

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

COMPANY SCHEME PETITION NO. 11 OF 2017

(High Court transferred Company Scheme Petition (L) No.862 of 2016)

MAN Turbomachinery India Private Limited Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO. 12 OF 2017

(High Court transferred Company Scheme Petition (L) No.863 of 2016)

MAN Diesel & Turbo India Private Limited Petitioner/Transferee Company

IN THE MATTER OF COMPANIES ACT, 1956
AND ANY RE-ENACTMENT THEREOF;

AND

IN THE MATTER OF PETITION UNDER
SECTIONS 391 TO 394 READ WITH SECTION
100 TO 104 OF THE COMPANIES ACT, 1956
AND ANY RE-ENACTMENT THEREOF;

AND

IN THE MATTER OF THE SCHEME OF
AMALGAMATION BETWEEN MAN
TURBOMACHINERY INDIA PRIVATE LIMITED
("THE TRANSFEROR COMPANY") AND MAN
DIESEL & TURBO INDIA PRIVATE LIMITED
("THE TRANSFEE COMPANY") AND THEIR
RESPECTIVE SHAREHOLDERS AND
CREDITORS AND REDUCTION OF SHARE
CAPITAL OF MAN DIESEL & TURBO INDIA
PRIVATE LIMITED

Called for Hearing

Mr. Vishal Maheshwari with Mr. Bankim Gangar i/by Khaitan Legal Associates,
Advocates for the Petitioner Companies.

Mr. S Ramakantha, Joint Director in the office of Regional Director

Mr. Santosh Dalve, officer in the office of Official Liquidator

Coram : B. S. V. Prakash Kumar (Judicial)

Date : 2 March, 2017

MINUTES OF THE ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Court to oppose the Scheme and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation between MAN Turbomachinery India Private Limited ("**The Transferor Company**") and MAN Diesel & Turbo India Private Limited ("**The Transferee Company**") and their respective shareholders and creditors and for reduction of share capital of MAN Diesel & Turbo India Private Limited.
3. Learned Counsel for the Petitioner Companies states that the Petitioner/Transferor Company is engaged in the business of designing, manufacturing, distributing, and trading in all types of turbines. The Petitioner/Transferor Company is also engaged in providing all types of customer support and services, training and consultation, erection, commissioning maintenance, repairs, refurbishing reconditioning, efficiency upgrading and improvements to purchase, recondition, refurbish and sell used or second hand turbines, turbo generators and its parts of Blades. The Petitioner/Transferee Company is engaged in the business of manufactures, engineers, founders, metal workers and machinists and designers and patentees of equipment, engines, power generating units and plants.
4. The rational for the Scheme is that the Petitioner/Transferor Company as well as the Petitioner/Transferee Company have proposed a plan of restructuring its Indian operations for achieving improved synergies and management focus. The Board of Directors of the Petitioner/Transferor Company and the Petitioner/Transferee Company are of the opinion that the proposed restructuring of Indian business of the two companies should benefit their respective shareholders, creditors and employees.

5. The Petitioner/Transferor Company and the Petitioner/Transferee Company have approved the said Scheme of Amalgamation by passing the relevant Board Resolutions which are annexed to the respective Company Scheme Petition.
6. The Learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / Companies Act, 2013 and the Rules made thereunder whichever is applicable. The said undertaking given by the Petitioner Companies is accepted.
7. The Official Liquidator has filed his report on 23rd February 2017 stating that the affairs of the Petitioner/Transferor Company have been conducted in a proper manner and that Petitioner/Transferor Company may be ordered to be dissolved.
8. The Regional Director has filed an Affidavit on 28 day of February, 2017 stating therein, save and except as stated in paragraph IV (a) to (d) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of the shareholders of the Petitioner Companies and public. In paragraph IV of the Affidavit of the Regional Director, it is stated that :-

“(a) In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc,

(b) As per scheme the Means 1st April 2016 or such other date as directed by the Hon’ble NCLT or such other competent authority as may be so empowered under the Applicable Law. In this regards it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April 2016,

(c) As per existing practice, the Petitioner Companies are required to serve Notice of Scheme of Arrangement to the Income Tax Department for their comments. It appears that the company vide letter dated 23.01.2017 has served a copy of company petition N.11 along with relevant orders etc. However, as on date there is no response from Income Tax Department.

(d) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon’ble Court may not deter the Income Tax Authority to scrutinize

the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company”

9. As far as the observation made in paragraph IV(a), of the Affidavit of the Regional Director is concerned, the Petitioner Companies through its Counsel undertakes that in addition to accounting treatment given in the Scheme, the Petitioner/Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standard.
10. As far as the observation made in paragraph IV(b), of the Affidavit of the Regional Director is concerned, the Petitioner Companies through its Counsel undertakes that in terms of provisions of section 232(6) of the Companies Act, 2013, the appointed date of the scheme would be 1st April 2016.
11. As far as the observation made in paragraph IV(c), of the Affidavit of the Regional Director is concerned, the Petitioner Companies through its Counsel undertakes that if any comments received from Income Tax Department, the Petitioner Companies shall comply the same.
12. As far as the observation made in paragraph IV(d), of the Affidavit of the Regional Director is concerned, the Petitioner Companies submits that the Petitioner is bound to comply with all applicable provision of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
13. Mr. S. Ramakantha, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region Mumbai for Regional Director are satisfied with the undertakings given by the Petitioner Companies. The said undertaking given by the Petitioner Companies are accepted.
14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
15. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No. 11 of 2017 and No. 12 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) to (c) of the Petition.

16. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with e-form INC 28 in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.
17. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay to be paid within four weeks from the date of Order.
19. Filing and issuance of the drawn up order is dispensed with.
20. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
21. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

B. S. V. Prakash Kumar (Judicial)

SCHEME OF AMALGAMATION

OF

MAN TURBOMACHINERY INDIA PRIVATE LIMITED

WITH

MAN DIESEL & TURBO INDIA PRIVATE LIMITED

AND

THEIR RESPECTIVE SHAREHOLDERS

UNDER SECTIONS 391 TO 394 OF THE COMPANIES ACT, 1956

**SCHEME OF AMALGAMATION
BETWEEN
MAN TURBOMACHINERY INDIA PRIVATE LIMITED
WITH
MAN DIESEL & TURBO INDIA PRIVATE LIMITED
AND
THEIR RESPECTIVE SHAREHOLDERS
(under Sections 391 to 394 of the Companies Act, 1956)**

I. Introduction

- a) This Scheme of amalgamation (“**Scheme**”) is presented under Section 391 to 394 and other applicable provisions of the Companies Act, 1956 and Companies Act, 2013, for amalgamation of MAN Turbomachinery India Private Limited (“**MT India** or **Transferor Company**”) with MAN Diesel & Turbo India Private Limited (“**MDT India** or **Transferee Company**”) and their respective shareholders
- b) Both MDT India and MT India are subsidiaries of MAN Diesel & Turbo SE, a company incorporated in Germany and a 100% subsidiary of MAN SE.

Transferor Company:

- c) MT India was incorporated on June 3, 2002 as a private limited company under the name Pentagon Turbines Private Limited. In around 2008, its name was changed to Max Watt Turbines Private Limited and in 2015 it was changed to MAN Turbomachinery India Private Limited.

d) The current shareholding pattern of MT India is as below:

Sr. no.	Particulars of the shareholders	Number of equity shares held	Percentage of shares
1.	MAN Diesel & Turbo SE	95,999	99.999
2.	MAN Diesel & Turbo India Private Limited	1	0.001
	Total	96,000	100

e) MT India is presently engaged in the business of *inter alia* designing, manufacturing, distributing, and trading in all types of turbines. MT India is also engaged in providing all types of customer support and services, training and consultation, erection, commissioning maintenance, repairs, refurbishing reconditioning, efficiency' upgrading and improvements to purchase, recondition, refurbish and sell used or second hand turbines, turbo generators and its parts of Blades. MT India has its registered office at E-73, Waluj MIDC, Aurangabad, Maharashtra – 431136. MT India has a manufacturing unit at Plot No, 113, Bommasandra Jigani Link Road, KIADB Industrial Area, Jigani, Anekal Taluk Bangalore – 562106 and No, 27P, 28P, 159P, 160 & 161 Bommasandra Jigani Link Road, KIADB Industrial Area, Jigani, Anekal Taluk Bangalore – 562105.

Transferee Company:

f) MDT India was incorporated under the name of Modi Mirrlees Blackstone Limited on January 11, 1989. Its name was first changed to MAN B&W Diesel India Limited on November 18, 2003 and thereafter to MAN Diesel India Limited on November 29, 2006. Subsequently on October 11, 2010 the name of the Transferee Company was changed to MAN Diesel & Turbo India Limited. Further, its name was changed to MAN Diesel & Turbo India Private Limited on February 25, 2016.

g) As on date, MAN Diesel & Turbo SE, Germany holds 3,21,77,094 (Three Crore Twenty-One Lakh Seventy-Seven Thousand and Ninety-Four) shares (approximately 99.99 % shares) in MDT India. Remaining 3 shares in MDT India are held jointly by MAN Diesel & Turbo SE and Mr. Reinhard Chudzicki.

h) The current shareholding pattern of MDT India is as below:

Sr. no.	Particulars of the shareholders	Number of equity shares held	Percentage of shares
1.	MAN Diesel & Turbo SE, Germany	32,177,094	99.99999
2.	MAN Diesel & Turbo SE jointly held with Mr. Reinhard Chudzicki	3	0.00001
	Total	32,177,097	100

i) MDT India is presently engaged in the business of manufactures, engineers, founders, metal workers and machinists and designers and patentees of equipment, engines, power generating units and plants. MDT India is also engaged in carrying out repair services of combustion engines for stationary and marine applications, gas and steam turbines, turbochargers, compressors of all kind, expanders, mechanical apparatus, machinery and appliances of all kinds and every description and effect warranty work in respect of equipment of all kinds MDT India has its registered office at E-73, MIDC, Waluj, Aurangabad - 431136, Maharashtra and has a manufacturing facility located at E-73, MIDC, Waluj, Aurangabad-431 136, Maharashtra and Plot No. 219 & 220, GIDC, Ranoli - 391 350, District Vadodara, Gujarat.

II. Rationale of the Scheme

- a) The managements of MDT India and MT India have proposed a plan of restructuring its Indian operations for achieving improved synergies and management focus. The Board of Directors of MDT India and MT India are of the opinion that the proposed restructuring of Indian business of MAN Group should benefit the shareholders, creditors and employees of both these companies.
- b) By this Scheme of amalgamation it is proposed to merge the Transferor Company with the Transferee Company for the purposes of *inter alia*, achieving the benefits of improved synergies in their respective businesses, better, efficient and economical management, control and running of their businesses, attaining economies of scale, further development and growth of their businesses, to avoid and eliminate unnecessary duplication of costs of administration, and to achieve administrative convenience. The proposed amalgamation between the Transferor Company and the Transferee Company will result in the following benefits, amongst others, to both companies, their respective members and creditors:
- (i) Consolidation of the activities by way of an amalgamation will lead to synergies of operations and a stronger and wider capital and financial base for future growth / expansion. The combined entity will have a bigger portfolio of products / services targeted at a wider array of customers, which will strengthen its competitive position in the related markets. The Transferor Company has skills to service the products manufactured and supplied by the Transferee Company. Accordingly, merging the operations of the Transferor Company and Transferee Company will result in an entity that is more vertically integrated and has significantly improved operational flexibility, thereby enabling the Transferee Company to provide newer, better and more cost effective solutions and services to its customers and to the Transferor Company's customers.

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- (ii) The amalgamation will result in economies of scale, reduction in overheads, administrative, managerial and other expenditure, operational rationalisation, organisational efficiency, and optimal utilisation of various resources.
 - (iii) The managerial expertise of the Transferor Company and Transferee Company will be combined giving additional strength to the Transferee Company. Consequently, the Transferee Company will offer a strong financial structure to all its creditors including the creditors of the Transferor Company, facilitate resource mobilisation and achieve better cash flows. This would also contribute substantially towards enhancement of shareholder's value of the Transferee Company.
 - (iv) The proposed amalgamation will result in a significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by both the Transferor Company and the Transferee Company.
 - (v) The secured creditors of the Transferor Company, if any, are not affected by the proposed amalgamation as their security is maintained and the liability owed to them by the Transferor Company will be discharged by the Transferee Company upon the Scheme coming into effect.
 - (vi) The increased asset base of the Transferee Company and greater revenue inflow would be to the benefit of all the shareholders and creditors of the Transferor Company and the Transferee Company, who would continue to be associated with the Transferee Company. The Transferee Company would have better financial viability and clearer focus, which would be in the interests of all its shareholders and creditors including the shareholders and creditors of the Transferor Company.
 - (vii) The amalgamation will result in the combination of man power of both the companies and a single management structure.

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- (viii) The combined managerial and technical expertise would enable the Transferee Company to develop a business model that would be more competitive and cogent.

III. Parts of the Scheme

The Scheme is divided into the following parts:

- a) **PART A** – dealing with definitions of the terms used in this Scheme and the share capital of the Transferor Company and the Transferee Company;
- b) **PART B** – dealing, *inter alia*, with the transfer and vesting of the businesses and undertaking of the Transferor Company to and in the Transferee Company; consideration for the amalgamation; and consequential changes in the Memorandum and Articles of Association of the Transferee Company;
- c) **PART C** – dealing, *inter alia*, with the accounting treatment of the Transferee Company pursuant to this Scheme coming into effect; and
- d) **PART D** – dealing with the general terms and conditions and other matters consequential and ancillary to, and integrally connected with the Scheme.

PART A

DEFINITIONS AND SHARE CAPITAL

1. DEFINITIONS

In this Scheme, unless repugnant to the context, the following expressions shall have the following meaning:

- 1.1 **“Act”** means the Companies Act, 2013, to the extent notified, and Companies Act, 1956, to the extent not repealed and yet enforceable, and any ordinances, rules and regulations made there under and shall include any statutory modification, re-enactment or amendment thereof.
- 1.2 **“Applicable Law”** means any statute, law, regulation, ordinance, rule, judgment, notification, order, decree, government approval, directive, guideline, requirement or other governmental restriction, or any similar form of decision of, or determination by, or any interpretation, policy or administration, having the force of law or any of the foregoing, by any authority having jurisdiction over the matter in question, in force at the relevant time.
- 1.3 **“Appointed Date”** means April 1, 2016 or such other date as may be fixed by the High Court or such other competent authority as may be so empowered under the Applicable Law.
- 1.4 **“Board of Directors” OR “Board”** means the board of directors of the Transferor Company or the Transferee Company, as the context may suggest, and shall also include a duly constituted committee thereof.
- 1.5 **“Court” OR “High Court”** means the High Court of Judicature at Bombay and shall include the National Company Law Tribunal, if applicable.

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- 1.6 **“Effective Date” OR “coming into effect of this Scheme”** means the last of the dates on which all of the conditions specified in Clause 15 of this Scheme are satisfied or complied with and this Scheme comes into effect.
- 1.7 **“MT India” OR “the Transferor Company”** means MAN Turbomachinery India Private Limited, a company incorporated under the provisions of the Act and having its Registered Office at E-73, Waluj MIDC, Aurangabad, Maharashtra – 431136, India.
- 1.8 **“MDT India” or “the Transferee Company”** means MAN Diesel & Turbo India Private Limited, a company incorporated under the provisions of the Act and having its Registered Office at E-73, MIDC, Waluj, Aurangabad, Maharashtra – 431136, India.
- 1.9 **“the Scheme” OR “this Scheme”** means this Scheme of amalgamation in its present form or with any modification(s) made under Clause 17 of this Scheme, as approved or directed by the High Court or any other appropriate authority.

All terms and words not defined in this Scheme shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning ascribed to them under the Act, the Securities Contract (Regulation) Act, 1956, the Depositories Act, 1996 and other applicable laws, rules, regulations, bye-laws, as the case may be, or any statutory modification or re-enactment thereof. Headings used herein are for convenience only and must not be used for interpreting the terms hereof.

2. DATE OF TAKING EFFECT AND OPERATIVE DATE

This Scheme, though operative from the Appointed Date, shall only become effective from the Effective Date.

3. SHARE CAPITAL

- 3.1 The share capital of the Transferor Company as per its latest audited Balance Sheet dated **March 31, 2015** is as under:

Authorised Capital	Amount (Rs.)
100,000 equity shares of Rs. 100/- each	10,000,000
Issued, Subscribed and Paid-up Capital	Amount (Rs.)
96,000 equity shares of Rs. 100/- each	9,600,000

Subsequent to **March 31, 2015** there has been no change in the aforesaid share capital of the Transferor Company.

- 3.2 The share capital of the Transferee Company as per its latest audited Balance Sheet as on **December 31, 2015** is as under:

Authorised Capital	Amount (Rs.)
33,169,200 equity shares of Rs. 10/- each	331,692,000
Issued, Subscribed and Paid-up Capital	Amount (Rs.)
32,177,097 equity shares of Rs. 10/- each	321,770,970

Subsequent to December 31, 2015, the Authorised Share Capital of Transferee Company was increased from existing Rs. 33,16,92,000 (Rupees Thirty Three Crore Sixteen Lakh Ninety Two Thousand only) divided into 3,31,69,200 (Three Crore Thirty one Lakh Sixty Nine Thousand Two Hundred) Equity Shares of Rs. 10/- each to Rs. 40,16,92,000 (Rupees Forty Crore Sixteen Lakh Ninety Two Thousand) divided into 4,01,69,200 (Four Crore One Lakh Sixty Nine Thousand Two Hundred) Equity Shares of Rs. 10/- each by creation of additional 70,00,000 (Seventy Lakh) Equity Shares of Rs. 10/- each ranking pari passu in all respect with the existing Equity Shares of the Company vide resolution passed by the shareholders in Annual General Meeting held on June 30, 2016.

PART B
TRANSFER AND VESTING OF THE BUSINESS AND UNDERTAKING OF
THE TRANSFEROR COMPANY TO THE TRANSFEREE COMPANY

4. TRANSFER AND VESTING OF BUSINESS AND UNDERTAKING

- 4.1 Subject to the provisions of this Scheme and with effect from the Appointed Date, the Transferor Company shall stand amalgamated with the Transferee Company pursuant to the provisions of Sections 391 to 394 of the Act, and other applicable provisions, if any, thereof, without any further act, instrument, deed, matter or thing but subject to the changes affecting the same as on the Effective Date, and the entire business and undertaking of the Transferor Company, of every description, as going concerns, including without limitation all the debts, liabilities, obligations, including those arising on account of taxation laws and other allied laws shall be transferred to and vest in the Transferee Company.
- 4.2 The business and undertaking of the Transferor Company which shall stand transferred and vested upon the Transferee Company as per clause 4.1, shall include, but not be limited to, all the movable and immovable properties and other assets (whether tangible or intangible) of the Transferor Company comprising, amongst others, investments of all kinds and in all forms, cash balances, loans, advances, contingent rights or benefits, receivables, benefit of deposits, securitized assets, warehouses, leasehold improvements, actionable claims, furniture and fixtures, computers, office equipment, electrical and other installations, telephones, telex, facsimile and other communication facilities and business licenses, trading licenses, permits, deposits, authorizations, approvals, insurance cover of every description, lease, tenancy rights, permissions, incentives, if any, and all other rights, patents, know-how, trademarks, copy rights, service marks, trade secrets, brands, registrations, marketing authorizations and other intellectual property rights including computer software(s), proprietary rights, title, interest, contracts, consents, approvals and rights and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages and benefits, including MAT Credit (if any)

entitlement under Section 115JAA of the Income-tax Act, 1961, service tax credit, custom duty credits. Such properties, assets, rights, businesses and undertaking of the Transferor Company, shall be transferred to and vested in, and / or deemed to be transferred to and vested in the Transferee Company, so as to become the properties, assets, rights, businesses and undertaking of the Transferee Company pursuant to and in accordance with the provisions of this Scheme.

4.3 Without prejudice to the generality of clauses 4.1 and 4.2 above, with effect from the Appointed Date and subject to the provisions of this Scheme:

4.3.1 in respect of the assets of the Transferor Company, including cash and bank balances, as are movable in nature or are otherwise capable of transfer by manual delivery, by paying over or by endorsement and delivery or otherwise, the same shall be so delivered and transferred by the Transferor Company to the Transferee Company, without requiring any further act, deed, instrument, matter or thing for the same, and such assets shall become the property of the Transferee Company as an integral part of the assets of the Transferee Company. Such delivery and transfer shall be made on a date to be mutually agreed upon by the Board of the Transferor Company and the Transferee Company, but shall not be later than 30 (thirty) days from the Effective Date.

4.3.2 all debts, liabilities and obligations, of the Transferor Company as on the Appointed Date, including without limitation, foreign currency loans, external commercial borrowings, term deposits, borrowings, bills payable, interest accrued and all other duties, liabilities, undertakings and obligations of the Transferor Company whether provided for or not in the books of account of the Transferor Company and all other liabilities which may accrue or arise after the Appointed Date but which relate to the period on or up to the Appointed Date shall be the debts, liabilities and obligations of the Transferee Company including any encumbrance on the assets of the Transferor Company or on any income

earned from those assets. Except the sanctions, consents and approvals already obtained from third parties, if any, by the Transferor Company and the Transferee Company, as the case may be, no further consent, approval or sanction of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, liabilities and obligations have arisen, shall be required in order to give effect to the provisions of this Clause. From the Effective Date, the Transferee Company undertakes to discharge and satisfy the said liabilities.

4.3.3 All cheques and other negotiable instruments and payment orders received in the name of the Transferor Company from the Effective Date shall be accepted by the bankers of the Transferee Company and credited to the account of the Transferee Company. Similarly, the banker of the Transferee Company shall honour cheques issued by the Transferor Company for payment and being dated on or after the Appointed Date and presented after the Effective Date.

4.4 Loans, advances and other obligations (including any guarantees, letters of credit, letters of comfort or any other instrument or arrangement which may give rise to a contingent liability in whatever form), if any, due or which may at any time in future become due between the Transferor Company and the Transferee Company shall, *ipso facto*, stand discharged and come to an end and there shall be no liability in that behalf on either party and appropriate effect shall be given in the books of accounts and records of the Transferee Company. It is hereby clarified that there will be no accrual of interest or other charges in respect of any such inter-company loans, advances and other obligations with effect from the Appointed Date.

4.5 All existing securities, mortgages, charges, liens or other encumbrances, if any, as on the Appointed Date and created by the Transferor Company, after the Appointed Date but prior to the Effective Date, over the properties and other assets comprised in the undertaking or any part thereof transferred to the Transferee Company by virtue of this Scheme and in so far as such securities,

mortgages, charges, liens or other encumbrances secure or relate to any of the liabilities of the Transferor Company, the same shall, after the Effective Date, continue to relate and attach to such assets or any part thereof to which they are related or attached prior to the Effective Date and are transferred to the Transferee Company, and such securities, mortgages, charges, liens or other encumbrances shall not relate or attach to any of the other assets of the Transferee Company or any other assets of Transferor Company being transferred to Transferee Company pursuant to this Scheme.

- 4.6 The existing encumbrances over the properties and other assets of the Transferee Company or any part thereof which relate to the liabilities and obligations of the Transferee Company prior to the Effective Date shall continue to relate only to such already encumbered assets and properties and shall not extend or attach to any of the assets and properties of the Transferor Company transferred to and vested in the Transferee Company by virtue of this Scheme.
- 4.7 Save as herein expressly provided, no other term or condition of the liabilities transferred to the Transferee Company is modified by virtue of this Scheme except to the extent that such amendment is required statutorily or by necessary implication.
- 4.8 With effect from the Appointed Date:
- 4.8.1 where any of the debt, liability or obligation of the Transferor Company as on the Appointed Date has been discharged by the Transferor Company after the Appointed Date but prior to the Effective Date, such discharge by the Transferor Company shall be deemed to have been for and on account of the Transferee Company;
- 4.8.2 all debts, liabilities or obligations incurred or undertaken by the Transferor Company in relation to or in connection with the undertaking or businesses after the Appointed Date but prior to the Effective Date, shall be deemed to have been incurred or undertaken for and on behalf of the Transferee Company and to the extent they are outstanding on the Effective Date, shall also without any further act, deed, instrument,

matter or thing be and stand transferred to the Transferee Company and shall become the debts, liabilities and obligations of the Transferee Company which it shall meet, discharge and satisfy; and

4.8.3 all assets accrued to and / or acquired by the Transferor Company in relation to or in connection with its business or undertaking after the Appointed Date but prior to the Effective Date, shall be deemed to have been so accrued to and / or acquired for and on behalf of the Transferee Company and shall also without any further act, instrument, deed, matter or thing be and stand transferred to the Transferee Company to that extent and shall become the assets of the Transferee Company.

4.9 With effect from the Appointed Date and subject to the applicable laws, all statutory licenses, registrations, incentives, tax credits, tax refunds, rights, claims, leases, tenancy rights, liberties, permissions, approvals or consents to carry on the operations of the Transferor Company, and all rights and benefits that have accrued or which may accrue to the Transferor Company, whether before or after the Appointed Date shall stand vested in or transferred to the Transferee Company, pursuant to the Scheme, without any further act or deed and shall remain valid, effective and enforceable on the same terms and conditions and shall be appropriately mutated by the statutory authorities concerned in favour of the Transferee Company upon such vesting and transfer of the undertaking of the Transferor Company pursuant to this Scheme.

4.10 The amalgamation of the Transferor Company with the Transferee Company, pursuant to and in accordance with this Scheme covered in clause 4, shall be in accordance with Section 2(1B) of the Income-tax Act, 1961. If any terms or provisions of the Scheme are found or interpreted to be inconsistent with the provisions of the said Section at a later date including resulting from an amendment of law or for any other reason whatsoever, the provisions of the said Section of the Income-tax Act, 1961 shall prevail and the Scheme shall stand

modified to the extent determined necessary to comply with the said Section. Such modification will however not affect the other parts of the Scheme.

5. TAXATION MATTERS

- 5.1 Upon this Scheme coming into effect, all taxes payable by the Transferor Company under the Income-tax Act, 1961, Customs Act, 1962, service tax provisions or other applicable laws / regulations dealing with taxes / duties / levies (hereinafter referred to as "**Tax Laws**") shall be to the account of the Transferee Company; similarly all credits for tax deduction at source on income of the Transferor Company, or obligation for deduction of tax at source on any payment made by or to be made by the Transferor Company shall be made or deemed to have been made and duly complied with by the Transferee Company if so made by the Transferor Company. Similarly any advance tax payment required to be made for by the specified due dates in the tax laws shall also be deemed to have been made by the Transferee Company if so made by the Transferor Company. Further, if any Minimum Alternate Tax paid by the Transferor Company under section 115 JB and / or other provisions (as applicable) of the Income-tax Act, 1961, shall be deemed to have been paid on behalf of the Transferee Company, and the Minimum Alternate Tax Credit (if any) of the Transferor Company as on or accruing after the Appointed Date shall stand transferred to the Transferee Company and such credit would be available for set-off against the tax liabilities of the Transferee Company. Any refunds under the tax laws due to the Transferor Company consequent to the assessments made on the Transferor Company and for which no credit is taken in the accounts as on the date immediately preceding the Appointed Date shall also belong to and be received and appropriated by the Transferee Company.
- 5.2 All taxes of any nature, duties, cess or any other like payments or deductions made by the Transferor Company or any of its agents to any statutory authorities such as income-tax, service tax or any tax deduction / collection at source, tax credits under tax laws, relating to the period after the Appointed Date shall be deemed to have been on account of or paid by the Transferee Company, and the

relevant authorities shall be bound to transfer to the account of and give credit for the same to the Transferee Company upon the Effective Date and upon relevant proof and documents being provided to the said authorities.

- 5.3 Further, upon this Scheme coming into effect, the benefits provided under all Tax Laws, to the extent it relates to the Transferor Company, shall stand transferred to, vested in and continue in the hands of the Transferee Company in the same manner, with effect from the Appointed Date in accordance with the relevant provisions of such laws.

6. STAFF & EMPLOYEES

- 6.1 On coming into effect of this Scheme, all staff and employees of the Transferor Company in service on date immediately preceding the Effective Date shall be deemed to have become the staff and employees of the Transferee Company with effect from the Effective Date, without any break or interruption in their service and on the basis of continuity of service, and the terms and conditions of their employment with the Transferee Company shall not be less favorable than those applicable to them with reference to their employment with the Transferor Company, on the date immediately preceding the Effective Date. The Transferee Company expressly agrees and undertakes to abide by the terms of agreement / settlement, if any, entered into by the Transferor Company with the employee's union / employee's association of the Transferor Company.
- 6.2 It is expressly provided that on coming into effect of this Scheme, the provident fund, gratuity fund, superannuation fund or any other special fund or trusts, if any, created or existing for the benefit of the staff and employees of the Transferor Company shall become trusts / funds of the Transferee Company for all purposes whatsoever in relation to the administration or operation of such fund or funds or in relation to the obligation to make contributions to the said fund or funds in accordance with the provisions thereof as per the terms provided in the respective trust deeds, if any, to the end and intent that all rights, duties, powers and obligations of the Transferor Company in relation to such

fund or funds shall become those of the Transferee Company. In the event that the Transferee Company does not have its own fund(s) with respect to any such matters, the Transferee Company shall create its own fund(s) to which contributions pertaining to the employees of the Transferor Company shall be transferred. It is clarified that for the purpose of the said fund(s), the services of the staff and employees of the Transferor Company will be treated as having been in continuous employment of the Transferee Company from their respective date of employment as reflected in the records of the Transferor Company.

7. LEGAL PROCEEDINGS

If any suit, application, petition, appeal or other proceeding of whatever nature by or against the Transferor Company is pending, including but not limited to, those arising on account of taxation laws and other allied laws, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of anything contained in this Scheme, but the said suit, appeal, application, petition or other legal 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 Company if this Scheme had not been made. The Transferee Company shall make necessary applications before the relevant Court to record its name in such proceedings.

8. CONTRACTS, DEEDS AND OTHER INSTRUMENTS

8.1 Subject to the other provisions of this Scheme, all contracts, deeds, bonds, agreements, indemnities, licenses, permits, registrations, approvals, insurance policies, and other instruments, if any (including tenancies, licenses and other assurances of the Transferor Company or any of them or the powers or authorities granted by way of any of them), of whatsoever nature to which the

Transferor Company are a party or to the benefit of which the Transferor Company or any of them may be eligible, and which are subsisting or having effect on the Effective Date, shall without any further act, deed, instrument, matter or thing be and remain in full force and effect against or in favour of the Transferee Company, as the case may be, and may be enforced by or against the Transferee Company as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party thereto or beneficiary or obligee thereto. Except the sanctions, consents and approvals already obtained from third parties, if any, by the Transferor Company and the Transferee Company, as the case may be, no further consent, approval or sanction of any third party or other person who is a party to such deeds, bonds, contracts, arrangements etc. shall be required in order to give effect to the provisions of this Clause.

- 8.2 Without prejudice to clause 8.1 above, the Transferee Company shall enter into and / or issue and / or execute deeds, writings or confirmations or enter into any tripartite arrangements, confirmations or novation, to which the Transferor Company shall, if necessary, also be party in order to give formal effect to the provisions of this Scheme, if so required. Further, the Transferee Company shall be deemed to be authorised to execute any such deeds, writings or confirmations on behalf of the Transferor Company and to implement or carry out all formalities required on the part of the Transferor Company to give effect to the provisions of this Scheme.

9. CONSIDERATION FOR AMALGAMATION

- 9.1 Upon this Scheme becoming effective and in consideration of amalgamation of the Transferor Company with the Transferee Company, including the transfer and vesting of the undertaking of the Transferor Company in the Transferee Company, the Transferee Company shall without any further application or deed, issue and allot to all shareholders of the Transferor Company, holding

fully paid up shares in the Transferor Company and whose names appear in the Register of Members of the Transferor Company as on the Effective Date or to his / her / its heirs, executors, administrators or the successors-in-title, as may be recognized by the Board of Directors of the Transferee Company, fully paid-up equity shares of the Transferee Company in the following ratio:

“In respect of every 1(one) full paid up equity shares of Rs. 100/- (Rupees One Hundred only) each, held by the shareholder in the Transferor Company, 93 (Ninety-three) equity shares of the Transferee Company of Rs. 10/- (Rupees Ten only) each, fully paid-up.”

- 9.2 The Transferee Company shall, if and to the extent required, apply for and obtain any and all necessary approvals from concerned regulatory authorities for the issue and allotment by the Transferee Company of the equity shares to be issued to the members of the Transferor Company under the Scheme pursuant to and in accordance with clause 9.1 above.
- 9.3 The equity shares in the Transferee Company to be issued to the members of the Transferor Company pursuant to Clause 9.1 above shall be subject to the Memorandum of Association and Articles of Association of the Transferee Company and shall rank in pari-passu in all respects, including for the purpose of any dividend declared after the Scheme becoming effective, with the existing equity shares of the Transferee Company.
- 9.4 The Transferee Company holds one share in the Transferor Company. All the shares of the Transferor Company held by the Transferee Company on the Effective Date shall be cancelled without any further act or deed and the share certificates in relation to the said shares shall be deemed to have been cancelled and extinguished and be of no effect on and from such issue and allotment. Accordingly, the share capital of the Transferee Company shall stand reduced to the extent of the shares held by the Transferee Company in the Transferor Company. Such reduction shall be effected as an integral part of the Scheme

and does not involve diminution of liability in respect of any unpaid share capital or payment to any shareholder. Hence the procedure prescribed under section 101(2) of the Act is not required to be followed separately, and the Order of the Court sanctioning the Scheme shall be deemed to be an Order under Sections 100 to 102 sanctioning such reduction of the share capital of the Transferee Company.

- 9.5 Further, upon coming into effect of this Scheme, the investment in the equity shares of the Transferee Company, appearing in the books of account of the Transferor Company, as the case may be, shall stand cancelled.
- 9.6 No shares shall be allotted in respect of fractional entitlements, if any, by the Transferee Company to which the members of the Transferor Company may be entitled on allotment of shares as per clause 9.1. The Board of Directors of the Transferee Company shall instead consolidate all such fractional entitlements and thereupon allot equity shares in lieu thereof to a director or officer of the Transferee Company or such other person as the Board of Directors of the Transferee Company shall appoint in this behalf who shall hold the shares in trust on behalf of the members of the Transferor Company entitled to such fractional allotments with the express understanding that such director or officer or person shall sell the same in the market at such time or times and such price or prices, and to such person, as he deems fit, and pay to the Transferee Company the net proceeds thereof, whereupon the Transferee Company shall distribute such net sale proceeds, subject to applicable tax deductions, to the members of the Transferor Company in proportion to their respective fractional entitlements.
- 9.7 The Transferee Company shall take necessary steps to increase or alter or reclassify, if necessary, its authorized share capital suitably to enable it to issue the equity shares to be issued and allotted by it under this Scheme.

10. MERGER OF AUTHORISED SHARE CAPITAL OF TRANSFEROR COMPANY AND TRANSFEREE COMPANY

10.1 The Authorised Share Capital of the Transferor Company shall stand transferred to and combined with the Authorised Share Capital of the Transferee Company and shall be reclassified as consisting of equity shares of rs.10 each without any further act or deed. The filing fees and stamp duty already paid by the Transferor Company on its Authorised Share Capital shall be deemed to have been so paid by the Transferee Company and accordingly, the Transferee Company shall not be required to pay any fees / stamp duty on the Authorised Share Capital so increased. The resolution approving the Scheme shall be deemed to be the approval under Sections 13, 14 of Companies Act, 2013, and 100 of Companies Act, 1956, and other applicable provisions of the Companies Act 1956 or Companies Act, 2013, as may be applicable, and any other consents, approvals that may be required in this regard, including but not limited to, the approval required for increase in the Authorised Share Capital of the Transferee Company under Section 94 and other applicable provisions of the Act. The relevant Clause of the Memorandum of Association of the Transferee Company relating to the Authorised Share Capital shall, without any further Act, instrument or deed, be and stand altered, modified and amended pursuant to SECTION 13, 14 of Companies Act 2013 and Sections 100 of Companies Act, 1956 and other applicable provisions of the Companies Act 1956 or Companies Act 2013, as may be applicable, in the manner set out below and be replaced by the following clause:

“The Authorised Share Capital of the Company is Rs. 41,16,92,000/- (Rupees Forty-One Crore Sixteen Lakh Ninety-Two Thousand Only) divided into 4,11,69,200 (Four Crore Eleven Lakh Sixty-Nine Thousand Two Hundred) Equity Shares of Rs. 10/- (Rupees Ten Only)/- each”

10.2 The Authorised Share Capital of the Transferee Company pursuant to this Scheme coming into effect shall stand increased to the extent required to accommodate the shares received by the shareholders of the Transferor Company as on the Effective Date, on account of the share swap and the requisite stamp duty and registration fee on the same shall be duly paid.

PART C

ACCOUNTING TREATMENT

11. ACCOUNTING TREATMENT

Upon the Scheme becoming effective, the Transferee Company shall account for the amalgamation in its books of accounts with effect from the Appointed Date as per the "Purchase Method" as described in Accounting Standard – 14 "Accounting for amalgamations" prescribed under Companies (Accounting Standards) Rules, 2006.:

- (i) The assets, liabilities and debts of the Transferor Companies (including intangibles, if any, whether or not recorded in the books of the Transferor Company) are transferred to and vested in the Transferee Company, pursuant to the Scheme and shall be recorded by the Transferee Company, at fair value in such manner as may be determined by the Board of Directors of the Transferee Company;
- (ii) The Transferee Company shall record issuance of shares at fair value and accordingly credit to its Share Capital Account the aggregate face value of the Equity Shares issued on amalgamation. The excess, if any, of the fair value of the Equity Shares over the face value of the shares issued shall be credited to the Securities Premium Reserve of the Transferee Company;
- (iii) Upon the coming into effect of this Scheme and with effect from the Appointed Date, all the inter-company balances, loan and advances, investments and transactions shall stand cancelled;
- (iv) Excess, if any, of the value of the consideration viz., fair value of new shares issued by the Transferee Company and the cost of shares in Transferor Company cancelled, over the fair value of Net Assets (including intangible assets, if any) taken over and recorded, shall be recognised as goodwill in

accordance with Accounting Standard - 14. In the event where result is negative, the same shall be credited as capital reserve in the books of the Transferee Company.

- (v) In case of any differences in the accounting policies between the Transferor Companies and the Transferee Company, the impact of the same till the Appointed Date of amalgamation will be quantified and adjusted in the free / general reserves of the Transferee Company to ensure that the financial statements of the Transferee Company reflect the financial position on the basis of consistent accounting policies

PART D

GENERAL TERMS AND CONDITIONS

12. TRANSACTIONS BETWEEN APPOINTED DATE AND EFFECTIVE DATE

During the period from the Appointed Date up to and including the Effective Date:

- 12.1 The Transferor Company shall (i) carry on and be deemed to have carried on its business and activities; and (ii) be deemed to have held and stood possessed of and shall hold and stand possessed of its entire business and undertaking, including assets; for and on account of and in trust for the Transferee Company;
- 12.2 All the profits, taxes or income accruing or arising to the Transferor Company or costs, charges, expenditure or losses incurred or arising to the Transferor Company shall for all purposes be treated and deemed to be and accrue as the profits, taxes or income or cost, charges, expenditure or losses (as the case may be) of the Transferee Company;
- 12.3 The Transferor Company shall carry on its business and activities in the ordinary course of business with reasonable diligence and business prudence and shall not undertake financial commitments either for itself or on behalf of its subsidiaries or group companies or any third party or sell, transfer, alienate, charge, or encumber or otherwise deal with or dispose of its business or undertaking or any part thereof, save and except in the ordinary course of business or with the prior written consent of the Transferee Company;
- 12.4 All taxes (including income-tax, sales tax, custom duty, service tax, etc.) duties, cess, including but not limited to withholding taxes, advance tax, paid by or deposited on behalf of the Transferor Company or credited or refunded to the Transferor Company on or after the Appointed Date till the Effective Date shall

be deemed to be taxes, duties, cess paid or deposited by and on behalf of the Transferee Company or credited or refunded to the Transferee Company, as the case may be;

- 12.5 The Transferor Company shall not vary the terms and conditions of service of its employees except in the ordinary course of its business;
- 12.6 The Transferor Company shall not without the prior written consent of the Transferee Company, undertake any new business or a substantial expansion of its existing business; and
- 12.7 The Transferee Company shall be entitled, until the Effective Date of this Scheme, to apply to the central government and any other government or statutory authorities / agencies / body concerned as are necessary under any law for such consents, approvals, licenses, registrations and sanctions which the Transferee Company may require in order to give effect to this Scheme, including but not limited to, for carrying on the business of the Transferor Company.

13. SAVING OF CONCLUDED TRANSACTIONS

Subject to the terms of this Scheme, the transfer and vesting of the business and undertaking of the Transferor Company under and pursuant to Clause 4 of this Scheme, shall not affect any transactions or proceedings already concluded by the Transferor Company on or before the Appointed Date or concluded between the Appointed Date and the Effective Date with the prior written consent of Transferred Company (both days inclusive), to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things made, done and executed by the Transferor Company as acts, deeds and things made, done and executed by or on behalf of the Transferee Company.

14. DISSOLUTION WITHOUT WINDING-UP

Upon coming into effect of this Scheme, the Transferor Company shall automatically stand dissolved, without being wound-up, without any further resolution being passed or orders being obtained from any Court, in this regard.

15. CONDITIONALITY OF THE SCHEME

This Scheme is and shall be conditional upon and subject to:

- (i) the Scheme being approved by the respective requisite majority of the members and / or creditors of the Transferor Company and the Transferee Company, if and to the extent that meetings of members and / or creditors of the Transferor Company and / or the Transferee Company, are not dispensed with, and are directed to be convened, by the High Court;
- (ii) sanction being obtained on the Scheme by the High Court and necessary orders under Section 394 and other applicable provisions, if any, of the Act, being passed;
- (iii) certified copies of the orders of the High Court sanctioning the Scheme being filed with the concerned Registrar of Companies, by the Transferor Company and the Transferee Company in prescribed form and the same having been approved by the Registrar of Companies; and
- (iv) all consents, sanctions or approvals, as may be required to be obtained from any person, by law or contract, for the implementation of this Scheme being obtained.

16. APPLICATION TO HIGH COURT

The Transferor Company and the Transferee Company shall, with all reasonable dispatch, make and file applications / petitions to the High Court, within whose jurisdiction the registered offices of the Transferor Company and the Transferee Company are situated, for *inter alia*, according sanction to the Scheme, and for dissolution of the Transferor Company without being wound-up and any other proceedings that may be required in relation to this Scheme.

17. MODIFICATION OF OR AMENDMENTS TO THE SCHEME

The Transferor Company and the Transferee Company through their respective Boards, may in their full and absolute discretion, carry out or assent to any modifications / amendments / alterations to the Scheme or to any conditions or limitations that the High Court and / or any other competent authority or body may deem fit to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them (i.e. the Boards), and may give such directions as they may consider necessary to settle any questions, disputes, disagreements or difficulty that may arise under the Scheme or in regard to its implementation or in any matter connected therewith (including any question or difficulty arising in connection with any deceased or insolvent shareholder of the respective company) and to do all acts, deed, and things as may be necessary, desirable or expedient for carrying this Scheme into effect; and the same shall be binding on all parties to the Scheme, in the same manner as if the same was specifically incorporated in the Scheme. The Transferor Company and the Transferee Company through their respective Boards, are hereby authorised to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions whether by reason of any directive or orders of any Government / regulatory / statutory authorities or bodies or otherwise howsoever arising out of or under or by virtue of the Scheme and / or any matter concerned or connected therewith. No modification or amendment materially altering the terms of this Scheme will be carried out or effected by the Board without approaching the High Court. In the event that any modification, amendment or alteration to this Scheme is unacceptable to the Board of the

Transferor Company and / or the Transferee Company for any reason whatsoever, then the Transferor Company and / or the Transferee Company shall be entitled to withdraw from the Scheme.

18. EFFECT OF NON-COMPLIANCE OF CONDITIONS

In the event any of the conditions specified in Clause 15 are not complied with, or for any other reason, the Scheme cannot be implemented within such period(s) that the Board of the Transferor Company and the Transferee Company may mutually agree upon, and / or if the Transferor Company and / or the Transferee Company withdraws from this Scheme pursuant to Clause 17 above, the Scheme shall become null and void and in such event no rights or liabilities whatsoever shall accrue to or be incurred by the Transferor Company and / or the Transferee Company. In such event, each party shall bear and pay their respective costs, charges and expenses in connection with the Scheme.

19. COSTS, CHARGES AND EXPENSES

Upon coming into effect of this Scheme, the Transferee Company shall bear and pay all costs, charges, expenses and taxes, including duties and levies in connection with the Scheme.