

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Through web-based video conferencing platform)

CA (CAA) No.23/BB/2022
U/s. 230 to 232 of the Companies Act, 2013
R/w Rule 3 of the Companies (CAA) Rules, 2016 and
Rule 11 of the NCLT Rules, 2016

IN THE MATTER OF:

M/s SHAKTI AUTO CAM PRIVATE LIMITED

Registered office at:
No.18B, Doddanekkundi Industrial Area,
1st Stage Whitefield Road,
Bengaluru- 560048
Karnataka.

-Applicant Company No.1 /Transferor Company

AND

M/s SHAKTI PRECISION COMPONENTS (INDIA) PRIVATE LIMITED

Registered office at:
No.20-B, Doddanekkundi Industrial Estate,
Whitefield Road, Mahadevapura,
Bengaluru- 560048,
Karnataka.

-Applicant Company No. 2/ Transferee Company

Their Respective Shareholders And Creditors

Order delivered on: 18th August, 2022

Coram: 1. Hon'ble Shri. Kishore Vemulapalli, Member (Judicial)
2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

Present:
For the Applicant Companies : Shri. Parameshwar G Bhat, PCS

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present First Motion Application is filed by Shakti Auto Cam Private Limited (described in short as 'Applicant Company No.1/Transferor Company) and Shakti Precision Components (India) Private Limited (described in short as 'Applicant Company No.2/Transferee Company) under



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Sections 230 to 232 of the Companies Act, 2013 and Rule 3 of the Companies (CAA) Rules, 2016 r/w Rule 11 of NCLT, Rules 2016 seeking to dispense with convening the meeting of the Equity Shareholders and Unsecured Creditors of the Transferor Company, and to dispense with convening the meeting of Equity shareholders and secured creditors of the Transferee Company and to convene the meeting of unsecured creditors of the Transferee Company for the purpose of considering the proposed scheme of Amalgamation. As there are no secured creditors in the Transferor company there is nothing to convene their meeting

2. The Scheme of Amalgamation (for short the 'Scheme') of Shakti Auto Cam Private Limited with Shakti Precision Components (India) Private Limited has been placed on record at Pg 42 of Application.
3. The Applicant Company No 1 is a private limited company incorporated on 07.11.1991 under the Provisions of the Companies Act, 1956 before the Registrar of Companies, Karnataka, bearing Corporate Identification Number (CIN) U50300KA1991PTC012479 having its current registered office at No. 18 B, Doddanekkundi Industrial Area, 1st Stage Whitefield Road, Bangalore-560048. The copy of Certificate of Incorporation dated 07.11.1991 issued by the Registrar of Companies, Karnataka and Memorandum and Articles of Association is found attached as Annexure A to the Application. As per the Memorandum of Association, the main objects of Transferor Company is as follows:

- (i) "The Transferor Company was incorporated with the following objects: to carry on the business of manufacture/sale/trade/import/export/machining of auto parts, components, accessories, casting, forgings generally used in automobiles and vehicles, electro-mechanical, electro-chemical products, engineering products, tools, jigs and fixtures of every description
- (ii) To Carry on Job-work, or Sub-contract business in machining of autoparts, components, accessories, castings, forgings generally used in automobiles and vehicles, electro-mechanical products, engineering products, tools, jigs and fixtures of every description.



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(iii) *To import, export and to deal in all types of raw materials, finished goods, plant and machinery equipments used in the manufacture of automobiles and vehicles, electro-mechanical products, electro-chemical products engineering products, tools, jigs and fixtures of every description."*

4. The authorised share capital of the Transferor Company is Rs. 1,00,00,000/- (Rupees One Crore only) divided into 10,00,000 (Ten Lakhs) equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of the Transferor Company is Rs. 54,00,000/- (Rupees Fifty Four Lakhs Only) divided into 5,40,000 (Five Lakhs and Forty Thousands) fully paid up equity shares of Rs. 10/- each.

5. The Transferee Company is a private limited company incorporated on 29.01.1999 under the provisions of the Companies Act, 1956 before the Registrar of Companies, Karnataka, bearing Corporate Identification Number (CIN) U34300KA1999PTC024691 and having its current registered office at No. 20-B, Doddanekkundi Industrial Estate Whitefield Road, Mahadevapura, Bangalore 560048. The copy of Certificate of Incorporation dated 29.01.1999 issued by Registrar of Companies, Karnataka and Memorandum and Articles of Association of Association of Transferee Company is found attached at Annexure C of the Application. As per the Memorandum of Association, the main object of the Transferee Company is as follows:

(i) *"To carry on the business of manufacture, development, assembled, deal, import, export and render consultancy and services in all kind of automobile components of every description electronic products and equipments of description and medical products, telecom products, electronic products, mechanical products, electrical products, electromechanical products, test equipment & tools. Software products, computer software, computers, computer based system, computer peripherals".*

6. The authorised share capital of the Transferee Company is Rs. 5,00,00,000/- (Rupees Five Crores only) divided into 50,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the Transferee Company is Rs. 3,59,00,000/- (Rupees Three Crores Fifty Nine Lakhs only) divided into 35,90,000 fully paid up equity shares of Rs. 10/- each.



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7. The preamble of the proposed reads as under:-

*"This Scheme of Amalgamation ("**the Scheme**") is presented pursuant to Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013, as the case may be, read with the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 in respect of the Amalgamation of Shakti Auto Cam Private Limited with Shakti Precision Components (India) Private Limited".*

8. The Board of Directors of the Applicant Companies has unanimously approved the Scheme vide respective Board Resolutions dated 01.12.2021 subject to the sanctioning of the same by this Tribunal. The aforesaid Board Resolutions of the Applicant companies is at Annexure- E1, and E2 respectively of the Application.
9. The Appointed date as stated in the Scheme," *the date from which this scheme shall become operative viz. the commencement of business on 01.04.2021 or if the Board of Directors of the Transferee Company requires any other date prior or subsequent to 01.04.2021 and/or the Hon'ble National Company Law Tribunal (NCLT) modifies the Appointed date to such other date, then the same shall be Appointed date".*
10. The instant Application has been filed with prayer for dispensing with the meeting of the Equity Shareholders, and Unsecured Creditors of the Transferor Company and to dispense the meeting of Equity shareholders and secured creditors of the Transferee company and to convene the meeting of Unsecured Creditors of the Transferee Company, with the following requirements:
- (i) *Grant dispensation from holding the Meeting of the Equity Shareholders of Transferor Company;*
 - (ii) *Grant Dispensation from holding the meeting of the Equity Shareholders of Transferee Company*
 - (iii) *Grant Dispensation from holding the Meeting of the Unsecured Creditors of the Transferor Company;*
 - (iv) *Grant Dispensation from holding the Meeting of the Secured Creditors of the Transferee Company;*
 - (v) *Pass such order as the Hon'ble Tribunal may deem it to hold a Meeting of the Unsecured Creditors of the Transferee Company, such meeting may be directed to be held at Bangalore, or such date and at such time as this Hon'ble Tribunal may direct.*



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- (vi) Pass order as the Hon'ble Tribunal may deem it to publish the News Paper advertisement of the above meeting in "the Financial Express" English daily in English and "Samyuktha Karnataka" daily in Kannada.

11. The Learned PCS for the Transferor Company submitted that as per Certificate dated 01.12.2021 (Annexure G1 of the Application) issued by M/s Anand Amarnath & Associates, Chartered Accountants, the number of equity shareholders of the Transferor Company as on 01.12.2021 is 5 (Five) each. The details are given below:

Sl.No	Name of Members	Address	% of total Shares of the Company	No. of Equity Shares held	Total Nominal value of Equity Shares held
1.	Mr. C R Narasimha Murthy	No.14, Sri Harivas Palace Guttahalli Bangalore- 560003	40.28	217500	21,75,000
2	Mr. Suhas G Tiwari	No. 1214, 4 th Cross, HAL III Stage, Bangalore- 560075	47.78	258000	25,80,000
3	Mrs. Sharada Murthy	No.14, Sri Harivas Palace Guttahalli Bangalore- 560003	2.22	12000	1,20,000
4	Sandhya Tiwari	No. 1214, 4 th Cross, HAL III Stage, Bangalore- 560075	2.22	12000	1,20,000
5	CR Manjunath	No.14, Sri Harivas Palace Guttahalli Bangalore- 560003	7.50	40500	4,05,000
		Total	100	540000	54,00,000

12. The Learned PCS for the Transferor Company submitted that the 5 (Five) Equity Shareholders the Transferor Company constituting 100% in value has given their consent to the proposed scheme of Amalgamation and for the dispensation of the meetings of the equity shareholders. The consent affidavits dated 04.01.2022 given by equity shareholders of the Transferor Company is attached as Annexure G1 to the Application.

13. The Learned PCS for the Transferor Company submits that as per C.A certificate dated 01.12.2021, issued by M/s Anand Amarnath & Associates there are no Secured Creditors in the Transferor Company. The CA certificate dated 01.12.2021 is produced vide diary No 1382 dated 01.04.2022.

14. The Learned PCS for the Transferor Company submits that as per CA certificate dated 01.12.2021 (Annexure F1 to the application), issued by M/s



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Anand Amarnath & Associates, there are 4 (Four) unsecured creditors in the Transferor Company. It is further submitted that all the unsecured creditors of the transferor company has given their consent to the proposed scheme of Amalgamation and for the dispensation of the meetings of the unsecured creditors. Consent by way of affidavit given by the unsecured creditor are attached as Annexure G1 to the Application.

15. The Learned PCS for the Transferee Company has submitted that as per Certificate dated 01.12.2021 (Annexure I of the Application) issued by M/s VB Nanjunde Gowda, Chartered Accountants, the number of equity shareholders of the Transferee Company as on 01.12.2021 is 6 (Six) each. The details are given below:

Sl.No	Name	Address	% of total shares of company	No. of Equity Shares held	Total Nominal value of Equity Shares held
1	Shakti Auto Cam Pvt Ltd	No. 18-B, Doddanekundi Industrial Area, Mahadevapura, Bangalore-560048	66.57	2390000	2,39,00,000
2	Mr. Suhas G Tiwari	No.1214, 4 th Cross, HAL III Stage, Bangalore-560075	16.34	586500	58,65,000
3	Mr. C R Narasimha Murthy	No. 14, Sri Harinivas Palace Guttahalli Bangalore- 560003	13.83	496500	49,65,000
4	CR Manjunath	No. 14, Sri Harinivas Palace Guttahalli Bangalore- 560003	2.51	90000	9,00,000
5	Mrs. Sharada Murthy	No. 14, Sri Harinivas Palace Guttahalli Bangalore- 560003	0.38	13500	1,35,000
6	Sandhya Tiwari	No.1214, 4 th Cross, HAL III Stage, Bangalore-560075	0.38	13500	1,35,000
		Total	100	3590000	3,59,00,000

16. The Learned PCS for the Transferee Company submits that the 6 (six) Equity shareholders of the Transferee Company have given consent for the proposed scheme of Amalgamation and for the dispensation of convening the meeting of Equity shareholders. The consent by way of affidavit of the Equity Shareholders of the Transferee Company is attached as Annexure G2 to the Application.

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17. The Learned PCS for the Transferee Company submits that as per CA Certificate dated 01.12.2021 issued by M/s VB Nanjunde Gowda, Chartered Accountant(Annexure F2 to the Application), there are 4 (Four) secured creditors in the Transferee Company. It is further submitted that all the Secured Creditors of the Transferee Company have given consent to the proposed scheme of Amalgamation and for the dispensation of convening the meeting of the secured creditors. The consent by way of affidavit given by the secured creditors are attached as Annexure G2 to the Application.
18. The Learned PCS for the Transferee Company submits that as per CA Certificate dated 01.12.2021 issued by M/s VB Nanjunde Gowda, Chartered Accountant (Annexure F2 to the Application), there are 252(Two Hundred and Fifty Two) Unsecured Creditors in the Transferee Company for whom convening of meeting has been sought.
19. The Reduction of Share Capital as envisaged in the Scheme of Amalgamation (Para 11.4 & 11.5) is as Follows:
 - a. *The Transferee Company is a subsidiary of the Transferor Company and upon implementation of the Scheme, the holding of 23,90,000 Equity Shares of Rs. 10 each in Transferee Company held by the Transferor Company shall get cancelled as an integral part of this scheme and no allotment of any new shares in the Transferee Company shall be made to any person whatsoever in lieu thereof. There shall not be any further approvals required under Section 66 of the Companies Act, 2013 and the said shares held by the Transferor Company in Transferee Company shall get reduced without following separate procedure of reduction of Share Capital.*
 - b. *As such reduction in share capital does not involve either diminution of any liability in respect of unpaid capital or payment to any shareholder of any paid-up capital, the proposed reduction would not in any way adversely affect the creditors of the Transferee Company. Accordingly, the reduction in the issued, subscribed and paid-up equity share capital of the Transferee Company shall be effected as an integral part of the Scheme itself and shall be deemed to be in accordance with the provisions of Section 66 and any other applicable provisions of the Act. The order of the Tribunal sanctioning the Scheme shall be deemed to be*



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an order under Section 66 of the Act confirming the reduction without imposing a condition on the Transferee Company to add to its name the words, "and reduced".

20. The Share Exchange Ratio as envisage in the Scheme is as Follows (Para 12):
- Upon the Scheme becoming fully effective and in consideration of the transfer and vesting of the Undertaking of the Transferor Company in the Transferee Company in terms of the Scheme, upon the Scheme being sanctioned by the Hon'ble NCLT and the transfer having been effected as provided, the Transferee Company shall without any further applications, act, instrument or deed, issue and allot to the Equity Shareholders of the Transferor Company whose names are record in the register of members of the Transferor Company, (the "Members") on the Record Date, Equity Shares in the following manner:
 - The Transferee Company will issue Five (5) Equity Share of Rs. 10/- each credited as fully paid up of every One (1) Equity Share of Rs. 10/- each held in the Transferor Company;
21. The Learned PCS for the Applicant Companies submits that the Certificates of the auditor has been filed stating that the Accounting Treatment contained in the Scheme is in compliance with all the applicable Accounting Standards notified by the Central Government under the Companies Act, 2013. The aforesaid Certificate dated 31.01.2022 is attached as Annexure – H1 & H2 of the Application. The Learned PCS further submits that the Valuation report issued by Registered Valuer is attached as Annexure I to the Application
22. The Applicant Companies has filed a separate affidavit vide diary No. 1382 dated 01.04.2022 stating that there are no Sectoral Regulators for the Applicant Companies.
23. The Learned PCS for the Applicant Companies filed affidavit vide diary No. 11918 dated 22.03.2022 stating that there are no pending legal proceedings against the Applicant Companies.
24. The Learned PCS for the Applicant Companies further submitted that the Transferor Company has filed its unaudited balance sheet as on 31.03.2021 and Provisional balance sheet as on 31.01.2022. The Audited and Provisional balance sheet are found attached at Annexure B of the Application. The Transferee Company has also filed its Audited balance sheet as on 31.03.2021



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and Provisional Balance Sheet as on 31.01.2022 which is marked as Annexure D of the Application

25. The Rationale of Scheme as given in the preamble of the Scheme is as follows:

"The amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits:

- (i) *The Transferee Company is the Subsidiary Company of the Transferor Company since incorporation and both the Company are engaged in same line of business and therefore in order to consolidate the operations in the Transferee Company as well as eliminate the duplication of various processes, the amalgamation is proposed;*
- (ii) *More effective integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder value, and will improve the competitive position of the combined entity;*
- (iii) *Greater efficiency in cash management of the amalgamated entity and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value;*
- (iv) *Improved organizational capability and leadership, to compete successfully in an increasingly competitive industry;*
- (v) *Greater access by the amalgamated company to different market segments in the conduct of its business.*
- (vi) *Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, and the elimination of duplication, and rationalization of administrative expenses.*
- (vii) *Achieving economies of scale*
- (viii) *The entire Share Capital in both the companies is held by close group of people.*



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- (ix) *The composition of the Boards of Directors with two Directors of the Transferor Company and Transferee Company is exactly the same.*
- (x) *The main objects of the Transferee Company include the main objects of the Transferor Company"*

26. Clause 8 of the Scheme states that, any staff, workmen and other employees in the service of the Transferor Company immediately before the Effective Date shall become the staff, workmen and employees of the Transferee Company, on the basis that their services shall have been continuous and shall not have been interrupted by reason of such transfer as if such transfer is effected under Section 25FF of the Industrial Disputes Act, 1947; the terms and conditions of employment applicable to the said employees after such transfer shall not in any way be less favourable to them than those applicable to them immediately before the transfer;
27. On 12.07.2022, the Tribunal directed the Learned PCS appearing for the Applicant companies to file Chartered Accountant certificates indicating the percentage of consent given by the Creditors of the Applicant Companies. In pursuance to the aforesaid order the learned PCS for the Applicant companies submitted CA Certificate dated 29.07.2022 stating that 100% of the shareholders and secured creditors of the Transferee Company have given consent to the scheme of Amalgamation and 100% of the shareholders and unsecured creditors of the Transferor Company have consent to the scheme of Amalgamation. The said consent affidavit is produced vide diary No 3322 dated 01.08.2022.
28. We have heard the learned PCS for the Applicant Companies and have perused the records and the supporting documents/papers filed along with the "Scheme" contemplated by the Applicant Companies with the assistance of learned PCS for the Applicant Companies.
29. In view of the above, following directions are issued with respect to dispensation or calling and convening various meetings, as well as issuance of notices including by way of publication in newspaper:



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(a) Since 5 Equity Shareholders of Transferor Company, constituting 100% in value have given consent to the Scheme, the meeting of the Equity shareholders of the Transferor company is dispensed with.

(b) Since there are no secured creditor in the Transferor company there is nothing to convene the meeting.

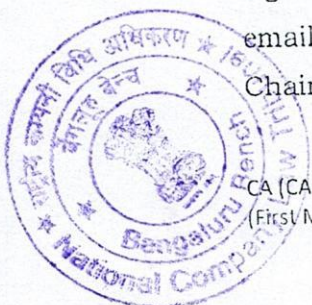
(c) Since Four Unsecured Creditors of the Transferor Company have given consent to the Scheme, the meeting of the unsecured creditors of the Transferor Company is dispensed with.

(d) Since Six Equity Shareholders of Transferee Company, constituting 100% in value have given consent to the Scheme, the meeting of the Equity Shareholders of the Transferee Company is dispensed with.

(e) Since Four secured creditors of the Transferee Company have given consent to the scheme, the meeting of the secured creditors of the Transferee Company is dispensed with.

(f). Meeting of the unsecured creditors of the Transferee Company is to be convened on 06.10.2022 At 11 AM through Video Conferencing or Other Audio Visual Means (OAVM) as per the guidelines issued by MCA or physical meeting at No. 20-B, Doddanekundi Industrial Estate White Field Road, Mahadevapura, Bangalore-560 048, Karnataka, subject to the notice of the meeting being issued through post or electronic mode. The quorum of the meeting of the unsecured creditors, shall be 40% in total value either personally present or through proxy.

(g). In case the required quorum as noted above for the meetings of the unsecured creditors of the Transferee Company is not present at the commencement of the meetings, the respective meetings shall be adjourned by 30 minutes, and thereafter, the persons present and voting shall be deemed to constitute the quorum. For the purpose of completing the quorum, the valid proxies and Authorized Representatives shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed through email or otherwise at the respective registered office of the Transferee Company. The Chairperson along with Scrutinizer shall ensure that the proxy register is properly



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maintained. The Scrutinizer is also duty bound to record all proceedings of the meeting conducted through Video Conference.

(h). Ms **Poorima Hatti**, having address at 62/1 Palace Road, Vasanthnagar, Bengaluru 560001 Email ID poornima@samvadpartners.com , Mobile No. 9900017012 is appointed as the Chairperson for the above meeting to be called for unsecured creditors under this order. She shall be paid fee of Rs.1,00,000/- for her services as the Chairperson. Shri. **Vinod Sunder Raman**, having address at 3rd Floor, 3717, 17th Main, 4th T Block, Jayanagar Banagalore 560041 Email ID vinod@vrconsulting.biz, Mobile No. 9845884410 is appointed as the Scrutinizer for the above meeting to be called for unsecured creditors under this order. Shall be paid fee of Rs 60,000/- for his services as the Scrutinizer.

(i). It is further directed that individual notices of the said meeting shall be sent by the Transferee Company to the respective unsecured creditors through registered post or speed post or through courier or through electronic mode, 30 days in advance before the scheduled date of meeting, indicating the day, date, time and link to the meeting if meeting is conducted through Video Conference as aforesaid, together with a copy of the Scheme, copy of explanatory statement required to be sent under the Companies Act, 2013 and the applicable Rules, along with the proxy forms and any other documents as may be prescribed under the Act shall also be duly sent with the notice.

(j). It is further directed that along with the notice Transferee Company shall also send statement explaining the effect of the Scheme on the shareholders and Creditors, key managerial personnel, promoters and non-promoter members etc., along with effect of the arrangement for amalgamation on any material interests of the Directors of the Company as provided under sub-section 3 of the Section 230 of the Act.

(k). That the Transferee Company shall publish with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date, time and link of the meeting to be conducted through video Conference as aforesaid, to be published in "Financial Express" (English) and "Samyuktha Karnataka" (Kannada), both in Karnataka Edition. It is to be stated in the advertisement that the copies of "Scheme", the Explanatory Statement required to be published pursuant to Section

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230 to 232 of the Act and the form of proxy shall be provided free of charge at the registered office of the Transferee Company. The Transferee Company shall also publish the notice on its respective website, if any.

(l). The Authorized Representative of the Transferee Company shall furnish affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least ten (10) days before the date of proposed meetings.

(m). Voting shall be allowed on the "Scheme" in person or by proxy or through electronic means as may be applicable to the Transferee Company under the Act or there under.

(n). The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA 4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 07 (seven) days of the conclusion of the meetings. She would be fully assisted by the Authorized Representative/Company Secretary of the Transferee Company and the Scrutinizer, who will assist the Chairperson and Alternate Chairperson in preparing and finalizing the reports.

(o). The Transferee Company shall individually and in compliance of sub-section (5) of section 230 and Rule 8 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016 send notices in Form No. CAA 3 along with a copy of the Scheme, the Explanatory Statement and the disclosures mentioned in Rule 6 of the "Rules" to (i) the Central Government through the office of the Regional Director (South East Region); (ii) Concerned Registrar of Companies; (iii) Official Liquidator (iv) Jurisdictional Assessing Officer, Income Tax Department, Bangalore by mentioning their respective PAN Number; (v) Competition Commission of India (CCI) and other Sectoral Regulators/ Authorities, if any, stating that representations, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representation shall simultaneously be sent to the concerned companies, failing which, it shall be presumed that they have no objection to the proposed Scheme.



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(p). The Transferee Company shall furnish copy of the Scheme free of charge within one day of any requisition for the "Scheme" made by any shareholder entitled to attend the aforesaid meetings.

(q). It shall be the responsibility of the Transferee Company to ensure that the notices are sent under the signature and supervision of the authorized representative of the Company on the basis of Board Resolutions.

(r). All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the "Rules" as well as the provisions of the Companies Act, 2013, by the Transferee Company.

30. With the aforesaid directions, this First Motion Application stands disposed of. A copy of this order be supplied to the learned PCS for the Applicant Companies, who in turn shall supply copy of the same to the Chairperson and the Scrutinizer.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(KISHOR VEMULAPALLI)
MEMBER (JUDICIAL)



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OF THE ORIGINAL
for Deputy Registrar
National Company Law Tribunal
Bengaluru Bench