

**HIGH COURT ORDER OF COMPANY PETITION
BEARING No. 138/2015, 139/2015, 140/2015**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4th DAY OF DECEMBER, 2015

BEFORE

THE HON'BLE MR. JUSTICE ARAVTND KUMAR CO.P.NO. 140/2015

C/W

CO.P.NO. 138/2015

&

CO.P.NO. 139/2015

CO.P.NO. 140/2015:

BETWEEN:

WAY2WEALTH BROKERS PRIVATE LIMITED

A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956, AND
HAVING ITS REGISTERED OFFICE AT
NO. 14, GROUND FLOOR, FRONTLINE GRANDEUR,
WALTON ROAD,BENGALURU-560001,
KARNATAKA, INDIA.

REPRESENTED BY ITS AUTHORISED SIGNATORY

MR. B.G. SRINATH ..PETITIONER

(BY SRI.N.K.DILIP, ADVOCATE FOR M/s.TATVA LEGAL)

AND :

NIL ..RESPONDENT

(BY SMT.S.SUMATHI, CGC FOR ROC)

COUNSEL FOR THE PETITIONER HAS FILED THE ABOVE PETITION U/S 391 TO 394 OF THE COMPANIES ACT, 1956, PRAYING THIS HON'BLE COURT:- TO SANCTION THE COMPOSITE SCHEME OF AMALGAMATION [ANNEXURE A] SO AS TO BE BINDING ON ALL THE SHAREHOLDERS AND CREDITORS OF THE PETITIONER/TRANSFEREE COMPANY; AND ETC.,

CO.P.NO. 138/2015:

BETWEEN:

TECHNO COMMODITY BROKING PRIVATE LIMITED,
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956
AND HAVING ITS REGISTERED OFFICE AT
NO. 14, GROUND FLOOR, FRONTLINE GRANDEUR,
WALTON ROAD, BENGALURU-560 001,
KARNATAKA, INDIA,

REPRESENTED BY ITS

AUTHORISED SIGNATORY
MR. RAGHAVENDRA,B

..PETITIONER

(BY SRI.N.K.DILIP, ADVOCATE FOR M/s.TATVA LEGAL)

AND:

NIL

..RESPONDENT

(BY SRI.K. S.MAHADEVAN, ADVOCATE, SMT.S.SUMATHI,
CGC FOR ROC)

COUNSEL FOR THE PETITIONER HAS FILED THE ABOVE PETITION U/S 391 TO 394 OF THE COMPANIES ACT, 1956, PRAYING THIS HON'BLE COURT-THAT THE COMPOSITE SCHEME OF AMALGAMATION [ANNEXURE-A] MAY BE SANCTIONED BY THIS HONORABLE COURT SO AS TO BE BINDING ON ALL THE SHAREHOLDERS AND CREDITORS OF THE PETITIONER COMPANY AND THE TRANSFEREE COMPANY; AND ETC.,

CO.P.NO. 139/2015

BETWEEN:

TECHNO SHARES AND STOCKS PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES
ACT, 1956 AND HAVING ITS

REGISTERED OFFICE AT
NO,14,GROUND FLOOR, FRONTLINE GRANDEUR,
WALTON ROAD, BENGALURU-560 001
KARNATAKA, INDIA,

REPRESENTED BY ITS DIRECTOR
MR MANJUNATHA K M

..PETITIONER

(BY SRLN.K.DILIP, ADVOCATE FOR M/s.TATVA LEGAL) .

AND:

NIL

..RESPONDENT

(BY SRI.K.S.MAHADEVAN, ADVOCATE, SMT.S.SUMATHI,
CGC FOR ROC)

COUNSEL FOR THE PETITIONER HAS FILED THE ABOVE PETITION U/S 391 TO 394
OF THE COMPANIES ACT, 1956, PRAYING THIS HON'BLE COURT:

THAT THE COMPOSITE SCHEME OF AMALGAMATION [ANNEXURE-A] MAY BE
SANCTIONED BY THIS HONORABLE COURT SO AS TO BE BINDING ON ALL THE
SHAREHOLDERS AND CREDITORS OF THE PETITIONER/TRANSFEROR COMPANY
NO.2 AND THE TRANSFEREE COMPANY; AND ETC.,

THESE COPs COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE
FOLLOWING:

ORDER

Petitioner in Co.P. 138/2015 is transferor company No.1, petitioner in
Co.P. 139/2015 is transferor company No.2 and petitioner in Co.P. 140/2015 is the
transferee company and they are seeking for sanction of composite scheme of
Amalgamation- Annexure-A in all the three petitions.

2. Petitioners - companies for their mutual benefit have evolved a scheme of
amalgamation as per Annexure-A in all the company petitions. Transferor company
No.1 came to be incorporated on 20.10.2003; Transferor company No.2 came to be
incorporated on 24.04.1997 and TransfereeCompany came to be incorporated on
16.08,2000 and they have been carrying on their business as per the objects envisaged
in the Memorandum and Articles of Association. During their subsistence, they have
evolved a Scheme of Amalgamation whereby, transferor- companies would be
amalgamated with M/s.Way 2 Wealth Brokers Private Limited (transferee company) as
detailed in the scheme of amalgamation - Annexure -A. Scheme came to be considered
by the Board of Directors of both the transferor companies in their meeting held on
26.12.2014 and same was approved.

Thereafter, shareholders and secured creditors of Transferor company No.1 have given their consent. Since they had given their consent in writing, transferor company No.1 filed C.A.Nos. 188/2015 to dispense with the meeting of shareholders, secured and unsecured creditors as there are no unsecured creditors. Transferor company No.2 filed C.A. 189/2015 seeking dispensation of meeting of shareholders, and secured creditors and was directed to hold the meeting of unsecured creditors on 23.05.2015 and Chairman for the said meeting appointed by this court has conducted the meeting and filed his report dated 25.05.2015 Annexure-L. Likewise in C.A. 190/2015 by order dated 19.03.2015 this court dispensed with the meeting of shareholders and secured creditors of the transferee company and directed to hold the meeting of unsecured creditors on 23.05.2015 and the Chairman appointed for conducting the said meeting has submitted a report on 25.05.2015 Annexure-P and Chairman's report was accepted by this court vide order dated 16.06.2015 in C.A.No.189/2015 and C.A.190/2015. Subsequent thereto, petitions in question have been filed.

3. Notice came to be issued by this Court on 10.07.2015 to the Regional Director and Official Liquidator. Petitioners were also directed to take out publication in 'The New Indian Express' English Daily and 'Kannada Prabha', Kannada Daily simultaneously and accordingly, it has been complied with. Despite notice being published in the newspapers, no person interested in the affairs of the petitioner - companies have appeared and opposed the same.

4. On 14.08.2015 based on the prayer made by Official Liquidator in OLR No.302/2015 and OLR No.303/2015, this Court appointed M/s.Murugendrappa and Co., Chartered Accountants to scrutinize the books of accounts of transferor companies and directed the auditors to submit a report and on furnishing of the said report, official Liquidator has filed report on 20.10.2015 whereunder Official Liquidator has opined based on the scrutiny report dated 05.10.2015 that transferor companies may be dissolved without winding up. The Registrar of Companies acting on behalf of the Regional Director has filed an affidavit dated 10.09.2015 with the following observations and same is identical in both the affidavits.

They are as follows:

- (i) "That a notice dated 30.07.2015 was issued to the Income-tax Department by the Regional Director (SER) as required by Ministry of Corporate Affairs General Circular No, 1/2014 dated 15.01.2014 giving 15 days time. But no comments/objections have been received so far from the Income Tax Department by the office of the Regional Director (SER).

In view of the fact that notice has been issued by the Ministry of Corporate Affairs to the jurisdictional Income Tax Officer and no comments or objections having been received from the Income Tax Department there is no impediment for approving the scheme for amalgamation.

5. That apart, Scheme of Amalgamation at clause 3.2 of Part II would also indicate that all loans raised and used and liabilities incurred by the transferor companies prior to the effective date shall be discharged by the transferee company. In that view of the matter, sanction of the scheme in any event would be subject to liabilities being borne by transferee company which relates to transferor companies and action in that regard can be initiated against transferee company in the aforestated circumstances.

6. It is noticed that there is no objection from any person interested in the affairs of the transferor companies or the statutory authority except observation made by Registrar of Companies as noticed herein above which has not been accepted by this Court for the reasons already assigned. A perusal of the scheme at Annexure-A would indicate that Scheme of Amalgamation has taken into consideration the mutual benefit of the transferee as well as transferor companies, its shareholders and employees of the transferor company would be accommodated in the transferee company and there being no secured or unsecured creditors, there is no impediment for allowing these petitions by sanctioning the Scheme of Amalgamation. Hence, keeping all these aspects in mind, prayer as sought for by petitioners in these writ petitions deserves to be granted.

Hence, I proceed to pass the following:-

ORDER

- (1) Company petitions No s.138/2015, 139/2015 and 140/2015 are hereby allowed .
- (2) The scheme of amalgamation at Annexure-A in all the company petitions is sanctioned so as to bind the shareholders and creditors of the transferor and transferee companies.
- (3) Transferor companies named above shall stand dissolved without the process of winding up.
- (4) A copy of this order shall be filed with the Registrar of Companies within 30 days from the date of receipt of copy of this order.

**Sd/-
JUDGE**

**ANNEXURE A - COMPOSITE SCHEME OF AMALGAMATION OF COMPANY PETITION
BEARING No. 138/2015, 139/2015, 140/2015**

**OF
TECHNO COMMODITY BROKING PRIVATE LIMITED
AND
TECHNO SHARES AND STOCKS PRIVATE LIMITED
WITH
WAY2WEALTH BROKERS PRIVATE LIMITED**

PART I

PRELIMINARY

- A. This Composite Scheme of Amalgamation provides for the amalgamation of (i) Techno Commodity Broking Private Limited, having its registered office at No. 14, Ground Floor, Frontline Grandeur, Walton Road, Bangalore 560 001 (i.e. the “**Transferor Company No. 1**”) and (ii) Techno Shares and Stocks Private Limited, having its registered office at No. 14, Ground Floor, Frontline Grandeur, Walton Road, Bangalore- 560 001, Karnataka (i.e. the “**Transferor Company No. 2**”) with Way2Wealth Brokers Private Limited, having its registered office at No. 14, Ground Floor, Frontline Grandeur, Walton Road, Bangalore 560 001, Karnataka (i.e. the “**Transferee Company**”) pursuant to the relevant provisions of the Companies Act, 1956.
- B. The Transferor Company No. 1 is a wholly owned subsidiary of Transferor Company No. 2, which holds the entire 100% of the issued, subscribed and paid-up equity share capital of Transferor Company No. 1.
- C. The Transferor Company No. 2 is a wholly owned subsidiary of Transferee Company, which holds the entire 100% of the issued, subscribed and paid-up equity share capital of the Transferor Company No. 2.
- D. The Transferor Company No. 1 was incorporated on October 20, 2003, as per the provisions of the Companies Act, 1956. The Transferor Company No. 1 was involved in the business of trading in derivatives of commodities on the National Commodities and Derivatives Exchange and Multi Commodity Exchange.
- E. The Transferor Company No. 2 was incorporated on April 24, 1997, as per the provisions of the Companies Act, 1956. The Transferor Company No. 2 is involved in the business of share and stock broker services and depository participant and distribution of investment products.
- F. The Transferee Company was incorporated on August 16, 2000, as per the provisions of the Companies Act, 1956. The Transferee Company is involved in the business of share and stock broker services and depository participant and distribution of investment products.
- G. By this Composite Scheme of Amalgamation it is proposed to amalgamate Transferor Company No. 1 and Transferor Company No. 2 (jointly referred to as the “**Transferor Companies**”) with the

Transferee Company without winding up, for the purposes of better, efficient and economical management, control and running of the businesses, and for further development and growth of the business of the Transferee Company and for administrative convenience. The proposed amalgamation between the Transferor Companies and the Transferee Companies shall result in the following benefits, amongst others, to both companies, their respective members and creditors.

- (i) The amalgamation will enable the Transferee Company to intergrate its business operations and provide significant impetus to the growth of the Transferee Company. The consolidation of the activities by way of an amalgamation will lead to synergies of operations and a stronger and wider capital and financial base for future growth/expansion. The combined entity will have a bigger portfolio of services targeted at a wider array of customers, which will strengthen its competitive position in providing share, stock, derivatives securities services and depository participant services along with distribution of investment products.
- (ii) The amalgamation will result in economy of scales and reduction in overheads, administrative, managerial and other expenditure, operational rationalisation, organisational efficiency, and optimal utilisation of various resources.
- (iii) The managerial expertise of the Transferor Companies will contribute to the strength of the Transferee Company. Consequently, the Transferee Company will offer a strong financial structure to all creditors including the creditors of the Transferor Companies, facilitate resource mobilisation and achieve better cash flows. This would contribute substantially towards enhancement of shareholder's value of the Transferee Company.
- (iv) Duplication of administrative functions will be eliminated together with the multiple record - keeping resulting in reduced expenditure.
- (v) This amalgamation will result in a significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and the Transferee Company.
- (vi) The banks, creditors and institutions, if any, are not affected by the proposed amalgamation as their security is maintained.
- (vii) The increased asset base of the Transferee Company and greater revenue inflow would be to the benefit of all the creditors of the Transferor Companies and the Transferee Company, who would continue to be associated with the Transferee Company. The Transferee Company would have better financial viability and clearer focus, which would be in the interests of all creditors including the creditors of the Transferor Companies.
- (viii) There shall be impetus to and increase in the area of sales, network of the Transferee Company apart from reduction in costs.
- (ix) The amalgamation shall result in the combination of manpower of both the companies and a single management structure for the companies.
- (x) The combined managerial and technical expertise would enable the Transferee Company to develop a business model that would be competitive and cogent.

PART II

IN CONSIDERATION OF THE RECIPROCAL PROMISES, THIS SCHEME BETWEEN THE TRANSFEROR COMPANIES AND THE TRANSFEREE COMPANY AND THEIR RESPECTIVE SHAREHOLDERS, CREDITORS (SECURED AND UNSECURED) IS BEING PROPOSED IN ACCORDANCE WITH THE TERMS SET OUT HEREUNDER:

1. DEFINITIONS AND INTERPRETATIONS

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

- 1.1 **“Act” or “The Act”** means the Companies Act, 1956, or any amendments, modifications or re-enactment thereof from time to time.
- 1.2 **“Appointed Date”** means the commencement of business on April 1, 2015.
- 1.3 **“Effective Date”** means last of the dates specified in Clause 13 of this Scheme.
- 1.4 **“Order”** means the order of the High Court of Karnataka, sanctioning the Composite Scheme of Amalgamation.
- 1.5 **“Scheme” or “The Scheme”** means this Composite Scheme of Amalgamation in its present form as approved by the Board of Directors of Transferor Company No. 1, Transferor Company No. 2 and Transferee Company subject to such modification(s) made under Clause 12 of this Scheme as the High Court of Karnataka may impose on the Transferor Company No. 1, the Transferor Company No. 2 and the Transferee Company respectively and such modifications which the Transferor Companies and the Transferee Company may deem necessary subject to the approval of the same by the High Court of Karnataka.
- 1.6 **“Transferee Company”** means Way2Wealth Brokers Private Limited, a company incorporated under the Companies Act, 1956 and having its registered office at No. 14, Ground Floor, Frontline Grandeur, Walton Road, Bangalore- 560 001, Karnataka.
- 1.7 **“Transferor Company No. 1”** means Techno Commodity Broking Private Limited, a company incorporated under the Companies Act, 1956 and having its registered office No. 14, Ground Floor, Frontline Grandeur, Walton Road, Bangalore- 560 001, Karnataka.
- 1.8 **“Transferor Company No. 2”** means Techno Shares and Stocks Private Limited, a company incorporated under the Companies Act, 1956 and having its registered office at No. 14, Ground Floor, Frontline Grandeur, Walton Road, Bangalore- 560 001, Karnataka.
- 1.9 **“Undertaking of the Transferor Companies”** means the business of the Transferor Companies and includes:

- (a) all the assets of the Transferor Companies as on the Appointed Date;
- (b) all liabilities of the Transferor Companies as on the Appointed Date;

Without prejudice to the generality of the above, the Undertaking of the Transferor Companies shall include all rights, privileges, powers and authorities and all property, movable or

immovable, real or personal, corporeal or incorporeal of whatsoever nature, in possession or reversion, present or contingent of whatever nature and where so ever situated in India or overseas, and where so ever situate belonging to or in the ownership, power or possession and/or in the control of or vested in or granted in favour of or enjoyed by the Transferor Companies including in particular, but without being limited to fixed assets, capital work-in-progress, current assets, debts, receivables, investments, software, technologies, belonging to or in the ownership, power or possession and/or in the control of or vested in or granted in favour of or enjoyed by the Transferor Companies, powers, authorities, allotments, approvals, permissions, licenses, consents, exemptions, registrations, statutory licences, no-objection certificates and certifications, contracts, engagements, arrangements, rights, title, interest, quotas, benefits and advantages of whatsoever nature and where so ever situated, liberties, easements, advantages, exemptions, benefits, leases, leasehold rights, licences, tenancy rights, quota rights, permits, approvals, authorisations, right to use and avail of telephones, telexes, facsimile connections & installations, utilities, electricity, power lines, communication lines and other services, reserves, deposits, provisions, funds, benefits of all agreements, subsidies, grants, sales-tax, turnover tax, excise, permits, quotas, rights, entitlements, tenancies, roof rights, brand, all copyrights, trademarks, service marks, know-how, technical know-how, trade names, descriptions, trading style, franchise, labels, label, designs, colour schemes, utility models, holograms, bar codes, designs, patents, copyrights, and other industrial or intellectual property rights of any nature whatsoever and licences in respect thereof, privileges and any rights, title or interest in intellectual property rights, benefits of contracts, agreements and all other rights including lease rights, licenses including those relating to trademarks, or service marks, powers and facilities of every kind, nature and description whatsoever of the Transferor Companies or to which the Transferor Companies are entitled and all the debts, liabilities including contingent liabilities, duties, responsibilities and obligations of Transferor Companies on the Appointed Date and all other obligations of whatsoever kind including liabilities for payment of gratuity, pension benefits, provident fund or compensation in the event of retrenchment and all other interests arising to the Transferor Companies and any accretions or additions thereto after the Appointed Date;

- 1.10 Reference in the Scheme to “**upon the Scheme becoming effective**” or “**effectiveness of the Scheme**” shall mean the Effective Date.

2. SHARE CAPITAL

- 2 2.1 The Share Capital of the Transferor Company No. 1 as on December 26, 2014 is as under:

Particulars	Amount in Rs.
Authorised Share Capital	
15,00,000 Equity Shares of Rs. 10 each/-	1,50,00,000/-
50,000 Redeemable Preference Shares of Rs. 100 each/-.	50,00,000/-
Total	2,00,00,000/-
Issued, Subscribed and Paid up Share Capital	
5,00,000 Equity Shares of Rs. 10 each/-	50,00,000/-

2.2 The Share Capital of the Transferor Company No. 2 as on December 26, 2014 is as under :

Particulars	Amount in Rs.
Authorised Share Capital	
2,00,00,000 Equity Shares of Rs. 10 each/-	20,00,00,000/-
10,00,000 Redeemable Preference Shares of Rs. 10 each/-.	1,00,00,000/-
Total	21,00,00,000/-
Issued, Subscribed and Paid up Share Capital	
1,05,00,000 Equity Shares of Rs. 10 each/-	10,50,00,000/-

2.3 The Share Capital of the Transferee Company as on December 26, 2014 is as under:

Particulars	Amount in Rs.
Authorised Share Capital	
2,20,00,000 Equity Shares of Rs. 10 each/-	22,00,00,000/-
Issued, Subscribed and Paid up Share Capital	
1,77,50,000 Equity Shares of Rs. 10 each/-	17,75,00,000/-

3. AMALGAMATION OF COMPANIES

3.1 TRANSFER AND VESTING OF ASSETS

3.1.1 Upon coming into effect of this Scheme and with effect from the Appointed Date and subject to the provisions of this Scheme including in relation to the mode of transfer and vesting, all of the assets, both movable and immovable, tangible and intangible, investments, rights, title and interests comprised in the Undertaking of Transferor Companies shall pursuant to Section 394 of the Act and without any further act or deed be transferred to and vested in the Transferee Company so as to become as and from the Appointed Date, the estate, assets, rights, title and interest of the Transferee Company.

3.1.2 The mode of vesting of assets referred to in Clause 3.1.1 is as under:

3.1.2.1 In respect of such of the said assets as are movable in nature including investments or are otherwise capable of transfer by manual delivery and/or by endorsement and delivery, the same shall be so transferred by the Transferor Companies to the Transferee Company in pursuance of the provisions of Section 394 of the Act, without requiring any deed or instrument of conveyance for the same and upon such transfer the same shall become the property, estate, assets, rights, title interest and authorities of the Transferee Company.

3.1.2.2 In respect of such of the said assets of the Transferor Companies other than those referred to in Clause 3.1.2.1 above including the immovable assets, the same shall, without any further act, instrument or deed, be and stand transferred to and vested in and/or deemed to be transferred to and vested in the Transferee Company with effect from the Appointed Date pursuant to the provisions of Section 394 of the Act and the concerned authorities having jurisdiction over the assets shall endorse and record the name of Transferee Company in its record so as to facilitate the implementation of the Scheme and vesting of the Undertaking of

the Transferor Companies in the Transferee Company without hindrance from the Appointed Date. For the avoidance of doubt, it is hereby clarified that all the rights, title and interest of the Transferor Companies in any leasehold properties shall pursuant to Section 394 of the Act and the provisions of this Scheme, without any further act or deed, be and stand transferred to and vested in and/or be deemed to have been and stand transferred to and vested in the Transferee Company so as to become as and from the Appointed Date, the right, title and interest of the Transferee Company.

- 3.1.2.3 In respect of movable assets, other than those specified in Clause 3.1.2.1 above, including all businesses through /with existing sub-brokers / authorised persons /clients and related rights & obligations, undertakings / records / know your customer documents, sundry debtors, outstanding loans, advances recoverable in cash or in kind or for value to be received, bank balances, cash balances and deposits with Government, Semi Government, local and other authorities, bodies and customers, etc., the same shall be so transferred by the Transferor Companies, and shall become the property of the Transferee Company in pursuance of the provisions of Section 394 of the Act without requiring any deed or instrument of conveyance for 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 debts, loans, advances or deposits have arisen in order to give effect to the provisions of this Clause. The Transferee Company may, if required, give notice in such form as it may deem fit and proper to such person, debtor or depositee that pursuant to the High Court of Karnataka having sanctioned the Scheme, the said person, debtor or depositee should pay the debt, loan or advance or make good the same or hold the same to its account and that the right of the Transferee Company to recover or realise the same is in substitution of the right of the Transferor Companies. The Transferee Company shall under the provisions of the Scheme be deemed to be authorised to execute any such writings on behalf of the Transferor Companies and to implement or carry out all such formalities or compliances referred to above on the part of the Transferor Companies to be carried out or performed.
- 3.1.2.4 All patents, copyrights, designs, trademarks, service marks, know-how, technical know-how, trade names, descriptions, trading style, franchise, labels, label designs, colour schemes, utility models, holograms, bar codes, patents, copyrights, and other industrial or intellectual property rights of any nature whatsoever and licenses, privileges in respect thereof, of every kind, nature and description whatsoever of the Transferor Companies or to which the Transferor Companies are entitled or which may accrue to the Transferor Companies shall, pursuant to the provisions of Section 394 of the Act, without any further act, instrument or deed, be and stand transferred to and vested in and or be deemed to have been transferred to and vested in and be available to the Transferee Company so as to become as and from the Appointed Date, all the patents, copyrights, designs, trademarks, service marks, know-how, technical know-how, trade names, descriptions, trading style, franchise, labels, label designs, colour schemes, utility models, holograms, bar codes, patents, copyrights, and industrial or intellectual property rights, licenses and privileges of the Transferee Company and shall remain valid, effective and enforceable by the Transferee Company on the same terms and conditions.
- 3.1.2.5 All the licenses, permits, quotas, approvals, permissions, incentives, sales tax deferrals, loans, subsidies, concessions, grants, rights, claims, leases, tenancy rights, liberties, rehabilitation schemes, special status and other benefits or privileges enjoyed or conferred upon or held or availed of by and all rights and benefits that have accrued, which may accrue to the Transferor Companies shall, pursuant to the provisions of Section 394 of the Act, without any further act, instrument or deed, be and stand transferred to and vested in and or be deemed to have been transferred to and vested in and be available to the Transferee Company so as to become as and from the Appointed Date the licenses, permits, quotas, approvals,

permissions, incentives, sales tax deferrals, loans, subsidies, concessions, grants, rights, claims, leases, tenancy rights, liberties, rehabilitation schemes, special status and other benefits or privileges of the Transferee Company and shall remain valid, effective and enforceable on the same terms and conditions to the extent permissible under law.

- 3.1.2.6 Upon the coming into effect of this Scheme, and subject to the provisions of this Scheme and receipt of third party consents if necessary, all contracts, deeds, bonds, agreements, arrangements including but not limited to all direct and indirect tax exemptions and/or deferral benefits and/or any other direct or indirect tax benefits and all other instruments of whatsoever nature to which the Transferor Companies are a party or to the benefit of which Transferor Companies may be eligible, and which are subsisting or having effect immediately before the Effective Date, shall remain in full force and effect against or in favour of the Transferee Company as the case may be and may be enforced as fully and effectually as if, instead of Transferor Companies, the Transferee Company had been a party or beneficiary or obligee thereto. The Transferee Company shall, wherever and if necessary, enter into and/or issue and/or execute deeds, writings or confirmations, enter into any tripartite arrangements, confirmations or novations to which Transferor Companies will also be a party in order to give formal effect to the provisions of this clause. Similarly, the exemption privilege and benefits under direct and indirect taxes availed/ enjoyed currently by the Transferor Companies shall continue to be available in the hands of the Transferee Company unhindered even after/upon coming into effect of this Scheme.
- 3.1.2.7 All the profits or incomes accruing or arising to the Transferor Companies, or expenditure or losses arising or incurred (including the effect of taxes, if any, thereon) by the Transferor Companies shall, for all purposes, be treated and be deemed to be and accrue as the profits or incomes or expenditure or losses or taxes of the Transferee Company, as the case may be.
- 3.1.3 It is clarified that all assets and receivables whether contingent or otherwise of the Transferor Companies as on start of business on the Appointed Date whether provided for or not, in the books of accounts and all other assets or receivables which may accrue or arise on or after the Appointed Date but which relate to the period up to the Appointed Date shall be the assets and receivables or otherwise as the case may be of the Transferee Company.
- 3.1.4 The aforesaid transfer/vesting, shall be, subject to the existing validly created charge/mortgage/hypothecation over the said assets or any part of it, provided however, that any reference in any security documents to which the Transferor Companies are a party, to such assets of the Transferor Companies, offered or agreed to be offered as security for any financial assistance both availed and to be availed up to any limit for which sanctions have already been obtained by the Transferor Companies or obligations to the secured creditors of the Transferor Companies shall be construed as references only to the assets pertaining to the Transferor Companies as are vested in the Transferee Company by virtue of the aforesaid Clause 3.1.1 of the Scheme to the end and intent that such security, mortgage and/or charge shall not extend or deemed to extend to any of the assets or to any of the other units or divisions or undertakings of the Transferee Company, unless specifically and in writing agreed to by the Transferee Company with such secured creditors and subject to the consents and approvals of the existing secured creditors of the Transferee Company with such secured creditors and subject to the consents and approvals of the existing secured creditors of the Transferee Company either on *pari passu* basis or otherwise, as may be agreed to by the Transferee Company and the secured creditors. The secured creditors of the Transferee Company shall continue to have a charge over the assets of Transferee Company and such charge shall not extend to the assets of the Transferor Companies, transferred to the Transferee Company pursuant to the Scheme. In respect of the floating charges created by the Transferor Companies in favour of its lenders for all the movable assets, documents of title to

goods, receivables, claims and other current assets that are acquired by the Transferor Companies from the Appointed Date till the Effective Date shall be deemed to be the security and shall be available as security for the loans, cash credits and other working capital facilities, both fund based and non-fund based, which were sanctioned by the lenders of the Transferor Companies, either utilised fully or partly or unutilised by the Transferor Companies, subject to the limits sanctioned by the lenders.

3.2 TRANSFER OF LIABILITIES

Upon coming into effect of the Scheme and with effect from the Appointed Date:

- 3.2.1 All secured and unsecured debts, (whether in Rupees or in foreign currency) all liabilities, duties and obligations of the Transferor Companies (hereinafter referred to as the “**said Liabilities**”) shall also be and stand transferred or be deemed to be and stand transferred, without any further act, instrument or deed, to the Transferee Company, pursuant to the provisions of Section 394 of the Act so as to become as and from the Appointed Date the debts, liabilities, duties and obligations of the Transferee Company such 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 debts, liabilities, duties and obligations have arisen in order to give effect to the provisions of this clause. Provided always that nothing in this clause shall or is intended to enlarge the security for any loan, deposit or other indebtedness created by the Transferor Companies prior to the Appointed Date which shall be transferred to and be vested in the Transferee Company by virtue of the amalgamation and the Transferee Company shall not be required or obliged in any manner to create any further or additional security thereof after the Appointed Date or otherwise. The Transferee Company may, at any time after coming into effect of this Scheme in accordance with the provisions hereof, if so required under any law or otherwise, execute deeds of confirmation in favour of the creditors of the Transferor Companies or in favour of any other party to any contract or arrangement to which either of the Transferor Companies was a party or any writings, as may be necessary, in order to give formal effect to the above provisions. The Transferee Company shall under the provisions of the Scheme be deemed to be authorised to execute any such writings on behalf of the Transferor Companies and to implement or carry out all such formalities or compliances referred to above on the part of the Transferor Companies to be carried out or performed.
- 3.2.2 Any loans or other obligations due between or amongst the Transferor Companies and the Transferee Company shall stand discharged and there shall be no liability or debt in that behalf. It is clarified that all debts, liabilities, duties, responsibilities and obligations of the Transferor Companies as on start of business on the Appointed Date whether provided for or not in the books of accounts and all other liabilities etc which may accrue or arise on or after the Appointed Date but which relates to the period up to the Appointed Date shall be the debts, liabilities, duties and obligations of the Transferee Company.
- 3.2.3 Upon the coming into effect of this Scheme in accordance with the provisions hereof, the borrowing powers, if any, of the Transferee Company as of the Appointed Date, without any further act or deed on the part of the Transferee Company shall stand enhanced to the extent of the borrowing powers of the Transferor Companies and if so required, these limits as enhanced may be increased from time to time by the Transferee Company.
- 3.2.4 All the loans advanced and other facilities sanctioned to the Transferor Companies by its bankers/financial institutions prior to the Appointed Date which are partly drawn/utilised shall be deemed to be the loans/advances sanctioned to the Transferee Company and the said loans and advances shall be drawn/utilised either partly or fully by the Transferor Companies

from the Appointed Date till the Effective Date and all the loans/advances and/or other facilities so drawn by the Transferor Companies shall on the Effective Date be treated as the advances and loans made available to the Transferee Company and any balance in the said accounts shall be transferred to the Transferee Company and all the obligations of the Transferor Companies under any loan agreement shall be construed as and shall become the obligation of the Transferee Company without any further act or deed on the part of the Transferee Company.

- 3.2.5 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, execute deeds of confirmation, in favour of the secured creditors of the Transferor Companies or in favour of any other party to any contract or arrangement to which they are a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Transferee Company shall under the provisions of the Scheme be deemed to be authorised to execute any such writings on behalf of the Transferor Companies and to implement or carry out all such formalities or compliance referred to above on their part to be carried out or performed.
- 3.2.6 It is hereby clarified that merely the increase in the size and turnover of the Transferee Company subsequent to this Scheme shall not have the effect of increasing any liability or penalty on the Transferee Company for any matters that arise prior to the Appointed Date.
- 3.2.7 It is clarified that any advance tax paid / TDS certificates received by the Transferor Companies /MAT credits be treated and be deemed to be and accrue as taxes paid by the Transferee Company.
- 3.2.8 The existing provident fund, gratuity fund, and pension and / or superannuation fund or trusts created by the Transferor Companies or any other special funds created or existing for the benefit of the employees of the Transferor Companies shall at an appropriate stage be transferred to the relevant funds of the Transferee Company and till such time shall be maintained separately.
- 3.2.9 The Transferee Company, if necessary shall take steps for suitable alterations in the Memorandum of Association and Articles of Association so as to enable it to implement this Scheme as may be required.

3.3 CONTRACTS, DEEDS, BONDS AND OTHER INSTRUMENTS.

Subject to the other provisions contained in the Scheme, all contracts, deeds, bonds, agreements and other instruments of whatsoever nature to which either of the Transferor Companies are a party subsisting or having effect immediately before the amalgamation, shall be, in full force and effect, against or in favour of the Transferee Company, as the case may be, and may be enforced as fully and effectively as if instead of the Transferor Companies, the Transferee Company had been a party thereto. The Transferee Company shall enter into and/or issue and/or execute deeds, writings or confirmation or enter into any tripartite arrangement, confirmations or novations to which the Transferor Companies will, if necessary, also be party in order to give formal effect to the provisions of this clause, if so required or it becomes necessary.

3.4 TREATMENT OF TAXES PAID BY THE TRANSFEROR COMPANIES:

All taxes, levies, cess etc. (whether direct or indirect) that might have been paid by the Transferor Companies (whether before the Appointed Date or after the Appointed Date) during the period when

deemed to be a transfer of trust property from one set of trustees to another set of trustees in accordance with the provisions of the relevant labour laws, Indian Trusts Act, 1882 and the Income Tax Act, 1961 and relevant stamp legislation as applicable. In such case, appropriate Deed(s) of Trust and/or documents for transfer of trust properties shall be executed simultaneously upon the sanction of the Scheme in accordance with the terms hereof by the trustees in favour of the trusts of the Transferee Company so as to continue the benefits of the employees. For this purpose such funds or schemes of the Transferor Companies may be continued and/or amalgamated with and/or transferred to the similar funds/schemes of the Transferee Company, if the Transferee Company considers so desirable or deemed fit for the smooth administration, management, operation and uniformity of such funds/schemes so however, that such funds/schemes do not become less favourable to the employees of the Transferor Companies with reference to those on the date preceding the Effective Date. The trustees including the Board of Directors of the Transferee Company shall be entitled to adopt such course in this regard as may be advised provided however that there shall be no discontinuation or breakage in the service of the employees of the Transferor Companies.

- 4.5 It is clarified that with regard to such employees of the Transferor Companies who have ceased to be the employees of the Transferor Companies on account of reasons other than any disciplinary action that may have been taken against such employees by the Transferor Companies, from the Appointed Date, the Transferee Company shall assume all the responsibilities and obligations of the Transferor Companies towards such employees until the said responsibilities and obligations stand duly discharged in law.

5. CONDUCT OF BUSINESS TILL EFFECTIVE DATE

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

5.1.1 the Transferor Companies shall be deemed to have been carrying on and shall carry on all its business(es) and activity(ies) and shall be deemed to have held and stood possessed of and shall hold and stand possessed of all of the assets of the Transferor Companies for and on account of and in trust for the Transferee Company. The Transferor Companies hereby undertakes to hold the said assets with utmost prudence until the Effective Date.

5.1.2 the Transferor Companies shall carry on its business and activities with reasonable diligence, business prudence in the ordinary course of business and shall not (without the prior written consent of the Transferee Company) alienate, charge, mortgage, encumber or otherwise deal with or dispose off any of its units/undertakings or any part thereof except pursuant to any pre-existing obligation undertaken by the Transferor Companies prior to the Appointed Date.

5.1.3 all the profits or income accruing to the Transferor Companies or expenditure or losses arising or incurred or suffered by Transferor Companies shall pursuant to coming into effect of the Scheme 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.

5.2 Save as provided for in this Scheme, the Transferor Companies shall not make any change in its capital structure either by any increase (*by fresh issue of equity shares whether by way of public issue, private placement, on a rights basis, or issuance of bonus shares, convertible debentures or otherwise*), decrease, reduction, reclassification, sub-division or consolidation, re-organisation, or in any other manner which may, in any way, affect the operation of the Scheme, except by mutual consent of the respective Boards of Directors of the Transferor Companies and Transferee Company.

the merger has not become effective for any tax liability that arises after the Appointed Date shall be deemed to be tax paid by the Transferee Company and credit in respect thereof shall be given to the Transferee Company accordingly.

3.5 TREATMENT OF SCHEME FOR THE PURPOSES OF THE INCOME TAX ACT, 1961.

- 3.5.1 This Scheme has been drawn up to comply and come within the definition and conditions relating to "Amalgamation" as specified under Section 2(1B) and Section 47 of the Income Tax Act, 1961.
- 3.5.2 If any terms or provisions of the Scheme are found or interpreted to be inconsistent with the provisions of the said sections of the Income Tax Act, 1961, at a later date, including resulting from an amendment of law or for any other reason whatsoever, the Scheme shall stand modified/ amended to the extent determined necessary to comply and come within the definition and conditions relating to "Amalgamation" as specified in the Income Tax Act, 1961. In such an event the clauses which are inconsistent shall be read down or if the need arises be deemed to be deleted and such modification/reading down or deemed deletion shall however not affect the other parts of the Scheme.

4. TRANSFER OF EMPLOYEES

On the Effective Date:

- 4.1 The services of all the employees of the Transferor Companies shall stand transferred to the Transferee Company on the terms and conditions not less beneficial to such employees than those subsisting with reference to the Transferor Companies. The position, rank, and designation of the employees would be decided by the Transferee Company.
- 4.2 The services of such employees shall not be treated as broken or interrupted for the purposes of bonus, provident fund, gratuity, superannuation or other statutory purposes and for all purposes will be reckoned from the date of their respective appointments with the respective Transferor Companies, as the case may be.
- 4.3 Subject to Clause 4.1, the Transferee Company shall have the right to transfer such employees to any unit, division, profit/cost centre or department of the Transferee Company situated anywhere in India or abroad if warranted and as may be deemed necessary from time to time.
- 4.4 In regard to provident fund, gratuity fund, superannuation fund or any other special fund created or existing for the benefit of such employees of the Transferor Companies, upon the Scheme becoming effective, the Transferee Company shall stand substituted for the Transferor Companies for all purposes whatsoever relating to the administration or operation of such schemes or funds in relation to the obligations to make contributions to the said funds in accordance with the provisions of such schemes or funds in the respective trust deeds or other documents. It is the aim and intent of the Scheme that all the rights, duties, powers and obligations of the Transferor Companies in relation to such schemes or funds shall become those of the Transferee Company and if necessary the names of the aforesaid funds or schemes will be suitably changed. It is clarified that the services of the employees of the Transferor Companies will be treated as having been continuous for the purpose of the aforesaid schemes, fund, trusts, etc. In the event that the trustees/funds are constituted as holders of any securities, trust funds of trust monies, in relation to any provident fund trust, gratuity trust or superannuation trust of the Transferor Companies, such funds/securities/ monies shall be transferred by such funds/ trustees of the trusts of the Transferor Companies to such funds/trustees of the trusts of the Transferee Company as may be existing or set up for the same purpose and object and such transfer shall be

5.3 The Transferor Companies shall also be entitled, pending the sanction of the Scheme, to apply to the Central Government, State Government, and all other agencies, departments and statutory authorities concerned, as are necessary for such consents, approvals and sanctions which the Transferee Company may require.

5.4 The Transferee Company shall carry on the business of the Transferor Companies after the Effective Date.

6 CONCLUDED MATTERS

The transfer and vesting of the assets and the liabilities in the Transferee Company and the continuance of contracts or proceedings by or against the Transferee Company as provided in this Scheme shall not affect any contract or proceedings relating to the assets and the liabilities, fully performed and completed by the Transferor Companies before the Appointed Date and the Transferee Company accepts and adopts all such acts, deeds, matters and things done and or executed by the Transferor Companies in this regard.

7 DISOLUTION WITHOUT WINDING UP OF TRANSFEROR COMPANIES

On the Scheme becoming effective, the Transferor Company No. 1 and Transferor Company No 2 shall stand dissolved without being wound up without further acts by parties and its name shall be struck off from the list of Companies maintained by the Registrar of the Companies, Karnataka.

8 CONSIDERATION BY THE TRANSFEE COMPANY

8.1 The entire equity share capital of Transferor Company No. 1 is held by Transferor Company No. 2 and the entire equity share capital of Transferor Company No. 2 is held by the Transferee Company. The Transferor Companies undertake not to effect any change in their equity share capital till this Scheme comes into effect. Upon the coming into effect of this Scheme, (a) the investment made by the Transferor Company No. 2 in the equity share capital of Transferor Company No. 1 and (b) the investment made by the Transferee Company in the equity share capital of the Transferor Company No. 2 shall stand cancelled and no shares shall be issued by the Transferee Company to either of the Transferor Companies, without there being any further act or deed in furtherance thereof.

9 ACCOUNTING TREATMENT

9.1 The Transferee Company shall, upon the Scheme becoming operative, record the assets and liabilities of the Transferor Companies vested in it pursuant to this Scheme, at the respective book value in accordance with the applicable accounting standards.

9.2 The investments made in the share capital of (a) Transferor Company No. 1 by Transferor Company No. 2 and (b) Transferor Company No.2 by Transferee Company will stand cancelled.

9.3 Upon the Scheme becoming effective, any goodwill arising out of amalgamation, shall first be set off and deducted from the securities/share premium account of the Transferee Company after adjusting for the cancellation of investments held. In the event the securities/share premium account is insufficient, then goodwill arising out of amalgamation shall be set off and deducted from out of the general reserves of the Transferee Company. However if even the general reserves of the Transferee Company are insufficient, then the goodwill arising out of amalgamation shall be carried on the books of the Transferee Company.

10 PENDING LEGAL PROCEEDINGS

If any suit, appeal or other proceeding of whatever nature by or against Transferor Companies be pending, the same shall not abate or be discontinued or be in any way prejudicially affected by reason of the amalgamation 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 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 Companies as if this Scheme had not been made. Therefore, upon this Scheme coming into effect, all legal actions, suits, writs or other proceedings by or against the Transferor Companies pending and/or arising on or before the Effective Date shall be continued and be enforced by or against the Transferee Company, as the case may be, as effectually as if the same had been pending and/or arising by or against the Transferee Company.

11 APPLICATION TO THE HIGH COURT OF KARNATAKA

The Transferee Company and the Transferor Companies shall, with all reasonable dispatch, make applications to the High Court of Karnataka where the registered office of the Company is situated, for sanctioning this Scheme under Section 391 to 394 of the Act for an Order or Orders thereof sanctioning this Scheme and for carrying this Scheme into effect and for dissolution of the Transferor Companies without winding up under the provisions of law.

12 MODIFICATIONS/AMENDMENTS TO THE SCHEME

- 12.1 The Transferor Companies and Transferee Company by their respective Boards of Directors may make and/or consent to any modifications/amendments to the Scheme or to any conditions or limitations that the court or any other authority may deem fit to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them. The Transferor Companies and Transferee Company by their respective Boards of Directors shall be authorised to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions whether by reason of any directive or orders of any other authorities or otherwise howsoever arising out of or under or by virtue of the Scheme and/or any matter concerned or connected therewith.
- 12.2 For the purpose of giving effect to this Scheme or to any modifications or amendments thereof or additions thereto, the delegate(s)/ representative(s) of the Transferee Company may give and are hereby authorized to determine and give all such directions as are necessary including directions for settling or removing any question of doubt or difficulty that may arise and such determination or directions, 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.

13 SCHEME CONDITIONAL ON APPROVALS/SANCTIONS

- 13.1 The Scheme is condition on and subject to:
 - 13.1.1 Approval of the Scheme by the requisite majority of the respective members of and such class of persons of the Transferor Companies and Transferee Company as may be directed by the High Court of Karnataka on applications made for directions under section 391 of the Act.
 - 13.1.2 Consent of the secured and unsecured creditors of the Transferor Companies and the Transferee Company.
 - 13.1.3 Sanctions and Orders under the provisions of Section 391 read with Section 394 of the Act being obtained by the Transferor Companies and Transferee Company from the High Court of Karnataka.

- 13.1.4 All other sanctions and approvals as may be required by law in respect of this Scheme being obtained.
- 13.2 This Scheme, although to come into operation from the Appointed Date, shall not become effective until the last of the following dates, namely:
 - 13.2.1 That on which the last of the aforesaid consents, approvals, permissions, resolutions, assignments and orders as mentioned in Clause 13.1 shall be obtained or passed.
 - 13.2.2 That on which all necessary certified copies of Orders under Sections 391 and 394 of the Act shall be duly filed with the appropriate Registrar of Companies.

The last of such dates shall be the “**Effective Date**” for the purpose of this Scheme.

- 13.3 It is clarified that the Scheme shall become effective from the Effective Date however it shall be operative from the Appointed Date.

14 COSTS

- 14.1 All costs, charges and expenses including stamp duty and registration fee of any deed, document, instrument or court's order including this Scheme or in relation to or in connection with negotiations leading upto the Scheme and of carrying out and implementing the terms and provisions of this Scheme and incidental to the completion of arrangement in pursuance of this Scheme shall be borne and paid by the Transferee Company.
- 14.2 In the event of any of the said sanctions and approvals referred to in Clause 13 above not being obtained and/or complied with and/or satisfied and/or this Scheme not being sanctioned by the High Court of Karnataka and/or Order or Orders not being passed as aforesaid before or within such further period or periods as may be agreed upon between the Boards of Directors of the Transferor Companies and the Transferee Company (who are hereby empowered and authorised to agree to and extend the aforesaid period from time to time without any limitations in exercise of their powers through and by their respective delegate(s)) or for any other reason this Scheme cannot be made effective, this Scheme shall stand revoked, cancelled, be of no effect and be null and void. No rights and liabilities shall accrue to or be incurred inter-se by the parties in terms of the Scheme, save and except in respect of any act or deed done prior thereto as is contemplated hereunder or as to any right, liability or obligation which has arisen or accrued pursuant thereto and which shall be governed and be preserved or worked out as may otherwise arise in law. Further the Boards of Directors of the Transferor Companies and Transferee Company shall be entitled to revoke, cancel and declare the Scheme to be of no effect if such Boards are of view that the coming into effect of the Scheme in terms of the provisions of this Scheme or filing of the drawn up Orders with any authority could have serious financial implication on the Transferor Companies and/or the Transferee Company or any of the aforesaid companies. And in case of any of the aforesaid events, each party shall bear their respective costs, charges and expenses in connection with this Scheme.

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