BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
COMPANY APPLICATION NO 60 OF 2017

Coram: B. S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

In the matter of the Companies Act, 2013 (18 of 2013);

And

In the matter of Sections 391 to 394 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 along with the Companies Act, 1956.

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 along with the Companies Act, 1956.

And

In the matter of Scheme of Arrangement of L&T Valves Limited, (the Transferor Company / the Demerged Company) with L&T Electricals and Automation Limited, the (the Transferee Company / the Resulting Company) and their respective Shareholders and Creditors

L&T Electricals and Automation Limited,)
a company incorporated under the provisions of the)
Companies Act, 1956, having its registered office)
at L&T House, Ballard Estate, Mumbai - 400001) ... Applicant

Applicants' Counsel: Shri Darius Khambata, Senior Advocate; Mr Rajesh Shah, Advocate; Mr Abhijeet Shinde, Advocate; Mr Siddharth Ranade, Advocate; Mr Ahmed M. Chunawala, Advocate; i/b Trilegal, Advocates for the Applicant.

ORDER
(Heard 09.02.2017)
(Pronounced on 13.02.2017)

It is a case of demerger between two unlisted public companies namely L & T Valves Limited (demerged company) and L & T Electricals and Automation Limited (resulting company). Each company filed separate

Application i.e. TCA 1020/2016 by demerged company and TCA1021/2016 by resulting company stating that demerged company is engaged in the business of manufacturing valves for various industries and resulting company is engaged in the business of manufacturing medium Voltage Switch Gear products. These two Companies are wholly owned subsidiaries of Larsen and Toubro Limited which is public limited company with securities listed in Bombay Stock Exchange as well as National Stock Exchange.

2. The Senior Counsel Shri Darius Khambata appearing on behalf of the Applicants submits that these Applications were originally filed under Sec. 391 r/w 394 of Companies Act,1956 (hereafter referred as old Act) before the Hon'ble High Court of Bombay for grant of scheme of demerger for transfer of Manapakkam undertaking of demerged company to resulting company for sale consideration of ₹7.38crores calling it as Manapakkam Scheme, by which, the plant, machinery and immovable properties of Manapakkam undertaking will be transferred from demerged company to resulting company.

3. As the jurisdiction relating to Schemes and Arrangements have been conferred upon National Company Law Tribunal, all Merger and Amalgamation matters except matters posted for orders were transferred from respective Honorable High Courts to the Tribunals, and those matters have now been taken up by this Bench for hearing under Chapter-XV of Compromises, Arrangements and Amalgamations spread in sections 230-240 of the Companies Act 2013 (hereafter referred as new Act).

4. In the process of it, the Senior Counsel, while seeking various directions u/s 230 & 232 of the new Act, has inter alia sought for dispensing with calling and holding meetings of shareholders, meetings of secured creditors in view of their written consent given by them and also for dispensation of calling meeting of unsecured creditors in lieu of undertaking to issue notices to the

Unsecured Creditors in demerged company and for dispensation from calling meeting of shareholders in view of Written Consents and dispensation from calling meeting of unsecured creditors of resulting company.

5. The grounds, the Counsel raised for dispensation of calling meetings are:

- that there are only seven shareholders and six secured creditors in demerged company and seven shareholders in resulting company and for all of them have already **given 100% consent** agreeing for the scheme envisaged, **the purpose** for calling and holding meetings u/s 230 of the new Act, **has already been served**, therefore the proposal for holding meetings may be dispensed with;

- that both the companies' **financial position being positive** with net worth of ₹520.64crores in demerged company and 3,16,721 lacs in resulting company reflecting in their respective Balance Sheets, there is **no need for the Companies to enter into any compromise** with the creditors, **henceforth the meeting of unsecured creditors is not required** subject to the notices being issued to the Unsecured Creditors above threshold of ₹5, 00,000.

- that Section 230 (9) of the new Act having envisaged that **calling creditors' meeting could be dispensed with** where such creditors **having at least 90% value, agree** and confirm, by way of affidavits, to the scheme of **compromise or arrangement**; it could be dispensed with, but here in this case, **scheme is not a compromise**, therefore **no occasion arises seeking dispensation** u/s 230 (9) of the new Act.

- that since almost **all High Courts exercised discretion** u/s 391(1) of the Old Act, **in dispensing with calling meetings** in cases where the

applicant companies have a few shareholders and when all of them in value and number give their consent to the scheme of compromise or arrangement, and when the company has positive net worth, **this Tribunal can also safely dispense with calling meetings** invoking the same discretion so far Honourable High Courts exercised under the old Act for the reasons, one – the language employed u/s 391(1) of the old Act and section 230 (1) of the new Act being pari materia to each other, two – for having both old and new sections have used the word **"may"** before "....**order meeting**" in subsection (1) of both old and new sections. Therefore, it cannot be, in the light of settled proposition of law, held that it is mandatory on the part of the Tribunal to direct company to call meeting in every case though the purpose for calling meeting has already been achieved by getting 100% consent of the members or the creditors, as the case may be.

- and that when purpose **for calling and holding meetings** to get approvals from the members or creditors **is served by supply of their 100% consents, this ceremonial compliance of calling and holding meetings could be done away**, the same has been reiterated in umpteen cases by the Hon'ble High Courts and Hon'ble Supreme Court, hence the counsel sought this Bench to follow the same path.

6. To fortify the above arguments, the counsel relied upon ***Ansal Properties and Industries Limited (1978) 48 Comp Cas 184 (Delhi High Court), Bengal Tea Industries Limited V/s. Union of India 93 CWN 542, Re: Kirloskar Electric Company (2003) SCC Online Karnataka 939, Re: Adobe Properties Private Limited (Manu /DE/2017), Mazda Theatres Ltd vs. Union of India (1975) 1 Delhi 1.***

7. The Applicant's Counsel further submits that looking at no express mandate of exemption from calling meeting of members in as much as exemption carved out to calling and holding creditors meeting u/s 230 (9) of

the New Act, the Principal Bench of NCLT, Delhi passed an Order ***In Re:JVA Trading Private Limited (CA No. A.1/PB/2017 dated 13.1.2017)*** holding that there is no power to dispense with meetings of shareholders under the new Act, basing on that proposition, the request for dispensing with calling shareholders meeting was turned down. He says such refusal is contrary to the rationale the Hon'ble High Courts followed until 1956 Act was repealed. Though jurisdiction is newly vested with NCLT, he says, for there being no difference in sub section 391 (1) of the Old Act and sub section 230 (1) of new Act in respect to compromise and arrangement, the rationale that followed under the repealed enactment would continue even after its repeal, because the respective provision has been bodily lifted from the old Act to the new Act. For various High Courts followed the principle enunciated above, the learned Principal Bench, New Delhi holding in respect to refusal for dispensation of calling and holding meetings becomes per incurium for the Principle Bench passed orders ignoring the ratio decidendi decided in plethora of judgments passed by Honorable High Courts dispensing with calling and holding meetings in the situations mentioned above. To get strength to his argument, the Counsel relied upon an excerpt from ***Union of India vs. R.P. Singh (2014) 7 SCC 340,*** which is as follows:

"Per incurium are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision are of some authority binding and the Court concerned..... It is settled rule that if a decision has been rendered per incurium, then the Court ignores it."

8. By this proposition, the counsel submits that this Bench can ignore the holding given by learned Principal Bench refusing to dispense with calling and holding meetings of the shareholders.

9. He also submits that learned Bench of Hon'ble NCLT Bangalore held on ***February 2, 2017 InRe: Coffee Day Overseas Private Limited*** dispensing with calling and holding of meeting of equity shareholders on similar set of

facts viz. where the equity shareholders had recorded their consent to the scheme. Since there are conflicting decisions from co-ordinate Benches, this Bench can also pass an Order ignoring the decision of the Principal Bench of Hon'ble NCLT on the footing that the order above is per incurium.

10. The Counsel further relied upon decision of Honorable High Court of Punjab and Haryana (FB) in ***Indo Swiss Times Limited, Dundahera vs. Umrao AIR 1981 Punjab & Haryana (page 219)*** to say that the when directly conflicting judgments of equal authority are in existence, then both of them cannot be binding on the Court below, inevitably a choice is to be made preferably to follow the judgment which appears to it to have laid down the law more elaborately and accurately. Relying upon this holding, he submits that this Bench can safely agree with the Order passed by Bangalore Bench of Hon'ble NCLT rather than the Order passed by Principal Bench of NCLT.

11. By making these submissions, the Senior Counsel put this Bench in a piquant situation warranting this Bench to take side which appears to be right in the eye of law.

12. To decide this point, this Bench is of the view that before going into the merits of the Arguments, it is just and necessary to read the provisions of the New Companies Act in respect to compromise and arrangements vis-à-vis the sections of Old Companies Act to find out what is the purpose and intent of the Parliament to have various changes in the new Act all through specifically in relation to compromises and arrangements.

13. Relevant Sections in New Act are mentioned with simultaneous notes to each of the subsections enabling the reader to read the note while looking at the section of law.

Sec: 230. Power to compromise or make arrangements with creditors and members

(1) Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them,

the Tribunal ***may,*** *on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator,* ***order a meeting*** *of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.*

14. The above part of this sub-section is bodily lifted from sub-section (1) of 391 of the old Act, the word order ***"may ..... order a meeting"*** is in the same order without any difference in both the sections, but noticeable aspect is that the applicant shall disclose the kind of meeting that is required basing on the scheme intended to. Though variation is not present in these two, the following subsections in section 230 conditioned this subsection with various disclosures, timelines and conferring right of postal ballot upon the persons noticed to meeting to exercise the same within one month from the date of receipt of notice.

Explanation:—For the purposes of this sub-section, arrangement includes a reorganization of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

15. This explanation part added to include reorganization of shares as arrangement, accordingly disclosure regarding changes in share capital is

included in sub-section 2 (b) of this section, this was not there in proviso to section 391 (2) of the old Act.

(2) The company or any other person, by whom an application is made under subsection (1), shall disclose to the Tribunal by affidavit—

(a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;

(b) reduction of share capital of the company, if any, included in the compromise or arrangement;

(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent of the secured creditors in value, including—

(i) a creditor's responsibility statement in the prescribed form;

(ii) safeguards for the protection of other secured and unsecured creditors;

(iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;

(iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and

(v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

16. Here, two clauses have been added, one in case of reduction of share capital, two – scheme for debt restructuring with the secured creditors. By the time of filing application itself, the company has to obtain consent of not less

than 75% of the secured creditors in value and file the same along with all the disclosures mentioned above, so now, even before filing this application, the applicant must show 75% of the secured creditors in value, what it reveals is, without 75% consent of the secured creditors in value the applicant could not even move an application for debt restructuring. – this mandate was not there in the old Act.

(3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors ***and*** *to all the members or class of members and the debenture-holders of the company,* ***individually*** *at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:*

17. In the old Act, according to sub section (1) of section 391, the company has to send meeting notice to either members or creditors, depending on the meeting, there was no obligation of sending notices to other stake holders other than to whom meeting has been called, now under new regime, **individual notices** have **to** be sent to **the members, creditors and debenture holders** along with statements explaining details of compromise/ arrangement and the impact of such compromise/arrangement on stakeholders.

Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to

the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:

Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

18. Under new provision, notice must come out in the web site of the company, in the case of listed companies, documents must be sent to SEBI for placing on the web site of SEBI, and shall also be published in news paper, so if it is unlisted company, public notice to the scheme shall come in the company website and newspaper, if listed, then in SEBI website also. **All these precautions have been taken in this proviso to make it public to such an extent that it reaches to the notice of every stakeholder, which was not the case under old Act.** Under section 393 (1) (b) of the old Act, it would come out in the newspaper advertisement only.

(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:

***Provided** that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent of the shareholding or having outstanding debt amounting to not less than five per cent of the total outstanding debt as per the latest audited financial statement.*

19. Under this subsection 4, whoever receives notice under subsection 3 is entitled to vote in person or by proxy or even by postal ballot to the compromise or arrangement **within one month from the date of receipt of notice**, whereby it has to be understood that whoever receives notice must be given at least one month time for exercising right of vote to the meeting, therefore there cannot be any meeting on short notice, it has to be held only

after one month from the date of receipt of notice gone under sub-section 3. Either this time line or postal ballot voting was not there in the old Act.

20. Another benchmark here is, qualification has been set out for raising objection to the scheme, so anybody and everybody cannot raise objection for the sake of raising, it will avoid unscrupulous and vexatious litigation under the garb of objection, this will in turn expedite sanctioning scheme, this qualification was not there, perhaps for that reason only, the scheme applications get stuck in the courts.

(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty (30) days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

21. Here, additional mandate is, directing the applicant company to send the same notice given under subsection 3 to be sent to all statutory authorities and such other sectoral regulators or authorities which are likely to be affected by the respective scheme and they shall give their representation if any to NCLT within 30 days from the date of receipt of notice, or else it will be presumed as no objection from their side to sanction the scheme by NCLT- It has two purposes, one-to raise their objection, two – in default, presumption after thirty days for sanctioning scheme. The Tribunal need not wait for the report of any authorities after thirty days, whereby delay in filing objections has been curtailed in sanctioning scheme, so everything has been set, to make business fast, but not to jump the signals given by the statute.

(6) Where, at a meeting held in pursuance of sub-section (1), ***majority of persons representing three-fourths in value of*** *the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.*

22. Though approval by the members or creditors or both, as the case may be, was there in section 391(2) of the old Act, there is a perceptible change in the new Act. In the old Act, majority was required in numbers and value of the shareholding or value of creditors, but now it has been cut to valuation alone, one thing is good, double requirement is brought down to single requirement. But the language couched in this subsection for voting is looking different, it is discernable that new Act has replaced the clause present in subsection of 391 of the old Act **"if a majority in number representing three-fourth value of the creditors/members ..... present and voting..... at the meeting, agree to the scheme"**, with clause **"where, at a meeting..., the majority of persons representing three-fourths in value of creditors/members ..... voting ..... agree to the scheme".** Here the concerning thing is the word **"in number"** after the word majority in Section 391 (2) of the old Act has been replaced with word **"of persons'** making it to understand that it is no more **"majority in number representing three-fourths in value of"** it is **"majority of persons representing three-fourths in value ofcreditors/members".** As to omission of word **"present"** in this new sub-section, it may be because a number criterion present in the old Act was deleted and postal ballot provision is conferred upon voters under subsection 4 of this section. If the framing in this new subsection is read in conjunction, it appears that 3/4th in valuation shall agree in favor of the scheme, any way, now the relief sought by the counsel being limited to dispensation and others argument is limited to shorter notice, this Bench does not hold any opinion over the majority requisition.

23. From the subsection below onwards to sub-section 9 not being essential to decide the issues before this Bench, they have not been dealt with.

> *(a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity sharesequal to the value of the dividend payable;*
>
> *(b) the protection of any class of creditors;*
>
> *(c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;*
>
> *(d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;*
>
> *(e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement:*

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless ***a certificate by the company's auditor*** *has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.*

(8) The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

(9) The Tribunal may ***dispense with calling of a meeting*** *of creditor or class of creditors where such creditors or class of creditors,* ***having at least ninety per centvalue, agree and confirm****, by way of affidavit,* ***to the scheme of compromise or arrangement****.*

24. We will later make further elaboration about giving this discretion to the company to exercise this option, in the event 90% consent in value has been given by the creditors.

(10) 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.

(11) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed:

Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.

(12) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.

***Sec: 231** .....*

Sec: 232. Merger and amalgamation of companies

(1) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and

*(b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the **Tribunal may direct***

and the provisions of sub-sections (3) to (6) of section 230 shall apply mutatis mutandis.

25. In the new Act, mergers and amalgamations have been separately dealt with u/s 232 stating that the procedure from subsections 3-6 of section 230 shall apply mutatis mutandis to section 232.

(2) Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—

(a) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;

(b) confirmation that a copy of the draft scheme has been filed with the Registrar;

(c) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

(d) the report of the expert with regard to valuation, if any;

(e) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

26. It is an additional exercise to the disclosures already disclosed, by this exercise, it cannot be construed that disclosures under section 230 not required to be complied with.

(3) The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(a) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;

(b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;

(d) dissolution, without winding-up, of any transferor company;

(e) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;

(f) where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;

(g) the transfer of the employees of the transferor company to the transferee company;

(h) where the transferor company is a listed company and the transferee company is an unlisted company, —

(A) the transferee company shall remain an unlisted company until it becomes a listed company;

(B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made,

and the arrangements under this provision may be made by the Tribunal:

Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;

(i) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation; and

(j) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless ***a certificate by the company's auditor*** *has been filed with the Tribunal to the effect that the* ***accounting treatment****, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.*

(4) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.

(5) Every company in relation to which the order is made shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order.

(6) The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

(7) Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost

accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

(8) If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than one lac rupees but which may extend to twenty-five lac rupees and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lac rupees but which may extend to three lac rupees, or with both.

Explanation: —For the purposes of this section, —

(i) in a scheme involving a merger, where under the scheme the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing company, it is a merger by absorption, or where the undertaking, property and liabilities of two or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, it is a merger by formation of a new company;

(ii) references to merging companies are in relation to a merger by absorption, to the transferor and transferee companies, and, in relation to a merger by formation of a new company, to the transferor companies;

(iii) a scheme involves a division, where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either an existing company or a new company; and

(iv) property includes assets, rights and interests of every description and liabilities include debts and obligations of every description.

27. By reading section 232, it is evident that it does not talk about procedural mandate in respect to holding meetings, voting patterns and disclosure mandates; therefore there cannot be any occasion to understand that mergers and amalgamations can have its own procedures for calling meetings. Perhaps Parliament is of the view that even for creditors meeting, unless sanction is there from NCLT, 90% consent in value cannot be

automatically applicable. If we see subsection 3 of this section, it is evident that the Tribunal can order for sanction of scheme only after it has been satisfied with the accomplishment of compliances laid out under subsection (1) & (2) of this section. As we know that for mergers and amalgamations, the procedures given in subsections 3-6 of section 230 shall apply mutatis mutandis and there being additional disclosures under sub-section (2) of section 232, NCLT could sanction post compliance as above said. Therefore, the applicant cannot invoke a procedure that is not present in subsections (1) & (2) of this section for sanction of the scheme. Subsection 4 of this section speaks of what kind of orders this Tribunal can pass in sanctioning scheme. As to rest of subsections of this section, they only talk about post sanction of the scheme; hence we believe that the applicant is not permitted to import something other than the procedure given for grant of scheme. When creditors have been permitted to give consent to avoid calling meeting, had it been the intention of the Parliament to extend the same liberty to take consent of the members as well, Parliament would have given, but that has not happened. This Bench has noticed this fact from the external aids available. It is not that this point has not come for discussion, it came for discussion, indeed standing committee suggested for extending the same liberty to the creditors meetings, but the Government gave its reason why it has not been extended, this we mentioned below.

28. If what prompted Parliament to go for new enactment is looked into, we can notice that many frauds have taken place in the recent past making the Companies Act 1956 otiose rather than effective, therefore to bring order to the system, the new Act has come with two concepts i.e. **democracy of shareholders** and **supremacy of shareholders**. The new Act facilitates stricter enforcement of provisions, higher levels of transparency, business friendly corporate regulations, improved corporate governance norms, e-management (electronic management), enhanced accountability on the part

of key management and auditors, protection of interest of investors, employee friendliness, whistle blower protection, and corporate social responsibility.

29. The parliament has not stopped the march of correction-course by enacting Companies Act 2013, it has gone beyond Companies Act 2013 to pass Insolvency and Bankruptcy Code 2016 so as to strengthen the Companies Act so that the creditors would not at the end of the day would remain remediless to the default of the Company that shielded by limited liability character. Several time lines have been given and several new duties and obligations have come upon management of the Company.

30. When a new enactment comes in to get rid of the old baggage haunting the system, and when an effort is made to take us out of old habits, obviously it will become inconvenient and looking impracticable to follow, then instead of getting streamlined to the new situations, an attempt would be made to puncture it, so that it could not have any take off at all. But if we realise change always comes out of a meticulous thought process and exhaustive exercise of the State after getting inputs and study relating to sustainability of it to take us forward, everybody will gear up to ensure that new enactment starts working in full vigor to cure the evils that old Act failed to curb.

31. If chapter of Compromises & Arrangements is taken into consideration, it is no doubt evident that subsection (1) of section 230 of the new Act is in pari materia to the corresponding old section 391 (1) of the old Act, but any deviation to the procedure laid in subsection (1) of 230, as we said above, militates against the subsections. The fact of the matter is here, there are number of mandates for disclosures, number of timelines, provision of postal ballot within one month from the date of receipt of notice, which evidently

prove that unless meeting is held, it is not possible to meet all the requisites mentioned in the following subsections. These points have already been dealt with in detail while discussing sections 230 and 232 of the new Act. Therefore, if section 230 (1) is read with in conjunction with other following subsections, we will find tone and tenor of subsection (1) of 230 of the new Act has become different.

32. We must also say that under this chapter of Compromises and Arrangements, the applicant first shall come with an application for calling a meeting for scheme approval by the members or the creditors, as the case may be, then this Tribunal is limited either to give or not to give approval for calling meeting. If leave is granted to meeting, what is to be done next is there in the sections – what to do, what not to do. If scheme is granted, then post sanction compliances will set in.

33. Therefore, for the applicant has to apply its wisdom to decide what meeting is to be held, then to ask for leave to call meeting, it is not the Tribunal to pour out its wisdom as to which meeting is to be held, if proposal comes, then this Tribunal will scrutinize the proposal for calling meeting. On its scrutiny, if the Tribunal feels that not only a meeting of the members or the creditors as sought by the Applicant, but also the meeting of other classes or any of the other classes is essential depending on the various factors underlying in the scheme, then this Bench may give further directions as well, or else it may dismiss the request on the facts of the case. Therefore, the Applicant cannot say that it wants all classes meetings, but on A, B, C, D reasons, the applicant wants dispensing with all classes meetings.

34. The applicant counsel submits that since the word "may" has been employed before the word "...order" in Section 230 (1) of the new Act and in

Section 391(1) of the old Act, and since all High Courts granted leave in the past under old Act, for there is no change in the subsection of new and old Acts, it has to be construed that discretion is given to this Bench to dispense with meetings of members also on the grounds mentioned in his arguments.

35. As we said earlier and having also explained how sections 230 and 232 work, there can't be any doubt that subsection (1) of 230 has been conditioned in such a way that it is not possible to dispense with calling members' meetings. Besides all these things, what one must not forget is, we should abide by legislative intent. All these rights and duties are creation of statute, therefore as long as statute is plain, clear and understandable, the right or duty shall be exercised in the way statute says, individual conveniences shall not run down the letter and spirit of the section. Rights and duties since emanate from the scheme sections, approvals and sanctions come only when compliance is in accordance with the statutory directions. Moreover, what are procedural rights and what are substantive rights is an abstract argument, sometimes the right considered as procedural will become substantial right. It all depends upon the context, if somebody fails to exercise his voting rights, by which he is put to sufferance of economic interest, and then right of notice is a substantive right. That apart, if meaningful reading is given, it can only be understood that this Tribunal under subsection (1) of section 230 is to allow for calling and holding meeting or not to allow calling and holding meeting, but certainly not to overreach the section of law, because the procedure is specific, dos and don'ts are specific in the process of granting scheme. Therefore, the discretion given will always be limited to the extent given, not beyond it. The discretion given using the word "May" cannot be construed as discretion to dispense with members' meetings as well. As to dispensation of creditors meetings, since sub-section (9) is carved out for it, this Bench will have to consider it. It goes without saying that the Courts or specifically Tribunals cannot take out discretion from somewhere else to say that mandate

in the section could be dispensed with or to create a procedure that is consciously omitted. Courts and Tribunals will search for discretion that has been permitted under the Section, so under Sub Section 230(1) discretion is given to the Tribunal as to whether an approval is to be given to the meeting sought by the Applicant or not. It need not be said again and again that as long as the purpose and intent of the Parliament in the section is clear and unambiguous, Courts are not supposed to give their interpretation either by reading something into it or taking out something from the section of law that has been legislated by Parliament. It is the mandate of the people of India; therefore specific omission cannot be taken as mandate to import something as explicit mandate. Courts will not find any cleavage to the purpose and intent of the Parliament, when it is clear.

36. It has become a convention to impress upon the courts by saying that purposive interpretation (mischief rule) is to be given, if the intent could be fulfilled otherwise, here by dispense with calling meeting. This Mischief rule has come into existence in Heydon's Case when common law was prevalent. But after Parliament sovereignty has become rule of law, it has been reiterated many times that it can't be applied, unless no meaning could be derived from the section. Here there is no such problem, meaning is clear, intent is clear. This rule will come for the help of Court where only when statue is unable to give a meaning to the intent and purpose set out therein. In fact, this perspective must be for the sake of implementation of overall accomplishment of the mandate i.e. given under the sub section. The mandate given under the subsection is either to give an approval or not to give an approval. Judicial discretion will never become an unfettered discretion, because the mandate behind the statue is the mandate of the people who are supreme in a democratic country. Since it is a new enactment in a different perspective in ideology and procedure, we do not believe that the ratio held in cases ante to this new Act will still remain stare decisis. One argument is

that particular subsection being the same, old law being respected and being felt to move forward, whatever ratio over and over held as fit to the context can't done away by saying it is new from old. It is right, but fact of the matter is earlier will always be conditioned by later, earlier is always required to be read along with later provision. If later condition is new and making earlier provision mandatory, if interpretation to earlier makes subsequent mandate compromise to deviation to earlier provision by purposive interpretation, it is not permissible. Of course here in this case, earlier provision (230(1)) is clear, no scope to give purposive interpretation. The achievement of purpose means achievement of purpose in the way it is said to be achieved, not in the way one feels right. If the way is the reason for making it mandatory, then way is as mandatory as purpose of taking approval from the stakeholders. Because when there is a chance of mischief sneaking into by deviation, it shall not be permitted. Another important thing one should not forget is most of the times this mischief rule is applied to actions already taken place, normally no prospective directions could be given to act differently from the mandate of the statute.

37. Before going into merits of the Arguments of the Petitioner, to decide this issue, it is pertinent to go into the legislative history of the Companies Act, 2013.

38. In the year 2002, 1956 Act was largely amended to fit to the new developments taking place in corporate jurisprudence, thereafter having the Government felt there was a need for new enactment and in pursuance thereof the Companies Bill 2009 came into existence with various new provisions to 1956 Act. If legislative brief of Companies Bill 2009 is looked into, then an idea will come to us what changes regarding schemes were proposed by the Government. Let us see what it is.

39. It is a material given by PRS Legislative Research as Legislative Brief of the Company Bill 2009 introduced in the Lok Sabha on 3rd August 2009.

Highlights of the Bill

- The Bill shifts the onus of regulation and oversight over management away from the government and towards shareholders. It provides for stricter standards of approval by shareholders over some types of management decisions.

- The Bill allows for certain types of companies to be subject to a less stringent regulatory framework.

- It seeks to strengthen corporate governance by including new provisions related to independent directors and auditors.

- It gives greater powers to creditors to supervise a rescue plan and restrict the powers of management in the rehabilitation of a sick company.

- The Bill establishes a National Company Law Tribunal to administer provisions with respect to company law. It increases penalties and provides for special courts to try offences under the Act.

- Shareholders and creditors can file class action suits against the company for breaching provisions of any Act.

(The changes that have come in 2009 Bill in respect to mergers are as follows)

Mergers, Compromises and Arrangements

- A company, its shareholders, or its creditors can propose a compromise or arrangement by applying to the NCLT, which shall order a meeting of the company. Such compromises or arrangements may include a share-split, debt restructuring, mergers or takeovers, or a reduction in share capital, but cannot include a buyback of securities.

- For issues directly related to shareholders, objections can only be made by those who together hold 10% or more of shares. In the case of creditors, only those who hold 5% or more of debt can object. The arrangement must be approved by a 75% vote of shareholders, or creditors, as the case may be. All arrangements must be sanctioned by the NCLT.

- Where assets and liabilities of a listed company are being acquired by an unlisted company, the latter shall continue to remain unlisted.

- A merger between two small companies or between a holding company and its subsidiary must be approved by a special resolution at a general meeting and by 75% of creditors by value of both companies.

40. This Bill 2009 was introduced on August 3, 2009; the standing Committee presented its Report on August 31st 2010, then the Central Government withdrew this Bill in the winter session of 2011 and reintroduced the Companies Bill 2011 on December 2, 2011. Finally, Standing Committee presented it to the Lok Sabha on 26th June 2012.

41. The only change that introduced to 2011 Bill regarding schemes is as below:

Compliance with Accounting Standards: While formulating compromise or arrangements, a new proviso to clause 230 is recommended by the standing committee included to ensure that an **auditor's certificate** is required, and a clarification in respect to **business situation of foreign company** as clause 234 (1) (2) of the Bill 2011.

42. Under new enactment, it is said that compromise or arrangement must be approved by 3/4th in value of shareholders or creditors as the case may be. In Companies Bill 2009, in clause 201 of ((2) (c), (i), it was for the first time said what disclosures have to be annexed to company application, namely consent of 75% of the Secured Creditors in value, Creditors responsibility statement. This consent of 75% was not there in the Companies Act, 1956. It was also not there that the Applicant is required to file Creditors Responsibility Statement. It was also for the first time said in Clause 201 (iii) of the Companies Bill 2009 that the individual Notices shall be given to the Members and the creditors and the debenture holders. In 1956 Act, it was only said that Notice for calling meetings to be given to creditors **or** members with a statement setting forth the terms and compromise or arrangement, but it has not been said that notice has to go to the members and the creditors as well. It was also not said that an individual notice has to go to each and every member and each and every creditor. In 1956 Act, in the Companies Bill 2011 and in Companies Act 2013, it has been said that an advertisement has to be given but later change is, after giving such advertisement, apart from sending notices to all members and the creditors, the persons received notice are provided a time of one month from the date of receipt of Notice to intimate their consent to the adoption of the compromise or arrangement through postal ballot. This timeline for sending their consent to the meeting was not mentioned in the year 1956 Act. In order to expedite granting scheme, a new clause was incorporated to give notice to all statutory authorities and sectoral authorities to raise their objections within 30 days from the date of issuing notice. This period of 30 days' notice to various authorities, was not there in the old Act. Likewise, another major

change in the Company Bills and the new enactment is that objection is to be raised by persons holding not less than 10% of the shareholding or creditors in value not less than 5% of the total outstanding debt as per the latest audited financial statement, but whereas under 1956 Act, any member can raise an objection notwithstanding percentage of shareholding in the Company. The State, having noticed that there should be some qualification for raising objections over the scheme, set out this qualification in the new enactment.

43. As to clause majority in number representing ¾ in value of the creditors or the members as the case may be has also been changed saying that ¾ in value of the shareholding or the creditors required to approve the scheme but whereas in the old enactment there were two requirements, one, was number and two, was the shareholding or outstanding debt in value was required. That apart a Certificate of Auditor is made as a requisite for sanctioning the scheme. Another major change in the new enactment is that for approval of merger and amalgamation, a separate clause has been carved out as Section 232 to deal with mergers and amalgamations. And another change is that if at all a scheme is to be entered with the creditors, holding of meeting could be dispensed with provided the Applicant files the consent of 90% creditors in value through Affidavits, it was not there in the year 1956 Act.

44. Since the Applicants Counsel has argued over dispensing with holding meeting, we limit our discussion in respect to dispensing with meetings; and about short notice to call and hold meetings.

45. When discussion came on clause for dispensation of holding creditors meeting, standing committee has recommended for dispensation of holding shareholders meeting as well by saying as below:

Clause	Suggestion by standing committee	Comments of ministry
230 (9) Dispensing with the	A similar provision may be provided dispensing with the meeting of shareholders of	The members and creditors stand on different footing so far as

meeting of creditors in compromise	closely held companies if they agree and confirm by Affidavit the Scheme of Compromise and arrangement	protection of their interest are concerned. The meetings of members are considered to be essential for such important matters to ensure corporate democracy and principle of participation in important decision makings.

46. After making the above comments by Corporate Ministry over suggestions given by the standing committee, the Bill was presented to the Parliament without adding any provision for dispensing with holding members' meetings, therefore, in the back drop of this legislative history, the Parliament is very particular about holding shareholders meeting and they made it clear that there cannot be any dispensation of holding members meeting.

47. The Applicant's Counsel has made an argument stating that the sub sections 3 to 6 of section 230 alone being applicable mutatis mutandis to section 232, as to rest of the issues in respect to mergers and amalgamation, the mandates under sub-sections of section 230, including subsection, are not applicable, therefore, this Tribunal, basing on the doctrine of stare decisis, the meetings, in the cases of mergers and amalgamation could be dispensed with wherever the purpose of holding meetings has already been served by filing consent letters of 100% value of shareholders and the creditors.

48. Here the point to be noted is, the parliament standing committee suggested the Government to apply dispense with provision envisaged u/s 230 (9) to members as well, it has not been suggested for compromises alone, it has been suggested to compromises and arrangement as well. The

Government said that the shareholders have to be considered on different footing, therefore there cannot be any dispensing with calling meetings of members in respect to compromises and arrangements. It need not be said that in all merger and amalgamations, scheme will be with shareholders only, that being the situation, how a meeting of the shareholders could be dispensed with. As all we know, Mergers and Amalgamations are species, Arrangements is the genesis to Mergers and Amalgamations. Therefore, the mandate under section 232 is addition to procedure u/s 230. When it is a scheme with creditors falling under compromise with creditors, then the procedure under section 230 suffice, but when it comes to merger and amalgamation, the procedure under 230 (3-6) is mandatory and the procedure in respect to post sanctions under 232 is also mandatory. So the liberty of taking consent is limited to creditors meeting falling under section 230, but not to the members' meetings.

49. Meetings of shareholders means normally the meetings take place in the case of mergers and amalgamation because in the case of mergers and amalgamation, consent of the shareholders is essential whereby it cannot be construed that since subsection 9 of section 230 is not present in section 232, NCLT is given liberty to dispense with holding shareholders meetings, As we said in the earlier paras that stare decisis will set in basing on the law in force, it cannot be that the plethora of the judgments passed in the past laying stare decisis to the inferior Courts remain in force subsequent to the repeal of the provisions which gave foundation to that stare decisis. Here section 391 to 394 has been changed to such an extent that the inferior Courts have to lay down a road path basing on the new provisions not basing on the stare decisis that has not been supported by law. We already held that law has become different on giving wholesome reading to the chapter of schemes.

50. Whenever any statutes have been enacted, the subjects of that state are premised to follow it in the letter and spirit that has mentioned in the Act. Whenever any new enactment with new mandates come in to existence, they just not come for qua change but they come to cure the evils stalking the old Act. Perhaps the Parliament has laid down this law believing that doing away calling and holding meetings in the name of consent was scuttling the rights of the stake holders in the company. By this consent, sometimes there is a possibility of ignoring shareholders or creditors by management by placing dubious affidavits.

51. When an enactment has come into existence with imprimatur of the supreme sovereign authority, the subjects of the sovereignty cannot find out a window not to abide by such law, if at all that law is patently bad, there are constitutional Courts to decide that it is in violation of the rights of the subjects of the said state and as long as it has not been declared as null and void, if plain reading of the sub section discloses the intent and purpose of the statute, the doctrine of purposive interpretation cannot be given to the statute to say that when the intent of the statute has been fulfilled otherwise, the mandate of statute need not be complied with.

52. Though it is out of box to deviate from the description since it is relevant, this Bench puts forth this example to say how statute works.

53. If road is declared as one-way, the Commuter cannot travel in the opposite direction just because traffic is not there, though on face, it may not cause any hurdle or problem to anybody for time being, but once it is permitted, then it will never remain as one-way, over a period of time it will be forgotten that it is one-way. Invention of short cuts to mandate of statute

is nothing but short circuiting the letter and spirit of statute. The legislation always comes with broader purpose with aim and procedure, to reach that aim and object, both procedure and object are equally important.

54. We must necessarily say when uniformity in application of law is there, there cannot be any inconsistency, and Courts also need not labor every time when procedure deviation is sought.

55. Initially it appears difficult to come out from the old habits to go into new path laid out, but once we start following it, it will become like any other procedure that we have been following.

56. If at all shareholders are there to give consent, what difficulty would be there to attend the meeting. Have we come across at any point of time dispense with holding AGM, in almost all the cases, meetings will be held before 30th September of every year, that being so, when the entity itself is having a change by merger or amalgamation, what difficulty would be there to the shareholders to attend the meeting. Since it has become a practice to obtain consent, we tend to try for it. When the statute has provided dispensation for holding creditors meeting, if 90% in value of the creditors consent is given, the statute would have also provided the same dispensation to the shareholders, but it has not happened.

57. Therefore, we hereby hold that the purposive interpretation is to reach the purpose and intent of the legislation not to reach the purpose and intent of the Applicant. It may be said that by applying mischief rule or golden rule, if deviation from the procedure is not affecting the ends of justice, it can be

ignored. We defer on this point because above two rules and this purpose of interpretation concept could be invoked only when statute is ambiguous or unable to give meaning to reach the purpose and intent of the legislation, not otherwise. A Party cannot elect that he will follow the procedural aspect that is convenient to him and he will not follow other procedure that is inconvenient to him. It cannot be like that. This compliance of holding meeting cannot be called technical compliance; there is an object of transparency. This diluting business in the name of technical compliance must be done away.

58. In view of the reasons aforementioned, we don't find any merit in the argument advanced by the Applicant's Counsel; therefore, the Company is hereby directed to hold shareholders meeting by following the timelines given under the respective provisions.

59. There is another argument from other Counsel for shorter notice to the meeting on the ground shareholders are from the place where the company is situated and it will not take much time to serve notice upon them. It may be right in one case, it will not be the case in all matters, if timeline is given under the statute, it has to be construed as given for broader object so as to ensure that shareholders or the creditors as the case may be received information of holding meetings and raise their objections, if any, in the meetings proposed to be held.

60. When the company knows that approval of scheme requires two three months' time or may be four five months for completion of this scheme process, the applicant ought to start this process four five months before. It cannot be that he can come today and take short notice to hold meetings in one week or ten days and come for approval of the scheme. It cannot happen

just like that, because under subsection 4 of section 230 one-month time is given to the persons to whom the notice is gone to give their consent for adoption of compromise or arrangement, therefore meeting cannot be held before one month from the date of receipt of such notice. Besides this, under sub section 5 of section 230, thirty days' clear notice is required to the various statutory authorities and sectoral authorities to raise their objections after receipt of such notice, thereby the Applicant anyway is not permitted under law to hold meeting before one month, therefore, the question of taking short notice for holding meetings or to cut short 30 days' notice time will not arise.

61. Since Case Law has not come on this point, we want to rely upon a daily event that happens with most of us when we go to Airport to catch flight. It is an event that comes across to any air commuter, so we believe no other illustration is as real as this. We start at least two three hours before depending on the traffic because we know that we cannot check in unless we go forty five minutes before. We certainly reach 45 minutes before because we know that we will not be permitted to check in if we go late. Likewise, here also, it is a known fact how much time it will take for getting sanction for scheme and for compliance of other procedures, then the Applicants shall start this process by calculating time that requires for it, therefore companies cannot start insisting upon this Bench to give directions for short notice, by coming late, hence we do not find any merit in the argument for shorter notice.

62. This being the Order with reasons rejecting the relief for dispensing with calling and holding meetings and short notice, this Bench will hereafter pass Orders in line with this Order. In view of the above order, this Bench, having gone through other averments of the application and exhibits thereof, we hereby direct the applicant as follows:

1. A meeting of the Equity Shareholders of the Applicant Company, be convened and held at L&T House, N. M. Marg, Ballard Estate, Mumbai

- 400001, on Saturday, March 18, 2017 at 12.00 p.m., for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement of L&T Valves Limited, the (the Transferor Company/ the Demerged Company with L&T Electricals and Automation Limited, (the Transferee Company/ the Resulting Company) and their respective Shareholders and Creditors.

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.
4. The Applicant Company undertakes to:

   i. issue Notice convening meeting of the equity shareholders as per Form No. CAA.2 (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 as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and

The undertaking is accepted

5. Mr. Narayanswamy Hariharan, Director of the Applicant Company is appointed as the Chairperson for the meeting of Equity Shareholders. The Scrutinizer for the meeting shall be Mr. Alwyn D'souza, Practicing Company Secretary, (Membership No. 5559) failing him Mr. Vijay Sonone, Practicing Company Secretary, (Membership No. 7301).

6. The Chairperson appointed for the aforesaid Meeting to issue the notices of the Meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise 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 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 'L&T House, Ballard Estate, Mumbai - 400001, Maharashtra, 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 or depository records and where the entries in the books / register / depository records 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 Amalgamations) Rules, 2016.

11. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within three days of the conclusion of the meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

12. That the question of convening and holding of the meeting of Secured Creditors does not arise since there are no Secured Creditors of the Applicant Company.

13. That Counsel for the Applicant submits that since the scheme is an arrangement between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is 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 its Unsecured creditors as required under section 230 (3) of the Companies Act , 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

14. 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 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.

15. 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 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.

16. 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

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.

17. The Applicant to file an affidavit of service of the notices issued to the Equity Shareholders and Notices to the Unsecured Creditors not less than seven days before the date fixed for the holding of the meetings and do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)

Sd/-

V. NALLASENAPATHY
Member (Technical)