

Action Construction Equipment Ltd.

Corporate & Regd. Office

Dudhola Link Road, Dudhola, Distt. Palwal - 121102, Haryana, India

ACE

An ISO 9001 Certified Co.

Date: February 26, 2019

To,

The Manager
BSE Limited
5th Floor, P.J. Towers,
Dalal Street,
Mumbai-400001
Scrip Code: 532762

The Manager
National Stock Exchange of India Ltd.
Exchange Plaza, Bandra Kurla Complex,
Bandra (E),
Mumbai-400051
CM Quote: ACE



Subject: Scheme of Amalgamation of Frested Limited with Action Construction Equipment Limited.

Dear Sir/Madam,

This is further to our letter dated November 22, 2017, wherein we had informed that the Board of Directors of Action Construction Equipment Limited ('ACE' or 'the Company') had considered and approved the Scheme of Amalgamation of Frested Limited, a wholly owned subsidiary of the Company with the Company as per the provisions of Section 230-232 & 234 of the Companies Act, 2013 ("Scheme").

In this regard, we would like to inform that the Hon'ble National Company Law Tribunal, Chandigarh Bench ('NCLT') vide its order dated February 20, 2019 has approved the said Scheme.

Copy of the Scheme of Amalgamation and the NCLT order approving the said scheme has been enclosed.

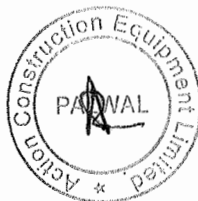
The Scheme shall come into effect, upon filing of certified copy of the order with the Registrar of Companies.

This is for your information and record. Kindly acknowledge the receipt of the same.

Thanking You.

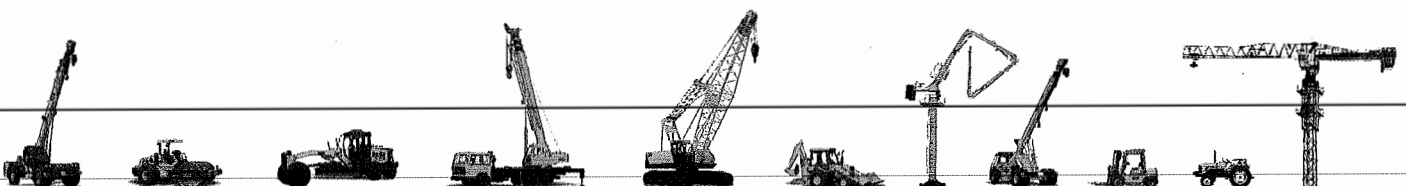
Yours faithfully,
For Action Construction Equipment Limited


Anil Kumar
Company Secretary



Enclosures :

1. Copy of the Scheme of Amalgamation
2. NCLT order dated February 20, 2019 approving the Scheme of Amalgamation



Corporate Office & Regd. Office : Phone : +91-1275-280111 (50 Lines), Fax :+91-1275-280133, E-mail : works2@ace-cranes.com
Mktg. H.Q.: 4th Floor, Pinnacle, Surajkund, Faridabad, NCR-121009, Phone: +91-129-4550000 (100 Lines), Fax : +91-129-4550022, E-mail: marketing@ace-cranes.com
Customer Care No.: 1800 1800 004 (Toll Free), CIN : L74899HR1995PLC053860

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www.ace-cranes.com

SCHEME OF AMALGAMATION
BETWEEN
FRESTED LIMITED
AND
ACTION CONSTRUCTION EQUIPMENT LIMITED
AND
THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

for Action Construction Equipment Limited
Rajan L
Authorised Signatory

for FRESTED LTD.
Rajan L
Authorised Signatory

PREAMBLE

(A) Background and Description of Companies

1. **FRESTED LIMITED**, (hereinafter called 'Frested Ltd or 'Amalgamating Company' or 'Transferor Company') is a company incorporated under the provisions of the Mauritius Companies Act, 2001 having its registered office at Suite 204, Grand Baie Business Quarter, Chemin Vingt Pieds, Grand Bay 30529, Mauritius.
2. **Action Construction Equipment Limited**, (hereinafter called 'ACE' or 'Amalgamated Company' or 'Transferee Company') is a public listed company incorporated under the provisions of Indian Companies Act, 1956 having its registered office at Dudhola Link Road, District – Palwal , Haryana – 121102.
3. ACE is the holding company of Frested Ltd.
4. ACE is engaged in the business of manufacturing of three types of heavy equipments – (i) mobile cranes / tower cranes ; (ii) material handling / construction equipment and (iii) agri equipment

(B) Purpose and Rationale of the Scheme of Amalgamation

This Scheme of Amalgamation (hereinafter called 'the Scheme') is presented under Sections 230 – 232 and 234 and other applicable provisions, if any, of the Indian Act (as defined in clause 1.1 hereinafter) and Sections 261 to 264 and other applicable provisions, if any, of the Mauritius Act (as defined in clause 1.7 hereinafter), for amalgamation of Frested Ltd. into and with ACE. The Indian Act enables a foreign transferor company to merge into an Indian transferee company.

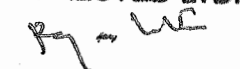
The Board of Directors of Frested Ltd and ACE consider that the Scheme of Amalgamation would benefit the respective companies and the various stakeholders on account of the following reasons:

1. Rationalizing and optimizing the group legal entity structure to ensure greater alignment with the business by reducing the number of legal entities;
2. Reduction in the legal and regulatory compliances required at present to be carried out by Frested Ltd and by ACE in relation to Frested Ltd ;
3. Overall reduction in administrative, managerial and other expenditure and operational rationalization, organizational efficiency and optimal utilization of various resources.

for Action Construction Equipment Limited


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for FRESTED LTD.


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In consideration of the above rationale and benefits, this Scheme is now presented for amalgamation of Frested Ltd into and with ACE in accordance with the terms set out hereunder.

(C) Parts of the Scheme of Amalgamation

This Scheme of Amalgamation is divided into the following parts:

1. **PART I** - Definitions and Share Capital;
2. **PART II** - Amalgamation of Frested Ltd with ACE;
3. **PART III** – General Clauses, Terms and Conditions.

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PART – I


DEFINITIONS AND SHARE CAPITAL

1. DEFINITIONS


In this Scheme (as defined hereinafter), unless repugnant to the meaning or context thereof, the following expressions shall have the meaning mentioned herein below:

- 1.1 **“Act” or “the Act” or “Indian Act” or “The Indian Act”** means the Companies Act, 2013 of India, and shall include the rules and regulations made thereunder and any statutory modifications, re-enactments and / or amendments thereof.
- 1.2 **“Amalgamated Company” or “Transferee Company” or “ACE”** means Action Construction Equipment Limited, a public listed company incorporated under the provisions of Indian Companies Act, 1956 having its registered office at Dudhola Link Road, District – Palwal, Haryana – 121102.
- 1.3 **“Amalgamating Company” or “Transferor Company” or “Frested Ltd”** means Frested Limited, a private company incorporated under the provisions of the Mauritius Companies Act, 2001 having its registered office at Suite 204, Grand Baie Business Quarter, Chemin Vingt Pieds, Grand Bay 30529, Mauritius.
- 1.4 **“Appointed Date”** means January 1, 2018 being the date with effect from which Frested Ltd shall stand amalgamated into and with ACE in terms of this Scheme, upon sanction of the Scheme by the NCLT and Supreme Court of Mauritius and the Scheme coming into effect.
- 1.5 **“Appropriate Authority”** means any government, statutory, regulatory, departmental or public body or authority of the Relevant Jurisdiction, including Registrar of Companies and the NCLT and Supreme Court of Mauritius. .
- 1.6 **“Effective Date”** means the last of the dates on which the conditions specified in Clause 17 are complied with. Any references in this Scheme to “upon this Scheme becoming effective” or “effectiveness of this Scheme” shall mean and refer to the Effective Date.
- 1.7 **“Mauritius Act”** means The Companies Act, 2001 of Mauritius or any statutory modification or re-enactment thereof for the time being in force.

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- 1.8 **“NCLT”** means National Company Law Tribunal at Chandigarh;
- 1.9 **“Registrar of Companies”** means Registrar of Companies, New Delhi and the Registrar of Companies, Mauritius, individually or collectively, as the context may require.
- 1.10 **“Relevant Jurisdiction”** means the territories of the Republic of India and Mauritius.
- 1.11 **“Scheme”** or **“the Scheme”** or **“this Scheme”** means this Scheme of Amalgamation, in its present form or with any modification(s) made under Clause 16 of this Scheme as approved or directed by NCLT and Supreme Court of Mauritius or any other appropriate authority in the relevant jurisdictions.
- 1.12 **“Supreme Court of Mauritius”** means the Bankruptcy Division of the Supreme Court of Mauritius.
- 1.13 **“Transferred Undertaking”** means the whole of the undertaking(s) of Frested Ltd., on the Appointed Date. For the avoidance of doubt Frested Ltd. will have no immovable property, debts (except inter-group debts) or other liabilities as on the Appointed Date.
- 1.14 In this Scheme, unless the context otherwise requires:
- a) references to persons shall include individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
 - b) the headings are inserted for ease of reference only and shall not affect the construction or interpretation of this Scheme;
 - c) words in the singular shall include the plural and vice versa;
 - d) any references in the Scheme to “upon the Scheme becoming effective” or “effectiveness of the Scheme” shall mean the Effective Date; and
 - e) all terms and words used but 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 Indian Act 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. DATE OF TAKING EFFECT AND OPERATIVE DATE

- 2.1 The Scheme set out herein in its present form or with any modification(s) approved or directed by the NCLT and Supreme Court of Mauritius or any other appropriate authority

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in the Relevant Jurisdictions shall have legal effect and force from the Appointed Date but shall be operative from the Effective Date.

2.2 Any reference in this Scheme to “upon the Scheme becoming effective” or “effectiveness of the Scheme” or “upon the coming into effect of the Scheme” shall mean the Effective Date.

3. SHARE CAPITAL

3.1 The Share Capital of Frested Ltd as per the audited balance sheet as on January 31, 2017 is as under:

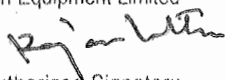
Particulars	As at January 31, 2017 (USD)
Issued, Subscribed and Paid-up	
1,000 Ordinary Share of USD 1.3/-each	1,300
TOTAL	1,300

Subsequent to the Balance Sheet date, there has been no change in the issued, subscribed and paid-up capital of Frested Ltd.


3.2 The Share Capital of ACE as per the audited balance sheet as on March 31, 2017 is as under:

Particulars	As at March 31, 2017 (Rs.)
Authorized Capital	
125,000,000 Equity Shares of Rs. 2/- each	250,000,000
30,250,000 8% Cumulative Non – Participating Redeemable Preference Shares of Rs. 10/- each	302,500,000
TOTAL	552,500,000
Issued, Subscribed and Paid-up	
117,323,000 Equity Shares of Rs. 2/- each fully paid up	234,646,000

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30,219,380 8% Cumulative Non – Participating Redeemable Preference Shares of Rs. 10/- each	302,194,000
TOTAL	536,840,000

Subsequent to the Balance Sheet date, there has been no change in the issued, subscribed and paid-up capital of ACE.


PART – II

AMALGAMATION OF FRESTED LTD. WITH ACE


4. PROVISIONS UNDER THE MAURITIUS LAWS PERTAINING TO AMALGAMATION

- 4.1 Amalgamating Company is incorporated under the Mauritius Act.
- 4.2 In terms of Section 4(2)(b) of Part II of the Fourteenth Schedule of the Mauritius Act, the Amalgamated Company, being incorporated under the laws of the jurisdiction other than Mauritius, must submit to the Registrar of Companies, Mauritius the following:
- 4.2.1 An agreement that a service of process may be effected on and against it as the surviving company (being “Amalgamated Company” or the consolidated company) in Mauritius in respect of proceedings for the enforcement of any claim, debt, liability or obligation of the constituent company (being the “Amalgamating Company”) incorporated under the Mauritius Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company incorporated under the Mauritius Act;
- 4.2.2 An irrevocable appointment of the Registered Agent as its agent to accept service of process in proceedings referred to in sub paragraph 4.2.1 above.
- 4.2.3 An agreement that the Amalgamated Company shall promptly pay to the dissenting members, if any, of the constituent company incorporated under the Mauritius Act, the amount, if any, to which they are entitled under the Mauritius Act, with respect to the rights of dissenting members; and

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4.2.4 A certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction (being the Order of the NCLT sanctioning the Scheme) where it is incorporated.

4.3 In terms of Paragraph 4(3) of Part II of the Fourteenth Schedule to the Mauritius Act, where the surviving company (being the 'Amalgamated Company') is incorporated under the laws of a jurisdiction other than that of Mauritius, the effect of the merger shall be the same as in the case of a merger under Part XVI of the Mauritius Act except in so far as the laws of other jurisdiction, i.e. the laws of India otherwise provide.

4.4 In terms of Paragraph 4(4) of Part II of the Fourteenth Schedule to the Mauritius Act, since the surviving company (being the 'Amalgamated Company') is incorporated under the laws of a jurisdiction other than that of Mauritius, the merger will be effective as provided for by the laws of that jurisdiction i.e. the laws of India.

4.5 The Amalgamating Company shall be required to file certain documents including those set out in Paragraph (4)(2)(b) of Part II of the Fourteenth Schedule to the Mauritius Act with the Registrar of Companies, Mauritius along with this Scheme and the corporate resolution of the Amalgamated Company or relevant extract thereof and the Amalgamating Company will be struck off the register maintained by the Registrar of Companies, Mauritius from the effective date of merger under the laws of India without the need for winding up.

4.6 Amalgamating Company shall with all reasonable dispatch make application under Section 261 to 264 and other applicable provisions of the Mauritius Act for seeking sanction of the Supreme Court of Mauritius to the Scheme subject to such other terms and conditions as the Supreme Court of Mauritius may deem fit.


5. TRANSFER AND VESTING

5.1 Upon the Scheme becoming effective and with effect from the Appointed Date, the Transferred Undertaking shall, pursuant to the applicable provisions of the Indian Act, and applicable provisions of the Mauritius Act and pursuant to the order of the NCLT and Supreme Court of Mauritius or other appropriate authority in the Relevant Jurisdictions, if any, sanctioning the Scheme, shall without any further act, deed, matter or thing, stand transferred to and vested in and/ or deemed to be transferred to and vested in the Amalgamated Company, as a going concern, so as to become the properties of the Amalgamated Company within the meaning of Section 2(1B) of the Indian Income Tax Act, 1961.

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6. DISCHARGE OF CONSIDERATION

- 6.1 The entire paid-up equity share capital of the Frested Limited is held by ACE. Therefore, upon this Scheme being effective, the entire Issued, Subscribed and paid up share capital of Frested Limited shall, *ipso facto*, without any further application, act or deed stand cancelled on the Effective Date and since ACE is not permitted to issue shares to itself under the provisions of the Indian Act, no shares of ACE will be issued or allotted with respect to the Equity Shares held by ACE in Frested Limited in consideration for amalgamation.

7. ACCOUNTING TREATMENT

Upon the Scheme becoming effective, the Amalgamated Company shall account for the amalgamation of the Amalgamating Company in its books of accounts with effect from the Appointed Date in accordance with the provisions of the Indian Accounting Standard (Ind AS) – 103 “Business Combinations” issued by the Ministry of Corporate Affairs, such that:

- 7.1 All assets, liabilities and debts of the Amalgamating Company are transferred to and vested in the Amalgamated Company pursuant to the Scheme and shall be recorded by the Amalgamated Company at their respective book values as on the Appointed Date.
- 7.2 With effect from the Appointed Date and upon the Scheme becoming effective, the investment of the Amalgamated Company in the Amalgamating Company shall stand cancelled.
- 7.3 Loans, advances, amount receivable or payable inter-se between the Amalgamating Company and the Amalgamated Company, appearing in the books of accounts of the Amalgamated Company and/or the Amalgamating Company, if any, shall stand cancelled.
- 7.4 The difference in the net value of assets and liabilities of the Amalgamating Company to be vested in the Amalgamated Company as per clause 7.1, after adjustment of the cancellation of investments of the Amalgamated Company as per clause 7.2 above and loans, advances, amount receivable or payable as per clause 7.3 above, shall be recorded as Capital Reserve.
- 7.5 In case of any difference in the accounting policies between the Amalgamating Company and the Amalgamated Company, the impact of the same till the Appointed Date will be adjusted in accordance with Ind AS- 8 “Accounting Policies, Changes in Accounting

for Action Construction Equipment Limited

Rajendra Kumar

Authorised Signatory

for FRESTED LTD.

Rajendra Kumar

Authorised Signatory

Estimates and Errors" to ensure that the financial statements of the Amalgamated Company reflect the financial position on the basis of consistent accounting policy.


8. LEGAL PROCEEDINGS

- 8.1 All legal proceedings of whatsoever nature by or against the Amalgamating Company pending and / or arising on or after of the Appointed Date and relating to the Amalgamating Company shall not abate or be discontinued or be in any way prejudicially affected by reason of the Scheme or by anything contained in this Scheme but shall be continued and enforced by or against the Amalgamated Company as the case may be, in the manner and to the same extent as would or might have been continued and enforced by or against the Amalgamating Company.
- 8.2 The Amalgamated Company undertakes to have all legal or other proceedings initiated by or against the Amalgamating Company referred to in clause 8.1 above transferred in its name and to have the same continued, prosecuted and enforced by or against the Amalgamated Company, to the exclusion of the Amalgamating Company. The Amalgamating Company confirms that there are no suits/proceedings pending against it as of the date of filing of the Scheme.

9. CONTRACTS, DEEDS, APPROVALS, EXEMPTIONS, ETC

- 9.1 Upon the Scheme becoming effective but with effect from the Appointed Date, all contracts, deeds, agreements, schemes, arrangements, and other instruments of whatsoever nature in relation to the Amalgamating Company, or to the benefit of which the Amalgamating Company may be eligible, and which are subsisting or having effect on or immediately before the Effective Date, shall be in full force and effect on or against or in favour of the Amalgamated Company and may be enforced as fully and effectually as if, instead of the Amalgamating Company, the Amalgamated Company had been a party or beneficiary or obligee thereto.
- 9.2 The Amalgamated Company shall be entitled to the benefit of all insurance policies (if any) which have been issued in respect of the Amalgamating Company and the name of the Amalgamated Company shall be substituted as "Insured" in the policies as if the Amalgamated Company was initially a party.
- 9.3 The Amalgamated Company, at any time after the Scheme becoming effective in accordance with the provisions hereof, if so required under any law or otherwise, will execute deeds of confirmation or other writings with any party to any contract in relation to

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the Amalgamating Company or to which the Amalgamating Company is a party in order to give formal effect to the above provisions. The Amalgamated Company shall, under the provisions of this Scheme, be deemed to be authorised to execute any such writings on behalf of the Amalgamating Company and to carry out or perform all such formalities or compliances, referred to above, on behalf of the Amalgamating Company.

10. OTHER ENTITLEMENTS


10.1 On the Scheme becoming effective, all employees, if any, of the Amalgamating Company in service on the Effective Date shall be deemed to have become employees of the Amalgamated Company with effect from the Appointed Date without any break, discontinuance or interruption in their service and on the basis of continuity of service, and the terms and conditions of their employment with the Amalgamated Company shall not be less favorable than those applicable to them with reference to the Amalgamating Company on the Effective Date.

11. CONDUCT OF AFFAIRS UNTIL THE EFFECTIVE DATE


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

- (a) All profits or income arising or accruing in favour of the Amalgamating Company or losses arising or incurred by the Amalgamating Company shall, for all purposes, be treated as and deemed to be the profits or income, or losses, as the case may be, of the Amalgamated Company;
- (b) Amalgamating Company shall carry on its activities with reasonable diligence and prudence and in the same manner as it had been doing hitherto.
- (c) Amalgamating Company shall be entitled, pending the sanction of the Scheme, to apply to any Governmental Authority and all other agencies, departments and authorities concerned as are necessary under any law or rules, for such consents, approvals and sanctions, which may be required pursuant to this Scheme; and
- (d) Amalgamating Company and /or Amalgamated Company may, during the pendency of the Scheme, make any alterations to their respective share capital structure, whether by way of increase (by issue of equity shares on a rights basis, bonus shares or otherwise) decrease, reduction, reclassification, sub-division or consolidation, re-organisation or in any other manner.

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12. SAVING OF CONCLUDED TRANSACTIONS

The transfer and vesting of the Transferred Undertaking, pursuant to this Scheme, and the continuance of the legal proceedings by or against the Amalgamated Company, under clause 8 hereof shall not affect any transactions or proceedings already completed by the Amalgamating Company, on the Effective Date to the end and intent that the Amalgamated Company accepts all acts, deeds and things done and executed by and / or on behalf of the Amalgamating Company, as acts, deeds and things done and executed by and on behalf of the Amalgamated Company.

13. APPLICABILITY OF THE PROVISIONS OF THE INDIAN INCOME TAX ACT, 1961

- 13.1 The provisions of this Scheme have been drawn up to comply with the conditions relating to "amalgamation" as defined under Section 2(1B) of the Indian Income-tax Act, 1961. If any terms or provisions of the Scheme are found or interpreted to be inconsistent with the provisions of the said Section of the Indian Income-tax Act, 1961, at a later date including resulting from an amendment of law or for any other reason whatsoever, the provisions of the said Section of the Indian Income-tax Act, 1961, shall prevail and the Scheme shall stand modified to the extent determined necessary to comply with Section 2(1B) of the Indian Income-tax Act, 1961. Such modification will, however, not affect the other parts of the Scheme.

14. DISSOLUTION OF AMALGAMATING COMPANY

Upon the Scheme becoming effective and upon the Supreme Court of Mauritius giving an Order under appropriate provisions of the Mauritius Act, Amalgamating Company shall be dissolved, without any further act or deed, without being wound up.

for Action Construction Equipment Limited



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PART – III

GENERAL TERMS AND CONDITIONS

15. APPLICATION AND PETITION TO THE NCLT AND SUPREME COURT OF MAURITIUS


The Amalgamating Company and the Amalgamated Company shall, with all reasonable dispatch, make applications to the respective NCLT and Supreme Court of Mauritius, under the relevant provisions of applicable law, if any, seeking orders for dispensing with or convening, holding and/or conducting of the meetings of the classes of their respective shareholders and/or creditors and for sanctioning the Scheme with such modifications, as may be approved by the NCLT and Supreme Court of Mauritius..

Upon the Scheme being approved by the requisite majority of the shareholders and creditors of the Amalgamating Company and the Amalgamated Company (wherever required), the said companies shall, with all reasonable dispatch, file petitions before the respective NCLT and Supreme Court of Mauritius for sanction of the Scheme, and for such other order or orders, as the NCLT and Supreme Court of Mauritius may deem fit for carrying the Scheme into effect. Upon the Scheme becoming effective, the shareholders of the Amalgamating Company and the Amalgamated Company, shall be deemed to have also accorded their approval under all relevant provisions of the Indian Act, and the relevant provisions of the applicable Mauritius Act, if any, for giving effect to the provisions contained in the Scheme.

16. MODIFICATIONS/ AMENDMENTS TO THE SCHEME

The Amalgamating Company and the Amalgamated Company, by their respective board of directors may assent to any modifications/ amendments to the Scheme or to any conditions or limitations that the NCLT and Supreme Court of Mauritius and/ or any other appropriate authority in the Relevant Jurisdiction may deem fit to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them (i.e. the board of directors). The Amalgamating Company and the Amalgamated Company, by their respective board of directors, be and are hereby authorized to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions of law or

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otherwise, whether by reason of any directive or orders of any other authorities or otherwise howsoever arising out of or under or by virtue of the Scheme and/ or any matter concerned or connected therewith.

The Amalgamating Company and the Amalgamated Company (acting through their respective boards of directors) shall be at liberty to withdraw the Scheme in entirety, or to decide not to give effect to any one or more of the parts contained herein, whether for the reason of any condition or alteration imposed by the NCLT and Supreme Court of Mauritius or any other governmental/regulatory authority not being acceptable to them, or any other reason whatsoever.

If any part of the Scheme is held to be invalid or illegal by NCLT or Supreme Court of Mauritius or unenforceable under present or future laws, then the parties may decide that such part shall be severable from the remainder of the Scheme and the Scheme shall not be affected thereby, unless the deletion of such part shall cause the Scheme to become materially adverse to any party, in which case the Amalgamating Company and the Amalgamated Company, shall attempt to bring about a modification in the Scheme, as will best preserve for the Amalgamating Company and the Amalgamated Company, the benefits and obligations of this Scheme, including but not limited to such part.

17. CONDITIONALITY OF THE SCHEME

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

- 17.1 The Scheme being approved by the requisite majorities in number and value of such classes of persons including the respective members and/ or creditors of the Amalgamating Company and the Amalgamated Company as prescribed under the Indian Act and relevant provisions of the Mauritius Act and as may be directed by the NCLT and Supreme Court of Mauritius or any other appropriate authority in the Relevant Jurisdiction as may be applicable.
- 17.2 The sanction of this Scheme by the NCLT and Supreme Court of Mauritius.
- 17.3 Certified or authenticated copy of the Order of the NCLT sanctioning the Scheme being filed with the Registrar of Companies by the Amalgamated Company.
- 17.4 Compliance by the Amalgamating Company of all necessary and applicable provisions of its applicable law including without limitation, all necessary filings to be made under applicable law of Mauritius.

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17.5 The requisite, consent, approval or permission of the Central Government or any other statutory or regulatory authority including the Reserve Bank of India, which by law may be necessary for the implementation of this Scheme.


18. EFFECT OF NON-RECEIPT OF APPROVALS

In the event of any of the said sanctions and approvals referred to in clause 17 not being obtained and/ or the Scheme not being sanctioned by the NCLT and Supreme Court of Mauritius or such other appropriate authority, if any, this Scheme shall stand revoked, cancelled and be of no effect, save and except in respect of any act or deed done prior thereto as is contemplated hereunder or as to any rights and/ or liabilities which might have arisen or accrued pursuant thereto and which shall be governed and be preserved or worked out as is specifically provided in the Scheme or as may otherwise arise in law and agreed between the respective parties to this Scheme. Each party shall bear and pay its respective costs, charges and expenses for and or in connection with the Scheme unless otherwise mutually agreed.

19. COSTS, CHARGES AND EXPENSES

All costs, charges, taxes including duties, levies and all other expenses, if any (save as expressly otherwise agreed) of the Amalgamating Company and the Amalgamated Company arising out of or incurred in carrying out and implementing this Scheme and matters incidental thereto shall be borne by the respective companies.

for Action Construction Equipment Limited


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for FRESTED LTD.


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**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CP (CAA)No.20/Chd/Hry/2018

**Under Sections 230-232 and 234
of the Companies Act, 2013**

In the matter of the Scheme of Amalgamation between:

Frested Limited

having its registered office at
Suite 204, Grand Baie Business Quarter,
Chemin Vingt Pieds, Grand Bay 30529,
Mauritius

.... Transferor Company

With

Action Construction Equipment Limited

having its registered office at
Dudhola Link Road, District – Palwal,
Haryana – 121102
PAN: AAACA6189P
CIN: L74899HR1995PLC053860

....Petitioner Company - Transferee Company

Judgment delivered on: 20.02.2019

**Coram: HON'BLE MR.JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Petitioner : Mr. Deepak Suri, Advocate

1. For the Regional Director,
Northern Region, Ministry of
Corporate Affairs, New Delhi

And : Mr. M.S. Pachouri, Registrar of Companies
Punjab, Chandigarh & Himachal Pradesh

2. Registrar of Companies,
NCT of Delhi & Haryana

For Income Tax Department : Mr. Yogesh Putney, Advocate

CP (CAA)No.20/Chd/Hry/2018

ATTESTED TO BE TRUE COPY

for Action Construction Equipment Limited

[Signature]
Authorised Signatory

Per: R.P. Nagrath, Member(Judicial)

JUDGMENT

This is a Second Motion Petition under Section 230 to 232 and 234 of the Companies Act, 2013 (for short, to be referred hereinafter as the 'Act') filed by the Petitioner/Transferee Company in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the rules framed under the National Company Law Tribunal Rules, 2016 (for brevity, 'Rules') for the approval of Scheme of Amalgamation (for brevity, 'Scheme') between Frested Limited, Transferor Company and Action Construction Equipment Limited, Petitioner Company/Transferee Company.

2. The Petitioner Company filed the First Motion Application CA (CAA) No. 24/Chd/Hry/2017 before this Tribunal for convening and calling of meetings of equity shareholders, secured creditors and unsecured creditors of a value of more than ₹1,00,000/- of the petitioner-company and dispensing with the meeting of the preference shareholders of the said company.

3. The First Motion Application was disposed of vide order dated 04.05.2018 with directions to hold meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of value more than INR 1,00,000/- with a requisite quorum and dispensation for convening the meeting of Preference Shareholders.

4. The affidavit dated 01.06.2018 of Mr. Rajan Luthra, the authorized signatory of the applicant-company with regard to compliance of all the directions given in the order dated 04.05.2018 was filed vide Diary No.2142 dated 12.06.2018 along with newspaper publications in Financial Express (English) and Jansatta (Hindi), Haryana Edition both dated 22.05.2018 and notices dated

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for Action Construction Equipment Limited

Rajan Luthra

Authorized Signatory

22.05.2018 sent to the Statutory Authorities including Income Tax Department by mentioning PAN of the Company and to other regulatory authorities namely, Registrar of Companies, Delhi and Haryana, the Central Government through Regional Director-Northern Region, BSE, NSE, SEBI, Official Liquidator, Punjab, Haryana and Chandigarh and Reserve Bank of India, in the record of first motion application. With the said affidavit copy of the notice of meeting of equity shareholders of transferee company Annexure 'A' copy with the list of equity shareholders, the list of secured and unsecured creditors with the acknowledgement of several notices to 646 unsecured creditors and 9 secured creditors by registered post as at Annexure-D (Colly) are attached.

5. Report of the Chairperson along with report of Scrutinizer in respect of the meetings of Equity Shareholders, Secured and Unsecured Creditors of the applicant-company was received vide Diary No.2252, 2253 and 2254 dated 02.07.2018.

6. The Chairperson of the meeting has reported that Equity Shareholders of the Transferee Company have approved the Scheme by 99.997% in value of those present in person or voting either in person or by proxy or through authorized representative or e-voting as per separate reports of Chairperson in respect of secured and unsecured creditors, this Scheme has been unanimously approved.


7. The main objects, date of incorporation, authorized and paid up share capital of the petitioner-company, interest of employees and rationale of the Scheme were already discussed in the First Motion order dated 04.05.2018 passed by this Tribunal.

8. Annexure-I is certificate dated 21.11.2017 of Bran & Associates, Chartered Accountants, stating therein that the accounting treatment specified in

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clause 7 of the "Scheme of Amalgamation" between the transferor and transferee company and their respective shareholders and creditors in terms of the provisions of Sections 230 to 232 and 234 and other applicable provisions of the Companies Act, 2013 with reference to its compliance with the applicable Accounting Standards notified under the Companies Act, 2013 and Other Generally Accepted Accounting Principles.

9. The audited financial statements for the period ended on 31.03.2017 and the unaudited financial statements of the Transferor Company for the period ended on 15.11.2017 are attached as Annexure-C. The audited financial statements for the period ended 31.03.2017 as well as the unaudited financial statements for the period ended 30.09.2017 of the Transferee Company is attached as Annexure-E.

10. As per the Scheme, the Appointment Date is 01.01.2018 (the opening hours of 01.01.2018) or such other date as may be approved by the Tribunal and the Supreme Court of Mauritius. It is stated in Para 21 of the First Motion Order dated 04.05.2018 that since the entire shareholding of Transferor Company is held by the petitioner-Transferee Company, no consideration will be paid for transfer of the undertaking of the Transferor Company and no shares will be issued to the shareholders of Transferor Company, since it is a wholly-owned subsidiary of the Applicant Company. Therefore, valuation report from the Chartered Accountants is not required.

11. When the petition was listed on 31.07.2018, the following directions were issued by this Tribunal :-

" The petition be listed for hearing on 09.10.2018. Notice of hearing be advertised in the same newspapers as in the first motion petition i.e. Financial Express (English), Chandigarh Edition and Jansatta (Hindi), Chandigarh Edition

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not less than 10 days before the aforesaid date fixed for hearing.

Notice be also served upon the Objector(s) or their representatives as contemplated under sub-section (4) of Section 230 of the Act who may have made representation and who have desired to be heard in their representation along with a copy of the petition and the annexures filed therewith at least 15 days before the date fixed for hearing. It be specified in the notices that the objections, if any, to the Scheme contemplated by the authorities to whom notice has been given on or before the date of hearing fixed herein may be filed within thirty days from the date of the receipt of the notice, failing which it will be considered that there is no objection to the approval of the Scheme on the part of the authorities by this Tribunal and subject to other conditions being satisfied as may be applicable under the Companies Act, 2013 and relevant rules framed thereunder.

In addition to the above public notice, the petitioner-company shall serve the notice of the petition on the following Authorities namely, (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs (b) Registrar of Companies, Delhi and Haryana (c) Income Tax Department through the Nodal Officer - Principal Chief Commissioner of Income Tax, NWR, Aaykar Bhawan, Sector 17-E, Chandigarh by mentioning the PAN of the company (d) BSE (e) NSE (f) SEBI (g) Reserve Bank of India along with copy of this petition by speed post immediately and to such other Sectoral Regulator(s) who may govern the working of the respective company involved in the Scheme.

The petitioner-company is directed to file specific affidavits of the authorized representative to the effect that there is no sectoral regulator governing the business of the petitioner-company and the petitioner company shall also file the affidavit at least two days before the date fixed to the effect that no objections to the Scheme have been received by the petitioner-company.

The petitioner shall at least 7 days before the date of hearing of the petition file an affidavit of service regarding paper publication as well as service of notices on the authorities specified above including the sectoral regulator as well as to objectors, if any.

The petitioner company shall individually comply with proviso to sub-section (3) of section 232 or proviso to sub-section (7) of Section 230, as may be applicable under the circumstances on or before the date fixed for hearing by filing the certificate of company's auditor. Registry shall also report

before the date fixed as to whether any objection has been received to the proposed Scheme in the registry.

The petitioner shall file the status of the matter pending before the Mauritius Court at least 7 days before the date fixed."

12. The Learned Counsel for the petitioner-company filed a compliance affidavit of the authorized signatory of the Transferee Company by Diary No.3742 dated 01.10.2018 along with copies of newspaper publications in Financial Express (English), Haryana Edition and Jansatta (Hindi), Haryana Edition both dated 06.09.2018 annexed as Annexure-A (Colly) (page 7-8).

13. It is also stated in the affidavit dated 01.10.2018 that notices were sent by speed post to the Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; the Registrar of Companies, Delhi and Haryana; Income Tax Department through the Nodal Officer - Principal Chief Commissioner of Income Tax, NWR, Aaykar Bhawan, Sector 17-E, Chandigarh; BSE; NSE; SEBI; and Reserve Bank of India. The speed post receipts along with tracking reports of the notices sent to the above authorities have been attached as Annexure-B (Colly) (Page Nos.25-26H). It is further stated in the affidavit that the petitioner-company has not received any objection to the Scheme of Amalgamation from equity shareholders, secured creditors and unsecured creditors.

14. It is further stated in the said affidavit that the Scheme of Amalgamation between the Transferor Company and the Petitioner Company has been approved by the Supreme Court of Mauritius vide order dated 03.09.2018 and copy of the same is enclosed with the aforesaid affidavit as Annexure -E.

15. As per Affidavit of the authorized signatory of the petitioner-company filed by Diary No.2885 dated 07.08.2018, there are no other sectoral regulators

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apart from the Authorities to whom the notice of hearing was directed to be issued.

16. In the additional affidavit filed by Diary No.3882 dated 09.10.2018, Mr. Rajan Luthra, authorized signatory has stated that no notice either supporting or opposing the aforesaid petition has been filed by any person pursuant to the above said publication of notice in the newspapers. It was also reported by the Registry that no objection to the proposed Scheme was received, as observed in the order dated 09.10.2018.

17. It is stated in the Scheme that all legal proceedings of whatsoever nature by or against the Amalgamating Company pending and/or arising on or after of the Appointed Date and relating to the Amalgamating Company shall not abate or be discontinued or be in any way prejudicially affected by reason of the Scheme or by anything contained in this Scheme but shall be continued and enforced by or against the Amalgamated Company as the case may be, in the manner and to the same extent as would or might have been continued and enforced by or against the Amalgamating Company.

18. We have heard the learned counsel for the petitioner-company; Registrar of Companies, Chandigarh & Himachal Pradesh for himself and the Regional Director, Northern Region, Ministry of Corporate Affairs and the learned counsel for the Income Tax Department.

19. The Reserve Bank of India, had sent response vide Diary No.1248 dated 04.09.2018. Mr. Kamlesh Sharma, Deputy General Manager of Reserve Bank of India in the letter dated 27.08.2018 submitted that it is the duty of the companies undergoing compromise/arrangement/amalgamation to comply with the requirements of various laws including the rules, regulations and guidelines prescribed by RBI, viz., the companies may have to comply with Foreign

Exchange Management Act, 1999 and the rules and regulations made thereunder. It is also submitted that as a regulator it will not be ethical on the part of RBI to vet individual cases, as it will preclude it from taking action on contraventions, if any, committed by such companies.

20. When the matter was listed for hearing on 09.10.2018, the learned counsel for the petitioner-company submitted that the Petitioner Company would be filing an affidavit, undertaking to comply with various guidelines, rules and regulations prescribed by the Reserve Bank of India by next date and the same was filed vide Diary No. 4482 dated 16.11.2018 with an undertaking to comply with various guidelines, rules and regulations prescribed by the Reserve Bank of India. This undertaking is taken on record.

21. The Registrar of Companies, NCT of Delhi & Haryana in its report vide Diary no.1406 dated 05.10.2018 stated that the Transferor Company is a foreign company having its registered office at Mauritius. Hence, the Transferor Company has to obtain separate order for allowing amalgamation from the Courts of Mauritius. But the petitioner company has not attached any such order with the petition. The same may be clarified from the petitioner company.

22. In this regard, affidavit of Mr. Rajan Luthra, authorized signatory of the Transferee Company was filed vide Diary No.4481 dated 16.11.2018 wherein the copy of the order passed by the Supreme Court of Mauritius dated 03.09.2018 was attached as Annexure-A whereby the Scheme was approved by the Supreme Court of Mauritius.

23. The Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report by way of affidavit dated 26.09.2018 (Diary No.3847 dated 08.10.2018). The Regional Director has made few observations in his report which are as follows:-

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- (i) In para 10 of the report, it has been submitted that as per reply of petitioner-Transferee Company, the equity shares of the petitioner-company are listed on BSE Ltd. and National Stock Exchange of India Limited (NSE). Further, since Transferor Company is wholly owned subsidiary of petitioner-company, No Objection Certificate from Stock Exchanges is not required to be obtained as per para 7 of SEBI Circular CFD/DIL3/CIR/2017/21 dated March 10, 2017. A copy of the SEBI Circular CFD/DIL3/CIR/2017/21 dated March 10, 2017 and the intimation letter filed with BSE and NSE as per SEBI Circular CFD/DIL3/CIR/2017/21 dated March 10, 2017.
- (ii) In para 13 of the report, the Regional Director directed the petitioner-company to pay Stamp duty if any, as may be applicable consequent upon transfer of assets due to the Amalgamating merger of undertaking/assets.

24. In response to the report of the Regional Director, the learned counsel for the petitioner-company filed reply by way of affidavit of Mr. Rajan Luthra, authorized signatory vide Diary No.4481 dated 16.11.2018. The petitioner-company has undertaken to pay Stamp duty, if any, as may be applicable consequent upon transfer of assets due to the Amalgamating merger of undertaking/assets. With regard to the instructions contained in the circular issued by SEBI we would direct the petitioner-company to comply with the same in letter and spirit.

25. Mr. Upendra Kishor, Assistant Commissioner of Income Tax, Circle-I, Faridabad has filed his report vide Diary No.4198 dated 29.10.2018 on behalf of

the Income Tax Department with regard to the petitioner-company that there is no outstanding demand in respect of Transferee Company i.e. M/s Action Construction Equipment Limited as of now. It is further stated that the Transferor and Transferee Company may also be directed to discharge the demand, if any, found later on and the proceedings for the Assessment Year(s) 2016-17 and 2017-18 are pending as per their records. The Income Tax Returns for the Assessment Years 2011-12 and 2012-13 were filed on time whereas the returns for the Assessment Years 2013-14 to 2017-18 were filed belatedly. It is stated that perusal of the Scheme of Amalgamation does not involve any public interest as such. It is however stated that the real intention is evasion of Tax Liability and therefore the same is against the interest of the Revenue and General Public at large. Therefore the interest of the Revenue and Tax Payers be protected.

26. In reply to the report of the Income Tax Department, filed vide Diary No.4582 dated 26.11.2018 by way of affidavit of Mr. Rajan Luthra, authorized signatory, it is stated that the Transferee Company has duly filed its income tax returns and the assessment proceedings have also been completed for all previous years except for the Assessment years 2016-17 and 2017-18. The Transferee Company has always filed their returns before the due date and there is no case of belated return as stated in the objection statement. Since assessee is required to furnish a report under Section 92E of the Income Tax Act the due date of filing the return for the assessee is 30th November of each assessment year and not 30th September. Further, Ministry of Finance in Cyprus has also issued a certificate in favour of Transferor Company dated 30.05.2017 that financial statements as on 31.01.2017 have been examined and the Transferor Company has no tax liability. Copy of the certificate given by Ministry of Finance has been

enclosed as Annexure-A.

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27. With regard to the assertion about intention for tax evasion it is responded as under in this affidavit:-

“that the Transferor Company is a wholly owned subsidiary of Transferee Company. I further state that the contentions raised in the paragraph under reference are misconceived. The present Scheme is not to avoid tax and also rational of the Scheme as given in the preamble of the Scheme is reproduced as under:

- *Rationalizing and optimizing the group legal entity structure to ensure greater alignment with the business by reducing the number of legal entities;*
- *Reduction in the legal and regulatory compliances required at present to be carried out by Frested Ltd and by ACE in relation to Frested Ltd.; and*
- *Overall reduction in administrative, managerial and other expenditure and operational rationalization, organizational efficiency and optimal utilization of various resources.*

Therefore, in order to simplify the group structure and with an objective of reduction of cost and to achieve better administration of resources, Companies and their respective board of directors and shareholders in their commercial wisdom have approved the present Scheme. This would be beneficial and advantageous in the long-term interests of the Transferee Company and its Shareholders.

I further state that the sanction of the present scheme would not absolve the Transferee Company from its income tax liabilities – irrespective of the fact whether they are finally determined or disputed. The Transferee Company shall exist even post the operation of the present Scheme of Amalgamation. The Transferee Company shall be bound by the outcome of the pending tax proceeding. Thus, the sanction of the present Scheme of Amalgamation shall not, in any manner, affect the interests or rights of the Department against the Transferee Company with respect to any pending proceedings.

I further submit that the Scheme of Amalgamation is not floated with the object of obtaining any tax benefit and deny that the Scheme is to evade any liability to pay tax by the Transferee Company. It is highly objectionable for the Income Tax Department to file and make sweeping and general assertions, that the instant Scheme is for evasion of tax liability without giving any basis, reference and reasons for the same. It is further stated, when neither any business losses are sought to be adjusted nor any tax losses are being set off, it is most unfortunate for the department to raise such frivolous objections, without giving any specific instances for the same. The same are completely baseless and deplorable.

Further, the Objection statement does not substantiate its observation as to how the intention is to evade tax liability. The said observation has been made in the most casual manner without

applying the mind and without understanding the provisions of the Income Tax Act in this regard. The unreasoned observation has no legal value."

28. In view of the above discussion, we conclude that the objections/observations to the Scheme have been received only from Regional Director, Registrar of Companies and the Income Tax Department and their objections/observations are adequately replied by the Petitioner Companies and hence there is no impediment in the sanction of the Scheme. Moreover there has been no representation from the Official Liquidator, though Official Liquidator has been declared as a sectoral regulator in the affidavit filed by Diary No.2885 dated 07.08.2018. Therefore, the Scheme (Annexure-A) is approved. While approving the Scheme, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes or any other charges, if any, and payment in accordance with law or granting permission. In respect of any permission/compliance with any other requirement which may be specifically required under any law. It is directed that the Petitioner Companies shall comply with RBI guidelines and the provisions of FEMA/RBI Act. With the sanction of the Scheme, the Transferor Company shall stand dissolved without undergoing the process of winding up and no shares will be issued to the shareholders of Transferor Company since it is a wholly-owned subsidiary of the applicant-company.

THIS TRIBUNAL DO FURTHER ORDER:

- (i) That all the property, rights and powers of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in

the Transferee Company for all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same and further that the petitioner-Transferee Company shall comply with RBI guidelines and provisions of FEMA and RBI Act; and

- (ii) That the petitioner-company shall follow the directions contained in SEBI Circular CFD/DIL3/CIR/2017/21 dated 01.03.2017; and
- (iii) That all the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and
- (iv) That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and
- (v) That all the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the 'Scheme'; and
- (vi) That the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme'; and
- (vii) That the Petitioner Companies do, within 30 days after the date of receipt of the order of this Tribunal, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of

winding up and the concerned Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept in relation to the Transferee Company and the files relating to the said Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and

- (viii) That the Transferee Company shall deposit an amount of ₹1,50,000/- Rupees One Lac Fifty Thousand only) with the Pay & Accounts Officer in respect of the Regional Director, Northern Region, Ministry of Corporate Affairs and ₹50,000/- Rupees Fifty Thousand only), in favour of "The Company Law Tribunal Bar Association" Chandigarh within a period of three weeks from the receipt of the certified copy of this order; and
- (ix) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

29. As per the above directions and Form No. CAA.7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the petitioners filing the schedule of properties i.e. (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company by way of affidavit.

Pronounced in open Court

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

Feb., 20, 2019
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for Action Construction Equipment Limited

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