

Documentation – Merger & Amalgamation

Lesson 5

KEY CONCEPTS

■ National Company Law Tribunal ■ Documentation ■ Effective Date ■ Transferee Company ■ Transferor Company

Learning Objectives

To understand:

- Stages Involved in Mergers and Amalgamation
- Legal Provisions of Mergers and Amalgamation
- Documentation in Mergers and Amalgamation
- Drafting of Scheme of amalgamation
- Statement of compliance in Mergers and Amalgamations

Lesson Outline

- Documentation in M&A
- List of documents filed in case of a scheme of amalgamation
- Merger and Amalgamation process at National Company Law Tribunal
- Drafting of Scheme
- Drafting of Notice
- Drafting of Explanatory Statement
- Drafting of Application and Petition
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings

REGULATORY FRAMEWORK

- The Companies Act, 2013
- The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
- The National Company Law Tribunal Rules, 2016

INTRODUCTION

Documentation is an important aspect in fulfillment of legal requirements and obligations in merger and amalgamation for an effective and successful venture. The quantum of such obligations will depend upon the size of company, debt structure and profile of its creditors, compliances under the corporate laws, controlling regulations, etc. In all or in some of these cases legal documentation would be involved. If foreign collaborators are involved, their existing agreements would need a mandatory documentation to protect their interests if their terms and conditions so require. Secured debenture holders and unsecured creditors would also seek legal protection to their rights with new or changed management of the amalgamating company. Regulatory bodies like the RBI, Stock Exchanges, the SEBI, etc. would also ensure adherence to their respective guidelines, regulations or directives. In this way, while drafting the scheme of merger and amalgamation the transferor and transferee would have to ensure that they meet legal obligations in all related and requisite areas.

Where a compromise or arrangement is proposed for the purposes of or in connection with scheme for the reconstruction of any company or companies, or for the amalgamation of any two or more companies, the petition shall pray for appropriate orders and directions under section 230, 231 and section 232 of the Companies Act 2013.

STAGES INVOLVED IN MERGERS AND AMALGAMATION UNDER THE COMPANIES ACT, 2013

In brief, it can be said that there are broadly eight stages involved in merger and amalgamation, which are listed below:

Stage 1 – Drafting of the Scheme

Stage 2 – Obtaining the approval of the Board of Directors of the companies involved

Stage 3 – Obtaining approval of the stock exchanges in case of listed companies

Stage 4 – Application / Petition for convening the meeting of members/creditors shall be filed with National Company Law Tribunal

Stage 5 – Convening meetings of the Shareholders and Creditors and obtaining their consent on

Stage 6 – Scheme Approvals or No objection from Regional Director / Official Liquidator

Stage 7 – Filing of final petition with NCLT for approving the Scheme

Stage 8 – Obtaining order for approval for scheme of merger/amalgamation from the National Company Law Tribunal.

A sample scheme of merger has been annexed to this Lesson as **Annexure A** for better understanding.

List of Documents filed in case of a scheme of amalgamation

In this case there are two companies to the amalgamation, i.e., the Transferor (1st Applicant) and the Transferee (2nd Applicant)

S. No.	Document
1.	Memorandum and Articles of Association of the First Applicant Company
2.	Audited Balance Sheet of the First Applicant Company – latest
3.	Board Resolution for approval and authorization of the scheme by the First Applicant Company
4.	List of Equity Shareholders of the First Applicant Company
5.	Consent Affidavits filed by the Equity Shareholders of the First Applicant Company
6.	Auditors Certificate stating out the no. of Secured Creditors in the First Applicant Company
7.	Auditor's Certificate listing out the no. of Unsecured Creditor in the First Applicant Company
8.	Consent Affidavit filed by no. of Unsecured Creditor of the First Applicant Company
9.	Auditors Certificate of the 1st Applicant Company in relation to the accounting treatment proposed in the Scheme of Amalgamation
10.	Memorandum and Articles of Association of the Second Applicant Company
11.	Audited Balance Sheet of the Second Applicant Company
12.	Board Resolution for approval and authorization of the Scheme by the Second Applicant Company
13.	List of Equity Shareholders of the Second Applicant Company
14.	Auditors Certificate listing out the no. of Secured Creditors in the Second Applicant Company
15.	Consent Affidavit filed by the no. of Secured Creditor of the Second Applicant Company
16.	Auditors Certificate listing out the no. of Unsecured Creditors in the Second Applicant Company
17.	Consent Affidavit filed by the no. of Unsecured Creditor of the Second Applicant Company
18.	Auditors Certificate of the 2nd Applicant Company in relation to the accounting treatment proposed in the Scheme of Amalgamation
19.	Certificate of the Chartered Accountant for Non-Applicability of obtaining a Valuation Report
20.	Fairness Opinion issued by the Merchant Banker on the Scheme of Amalgamation
21.	Undertaking regarding the Non-Applicability of paragraph I(A) 9(a) of Annexure I of SEBI Circular No. CIR/CFD/CMD/16/2015 dated 30 November 2015
22.	Observation Letter issued by the Stock Exchanges approving the Scheme of Amalgamation
23.	Scheme of Amalgamation.

Merger and Amalgamation process at National Company Law Tribunal (NCLT)

It must be ensured that the companies under amalgamation have a clause in the object clause of their Memorandum of Association to undergo amalgamation though the absence may not be an impediment, but this will make matters smooth. A draft scheme of amalgamation shall be prepared for getting it approved in Board meeting of each company.

Persons eligible for filing the petition before NCLT

1. An application for merger & amalgamation shall be filed with Tribunal (NCLT) by both the transferor(s) and the transferee company in the form of petition under section 230-232 of the Companies Act, 2013 for the purpose of sanctioning the scheme of amalgamation.
2. Where more than one company is involved in a scheme, such application may, at the discretion of such companies, be filed as a joint-application.

In case, the registered office of the companies involved is in different states, there will be two Tribunals having the jurisdiction over those. Both the companies shall have to file separate petition with the respective Tribunals. However as a matter of practice and smother the process, first registered office of companies may be shifted as per section 12 of the Companies Act, 2013 to a single jurisdiction.

(1) Drafting of Scheme

The Scheme of amalgamation would comprise of various parts containing details about Transferor Company, Transferee Company. The Scheme in particular would comprise of the following in detail:

Introductory Part

1. Basic Details of the Transferor & Transferee company like date of incorporation, CIN and registered office and address for service of notice
2. Main objects in Memorandum of Association of Transferor and Transferee Company
3. Jurisdiction of the Bench
4. Limitation
5. Facts of the case - reason in brief for going into merger or amalgamation
6. Nature of business
7. Share Capital of the companies involved and shareholding relationship between the companies involved
8. Definition Clause

Operating Part – The Scheme

9. Appointed Date - The scheme 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.
10. Transfer of the undertaking of the Transferor Company or transfer of the Transferor Company *per se*
11. Transfer of assets
12. Transfer of debts and liabilities
13. Transfer of licenses, approvals / permissions
14. Transferor of Company's staff, workmen and employees
15. The transfer of undertaking or the Transferor Company not to affect the transaction / contracts of transferor Company
16. Enforcement of contracts, deeds, bonds and other instruments
17. Enforcement of Legal Proceedings
18. Issue and Allotment of Shares under the Scheme
19. Increase in Authorized Share Capital
20. Accounting Treatment

21. Conduct of business by the transferor Company till effective date
22. Dissolution of Transferor Company
23. Effect of Scheme
24. Expenses relating to the Scheme
25. Scheme conditional upon approval / sanctions
26. Effect of non-receipt of approvals
27. General terms and conditions applicable for the scheme *Prayer / Relief Part*
28. Approval of scheme
29. Particulars of Bank draft evidencing payment of fee for the Application.

In addition to the above, a clean and clear drafting of the Petition is required to be submitted to the NCLT, which would make process easier. Following are the standard guidelines for presenting an application or petition before NCLT, prescribed in National Company Law Tribunal Rules, 2016 and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016:-

1. The petition / application being filed shall fall under the proper territorial jurisdiction of NCLT Bench
2. The petition / application and all enclosures shall be legibly typewritten in English language.
3. The petition / application / appeal / reply shall be printed in double line spacing on one side of the standard petition paper with an inner margin of about 4 cms width on top and with a right margin of 2.5 cm left margin of 5 cm and duly paginated, indexed and stitched together in paper book form.
4. The petition/ application shall be filed in prescribed form with stipulated fee in triplicate by duly authorised representative of the companies or by an advocate duly appointed in this behalf.
5. The petition shall also be accompanied by an index and memo of the parties.
6. The cause title of the petition/application shall be “Before the National Company Law Tribunal” and it shall also specify the Bench to which it is presented.
7. All the relevant provisions of the Companies Act, 2013 / NCLT Rules, 2016 shall be clearly mentioned in the petition / application.
8. The petition/application shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain a separate fact or point.
9. The foot of petition / application shall have name and signature of the authorized representative.
10. The name of the petitioner / applicant along with complete address, viz, the name of the road street lane and municipal division or ward, municipal door and other number of the house, the name of the town or village; the post office; postal district and pin code shall be mentioned in the petition / application.
11. The fax number, mobile number, valid email addresses of the petitioner / applicant shall also be mentioned.
12. Every interlineations, eraser or correction or deletion in petition / application shall be initialed by the party or his authorized representative.
13. The affidavit verifying the petition in Form NCLT-6 shall be drawn on non-judicial /stamp paper of requisite value duly attested by Notary public / Oath Commissioner.

14. Full name, parentage, age, description of each party, date, address and in case a party sues or being sued in a representative character, has been set out in accordance to Rule 20(5) of the NCLT Rules, 2016.
15. Petition / application / appeal reply has been drawn in the prescribed form i.e. Form No. NCLT.1 with stipulated fee given in the Schedule of these rules. The fee is to be paid by way of demand draft / PO drawn in favour of the “The Pay & Accounts Officer, Ministry of Corporate Affairs, New Delhi” or can be paid through online at nclt.gov.in.
16. The documents attached with petition / application shall be duly certified by the authorized representative or advocate filing the petition or application.
17. The annexure to the petition / application shall be serially numbered.
18. The *Vakalatnama* shall bear court fee stamp.
19. The documents with regard to shareholding/paid-up capital/latest balance sheet of the petitioner/ applicant shall be attached.
20. Document other than in English language shall be duly translated and accordingly a translated copy duly certified shall be attached with petition/application.

(2) Submission of Application / Petition

Petition to the Tribunal for merger & amalgamation shall be submitted in Form No. NCLT-1 along with following documents:

1. A notice of admission in Form No. NCLT
2. An affidavit in Form No. NCLT-6
3. A copy of Scheme of compromise and arrangement (Merger & Amalgamation)
4. The applicant shall also disclose to the Tribunal in the application, the basis on which each class of members or creditors has been identified for the purposes of approval of the scheme.

(3) Calling of Meeting by Tribunal

The Tribunal upon hearing the application may either give relevant directions / order for conducting the meeting of the creditors or class of creditors, or of the members or class of members or may dismiss the application for any appropriate reason.

Drafting of Notice of Meeting

The Notice of the meeting pursuant to the order of Tribunal shall be given in Form No. CAA-2. The table below provides basic information about Notice of Meeting:

Person entitled to receive the notice	The notice shall be sent individually to each of the Creditors or Members and the debenture-holders at the address registered with the company
Person authorized to send the notice	Chairman of the Meeting or if Tribunal so directs- by the Company or liquidator or by any other person
Modes of sending of notice	By Registered post, or by Speed post, or by courier, or By e-mail, or by and delivery, or by hand delivery, any other mode as directed by the Tribunal
Minimum time of notice	At least one month before the date fixed for meeting

The notice shall be accompanied with a copy of the scheme. Additionally, if the scheme does not include the following details, then the same shall also be sent along with the notice.

- (a) Details of the order of the Tribunal directing the calling, convening and conducting of the Meeting
 - Date of the Order;
 - Date, time and venue of the meeting
- (b) Details of the company including –
 - Corporate Identification Number (CIN) or Global Location Number (GLN) of the company;
 - Permanent Account Number (PAN);
 - Name of the company;
 - Date of incorporation;
 - Type of the company (whether public or private or one-person company);
 - Registered office address and e-mail address;
 - Summary of main object as per the memorandum of association; and main business carried on by the company;
 - Details of change of name, registered office and objects of the company during the last five years;
 - Name of the stock exchange (s) where securities of the company are listed, if applicable;
 - Details of the capital structure of the company including authorized, issued, subscribed and paid-up share capital;
 - Names of the promoters and directors along with their addresses.
- (c) Relationship between companies: if the scheme of compromise or arrangement relates to more than one company, then the fact and details of any relationship subsisting between such companies who are parties to such scheme of compromise or arrangement, including holding, subsidiary or of associate companies.
- (d) Disclosure about the effect of the compromise or arrangement on:
 - Key managerial personnel;
 - directors;
 - promoters;
 - non-promoter members;
 - depositors;
 - creditors;
 - debenture holders;
 - deposit trustees and debenture trustees;
 - employees of the company.
- (e) Disclosure about effect of M&A on material interests of directors, Key Managerial Personnel (KMP) and debenture trustee. The term 'interest' extends beyond an interest in the shares of the company, and is with reference to the proposed scheme of compromise or arrangement.

- (f) Details of Board Meeting: The date of the board meeting at which the scheme was approved by the board of directors, the name of the directors who voted in favor of the resolution, the names of the directors who voted against the resolution and the names of the directors who did not vote or participate on such resolution.
- (g) Investigation or proceedings, if any, pending against the company under the Act.
- (h) Details of the availability of the following documents for obtaining extract from or for making/obtaining copies of or for inspection by the members and creditors, namely:
 - latest audited financial statements of the company including consolidated financial statements;
 - copy of the order of Tribunal in pursuance of which the meeting is to be convened or has been dispensed with;
 - copy of scheme of compromise or arrangement;
 - contracts or agreements material to the compromise or arrangement;
 - the certificate issued by auditor of the company to the effect that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013; and
 - such other information or documents as the Board or Management believes necessary and relevant for making decision for or against the scheme.
- (i) Details of approvals, sanctions or no-objection(s), if any, from regulatory or any other government authorities required, received or pending for the purpose of scheme of compromise or arrangement.
- (j) A statement to the effect that the persons to whom the notice is sent may vote in the meeting either in person or by proxies, or where applicable, by voting through electronic means.

Drafting of the Explanatory Statement

Explanatory Statement disclosing details of the scheme of compromise or arrangement include the following:

- (a) Parties involved in compromise or arrangement;
- (b) Appointed date, effective date, share exchange ratio (if applicable) and other considerations, if any;
- (c) Summary of valuation report (if applicable) including basis of valuation and fairness opinion of the registered valuer, if any, and the declaration that the valuation report is available for inspection at the registered office of the company;
- (d) Details of capital or debt restructuring, if any;
- (e) Rationale for the compromise or arrangement;
- (f) Benefits of the compromise or arrangement as perceived by the Board of directors to the company, members, creditors and others (as applicable);
- (g) Amount due to unsecured creditors.

Further details to be provided in the Notice

1. A copy of the valuation report, if any;
2. Copy of the order of Tribunal in pursuance of which the meeting is to be convened or has been dispensed with copy of scheme of Merger & Amalgamation;
3. Contracts or agreements material to the Merger & Amalgamation;

4. Such other information or documents as the Board or Management believes necessary and relevant for making decision for or against the scheme;
5. The draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;
6. a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;
7. Confirmation that a copy of the draft scheme has been filed with the Registrar;
8. The report of the expert with regard to valuation, if any;
9. A supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

The notice along with the aforementioned documents and information shall also be placed on the website of the company, if any. In case of a listed company, these documents shall be sent to Securities and Exchange Board of India (SEBI) and stock exchanges where the securities of the companies are listed, for placing on their website.

Report of the result of the meeting by the Chairperson

The Chairperson of the meeting shall within the time fixed by the Tribunal, or where no time has been fixed, within three (3) days after the conclusion of the meeting, submit a report to the Tribunal on the result of the meeting in Form no. CAA.4.

Petition for confirming compromise or arrangement

Where the proposed compromise or arrangement is agreed to by the members or creditors or both as the case may be, the company shall within seven (7) days of filing of report by the Chairperson, present a petition to the Tribunal in Form no. CAA.5.

BASIC PRINCIPLES OF DRAFTING OF APPLICATION AND PETITION

Before any professional commences drafting of Petition, Written Statement, Replication/Rejoinder or Miscellaneous application (cumulatively called pleadings), Interlocutory application it is absolutely necessary to keep in mind the provisions of Companies Act, 2013 Code of Civil Procedure (in short CPC), Limitation Act, Indian Evidence Act, National Company Law Tribunal Rules, 2016 and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 procedural laws and certain basic and fundamental principles of drafting and pleadings must be kept in mind. Therefore, for anyone wishing to appear before NCLT or NCLAT, the professional must acquaint himself with CPC, Cr. PC, Limitation Act, Indian Evidence Act, Law of Contracts, Sale of Goods Act, etc.

Order 6 (Pleading Generally & Associates Rules of CPC)

1. As per Order 6 Rule 2 of CPC every pleading shall contain only a statement in a concise form of material facts on which the party is relying upon. However, text of documents or evidence in the form of Agreement/MOU (d) Letters (c) e-mails (d) Negotiable instruments (e) Deeds (f) written documents or well settled position of law need not be elaborated in the pleadings but only reference is required to be made. Every pleading should not contain arguments. Further, (a) every pleading shall be divided into paragraphs, numbered consecutively, each allegation should be in a separate paragraph (b) dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

The Supreme Court has observed that “every pleading must state all material facts and not law. (i) *Mayar (H. K.) Ltd. and Ors. Vs. Owners and Parties, Vessel M. V. Fortune Express and Ors* [AIR 2006 SC1828] (ii) *Ramesh Kumar Agarwal Vs. Rajmala Exports Pvt. Ltd. and Ors.* [AIR 2012SC 1887]

2. However, as per Order 6 Rule 4 of CPC, in all cases, where the party alleges (a) mis-representation (b) fraud (c) breach of trust (d) willful default (e) undue influence, the party alleging any of these, must state clearly and specifically time, date month or year when any of the aforesaid happened - however, merely vague allegations are not sufficient and adequate and the court will not take cognizance.
3. Before any one proceed to commence drafting, it is absolutely necessary to gather information/ documents/ papers by having extensive discussions with the clients. The information could be gathered by asking the questions on the following points:
 - Whether all Factual Details have been taken out
 - Whether basic details of the parties have collated
 - All Evidence Necessary for Drafting
 - Appointment of Additional Directors
 - Cessation of Office of Existing Directors
 - Removal of Promoter Directors
 - Illegal Transfer of Shares / Removal of Directors
 - Information can be obtained under Right to Information Act, 2005.
4. As per Order 6 Rule 14 of CPC Every pleading shall be signed by the party and his pleader, if any, provided that where a party pleading is, by reason of absence or for other good cause; unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf. The authorization to sign the pleadings could be either by way of (a) Board resolutions in case of body corporate or (b) Power of Attorney duly executed.

Forms of Pleadings

5. Generally, the rules prescribe the format of petition or application but does not prescribe the format for filing of Written Statement/Reply or Rejoinder or Replication. Therefore, the contents of petition must always be set out under various headings or sub-headings in accordance with the format prescribed – otherwise, the Registry of the NCLT or NCLAT may raise objection and your petition will not be listed for admission hearing and consequently, grant of interim relief may be delayed. The petition must adhere to the following:-
 - (a) Form prescribed
 - (b) Set brief description of each of the petitioner and respondents
 - (c) Narrate the Facts.

Other General Points to be kept in mind while filing Application / Petition with NCLT

1. Where a particular situation is not provided in the NCLT Rules, the NCLT may for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice.
2. The general heading in all proceedings before the Tribunal, in all advertisement and notices shall be in Form No. NCLT-4.

3. Every petition or application or reference shall be filled in form as provided in Form No. NCLT-1 with attachments thereto accompanied by Form No. NCLT-2 and in case of an interlocutory application, the same shall be filed in Form No. NCLT-1 accompanied by such attachments thereto along with the Form No. NCLT-3.
4. Every petition or application including interlocutory application shall be verified by an affidavit in Form.
5. Notice to be issued by the NCLT to the opposite party shall be in Form No. NCLT-5.

Hearing of petition or application and production of Evidence by Affidavit.

After filing the application along with all the attachment and supporting document, the Tribunal shall notify the parties the date and place of hearing of the petition and during the hearing, where the Tribunal consider it is necessary in the interest of natural justice, it may order the parties to submit further evidence by the affidavit.

FINAL ORDER OF TRIBUNAL

On the date of final hearing, if the Tribunal is satisfied that meeting of creditors or members has been held as per the prescribed procedure and required disclosures were made to them, then the Tribunal may, by order, sanction the compromise or arrangement. The order shall be in Form No. CAA. 6. However, no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the prescribed accounting standards.

The order may include directions in regard to any matter or such modifications in the compromise or arrangement for the proper working of the compromise or arrangement. The Tribunal also has the power to supervise the implementation of the compromise or arrangement. Moreover, if the Tribunal is satisfied that the compromise or arrangement sanctioned cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding-up the company.

Statement of compliance in mergers and amalgamations

Every company in relation to which an order has been made by the Tribunal sanctioning the scheme shall file with the Registrar of Companies a statement in Form No. CAA.8, until the scheme is fully implemented within two hundred and ten days from the end of each financial year. The statement shall be duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

ANNEXURE - A

SAMPLE SCHEME OF MERGER

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

IN THE MATTER OF SECTIONS 230 and 232 OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF ABC PRIVATE LIMITED

AND

IN THE MATTER OF SCHEME OF AMALGAMATION OF ABC PRIVATE LIMITED

WITH XYZ PRIVATE LIMITED AND THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

PREAMBLE

- i) The Scheme of Amalgamation provides for the amalgamation of ABC Pvt. Ltd. (hereinafter referred to as 'Transferor Company') with XYZ Pvt. Ltd. (hereinafter referred to as 'Transferee Company') pursuant to Sections 230 and 232 of the Companies Act, 2013.
- ii) Transferor Company was incorporated on May 23, 1999 bearing CIN as U17110KA1999PTC019786 as a Private Limited Company limited by shares under the provisions of the Companies Act, 1956 with the Registrar of Companies, Karnataka at Bangalore. The main object of the Transferor Company, as per the Memorandum of Association is to carry on the business of information technology. The Transferor Company is a wholly owned subsidiary of the Transferee Company.
- iii) Transferee Company is a company incorporated on August 23, 2000 bearing CIN: U72300 KA 2000 PTC 044988 as a Private Limited Company limited by shares with Registrar of Companies, Karnataka at Bangalore under the Companies Act, 1956. The Registered Office of the Company, at present, is situated at, Bangalore – 560103, Karnataka. The main objects of the Transferee Company, as per the Memorandum of Association is as follows:
 - (a) To provide information technology enabled services, web enabled services, business process outsourcing services and other services relating to back office operations and all kinds of business support services, including but not limited to operation support services, corporate function services, corporate support service, database services, information management services, telecom services, contact center services, consultancy services, document services, data processing services, data management services, activities for collating, accounting, managing, processing, analyzing, distributing, developing and storing documents, information and data, information technology support services, financial control support services, administration support services, professional/legal support, human resources support services, payroll support services, correspondence management services, online support services, financial and revenue accounting.
 - (b) To establish, maintain and run data processing/ computer centres, support and call centers, customer care and other customer service centers, providing database services including software and hardware support services, networking services, remote maintenance, testing services, network / web complex management services, digital certification services, information technology consultancy services, and other information technology and operations services.
 - (c) To organize, review and catalogue electronic documents, populate electronic databases and prepare reports, and conduct research including multi-jurisdictional surveys, to provide service management and business process management services in corporate, financial and general information research, financial analytics and for the purpose to act as representative, advisor, consultant, know how provider, sponsor, franchiser, licensor, job worker. To provide software development services and to produce software in connection with the above mentioned areas of expertise or otherwise."

The shares of the Transferee Company are held by XYZ Pte. Limited (99.10%) and XYZ International LLC, USA (0.10%).

- iv) WHEREAS to rationalize and streamline the various functions of the entities in India, to eliminate multiple entities, to achieve administrative convenience, to achieve cost savings from more focused operational effort and to rationalize, standardize and simplify the business processes, productivity improvements and administrative expenses, it has been decided by the Board of Directors of the Transferor Company and the Transferee Company to amalgamate the Transferor Company into the Transferee Company.

- v) The Scheme of Amalgamation is divided into the following parts: Part A - Definitions and Share capital
Part B - Amalgamation of ABC Pvt. Ltd. with XYZ Pvt. Ltd. Part C -General Terms and Conditions

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” or “the Act” means the Companies Act, 2013 and shall include any statutory modifications, re-enactment or amendments thereof for the time being in force.
- 1.2 “Appointed Date” means April 01, 2018 or such other date as may be fixed or approved by the Hon’ble NCLT or any other appropriate authority.
- 1.3 “Board of Directors” or “Board” shall mean the Board of Directors of the Transferor Company and the Transferee Company as the case may be or any committee thereof duly constituted or any other person duly authorized by the Board for the purpose of this Scheme.
- 1.4 “Effective Date” means the latest date on which the certified copies of the order of the National Company Law Tribunal Bangalore Bench sanctioning the Scheme, as defined hereunder, are filed with the Registrar of Companies, Karnataka at Bangalore by the Transferor and the Transferee Companies.
- 1.5 “NCLT” means the National Company Law Tribunal, Bangalore Bench having jurisdiction in relation to the Transferor Company and the Transferee Company.
- 1.6 “Scheme” or “the Scheme” or “this Scheme” means this Scheme of Amalgamation of ABC Pvt. Ltd. with XYZ Pvt. Ltd. and their respective shareholders and creditors, in its present form as submitted to/ approved or directed by the NCLT or this Scheme with such modification(s), if any made, as per Clause 19 of the Scheme.
- 1.7 “Transferee Company” means XYZ Pvt. Ltd., a company incorporated under the Act and having its registered office at Pritech Park, Block 10, Unit 1, Sarjapur Ring Road, Bangalore – 560103, Karnataka.
- 1.8 “Transferor Company” means ABC Pvt. Ltd., a company incorporated under the Act and having its registered office at 40/2, Avenue Road, Ulsoor, Bangalore-560042, Karnataka.
- 1.9 “Undertaking” shall mean and include the whole of assets, properties, liabilities and the undertaking of the Transferor Company existing as on Appointed Date and specifically include the following (without limitation):
 - i) The whole of the undertaking of the Transferor Company, including all secured and unsecured debts, if any, liabilities, duties and obligations and all the assets, 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, investments, reserves, provisions, funds, licenses, registrations, copyrights, patents, trade names, trademarks and other rights and licenses in respect thereof, applications for copyrights, patents, trade names, trademarks, leases, licenses, tenancy rights, premises, ownership flats, hire purchase and lease arrangements, lending arrangements, benefits of security arrangements, computers, office equipment, telephones, telexes, facsimile connections, internet connections, communication facilities, equipment and installations and utilities, electricity, water and other service connections, benefits of agreements, contracts and arrangements, powers, authorities, permits, allotments, approvals, consents, privileges, liberties, advantages, easements and

all the right, title, interest, goodwill, benefit and advantage, deposits, reserves, provisions, advances, receivables, deposits, funds, cash, bank balances, accounts and all other rights, benefits of all agreements, subsidies, grants, Minimum Alternate Tax, tax credits (including but not limited to credits in respect of income tax, sales tax, value added tax, turnover tax, service tax, Goods and Service tax etc), Software License, Domain

- ii) Websites etc., in connection / relating to the Transferor Company 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 Company, existing as on the Appointed Date.
- iii) All staff, workmen, and employees, if any, of the Transferor Company in service on the Effective Date.
- iv) All records, files, papers, information, computer programs, manuals, data, catalogues, quotations, sales advertising materials, lists of present and former customers and suppliers, customer credit information, customer pricing information and other records, whether in physical form or electronic form of the Transferor Company existing as on the Appointed Date.

1.10 Any references in the Scheme to “upon the Scheme becoming effective” or “effectiveness of the Scheme” shall mean the Effective Date.

1.11 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 Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and other applicable laws, rules, regulations, bye laws, as the case may be, including any statutory modification or re-enactment thereof from time to time.

2. Share Capital

2.1 The authorized and issued and paid up share capital of the Transferee Company as at March 31, 2018 is as under:

Authorized capital	Amount (Rs)
50,000,000 equity shares of Rs. 10 each	500,000,000
Issued, subscribed and paid-up capital	Amount (Rs)
15,000,000 equity shares of Rs. 10 each fully paid-up	150,000,000

2.2 The authorized and issued share capital of the Transferor Company as at March 31, 2018 is as under:

Authorized capital	Amount (Rs)
10,000,000 equity shares of Rs. 10 each	100,000,000
Issued, subscribed and paid-up capital	Amount (Rs)
5,000,000 equity shares of Rs. 10 each fully paid-up	5,000,000

Subsequent to March 31, 2018, there has been no change in the capital structure of Transferor Company.

PART B

AMALGAMATION OF TRANSFEROR COMPANY WITH TRANSFEE COMPANY

3. Date of Taking Effect and Operative Date

The Scheme set out herein in its present form or with any modification(s) approved or imposed or directed by the Hon'ble NCLT or made as per Clause 19 of the Scheme, shall be effective from the Appointed Date but shall be operative from the Effective Date.

4. Amalgamation of the Transferor Company with the Transferee Company

- 4.1 Subject to the provisions of this Scheme as specified hereinafter and with effect from the Appointed Date, the Undertaking of the Transferor Company, as defined in clause 1.9, including all the debts, liabilities, duties and obligations of the Transferor Company of every description and also including, without limitation, all the movable and immovable properties and assets (whether tangible or intangible) of the Transferor Company comprising, amongst others, all furniture and fixtures, computers/data processing, office equipment, electrical installations, telephones, telex, facsimile and other communication facilities, deposits, reserves, provisions, advances, receivables, deposits, funds, cash, bank balances and business licenses, permits, authorizations, approvals, lease, tenancy rights, permissions, incentives, if any, and all other rights, patents, know-how, trademark, service mark, trade secret or other intellectual property rights, proprietary right, title, interest, contracts, consent, approvals and rights and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages, benefits and approvals, if any, existing as on Appointed Date, shall, under the provisions of Sections 230 to 232 of the Act, and pursuant to the order of the Hon'ble NCLT sanctioning this Scheme and without further act, instrument or deed, but subject to the charges affecting the same as on the Effective Date, be transferred and/ or deemed to be transferred to and vested in the Transferee Company so as to become the properties, assets, rights, and undertaking(s) of the Transferee Company.
- 4.2 With effect from the Appointed Date, all statutory licenses, permissions, approvals or consents to carry on the operations of the Transferor Company, if any, existing as on Appointed Date 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 upon the vesting and transfer of the undertaking of the Transferor Company pursuant to this Scheme. The benefit of all statutory and regulatory permissions, licenses, approvals and consents, registrations shall vest in and become available to the Transferee Company pursuant to this Scheme.
- 4.3 With effect from the Appointed Date all debts, liabilities, duties and obligations of the Transferor Company existing as on the Appointed Date 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 day of the Appointed Date shall be the debts, liabilities, duties and obligations of the Transferee Company including any encumbrance on the assets of the Transferor Company or on any income earned from those assets and further that 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 liabilities have arisen, in order to give effect to the provisions of this Clause.
- 4.4 The transfer and vesting as aforesaid shall be subject to the existing charges/ hypothecation / mortgages, if any, as may be subsisting and agreed to be created over or in respect of the said assets or any part thereof, provided however, any reference in any security documents or arrangements to which the Transferor Company is a party wherein the assets of the Transferor Company have been or are offered or agreed to be offered as security for any financial assistance or obligations shall be construed as reference only to the assets pertaining to the Transferor Company and vested in the Transferee Company by virtue of this Scheme to the end and intent that the charges shall not extend or deemed to extend to any assets of the Transferee Company.
- 4.5 All staff, workmen and employees, if any, engaged in the Transferor Company as on the Effective Date shall stand transferred to the Transferee Company, without any further act or deed to be done by the Transferor Company or the Transferee Company and, subject to the provisions hereof, on terms and conditions not less favorable than those on which they are engaged by the Transferor Company, without any interruption of service as a result of the amalgamation of the Transferor Company into the Transferee Company.

- 4.6 All items as detailed under Para 1.9 in relation to the Transferor Company shall stand transferred to or vested in the Transferee Company, without any further act or deed done by the Transferor Company or the Transferee Company.
- 4.7 Without prejudice to the above provisions, with effect from the Appointed Date, all inter-party transactions between the Transferor Company and the Transferee Company, if any, shall be considered as intra- party transactions for all purposes from the Appointed Date.

5. Consideration

- 5.1 The entire issued, subscribed and paid-up Equity Share Capital of the Transferor Company is held by the Transferee Company. Upon the Scheme becoming effective, no shares of Transferee Company shall be allotted in lieu or exchange of the holding in Transferor Company and, the whole of the investment of the Transferor Company in the share capital of the Transferee Company shall stand cancelled in the books of Transferee Company. Upon the coming into effect of this Scheme, the share certificates, if any, and/ or the shares in electronic form representing the shares held by the Transferee Company in Transferor Company shall be deemed to be cancelled without any further act or deed for cancellation thereof by Transferee Company, and shall cease to be in existence accordingly.

PART C

GENERAL TERMS AND CONDITIONS

6. Accounting Treatment in the Books of the Transferee Company

- 6.1 On the Scheme becoming effective, the Transferee Company shall account for the amalgamation under the Scheme in its accounts in accordance with “Pooling of Interest” method prescribed under Accounting Standard 14 “Accounting for Amalgamations” or if applicable under Appendix C of Indian Accounting Standard 103 (Business Combinations of Entities under common control) as prescribed under Companies (Accounting Standards) Rules, 2006 including any amendments thereto as may be prescribed under the Companies Act, 2013, read with rules made thereunder.”
- 6.2 All the assets and liabilities recorded in the books of Transferor Company shall be transferred to and vested in the books of Transferee Company pursuant to the scheme and shall be recorded by Transferee Company at their respective book values as appearing in the books of Transferor Company.
- 6.3 The identity of the reserves of Transferor Company shall be preserved and they shall appear in the financial statements of Transferee Company in the same form and manner, in which they appeared in the financial statements of Transferor Company prior to this scheme being effective.
- 6.4 The investments in the equity capital of Transferor Company as appearing in the financial statements of Transferee Company shall stand cancelled.
- 6.5 Inter-company balances, loans and advances if any, will stand cancelled.
- 6.6 In case of any differences in accounting policy between Transferor Company and Transferee Company, the accounting policies followed by Transferee Company will prevail and the difference till the appointed date shall be adjusted in capital reserves of Transferee Company, to ensure that the financial statements of Transferee Company reflect the financial position on the basis of consistent accounting policy.
- 6.7 Subject to any corrections and adjustments as may, in the opinion of the Board of Directors of the Transferee Company, be required and except to the extent otherwise by law required, the reserves of the Transferor Company, if any, will be merged with the corresponding reserves of the Transferee Company.

7. Consequential Matters Relating to Tax and Compliance with Law

- 7.1 Upon the Scheme coming into effect, all taxes / cess / duties payable by or on behalf of the Transferor Company up to the Appointed Date and onwards including all or any refunds and claims, including refunds or claims pending with the revenue authorities, including the right of carry forward of accumulated losses and Minimum Alternate Tax credit under Section 115JAA of the Income-tax Act, 1961, Goods and Services tax, expenses incurred by the Transferor Company but deduction to be claimed on payment basis / on compliance with withholding tax provisions (as the case may be) under Sections 43B, 40(a) and 40(a)(ia) of the Income-tax Act, 1961, if any, shall, for all purposes, be treated as the tax / cess / duty, liabilities or refunds, claims, accumulated losses and Minimum Alternate Tax credit of the Transferee Company.
- 7.2 Upon the Scheme becoming effective, the Transferee Company is expressly permitted to revise its income-tax returns, sales tax returns, excise & CENVAT returns, service tax returns, Goods and Service tax return, other tax returns and to restore as input credit of service tax adjusted earlier or claim refunds / credits as required.
- 7.3 The Transferee Company is also expressly permitted to claim refunds, credits, including restoration of input CENVAT credit, Goods and Service tax, tax deduction in respect of nullifying of any transactions between the Transferor Company and Transferee Company.
- 7.4 In accordance with the Cenvat Credit Rules framed under Central Excise Act, 1944, as are prevalent on the Effective Date, the unutilized credits relating to excise duties / service tax/ Goods and Services tax paid on inputs / capital goods / input services lying in the accounts of the undertaking of the Transferor Company shall be permitted to be transferred to the credit of the Transferee Company, as if all such unutilized credits were lying to the account of the Transferee Company. The Transferee Company shall accordingly be entitled to set off all such unutilized credits against the excise duty / service tax payable by it.
- 7.5 Upon the Scheme becoming effective, unabsorbed tax losses and unabsorbed tax depreciation of the Transferor Company, if any, till the Appointed Date, would accrue to the Transferee Company in accordance with the provisions of the Income Tax Act, 1961.
- 7.6 This Scheme has been drawn up to comply with the conditions relating to “Amalgamation” as specified under the tax laws, including Section 2(1B) and other relevant sections of the Income tax Act, 1961. If any terms or provisions of the Scheme are found to be or interpreted to be inconsistent with any of the said provisions at a later date, whether as a result of any amendment of law or any judicial or executive interpretation or for any other reason whatsoever, the aforesaid provisions of the tax laws shall prevail. The Scheme shall then stand modified to the extent determined necessary to comply with the said provisions. Such modification will however not affect other parts of the Scheme. The power to make such amendments as may become necessary shall vest with the Board of Directors of the Transferor Company and the Transferee Company, which power shall be exercised reasonably in the best interests of the companies concerned.

8. Authorised Share Capital

- 8.1 Upon the Scheme becoming effective, the authorized share capital of the Transferor Company shall stand combined with the authorized share capital of the Transferee Company. Filing fees and stamp duty, if any, paid by the Transferor Company on its authorized share capital, shall be deemed to have been so paid by the Transferee Company on the combined authorized Share capital and accordingly, the Transferee Company shall not be required to pay any fee/ stamp duty for its increased authorized share capital.
- 8.2 Clause V of the Memorandum of Association and the Articles of Association of the Transferee Company shall, without any further act, instrument or deed, be and stand altered, modified and

amended pursuant to Sections 61 and 64 and other applicable provisions of the Act by deleting the existing Clause and replacing it by the following:

“The Authorized Share Capital of the Company is Rs. 900,000,000/- (Rupees Ninety crore only) divided into 90,000,000 (Nine crore only) equity Shares of the face value of Rs. 10/- (Rupees ten only) each with powers to increase or reduce in accordance with the law”.

- 8.3 The approval of this Scheme by the shareholders of the Transferee Company under sections 230 and 232 of the Act, whether at a meeting or otherwise, shall be deemed to have the approval under Sections 13, 14, 61, 64 and other applicable provisions of the Act and any other consents and approvals required in this regard.

9. Transactions Between Appointed Date and Effective Date With effect from the Appointed Date and up to the Effective Date:

- 9.1 The Transferor Company shall be deemed to have held and stood possessed of and shall hold and stand possessed of all their properties and assets pertaining to the Undertaking of the Transferor Company for and on account of and in trust for the Transferee Company. The Transferor Company hereby undertakes to hold its said assets with utmost prudence until the scheme comes into effect.
- 9.2 The Transferor Company shall carry on its activities with reasonable diligence, business prudence and shall not, except in the ordinary course of business or without prior written consent of the Transferee Company alienate charge, mortgage, encumber or otherwise deal with or dispose of the Transferor Company or part thereof.
- 9.3 It is clarified that any advance tax paid / Tax Deduction at Source (“TDS”) credits / TDS certificates received by the Transferor Company shall be deemed to be the advance tax paid by / TDS credit / TDS certificate of the Transferee Company.
- 9.4 All the profits or income, if any, accruing or arising to the Transferor Company or expenditure or losses, if any, arising or incurred or suffered by the Transferor Company pertaining to the undertaking of the Transferor Company shall for all purposes be treated and be deemed to be and accrue as the income or profits or losses or expenditure as the case may be of the Transferee Company.
- 9.5 The Transferor Company shall not vary the terms and conditions of employment of any of the employees, existing as on the Effective Date, except in the ordinary course of business or without the prior consent of the Transferee Company or pursuant to any pre-existing obligation undertaken by the Transferor Company as the case may be, prior to the Effective Date.
- 9.6 The Transferor Company shall not make any change in its capital structure either by any increase (by issue of equity or shares on a rights basis, bonus shares, convertible debentures or otherwise), decrease, reduction, reclassification, subdivision or consolidation, re-organization, or in any other manner which may, in any way, affect the share exchange ratio, except by mutual consent of the respective Boards of Directors of the Transferor Company and the Transferee Company or except as may be expressly permitted.

10. Employees of the Transferor Company

- 10.1 On the Scheme becoming effective, all staff, workmen and the employees, if any, of the Transferor Company in service on the Effective Date shall be deemed to have become staff, workmen and the employees of the Transferee Company, without any break or interruption in their services, and on the basis of continuity of service, and the terms and conditions of their employment with the Transferee Company shall not be less favourable than those applicable to them with reference to their employment with the Transferor Company on the Effective Date.

10.2 It is expressly provided that, on the Scheme becoming effective, any provident fund, gratuity fund, superannuation fund or any other special fund or trusts, if any, created or existing for the benefit of the staff, workmen and the employees of the Transferor Company in service as on the Effective Date 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. It is clarified that, for the purpose of the said fund or funds, the service of the staff, workmen and employees, if any, of the Transferor Company will be treated as having been continuous with the Transferee Company from the date of employment as reflected in the records of the Transferor Company.

11. Validity of Existing Resolutions

Upon the coming into effect of the Scheme, the resolutions of the Transferor Company as are considered necessary by the Board of Directors of the Transferee Company which are validly subsisting be considered as resolutions of the Transferee Company. If any such resolutions have any monetary limits approved under the provisions of the Act or of any other applicable statutory provisions, then the said limits, as are considered necessary by the Board of Directors of the Transferee Company, shall be added to the limits, if any, under the like resolutions passed by the Transferee Company.

12. Legal Proceedings

12.1 If any suit, appeal or other proceeding of whatever nature by or against the Transferor Company is pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of or by anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against the Transferee Company, as the case may be, 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 as if this Scheme had not been made.

12.2 In case of any litigation, suits, recovery proceedings which are to be initiated or may be initiated against the Transferor Company, the Transferee Company shall be made party thereto and any payment and expenses made thereto shall be the liability of the Transferee Company.

13. Contracts, Deeds, etc.

13.1 Subject to the other provisions of this Scheme, all contracts, deeds, bonds, insurance, letters of intent, undertakings, arrangements, policies, agreements and other instruments, if any, of whatsoever nature pertaining to the Transferor Company to which the Transferor Company is party and subsisting or having effect on the Effective Date, shall be 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.

13.2 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 Company will, if necessary, also be party in order to give formal effect to the provisions of this Scheme, if so required or becomes necessary. The Transferee Company shall be deemed to be authorized 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.

14. Statutory Licenses, Permissions, Approvals

With effect from the Appointed Date and upon the Scheme becoming effective, all statutory licenses, permissions, approvals, copyrights, trademarks or consents, if any, relating to the Undertaking of

the Transferor Company 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, environmental approvals and consents, registrations or other licenses and consents shall vest in and become available to the Transferee Company pursuant to this Scheme. In so far as the various incentives, subsidies, rehabilitation schemes, special status and other benefits or privileges enjoyed, granted by any government body, local authority or by any other person, or availed of by the Transferor Company are concerned, the same shall vest with and be available to the Transferee Company on the same terms and conditions.

15. Saving of Concluded Transactions

The transfer of Undertaking as described hereinabove and the continuance of proceedings by or against the Transferor Company, the same shall not affect any transaction or proceedings already concluded by the Transferor Company on and after the Appointed Date till the Effective Date, to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things done and executed by the Transferor Company in respect thereto as done and executed on behalf of the Transferee Company.

16. Dissolution of the Transferor Company

On the Scheme becoming effective, the Transferor Company shall stand dissolved without being wound-up.

17. Conditionality of the Scheme

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

- 17.1 The requisite, consent, approval or permission of the Central Government or any other statutory or regulatory authority, which by law may be necessary for the implementation of this Scheme.
- 17.2 The Scheme being approved by the requisite majorities in number and value of such classes of persons including the respective members and/or creditors of the Transferor Companies and the Transferee Company as required under the Act and as may be directed by the NCLT.
- 17.3 The sanction of the NCLT under Section 230 and 232 of the Act in favor of the Transferor Companies and the Transferee Company under the said provisions and the necessary orders under sections 232 of the Act being obtained.
- 17.4 The certified copy of the order of the Hon'ble NCLT under sections 230 and 232 of the Act sanctioning the Scheme is filed with the Registrar of Companies Karnataka at Bangalore.
- 17.5 Each part in Section of the Scheme shall be given effect to as per the chronology in which it has been provided for in the Scheme. The Scheme shall be effective from the Effective Date. However, failure of any one part of one Section for lack of necessary approval from the shareholders / creditors / statutory regulatory authorities shall not result in the whole Scheme failing. It shall be open to the concerned Board of Directors to consent to severing such part(s) of the Scheme and implement the rest of the Scheme as approved by the Hon'ble NCLT with such modification.
- 17.6 Compliance with such other conditions as may be imposed by the Hon'ble NCLT.

18. Application to Hon'ble NCLT

The Transferor Company and the Transferee Company shall, with all reasonable dispatch, make applications pursuant to Sections 230 and 232 of the Act, to the NCLT for sanction and carrying out the Scheme and for consequent dissolution of the Transferor Company without winding-up. The said companies shall also apply for and obtain such other approvals, as may be necessary

in law, if any, for bringing the Scheme into effect and be entitled to take such other steps and proceedings as may be necessary or expedient to give full and formal effect to the provisions of this Scheme.

19. Modification or Amendments to the Scheme

Subject to approval of the Hon'ble NCLT, the Transferor Company and the Transferee Company by their respective Boards of Directors, may assent to/make and/or consent to any modifications/ amendments to the Scheme or to any conditions or limitations that the Hon'ble NCLT and/or any other Authority under law may deem fit to direct or impose, or which may otherwise be considered necessary, desirable or appropriate as a result of subsequent events or otherwise by them (i.e. the Board). The Transferor Company and the Transferee Company by their respective Board are authorised to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions whatsoever for carrying the Scheme into effect, whether by reason of any directive or Order 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.

20. Effect of Non-Receipt of Approvals

In the event of any approvals or conditions enumerated in the Scheme not being obtained or complied with, or for any other reason, the Scheme cannot be implemented, the Board of Directors of the Transferee Company and the Transferor Company shall mutually waive such conditions as they consider appropriate to give effect, as far as possible, to this Scheme and failing such mutual agreement, or in case the Scheme not being sanctioned by the Hon'ble NCLT, the Scheme shall become null and void and each party shall bear and pay their respective costs, charges and expenses in connection with the Scheme.

21. Costs, Charges & Expenses

In the event of the Scheme being sanctioned by the Hon'ble NCLT, the Transferee Company shall bear and pay all costs, charges, expenses, taxes including duties, levies in connection with the Scheme.

Authorised Representative

ABC Pvt. Ltd.

Place:

Date:

ANNEXURE -B

SAMPLE OF SCHEME OF AMALGAMATION

Under Sections 230 To 232 of the Company Act, 2013

Of

ABC LIMITED

(THE "TRANSFEROR COMPANY")

And

XYZ LIMITED

(THE "TRANSFEE COMPANY")

And

THEIR RESPECTIVE SHAREHOLDERS

GENERAL**A. Description of Company and Background**

- I. ABC Limited, (CIN: U27104CT1999PLC013744) is a unlisted public limited Company incorporated under the Company Act, 1956 having its registered office at _____ (hereinafter referred to as the “Transferor Company”). The Transferor Company is engaged in the business of generation of power and has set up a 25MW Captive Power Plant at _____.
- II. XYZ Limited, (CIN: L27106CT1999PLC013756) is a listed public limited Company incorporated under the Company Act, 1956 having its registered office at _____ (hereinafter referred to as the “Transferee Company”). The Transferee Company is engaged in the business of Iron & Steel with captive power generation and having an Integrated Steel Plant.
- III. The Transferor Company is an Associate Company of the Transferee Company. The Transferee Company’s equity shares are listed on BSE Limited and National Stock Exchange of India Limited.
- IV. This Scheme of Amalgamation provides for the amalgamation of the Transferor Company with the Transferee Company pursuant to Sections 230 to 232 and other relevant provisions of the Company Act, 2013.

B. Rationale for the Scheme

- a. The amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits: a. With the proposed amalgamation of Transferor Company into Transferee Company and completion of integration of the Power Plant of the Transferor Company with Steel Plant of Transferee Company, the captive power generation capacity of the Transferee Company will stand enhanced to 98 MW and thereby availability of much needed additional 25MW of power capacity, to meet the shortfall of electricity requirement of Transferee Company, assuring uninterrupted power supply to its steel making units at competitive cost, leading to increase in capacity utilization of its steel melting plant and cost savings through operating leverage. It is pertinent to mention that no fresh capacity addition is allowed in the plant location of Transferee Company on account of environmental and pollution reasons and therefore the Power Plant of Transferor Company is critical for operations of Transferee Company.
- b. The consolidation of operations of the Transferor Company and the Transferee Company by way of amalgamation will lead to a more efficient utilization of capital, administrative and operational rationalization and promote organizational efficiencies. It will prevent cost duplication that can erode financial efficiencies of the holding structure and the resultant operations will be more cost-efficient with the achievement of greater economies of scale, reduction in overheads and improvement in various other operating parameters.
- c. The amalgamation will result in the formation of a stronger company with a larger capital and asset base and enable the combined business to be pursued more conveniently and advantageously. The amalgamation will have beneficial results for the amalgamating companies, their stakeholders and all concerned.
- d. Greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximising overall shareholder value, and will improve the competitive position of the combined entity.
- e. Improved organizational capability and leadership, arising from the pooling of human capital who have the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.

- f. Cost savings are expected to flow from more focused operational efforts, rationalization, standardisation and simplification of business processes, and the elimination of duplication, and rationalization of administrative expenses.

In view of the aforesaid, the Board of Directors of the Transferor Company and the Transferee Company have considered and proposed the amalgamation of the entire undertaking and business of the Transferor Company with the Transferee Company in order to benefit the stakeholders of both the companies. Accordingly, the Board of Directors of the Transferor Company and the Transferee Company have formulated this Scheme of Amalgamation for the transfer and vesting of the entire Undertaking (herein after defined) and business of the Transferor Company with and into the Transferee Company pursuant to the provisions of Section 230 to Section 232 and other relevant provisions of the Act.

C. Parts of the Scheme:

This Scheme of Amalgamation is divided into the following parts:

- (i) **Part I** deals with definitions of the terms used in this Scheme of Amalgamation and sets out the share capital of the Transferor Company and the Transferee Company;
 - (ii) **Part II** deals with the transfer and vesting of the Undertaking (as hereinafter defined) of the Transferor Company to and in the Transferee Company;
 - (iii) **Part III** deals with the Consideration i.e. issue of new equity shares by the Transferee Company to the eligible shareholders of the Transferor Companies, as applicable and cancellation shares held by Transferee Company in the Transferor Company;
 - (iv) **Part IV** deals with the accounting treatment for the amalgamation in the books of the Transferee Company and dividends;
 - (v) **Part V** deals with the dissolution of the Transferor Company and the general terms and conditions applicable to this Scheme of Amalgamation and other matters consequential and integrally connected thereto.
- D.** The amalgamation of the Transferor Company with the Transferee Company, pursuant to and in accordance with this Scheme, shall take place with effect from the Appointed Date and shall be in accordance with the relevant provisions of the Income Tax Act, 1961 including but not limited to Section 2(1B) and Section 47 thereof.

PART I

DEFINITIONS AND SHARE CAPITAL

1. Definitions

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

- 1.1. "Act" means the Companies Act, 2013, the rules and regulations made thereunder and will include any statutory re-enactment or amendment(s) thereto, from time to time;
- 1.2. "Appointed Date" For the purpose of this Scheme and for Income Tax Act, 1961, the "Appointed Date" means the open of business hours on 1st April 2017;
- 1.3. "Board of Directors" or "Board" means the board of directors of the Transferor Company or the Transferee Company, as the case may be, and shall include a duly constituted committee thereof;
- 1.4. "Effective Date" means the last of the dates on which the certified or authenticated copies of the order of the National Company Law Tribunal sanctioning the Scheme are filed with the Registrar

of Companies by the Transferor Company and by the Transferee Company. Any references in this Scheme to the date of “coming into effect of this Scheme “or “effectiveness of this Scheme “or “Scheme taking effect “shall mean the Effective Date;

- 1.5. “Equity Shares” means equity shares of the Transferee Company, having face value of Rs 10/- (Ten only), per share fully paid;
- 1.6 “Governmental Authority” means any applicable central, state or local government, legislative body, regulatory or administrative authority, agency or commission or any court, tribunal, board, bureau or instrumentality thereof or arbitration or arbitral body having jurisdiction over the territory of India including but not limited to Securities and Exchange of India, Stock Exchanges, Registrar of Companies, competition Commission of India and National Company Law Tribunal;
- 1.7 “New Equity Shares” means Equity Shares of Transferee Company, to be issued to shareholders of the Transferor Company pursuant to this scheme, upon approval of NCLT in exchange of equity shares held in Transferor Company;
- 1.6 “NCLT” means the National Company Law Tribunal, Mumbai Bench, Mumbai;
- 1.7 “Registrar of Companies” means the Registrar of Companies, Chhattisgarh.
- 1.8 “Scheme” means this Scheme of Amalgamation between the Transferor Company and the Transferee Company and their respective shareholders as submitted to the NCLT together with any modification(s) approved or directed by the NCLT Mumbai Bench;
- 1.9 “Stock Exchanges” means BSE Limited and National Stock Exchange of India Limited where the shares of Transferee Company are listed;
- 1.10 “Transferor Company” means ABC Limited, Transferor Company (CIN: U27104CT1999PLC013744) is a unlisted public limited company incorporated under the Companies Act, 1956 having its registered office at _____;
- 1.11 “Transferee Company” means XYZ Limited, Transferee Company (CIN: L27106CT1999PLC013756) is a listed public limited company incorporated under the Companies Act, 1956 having its registered office at _____;
- 1.12 “Undertaking” means the whole of the undertaking and entire business of the Transferor Company as a going concern, including (without limitation):
 - I. All the assets and properties (whether movable or immovable, tangible or intangible, real or personal, corporeal or incorporeal, present, future or contingent) of the Transferor Company, including but not limited to, plant and machinery, equipment, buildings and structures, offices, residential and other premises, sundry debtors, furniture, fixtures, office equipment, appliances, accessories, depots, deposits, all stocks, assets, investments of all kinds (including shares, scrips, stocks, bonds, debenture stocks, units), and interests in its subsidiaries, cash balances or deposits with banks, loans, advances, disbursements, contingent rights or benefits, book debts, receivables, actionable claims, earnest moneys, advances or deposits paid by the Transferor Company, financial assets, leases (including lease rights), hire purchase contracts and assets, lending contracts, rights and benefits under any agreement, benefit of any security arrangements or under any guarantees, reversions, powers, municipal permissions, tenancies in relation to the office and/or residential properties for the employees or other persons, guest houses, godowns, warehouses, licenses, fixed and other assets, trade and service names and marks, patents, copyrights, and other intellectual property rights of any nature whatsoever, know how, good will, rights to use and avail of telephones, telexes, facsimile, email, internet, leased line connections and installations, utilities, electricity and other services, reserves, provisions, funds, benefits of assets or properties or

other interest held in trust, registrations, contracts, engagements, arrangements of all kind, privileges and all other rights including, title, interests, other benefits (including tax benefits), easements, privileges, liberties, mortgages, hypothecations, pledges or other security interests created in favour of the Transferor Company and advantages of whatsoever nature and wheresoever situated in India or abroad, belonging to or in the ownership, power or possession and in the control of or vested in or granted in favour of or enjoyed by the Transferor Company or in connection with or relating to the Transferor Company and all other interests of whatsoever nature belonging to or in the ownership, power, possession or the control of or vested in or granted in favour of or held for the benefit of or enjoyed by the Transferor Company, whether in India or abroad;

- II. All liabilities including, without being limited to, secured and unsecured debts (whether in Indian rupees or foreign currency), sundry creditors, liabilities (including contingent liabilities), duties and obligations of the Transferor Company, of every kind, nature and description whatsoever and howsoever arising, raised or incurred or utilised;
- III. All agreements, rights, contracts, entitlements, permits, licenses, approvals, authorizations, concessions, consents, quota rights, engagements, arrangements, authorities, allotments, security arrangements (to the extent provided herein), benefits of any guarantees, reversions, powers and all other approvals of every kind, nature and description whatsoever relating to the
Business activities and operations of the Transferor Company;
- IV. All records, files, papers, computer programs, manuals, data, catalogues, sales material, lists of customers and suppliers, other customer information and all other records and documents relating to the business activities and operations of the Transferor Company;
- V. All permanent employees engaged by the Transferor Company as on the Effective Date;
- VI. All rights, entitlements, export/import incentives and benefits including advance licenses, bids, tenders (at any stage as it may be), letters of intent, expressions of interest, development rights (whatever vested or potential and whether under agreements or otherwise), subsidies, tenancies in relation to office, benefit of any deposits privileges, all other rights, receivables, powers and facilities of every kind, nature and description whatsoever, rights to use and avail of telephones, telexes, facsimile connections and installations, utilities, electricity and other services, provisions and benefits of all agreements, contracts and arrangements, including technological licensing agreements, and all other interests in connection with or relating thereto;
- VII. All intellectual property rights created, developed or invented by employees concentrated on the research, development or marketing of products (including process development or enhancement) in connection with the Transferor Company;
- VIII. all benefits and privileges under letters of permission and letters, of approvals, all tax credits, including CENVAT and other Input credits, refunds; reimbursements, claims, exemptions, benefits under service tax laws, value added tax, purchase tax, sales tax or any other duty or tax or cess or imposts under central or state law including sales tax deferrals, advance taxes, tax deducted at source, right to carry forward and set-off unabsorbed losses, if any and depreciation, deductions and benefits under the Income-tax Act, 1961.

- 1.13. All capitalized terms not defined but used 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 Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and other applicable laws, rules, regulations and byelaws, as the case may be, or any statutory amendment(s) or re-enactment thereof, for the time being in force.

2. Share Capital

2.1. Transferor Company:

The Authorised, Issued, Subscribed and Paid-up share capital of the Transferor Company as on March 31, 2017 and subsequent changes are as under:

Particulars	Rs. In Lacs
AUTHORISED SHARE CAPITAL:	
1,00,00,000 Equity Shares of Rs.10/- each	1,000.00
TOTAL	1,000.00
ISSUED, SUBSCRIBED AND PAID UP CAPITAL:	
99,95,700 Equity Shares of Rs.10/- each	999.57
TOTAL AS ON 31.03.2017	999.57
Less 23,26,000 Equity Shares of Rs.10/- each bought back on 31.01.2018.	232.60
TOTAL AFTER BUY BACK	766.97

Subsequent to the above balance sheet date there is no change in the Capital Structure of Transferor Company except buy back of 23, 26,000 equity shares of Rs.10 each fully paid as shown in the above table. The Transferor Company shall not make any alteration in its' paid up share capital from the date of approval of this scheme by the Board of Directors of the both the Companies, either by issuance of fresh equity shares or bonus issue or any other from, till Effective Date.

2.2. Transferee Company:

The Authorised, Issued, subscribed and paid-up share capital of the Transferee Company as on March 31, 2017 was as under:

Particulars	Amount (Rs. In lacs)
AUTHORISED SHARE CAPITAL:	
4,98,00,000 Equity Shares of Rs.10/- each	4,980.00
32,00,000 Preference Shares of Rs.10/- each	320.00
TOTAL	5,300.00
ISSUED, SUBSCRIBED AND PAID UP CAPITAL:	
3,52,36,247 Equity Shares of Rs.10/- each	3411.12
TOTAL	3411.12

[*Note: The issued, subscribed and paid up share capital of the Transferee Company is Rs. 35,23,62,470/- divided into 3,52,36,247 Equity Shares of Rs. 10/- each fully paid up. Out of these 3,52,36,247 Equity Shares 11,25,000 Equity Shares have been held by the Transferee Company itself in the name of its Trustee as Trust Shares. As per the Indian Accounting Standards, the amount of share capital pertaining these 11,25,000 Equity Shares of Rs. 10/- each has been reduced from the issued, subscribed and paid up share capital on the liabilities side and from the investments on the asset side of the balance sheet. Hence the amount of issued, subscribed and paid up share capital in point 2.2 of the Scheme is Rs. 3411.12 Lacs (i.e. Rs. 3523.62 Lacs - Rs. 112.50 Lacs).]

Subsequent to the above balance sheet date there is no change in the capital structure of Transferee Company. It is hereby clarified that the Transferee Company will be free to make further issue of Equity Shares as per provisions of the Companies Act, 2013 and Rules and Regulations made thereunder and

other applicable laws, rules and regulations including SEBI regulations. However, the Transferee Company shall not be entitled to make bonus issue of Equity Shares by capitalisation of its free reserves & surplus till the Effective Date.

The equity shares of Transferee Company are, at present, listed on the National Stock Exchange of India Limited and the BSE Limited.

3. Date of Taking Effect and Operative Date

The Scheme set out herein in its present form or with any modifications approved or imposed or directed by NCLT shall be effective from the Appointed Date but shall be operative from the Effective Date.

PART II

TRANSFER AND VESTING OF UNDERTAKING

4. Transfer of Undertaking

- 4.1 Upon the coming into effect of this Scheme and with effect from the Appointed Date, the Undertaking, pursuant to the sanction of this Scheme by the NCLT under and in accordance with the provisions of Sections 230 to 232 and other applicable provisions, if any, of the Act, shall stand transferred to and be vested in or be deemed to have been transferred to and vested in the Transferee Company, as a going concern without any further act, instrument, deed, matter or thing to be made, done or executed so as to become, as and from the Appointed Date, the Undertaking of the Transferee Company by virtue of and in the manner provided in this Scheme.
- 4.2 Subject to the provisions of this Scheme as specified hereinafter and with effect from the Appointed Date, the entire Undertaking(s) of the Transferor Company, including all the debts, liabilities, losses, duties and obligations, including those arising on account of taxation laws and other allied laws of the Transferor Company of every description and also including, without limitation, all the movable and immovable properties and assets, tangible or Intangible assets (whether or not recorded in the books of account of the Transferor Company) of the Transferor Company comprising, amongst others, all freehold land, leasehold land, building, plants, motor vehicles, manufacturing facilities, laboratories receivables, actionable claims, furniture and fixtures, computers, office equipment, electrical installations, generators, containers, telephones, telex, facsimile and other communication facilities and business licenses, licenses under Factories Act, manufacturing licenses, permits, deposits, authorisations, approvals, recognitions and registrations granted by the Department of Scientific & Industrial Research to the in-house research and development units established, insurance cover of every description, lease, tenancy rights, permissions, incentives, if any, and all other rights, patents, know-how, trademark, service mark, trade secret, brands, registrations, licenses including other intellectual property rights, proprietary rights, title, interest, contracts, no objection certificates, deeds, bonds, consents, approvals and rights and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages and benefits, approvals, filings, dossiers, copyrights, industrial designs, trade secrets, know-how, data, formulations, technology, methodology, manufacturing procedures and techniques, test procedures, brand names, trade names and domain names, and all other interests in connection with or relating to and product registrations, applications and authorisations for product registrations, and all other interests exclusively relating to the goods or services, shall, under the provisions of Sections 230 to 232 of the Act, and pursuant to the orders of the NCLT sanctioning this Scheme and without further act, instrument or deed, but subject to the charges affecting the same as on the Effective Date, be transferred and/or deemed to be transferred to and vested in the Transferee Company, so as to become the properties, assets, rights, business and Undertaking(s) of the Transferee Company.

4.3 *Transfer of Assets:*

- 4.3.1 Without prejudice to the generality of Clause 4.1 above, upon the coming into effect of this Scheme and with effect from the Appointed Date.
- 4.3.1.1 All the assets and properties comprised in the Transferor Company of whatsoever nature and wheresoever situated, shall, under the provisions of Sections 230 to 232 and all other applicable provisions, if any, of the Act, without any further act or deed, be and stand transferred to and vested in the Transferee Company or be deemed to be transferred to and vested in the Transferee Company as a going concern so as to become the assets and properties of the Transferee Company.
- 4.3.1.2 Without prejudice to the provisions of Clause 4.3.1.1 above, in respect of such of the assets and properties of the Transferor Company as are movable in nature or incorporeal property or are otherwise capable of transfer by manual delivery or by endorsement and/or delivery, the same shall be so transferred by the Transferor Company and shall, upon such transfer, become the assets and properties of the Transferee Company as an integral part of the Undertaking, without requiring any separate deed or instrument or conveyance for the same.
- 4.3.1.3 In respect of movables other than those dealt with in Clause 4.3.1.2 above including sundry debts, receivables, bills, credits, loans and advances of the Transferor Company, if any, whether recoverable in cash or in kind or for value to be received, bank balances, investments, earnest money and deposits with any Governmental Authority or with any Company or other person, the same shall on and from the Appointed Date stand transferred to and vested in the Transferee Company.
- 4.3.1.4 All interests of the Transferor Company in their respective subsidiaries and associates as on the Appointed Date will become the interests, subsidiaries and associates of the Transferee Company.
- 4.3.1.5 All the licenses, permits, approvals, permissions, registrations, incentives, tax deferrals and benefits, subsidies, concessions, grants, rights, claims, leases, tenancy rights, liberties, special status and other benefits or privileges enjoyed or conferred upon or held or availed of by 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, under the provisions of Sections 230 to 232 and all other applicable provisions, if any, of the Act, without any further act, instrument or deed, cost or charge be and stand transferred to and vest in or be deemed to be transferred to and vested in and be available to the Transferee Company so as to become as and from the Appointed Date licenses, permits, approvals, permissions, registrations, incentives, tax deferrals and benefits, subsidies, concessions, grants, rights, claims, leases, tenancy rights, liberties, special status and other benefits or privileges of the Transferee Company and shall remain valid, effective and enforceable on the same terms and conditions.
- 4.3.2 The Transferor Company shall, if so required, also give notice in such form as it may deem fit and proper to the debtors, that pursuant to the sanction of this Scheme by NCLT under and in accordance with Sections 230 and 232 and all other applicable provisions, if any, of the Act, the said debtors should pay to the Transferee Company the debt, loan or advance or make the same on account of the Transferor Company and the right of the Transferor Company to recover or realize the same stands extinguished.
- 4.3.3 All assets and properties of the Transferor Company as on the Appointed Date, whether or not included in the books of the respective Transferor Company, and all assets and properties which are acquired by the Transferor Company on or after the Appointed Date but prior to the Effective 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, 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. Provided, however, that no onerous assets shall have been acquired by the Transferor Company after the Appointed Date without the consent of the Transferee Company as provided for in this Scheme.

4.4 Transfer of Liabilities:

- 4.4.1 Upon the coming into effect of this Scheme and with effect from the Appointed Date all liabilities relating to and comprised in the Transferor Company including all secured and unsecured debts (whether in Indian rupees or foreign currency), sundry creditors, liabilities(including contingent liabilities), duties and obligations and undertakings of the Transferor Company of every kind, nature and description whatsoever and howsoever arising, raised or incurred or utilised for its business activities and operations (herein referred to as the “Liabilities”), shall, pursuant to the sanction of this Scheme by the NCLT under and in accordance with the provisions of Sections 230 to 232 and other applicable provisions, if any, of the Act, without any further act, instrument, deed, matter or thing, be transferred to and vested in or be deemed to have been transferred to and vested in the Transferee Company, along with any charge, encumbrance, lien or security thereon, and the same shall be assumed by the Transferee Company to the extent they are outstanding as on the Effective Date so as to become as and from the Appointed Date the liabilities of the Transferee Company on the same terms and conditions as were applicable to the Transferor Company, and the Transferee Company shall meet, discharge and satisfy the same and further 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 Liabilities have arisen in order to give effect to the provisions of this Clause.
- 4.4.2 All debts, liabilities, duties and obligations of the Transferor Company as on the Appointed Date, whether or not provided in the books of the respective Transferor Company, and all debts and loans raised, and duties, liabilities and obligations incurred or which arise or accrue to the Transferor Company on or after the Appointed Date till the Effective Date, shall be deemed to be and shall become the debts, loans raised, duties, liabilities and obligations incurred by the Transferee Company by virtue of this Scheme.
- 4.4.3 Where any such debts, loans raised, liabilities, duties and obligations of the Transferor Company as on the Appointed Date have been discharged or satisfied by the Transferor Company after the Appointed Date and prior to the Effective Date, such discharge or satisfaction shall be deemed to be for and on account of the Transferee Company.
- 4.4.4 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 any party and appropriate effect shall be given in the books of accounts and records of the Transferee Company.

4.5 Encumbrances:

- 4.5.1 The transfer and vesting of the assets comprised in the Transferor Company to and in the Transferee Company under Clauses 4.1 and 4.3 of this Scheme shall be subject to the mortgages and charges, if any, affecting the same, as and to the extent hereinafter provided.
- 4.5.2 All the existing securities, mortgages, charges, encumbrances or liens(the “Encumbrances”), if any, as on the Appointed Date and created by the Transferor Company after the Appointed Date, over the 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 Encumbrances secure or relate to 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 as are transferred to the Transferee Company, and such Encumbrances shall not relate or attach to any of the other assets of the Transferee Company, provided however that no Encumbrances shall have been created by the Transferor Company over its assets after the Appointed Date without the consent of the Transferee Company as provided for in this Scheme.
- 4.5.3 The existing Encumbrances over the assets and properties 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 assets and properties and shall not extend or attach to any of

the assets and properties of the Undertaking transferred to and vested in the Transferee Company by virtue of this Scheme.

- 4.5.4 Any reference in any security documents or arrangements (to which the Transferor Company are a party) to the Transferor Company and its assets and properties, shall be construed as a reference to the Transferee Company and the assets and properties of the Transferor Company transferred to the Transferee Company by virtue of this Scheme. Without prejudice to the foregoing provisions, the Transferor Company and the Transferee Company may execute any instruments or documents or do all the acts and deeds as may be considered appropriate, including the filing of necessary particulars and/or modification(s) of charge(s), with the Registrar of Company to give formal effect to the above provisions, if required.
- 4.5.5 Upon the coming into effect of this Scheme, the Transferee Company alone shall be liable to perform all obligations in respect of the Liabilities, which have been transferred to it in terms of the Scheme.
- 4.5.6 It is expressly provided that, 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.
- 4.5.7 The provisions of this Clause 4.5 shall operate in accordance with the terms of the Scheme, notwithstanding anything to the contrary contained in any instrument, deed or writing or the terms of sanction or issue or any security document; all of which instruments, deeds or writings shall be deemed to stand modified and/or superseded by the foregoing provisions.

4.6 Inter - se Transactions:

Without prejudice to the provisions of Clauses 4.1 to 4.5, with effect from the Appointed Date, all inter-party transactions between the Transferor Company and the Transferee Company shall be considered as intra-party transactions for all purposes.

5. Contracts, Deeds, etc.

- 5.1 Upon the coming into effect of this Scheme and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements, schemes, arrangements, assurances and other instruments of whatsoever nature to which the Transferor Company are a party or to the benefit of which the Transferor Company may be eligible, and which are subsisting or have effect immediately before the Effective Date, shall continue in full force and effect by, for or against or in favour of, as the case may be, the Transferee Company and may be enforced as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obligee or obligor thereto or thereunder.
- 5.2 Without prejudice to the other provisions of this Scheme and notwithstanding the fact that vesting of the Undertaking occurs by virtue of this Scheme itself, the Transferee Company may, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required under any law or otherwise, take such actions and execute such deeds (including deeds of adherence), confirmations or other writings or arrangements with any party to any contract or arrangement to which the Transferor Company are a party or any writings as may be necessary in order to give formal effect to the provisions of this Scheme. The Transferee Company shall, under the provisions of this Scheme, be deemed to be authorised to execute any such writings on behalf of the Transferor Company and to carry out or perform all such formalities or compliances referred to above on the part of the Transferor Company.
- 5.3 For the avoidance of doubt and without prejudice to the generality of the foregoing, it is clarified that upon the coming into effect of this Scheme, all consents, permissions, licenses, certificates, clearances, authorities, powers of attorney given by, issued to or executed in favour of the Transferor Company shall without any further act or deed, stand transferred to the Transferee Company, as if the same were originally given by, issued to or executed in favour of the Transferee Company, and the Transferee Company shall be bound by the terms thereof, the obligations and duties thereunder, and the rights and benefits under the same shall be available to the Transferee Company.

6. Legal Proceedings

- 6.1 On and from the Appointed Date, all suits, actions, claims and legal proceedings by or against the Transferor Company pending and/or arising on or before the Effective Date shall be continued and / or enforced as desired by the Transferee Company and on and from the Effective Date, shall be continued and / or enforced by or against the Transferee Company as effectually and in the same manner and to the same extent as if the same had been originally instituted and/or pending and/or arising by or against the Transferee Company. On and from the Effective Date, the Transferee Company shall have the right to initiate, defend, compromise or otherwise deal with any legal proceedings relating to the Undertaking, in the same manner and to the same extent as would or might have been initiated by the Transferor Company as the case may be, had the Scheme not been made; If any suit, appeal or other proceedings relating to the Undertaking, of whatever nature by or against the Transferor Company be pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of the amalgamation of the Undertaking or by anything contained in this Scheme but the proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Company as if this Scheme had not been made.

7. Conduct of Business

7.1 With effect from the Appointed Date and up to and including the Effective Date:

- 7.1.1 The Transferor Company shall carry on and shall be deemed to have carried on all its business and activities as hitherto and shall hold and stand possessed of and shall be deemed to have held and stood possessed of the Undertaking on account of, and for the benefit of and in trust for, the Transferee Company.
- 7.1.2 All the profits or income accruing or arising to the Transferor Company and all expenditure or losses arising or incurred (including all taxes, if any, paid or accruing in respect of any profits and income) by the Transferor Company shall, for all purposes, be treated and be deemed to be and accrue as the profits or income or as the case may be, expenditure or losses (including taxes) of the Transferee Company.
- 7.1.3 Any of the rights, powers, authorities and privileges attached or related or pertaining to and exercised by or available to the Transferor Company shall be deemed to have been exercised by the Transferor Company for and on behalf of and as agent for the Transferee Company. Similarly, any of the obligations, duties and commitments attached, related or pertaining to the Undertaking that have been undertaken or discharged by the Transferor Company shall be deemed to have been undertaken or discharged for and on behalf of and as agent for the Transferee Company.

7.2 With effect from the first of the date of filing of this Scheme with the NCLT and up to and including the Effective Date:

- 7.2.1 The Transferor Company shall preserve and carry on their business and activities with reasonable diligence and business prudence and shall not undertake any additional financial commitments of any nature whatsoever, borrow any amounts nor incur any other liabilities or expenditure, issue any additional guarantees, indemnities, letters of comfort or commitments either for itself or on behalf of its group Company or any third party or sell, transfer, alienate, charge, mortgage or encumber or deal with the Undertaking or any part thereof save and except in each case in the following circumstances:
- 7.2.1.1 if the same is in its ordinary course of business as carried on by it as on the date of filing this Scheme with NCLT; or
- 7.2.1.2 if the same is permitted by this Scheme; or
- 7.2.1.3 if consent of the Board of Directors of the Transferee Company has been obtained.

- 7.2.2 The Transferor Company shall not take, enter into, perform or undertake, as applicable
- (i) any material decision in relation to its business and operations other than decisions already taken prior to approval of the Scheme by the respective Board of Directors (ii) any agreement or transaction; and (iii) any new business, or discontinue any existing business or change the capacity of facilities.; (iv) such other matters as the Transferee Company may notify from time to time save and except in each case in the following circumstances:
- 7.2.2.1 if the same is in its ordinary course of business as carried on by it as on the date of filing this Scheme with NCLT; or
- 7.2.2.2 if the same is permitted by this Scheme; or
- 7.2.2.3 if consent of the Board of Directors of the Transferee Company has been obtained.

7.3 Treatment of Taxes

- 7.3.1 Any tax liabilities under the Income-tax Act, 1961, Wealth Tax Act, 1957, Customs Act, 1962, Central Excise Act, 1944, Central Sales Tax Act, 1956, any other state Sales Tax /Value Added Tax laws, service tax, luxury tax, stamp laws, Goods and Service Tax (GST) or other applicable laws/ regulations (hereinafter in this Clause referred to as “Tax Laws”) dealing with taxes/ duties/ levies allocable or related to the business of the Transferor Company to the extent not provided for or covered by tax provision in the accounts made as on the date immediately preceding the Appointed Date shall be transferred to Transferee Company.
- 7.3.2 All taxes (including income tax, wealth tax, sales tax, excise duty, customs duty, service tax, luxury tax, VAT, GST etc.) paid or payable by the Transferor Company in respect of the operations and/or the profits of the business on and from the Appointed Date, shall be on account of the Transferee Company and, insofar as it relates to the tax payment (including without limitation income tax, wealth tax, sales tax, excise duty, customs duty, service tax, luxury tax, VAT, GST etc.), whether by way of deduction at source, advance tax or otherwise howsoever, by the Transferor Company in respect of the profits or activities or operation of the business on and from the Appointed Date, the same shall be deemed to be the corresponding item paid by the Transferee Company, and shall, in all proceedings, be dealt with accordingly.
- 7.3.3 Any refund under the Tax Laws due to Transferor Company consequent to the assessments made on 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 by the Transferee Company.
- 7.3.4 Without prejudice to the generality of the above, all benefits including under the income tax, sales tax, excise duty, customs duty, service tax, luxury tax, VAT, GST etc., to which the Transferor Company are entitled to in terms of the applicable Tax Laws of the Union and State Governments, shall be available to and vest in the Transferee Company.

8. Staff Workmen and Employees

8.1 Upon the coming into effect of this Scheme:

- 8.1.1 All the permanent employees of the Transferor Company who are in its employment as on the Effective Date shall become the permanent employees of the Transferee Company with effect from the Effective Date without any break or interruption in service and on terms and conditions as to employment and remuneration not less favourable than those on which they are engaged or employed by the Transferor Company. It is clarified that the employees of the Transferor Company who become employees of the Transferee Company by virtue of this Scheme, shall not be entitled to the employment policies and shall not be entitled to avail of any schemes and benefits that may be applicable and available to any of the employees of the Transferee Company (including the benefits of or under any employee stock option schemes applicable to or covering all or any of the employees of the Transferee Company),

unless otherwise determined by the Board of Directors of the Transferee Company. The Transferee Company undertakes to continue to abide by any agreement/ settlement, if any, validly entered into by the Transferor Company with any union/employee of the Transferor Company (as may be recognized by the Transferor Company). After the Effective Date, the Transferee Company shall be entitled to vary the terms and conditions as to employment and remuneration of the employees of the Transferor Company on the same basis as it may do for the employees of the Transferee Company.

- 8.1.2 The existing provident fund, gratuity fund and pension and/or superannuation fund or trusts or retirement funds or benefits created by the Transferor Company or any other special funds created or existing for the benefit of the concerned permanent employees of the Transferor Company (collectively referred to as the “Funds”) and the investments made out of such Funds shall, at an appropriate stage, be transferred to the Transferee Company to be held for the benefit of the concerned employees. The Funds shall, subject to the necessary approvals and permission and at the discretion of the Transferee Company, either be continued as separate funds of the Transferee Company for the benefit of the employees of the Transferor Company or be transferred to and merged with other similar funds of the Transferee Company. In the event that the Transferee Company does not have its own fund with respect to any such Funds, the Transferee Company may, subject to necessary approvals and permissions, continue to maintain the existing Funds separately and contribute thereto, until such time as the Transferee Company creates its own funds at which time the Funds and the investments and contributions pertaining to the employees of the Transferor Company shall be transferred to such funds of the Transferee Company.

9. Saving of Concluded Transactions

Subject to the terms of this Scheme, the transfer and vesting of the Undertaking of the Transferor Company under 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 after the Appointed Date till the Effective Date, 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.

PART III

CONSIDERATION

10. Issue of Shares by the Transferee Company

- 10.1 Upon the Scheme coming into effect and without any further application, act or deed, the Transferee Company shall, in consideration of the amalgamation of the Transferor Company with the Transferee Company, the 26,05,000 (Twenty Six Lacs Five Thousand) equity shares of Transferor Company held by Transferee Company, will be cancelled without any act, deeds or instrument and the Transferee Company will issue and allot, to every equity shareholder of the Transferor Company, holding fully paid-up equity shares in the Transferor Company and whose names appear in the register of members of the Transferor Company on the Record Date to be announced by the Board of the Transferor Company, 45 (Forty Five) Equity Shares of of the Transferee Company, credited as fully paid-up with rights attached thereto as hereinafter mentioned (hereinafter referred to as the “New Equity Shares”) for every 100 (One Hundred) Equity Shares of Rs.10 each fully paid-up, held by such shareholder in the capital of the Transferor Company (“Share Exchange Ratio”).
- 10.2 In respect of the equity shares in the Transferor Company already held in dematerialized form, the New Equity Shares to be issued by the Transferee Company in lieu thereof shall also be issued in dematerialized form with the New Equity Shares being credited to the existing depository accounts of the members of the Transferor Company entitled thereto. Members of the Transferor Company desirous

of receiving the New Equity Shares in the Transferee Company in dematerialized form should have their shareholding in the Transferor Company dematerialized on or before the Record Date.

- 10.3 Pursuant to the Scheme, the shares of the Transferor Company held by its equity shareholders (both in physical and dematerialized form), shall, without any further application, act, instrument or deed, be deemed to have been automatically cancelled. The said equity shares of Transferor Company held in physical form shall be deemed to have been automatically cancelled without any requirement to surrender the certificates for shares held by the shareholders of the Transferor Company.
- 10.4 No fractional share shall be issued by the Transferee Company in respect of the fractional entitlements, if any, to which the equity shareholders of the Transferor Company may be entitled on issue and allotment of New Equity Shares in the Transferee Company as above. The Board of Directors of the Transferee Company shall consolidate all such fractional entitlements and thereupon, issue and allot New Equity Shares in lieu thereof to the Trustee nominated by the Transferee Company for the purpose who shall hold the New Equity Shares in trust for and on behalf of the members entitled to such fractional entitlements with the express understanding that such Trustee shall sell the same at such time or times and at such price or prices to such person or persons, as it deems fit. The said Trustee shall distribute such net sale proceeds to the shareholders of the Transferor Company in the same proportion, as their respective fractional entitlements bear to the consolidated fractional entitlements. The Trustee shall be appointed by the Board of Directors of the Transferee Company.
- 10.5 The New Equity Shares in the Transferee Company to be issued to the shareholders of the Transferor Company shall be subject to the Memorandum and Articles of Association of the Transferee Company and the New Equity Shares so issued shall rank pari-passu in all respects with the existing Equity Shares of the Transferee Company.
- 10.6 The New Equity Shares of the Transferee Company issued in terms of the Scheme shall, subject to applicable regulations, be listed and/or admitted to trading on the relevant stock exchange(s) where the existing Equity Shares of the Transferee Company are listed and/or admitted to trading.
- 10.7 Consequent to and as part of the amalgamation of the Transferor Company with the Transferee Company herein, the Authorised Share Capital of the Transferor Company shall stand merged into and combined with the Authorised Share Capital of the Transferee Company pursuant to the Scheme, without any further act of deed, and without payment of any registration or filing fee on such combined Authorised Share Capital, the Transferor Company and the Transferee Company having already paid such fees. Accordingly, the Authorised Share Capital of the Transferee Company resulting from the amalgamation of the Transferor Company with the Transferee Company shall be a sum of Rs. 59,80,00,000/- divided into 5,98,00,000 Equity Shares of Rs.10/- each and Clause V of the Memorandum of Association of the Transferee Company shall stand altered accordingly.

It further clarified that the approval of the members of the Transferee Company to the Scheme shall be deemed to be their consent / approval also to the alteration of the Memorandum and Articles of Association of the Transferee Company as maybe required under the Act. Clause 'V' of the Memorandum of Association of the Transferee Company shall stand substituted by virtue of the Scheme to read as follows:

Clause 'V' of the Memorandum of Association

The authorised Share Capital of the Company is Rs.63,00,00,000 (Rupees Sixty Three Crores Only) divided into 5,98,00,000 (Five Crores Ninety Eight Lacs) Equity Shares of Rs. 10/- (Rupees Ten) each and 32,00,000 (Thirty Two Lacs) Preference Shares of Rs.10/- (Rupees Ten) each.

- 10.8 The equity shares of the Transferee Company allotted pursuant to the scheme shall remain frozen in the depositories system till listing / trading permission is given by the designated stock exchanges.
- 10.9 Till the listing of the New Equity Shares of the Transferee Company, there will be no change in the pre-arrangement capital structure and shareholding pattern or controls in the Transferee Company, which may affect status of the approval of the stock exchanges to this scheme.

- 10.10 Approval of the Scheme by the shareholders of Transferee Company shall be deemed to be due compliance of the provisions of section 42, 62 if any and other relevant or applicable provisions of the Companies Act, 2013 and Rules made thereunder for the issue and allotment of the Equity shares by Transferee Company to the shareholders of Transferor Company as provided hereinabove.

11. No Allotment of Shares to the Transferee Company

Upon the Scheme coming into effect, all equity shares which the Transferee Company holds in the Transferor Company (either directly or through nominees) shall stand cancelled without any issue or allotment of New Equity Shares or payment whatsoever by the Transferee Company in lieu of such Equity Shares of the Transferor Company.

PART IV

ACCOUNTING TREATMENT AND DIVIDENDS

12. Accounting Treatment

- 12.1 Upon the coming into effect of this Scheme and with effect from the Appointed Date, for the purpose of accounting for and dealing with the value of the assets and liabilities in the books of the Transferee Company, all assets and liabilities shall be recorded at Fair Value and adjust differences in Goodwill/ Capital Reserve/Gain from bargain purchase price.
- 12.2 In case of any difference in accounting policy between the Transferor Company and the Transferee Company, the impact of the same till the Appointed Date will be quantified and adjusted in accordance with 'Indian Accounting Standard Ind AS-8 Accounting Policies, Change in Accounting Estimates and Errors', in the books of the Transferee Company to ensure that the financial statements of the Transferee Company reflect the financial position on the basis of consistent accounting policy.
- 12.3 The difference between the value of respective investments carried in the books of the Transferee Company and the "Fair Value" of the assets of the respective Transferor Company, shall be debited/ credited to Goodwill/ Other Comprehensive Income respectively as the case may be, in the books of the Transferee Company, and dealt with in accordance with the Indian Accounting Standard Ind AS-103 issued by the Institute of Chartered Accountants of India.
- 12.4 Subject to provisions of this Scheme, the Transferee Company shall abide by Indian Accounting Standard Ind AS-103 issued by the Institute of Chartered Accountants of India.
- 12.5 The amalgamation of Transferor Company with the Transferee Company in terms of this Scheme shall take place with effect from the Appointed Date and shall be in accordance with the provisions of Section 2(1B) of the Income Tax Act, 1961.
- 12.6 All inter-corporate deposits, loans and advances, outstanding balances or other obligations between Transferee Company and Transferor Company shall be cancelled and there shall be no obligation/ outstanding in that behalf.
- 12.7 Notwithstanding the above, the Transferee Company, in consultation with their statutory auditors, are authorized to account for this Scheme and effect thereof in any manner whatsoever as may be deemed fit in accordance with the applicable accounting standards.

13. Declaration of Dividend

- 13.1 During the period between the Appointed Date and up to and including the Effective Date, the Transferor Company shall not declare any dividend without the prior written consent of the Board of Directors of the Transferee Company.
- 13.2 For the avoidance of doubt, it is hereby declared that nothing in the Scheme shall prevent the Transferee Company from declaring and paying dividends, whether interim or final, to its equity shareholders as on

the Record Date for the purpose of dividend and the shareholders of the Transferor Company shall not be entitled to dividend, if any, declared by the Transferee Company prior to the Effective Date.

14. Power to Give Effect to this Part

- 14.1. 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 Company will, 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.
- 14.2. Upon coming into effect of the Scheme, the Transferee Company and/or the Transferor Company shall, with reasonable dispatch apply for transition of all licenses and statutory registrations of the Transferee Company including but not limited to product registrations (including applications and authorizations for product registrations), manufacturing licenses, product permissions, certificates, market authorizations, filings, (including experience and prequalification submissions), industrial licences, municipal permissions, approvals, consent, permits, incentives and subsidies. The period between the Effective Date and the last date on which the transfer of all such aforementioned licenses and statutory registrations have occurred is hereinafter referred to as “Transitory Period”.

PART V

DISSOLUTION OF TRANSFEROR COMPANY AND GENERAL TERMS AND CONDITIONS

15. Dissolution of Transferor Company

On the coming into effect of this Scheme, the Transferor Company shall stand dissolved without winding-up, and the Board of Directors and any committees thereof of the Transferor Company shall without any further act, instrument or deed be and stand dissolved.

16. Validity of Existing Resolutions, etc.

Upon the coming into effect of this Scheme the resolutions, if any, of the Transferor Company, which are valid and subsisting on the Effective Date, shall continue to be valid and subsisting and be considered as resolutions of the Transferee Company and if any such resolutions have any monetary limits approved under the provisions of the Act, or any other applicable statutory provisions, then the said limits shall be added to the limits, if any, under like resolutions passed by the Transferee Company and shall constitute the aggregate of the said limits in the Transferee Company.

17. Modification of Scheme

- 17.1 Subject to approval of NCLT, the Transferor Company and the Transferee Company by their respective Board of Directors or any director/executives or any committee authorised in that behalf (hereinafter referred to as the “Delegate”) may assent to, or make, from time to time, any modification(s) or addition(s) to this Scheme which NCLT or any authorities under law may deem fit to approve of or may impose and which the Board of Directors of the Transferor Company and the Transferee Company may in their discretion accept, or such modification(s) or addition(s) as the Board of Directors of the Transferor Company and the Transferee Company or as the case may be, their respective Delegate may deem fit, or required for the purpose of resolving any doubts or difficulties that may arise in carrying out this Scheme. The Transferor Company and the Transferee Company by their respective Boards of Directors or Delegates are authorised to do and execute all acts, deeds, matters and things necessary for bringing this Scheme into effect, or review the position relating to the satisfaction of the conditions of this Scheme and if necessary, waive any of such conditions (to the extent permissible under law) for bringing this

Scheme into effect, and/or give such consents as may be required in terms of this Scheme. In the event that any conditions are imposed by NCLT or any Governmental Authorities, which the Board of Directors of the Transferor Company or the Transferee Company find unacceptable for any reason, then the Transferor Company and the Transferee Company shall be at liberty to withdraw the Scheme.

- 17.2 For the purpose of giving effect to this Scheme or to any modification(s) thereof or addition(s) thereto, the Delegates (acting jointly) of the Transferor Company and Transferee Company may give and are authorised to determine and give all such directions as are necessary for settling or removing any question of doubt or difficulty that may arise under this Scheme or in regard to the meaning or interpretation of any provision of this Scheme or implementation thereof or in any matter whatsoever connected therewith (including any question or difficulty arising in connection with any deceased or insolvent shareholders or depositors, if any of the Transferor Company) or to review the position relating to the satisfaction of various conditions of this Scheme and if necessary, to waive any such conditions (to the extent permissible in law) and such determination or directions or waiver, as the case may be, shall be binding on all parties, in the same manner as if the same were specifically incorporated in this Scheme. For the avoidance of doubt it is clarified that where this Scheme requires the approval of the Board of Directors of the Transferor Company or the Transferee Company to be obtained for any matter, the same may be given through their Delegates.

18. Severability

If any part of this Scheme is found to be unworkable for any reason whatsoever, the same shall not, subject to the decision of the Board of Directors of the Transferor Company and the Transferee Company, affect the validity or implementation of the other parts and/or provisions of this Scheme.

19. Miscellaneous – SEBI Observations

XYZ Ltd, a Transferee Company, its directors and one of Subsidiary Company, namely Ardent Steel Limited, were classified as defaulters for non-payment of the principle amount and interest on the debts availed from the banks and financial institutions in the year 2016-17. The debts of the said Companies were restructured vide Master Restructure Agreements dated 30th March, 2017. Since then the Transferee Company and its Subsidiary are regular in repayment of dues to the banks and financial institutions and there are no over dues as on the date, which is confirmed by the Canara Bank, vide their e-mail dated 07th August, 2018, however, the names of the Company, its subsidiary and their directors are still appearing in the CIBIL's list of defaulters in the category of Non filing suits above Rs. 100 Lakhs.

20. Filing of Applications

The Transferor Company and the Transferee Company shall use their best efforts to make and file all applications and petitions under Sections 230 to 232 and other applicable provisions of the Act, before the respective NCLT for sanction of this Scheme under the provisions of law, and shall apply for such approvals as may be required under law.

21. Approvals

The Transferee Company shall be entitled, pending the sanction of the Scheme, to apply to any Governmental Authority, if required, under any law for such consents and approvals which the Transferee Company may require to own the Undertaking and to carry on the business of the Transferor Company.

22. Scheme Conditional upon Sanctions, etc.

22.1 This Scheme is conditional upon and subject to:

22.1.1 The Scheme being agreed to by the requisite majority of the respective members and/or creditors of the Transferor Company and of the Transferee Company as required under the Act and the requisite orders of the NCLT being obtained;

- 22.1.2 The Transferee Company will provide for voting by the public shareholders through e-voting and will disclose all material facts in the explanatory statement to be sent to the shareholders in relation to the Resolution Sanctioning the Scheme of Amalgamation; and
- 22.1.3 The certified copies of the orders of the NCLT sanctioning this Scheme being filed with the Registrar of Companies, Chhattisgarh.

23. Costs, Charges, Expenses and Stamp Duty

All costs, charges and expenses (including any taxes and duties) incurred or payable by the Transferor Company and Transferee Company in relation to or in connection with this Scheme and incidental to the completion of the amalgamation of the Transferor Company with the Transferee Company in pursuance of this Scheme, including stamp duty on the orders of NCLT, if any and to the extent applicable and payable, shall be borne and paid by the Transferee Company.

(Source : Reference taken from Scheme of Amalgamation of Godawari Power and Ispat Limited & Jagdamba Power and Alloys Limited.)

FORMAT- REPORT OF THE AUDIT COMMITTEE FOR RECOMMENDING THE SCHEME OF AMALGAMATION BETWEEN ABC LTD. AND XYZ LTD. AND THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

The following members were present in the Meeting of the Audit Committee of the Board of Directors of the Company held on (Day), (Date) at (Time) at (Address)

Members present:

In attendance:

By Invitation:

1. Background

- 1.1 A meeting of the Audit Committee of ABC Ltd. ("Company") was held on _____ to consider and recommend the proposed scheme of amalgamation between XYZ Ltd. and the Company ("Scheme"), involving
- (i) the amalgamation of XYZ Ltd. with the Company, and dissolution of XYZ without winding up and consequent issuance of equity shares of the Company to the shareholders of XYZ Ltd., in accordance with the Scheme ("**Amalgamation**");
 - (ii) various other matters incidental, consequential or otherwise integrally connected therewith, including the increase in the share capital of the Company, in accordance with the provisions of, inter alia, Sections 230 to 232 of the Companies Act, 2013.
- 1.2 In terms of the SEBI Scheme Circular CFD/DIL1/CIR/P/2020/249 dated December 22, 2020 ("SEBI Scheme Circular"), a report from the Audit Committee is required recommending the Draft Scheme, taking into consideration, inter alia, the Valuation Report. This report of the Audit Committee is made in order to comply with the requirements of the SEBI Scheme Circular.
- 1.3 In this regard, the Audit Committee considered, inter alia, the following documents:
- (i) The draft Scheme;
 - (ii) Valuation report issued by Independent Chartered Accountant appointed by the Company, for the purposes of determining the share exchange ratio ("Valuation Report");
 - (iii) Fairness opinion issued by, a SEBI Registered Merchant Banker, on the equity shares to be issued by the Company to the shareholders of XYZ pursuant to the amalgamation ("Fairness Opinion");
 - (iv) Certificates obtained from the Statutory Auditors of the Company on the accounting treatment prescribed in the Scheme.

2. Salient features of the Draft Scheme**3. Recommendation of the Audit Committee**

The Audit Committee, having considered the aforementioned documents as placed before the Committee, including the Valuation Report and the Fairness Opinion, does hereby recommend the draft Scheme for favourable consideration by the Board of Directors of the Company, BSE Limited and the National Stock Exchange of India Limited and the Securities and Exchange Board of India.

By order of the Audit Committee

For and on behalf of

Format for Auditor's Certificate

To,

The Board of Directors,

.....

(Name and address of the Company)

We, the statutory auditors of (name of the listed entity),(hereinafter referred to as “the Company”), have examined the proposed accounting treatment specified in clause (specify clause number) of the Draft Scheme of (specify the type of Scheme) between (names of the companies/entities involved) in terms of the provisions of section(s) (specify the relevant section(s)) of the Companies Act, 1956/ Companies Act, 2013 with reference to its compliance with the applicable Accounting Standards notified under the Companies Act, 1956/ Companies Act, 2013 and Other Generally Accepted Accounting Principles.

The responsibility for the preparation of the Draft Scheme and its compliance with the relevant laws and regulations, including the applicable Accounting Standards as aforesaid, is that of the Board of Directors of the Companies involved. Our responsibility is to examine and report whether the Draft Scheme complies with the applicable Accounting Standards and Other Generally Accepted Accounting Principles. Nothing contained in this Certificate, nor anything said or done in the course of, or in connection with the services that are subject to this Certificate, will extend any duty of care that we may have in our capacity of the statutory auditors of any financial statements of the Company. We carried out our examination in accordance with the Guidance Note on Audit Reports and Certificates for Special Purposes, issued by the Institute of Chartered Accountants of India.

Based on our examination and according to the information and explanations given to us, we confirm that the accounting treatment contained in the aforesaid scheme is in compliance with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and circulars issued thereunder and all the applicable Accounting Standards notified by the Central Government under the Companies Act, 1956/ Companies Act, 2013 and/or the accounting treatment in respect of (specify the financial statement item(s)) as prescribed by (name of the regulator) vide its Notification (details of the Notification) which prevail over the accounting treatment for the same as prescribed under the aforesaid Accounting Standards (wherever applicable), except the following:

.....

.....

This Certificate is issued at the request of the (name of the Company) pursuant to the requirements of circulars issued under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for onward submission to the (name of the Stock Exchange(s)). This Certificate should not be used for any other purpose without our prior written consent.

For

.....

(name of the Firm)

Chartered Accountants

Firm Registration No.:

Signature

(Name of the member)

Designation (Partner or proprietor, as may be applicable):

Membership Number:

Place:

Date:

Format for Report on Complaints**Part A**

Sr. No.	Particulars	Number
1.	Number of complaints received directly	
2.	Number of complaints forwarded by Stock Exchanges / SEBI	
3.	Total Number of complaints/comments received (1+2)	
4.	Number of complaints resolved	
5.	Number of complaints pending	

Part B

Sr. No.	Name of complainant	Date of Complaint	Status (Resolved/pending)
1.			
2.			
3.			

Format of the Compliance Report to be submitted along with the draft scheme

It is hereby certified that the draft scheme of arrangement involving (Name of the entities) does not, in any way violate, override or limit the provisions of securities laws or requirements of the Stock Exchange(s) and the same is in compliance with the applicable provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and this circular, including the following:

Sl.	Reference	Particulars
1.	Regulations 17 to 27 of LODR Regulations	Corporate governance requirements
2.	Regulation 11 of LODR Regulations	Compliance with securities laws
Requirements of this circular		
(a)	Para (I)(A)(2)	Submission of documents to Stock Exchanges
(b)	Para (I)(A)(2)	Conditions for schemes of arrangement involving unlisted entities

(c)	Para (I)(A)(4) (a)	Submission of Valuation Report
(d)	Para (I)(A)(5)	Auditors certificate regarding compliance with Accounting Standards
(e)	Para (I)(A)(9)	Provision of approval of public shareholders through e-voting

Company Secretary**Managing Director**

Certified that the transactions / accounting treatment provided in the draft scheme of arrangement involving (Name of the entities) are in compliance with all the Accounting Standards applicable to a listed entity.

Chief Financial Officer**Managing Director**

Format for report on unpaid dues

Sr. No.	Particulars	Details of dues/fine	Amount	Reason for non-payment
1.	Pending Dues of SEBI			
2.	Pending Dues of Stock Exchanges			
3.	Pending Dues of Depositories			

Computation of Fair Share Exchange Ratio

Valuation Approach	XYZ Ltd		PQR Ltd	
	Value per Share	Weight	Value per Share	Weight
Asset Approach	x	a	y	d
Income Approach	x	b	y	e
Market Approach	x	c	y	f
Relative Value per Share	X		Y	
Exchange Ratio (rounded off)			xx	

Specimen Resolution

Consider and approve the Scheme of Amalgamation between the _____ (Transferee Company) and _____ (Transferor Company) and their respective members and creditors under Section 233 of the Companies Act, 2013.

To consider, and if thought fit, to pass with or without modifications, the following Special Resolution:

“RESOLVED THAT pursuant to the provisions of Sections 230 to 232 read with Section 234 and other applicable provisions, if any, of the Companies Act, 2013 including rules, circulars, notifications, if any, made thereunder (including any statutory modification(s) or re-enactment thereof for the time being in force), the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and other applicable provisions of the regulations and guidelines issued by the Securities and Exchange Board of India (SEBI) and Reserve Bank of India (RBI) from time to time, and the applicable provisions of the Memorandum

and Articles of Association of the Company and subject to the approval of the Hon'ble National Company Law Tribunal, _____ Bench and subject to such other approvals, permissions and sanctions of regulatory and other authorities, as may be necessary and subject to such conditions and modifications as may be prescribed or imposed by the Hon'ble National Company Law Tribunal, _____ Bench or by any regulatory or other authorities, while granting such consents, approvals and permissions, which may be agreed to by the Board of Directors of the Company (hereinafter referred to as the ("Board"), which term shall be deemed to mean and include one or more Committee(s) constituted/to be constituted by the Board or any person(s) authorized by the Board to exercise its powers including the powers conferred by this resolution), the Scheme of Amalgamation for merger of the businesses of the industrial undertakings of _____ and _____ ("Scheme"), be and is hereby approved.

RESOLVED FURTHER THAT the Board be and is hereby authorized to do all such acts, deeds, matters and things, as it may, in its absolute discretion deem requisite, desirable, appropriate or necessary to give effect to this resolution and effectively implement the amalgamation/merger embodied in the Scheme and to accept such modifications, amendments, limitations and/or conditions, if any, which may be required and/or imposed by the Hon'ble National Company Law Tribunal, _____ Bench or such other regulatory/statutory authorities while sanctioning the amalgamation/merger embodied in the Scheme or as may be required for the purpose of resolving any doubts or difficulties that may arise in giving effect to the Scheme or for any other such reason, as the Board may deem fit and proper."

TAKE FURTHER NOTICE that in compliance with the provisions of (i) Sections 230, 232, 234 read with Sections 108 and 110 of the Companies Act, 2013; (ii) Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016; (iii) Rule 20, 22 and other applicable provisions of the Companies (Management and Administration) Rules, 2014; (iv) Regulation 44 and other applicable provisions of the SEBI Listing Regulations; and (v) Secretarial Standards on General Meetings, the Transferee Company has also provided the facility of voting prior to the meeting through Postal Ballot and e-voting, so as to enable the Shareholders, to consider and approve the Scheme by way of the aforesaid resolution. Accordingly, voting by Shareholders of the Transferee Company to the Scheme shall be carried out through (i) Postal Ballot (ii) remote e-voting and (iii) e-voting at the venue of the meeting to be held on _____ at _____.

Place:

For and on behalf of the Board of Directors of

_____ (Name of Company)

Date:

_____ Chairman and Managing Director

DIN: _____

Chairperson appointed for the meeting

Specimen Resolution

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF _____ HELD ON _____ AT THE REGISTERED OFFICE OF THE COMPANY SITUATED AT _____.

Consideration and approval of draft Scheme of Amalgamation under section 230-232 and other applicable provisions, if any, of the Companies Act, 2013.

"RESOLVED THAT pursuant to the provisions of Sections 230-232 of Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other applicable rules and regulations made thereunder (including any statutory modification(s) or re-enactment(s) or amendment(s) thereof for the time being in force), relevant provisions of Memorandum of Association and Articles of Association of the Company, and subject to the approval of the shareholders of the Company, the Hon'ble National Company Law Tribunal, _____ Bench ("**NCLT**") and any other statutory authorities, as may be applicable, on the basis of Audit Committee recommendations the consent of the Board of Directors (hereinafter referred to as "the Board") be and is hereby accorded to the draft Scheme ("**Scheme**") of Amalgamation along with Share Exchange Ratio

between _____ (“**Transferee Company**”) and _____ (“**Transferor Company**”) and their respective shareholders.

RESOLVED FURTHER THAT Certificate of _____, Chartered Accountants, the Statutory Auditors of the Transferee Company confirming that the accounting treatment outlined in the Scheme is in compliance with the applicable Indian Accounting Standards (Ind AS) notified under Section 133 and Companies (India Accounting Standards) Rules 2015 and other generally accepted accounting principles.

RESOLVED FURTHER THAT the report of the Audit Committee, considering inter alia the Valuation Report dated _____ of _____, Chartered Accountants and Fairness opinion dated _____ given by _____ SEBI authorized Cat 1 Merchant Banker, be and is hereby taken on record.

RESOLVED FURTHER THAT in compliance with the SEBI Circular, for the purpose of approval under Regulation 37 of the Listing Regulations, 2015 and coordinating with SEBI, the Board of Directors of the company hereby designate “BSE Limited” as the Designated Stock Exchange.

RESOLVED FURTHER THAT any Director of the Transferee Company or Mr _____ or Mr _____, Authorised Signatories of Transferee Company, be and are hereby severally authorized to give effect to the Scheme and to do such acts, deeds, matters and things and also to execute such documents, writings etc. as may be necessary and to settle any questions or difficulties which may arise and give any directions necessary for obtaining approval of and giving effect to the Scheme, as and when required including to take all necessary steps.

CERTIFIED TRUE COPY

FOR _____ (Company Name)

_____ (Name of the Director)

(Designation _____)

Address:

Date:

Place:

LESSON ROUND-UP

- There are various stages in the process of merger and amalgamations under the Companies Act, 2013.
- It is necessary to understand the key terms used in the process of mergers and amalgamations for better documentation.
- Documentation is a very important aspect for filing the scheme along with proper enclosures before the NCLT for seeking approval of the scheme.
- The Scheme of amalgamation would comprise of various parts containing details about Transferor Company, Transferee Company and further details about these two companies.
- Legal provisions of the mergers and amalgamations are contained in Section 230 to 240 of the Companies Act, 2013.
- Detailed care should be taken while drafting the Scheme of amalgamation, notice and explanatory statement.
- There are various forms prescribed under the National Company Law Tribunal Rules, 2016 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 for various applications/petitions to be submitted before NCLT.
- Various documents are to be attached with Petition / Application to be submitted for merger and amalgamation and due care has to be taken to ensure that all such documents are duly enclosed.

GLOSSARY

Documentation: The process of classifying and annotating texts that provides official information or that serves as a record.

Drafting: In legal sense, means an act of preparing the legal documents like agreements, contracts, deeds, etc.

Petition: Petition and application are interchangeable terms normally used to indicate formal applications for seeking a remedy provided by law.

Rejoinder: A written statement/reply of the plaintiff/petitioner by way of defense to pleas' raised in the counter affidavit/written statement from the defendant/respondent.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation).

1. What are the steps involved in the merger and amalgamation?
2. Who are the persons eligible for filing petition before the National Company Law Tribunal?
3. What are the various forms prescribed under the NCLT Rules and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016?
4. What are the various documents to be enclosed along with various types of petitions / applications to be made before the NCLT?
5. Discuss briefly the points to be considered while drafting a scheme of merger and amalgamation.

LIST OF FURTHER READINGS

- Drafting of Contracts by Ravi Singhania, Bloomsbury Publications
- Legal writing and Contract Drafting by Madhavan & Ryder, Bloomsbury Publications
- National Company Law Tribunal and National Company Law Appellate Tribunal: Law Practice and Procedure by Prachi Manekar Wazalwar
- Practical Approach to deeds & documents by MC Bhandari