

April 03, 2023

The Manager, Listing Department, BSE Limited, Phiroze Jeejeebhoy Towers, Dalal Street, Mumbai- 400 001	The Manager, Listing Department, National Stock Exchange of India Limited Exchange Plaza, 5th Floor, Plot No. C/1, G Block, Bandra-Kurla Complex, Bandra-East, Mumbai- 400 051
Scrip Code: 532953	Symbol: VGUARD

Dear Sir/Madam,

Sub: Copy of Order of the National Company Law Tribunal, Kochi Bench ("Hon'ble NCLT") in the matter of the Scheme of Arrangement between Simon Electric Private Limited ("Transferor Company") and the V-Guard Industries Limited ("Transferee Company") and their respective shareholders and creditors

In furtherance to our intimation dated December 20, 2021, May 16, 2022 and November 15, 2022 and pursuant to Regulations 30 of SEBI (Listing Obligations and Disclosure Requirements), 2015, we wish to inform you that Hon'ble NCLT has sanctioned the scheme of arrangement between Simon Electric Private Limited ("Transferor Company") and the V-Guard Industries Limited ("Transferee Company") and their respective shareholders and creditors through its order dated March 31, 2023.

The digitally signed copy of order is also enclosed herewith and the same is also available on the website of the Company www.vguard.in.

We request you to kindly take the above information on record.

Thanking You,

Yours Sincerely,

For V-Guard Industries Limited

Vikas Kumar Tak
Company Secretary & Compliance Officer
Membership No. FCS 6618

Encl: As above

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI**

CP (CAA) No. 06/KOB/2022

IN

CA (CAA) No. 03/KOB/2022

*(Under sections 230 and 232 of the Companies Act, 2013 read with Companies
(Compromises, Arrangements and Amalgamations) Rules, 2016)*

In the matter of:

Scheme of Amalgamation of

In the matter of:

M/s. Simon Electric Private Limited, having its registered office at XIII/300 E-27(XXXV/565), 5th Floor, KCF Tower, Kakkanad Desom, Thrikkakara P.O, Kanayannur Taluk, Vazhakkala, Ernakulam, Kerala, India – 682 021;

... Petitioner Company No. 1/Transferor Company

-With-

M/s. V- Guard Industries Limited, having its registered office at- 42/962, Vennala High School Road, Vennala, Kochi, Ernakulam, Kerala, India – 680 028.

... Petitioner Company No. 2/Transferee Company

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearance (through video conference):

For the Petitioners : Ms. Shikha Tandon, Adv.,
: Ms. Shree Sinha, Adv.,
: Mr. Zaid Drabu, Adv.,
: Mr. Shrish Gautam, Adv.,
: Mr. Adhiraj Singh Chauhan,
Adv.,

For ROC : M/s. Menon & Pai, Advocates
: Mr. B. Ramesh, AROC

**Order reserved on: 16.03.2023
Order pronounced on:31.03.2023**

ORDER

1. The object of the present joint Company Petition under Sections 230-232 of the Companies Act, 2013 (“**Act**”) read with the applicable provisions of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (hereinafter referred to as the “**Rules**”) and the National Company Law Tribunal Rules, 2016, filed by M/s. Simon Electric Private Limited (“**Petitioner Company No. 1**” or “**Transferor Company**” or “**Amalgamating Company**”) and M/s. V-Guard Industries Limited (“**Petitioner Company No. 2**” or “**Transferee Company**” or “**Amalgamated Company**”) (“**Petitioner Companies**”), is to obtain the sanction of the Scheme of Amalgamation between the Petitioner Companies and their respective shareholders and creditors (“**Scheme**”). By way of the aforesaid Scheme, all businesses, undertakings, properties, investments, and liabilities of the Transferor Company are proposed to be transferred to and vested in the Transferee Company as a going concern, on the terms and conditions fully stated in the Scheme, which is annexed to the Company Petition.

2. The brief facts are as follows:

- i. The Scheme was approved unanimously by the respective Board of Directors of the Transferor Company and Transferee Company at their meetings held on December 20, 2021.
- ii. The object of the instant Company Petition before this Tribunal is to obtain sanction of the Scheme, which provides for:
 - a) the amalgamation of the Transferor Company with the Transferee Company in accordance with Part II of the Scheme;
 - b) transfer of the authorized share capital of the Transferor Company to the Transferee Company and consequential increase in the authorized share capital of the Transferee Company as provided in Part III of the Scheme;

- c) issuance and allotment of 'New Equity Shares' (*as defined in the Scheme*) to the shareholders of the Transferor Company as on the Record Date (*as defined in the Scheme*) without any further act, instrument or deed, in accordance with Part III of this Scheme; and
 - d) dissolution of the Transferor Company without winding up.
- iii. It is stated that the proposed Scheme involving *inter alia* the Amalgamation, is sought to be undertaken to help in achieving the following:
- a) Providing an established and operating modular switches manufacturing facility for the Transferee Company along with the required human and other resources;
 - b) Enhanced economies of scale in production, through improved utilization of the switches manufacturing facility;
 - c) Entry/ access to 'Premium' modular switches segments;
 - d) Acquiring technical know-how and knowledge required for designing, developing, manufacturing, distributing, and selling switches, as embedded in the current business of Transferor Company;
 - e) Learning from the manufacturing and quality systems of one of the leading global players in the modular switches product category;
 - f) Connecting into an established and global vendor/supplier ecosystem;
 - g) Quicker access to the existing products and the markets of the Transferor Company (especially in Northern States/regions); and
 - h) Creating value for various stakeholders of the Transferee Company, including shareholders, creditors, customers, and employees as the combined business would benefit from increased scale and wider product portfolio.
- iv. The Transferor Company is a private company, which was incorporated under the provisions of the Companies Act, 1956, in the name of 'M/s. Indo

Asian Simon Private Limited’, *vide* certificate of incorporation dated August 02, 2006, issued by the Registrar of Companies, National Capital Territory of Delhi and Haryana. Thereafter, in terms of Section 23 of the Companies Act, 1956, the name of the Transferor Company was changed to ‘M/s. Indo Simon Electric Private Limited’ and a fresh certificate of incorporation was issued by the Registrar of Companies, National Capital Territory of Delhi and Haryana on September 23, 2010. Subsequently, pursuant to Rule 29 of the Companies (Incorporation) Rules, 2014, the name of the Transferor Company was changed to ‘M/s. Simon Electric Private Limited’ and a fresh certificate of incorporation was issued by the Registrar of Companies, Delhi on July 27, 2015. In terms of Section 13(5) of the Act, pursuant to a change in place of the registered office of the Transferor Company from Delhi to Kerala, a fresh certificate of incorporation was issued by the Registrar of Companies, Ernakulam on December 07, 2021. Since its incorporation, the Transferor Company is doing the business of manufacturing and trading of electrical wiring accessories, such as electrical switches, sockets, fan regulators and home automation products.

- v. The share capital structure of the Transferor Company as on November 22, 2022 is as under:

Authorized Share Capital	Amount
14,15,00,000 equity shares of INR 10 each	INR 141,50,00,000 (Indian Rupees One Hundred Forty-One Crores Fifty Lakhs)
Issued, Subscribed and Paid-up Share Capital	Amount
14,12,99,757 fully paid-up equity shares of INR 10 each	INR 141,29,97,570 (Indian Rupees One Hundred Forty-One Crore Twenty-Nine Lakhs Ninety-Seven

	Thousand Five Hundred and Seventy)
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Subsequent to November 22, 2022, there has been no change in the above share capital structure of the Transferor Company.

- vi. The Transferee Company is a public limited company, which was incorporated as a public limited company under the provisions of the Companies Act, 1956 on February 12, 1996 *vide* certificate of incorporation dated February 26, 1996 issued by the Registrar of Companies Kerala. Pursuant to the change in status of the Transferee Company from a public limited company to a private limited company and change in name from ‘M/s. V-Guard Industries Limited’ to ‘M/s. V-Guard Industries Private Limited’, a fresh certificate of incorporation dated November 15, 2001 was issued by the Registrar of Companies, Kerala. Pursuant to a change in the status of Transferee Company from a private limited company to a public limited company and change in name from ‘M/s. V-Guard Industries Private Limited’ to ‘M/s. V-Guard Industries Limited’, a fresh certificate of incorporation dated August 01, 2007 was issued by the Registrar of Companies, Kerala. After incorporation, the Transferee Company is doing the business of designing and manufacturing of: (a) electronic products such as stabilizers, digital UPS and batteries, solar inverters; (b) electrical items such as house wiring cables, switchgears, modular switches, pumps; and (c) household appliance such as solar and electric water heaters, fans, air coolers and kitchen appliances. The equity shares of the Transferee Company are listed on the Bombay Stock Exchange India Limited (“BSE”) and the National Stock Exchange of India Limited (“NSE”).
- vii. The share capital structure of the Transferee Company as on November 22, 2022 is as under:

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(CAA)/06/KOB/2022

IN

CA(CAA)/03/KOB/2022

In re: M/s. Simon Electric Private Limited. With. M/s. V-Guard Industries Limited.

Authorized Share Capital	Amount
50,00,00,000 equity shares of INR 1 each	INR 50,00,00,000 (Indian Rupees Fifty Crore)
Issued, Subscribed and Paid-up Share Capital	Amount
43,17,72,400 fully paid-up equity shares of INR 1 each	INR 43,17,72,400 (Indian Rupees Forty Three Crores Seventeen Lakhs Seventy-Two Thousand Four Hundred)

- viii. The registered offices of both the Petitioner Companies are situated in Kerala, which is within the territorial jurisdiction of this Tribunal.
- ix. The Statutory Auditor of the Transferor Company has, by way of its certificate dated December 20, 2021, confirmed that upon the Scheme becoming effective, the Transferor Company will cease to exist, and accordingly, there would be no accounting treatment in the books of the Transferor Company. The Statutory Auditor of the Transferee Company has, by way of its certificate dated December 20, 2021, confirmed that the accounting treatments proposed in the Scheme are in conformity with the accounting standards prescribed under Section 133 of the Act.
- x. The valuation of the Petitioner Companies for the purpose of the Scheme was undertaken by D and P India Advisory Services LLP (Registered valuer No: IBBI/RV-E/05/2020/131) and a valuation report dated December 20, 2021, was issued by them. The said Valuation Report also contains the Swap Ratio (0.0076646 equity shares having a face value of INR 1 each of the Transferee Company (constituting 100% of the merger consideration) for every 1 equity share of the Transferor Company having a face value of INR 10) that has been determined as per the settled principles of valuation by D and P India Advisory Services LLP. A copy of the Valuation Report with the Share Swap Ratio

dated December 20, 2021, has been produced along with this Company Petition, enclosing other documents/ correspondence in relation to the aforesaid valuation.

- xi. Further, a fairness opinion bearing reference no. Inv. Bk/M&A/GD/21-22/031 dated December 20, 2021 has been issued by IDBI Capital Markets & Securities Ltd., a Category-I Merchant Banker to the Board of Directors of the Transferee Company, certifying that the Share Swap Ratio determined by D and P India Advisory Services LLP is fair and reasonable (“**Fairness Opinion**”).
- xii. A pricing certificate has been issued by M/s Krishnamoorthy and Krishnamoorthy, Chartered Accountants, on December 20, 2021, to the Transferee Company, as per Chapter V of the LODR (“**Pricing Certificate**”).
- xiii. It is stated that the assets of the Petitioner Companies are sufficient to meet all its liabilities and the Scheme will not adversely affect the rights of any of the shareholders and/or creditors of the Petitioner Companies in any manner whatsoever. The Petitioner Companies have made due provisions for payment of all liabilities as and when the same will fall due in the usual course. Further, the net worth certificate dated June 27, 2022 issued by the statutory auditor of Transferor Company and net worth certificate dated July 01, 2022, issued by the statutory auditor of the Transferee Companies indicate substantial positive net worth of the Petitioner Companies.
- xiv. It is stated in the Company Petition that no proceedings pending under Section 235 or 250A of the Companies Act, 1956 or the applicable provisions of the Act against any of the Petitioner Companies.
- xv. It is stated in the Company Petition that to the knowledge of the Petitioner Companies, no winding-up petition (including under Section 433 read with

Section 434 of the Companies Act, 1956) and/ or insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 have been filed/ instituted and are pending against the Petitioner Companies.

- xvi. Since the equity shares of the Transferee Company are listed on the Stock Exchanges, the Transferee Company had submitted the Scheme along with requisite documents with the Stock Exchanges for their no-objection, in compliance with Regulation 37 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR**”) read with SEBI Master Circular No. SEBI/ HO/ CFD/ DIL1/ CIR/ P/ 2021/ 0000000665 dated November 23, 2021, as amended from time to time. Pursuant to the above, the Stock Exchanges have, *vide* their respective letters dated May 13, 2022, provided no adverse observation/ no-objection letters. By way of an Order dated September 27, 2022 in CA (CAA) NO. 3 / KOB / 2022, this Tribunal had, *inter alia*, issued the following directions:

(i) **Dispensation/ convening of meetings**

(a) In relation to the Transferor Company

The meetings of the equity shareholders and unsecured creditors was dispensed with, on account of the consent affidavits placed on record. The requirement of convening a meeting of the secured creditors was obviated on account of there being no secured creditors.

(b) In relation to the Transferee Company

Virtual meetings of the equity shareholders and unsecured creditors of the Transferee Company were directed to be held on November 14, 2022, at 11:30 A.M. and 2:30 P.M., respectively.

This Tribunal had appointed Mr. Sankar P Panicker, as the Chairperson; Mr. Sathiq Buhari, as the Alternate Chairperson; and Ms. Sudha Nerukkavil Variyam, as the Scrutinizer, for the meetings of the equity shareholders and unsecured creditors of the Transferee Company.

(ii) **Service of notices of meetings to the relevant Statutory Authorities**

By way of the Order, this Tribunal had directed the Petitioner Companies to serve notices, upon (i) the Central Government through the Regional Director, Southern Region, Ministry of Corporate Affairs (“RD”); (ii) the Registrar of Companies, Kerala (“ROC”); (iii) the Income Tax Department; (iv) the Official Liquidator attached to High Court, Kerala (“OL”), (v) Reserve Bank of India (“RBI”) (vi) BSE Limited (“BSE”), National Stock Exchange of India Limited (“NSE”) and Securities and Exchange Board of India (“SEBI”), and to such other sectoral regulatory authorities who may govern the working of the respective companies involved in the Scheme.

(iii) **Joint publication of notice of meeting, by way of newspaper advertisement**

The Petitioner Companies were directed to publish the notice for convening of meetings, in English daily, “Business Standard”, Kochi Edition and a Malayalam translation thereof in “Deepika”, Kochi Edition, 30 days prior to the date of meetings (i.e., November 14, 2022).

(iv) **Affidavits on pending legal proceedings**

The Petitioner Companies were directed to file their respective affidavits on affidavit regarding any penalties/ punishments, with

regard to the pending investigations and legal proceedings and the impact thereon, in the event of the passing of an adverse order.

3. It is stated that the Petitioner Companies have duly complied with the directions contained in the Order of this Tribunal dated September 27, 2022, as under:
 - (i) On November 06, 2022 (i.e., within the time period prescribed under law), the Transferor Company and the Chairperson appointed for the meetings of the Transferee Company filed their respective compliance affidavits under Rule 12 of the Rules, copies whereof are annexed with the Company Petition, as **Annexure P-20** and **Annexure P-22**, respectively;
 - (ii) In compliance with the directions contained in the Order dated September 27, 2022, the meetings of the equity shareholders and unsecured creditors of the Transferee Company were duly convened on November 14, 2022.
 - (iii) The Petitioner Companies have also filed their respective affidavits regarding any penalties/ punishments, with regard to the pending investigations and legal proceedings and the impact thereon, in the event of the passing of an adverse order, copies of which are annexed with the Company Petition as **Annexure P-21** and **Annexure P-25**, respectively.
4. In respect of the meeting of the equity shareholders of the Transferee Company, it is stated as under:
 - (i) There were 1,34,273 (one lakh thirty-four thousand two hundred seventy-three) equity shareholders of the Transferee Company as on September 30, 2022, and as such, the notices of the meeting were sent to all the equity shareholders.

- (ii) The virtual meeting of the equity shareholders of the Transferee Company was duly convened and held on November 14, 2022 at 11:30 A.M. through Video Conferencing/ other Audio-Visual Mode. The aforesaid meeting was attended by 38 (thirty) equity shareholders.
 - (iii) Out of the 379 equity shareholders who voted, 371 equity shareholders representing 97.88% in number and 99.99% in value, voted in favour of the resolutions and were of the opinion that the Scheme should be approved and as such, agreed to the Scheme.
 - (iv) 38,95,29,350 of the total valid votes cast by the equity shareholders, through remote e-voting or e-voting during the meeting, were in favour of the Scheme. Accordingly, the Scheme has been approved by 97.88% in number and 99.99% in value, of the equity shareholders of Petitioner Company No. 2, through the requisite majority representing more than three-fourths in value, in accordance with the requirements of Section 230(6) of the Act read with Rules 9 and 13 of the Rules.
 - (v) Within 7 days of the convening of meetings, the Chairperson, on November 21, 2022, filed a report on the meeting of the equity shareholders of the Transferee Company, copies whereof are annexed with the Company Petition, as **Annexure P-23 (Colly)**.
5. With regard to the meeting of the unsecured creditors of the Transferee Company, it is stated as under:
- (i) As on May 31, 2022, there were 8100 unsecured creditors of the Transferee Company. In terms of the Order dated September 27, 2022, notices of the meeting were sent to 561 unsecured creditors, whose outstanding debt was not less than Rs. 5,00,000/- (i.e., 0.012% of the total outstanding debt of the Transferee Company,

constituting 93.77% of the total outstanding debt of the Petitioner Company No. 2, as on May 31, 2022).

- (ii) A virtual meeting of the unsecured creditors of the Transferee Company was convened and held on November 14, 2022 at 2:30 P.M., through Video Conferencing/ other Audio-Visual Mode. The aforesaid meeting was attended by 96 unsecured creditors.
 - (iii) All the unsecured creditors, whose votes were taken as valid, and representing 100% in number and value of the unsecured debt, voted in favour of the resolutions and were of the opinion that the Scheme should be approved, and as such, agreed to the Scheme.
 - (iv) 61,36,46,545 of the total valid votes cast by the unsecured creditors, through remote e-voting or e-voting during the meeting, voted in favour of the Scheme. Accordingly, the Scheme has been approved by 100% in number and in value, of the unsecured creditors of the Transferee Company, through the requisite majority representing more than three-fourths in value, in accordance with the requirements of Section 230(6) of the Act read with Rules 9 and 13 of the Rules.
 - (v) Within 7 days of the convening of meetings, the Chairperson, on November 21, 2022 filed a report on the meeting of the unsecured creditors of the Transferee Company, copies whereof are annexed with the Company Petition, as **Annexure P-23 (Colly)**.
6. Vide Order dated 06.01.2023 this Tribunal issued the following directions:-
- (a) Service of notice to (i) RD, (ii) ROC, (iii) the Income Tax Department, (iv) OL, (v) RBI, (vi) BSE, (vii) NSE, (viii) SEBI, and other sectoral regulators who may have a significant bearing on the operation of the Petitioner Companies;

- (b) Necessary paper publication of the notice of hearing in the same newspapers as has been done in CA(CAA)/03/KOB/2022, i.e., in English Daily “Business Standard” (Kochi Edition) and Malayalam Daily “Deepika”, which have wide circulation where the Petitioner Companies are situated, not less than 10 days before the date fixed for the hearing as prescribed under the relevant provisions of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016; and
- (c) to file proof of publication at least 3 days before 08.02.2023.
7. The learned counsel appearing for the Petitioner Companies submitted that pursuant to the aforesaid directions contained in the Order dated January 06, 2023. On 13.02.2023 the Petitioner Companies, served the statutory authorities with the notice of hearing along with a complete paper book of the instant Company Petition and copy of the Order dated January 06, 2023. Further, an advertisement of the notice of hearing of the Petition was also jointly published by the Petitioner Companies in the newspapers, English Daily “Business Standard” (Kochi Edition) and Malayalam Daily “Deepika”, on January 14, 2023, i.e., more than 10 (ten) days before the date fixed for the hearing. Pursuant to the aforesaid compliances, the Transferor Company and Transferee Company have duly filed their compliance affidavits on February 01, 2023 and February 02, 2023, respectively.
8. The learned counsel for the Petitioner Companies submitted that pursuant to the respective Orders dated September 27, 2022 and January 06, 2023, the Petitioner Companies served notices, on October 10, 2022 and January 13, 2023, to the abovementioned statutory authorities. The Petitioner Companies have jointly published notices in the abovementioned newspapers on October 11, 2022 and January 14, 2023. However, the Petitioner Companies have only received representations from the OL and

the RD/ ROC, in response whereto, the Petitioner Companies have filed their respective replies on February 01, 2023 and February 02, 2023. The aforesaid replies have also been served upon all the statutory authorities, and the Petitioner Companies have filed their respective affidavits of service on February 25, 2023.

9. It is further stated that the Official Liquidator had approached this Tribunal, filing IA(C/ACT)/169/KOB/2022 seeking the appointment of a chartered accountant for the scrutiny of books of accounts, statutory registers and other relevant records and papers relating to Transferor Company. This Tribunal, *vide* Order dated December 02, 2022, allowed the application and accordingly, the Official Liquidator appointed M/s Babu A. Kallivayalil & Company, Chartered Accountants, for the purpose of scrutiny of the books of accounts, statutory registers and other relevant records and papers relating to the Transferor Company, for the last 3 financial years. M/s Babu A. Kallivayalil & Company, Chartered Accountants, submitted a report dated December 22, 2022 to the OL, opining that the Scheme is not prejudicial to the interests of revenue, creditors, shareholders and employees of the Petitioner Companies. The Official Liquidator has filed its report dated January 03, 2023 before this Tribunal, stating that it has no objection to the Scheme.
10. The ROC has filed its report dated December 13, 2022 before this Tribunal, which was prepared after considering the report/ representation of the RD. In terms of the ROC Report, the ROC and RD have no objection to the Scheme, except to the extent of the following observations:

“Regional Director, Southern Region, Ministry of Corporate Affairs being the competent authority vide letter dated 23.11.2022 has conveyed that he on behalf of the Central Government has examined the Scheme with reference to the material papers made available to him and accordingly decided not to

make any objection to the above Scheme of Amalgamation except with the following observations:-

1. As per Clause 1 (iii) of Part I of the Scheme, the Appointed Date is mentioned as the Effective Date, or such other date as may be directed / approved by the Tribunal being the date from which this Scheme shall, post effectiveness of this Scheme, become operative, which is not in accordance with Section 232(6) of the Companies Act, 2013 and stated that this Tribunal may fix an appointed date as it deems fit.
2. To direct the Transferee Company to comply with the provisions of Section 232 (3)(i) of the Companies Act, 2013 for merger of Authorized Share Capital of the Transferor Company with Transferee Company and also to file the amended Memorandum of Association (MOA) and Articles of Association (AOA) with the jurisdictional Registrar of Companies.”

11. The learned counsel for the Petitioner Companies stated that the Scheme clearly demarcates the ‘Effective Date’ and ‘Appointed Date’, in compliance with law. In this regard, reliance is placed on the following provisions of the Scheme:

- (a) Clause 1.1(iii) of the Scheme defines ‘Appointed Date’ as under:

““Appointed Date” means the Effective Date (beginning of business hours), or such other date as may be directed / approved by the Tribunal(s) being the date from which this Scheme shall, post effectiveness of this Scheme, become operative;”

- (b) Clause 1.1(ix) of the Scheme defines ‘Effective Date’ as under:

““Effective Date” means the date or last of the dates on which the certified copies of the Sanction Order are filed with the Registrar of Companies after the last of the approvals or events specified under Clause 20.1 of Part V of this Scheme are satisfied or obtained or have occurred or the requirement of which has been waived (in writing) in accordance with this Scheme. References in this

Scheme to 'coming into effect of the Scheme' or 'effectiveness of the Scheme' shall mean the Effective Date; and upon occurrence of the Effective Date, the Scheme shall be deemed to be effected from the Appointed Date;”

- (c) The Scheme is conditional upon and subject to the conditions precedent set out in Clause 20.1 of Part V of the Scheme. These conditions precedent include *inter alia*, (i) the sanction of the Scheme by this Tribunal [Clause 20.1(ii)]; and (ii) filing of the certified or authenticated copy of the Order sanctioning the Scheme, with the ROC [Clause 20.1 (v)].
- (d) In terms of Clause 1.1(ix) read with Clause 20.1 of the Scheme, pursuant to completion of the conditions precedent, the Effective Date shall be the last date on which the Order sanctioning the Scheme is filed with the ROC, on which date, the Scheme will come into effect.
- (e) In terms of Clause 1.1 (ix) read with Clause 1.1 (ii) of the Scheme, post effectiveness of the Scheme, the Scheme shall be deemed to be effective from the ‘Appointed Date’, which shall be the Effective Date, or such other date, as may be determined by this Hon’ble Tribunal.

12. The learned counsel for the Petitioner Companies further submitted that the Ministry of Corporate Affairs, *vide* its General Circular No. 09/2019 (“**MCA Circular**”), issued certain clarifications on Section 232(6) of the Act, the relevant extracts is reproduced hereinbelow:

“5. Section 232(6) of the Act states that the scheme shall be deemed to be effective from the 'appointed date' and not a date subsequent to the 'appointed date'. This is an enabling provision to allow the companies to decide and agree upon an 'appointed date' from which the scheme shall come into force.

6. *In view of the above, it is hereby clarified that:*

a) The provision of section 232(6) of the Act enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as grant of license by a competent authority or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme.

...

d) The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself upon occurrence of which the scheme would become effective. However in case of such event based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force."

13. The learned counsel for the Petitioner Companies submitted that it is a clear position that the "appointed date" can either be a specific calendar date or be tied to the occurrence of a 'trigger event' / 'precondition' agreed between the parties. In terms of the instant Scheme, the 'Appointed Date' [Clause 1.1(ii)] is defined to mean the 'Effective Date' [Clause 1.1(ix)] or such other date as may be directed/ approved by this Tribunal. Therefore, the 'Appointed Date' is linked with the 'Effective Date' of the Scheme, which in turn is tied up with the completion of the conditions precedent [Clause 20.1], and therefore, the present Scheme is squarely covered by and in compliance with the MCA Circular.

14. The learned counsel for the Petitioner Companies further submitted that the decision in relation to the 'Appointed Date' falls entirely within the prerogative of the shareholders and creditors of the Petitioner Companies

and is left to their commercial wisdom. In the present case, the shareholders and creditors of both the Petitioner Companies have, in their commercial wisdom, approved the Scheme and the Appointed Date specified therein.

15. The learned counsel for the Petitioner Companies further submitted that it is a settled position of law that “appointed date” can be the same as the “effective date”, so long it meets the criteria set out in the MCA circular. Accordingly, in terms of the Scheme, the ‘Appointed Date’ may be a date directed/ approved by this Tribunal. In this regard, the learned counsel for the Petitioner Companies placed reliance on paragraphs 20-21 of the decision of the NCLT, Chennai Bench, in *Sundaram Industries Private Limited* [CA(CAA)/24-37/CHE/2021].
16. The learned counsel stated that this Tribunal may fix the ‘Appointed Date’ in the Scheme **as March 25, 2023**. The aforesaid prayer has also been made by the Transferor Company and Transferee Company in their respective replies to the representations of the statutory authorities, filed on February 01, 2023 and February 02, 2023.
17. The Petitioners stated that the ROC and RD have prayed before this Tribunal to direct (i) the Petitioner Company No. 2 to comply with the provisions of Section 232(3)(i) of the Act for merger of the Authorised Share Capital of the Transferor Company with the Transferee Company; and (ii) the Transferee Company to file the amended Memorandum of Association and Articles of Association with the jurisdictional ROC. In this regard, the learned counsel for the Petitioner Companies submitted that the Scheme itself contemplates an amendment in relation to the Memorandum of Association in Clause 12 as under:

“12. Amendment to Memorandum of Association

12.1 Transfer of Authorized Share Capital

- (i) *The Transferee Company shall, if required, take all necessary steps for increase of authorized share capital for issue of shares pursuant to Cluse 10.1 above prior to fixation of Record Date.*
- (ii) *Upon this Scheme becoming effective and upon the vesting and transfer of the Undertaking to the Transferee Company, the entire authorized share capital of the Transferor Company shall stand transferred to the authorized share capital of the Transferee Company without any further act or deed. Clause V of the memorandum of association of the Transferee Company shall, without any further act or deed, stand altered to read as under:*
- “The Authorized Share Capital of the Company is INR 191,50.00,000 (Indian Rupees One Hundred Ninety-One Crore Fifty lakh) divided into 191,50,00,000 equity shares of INR 1 (Indian Rupee One) each.”*
- (iii) *Pursuant to this Scheme, Transferee Company shall file the requisite forms with the Registrar of Companies for alteration of its authorized share capital. The stamp duties and fees (including registration fee) paid on the authorized share capital of the Transferor Company shall be utilized and applied to the increased authorized share capital of the Transferee Company and there would be no requirement for any further payment of stamp duty and / or fee by the Transferee Company for increase in the authorized share capital to that extent.*
- (iv) *The amendments pursuant to this Clause 12 shall become operative on the Scheme becoming effective by virtue of the fact that the shareholders of Transferee Company, while approving the Scheme as a whole, have approved and accorded the relevant consents as required under the Act for amendment of the memorandum of association and articles of association of Transferee Company and shall not be required to pass separate resolutions under the applicable provisions of the Act. It is hereby clarified that for the purposes of Clause 12, the consent of the shareholders of Transferee Company to the Scheme shall be deemed to be sufficient for the purposes of effecting the above amendment or increase in authorized share capital of Transferee Company.*

and no further resolution under Section 13, Section 14 and Section 61 of the Act, or any other applicable provisions of the Act would be required to be separately passed.”

18. Therefore, the Scheme clearly states that pursuant to the Scheme becoming effective, the entire authorized share capital of the Transferor Company shall stand transferred to the authorized share capital of the Transferee Company, and accordingly provides for amendment of Clause V of the Memorandum of Association of the Transferee Company to reflect the same. Further, the Scheme clearly requires the Transferee Company to make the requisite filings before the ROC for alteration of capital.
19. The learned counsel submitted that the Transferee Company undertakes to comply with Section 232 (3) (i) of the Act and / or any other provision of law, as also with any directions that may be imposed by this Tribunal in this regard.
20. Upon a perusal of the clarifications set forth in the MCA Circular, this Tribunal is of the opinion that be tied to the occurrence of an event, and is not required to be necessarily a specific calendar date. Further, this Tribunal is also conscious of the fact that the decision in relation to the 'Appointed Date' falls entirely within the prerogative of shareholders and left to their commercial wisdom. In view of the submissions made by the learned counsel for the Petitioner Companies, as also the statement made by the representative of the ROC on the RD/ ROC having no objections to the Scheme, this Tribunal hereby fixes the 'Appointed Date' of the Scheme as **March 25, 2023**.
21. We have also seen from the records that despite service of notices of joint publication of notice by way of advertisement, on two occasions, no reply/ objection/ observation has been filed by the other statutory authorities nor any other objections have been received.

22. It is further stated that despite the service of notices on two occasions, no representations have been made by the Income Tax Department, till date. In terms of Section 230 (5) of the Act read with Rule 8 (3) of the Rules, if the statutory authorities fail to file their representations within a period of 30 days, from the date of receipt of such notice, it shall be presumed that they have no objection to the proposed Scheme. This position has also been followed in several decisions, including in *Crust N Crumb Food Innovations India Ltd.* [CP(CAA)03/KOB/2022];
23. In terms of Clause 4.3.1 read with Clause 1.1 (xxix) of the Scheme, all liabilities of the Transferor Company, relating to and comprised in the 'Undertaking', shall, pursuant to the sanction of the Scheme by this Tribunal and under Sections 230 to 232 of the Act, and other applicable provisions of the Act, without any further act, instrument, or deed, matter or things, deemed to have been transferred to and vested in the Transferee Company, on the terms and conditions as were applicable to the Transferor Company and, the Transferee Company shall meet, discharge and satisfy the same. Furthermore, any charge, encumbrance, lien or security thereon, and the same shall be assumed by the Transferee Company, to the extent they are outstanding as on the 'Effective Date', so as to become the 'Liabilities' of the Transferee Company, on the same terms and conditions as were applicable to the Transferor Company.
24. Furthermore, in terms of Clause 5.1 of the Scheme, all suits, actions, claims, cause of actions, appeals, or other legal, quasi-judicial, arbitral or other administrative proceedings of whatever nature ("**Proceedings**") by or against the Transferor Company, which are pending on the 'Effective Date' or which may be instituted any time in the future, shall not abate, be discontinued or be in any way prejudicially affected by reason of the amalgamation or of anything contained in the Scheme, but the Proceedings may be continued, prosecuted and enforced by or against the Transferee

Company, in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Company as if the Scheme had not been made.

25. It is further stated that despite service of notices on two occasions, RBI has not made any representations in respect of or objections to the Scheme under consideration. Under the regulatory framework/ requirements under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (“**FEMA NDI Rules**”) and the Consolidated FDI Policy Circular of 2020 (“**FDI Policy**”), no approval of RBI is required for the proposed amalgamation, since the Petitioner Companies are engaged in the manufacturing sector in which 100% foreign direct investment (automatic route) is allowed as per the FEMA NDI Rules and FDI Policy. The Petitioner Companies are engaged in the sector which comes under 100% automatic route (i.e., manufacturing sector) and does not exceed the sectoral cap on the shareholding percentage of foreign shareholders. In the letters to the respective notices sent to the RBI on October 10, 2022 and January 13, 2023, the Petitioner Companies have clearly stated that they shall continue to comply with the applicable provisions of the Foreign Exchange Management Act, 1999 and the Reserve Bank of India Act, 1934, and the rules and regulations thereunder, as applicable to it and shall make all necessary filings and/or reporting as may be required under the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, FEMA NDI Rules and the FDI Policy. The Petitioner Companies are neither registered as Banking Companies nor Non-Banking Financial Companies with the RBI.
26. It is stated that the First Motion Application, i.e., CA (CAA)/03/KOB/2022, was instituted by the Petitioner Companies pursuant to the receipt of observation letters/ letters of no adverse observation, both dated May 13, 2022 from BSE and NSE, under

Regulation 37 of the LODR. Both the observation letters/ letters of no adverse observation record SEBI's no objection to the present Scheme. In terms of the observation letter/ letter of no adverse observation dated May 13, 2022 issued by NSE, NSE expressly stated that the Transferee Company is not required to send notice for representation as mandated under Section 230(5) of the Act to NSE again, for its comments/ observations/ representation. Furthermore, BSE also, in the observation letter/ letter of no adverse observation dated May 13, 2022, has stated that it has no adverse observations.

27. The learned counsel for the Petitioner Companies further submitted that the proposed Scheme would be in the interests of the Petitioner Companies, and their respective shareholders, creditors, employees and other stakeholders and will not be prejudicial to the interests of any concerned shareholders or creditors or employees or the general public at large.
28. From a perusal of the materials placed on record, it appears that the Scheme of Merger annexed to this petition is a fair and reasonable one and does not violate any provisions of law, and is not contrary to public policy. As per the Scheme, the entire undertaking, assets, business, and liabilities of the Transferor Company proposed to be amalgamated and stand vested with the Transferee Company as a going concern.
29. Since, all the requisite statutory compliances prescribed under Sections 230 and 232 of the Companies Act, 2013 have been followed, this Tribunal finds that the Scheme of Merger & Amalgamation annexed to these Petitions can be sanctioned and made absolute in terms of the prayer in the said Company Petition.

ORDER

- i. The Scheme of Amalgamation, being **Annexure P-1** to the Company Petition, is hereby sanctioned by this Tribunal so as to be binding with effect from **March 25, 2023**, on M/s. Simon Electric Private

Limited (Transferor Company) and M/s. V-Guard Industries Limited (Transferee Company) and their Members/ Shareholders, Secured Creditors, Unsecured Creditors, employees of the Petitioner Companies and all concerned;

- ii. All the properties, rights, interests and powers of the Petitioner Transferor Company namely M/s. Simon Electric Private Limited (Transferor Company) be transferred to and vest without further act or deed in M/s. V-Guard Industries Limited ("Transferee Company) and accordingly the same shall, pursuant to Section 230-232 of the Companies Act, 2013, be transferred to and vest in M/s. V-Guard Industries Limited ("Transferee Company"), for all the estates and interest of the Petitioner Transferor Company, but subject nevertheless to all charges now affecting the same;
- iii. All the debts, liabilities, duties and obligations of the Petitioner Transferor Company namely M/s. Simon Electric Private Limited be transferred without further act or deed to the Transferee Company M/s. V-Guard Industries Limited and accordingly the same shall, pursuant to Section 230-232 of the Companies Act, 2013 be transferred to and become the debts, liabilities, duties and obligations of M/s. V-Guard Industries Limited ("Transferee Company");
- iv. All legal proceedings and/or suits and/or appeals now pending by or against the Petitioner Transferor Company namely M/s. Simon Electric Private Limited ("Transferor Company") be continued by or against the Transferee Company M/s. V-Guard Industries Limited;
- v. All proceedings and/or suits and/ or appeals now pending by or against the Transferor Company shall be continued by or against the Transferee Company; however, if any suit, writ petition, investigation appeal, criminal or other proceedings of whatsoever

nature is pending against the petitioner Companies or entities associated with petitioner companies, their directors, shareholders, employees etc., the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer of business of the Transferor Company or because anything contained in the scheme, but the proceeding shall continue, prosecuted and enforced by or against the Transferee Company/Transferor Company entities etc. in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Company and their associated entities, directors, shareholders, employees etc., as if the Scheme had not been made

- vi. All the employees of the Transferor Company in service, if any, on the date immediately preceding the date on which the scheme takes effect, i.e., the effective date, shall become the employees of the Transferee Company on such date without any break or interruption in service and upon terms and conditions not less favourable than those subsisting in concerned Transferor Company on the said date.
- vii. The Petitioner Companies are directed to file copy of this order along with a copy of the Scheme with the Registrar of Companies, Kerala, electronically in E-Form INC-28, in addition to producing a physical copy within 30 (thirty) days from the date of issue of the order by the Registry.
- viii. The Transferor Company namely, M/s. Simon Electric Private Limited be dissolved without winding up from the date of filing of certified copies of this Order with the Registrar of Companies, Kerala;
- ix. Upon receiving the certified copy of this Order, the Registrar of Companies, Kerala, is directed to place all documents relating to the

Transferor Company with that of the Transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.

- x. Leave is granted to the Petitioner Companies to file the Schedule of Assets of M/s. Simon Electric Private Limited ("Transferor Company") within three weeks from the date of receipt of the order to be made herein;
- xi. Let the Deputy Registrar/ Assistant Registrar of this Tribunal draw up the necessary Order in Form No. CAA 7 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, with such necessary variations.
- xii. The Petitioner Companies have to lodge a copy of this order duly certified by the Deputy/ Assistant Registrar of this Tribunal with the concerned Superintendent of Stamps, along with a copy of the Scheme for adjudication of stamp duty payable, if any, on the same within 60 (sixty) days from the date of receipt of the certified copy of the Order.
- xiii. All concerned regulatory authorities shall act on receipt of the copy of this order along with the Scheme duly certified by the Deputy/ Assistant Registrar of this Tribunal.
- xiv. The Transferee Company is directed to file the amended Memorandum of Association (MoA) and Articles of Association (AoA) with the Registrar of Companies, Kerala, and also to strictly comply with the provisions of Section 232(3)(i) of the Companies Act, 2013.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(CAA)/06/KOB/2022

IN

CA(CAA)/03/KOB/2022

In re: M/s. Simon Electric Private Limited. With. M/s. V- Guard Industries Limited.

xv. The Petitioner Companies or other persons interested shall be at liberty to apply to this Tribunal in the above matters for any directions that may be necessary about the working of the Scheme.

V

xvi. Any concerned authorities shall also be at liberty to approach this Tribunal for any further clarification after the Sanction of the Scheme.

30. With the aforesaid Sanction, the CP(CAA)/06/KOB/2022 connected with CA(CAA)/03/KOB/2022 is hereby stands disposed of.

31. Urgent certified copies of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.03.31 14:34:32 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ
Date: 2023.03.31 14:48:04 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this, 31st day of March, 2023.

Rajasree R. Nair.