

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,**

**MUMBAI BENCH**

**COMPANY SCHEME APPLICATION NO. 580 OF 2017**

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of Poddar Infracon Private Limited having CIN U45201MH1995PTC089710 ('PIPL' or 'Transferor Company 1') and Java Tradvest Limited having CIN U51900MH1999PLC117907 ('Java' 'Transferor Company 2') and Suvidha Vitaran Private Limited having CIN U63090MH1988PTC047047 ('Suvidha' or 'Transferor Company 3') hereinafter collectively referred to as "Transferor Companies") with Mehtabson Trading and Manufacturing Private Limited having U51900MH1996PTC098488 ('Mehtabson' or 'Transferee Company') and their respective shareholders ('Scheme')

Suvidha Vitaran Private Limited, a Company )  
incorporated under the Companies Act, 1956 )  
with CIN U63090MH1988PTC047047 and )  
having its registered office at 5, Sunbeam )  
Chambers, Opp. Liberty Cinema, New Marine )  
Lines, Mumbai 40020. ) ...Applicant Company

**Called for Notice of Admission:**

Ajit Singh Tawar, Advocate with Rushil Aiya, Advocate, Advocates for the Applicant.

Coram: Ina Malhotra Member (Judicial)

Date: 19<sup>th</sup> June, 2017

## MINUTES OF THE ORDER

UPON the application of the Applicant Company above named by a Company Notice of Admission **AND UPON HEARING** Mr. Ajit Singh Tawar and Mr. Rushil Aiya, Advocates of the Applicant Company. **AND UPON READING** the Application along with the Notice of Admission dated 20<sup>th</sup> day of April, 2017 of Mr. Mahendra Savaliya, Authorised Representative of the Applicant Company, in support of Notice of Admission along with Applications and Exhibits therein referred to, **IT IS ORDERED THAT:**

1. A meeting of the Equity Shareholders of the Applicant Company, be convened and held at 5, Sunbeam Chambers, Opp. Liberty Cinema, New Marine Lines, Mumbai 40020 Maharashtra, India on 25<sup>th</sup> day of July 2017 at 1.00 pm for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of Poddar Infracon Private Limited and Java Tradvest Limited and Suvidha Vitaran Private Limited with Mehtabson Trading and Manufacturing Private Limited and their respective shareholders.
2. At least 30 clear days before the said meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by Registered Post or by Air Mail, or by courier or by speed post, or by hand delivery to each of the Equity Shareholders of the Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders as per the records of the Applicant Company.
3. At least 30 clear days before the Meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of Proxy can be obtained free of charge at the Registered Office of the Applicant

Company as aforesaid, shall be published once each in 'Free Press Journal' in English and 'Navshakti' in Marathi, both circulated at Mumbai.

4. The Applicant Company undertakes to:
  - i. Issue Notice convening meeting of the Equity shareholders in Form No. CAA.2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
  - ii. Issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
  - iii. Issue Form of Proxy in Form No. MGT-11 as per Rule 19 of the Companies (Management and Administration) Rules, 2014; and
  - iv. Advertise the Notice convening meeting in Form No. CAA.2 as per Rule 7 the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

5. Mr. Dinesh Poddar, Director of the Applicant Company failing him Mr. Yash Poddar, Director of the applicant Company failing him Mr. Mahendra Savaliya, Authorised Representative of the Applicant Company, is appointed as the Chairperson for the meeting of the Equity Shareholders. The Scrutinizer for the meeting shall be Ms. Kala Agarwal, Practicing Company Secretary who shall be paid an amount of Rs. 2,500/- for the services..
6. The Chairperson appointed for the aforesaid Meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (or any re-enactment thereof upon effectiveness of Companies Act, 2013) in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise at the meeting or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
7. The quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
8. The voting by proxy or authorised representative in case of body corporate shall be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the

person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered Office at 5, Sunbeam Chambers, Opp. Liberty Cinema, New Marine Lines, Mumbai 40020 Maharashtra, India, not later than, 48 hours before the aforesaid meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

9. The value and number of the shares of each member shall be in accordance with the books/register of the Applicant Company and where the entries in the books / register are disputed, the Chairperson of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
10. The Chairperson to file an affidavit not less than seven days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
11. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within thirty days after the conclusion of the meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromise, Arrangements and Amalgamation) Rules, 2016.
12. A meeting of the Preference Shareholders of the Applicant Company, be convened and held at 5, Sunbeam Chambers, Opp. Liberty Cinema, New Marine Lines, Mumbai 40020 Maharashtra, India on 25<sup>th</sup> day of July 2017 at 2.00 pm for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of Poddar Infracon Private Limited and Java Tradvest Limited and Suvidha Vitaran Private Limited with Mehtabson Trading and Manufacturing Private Limited and their respective shareholders.
13. At least 30 clear days before the said meeting of the Preference Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by Registered Post or by Air Mail, or by

courier or by speed post, or by hand delivery to each of the Preference Shareholders of the Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Preference Shareholders as per the records of the Applicant Company.

14. At least 30 clear days before the Meeting of the Preference Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid, shall be published once each in 'Free Press Journal' in English and 'Navshakti' in Marathi, both circulated at Mumbai.
15. The Applicant Company undertakes to:
  - i. Issue Notice convening meeting of the Preference shareholders in Form No. CAA.2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
  - ii. Issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
  - iii. Issue Form of Proxy in Form No. MGT-11 as per Rule 19 of the Companies (Management and Administration) Rules, 2014; and
  - iv. Advertise the Notice convening meeting in Form No. CAA.2 as per Rule 7 the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

16. Mr. Dinesh Poddar, Director of the Applicant Company failing him Mr. Yash Poddar, Director of the applicant Company failing him Mr. Mahendra Savaliya, Authorised Representative of the Applicant Company, is appointed as the Chairperson for the meeting of the Equity Shareholders. The Scrutinizer for the meeting shall be Ms. Kala Agarwal, Practicing Company Secretary who shall be paid an amount of Rs. 2,500/- for the services..
17. The Chairperson appointed for the aforesaid Meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairperson shall have all powers

under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (or any re-enactment thereof upon effectiveness of Companies Act, 2013) in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise at the meeting or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

18. The quorum for the aforesaid meeting of the Preference Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
19. The voting by proxy or authorised representative in case of body corporate shall be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered Office at 5, Sunbeam Chambers, Opp. Liberty Cinema, New Marine Lines, Mumbai 40020 Maharashtra, India, not later than, 48 hours before the aforesaid meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
20. The value and number of the shares of each member shall be in accordance with the books/ register of the Applicant Company and where the entries in the books / register are disputed, the Chairperson of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
21. The Chairperson to file an affidavit not less than seven days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
22. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within three days after the conclusion of the meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromise, Arrangements and Amalgamation) Rules, 2016.
23. That Counsel for the Applicant submits that there are no Secured Creditors of the Applicant Company as mentioned in paragraph 13 of the Application. Hence, the question of issuing notice of meeting to the Secured Creditors does not arise.

24. That Counsel for the Applicant submits that since the scheme is an amalgamation between the Applicant Company and their respective shareholders only meetings of shareholders are proposed to be held in accordance with the provisions of Section 230 (1) (b) of the Companies Act, 2013. This bench hereby directs the Applicant Company to issue notice to all its Unsecured Creditors as required under Section 230 (3) of the Companies Act, 2013 with a direction that may submit their representation, if any, to the Tribunal and a copy of such representations shall simultaneously be served upon the Applicant Company.
25. The Applicant to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
26. The Applicant to serve the notice upon the concerned Registrar of Companies, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
27. The Applicant to serve the notice on the concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessment are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
28. The Applicant to serve the notice upon the concerned office of the Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies

(Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing Chartered Accountant, M/s. S. R. Hegde & Co. with remuneration of Rs. 20,000/- for the services. If no response is received by the concerned Tribunal from the Official Liquidator within 30 days of the date of receipt of the notice it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

29. The Applicant Company to file an affidavit of service of the directions given by the Tribunal not less than seven days before the date fixed for holding of the meetings and do report to this tribunal that the direction regarding the issue of notices have been duly complied with.

Sd/-  
Ina Malhotra Member (J)