

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”**

**CA (CAA) No 24 /Chd/Hry/2018**

**Under Section 230-232 of  
the Companies Act, 2013**

**In the matter of scheme of arrangement between:**

- 1. Brooks Instrument India Private Limited,**  
having its registered office at Level 1,  
Lotus Plaza, 732/1, Mehrauli Gurgaon Road,  
Sector-14, Gurugram, Haryana 122001,  
Income Tax PAN AAGCA7323K,  
Assessing Officer – ITO Ward 14(1)(3),  
Mumbai, Maharashtra.  
...Transferor Company No. 1-Applicant Company -1  

And
- 2. Bangalore Integrated System Solutions  
Private Limited,** having its registered office  
at Level 1, Lotus Plaza, 732/1, Mehrauli  
Gurgaon Road, Sector-14, Gurugram,  
Haryana 122001. Income Tax PAN  
AAACB5854G, Assessing Officer – Circle-11,  
Bangalore, Karnataka.  
...Transferor Company No. 2-Applicant Company-2  

And
- 3. ITW India Private Limited,** having its  
registered office at Level 1, Lotus Plaza,  
732/1, Mehrauli Gurgaon Road, Sector-14,  
Gurugram, Haryana 122001. Income Tax  
PAN AAACI4550Q, Assessing Officer –  
DCIT, Circle- 2(1), Gurgaon, Haryana.  
...Transferee Company-Applicant Company-3

**Order delivered on : 27.09.2018**

**Coram: HON'BLE MR. JUSTICE R.P. NAGRATH, MEMBER (JUDICIAL)  
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Applicants:                      Atul V Sood, Advocate

**Per: R.P. Nagrath, Member (Judicial):**

**ORDER**

This is a joint First Motion Application for amalgamation of applicant Companies 1 and 2, namely; Brooks Instrument India Private Limited (for brevity, A-1 Company) and Bangalore Integrated System Solutions Private Limited (for brevity, A-2 Company) with ITW India Private Limited (for brevity, A-3 Company) under Section 230-232 of the Companies Act, 2013 (for short, to be referred hereinafter as the Act) read with Rule 3 of the Companies (Compromises, Arrangements Amalgamations) Rules, 2016 (for brevity, the Rules) for sanction of proposed Scheme of Arrangement Annexure A-1 (for short, the Scheme) of the Applicant- Companies as supported by the affidavit of Mr. Rohit Gupta, Authorised Representative of the Applicant Companies in support of the joint application for seeking appropriate orders/direction for calling and convening meetings and for dispensing with some of the meetings. The joint application is maintainable in terms of Rule 3(2) of the Rules.

2. The Board of Directors of the applicant companies unanimously approved the "Scheme" by passing their Board resolutions. The resolutions dated 01.08.2018 of A-1 and A-2 companies are Annexures A-11 and A-12, respectively and A-3 company approved the Scheme by resolution dated 02.08.2018 (Annexure A-13) subject to sanctioning of the same by this Tribunal. That A-1 Company has authorized Shri Rohit Gupta and Shri Mihir Gangadhar Kulkarni, Directors; A-2 company has authorized Shri Rohit Gupta and Shri Ramasubbu Sunder, Directors and A-3 company has authorized Shri Rohit Gupta, Chief Financial Officer and Executive

Director and other directors and Mr. Abhishek Nagar, Company Secretary and Senior Manager (Legal) jointly and/or severally to sign, file, submit or present necessary applications, petitions, supplementary applications/petitions, pleadings etc. and to do such acts and deeds as are necessary and incidental with regard to the Scheme. By the same resolution, the applicant-companies have also appointed Mr. Atul V. Sood, Advocate to represent the companies before the Tribunal.

3. As per Memorandum and Articles of Association, (Annexure A-2) the main objects of A-1 Company are to carry on the business, whether directly or indirectly, of designing, manufacturing, assembling, modifying, installing, testing, repairing, operating, maintenance, management, buying, selling, trading, exporting, importing, distributing or otherwise dealing in all types and nature of highly engineered thermal, variable area and Coriolis flow devices.

4. As per the certificate of incorporation of A-1 Company which is part of Annexure A-2, A-1 Company was incorporated on the 19.12.2007 as AIP Devices Private Limited and its name was changed to Brooks Instrument India Private Limited w.e.f. 15.07.2008. Its registered office was shifted from the State of Maharashtra to the State of Haryana and a fresh certificate of incorporation dated 20.07.2015 was issued by the Assistant Registrar of Companies at Delhi. Its CIN is U36900HR2007PTC056071. A-1 company is stated to be a wholly owned subsidiary of Transferee Company.

5. The authorized, issued, subscribed and paid-up capital of the A-1 company as on 31.07.2018 is as under:-

<b>Particulars</b>	<b>Amount (in ₹)</b>
<b>Authorized Share Capital</b>	
15,00,000 Equity Shares of Rs.10/- each	1,50,00,000
<b>Issued, Subscribed and Paid-up Share Capital</b>	
10,80,327 Equity Shares of Rs.10/- each	1,08,03,270

6. As per Memorandum and Articles of Association, Annexure A-5, the main objects of A-2 Company are to act as consulting engineers, designers and Developers, Manufacturers, dealers in electronic, mechanical and servo-hydraulic systems used in mechanical testing of materials and structures; digital, analog, hybrid and microprocessor based control and data acquisition equipment; Computer Software, including firmware, application software and documentation, and associated with real-time as well as off-line application etc.

7. Further as per certificate of incorporation of A-2 company which is part of the documents - Annexure A-5, the company was incorporated on the 29<sup>th</sup> January, 1992 as a private company limited by shares. Its registered office was shifted from the State of Karnataka to the State of Haryana and a fresh Certificate of Incorporation dated 20.07.2015 was issued. Its CIN is U30009HR1992PTC056008. A-2 company is stated to be a wholly owned subsidiary of Transferee Company.

8. The authorized, issued, subscribed and paid-up capital of A-2 Company as on 31.07.2018 is as under:-

<b>Particulars</b>	<b>Amount (in ₹)</b>
<b>Authorized Share Capital</b>	
25,000 Equity Shares of Rs.100/- each	25,00,000
<b>Issued, Subscribed and Paid-up Share Capital</b>	
13,798 Equity Shares of Rs.100/- each	13,79,800

9. It was represented further that as per Memorandum and Articles of Association, (Annexure A-8) the main objects of A-3 Company are as under:-

- “(i) To establish, own or acquire ferrous and non-ferrous metal melting furnaces and rolling mills and to carry on business as traders, manufacturers and fabricators of ferrous and non-ferrous ingots, blocks, billets, slabs, sheets, hot rolled and cold rolled steel strips, strips with edges, rounded or otherwise shaped, coated strips, galvanized or Zinc finished or wax coated or painted.*
- (ii) To carry on business as traders, manufacturers and fabricators of steel strappings of various ranges of tensile strength for different type of applications, including cold rolled steel, medium carbon, high manganese steel, high carbon steel and stainless steel strappings and palletizing/unitizing strapping made of polypropylene and other non-metallic strapping systems like polypropylene, rayon, nylon, plastic or other synthetic materials and their equipments and components for industrial applications.*
- (iii) To carry on business as traders, manufacturers and fabricators of seals of various types for different types of applications, tensioners and sealers either manually or pneumatically operated to cover various types of applications and sizes, combination tools, pneumatic accessories, cutters, tool suspension systems, strapping dispensers, power strapping machines, special purpose machine for any or all of the above applications” etc.*

10. It is submitted that as per Certificate of Incorporation which is part of the document, Annexure A-8, A-3 company was incorporated on 30.11.1979 in the name and style of Nagarjuna Strapping Systems Private Limited as a private company limited by shares. Later, on 21.4.1981, the CA (CAA) No 24 /Chd/Hry/2018

name of the Company was changed to Nagarjuna Signode Private Limited. Subsequently, the Company was converted into a public limited company. Pursuant to which, the name was changed to Nagarjuna Signode Private Limited w.e.f. 10.07.1981. Vide fresh certificate of incorporation dated 30.1.1992, the name of the company was further changed to ITW Signode India Limited. The name was then changed to ITW India Limited vide fresh certificate of incorporation dated 13.10.2004. Its registered office was shifted from the State of Andhra Pradesh to the State of Haryana and a fresh Certificate of Incorporation Number U32301HR1979PLC038643 dated 29.12.2008 was issued. Vide fresh certificate of incorporation dated 16.04.2015, the company was again converted into a private limited company under its present name of ITW India Private Limited. Its CIN U32301HR1979PTC038643. A-3 company is stated to be a holding company of A-1 and A-2 Companies.

11. The Authorised and paid up capital of the Transferee Company as on 31.07.18 is as follows and there is no change till the date of filing of the present petition :-

<b>Particulars</b>	<b>Amount (in ₹)</b>
<b>Authorized Share Capital</b>	
25,300 Equity Shares of Rs.20,000/- each	50,60,00,000
<b>Issued Share Capital</b>	
8,938 Equity Shares of Rs.20,000/- each	17,87,60,000
<b>Subscribed and Paid-up Share Capital</b>	
6,775 Equity Shares of Rs.20,000/- each	13,55,00,000
Add: Amount paid up on forfeited shares	5,125

12. The registered offices of all the Applicant-Companies are the same and situated within the State of Haryana and, therefore, the matter falls within the territorial jurisdiction of this Tribunal. All the Applicant-Companies are unlisted private limited companies.

13. It is stated that there are no proceedings for inspection / investigation under the Companies Act, 1956 or Companies Act, 2013 or any proceedings under SEBI/FEMA/IPC, pending against the Applicant Companies or their directors. Even no proceedings are pending under Sections 241 and 242 of the Companies Act, 2013 against the companies or its Directors.

14. The Applicant Companies have made the following prayers;-

- “(a) Direct that the meetings of the equity shareholders and secured creditors of the Applicant Companies 1 and 2 be dispensed with;*
- (b) Direct that meetings of unsecured creditors of Applicant Company 1 and 2 be convened;*
- (c) Direct that meeting of secured creditors of Applicant Company 3 be convened;*
- (d) Direct that the meetings of the equity shareholders and unsecured creditors of the Applicant Company 3 be convened;*
- (e) Direct that for meeting of unsecured creditors of the Applicant Company 3, convening of meeting of unsecured creditors having debt of less than ₹ 50,000/- may be dispensed with;*
- (f) Pass any such orders or directions as may be deemed fit in the facts and circumstances of the present case.”*

15. Learned counsel for the applicant-companies further represented that as on 31.7.2018, A-1 company has 02( two) equity shareholders as per list attached at Annexure A-14(Colly).

16. It was submitted accordingly that A-3 company is holding 10,80,326 equity shares constituting 99.9999% shareholding in A-1 company and Avery India Limited is holding 1 share in A-1 company as a nominee shareholder of A-3 company. A-3 company, vide resolution of its Board of Directors dated 02.08.2018 (at page 354 of the paper book), while granting approval to the scheme, has authorized Shri Rohit Gupta, Chief Financial Officer and Executive Director along with others to do various acts including executing any affidavits in relation to the scheme. The affidavit giving consent of Mr. Rohit Gupta on behalf of A-3 company has been filed stating therein that the A-3 company agrees and consents unconditionally to the dispensation of meeting of shareholders of A-1 company. With regard to the nominee shareholder, i.e., Avery India Limited, a similar affidavit of no objection for dispensation has been filed by Mr. Rohit Gupta from pages 363 to 366 of the paper book. The learned counsel for the applicant-companies has represented that the resolution of Board of Directors of Avery India Limited, the nominee shareholder passed the resolution dated 13.07.2018 (as per page 373A) authorizing all its Directors, jointly and/or severally to furnish the affidavits of consent. Mr. Rohit Gupta in his affidavit has also stated that he derives his authority from the resolution dated 13.07.2018.

17. As per certificate of Suresh Surana & Associates LLP, Chartered Accountants as at Annexure A-16, A-1 company has no secured creditors as on 31.07.2018.

18. There are 3 unsecured creditors of A-1 company as on 31.7.2018 as per certificate of Suresh Surana & Associates LLP, Chartered Accountants Annexure A-17 and A-18. It is stated in this certificate that the list include all the unsecured creditors, i.e., unsecured loans, trade creditors, sundry creditors and other current liabilities of A-1 company. It has been prayed that meeting of the unsecured creditors of A-1 company may be convened.

19. In relation to A-2 company, it is stated that A-3 company is holding 13,797 equity shares of the value of ₹ 100/- each constituting 99.99% shareholding in this company and Avery India Limited is holding 1 share as a nominee shareholder of A-3 company. List of shareholders is at Annexure A-18. A-3 company, vide resolution of its Board of Directors dated 02.08.2018 (at page 354 of the paper book), while granting approval to the scheme, has jointly and/or severally authorized Shri Rohit Gupta and Shri Mihir Gangadhar Kulkarni to do various acts including executing any affidavits in relation to the scheme. The affidavit giving consent of Mr. Rohit Gupta, Director on behalf of A-3 company has been filed stating therein that the A-3 company has no objection to the dispensation of meeting of shareholders. The affidavit dated 07.08.2018 is Annexure A-19. With regard to the nominee shareholder, i.e. Avery India Limited, a similar affidavit by Rohit

Gupta, its Director furnishing no objection for dispensation has been filed along with Board resolution of Avery India Limited. The affidavit is from pages 385 to 388 of the paper book and the Board resolution of Avery India Limited, the nominee shareholder is at page 373A.

20. A-2 company has no secured creditor as on 31.7.18 as per certificate of M.A.Narasimhan & Co., Chartered Accountants as at Annexure A-20.

21. There are 73 unsecured creditors of A-2 company as on 31.7.2018 as per certificate of M.A.Narasimhan & Co , Chartered Accountants at Annexure A-21. It is stated in this certificate that the list includes all the unsecured creditors, i.e., unsecured loans, trade creditors, sundry creditors and other current liabilities of A-2 company. It is prayed that meeting of the unsecured creditors of A-2 company may be convened.

22. It is further stated that as on 31.7.2018, A-3 company has 22 (twenty two) shareholders as per list attached as Annexure A-22. As per this list, out of 6775 equity shares of the face value of ₹ 20,000/- per share, 6744 shares are held by M/s. Illinois Tool Works Inc., located at Harlem Ave Glenview IL 60025. Rest of the equity share holders have 3 or less than 3 shares each. Total amount of shareholding comes to ₹ 13,55,00,000/- A-3 company is seeking to call and convene the meeting of equity shareholders.

23. There is only one secured creditor of A-3 company as on 31.7.2018, i.e., Sundaram Finance Limited as per certificate of

Goel Mintri & Associates, Chartered Accountants as per Annexure A-23. The amount of secured loan is ₹ 9,25,097.34. A-3 company is seeking to call and convene the meeting of secured creditors.

24. There are 466 unsecured creditors of A-3 company as on 31.7.2018 as per certificate of Goel Mintri & Associates, Chartered Accountants at Annexure A-24. It is stated in this certificate that the list includes all the unsecured creditors, i.e., unsecured loans, trade creditors, sundry creditors and other current liabilities of A-3 company. The total amount due towards unsecured creditors as on 31.07.2018 is ₹ 18,42,52,805/-. It has been prayed that meeting of the unsecured creditors of A-3 company be convened and held. It is further prayed that meeting of unsecured creditors having a debt of less than ₹ 50,000/- as on 31.7.2018 may be dispensed with as they constitute 1.92% of the total value of unsecured creditors..

25. The certificates of Statutory Auditors of all the applicant companies with respect to the Scheme between Applicant-Companies to the effect that the accounting treatment proposed in the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act,2013 read with relevant Rules issued thereunder and other generally accepted accounting principles in India are attached as A-26 (colly.).

26. We have heard the learned counsel for the applicant-companies and have perused the records and the supporting documents/papers filed along with the "Scheme" contemplated

between the Applicant-Companies with the assistance of learned counsel for the applicants.

27. The rationale for the "Scheme" is stated as under:-

*"The Transferee Company, the Transferor Company 1 and the Transferor Company 2 (hereinafter referred as "Companies") are a part of the ITW Group which is headquartered in the United States of America. This Scheme of Arrangement, is being undertaken as part of the restructuring plan to simplify the holding structure through consolidation of the wholly owned subsidiaries and to **reduce the paid up share capital of all shareholders holding less than 10 shares in the Transferee Company.***

*The Scheme is expected to achieve various objectives, including:*

- a. The Transferee Company will have the benefit of the combined assets, cash flows and man power of the Transferor Companies (as defined hereinafter). These combined resources will enhance its capability to expand and improve its efficiency of operations, better administration and cost reduction.*
- b. The amalgamation would enable seamless access to strong business relationships, closer and better focused attention being given to the businesses which would get integrated, aligned and streamlined, leading to achievement of their full business and growth potential.*
- c. The Transferee Company and the Transferor Companies, are engaged in inter-alia, test and measurement business segment. While the Transferor Company 1 is engaged in fluid measurement technology, the Transferor Company 2 is engaged in development, manufacturing of non-destructive test equipment and also provides testing and calibration services and the Transferee Company is engaged inter-alia in the business of manufacturing testing equipments. Thus, the amalgamation would result in consolidation of complementary businesses and*

*related assets of the Transferor Companies with the Transferee Company, leading to synergistic linkages and benefits.*

- d. *Pursuant to the Scheme, the existing multi-tiered structure would collapse, resulting in the entire business being housed in one entity only (i.e. Transferee Company).*
- e. ***The Transferee Company was delisted in the year 2002. Post delisting, the equity shares of the Transferee Company could not be traded on any of the stock exchanges in India and hence, these shares have lost marketability. Subsequently, in the year 2015, the Transferee Company was converted into a private limited company, resulting in restrictions on transfer of equity shares.***
- f. ***The Transferee Company is having sufficient reserves and cash and intends to reduce its paid up share capital, which is no longer required, by paying off to the Relevant Shareholders (as defined hereinafter)."***

28. It was represented by the learned counsel for the applicant companies that A-1 and A-2 companies are the wholly owned subsidiaries of the A-3 company. Upon sanctioning of the Scheme, the entire present issued, subscribed and paid-up capital of the A-1 and A-2 companies shall stand automatically cancelled and extinguished and these companies shall stand dissolved without undergoing the process of winding up.

29. It is also averred that since all the Transferor Companies are wholly owned subsidiaries of the A-3 company, therefore, there would be no issue and allotment of shares by the A-3 company.

30. The learned counsel for the Applicant-companies further represented that in respect of the applicant-companies, the audited financial statements upto 31.3.2017 and unaudited supplementary accounting statements upto 31.3.2018 are at Annexures A-3, A-4, A-6, A-7, A-9 and A-10 respectively.

31. It was also represented by learned counsel for the applicant companies that as per clause 6 of the Scheme, on the "Scheme" coming into effect, all employees of the Transferor Companies in service on the date immediately preceding the Effective Date shall, on and from the Effective Date, be deemed to have become the employees of the Transferee Company on the same terms and conditions on which they are engaged by the Transferor Companies without treating it as a break, discontinuance or interruption in service. Care has also been taken in the Scheme regarding other benefits/facilities being granted to the employees of the transferor-companies.

32. It is also stated that upon the Scheme coming into effect and with effect from the Appointed Date, the Transferee Company shall bear the burden and the benefits of all legal taxation or other claims, proceedings and investigations of whatsoever nature that pertain to the Transferor Companies or their properties, assets, debts, liabilities, duties and obligations, initiated by or against the Transferor companies or claims, proceedings and investigations to which the Transferor Companies are party to, whether pending as on the appointed date, or which may be instituted any time in the future in relation to the Transferor Companies ("Proceedings"). Upon the Scheme coming into effect and with effect from

the Appointed Date, if any, proceedings in respect of the Transferor Companies, be pending, the same shall not abate, be discontinued or in any way be prejudicially affected by reason of the amalgamation of the Transferor Companies with the Transferee Company but the proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Companies.

33. In the separate affidavits Annexure A-27 (colly) dated 7.8.2018 of Mr. Rohit Gupta, the authorized representative of all the applicant-companies, it is stated that apart from the statutory authorities and the Reserve Bank of India, there is no other sectoral regulator. It is, however, stated that the Reserve Bank of India may be considered as the Sectoral Regulator on account of foreign shareholding of A-3 company and A-1 and A-2 companies being downstream investment of foreign owned and controlled company.

34. The question posed to the learned counsel for the petitioner was that other than the amalgamation of the subsidiary-companies into the transferee-company, the prayer to give exit only to the minority shareholders is an arrangement which may amount to buy back of the shares by the company to attract Section 68 of the Act. Sub-section (10) of Section 230 of the Act says that no compromise or arrangement in respect of any buy-back of securities under this Section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of Section 68. The company is required to make certain compliance in order to move the

Tribunal under Section 68 of the Act.

35. The learned counsel for the petitioner-companies, however, referred to the following judgements to contend that the Scheme of Arrangement to give honorable exit to such minority shareholders who still remain the members after the delisting of the company:

(i)	R Systems International Limited	MANU/NL/0151/2018
(ii)	Sandvik Asia Ltd. V. Bharat Kumar Padamsi & Ors.	MANU/MH/0237/2009
iii)	Reckit Benckiser (India) Ltd.	MANU/DE/1174/2005
iv)	Jubilant Clinsys Limited	MANU/NC/0629/2017
(v)	Gujarat Ambuja Exports Ltd.	MANU/GJ/0170/2003
(vi)	Hind Lever Chemicals Ltd. & Anr.	MANU/PH/0040/2004

Such an arrangement, according to the learned counsel, is covered under Section 66 of the Act, which is permitted as per explanation below sub-section (12) of Section 230 of the Act. We would not like to express any opinion on merits of this contention at this stage and leave this issue to be finally adjudicated up while disposing of the Second Motion petition for which the applicant-companies shall make a specific prayer in the relief clause at that stage seeking for adjudication on this aspect. However, we would observe that in the Companies Act, 2013, certain provisions/changes have been made which were not found under the provisions of the Companies Act, 1956 (for brevity, the 1956 Act). The provisions of reduction of share capital were contained in Sections 101 to 104 in the 1956 Act and with regard to buy-back of the shares, the relevant provision was found in Section 77A of 1956 Act. There was no reference to Section 77A and

Sections 101 to 104 of the 1956 Act in the provisions of Sections 391 to 394 of said Act dealing with the compromise, arrangement and amalgamation. The legislative intention to introduce these provisions in Section 230 of the Act have thus to be examined at the appropriate stage.

36. The learned counsel for the petitioner-companies urged that the issue of applicability of Section 77A of the 1956 Act was also discussed in the Judgements of **Reckit Benckiser (India) Ltd.** and **Gujarat Ambuja Exports Ltd.** (supra). We would, however, like to have the view from the Central Government or counsel for the Central Government or any of the Objectors to the aforesaid clauses in the Scheme sought to be sanctioned, before taking a final decision. Presently, we are dealing with the issue of calling and convening of meetings of the shareholders as well as secured and unsecured creditors of the three companies.

37. It would be pertinent to refer to the relevant clauses of the Scheme laying down salient features thereof. These relate to **Reduction of Share Capital of the Transferee-Company** as detailed below.

*“18.1 The subscribed and paid up share capital of the Transferee Company is ₹ 13,55,00,000 consisting of 6,775 equity shares of face value ₹ 20,000 each, fully paid up. The subscribed and paid up share capital of the Transferee Company shall stand reduced with regard to the shares held by the Relevant Shareholders **by paying back** the capital at a price as mentioned hereinafter.*

*18.2 Upon the Scheme becoming effective, the subscribed and paid up share capital of the Transferee Company will be reduced from ₹13,55,00,000 (Rupees Thirteen Crore Fifty Five*

Lakhs) consisting of 6,775 (Six Thousand Seven Hundred Seventy Five) equity shares of face value Rs. 20,000 each to ₹ 13,48,80,000 (Rupees Thirteen Crore Forty Eight Lakhs Eighty Thousand) consisting of 6,744 (Six Thousand Seven Hundred and Forty Four) equity shares of face value ₹ 20,000 each, by cancelling and extinguishing 31 (Thirty One) equity shares of face value ₹ 20,000 each.

18.3 Upon the Scheme becoming effective and pursuant to clause 18.1 and clause 18.2 above, the Relevant Shareholders of the Transferee Company as on the Record Date, shall be paid, for the equity shares held by them and which are cancelled and extinguished, **a sum of ₹ 21,60,088 per equity share of face value ₹ 20,000 each**, so cancelled and extinguished, as per valuation carried out by independent valuers, SSPA & CO. (Chartered Accountants). Further, as per the provisions of section 115-O of the Income Tax Act, 1961, the Transferee Company shall additionally bear the dividend distribution tax @ 20.555% amounting to ₹ 4,44,006 per equity share so cancelled and extinguished or as may be applicable as per the tax laws then in force.

18.4 Upon the Scheme becoming effective, and without any further act or deed by the Relevant Shareholders or their nominees (including but not limited to surrendering of share certificates and/or sending appropriate instructions to the Depository Participants), the shares held by the Relevant Shareholders shall stand cancelled, extinguished and rendered invalid.

- 18.5 *Upon the Scheme becoming effective, the payment for the Capital Reduction to the Relevant Shareholders as on the Record Date shall be discharged by issue of cheque, pay order/ warrant or demand draft, electronic transfer of funds, NEFT/ RTGS/ IMPS to the last known details of such Relevant Shareholder, as available with the Company / Registrar and Share Transfer Agent.*
- 18.6 *To the extent the consideration for the Capital Reduction is payable to non-resident Relevant Shareholders as on the Record Date, the Transferee Company shall comply with the provisions of Foreign Exchange management Act, 1999 and the guidelines therein and may seek any information from such non-resident Relevant Shareholders as on the Record Date to comply with the said provisions.*
- 18.7 *In case of transfer requests pending as on the Record Date, the Transferee Company shall dispatch to shareholders (transferor) and to such person (transferee) from whom the Transferee Company has received any communication with respect to pending transfer of shares, a form to be duly filled in by the transferor and the transferee. Upon receipt of duly filled-in form complete in all respects, the Transferee Company shall discharge the consideration to the transferee or to the transferor, as the case may be. Pending receipt of duly filled in form, the consideration towards such shares shall be dealt in a manner provided for in the clause 18.8 below.*
- 18.8 *Where the payment pursuant to clause 18.3 and clause 18.5 above, has not been claimed by any*

*of the Relevant Shareholders on account of cheques or demand drafts returned and / or undelivered, cheques not deposited, consideration in respect of shares pending transfer as on the Record Date, or for any other reason, for a period of 7 (seven) years, such unclaimed consideration after the said period shall be utilized in a manner as may be permitted under any law then in force or shall be transferred to the Investor Education and Protection Fund.*

18.9 *The Capital Reduction shall be effected as an integral part of the Scheme.”*

38. Now coming to issue of the other regulatory authorities, it would be relevant to refer to sub-clause (h) of clause 5.2 of the Scheme under the Head – Transfer and Vesting of the Undertakings which says that with effect from the appointed date, the entire Research and Development unit of the Transferor Company 2 shall stand transferred to the Transferee Company and the Transferee Company shall continue to undertake the Research and Development activities in the same manner and to the same extent, as the Transferor Company 2. Further, with effect from the Appointed Date, the approval of DSIR pertaining to the Transferor Company 2 shall stand transferred to the Transferee Company and The Transferee Company shall be entitled to claim applicable tax deduction, specified under the relevant provisions of the Income Tax Act, 1961 including Section 35(2AB) of the Income Tax Act, 1961.

39. The learned counsel for the applicant-companies

submits that apart from the statutory authorities, the Reserve Bank of India is also to be issued notice as the holding company is a foreign based company. However, we find from clause 5.2(h) of the Scheme as referred to above that the Department of Scientific and Industrial Research (DSIR) should also be served notice as according to the Scheme, with the approval of DSIR, the transferor company No. 2 shall stand transferred to the transferee company and the transferee-company shall be able to claim applicable tax deductions. Further in case the reduction of share capital in this case is considered as buy-back, then the transferee company shall also have to show that its Articles of Association permits the buy-back of the shares.

40. In view of the above, following directions are issued with respect to calling, convening and holding of meetings of shareholders, secured and unsecured creditor and dispensing with the same as well as issue of notices including by way of paper publication which are as follows:

**A. In relation to A-1 Company/ Transferor Company 1:**

- a) Meeting of the equity shareholders is dispensed with as there are two equity shareholders and the consent of both of them on affidavits have been obtained and placed on record.
- b) Since there is no secured creditor, there is nothing to convene the meeting.
- c) Meeting of unsecured creditors to be convened at Level 1, Lotus Plaza, 732/1, Mehrauli Gurgaon Road, Sector-14, Gurugram, Haryana 122001 on 17.11.2018 at 10.30 AM subject to the

notice of meeting being issued. The quorum of the meeting shall be two in number and 60% of the value of the unsecured credit.

**B. In relation to A-2 Company/ Transferor Company 2:**

- a) Meeting of the equity shareholders is dispensed with as there are two equity shareholders and the consent of both of them on affidavits have been obtained and placed on record.
- b) Since there is no secured creditors, there is nothing to convene the meeting.
- c) Meeting of unsecured creditors to be convened at Level 1, Lotus Plaza, 732/1, Mehrauli Gurgaon Road, Sector-14, Gurugram, Haryana 122001 on 17.11.2018 at 12'O clock subject to the notice of meeting being issued. The quorum of the meeting shall be 40 and 40% of the value of unsecured credit.

**C. In relation to A-3 Company/ Transferee Company :**

- a) Meeting of equity shareholders to be convened at Level 1, Lotus Plaza, 732/1, Mehrauli Gurgaon Road, Sector-14, Gurugram, Haryana 122001 on 17.11.2018 at 2.30 PM subject to the notice of meeting being issued. The quorum of the meeting shall be 20 in number and 100% of the value of the shareholding.
- b) Meeting of secured creditors to be convened at Level 1, Lotus Plaza, 732/1, Mehrauli Gurgaon Road, Sector-14, Gurugram, Haryana 122001 on 17.11. 2018 at 03.30 PM subject to the notice of meeting being issued. The quorum of the meeting

shall be one in number and 100% of the value of the secured credit.

- c) Meeting of unsecured creditors to be convened at at Level 1, Lotus Plaza, 732/1, Mehrauli Gurgaon Road, Sector-14, Gurugram, Haryana 122001 on 18.11.2018 at 10.30 AM subject to the notice of meeting being issued. The quorum of the meeting shall be 60 in number and 50% of the value of the unsecured credit. The meeting of unsecured creditors having debt of less than ₹ 50,000/- is dispensed with.

D. In case the required quorum as noted above for the meetings of the Applicant-Companies is not present at the commencement of the meetings, the meetings shall be adjourned by 30 minutes, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the applicant companies at least 48 hours before the meeting. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy register is properly maintained.

E. Ms. Anu Chatrath, Senior Advocate, House No. 2055, Sector 15-C, Chandigarh (Mobile No. 9872511222), e-mail id: [anuchatrath2055@gmail.com](mailto:anuchatrath2055@gmail.com) is appointed as the Chairperson for the meeting to be called under this order. She shall be paid

fee of ₹1,60,000/- (Rupees one lac, sixty thousand only) for her services as the Chairperson.

F. Mr. B.S. Arora, Advocate, Chamber No. 72, Patiala House, New Delhi (Mobile No. 9810206929), e-mail id: bsarora.adv@gmail.com is appointed as the Alternate Chairperson for the meetings to be called under this order. He shall be paid fee of ₹80,000/- (Rupees eighty thousand only) for his services as the Alternate Chairperson.

G. Mr. Ramesh Bhatia, Company Secretary, SCO 154-155, Sector 17-C, Chandigarh (Mobile Number: 9815351500), e-mail id: bhatiar9@yahoo.co.in is appointed as the Scrutinizer for the above meeting to be called under this order. He shall be paid fee of ₹ 70,000/- (Rupees seventy thousand only) for his services as the Scrutinizer.

H. The fee of Chairperson, Alternate Chairperson and Scrutinizer along with the travelling expenses and other out of pocket expenses for them shall be borne by the Transferee-Company.

I. It is further directed that individual notice of the said meeting shall be sent by the Applicant Companies to the unsecured Creditors of the A-1 and A-2 companies, Equity Shareholders, secured creditors and unsecured creditors of the A-3 Company as on 31.7.2018. Notice shall be sent through registered post or speed post or through courier or e-mail, 30 days in advance before the schedule date of meeting, indicating the day, date, the place and time as aforesaid, together with a copy of "Scheme", copy of

explanatory statement required to be sent under the Companies Act, 2013 and the applicable Rules along with the proxy forms and any other documents as may be prescribed under the Act shall also be duly sent with the notice. It is also directed that copy of this order be also sent with the individual notices to the equity shareholders of A-3 company

- J. It is further directed that along with the notices, Applicant Companies shall also send, statement explaining the effect of the scheme on the creditors, key managerial personnel, promoters and non-promoter members etc. along with effect of the arrangement for amalgamation on any material interests of the Directors of the Company or the debenture trustees, if any, as provided under sub-section 3 of Section 230 of the Act.
- K. It is also directed that the supplementary accounting statement relating to the period ending 30.06.2018 be also circulated for the aforesaid meetings apart from other requirements of sub-section 2 of Section 230 of the Act.
- L. That the Applicant Companies shall jointly publish the advertisement with a gap of at least 30 clear days before the aforesaid meeting, indicating the day, date and the place and time of meetings as aforesaid, to be published in the Indian Express (English), Delhi NCR Edition and Business Standard (Hindi), Delhi NCR Edition. It be stated in the advertisement that the copies of "Scheme", the Explanatory Statement required to be published pursuant to Section 230 to 232 of the "Act" and the form

of proxy shall be provided free of charge at the registered office of the Applicant Companies. The Applicant Companies shall also publish the notice on their respective website, if any.

- M. It shall be the responsibility of the Applicant Companies to ensure that the notices are sent under the signature and supervision of the authorized representative of the companies on the basis of Board resolutions and that they shall file their affidavits in the Tribunal at least ten days before the date fixed for the meeting.
- N. Voting shall be allowed on the "Scheme" in person or by proxy or through electronic means as may be applicable to the Applicant Companies under the Act and Rules framed thereunder.
- O. The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA 4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 07 (seven) days of the conclusion of the meeting. He would be fully assisted by the authorized representative / Company Secretary of each Company and the Scrutinizer, who will assist the Hon'ble Chairperson and Alternate Chairperson in preparing and finalizing the reports.
- P. The Applicant Companies shall individually and in compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA 3 along with a copy of the Scheme, the Explanatory Statement and the disclosures mentioned in Rule 6 of the "Rules" **and copy of this order to** (i) the Central

Government through the Regional Director, Northern Region, Ministry of Corporate Affairs; (ii) Registrar of Companies, NCT of Delhi & Haryana; (iii) Income Tax Department through the Nodal Officer – Principal Chief Commissioner of Income Tax, NWR, Aaykar Bhawan, Sector 17-E, Chandigarh by mentioning the PAN numbers of all the companies in the notices; (iv) Official Liquidator, Punjab, Haryana and Chandigarh (v) Reserve Bank of India (vi) Director General, Council of Scientific and Industrial Research (CSIR)-cum Secretary, Department of Scientific and Industrial Research (DSIR), Room No. 14-B, Technology Bhawan, S&T Block I, New Mehrauli Road, Block-C, Adchini, New Delhi-110016 and other Sectoral Regulator(s), if any, stating that representations, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representations shall be simultaneously sent to the concerned companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

Q. The Applicant Companies further shall furnish copy of the Scheme free of charge within one day of any requisition for the “Scheme” made by any creditor or member/shareholder entitled to attend the meeting as aforesaid.

R. The authorized representative(s) of the Applicant Companies shall furnish affidavits of service of notice of meeting and

publication of advertisement and compliance of all directions contained herein at least a week before the date of meeting.

S. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the "Rules" as well as the provisions of the Companies Act, 2013 by the Applicants.

T. Specific prayer shall be made in the relief clause in the Second Motion Petition regarding exit to only minority shareholders of the transferee company in the Scheme of amalgamation (Para Nos. 34 to 37 supra)

41. With the aforesaid directions, this First Motion Petition stands disposed of. A copy of this order be supplied to the learned counsel for the Applicant- Companies who in turn shall supply copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer.

Sd/-

(Pradeep R. Sethi)  
Member (Technical)

September 27, 2018  
saini

Sd/-

(Justice R.P. Nagrath)  
Member(Judicial)