

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

C.P. (CAA) 1025/MB-I/2020
Connected with
C.A. (CAA) 1011/MB-I/2020

In the matter of

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

And

In the matter of

Scheme of Amalgamation of Suremi Trading Private Limited (First Transferor Company) and Sushripada Investments Private Limited (Second Transferor Company) with NOCIL Limited (Transferee Company) and their respective Shareholders.

Suremi Trading Private Limited, a Company incorporated under the Companies Act, 1956 and having its Registered office at D1 Sindhu House, Nanabhat Lane, Mumbai – 400 023
CIN: U65990MH1978PTC020335

... *First Petitioner Company*

Sushripada Investments Private Limited, a Company incorporated under the Companies Act, 1956 and having its Registered office at Mafatlal House, Backbay Reclamation Mumbai – 400 020
CIN: U65990MH1974PTC017275

... *Second Petitioner Company*

NOCIL Limited, a Company incorporated under the Companies Act, 1956 and having its Registered office at Mafatlal House, H.T. Parekh Marg, Backbay Reclamation, Mumbai - 400020
CIN: L99999MH1961PLC012003

... *Third Petitioner Company*

Date of Order: 3rd March 2021



CORAM:

Hon'ble Janab Mohammed Ajmal, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

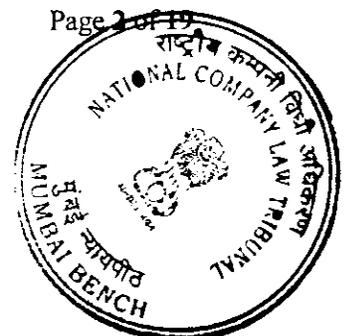
Appearance:

For the Petitioners : Mr. Hemant Sethi, i/b. Hemant Sethi &
Co., Advocates
For the Regional Director (WR) : Ms. Rupa Sutar, Deputy Director Office
of Regional Director (WR), Ministry of
Corporate Affairs

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

1. This Petition seeks sanction of the Tribunal under sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (the Act) to the Scheme of Amalgamation (the Scheme) of Suremi Trading Private Limited and Sushripada Investments Private Limited with NOCIL Limited and their respective shareholders.
2. We have heard the learned counsel for the Petitioner Companies and the representative of the Regional Director (Western Region), MCA, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.
3. The learned counsel for the Petitioner Companies submitted that the First Petitioner Company and the Second Petitioner Company are promoters, respectively holding 12.54% & 5.41% shares of the Third Petitioner Company, as on 31st March, 2020. They are engaged in the business of trading of fabrics and hold investments in securities. The Third Petitioner Company is engaged in the business of manufacture of rubber chemicals.

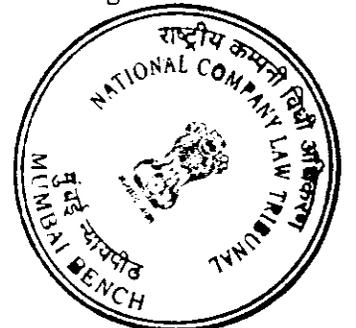


4. The Board of Directors of the Petitioner Companies approved the Scheme in their respective meetings held on 30th January, 2020. The Appointed Date fixed under the Scheme is 1st October 2020.
5. The learned counsel for the Petitioner Companies further highlighted the following rationale for the Scheme:
 - a. *Ensuring a streamlined group structure by reducing the number of legal entities in the group structure;*
 - b. *Reducing the multiplicity of legal and regulatory compliances required at present;*
 - c. *Eliminating duplicative communication and coordination efforts across multiple entities;*
 - d. *Rationalizing costs by eliminating multiple record keeping and administrative functions;*
6. The Company Petition is filed in consonance with sections 230 to 232 of the Act along with the Order dated 07.07.2020 passed in C.A. (CAA) No. 1011/MB/2020 by this Tribunal.
7. Learned counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Act and the Rules made thereunder. The undertaking given by the Petitioner Companies is accepted.
8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 27th October 2020, *inter-alia* stating therein that save and except as stated in para IV (a) to (n) of the Report, the Scheme is



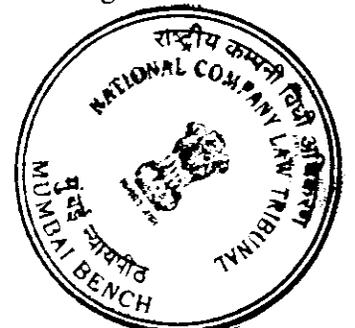
not prejudicial to the interest of shareholders and public. In response to the observations made by the Regional Director, the Petitioner Companies have also given necessary clarifications and undertakings *vide* their rejoinder affidavit dated 18th November 2020. In response to the rejoinder affidavit, the Regional Director has filed his Supplementary Report dated 24th December 2020. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies and the observations of the Regional Director in the Supplementary Report and the response of the Petitioner Companies is summarized in the table below:

Sr. No. Para No. (IV)	RD Report /observations Dated 27 th October, 2020	Response of the Petitioner Companies.	Observation of Regional director in Supplementary Report dated 24 th December, 2020	Response of the petitioner Companies to the Supplementary Report
(a)	That it is seen that both the Transferor Companies are belonging to the Promoter, which are holding shares in the Transferee Company. The Scheme proposes at para No. 8 of Part-B of the scheme about issue of 207,72,170 equity shares of face value of Rs.10/- each as fully paid up to the equity shareholders of the Transferor Company No.1 and Compulsory Convertible Preference Shareholders of Transferor Company No.1 in proportion to their holding in Transferor Company No.1. Similarly, the Scheme proposes at para	As far as the observation of the Regional Director, as stated in IV(a) of the report is concerned, the Counsel for the Petitioner Companies states that the tax implications would arise, if the shares of the Transferee Company are deemed as sale of shares by the Transferor Companies. In this regard, Counsel of the Petitioner Companies submits as under: a. The Scheme of Amalgamation is for the merger of Suremi and Sushripada into NOCIL. The intention is to streamline the promoter group structure, to ensure a transparent shareholding pattern for the public to demonstrate the promoter group's direct commitment and engagement with NOCIL by having direct ownership in NOCIL. The Scheme clearly provides that the shareholders of the Transferor Companies will be issued identical number of shares of NOCIL held by the Transferor Companies. It has been clearly highlighted and disclosed in all the filings made by the	Based on the observations by this Directorate and the reply thereon by the Petitioner, Hon'ble Tribunal may pass order as deem fit and proper.	Further to the response referred to in the Rejoinder of the Petitioner Companies and several judgements cited therein, the Counsel for the Petitioner Company humbly submits that notice has been served to the Income Tax Department 21 st July 2020 and 19 th October 2020 by the Transferor Companies and on 13 th August



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<p>No.8 of Part-B of the scheme about issue of 89,60,880 equity shares of face value of Rs.10/- each as fully paid up to the equity shareholders of the Transferor Company No.2 and Compulsory Convertible Preference Shareholders of Transferor Company No.2 in proportion to their holding in Transferor Company No.2.</p> <p>In this regard, it is seen that the Transferor Company No.1 is holding 207,72,170 number of equity shares in the Transferee Company and similarly Transferor Company No.2 is holding 89,60,880 number of equity shares in the Transferee Company. This reflects that the Promoters/Share holders of the Transferor Company No.1 & 2, in the guise of present scheme, proposes to transfer the identical number of shares of Transferee Company (being a listed company) held in the name of the respective Transferor Companies, into their personal names and transfer the shareholding under the shelter of the scheme which may result in loss of revenue by way of Income Tax. If the</p>	<p>Petitioner Companies to the relevant authorities as well as in the Notice and Explanatory Statement issued to the shareholders. Adequate disclosures have been made in the Scheme and to the stakeholders and there is nothing done in disguise. As per the direction of this Bench, notices have been issued to the Income Tax Department on 21st July 2020 and 19th October 2020 by the Transferor Companies and on 13th August 2020 and 19th October 2020 by the Transferee Company respectively. No observation of the Income Tax department on the same has been received by the Petitioner Companies.</p> <p>Further, Counsel for the Petitioner Companies submits that the shares held by the Transferor Companies in NOCIL represents the strategic promoter holding and there is no intention to divest the shares of NOCIL held by the Transferor Companies or the Promoters. The Scheme envisages the restructuring of the group entities resulting into realignment of the shareholding.</p> <p>The Income Tax Act, 1961 provides specific tax exemption u/s 47 of the Income Tax Act, 1961 for corporate restructuring, such as for amalgamation and demerger, to the companies involved in such restructuring and the shareholders of such companies. Had such exemptions not been provided all such corporate restructuring would be taxable for the concerned parties. Hence, in any amalgamation or demerger, transfer of assets by the companies and exchange of shares for the shareholders would become taxable if such exemptions are not granted. The reason for providing such exemption is to carry out such restructuring exercise in a tax and cash neutral manner.</p> <p>There are judicial precedents affirming that the Petitioner's choice of opting any one of the available methods cannot be disputed.</p>	<p>2020 and 19th October 2020 by the Transferee Company respectively.</p> <p>There is no representation received so far from the Income Tax Department. Further, Section 230(5) of the Companies Act, 2013 provides that in case no representation is made within a period of 30 days from receipt of notice by the authorities, then it shall be presumed that they have no representations to make on the proposals. Petitioner Companies through their Counsel further say and submit that the tax implications, if any, arising out the Scheme shall be decided in accordance with the Income Tax Law.</p>
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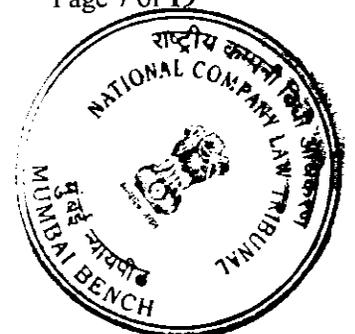


<p>Transferor Companies transfer the shares of the listed company into the name of the respective shareholders, then it will attract the relevant Income Tax/Corporate Tax. The present value of the shares of the listed company comes to approximately Rs.416 Crores (207,72,170 shares + 89,60,880 shares at Rs.140 per shares, the quoted price as on 27.10.2020). Therefore, the Petitioner Company be directed to place on record the relevant facts.</p>	<p>Also, if the Petitioner Company chooses a more elaborate route, they cannot be faulted for the same. Certain rulings of the High Court affirming the aforesaid finding are as under:</p> <ul style="list-style-type: none"> In AVM Capital Private Limited (CSP No. 670-675 of the Bombay High Court by order dated July 12, 2012 issued by Justice S.J. Kathawalla J.) Hon'ble Court at para 23 of the order has held that <i>“It would be in the interest of the Transferee Company to merge the five Transferor Companies with the Transferee Company and to enable the Promoter thereof to hold shares directly in the Transferee Company rather than indirectly. The object of the Scheme is not to avoid any tax. Even today the shares are owned/controlled by the same Promoter albeit through the Transferor Companies. Under the Scheme the only difference is that the Promoter will now hold shares directly in the Transferee Company.”</i> <p>The Counsel for the Petitioner Companies submitted that the view taken by the Hon'ble Bombay High Court in AVM Capital Private Limited has been followed by the NCLT Delhi Bench in case of NIIT Ltd (CSP No. 347 of 2017) in the similar facts and circumstances.</p> <p>The Counsel for the Petitioner Company further relied upon the order passed by the Hon'ble Bombay High Court in case of Tata Services Limited and Tatanet services Limited (Company Petition No.758 of 2005 of the Bombay High Court), wherein it has been held that: <i>“If the Petitioners have chosen a more elaborate route, they cannot be faulted for the same.”</i></p> <p>The above view has also been followed in the case of Balkrishna Industries Limited and Balkrishna Paper Mills Limited and Balkrishna Synthetics Limited (Company</p>		
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		<p>Petition No.713 of 2007 of the Bombay High Court)</p> <p>b. Petitioner Companies through their Counsel further say and submit that the tax implications, if any, arising out the Scheme shall be decided in accordance with the Income Tax Law.</p>		
(b)	<p>As stated herein above both the Transferor Company No.1 & 2 are holding equity shares in the Transferee Company and they have no other business in the respective companies. Hence, when the shares of the Transferee Company are issued to the individual shareholders of both the Transferor Companies and the investments in their books are written off, there will be nothing left in the company to merge or amalgamate into the Transferee Company. This contradicts with para II of the Rational of the Scheme.</p>	<p>As far as the observation of the Regional Director, as stated in IV(b) of the report is concerned, the Counsel for the Petitioner Companies submit that on issue and allotment of share pursuant to Clause 8 of the Scheme and as on the Effective Date the Transferor Companies shall be dissolved without winding up. Therefore, the contention of the Regional Director that there will be nothing left in the Transferor Companies has no relevance. Therefore, the question of contradiction with Para II of the Scheme does not arise.</p> <p>Further, the Counsel for the Petitioner Companies submitted that Section 232 of the Companies Act 2013 clearly envisages that a company can transfer whole or any part of the undertaking.</p> <p>The reliance is placed upon order passed by Mumbai Bench of NCLT in case of Spectra Motors Ltd (Company Scheme Petition No. 33 of 2017) which held that “ <i>as per section 232 (1)(b) of the Act, the scheme is permissible even when the whole of the undertaking is hived and transferred to two or more resulting companies, therefore, this Bench having seen the objection raised by the Regional Director is not supported by any provision of law, hereby allowed the company to proceed with the demerger proposed.</i>”</p> <p>Further, rationale mentioned under the Scheme envisages that it will result in promoters holding shares of NOCIL directly and eliminate the holding companies, thereby streamline the group structure; it will benefit by reducing the multiplicity of legal and regulatory compliances such as year on year statutory and tax audits, filing of tax returns, its assessment procedures, secretarial and other</p>	<p>Based on the observations by this Directorate and the reply thereon by the Petitioner, Hon'ble Tribunal may pass order as deem fit and proper.</p>	<p>Counsel for the Petitioner Companies submits that response to the observation has been dealt with in detail in the Rejoinder citing several precedents and the contention of the Regional Director that there will be nothing left in the Transferor Companies has no relevance. Therefore, the question of contradiction with Para II of the Scheme does not arise.</p>

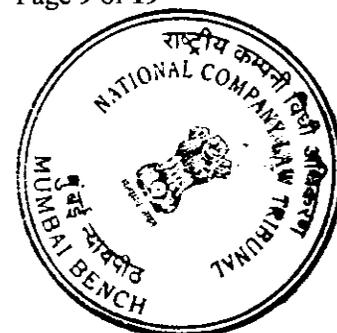


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	<p>legal compliance required at present for the Transferor Companies. Also, on account of merger of two entities, the coordination and communication efforts will reduce. All this would result in savings in administrative and other costs required to be incurred for the Transferor Companies. Similar scheme of merger of promoter companies with its investee company has been approved in many other cases. Some of them being Welspun India Limited [CP (CAA) 34 of 2019 by Ahmedabad Bench of NCLT] , Welspun Corp Ltd [CP (CAA) 33 of 2019 by Ahmedabad Bench of NCLT], Welspun Enterprises Limited [CP (CAA) 46 of 2019 by Ahmedabad Bench of NCLT], Godrej Industries Limited [CP (CAA) 2716 /MB/ 2018 by Mumbai Bench of NCLT], Apcotex Industries Limited [CSP No. 1086 of 2017 by Mumbai Bench of NCLT], Piramal Enterprises Limited [Company Scheme Petition No. 278 of 2013 by Hon'ble Bombay High Court], Borosil Limited [CP (CAA) 2018/MB/2019 by Mumbai Bench of NCLT], NIIT Technologies Limited [Company Petition CA-347/ND/ 2017 by Delhi Bench of NCLT], Hero MotorCorp Limited [Co. Pet. No.547 of 2012 by Hon'ble Delhi High Court], Eicher Motors Limited [Company Petition No. 292/2009 by Hon'ble Delhi High Court], Sunteck Realty Limited [Company Scheme Petition No. 710 of 2014 by Hon'ble Bombay High Court] , Navneet Publications(I) Ltd [Company Scheme Petition No. 839 of 2012 by Hon'ble Bombay High Court], Kirloskar Oil Engines Limited [Company Scheme Petition No. 159 of 2015 by Hon'ble Bombay High Court] and PVR Limited [Company Petition No. 243 of 2016 by Hon'ble Delhi High Court]</p> <p>Lastly, the Counsel for the Petitioner Companies rely upon the order of the Hon'ble Supreme Court in Civil Appeal No. 984 of 2006 where the Hon'ble Supreme Court referred to the full bench judgement of the Hon'ble Allahabad High Court, wherein it was</p>		
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		observed: <i>“Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle, prohibition cannot be presumed.”</i>		
(c)	Since, the Transferee Company is a listed company and the Promoters/ Promoter group are to be issued shares as per the Scheme, the Petitioner Company be directed to place on record whether necessary approval from SEBI and the concerned Stock Exchanges have been obtained and whether the meeting of the shareholders/class of shareholders have been convened, as per the listing/SEBI guidelines.	As far as the observation of the Regional Director, as stated in IV(c) of the report is concerned, the Counsel for the Petitioner Companies submits that the BSE Limited and the National Stock Exchange of India Limited, in consultation with the Securities Exchange Board of India has given their no objection letter to the proposed Scheme. The Observation letter of the BSE and NSE is Annexed as Exhibit I1 and I2 to the Petition on page nos. 556-559. Further, the meeting of equity shareholders of the Third Petitioner Company for approving the Scheme was held on 15th September 2020 as directed by this Tribunal vide its order dated 7th July 2020. The Scheme was approved by 99.99% shareholders (including Promoters) and 99.95% of non promoter shareholders at the Tribunal convened meeting and was in compliant of the applicable SEBI guidelines and provisions of the Companies Act, 2013. The result of the meeting of the equity shareholders of the Third Petitioner Company is a part of the Chairman’s Report and Scrutinizer’s Report annexed to the Petition at page nos. 871 to 883 as ‘Exhibit O.’	Reply of the Company appears satisfactory.	
(d)	As stated herein above, the present scheme appears to have been devised for evasion of Income/Corporate Tax and Dividend Distribution Tax, hence, the Income Tax Department requires to be heard in the matter for	As far as the observation of the Regional Director, as stated in IV(d) of the report is concerned, the Petitioner Companies submit that the proposed Scheme does not envisage evasion of income tax for reasons as mentioned under reply to observation IV(a) of the RD Report. Further, there is no question of evasion of Dividend Distribution Tax as the same has been abolished by the amendment introduced vide Finance Act, 2020. Further,	Based on the observations by this Directorate and the reply thereon by the Petitioner, Hon’ble Tribunal may pass order as deem fit and	Further to the response referred to in the Rejoinder of the Petitioner Companies, the Counsel for the Petitioner Company humbly submits



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	<p>submission of their views.</p>	<p>due to the amendment introduced vide Finance Act, 2020, the dividend income will be taxed at 35.88% in case of individual promoters which is higher than tax on the companies i.e.25.17%. Hence in the present situation, the dividend income will be taxed at higher rate for individual promoters post the Scheme getting implemented as compared to the existing company shareholder. Also, as directed by this Bench, notices have been sent to the Income-Tax Department on 21st July 2020 and 19th October 2020 by the Transferor Companies and on 13th August 2020 and 19th October 2020 by the Transferee Company respectively. However, no observations have been received by the Petitioner Companies till date.</p>	<p>proper, after hearing the Income Tax Department.</p>	<p>that notice has been served to the Income Tax Department 21st July 2020 and 19th October 2020 by the Transferor Companies and on 13th August 2020 and 19th October 2020 by the Transferee Company respectively. There is no representation received so far from Income Tax Department. Further, Section 230(5) of the Companies Act, 2013 provides that in case no representation is made within a period of 30 days from receipt of notice by the authorities, then it shall be presumed that they have no representations to make on the proposals. Petitioner Companies through their Counsel further say and submit that the tax implications, if any, arising out</p>
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				the Scheme shall be decided in accordance with the Income Tax Law.
(e)	Transferor Companies are Investment Companies and hence the Petitioner Companies be directed to place on record, whether the NOC from RBI is required to be obtained or not and whether RBI has been issued any notice, if so details of the same be placed on record.	As far as the observation of the Regional Director, as stated in IV(e) of the report is concerned, the Counsel for the Petitioner Companies submits that the First Petitioner Company is a non-deposit taking Core Investment Company, which has more than 90% assets as investment in group companies and has not accessed public funds. Hence it is exempt from registration with the Reserve Bank of India('RBI') based on Master Direction - Core Investment Companies (Reserve Bank) Directions, 2016. The Second Petitioner Company is not involved in the business of non-banking finance activity since its financial income is less than 50% of the total income. Accordingly, approval or No Objection Certificate from RBI is not required.	Hon'ble Tribunal may kindly direct the petitioner companies to submit an undertaking that the NOC of RBI is not required and the Company has not received any notice from RBI	The Counsel on behalf of the Petitioner Transferee Company undertakes that NOC of RBI is not required and that the Transferor Companies as well as the Transferee Company has not received any notice from RBI.
(f)	In compliance of AS-14 (IND AS-103), the Petitioner Companies 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.	As far as the observation of the Regional Director, as stated in IV(f) of the report is concerned, the Transferee Company undertakes that it shall pass such accounting entries as may be necessary in connection with the Scheme to comply with all the applicable Indian Accounting Standards (IND AS).	Reply of the Company appears satisfactory.	
(g)	As per Definition of the Scheme, "Appointed Date" means October 1, 2020 "Effective Date" means the date on which the certified copy of the order of NCLT sanctioning this Scheme of Amalgamation, is filed by the Transferor Company	As far as the observation of the Regional Director, as stated in IV(g) of the report is concerned, the Petitioner Companies submit as under: a. The Ministry of Corporate Affairs ('MCA') Circular F.No.7112/2019/CL -I ('Circular') dated August 21, 2019 provided for certain clarifications on Appointed Date under section 232(6) of the Companies Act, 2013. The purpose and intent of the MCA circular was to provide clarification on	Based on the observations by this Directorate and the reply thereon by the Petitioner, Hon'ble Tribunal may pass order as deem fit and proper.	Further to the detailed submission in the Rejoinder and placing reliance on the orders passed by the NCLT, the Counsel for the Petitioner Companies state



<p>I, the Transferor Company 2 and the Transferee Company with the Registrar of Companies, Mumbai In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that 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. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers. Further, the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs. In the present case the appointed date is proposed to be 01.10.2020, which is a prospective date from the date of filing the petition as well as the convening the meeting of Shareholders, Creditors etc. The exchange ratio should be relating to the particular date of valuation and the appointed date shall be subsequent to the</p>	<p>appointed date and acquisition date. Accordingly, the Circular clarifies that appointed date needs to be a specific calendar date but does not restrict it to be a prospective date from the date of the Board Meeting or filing of application with the Hon'ble NCLT. In the present case it is a specific date of 1st October 2020 and hence in compliance with the Circular.</p> <p>b. Also in case of KPIT Technologies Limited (Company Petition CA -3607/MB/2018 NCLT Mumbai Bench), on the objection of the Regional Director on Appointed Date being the Effective Date, the Hon'ble NCLT has approved the Scheme with the prospective Appointed Date of 1st January 2019 whilst the order sanctioning the Scheme was 29th November 2018.</p> <p>c. Further, reliance is also placed on Atlas Copco (India) Limited (Company Scheme Petition No. 976 of 2017 by NCLT Mumbai Bench) approved by Hon'ble NCLT sanctioning the scheme having a prospective appointed date. The relevant extracts of the explanations made by the Petitioner Companies on the observations made by the Regional Director in the said matter of Atlas Copco (India) Limited are reproduced as under:</p> <p><i>"The Companies Act, 2013 does not prohibit a prospective Appointed Date and Section 232(6) of the Companies Act, 2013 merely provides that the Scheme shall be deemed to be effective only from the Appointed Date specified in the Scheme and not from a date subsequent to such Appointed Date...</i></p> <p><i>...Further, the value of the assets and liabilities as on the Appointed Date is immaterial in the present case as the Scheme intends to mirror the shareholding of the Transferor Company and Transferee Company by prescribing a share exchange ratio of 1:1...</i></p> <p><i>...The Valuation report issued by Thadani</i></p>	<p>that the purpose and intent of the MCA circular was to provide clarification on appointed date and acquisition date. Accordingly, the Circular clarifies that appointed date needs to be a specific calendar date but does not restrict it to be a prospective date. In the present case it is a specific date of 1st October 2020 and hence in compliance with the Circular.</p>
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	<p>appointed date. Whereas, in the present case it is prospective date. Therefore, the proposed appointed date is against the spirit of the Ministry's Circular as stated above and not to be allowed.</p>	<p><i>& Company, Chartered Accountants for this purpose also states that the proposed share exchange ratio is fair and reasonable...</i></p> <p><i>...Further, the share swap ratio has been unanimously approved by the shareholders of the Transferor Company and the Transferee Company. The Counsel for the Petitioners submit that even in a given situation where the appointed date was retrospective, the swap ratio would have been the same."</i></p> <p>d. In the present Scheme, the share entitlement ratio would be the same irrespective of the appointed date being retrospective or prospective as the Scheme envisage issuance of exactly the same number of shares held by the Transferor Company in the Transferee Company to the shareholders of the Transferor Company in proportion of their shareholding in the Transferor Company</p> <p>e. Hence, the valuation of the Transferor Company 1 and the Transferor Company 2 is derived only from its holding in the Transferee Company and it shall not be affected by appointed date being prospective or retrospective.</p> <p>Accordingly, the Counsel for the Petitioner Companies submits that the appointed date can be a prospective date in the present situation.</p>		
(h)	<p>Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the</p>	<p>As far as the observation of the Regional Director, as stated in IV(h) of the report is concerned, the Third Petitioner Company states that the Scheme does not provide for combination of authorised Share capital and accordingly, no additional fees would be payable.</p>	<p>Reply of the Company appears satisfactory.</p>	



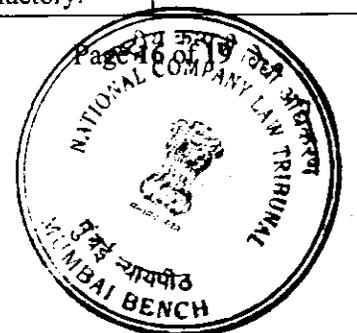
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	amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.													
(i)	In view of the observations and comments made by the ROC, Mumbai in its Report dated 16.09.2020 mentioned on para No. 12 in the table above, the Petitioner Company may be directed to submit clarification regarding the difference in paid up Share Capital of Transferee Company and/or on the basis of comments/observations of ROC, Mumbai	As far as the observation of the Regional Director, as stated in IV(i) of the report and the report of ROC dated 16 th September 2020, the Petitioner Companies submit that the paid-up share capital of the Third Petitioner Company mentioned in Clause 3.3 of the Scheme relates to the paid-up share capital of the Third Petitioner Company as on date on the approval of the Scheme by the Board of Directors of the Third Petitioner Company on 30th January 2020. After the approval of the Scheme by the Board of Directors, the Third Petitioner Company has allotted 9,250 equity shares, 69,550 equity shares and 2,59,550 equity shares on 10th February 2020, 16th July 2020 and 21st September 2020 respectively pursuant to NOCIL Limited – Employee Stock Grant Scheme. After considering the said allotment, the paid-up capital of the Third Petitioner Company is matching with MCA Master Data. A reconciliation of the paid up capital of the Third Petitioner Company is summarized below:	Reply of the Company appears satisfactory.											
		<table border="1"> <thead> <tr> <th>Particulars</th> <th>Amount in Rs.</th> </tr> </thead> <tbody> <tr> <td>Share Capital as on 30.01.2020</td> <td>1,65,59,67,050</td> </tr> <tr> <td>Share Capital as on 10.02.2020</td> <td>1,65,60,59,550</td> </tr> <tr> <td>Share Capital as on 30.08.2020</td> <td>1,65,67,55,050</td> </tr> <tr> <td>Share Capital as on 30.10.2020</td> <td>1,65,93,50,550</td> </tr> </tbody> </table>	Particulars	Amount in Rs.	Share Capital as on 30.01.2020	1,65,59,67,050	Share Capital as on 10.02.2020	1,65,60,59,550	Share Capital as on 30.08.2020	1,65,67,55,050	Share Capital as on 30.10.2020	1,65,93,50,550		
Particulars	Amount in Rs.													
Share Capital as on 30.01.2020	1,65,59,67,050													
Share Capital as on 10.02.2020	1,65,60,59,550													
Share Capital as on 30.08.2020	1,65,67,55,050													
Share Capital as on 30.10.2020	1,65,93,50,550													
(j)	That in view of provisions of proviso to Section 66(3) of the Companies Act, 2013, Hon'ble Tribunal may kindly direct the Company to submit certificate from the	As far as the observation of the Regional Director, as stated in IV(j) of the report is concerned, it is submitted that the reduction of capital provided under the Scheme is undertaken pursuant to provisions of section 230-232 of the Companies Act and accordingly, provisions of section 66 are not required to be complied with separately. The	Reply of the Company appears satisfactory.											

	<p>auditor of the Company that "the accounting treatment proposed by the company for such reduction is in conformity with the Accounting Standards specified in Section 133 or any other provisions of the Companies Act, 2013.</p>	<p>accounting treatment as provided in Clause 11 of the Scheme provides for cancellation of shares of Transferee Company held by the Transferor Companies and the same is reproduced as under:</p> <p>"11.1 Upon the coming into effect of this Scheme, the Transferee Company shall account for the amalgamation of the Transferor Companies in its books as per the applicable accounting principles prescribed under Indian Accounting Standards (Ind AS). It would inter alia include the following;</p> <p>11.2 The shares of the Transferee Company held by the Transferor Companies shall stand cancelled.</p> <p>11.3 The inter-company deposits/ inter-company loans and advances, if any, in the books of accounts of the Transferee Company and the Transferor Companies shall stand cancelled.</p> <p>11.4 The face value of New Equity Shares issued by the Transferee Company to the shareholders of the Transferor Company pursuant to Clause 8.1 above shall be credited to the Equity Share Capital Account of the Transferee Company.</p> <p>11.5 Other assets and liabilities of the Transferor Companies transferred to and vested in the Transferee Company shall be recorded at their respective fair values as appearing in the books of accounts of the Transferor Companies and in accordance with requirements of Ind AS.</p> <p>11.6 The difference, if any, being excess or deficit arising pursuant to the Scheme, after giving effect to the above adjustments, shall be accounted based on generally accepted accounting principles under Ind AS."</p> <p>The Third Petitioner Company has obtained the Certificate from its Auditor certifying the entire Accounting Treatment provided in the Scheme and accordingly, covers the accounting treatment on capital reduction as well.</p>		
(k)	The Hon'ble Tribunal may kindly seek the	As far as the observation of the Regional Director, IV(k) of the report is concerned, the	Reply of the Company	

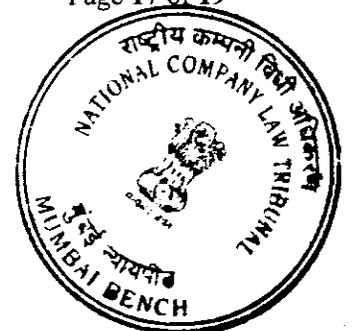


	undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.	Counsel for the Petitioner Companies submits that in lieu of the consent affidavits of the shareholders of the Transferor Companies, the meeting of the shareholders of Transferor Companies was dispensed of with by this Bench vide order dated 7 th July 2020. Further, the Scheme was approved by requisite majority of members as required under section 230(6) of the Companies Act, 2013 and the meetings convened of the Transferee Company vide Hon'ble Tribunal Order dated 7 th July 2020 in terms of section 230(1) read with subsection (3) to (5) of Section 230 of the Companies Act, 2013. The minutes thereof are duly placed before this Hon'ble Tribunal. Further, the Scheme has also been approved by the requisite majority of the public shareholders of the Transferee Company in compliance with the SEBI Circular date 10 th March 2017. This Bench of NCLT had dispensed with the requirement to hold the meetings for the creditors of the Petitioner Companies vide the order dated 7 th July 2020, with a direction that notices be sent to the creditors above INR 10 lakhs to the creditors of NOCIL and all the creditors of the Transferor Companies intimating them regarding the Scheme. The Petitioner Companies have served notices to the creditors as per the direction and till date, no representations have been received from any of the creditors.	appears satisfactory.	
(l)	The Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy/any change/changes are made.	As far as the observation of the Regional Director, IV(l) of the report is concerned, the Petitioner Companies confirm that the Scheme enclosed to the Company Scheme Application No. 1011 of 2020 and the Company Scheme Petition No. 1025 of 2020 are one and the same and there is no discrepancy or change in the Scheme.	Reply of the Company appears satisfactory.	
(m)	It is observed that the Petitioner companies have not submitted a admitted copy of the	As far as the observation of the Regional Director, IV(m) of the report is concerned, the Petitioner Companies have submitted the admitted copy of the Petition and Minutes of	Reply of the Company appears satisfactory.	



	Petition, and Minutes of Order for admission of the Petition. In this regard, the Petitioner has to submit the same for the record of Regional Director.	Order for admission of the Petition to the Regional Director on 29 th October 2020.		
(n)	Complaints as mentioned in para-10 of above table, Petitioner may ask to submit clarification regarding the various complaints and ensure resolution of the same.	As far as the observation of the Regional Director, IV(n) of the report and observation of ROC Mumbai is concerned, the complaint against the Third Petitioner Company relates to a matter unconnected with the Scheme. Further, the Scheme does not envisage any compromise to the public shareholders of the Third Petitioner Company and hence the interest of the shareholders would not be adversely affected pursuant to the Scheme. Further, the Petitioner Companies respectfully submit that the Third Petitioner Company shall continue to remain in existence post the approval of the Scheme and the complainant shall continue to have his rights of redressal and claims, if any, against the Third Petitioner Company in the appropriate forum.	The Petitioner Transferee Company to give an undertaking that it shall be accountable for the complaint redressal.	The Counsel on behalf of the Petitioner Transferee Company undertakes that it shall be accountable for the complaint redressal and shall be dealt with as per the Law.

9. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies have been verified and accepted.
10. The Official Liquidator has filed his report dated 17th August 2020 *inter alia*, stating therein that the affairs of the First Petitioner Company and the Second Petitioner Company have been conducted in a proper manner.
11. From the material on record, the Scheme appears to be fair and reasonable and so far not in violation of any provisions of law, nor contrary to public interest.

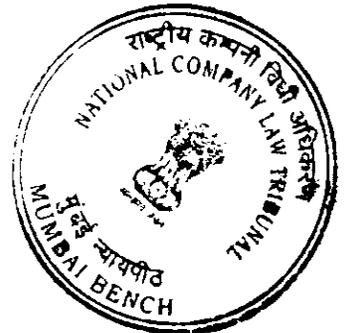


12. Since all the requisite statutory compliances have been made, the C.P. (CAA) 1025/MB-I/2020 is made absolute in terms of prayer made in the Petition. Hence ordered.

ORDER

The Petition be and the same is allowed subject to the following:

- i. The Scheme, with the Appointed Date fixed as 1st October, 2020 placed at page nos. 534 to 555 (Exhibit H) of the Company Petition, is hereby sanctioned. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors and Employees.
- ii. The First Petitioner Company and the Second Petitioner Company be dissolved without being wound up.
- iii. The Registrar of this Tribunal shall issue the certified copy of this Order along with the Scheme forthwith. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the Registrar of Companies concerned, electronically in E-form INC-28 within 30 days from the date of receipt of the Order from the Registry.
- iv. The Petitioner Companies shall lodge a copy of this Order and the Scheme duly authenticated by the Registrar of this Tribunal with the Superintendent of Stamps concerned, within 60 days from the date of the receipt of the Order, for the purpose of adjudication of stamp duty, if any, payable.
- v. The Petitioner Companies shall comply with all the undertakings given by them.



- vi. The Petitioner Companies shall, within 15 days of receipt of this order, issue newspaper publications with respect to approval of the Scheme, in the same newspapers in which previous publications were issued.
- vii. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
- viii. All concerned authorities to act on a copy of this Order duly authenticated by the Deputy/Assistant Registrar of this Tribunal along with the Scheme.
- ix. Any person interested in the above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.

Sd/-

V. NALLASENAPATHY
MEMBER (TECHNICAL)

Sd/-

JANAB MOHAMMED AJMAL
MEMBER (JUDICIAL)

Certified True Copy

Date of Application 03/03/2021

Number of Pages 19

Fee Paid Rs 95

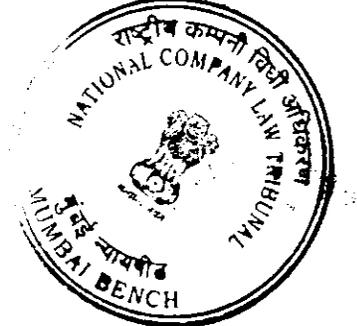
Applicant called for collection copy on 16/03/2021

Copy prepared on 16/03/2021

Copy Issued on 16/03/2021


Joint Registrar

National Company Law Tribunal Mumbai Bench



**SCHEME OF AMALGAMATION
OF
SUREMI TRADING PRIVATE LIMITED
("SUREMI" or "THE TRANSFEROR COMPANY 1")
AND
SUSHRIPADA INVESTMENTS PRIVATE LIMITED
("SUSHRIPADA" or "THE TRANSFEROR COMPANY 2")
WITH
NOCIL LIMITED
("NOCIL" or "THE TRANSFEREE COMPANY")
AND
THEIR RESPECTIVE SHAREHOLDERS**

**UNDER SECTIONS 230 TO 232 OF THE COMPANIES ACT, 2013 AND
OTHER APPLICABLE PROVISIONS OF THE COMPANIES ACT, 2013**

I. PREAMBLE

This Scheme of Amalgamation is presented under Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions, if any, of the Companies Act, 2013, as may be applicable, for amalgamation of Suremi Trading Private Limited ("Suremi" or "The Transferor Company 1") and Sushripada Investments Private Limited ("Sushripada" or "The Transferor Company 2") collectively referred to as the Transferor Companies with NOCIL Limited ("NOCIL" or "The Transferee Company"). The Scheme of Amalgamation also provides for various other matters consequential or otherwise integrally connected herewith.

II. RATIONALE OF THE SCHEME

The amalgamation of the Transferor Company 1 and the Transferor Company 2 with the Transferee Company would include the following benefits:

- Ensuring a streamlined group structure by reducing the number of legal entities in the group structure;
- Reducing the multiplicity of legal and regulatory compliances required at present;
- Eliminating duplicative communication and coordination efforts across multiple entities;



- Rationalizing costs by eliminating multiple record keeping and administrative functions;

III. PARTS OF THE SCHEME

This Scheme of Amalgamation is divided into the following parts:

- Part A** - Deals with Definitions, Interpretation and Share Capital;
- Part B** - Deals with the amalgamation of Suremi and Sushripada with NOCIL;
- Part C** - Deals with the general terms and conditions applicable to this Scheme.

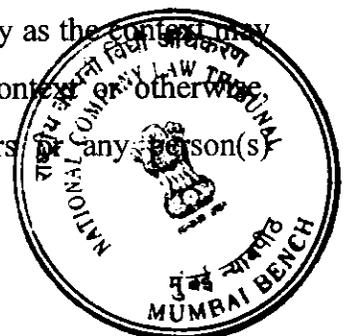
PART A

DEFINITIONS, INTERPRETATION AND SHARE CAPITAL

1. DEFINITIONS

In this Scheme (as defined hereinafter), unless inconsistent with the subject or context, the following expressions shall have the following meaning:

- 1.1 **“Act” or “the Act”** means the Companies Act, 2013 and the rules and regulations made thereunder as the case may be, and shall include any statutory modifications, re-enactment or amendments thereof for the time being in force;
- 1.2 **“Appointed Date”** means October 1, 2020.
- 1.3 **“Appropriate Authority”** means any applicable central, state or local government, legislative body, regulatory, administrative or statutory authority, agency or commission or department or public or judicial body or authority, including, but not limited, to Regional Director, Registrar of Companies, Securities and Exchange Board of India, BSE Limited, The National Stock Exchange of India Limited and National Company Law Tribunal;
- 1.4 **“Board of Directors” or “Board”** means the Board of Directors of the Transferor Companies or of the Transferee Company as the context may require and shall, unless it be repugnant to the context or otherwise, include a duly constituted committee of directors or any person(s)



authorised by the Board of Directors or such committee of directors;

- 1.5 **“Effective Date”** means the date on which the certified copy of the order of NCLT sanctioning this Scheme of Amalgamation, is filed by the Transferor Company 1, the Transferor Company 2 and the Transferee Company with the Registrar of Companies, Mumbai
- 1.6 **“NCLT”** means the Mumbai Bench of National Company Law Tribunal and the National Company Law Appellate Tribunal or any other competent authority as constituted and authorized as per the provisions of the Companies Act, 2013 for approving any scheme of arrangement, compromise or reconstruction of companies under Section 230 – 232 and other applicable provisions of the Companies Act, 2013;
- 1.7 **“NOCIL” or “Transferee Company”** means NOCIL Limited (CIN: L99999MH1961PLC012003), a company incorporated under the Companies Act, 1956, having its registered office at Mafatlal House, H.T Parekh Marg, Backbay Reclamation, Churchgate, Mumbai – 400020;
- 1.8 **“Record Date”** means the date fixed by the Board of Directors or a committee thereof, if any, of the Transferee Company for the purpose of determining the members of the Transferor Companies to whom New Equity Shares will be allotted pursuant to the Scheme;
- 1.9 **“SEBI”** means the Securities and Exchange Board of India established under the Securities and Exchange Board of India Act, 1992;
- 1.10 **“Scheme” or “the Scheme of Amalgamation” 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 Tribunal;
- 1.11 **“Stock Exchange(s)”** means BSE Limited and The National Stock Exchange of India Limited;
- 1.12 **“Suremi” or “the Transferor Company 1”** means Suremi Trading Private Limited (CIN: U65990MH1978PTC020335), a company



incorporated under the Companies Act, 1956 and having its registered office at D1 Sindhu House, Nanabhat Lane, Mumbai – 400023;

1.13 "Sushripada" or "the Transferor Company 2" means Sushripada Investments Private Limited (CIN: U65990MH1974PTC017275), a company incorporated under the Companies Act, 1956 and having its registered office at Mafatlal House, Backbay Reclamation, Mumbai - 400020;

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 from time to time.

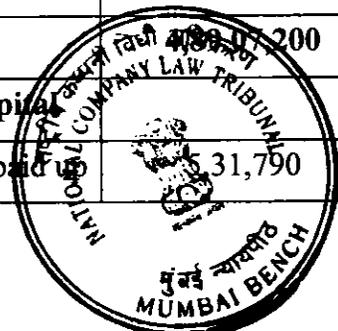
2. DATE OF TAKING EFFECT

The Scheme in its present form or with any modification(s) approved or directed by the NCLT or any amendment(s) made under Clause 17 of this Scheme shall be deemed to be effective from the Appointed Date but shall be operative from the Effective Date.

3. SHARE CAPITAL

3.1 The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company 1 as on December 31, 2019 is as under:

Share Capital	
Authorised Capital	
10,00,000 Equity Shares of Rs. 10/- each	100,00,000
1,87,200 Preference Shares of Rs. 100/- each	1,87,20,000
1,87,200 Preference Shares of Rs. 1/- each	1,87,200
20,00,000 Preference Shares of Rs. 10/- each	2,00,00,000
TOTAL	
Issued, Subscribed and Paid-up Share Capital	
53,179 Equity Shares of Rs. 10/- each fully paid up	5,31,790



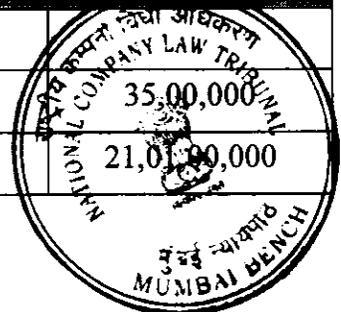
1,87,200 6% Cumulative Redeemable Non - Convertible Preference Shares of Rs. 1/- each fully paid up	1,87,200
9,84,000 0.01% Non-Cumulative Compulsory Convertible Preference Shares of Rs. 10/- each fully paid up	98,40,000
TOTAL	1,05,58,990

Subsequent to December 31, 2019 and as on date the Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company 1 is as under:

Share Capital	
Authorised Capital	
10,00,000 Equity Shares of Rs. 10/- each	100,00,000
1,87,200 Preference Shares of Rs. 100/- each	1,87,20,000
1,87,200 Preference Shares of Rs. 1/- each	1,87,200
20,00,000 Preference Shares of Rs. 10/- each	2,00,00,000
TOTAL	4,89,07,200
Issued, Subscribed and Paid-up Share Capital	
53,179 Equity Shares of Rs. 10/- each fully paid up	5,31,790
9,84,000 0.01% Non-Cumulative Compulsory Convertible Preference Shares of Rs. 10/- each fully paid up	98,40,000
TOTAL	1,03,71,790

3.2 The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company 2 as on December 31, 2019 is as under:

Authorised Capital	
35,000 Equity Shares of Rs. 100/- each	35,00,000
21,01,000 Preference Shares of Rs. 100/- each	21,01,00,000



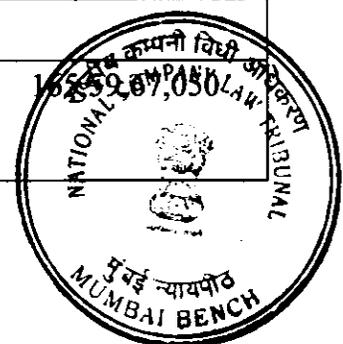
TOTAL	21,36,00,000
Issued, Subscribed and Paid-up Share Capital	
30,644 Equity Shares of Rs. 100/- each fully paid up	30,64,400
TOTAL	30,64,400

Subsequent to December 31, 2019 and as on date the Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company 2 is as under:

Share Capital	
Authorised Capital	
35,000 Equity Shares of Rs. 100/- each	35,00,000
21,01,000 Preference Shares of Rs. 100/- each	21,01,00,000
TOTAL	21,36,00,000
Issued, Subscribed and Paid-up Share Capital	
30,644 Equity Shares of Rs. 100/- each fully paid up	30,64,400
6,99,998 0.01% Non-Cumulative Compulsory Convertible Preference Shares of Rs. 100/- each fully paid up	6,99,99,800
TOTAL	7,30,64,200

3.3 The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferee Company as on December 31, 2019 is as under:

Share Capital	
Authorised Capital	
1200,00,00,00 Equity Shares of Rs. 10/- each	1200,00,00,000
TOTAL	1200,00,00,000
Issued, Subscribed and Paid-up Share Capital	
16,55,96,705 Equity Shares of Rs. 10/- each fully paid up	16,55,96,705



TOTAL	165,59,67,050
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Subsequent to the above date, there has been no change in the authorised, issued, subscribed and paid up capital of the Transferee Company.

2,07,72,170 Equity Shares constituting 12.54% of the total Paid-up Equity Share Capital of the Transferee Company is held by the Transferor Company 1.

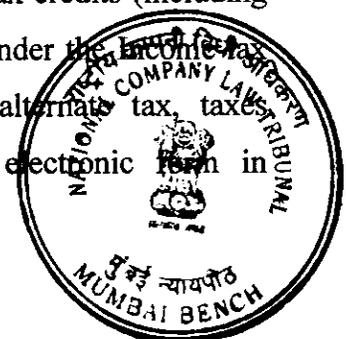
89,60,880 Equity Shares constituting 5.41% of the total Paid-up Equity Share Capital of the Transferee Company is held by the Transferor Company 2.

PART B

AMALGAMATION OF SUREMI AND SUSHRIPADA WITH NOCIL

4. TRANSFER AND VESTING OF UNDERTAKING

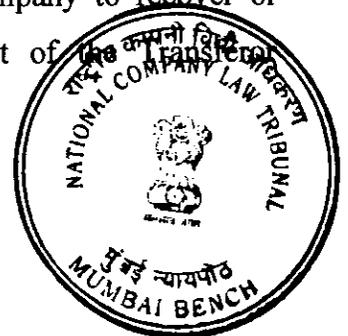
- 4.1 With effect from the Appointed Date, the whole of the undertaking of the Transferor Companies as a going concern, including its business, all the assets, investments, properties, rights, titles and benefits, whether movable or immovable, real or personal, in possession or reversion, corporeal or incorporeal, tangible or intangible, present or contingent and including but without being limited to land and building (whether owned, leased, licensed), all fixed and movable plant and machinery, vehicles, fixed assets, work in progress, current assets, provisions, funds, statutory licenses, registrations, all intangible assets and intellectual property rights of any kind and nature, tenancy rights, premise, hire purchase and lease arrangements, lending arrangements, all plant and machinery and office equipment, contracts, powers, authorities, permits, benefit and advantage, deposits, advances, receivables, funds, cash, bank balances, accounts (including demat accounts with depository participants) and all other rights, benefits of all agreements, assets held in trust, subsidies, grants, tax credits (including but not limited to benefits of tax relief including under the Income Tax Act such as credit for advance tax, minimum alternate tax, taxes deducted at source, etc.) whether in physical, electronic form in



connection/relating to the Transferor Companies and other claims and powers, of whatsoever nature and wheresoever situated belonging to or in the possession of or granted in favour of or enjoyed by the Transferor Companies, all debts, liabilities and obligations of every kind, nature and description of the Transferor Companies, shall, under the provisions of Sections 230 to 232 of the Act and all other applicable provisions, if any, of the Act, and without any further act or deed, be transferred to and vested in and / or be deemed to be transferred to and vested in the Transferee Company so as to become as from the Appointed Date the undertaking of the Transferee Company and to vest in the Transferee Company with all the rights, title, interest or obligations of the Transferor Companies therein.

4.2 Without prejudice to the generality of Clause 4.1 above, it is expressly provided that such of the assets of the Transferor Companies that are tangible and movable including cash on hand, etc., shall with effect from the Appointed Date and subject to the provisions of this Scheme, be transferred by physical delivery and/or endorsement and delivery to the Transferee Company to the end and intent that the property therein passes to the Transferee Company upon such delivery.

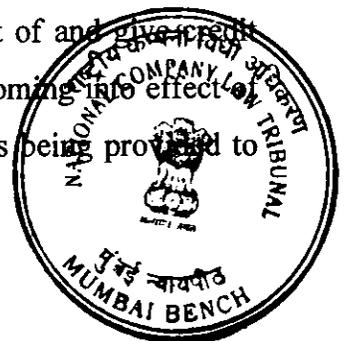
4.3 Without prejudice to the generality of Clause 4.1 above, movable assets, other than those specified in Clause 4.2 above, including sundry debtors, outstanding loans recoverable in cash or in kind or value to be received, bank balances and deposits of the Transferor Companies shall with effect from the Appointed Date and subject to provisions of this Scheme, stand transferred to and vested in the Transferee Company without any notice or other intimation to the debtors and the debtors shall be obliged to make payment to the Transferee Company. The Transferee Company may, if required, give notice in such form as it may deem fit and proper to each person, debtor or depositor that pursuant to the Scheme, the said person, debtor or depositor should pay the debt, loan or advance or make good the same or hold the same to its account and that the right of the Transferee Company to recover or realize the same is in substitution of the right of the Transferor Companies.



- 4.4 All the assets, investments and properties which are acquired by the Transferor Companies on or after the Appointed Date shall be deemed to be and shall become the assets and properties of the Transferee Company and shall under the provisions of Sections 230 to 232 and all other applicable provisions if any of the Act, without any further act or execution of any instrument or deed, be and stand transferred to and vested in and be deemed to have been transferred to and vested in the Transferee Company upon the coming into effect of this Scheme pursuant to the provisions of Sections 230 to 232 of the Act.
- 4.5 With effect from the Appointed Date, any statutory licenses, permissions, approvals, quotas or consents to carry on the operations and business of the Transferor Companies shall stand vested in or transferred to the Transferee Company without any further act or deed and shall be appropriately mutated by the statutory authorities concerned in favour of the Transferee Company. The benefit of all statutory and regulatory permissions registrations or other licenses and consents shall vest in and shall be in full force and effect against or in favour of the Transferee Company and may be enforced as fully and effectually as if instead of the Transferor Companies, the Transferee Company had been the party thereto or the beneficiary or obligee thereof pursuant to this Scheme.
- 4.6 With effect from the Appointed Date, all debts, liabilities (including contingent liabilities), duties and obligations (including obligations to hold assets in trust) of every kind, nature and description of the Transferor Companies, shall be deemed to have been transferred to the Transferee Company and to the extent they are outstanding on the Scheme becoming effective shall, without any further act, deed, matter or thing be and stand transferred to the Transferee Company and shall become the liabilities and obligations of the Transferee Company which undertakes to meet, discharge and satisfy the same and it shall not be necessary to obtain the consent 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 in order to give effect to the provisions of this Clause.



- 4.7 Where any of the debt, liabilities (including contingent liabilities), duties and obligations of the Transferor Companies as on the Appointed Date, deemed to be transferred to the Transferee Company has been discharged by the Transferor Companies, after the Appointed Date, such discharge shall be deemed to have been for and on account of the Transferee Company.
- 4.8 Without prejudice to the provisions of the foregoing clauses and upon the Scheme becoming effective, the Transferor Companies and the Transferee Company shall execute all such instruments or documents or do all the acts and deeds as may be required, including the filing of necessary particulars and/or modification(s) of charge, with the Registrar of Companies, Mumbai to give formal effect to the above provisions, if required.
- 4.9 Upon the Scheme being sanctioned and taking effect, the Transferee Company shall be entitled to operate all bank accounts (including demat accounts) related to the Transferor Companies and all cheques, drafts, pay orders, instruction slips, direct and indirect tax balance and/or payment advices of any kind or description issued in favour of the Transferor Companies, either before or after the Appointed Date, or in future, may be deposited with the bank / depository participant of the Transferee Company and credit of all receipts thereunder will be given in the accounts of the Transferee Company.
- 4.10 All taxes of any nature, duties, cess or any other like payments or deductions made by the Transferor Companies to any statutory authorities such as Income Tax, Minimum Alternate Tax, tax on distributed profits (i.e. Dividend Distribution Tax), tax on distributed income (i.e. Buy-back Tax), Equalisation Levy, Sales Tax, Value Added Tax, Service Tax, Goods and Services Tax etc. or any tax deduction/collection at source, relating to the period after the Appointed Date and upto the Effective Date shall be deemed to have been on account of and on behalf of 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 coming into effect of this Scheme and upon relevant proof and documents being provided to



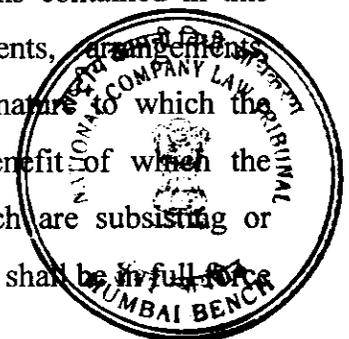
the said authorities.

- 4.11 The Transferee Company shall be entitled to file/ revise its income-tax returns, TDS certificates, TDS returns, goods and service tax returns and other statutory returns, if required, and shall have the right to claim refunds, advance tax credits, credits of all taxes paid/ withheld, if any, as may be required consequent to implementation of this Scheme.

5. CONTRACTS, DEEDS, APPROVALS, EXEMPTIONS, ETC.

- 5.1 Upon the coming into effect of this Scheme and with effect from Appointed Date and subject to the other provisions contained in this Scheme, all contracts, deeds, bonds, agreements, arrangements, assurances and other instruments of whatsoever nature to which the Transferor Companies are a party or to the benefit of which the Transferor Companies may be eligible, and which are subsisting or having effect immediately before the Effective Date shall be in full force and effect against or in favour of Transferee Company and may be enforced as fully and effectually as if instead of the Transferor Companies, Transferee Company had been the party thereof
- 5.2 Without prejudice to Clause 5.1 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 novations, to which the Transferor Companies 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 Companies and to implement or carry out all formalities required on the part of the Transferor Companies to give effect to the provisions of this Scheme.

- 5.3 Upon the coming into effect of this Scheme and with effect from Appointed Date and subject to the other provisions contained in this Scheme, all contracts, deeds, bonds, agreements, arrangements, assurances and other instruments of whatsoever nature to which the Transferor Companies are a party or to the benefit of which the Transferor Companies may be eligible, and which are subsisting or having effect immediately before the Effective Date shall be in full force



and effect against or in favour of Transferee Company and may be enforced as fully and effectually as if instead of the Transferor Companies, Transferee Company had been the party thereof

6. LEGAL PROCEEDINGS

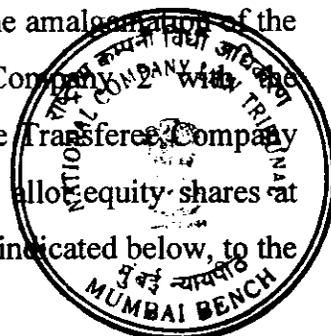
- 6.1 All legal proceedings of whatsoever nature by or against the Transferor Companies pending and/ or arising on or after the Appointed Date and relating to the Transferor Companies shall not abate or be discontinued or be in any way prejudicially affected by reason of the Scheme or by anything contained in this Scheme but shall be continued and enforced by or against the Transferee Company in the manner and to the same extent as would or might have been continued and enforced by or against the Transferor Companies if this Scheme had not been made
- 6.2 The Transferee Company undertakes to have all legal or other proceedings initiated by or against the Transferor Companies referred to in Clause 6.1 above transferred in its name respectively and to have the same continued, prosecuted and enforced by or against the Transferee Company to the same extent as would or might have been continued and enforced by or against the Transferor Companies.

7. STAFF & EMPLOYEES

Upon this Scheme becoming effective, all employees of the Transferor Companies shall be deemed to have become employees of the Transferee Company with effect from the Appointed Date without any break, discontinuance 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 the Transferor Companies on the date on which scheme becomes effective.

8. CONSIDERATION

- 8.1 Upon the Scheme becoming effective and upon the amalgamation of the Transferor Company 1 and the Transferor Company 2 with the Transferee Company in terms of this Scheme, the Transferee Company shall without any application or deed, issue and allot equity shares at face value, credited as fully paid up, to the extent indicated below, to the

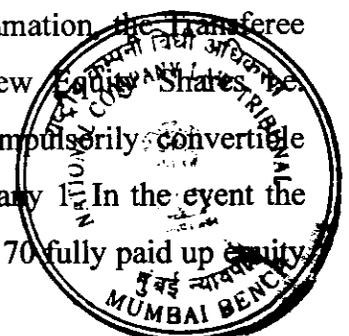


equity shareholders holding fully paid up equity shares of the Transferor Companies and to the compulsorily convertible preference shareholders of the Transferor Companies holding fully paid up compulsorily convertible preference shares of the Transferor Companies and whose name appear in the register of members of the Transferor Companies on the Record Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of the Transferor Companies / the Transferee Company in the following proportion, subject to the Clause 8.4 and Clause 8.5 of the Scheme:

“2,07,72,170 equity shares of the face value of Rs. 10 each fully paid-up of the Transferee Company shall be issued and allotted as fully paid up to the equity shareholders of the Transferor Company 1 and compulsorily convertible preference shareholders of the Transferor Company 1 in the proportion of their holding in the Transferor Company 1.”

“89,60,880 equity shares of the face value of Rs. 10 each fully paid-up of the Transferee Company shall be issued and allotted as fully paid up to the equity shareholders of the Transferor Company 2 and compulsorily convertible preference shareholders of the Transferor Company 2 in the proportion of their holding in the Transferor Company 2.”

- 8.2 It is clarified that any positive net assets of the Transferor Companies as on the Appointed Date, other than the investment in the shares of the Transferee Company, will not affect/alter the share exchange ratio.
- 8.3 The equity shares issued and allotted pursuant to Scheme of Amalgamation shall be hereinafter referred to as “New Equity Shares”.
- 8.4 The Transferor Company 1 holds 2,07,72,170 equity shares of the Transferee Company and pursuant to the amalgamation the Transferee Company shall issue the same number of New Equity Shares 2,07,72,170 to the equity shareholders and compulsorily convertible preference shareholders of the Transferor Company 1. In the event the Transferor Company 1 holds more than 2,07,72,170 fully paid up equity



shares of the Transferee Company (without incurring any additional liability) on the Record Date, New Equity Shares to be issued by the Transferee Company to the shareholders of the Transferor Company 1 shall stand increased by such additional number of equity shares held by the Transferor Company 1

8.5 The Transferor Company 2 holds 89,60,880 equity shares of the Transferee Company and pursuant to the amalgamation, the Transferee Company shall issue the same number of New Equity Shares i.e. 89,60,880 to the equity shareholders and compulsorily convertible preference shareholders of the Transferor Company 2. In the event the Transferor Company 2 holds more than 89,60,880 fully paid up equity shares of the Transferee Company (without incurring any additional liability) on the Record Date, New Equity Shares to be issued by the Transferee Company to the shareholders of the Transferor Company 2 shall stand increased by such additional number of equity shares held by the Transferor Company 2

8.6 The New Equity Shares to be issued to the members of the Transferor Companies shall be in multiples of 1 (One) and, in case of any fractional entitlement, the same shall be rounded to the nearest integer. However, in no event shall the number of New Equity Shares to be allotted by the Transferee Company to the shareholders of the Transferor Companies exceed the number of equity shares held by the Transferor Companies in the Transferee Company on the Record Date and the Board of Directors shall be authorised to make necessary adjustment for the same in the allotment of shares to the shareholders of Suremi and / or Sushripada pursuant to clause 8.1 of this Scheme.

8.7 The New Equity Shares to be issued to the members of the Transferor Companies as above shall be subject to the Memorandum and Articles of Association of the Transferee Company. Further, the New Equity Shares issued shall rank *pari passu* with the existing equity shares of the Transferee Company in all respects including dividends, if any that may be declared by the Transferee Company on or after the Scheme becoming effective, as the case may be.



8.8 The issue and allotment of the New Equity Shares to the shareholders of the Transferor Companies as provided in Clause 8.1 of this Scheme, is an integral part of the Scheme thereof, and shall be deemed to be have carried out without requiring any further act on the part of the Transferee Company or its shareholders as if the procedure laid down under Section 62 of the Act and any other applicable provisions of the Act, were duly complied with.

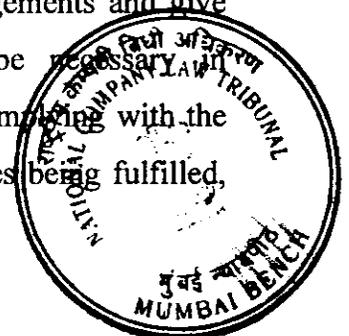
8.9 The New Equity Shares to be issued and allotted by the Transferee Company to the shareholders of the Transferor Company shall be issued in dematerialized form

8.10 Upon the Scheme becoming effective and upon the amalgamation of the Transferor Company 1 and the Transferor Company 2 with the Transferee Company in terms of this Scheme, the investment held by the Transferor Company 2 in the equity share capital and preference share capital of the Transferor Company 1 shall, without any further application, act, instrument or deed stand cancelled.

8.11 The investment held by the Transferor Companies in the equity share capital of the Transferee Company shall, without any further application, act, instrument or deed stand cancelled. The share certificates, if any, in relation to the shares held by the Transferor Companies shall be of no effect and the shares held by the Transferor Companies in dematerialized form shall be extinguished on and from such issue and allotment of New Equity Shares.

9. LISTING OF NEW EQUITY SHARES OF THE TRANSFEE COMPANY

9.1 The New Equity Shares to be issued and allotted in terms of Clause 8.1 above, shall, in compliance with the requirement of applicable regulations, be listed and/or admitted to trading on the Stock Exchange where the existing equity shares of the Transferee Company are listed. The Transferee Company shall enter into such arrangements and give such confirmations and/or undertakings as may be necessary in accordance with applicable laws or regulations for complying with the formalities of the Stock Exchange. On such formalities being fulfilled,



the Stock Exchange shall list and/or admit the New Equity Shares for the purpose of trading.

- 9.2 The Transferee Company shall, if and to the extent required, apply for and obtain any approvals from the concerned regulatory authorities for the issue and allotment by the Transferee Company of New Equity Shares to the members of the Transferor Companies under the Scheme and listing thereof.

10. REDUCTION OF SHARE CAPITAL

- 10.1 Upon the Scheme becoming effective and simultaneous to the New Equity Shares being issued by the Transferee Company, the equity shares of the Transferee Company held by the Transferor Companies on Scheme becoming effective shall be cancelled without any further act or deed. Accordingly, the share capital of the Transferee Company shall stand reduced to the extent of face value of shares held by the Transferor Companies as on the Effective Date.

- 10.2 Such reduction of the aforesaid equity share capital of the Transferee Company shall be effected as an integral part of the scheme itself and not in accordance with section 66 of the Act and no separate compliance and sanction under section 66 of the Companies Act, 2013 will be necessary.

Notwithstanding the reduction of capital of the Transferee Company, the Transferee Company shall not be required to add "And Reduced" as suffix to its name.

11. ACCOUNTING TREATMENT

- 11.1 Upon the coming into effect of this Scheme, the Transferee Company shall account for the amalgamation of the Transferor Companies in its books as per the applicable accounting principles prescribed under Indian Accounting Standards (Ind AS). It would inter alia include the following;

- 11.2 The shares of the Transferee Company held by the Transferor Companies shall stand cancelled.



11.3 The inter-company deposits/ inter-company loans and advances, if any, in the books of accounts of the Transferee Company and the Transferor Companies shall stand cancelled.

11.4 The face value of New Equity Shares issued by the Transferee Company to the shareholders of the Transferor Company pursuant to Clause 8.1 above shall be credited to the Equity Share Capital Account of the Transferee Company.

11.5 Other assets and liabilities of the Transferor Companies transferred to and vested in the Transferee Company shall be recorded at their respective fair values as appearing in the books of accounts of the Transferor Companies and in accordance with requirements of Ind AS.

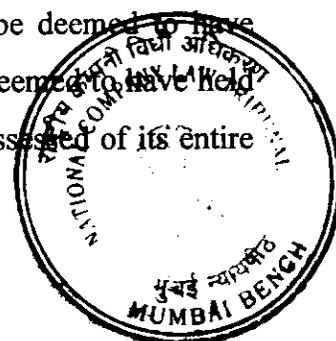
11.6 The difference, if any, being excess or deficit arising pursuant to the Scheme, after giving effect to the above adjustments, shall be accounted based on generally accepted accounting principles under Ind AS.

12. CONDUCT OF BUSINESS UNTIL THE SCHEME BECOMES EFFECTIVE

12.1 With effect from the Appointed Date and upto and including the Effective Date, Transferor Companies shall carry on and be deemed to have been carrying on its business and activities and shall stand possessed of and hold all of the business for and on account of and for the benefit of and in trust for Transferee Company. Further, all the profits or income accruing or arising to Transferor Companies or expenditure or losses arising to or incurred by Transferor Companies, with effect from the said Appointed Date shall for all purposes and intents be treated and be deemed to be and accrue as the profits or income or expenditure or losses of Transferee Company, as the case may be.

12.2 With effect from the date of approval of this Scheme by the Board of Directors of Transferee Company upto and including the Effective Date:

- a. The Transferor Companies shall (i) carry on and be deemed to have carried on its businesses and activities; and (ii) be deemed to have held and stood possessed of and shall hold and stand possessed of its entire

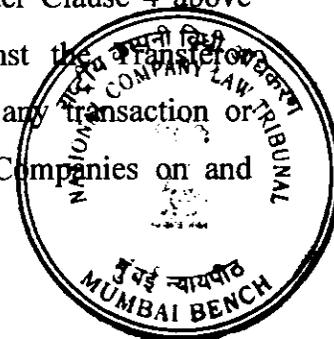


businesses and undertakings, including assets for and on account of and in trust for the Transferee Company.

- b. The Transferor Companies shall carry on its businesses and activities in the ordinary course of business with reasonable diligence and business prudence and shall not make borrowings or undertake financial commitments either for itself or on behalf of group companies or any third party or sell, transfer, alienate, mortgage, charge, or encumber or otherwise deal with or dispose of its assets, 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.
- c. The Transferee Company shall be entitled 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 to carry on the business of the Transferor Companies.
- d. Any income, profits or other funds of the Transferor Companies will first be utilized to meet any current or expected liabilities of the Transferor Companies, including any tax liabilities or costs in relation to the amalgamation of the Transferor Companies with the Transferee Company, before they are utilized for other purposes.
- e. During the pendency of this Scheme, in the event the Transferee Company distributes dividend (including interim dividend) or issues bonus shares or offers rights shares to its shareholders, the Transferor Companies shall be entitled to receive such dividend and bonus shares, and subscribe to such rights shares offered by the Transferee Company or make distribution of profits/reserves to its Shareholders.

13. SAVING OF CONCLUDED TRANSACTIONS

The transfer of assets, properties and liabilities under Clause 4 above and the continuance of proceedings by or against the Transferor Companies under Clause 6 above shall not affect any transaction or proceedings already concluded by the Transferor Companies on and



after the Appointed Date, to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things done and executed by the Transferor Companies in respect thereto as done and executed on behalf of the Transferee Company.

14. INDEMNITY BY SHAREHOLDERS OF THE TRANSFEROR COMPANIES

The shareholders of the Transferor Companies shall indemnify and hold harmless the Transferee Company and its directors, officers, representatives, employees and agents (collectively the "Indemnified Persons") for losses, liabilities, costs, charges, expenses whether or not resulting from third party claims, including those paid or suffered pursuant to any actions, proceedings, claims and including interest and penalties discharged by the Indemnified Persons, which may devolve on the Indemnified Persons on account of amalgamation of the Transferor Companies into the Transferee Company but would not have been payable by such Indemnified Persons otherwise, in the form and manner as may be agreed amongst the Transferee Company and shareholders of the Transferor Companies.

15. DISSOLUTION OF THE TRANSFEROR COMPANIES

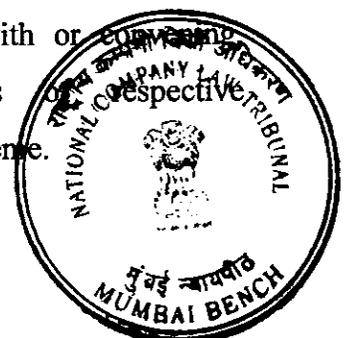
Upon filing of the certified copies of order of the Hon'ble NCLT sanctioning the Scheme by the Transferor Companies and the Transferee Company with the jurisdictional Registrar of the Company, the Transferor Companies shall stand dissolved without being wound-up.

PART C

GENERAL TERMS AND CONDITIONS

16. APPLICATION

The Transferor Companies and the Transferee Company shall make necessary applications before the NCLT for the sanction of this Scheme under Sections 230 to 232 of the Act and other applicable provisions of the Act, and for seeking orders for dispensing with or holding and/or conducting of the meetings of the respective shareholders/creditors and for sanctioning of this Scheme.



17. MODIFICATIONS/AMENDMENTS TO THE SCHEME

17.1 The Transferor Companies and the Transferee Company by their respective Board of Directors may assent to any modifications/amendments to the Scheme or to any conditions or limitations that the NCLT and/or any other authority may deem fit to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them (i.e. the Board of Directors).

17.2 The term “any other authority” referred to in Clause 17.1 above, shall specifically include the Stock Exchanges with which the shares of the Transferee Company are listed and with which the Transferee Company shall file a copy of the Scheme under Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 or any other Government authority.

17.3 Any modification or amendment to the Scheme shall be subject to the approval of Hon’ble NCLT.

17.4 The Transferor Companies and the Transferee Company by their respective Board of Directors be and are hereby authorized to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions of law or otherwise, whether by reason of any directive or orders of any other authorities or otherwise howsoever arising out of or under or by virtue of the Scheme and/or any matter concerned or connected therewith.

17.5 The Transferor Companies and the Transferee Company in their full and absolute discretion, may withdraw this Scheme prior to the Scheme becoming effective at any time.

18. CONDITIONALITY OF THE SCHEME

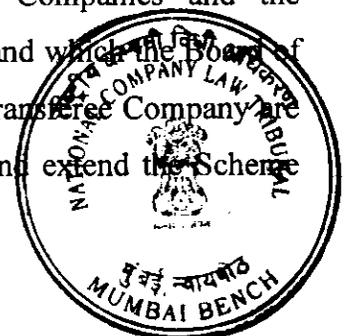
This Scheme is conditional upon and subject to the following:



- 18.1 The Scheme being approved by the requisite majorities in number and value of such classes of persons including the respective members and/or creditors, if required, of the Transferor Companies and the Transferee Company, as may be directed by the NCLT or any other appropriate authority as may be applicable;
- 18.2 The Transferee Company complying with other provisions of the SEBI circular, including seeking approval of its shareholders through e-voting. The Scheme shall be acted upon only if the number of votes cast by public shareholders in favour of the proposal are more than the number of votes cast by public shareholders against it, in accordance with the circular no CFD/DIL3/CIR/2017/21 issued on March 10, 2017 by SEBI, subject to modification, if any, in accordance with any subsequent circulars and amendments that may be issued by SEBI from time to time. The term "public" shall carry the same meaning as defined under Rule 2 of Securities Contracts (Regulation) Rules, 1957;
- 18.3 The requisite sanctions and approvals of Appropriate Authority, as may be required by law, in respect of the Scheme being obtained;
- 18.4 The sanction of this Scheme by the NCLT under Sections 230 to 232 of the Act, and other applicable provisions, if any of the Act in favour of the Transferor Companies and the Transferee Company; and
- 18.5 Requisite form along with Certified or authenticated copy of the Order of the NCLT sanctioning the Scheme being filed with the Registrar of Companies, Mumbai by the Transferor Company 1, the Transferor Company 2, and the Transferee Company as may be applicable.

19. EFFECT OF NON-RECIPT OF APPROVALS

In the event of any of the said sanctions and approvals referred to in the Clause 18 not being obtained or for any other reason, the Scheme cannot be implemented on or before December 31, 2021 or within such further period(s) that the Boards of the Transferor Companies and the Transferee Company may mutually agree upon (and which the Board of Directors of the Transferor Companies and the Transferee Company are hereby empowered and authorized to agree to and extend the Scheme



from time to time without any limitation), or the Transferor Companies and the Transferee Company withdraw 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 Companies and the Transferee Company or their shareholders or creditors or employees or any other person.

20. COSTS, CHARGES AND EXPENSES

All costs, charges, taxes including duties, levies and all other expenses, if any (save as expressly otherwise agreed) arising out of or incurred in carrying out and implementing this Scheme and matters incidental thereto shall be borne by the Transferor Companies. Any surplus assets of the Transferor Companies available after the Effective Date to the Transferee Company to pay the cost, charges and expense of this Scheme shall be deemed to be sufficient discharge of the obligations by the Transferor Companies under this clause.

