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INDIA

United Spirits Limited

Registered Office:

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Bengaluru 560 001

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2nd December 2022

BSE Limited
Listing Department
Dalal Street, Mumbai 400 001
Scrip Code: 532432

National Stock Exchange of India Ltd
Exchange Plaza, C-1 Block G,
Bandra Kurla Complex,
Bandra East, Mumbai- 400051
Scrip Code: MCDOWELL-N

Dear Sirs,

Sub: Disclosure under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”)

Certified Copy of Order of the Hon’ble National Company Law Tribunal, Bengaluru Bench in the matter of the Scheme of Amalgamation and Arrangement amongst Pioneer Distilleries Limited and United Spirits Limited and their respective shareholders and creditors

This is with reference to our earlier disclosure dated 17th November 2022 wherein we had disclosed that the Hon’ble National Company Law Tribunal, Bengaluru Bench (“NCLT”) had passed an order dated 4th November 2022 (“**Order**”) (uploaded on the website of the NCLT on Wednesday, 17th November 2022), sanctioning the Scheme of Amalgamation and Arrangement amongst Pioneer Distilleries Limited and United Spirits Limited (the “**Company**”) and their respective shareholders and creditors under Sections 230-232 and other applicable provisions of the Companies Act, 2013 (“**Scheme**”) with the ‘Appointed Date’ as 1st April 2021.

This is to inform you that the certified copy of the said Order of the NCLT was received by the Company today i.e., 2nd December 2022, and the same is enclosed herewith.

This is for your information and records.

Thank you,

For United Spirits Limited

Mital Sanghvi
Company Secretary

Enclosed: As above



**FREE OF COST COPY****IN THE NATIONAL COMPANY LAW TRIBUNAL**
BENGALURU BENCH**(Through Web Based Video Conferencing)****CP (CAA) No. 40/BB/2021****(Second Motion)****U/s. 230-232 of the Companies Act, 2013****IN THE MATTER OF:****Pioneer Distilleries Limited**Registered Office at:
UB Tower, Level 10, No. 24,
Vittal Mallya Road,
Bengaluru- 560 001.

... Petitioner 1/Transferor Company

And**United Spirits Limited**Registered Office at:
UB Tower, Level 10, No.24
Vittal Mallya Road,
Bengaluru- 560 001.

... Petitioner 2/Transferee Company

Order delivered on: 4th November, 2022**CORAM:**

Hon'ble Shri Kishore Vemulapalli, Member (Judicial)

Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner Companies

: Shri. K.G Raghavan, Sr. Counsel a/w
Ms. Lekha Chandrashekar

For ROC

: Shri. Hemanth Rao

For IT

: Shri. Ganesh R Ghale

ORDER**Per: Manoj Kumar Dubey, Member (Technical)**

1. This is a joint second motion petition filed by Pioneer Distilleries Limited (for brevity, the "Petitioner Company No. 1/ Transferor Company") and United Spirits Limited (for brevity, the "Petitioner Company No.2/ Transferee Company") under Sections 230 and 232 of the Companies Act, 2013 (for short to be referred hereinafter as the 'Act') and in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations)

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Rules, 2016 (for brevity, 'Rules') by inter alia seeking for the sanction of Scheme of Amalgamation and Arrangement (for brevity 'Scheme') between Transferor Company and Transferee Company. The joint petition is maintainable in terms of Rule 3 (2) of the Rules.

2. The petitioner companies filed First Motion Application bearing CA (CAA) No. 09/BB/2021 before this Tribunal. And based on such application moved under section 230-232 of the Companies Act, 2013 necessary directions were issued vide order dated 08.02.2021 and modified order dated 13.08.2021. Details of the First Motion order are as under:

	Transferor Co	Transferee Co
Equity Shareholders	Convene Meeting (30.09.2021 at 3.00PM) at	Convene Meeting (30.09.2021 at 11.00AM)
Secured Creditors	No Secured Creditors	No Secured Creditors
Unsecured Creditors	Meeting Dispensed (Consent Obtained)	Convene Meeting (30.09.2021 at 1.00PM)

3. Pursuant to the First Motion Application, the Tribunal directed to convene the meetings of Equity Shareholders of both Transferor and Transferee Company and also directed to convene the Meeting of Unsecured Creditors of the Transferee Company on 30.09.2021. In compliance to the Order dated 08.02.2021 and 13.08.2021, the aforesaid meetings were held on 30.09.2021 and the report of the Chairman dated 30.09.2021 is attached along with the petition wherein it is stated that the Scheme was approved by (i) Majority of persons representing 98.3152% in value of equity shareholders of the Transferor Company who voted through postal ballot, remote e-voting and e-voting; (ii) Majority of person representing 99.9981% in value of the equity shareholders of the Transferee Company; (iii) Majority of persons 99.8825% in value of the unsecured creditors of the Transferee Company. The Scrutinizer has also filed his report dated 30.09.2021, which is attached along with the Petition.

4. When the petition was listed on 25.11.2021, through video conferencing, the following directions were issued:-

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"5. The Petition be listed for hearing on 12.01.2022. Notice of hearing be advertised in the same newspaper as in the first motion petition i.e., "Business Standard" in English Edition and "Prajavani" in Kannada Edition not less than 10 days before the aforesaid date fixed for hearing.

6 Notice be also serve upon the Objector(s) or their representatives as contemplated under Section 230 (4) 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 annexure filed therewith at least 15 days before the date fixed for hearing

7. In addition to the public notice, each of the Petitioner Companies shall serve the notice of the petition on the following Authorities namely, (a) Registrar of Companies (Bangalore) (ii) Central Government through Regional Director, (South East Region), Hyderabad (iii) Office of Official Liquidator, Bangalore; (iv) Deputy Commissioner of Income, Bengaluru (v) Reserve Bank of India (Central Office), Mumbai (vi) Reserve Bank of India (Regional Office-Bengaluru) (vii) Bombay Stock Exchange Limited (BSE), Mumbai (viii) Securities and Exchange Board of India, (SEBI) (ix) National Stock Exchange of India Limited (NSE) (x) The Secretary, Competition Commission of India, New Delhi along with the copy of this petition by speed post immediately and to such Sectoral Regulator(s) who may govern the working of the respective companies involved in the scheme. "

5. In pursuant to the aforesaid notice, the authorized signatory of the petitioner companies has filed copies of proof of service of notice vide diary No. 3750 dated 24.12.2021, to the aforesaid authorities and also copies of paper publication of notice of hearing.
6. The main objects, dates of Incorporation, authorized, issued and paid-up share capital, rationale of the scheme and interest of employees have been discussed in detail in first motion order dated 08.02.2021.
7. The Board Resolution of the Petitioner Companies approving the Scheme is annexed as Annexure H of the Petition.

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CP (CAA) No. 10/BB/2021
(Second Motion)

8. It is further submitted that the Certificate of Statutory Auditors of the Petitioner Companies, stating that, pursuant to the requirement of the Act and SEBI Regulation, it is confirmed that the accounting treatment contained in the Draft Scheme is in compliance with Regulation 11, 37 and 94 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 and circulars issued thereunder, the applicable Accounting Standards specified under Section 133 of the Act, and other generally accepted accounting principles. The aforesaid certificate is attached as Annexure L of the Petition.
9. The audited financial statement as on 31.03.2021 and Unaudited Financial Statement as on 30.06.2021 of the Transferor Company and audited financial statement as on 31.03.2021 and Unaudited Financial Statement as on 30.06.2021 of the Transferee Company are attached as Annexure D of the Petition.
10. As per the Scheme, the "Appointed Date" means 1st day of April, 2019 or such other date as the National Company Law Tribunals may direct. The "Effective Date" means the last of the dates on which all the conditions and matters referred to in Clause 21.1 have been fulfilled, obtained or waived, as applicable.
11. The consideration for Amalgamation of the Transferor Company with the Transferee Company has been determined under clause 12 of the Scheme.
12. In pursuant to the notice, the Regional Director (RD) and the Registrar of Companies (ROC) has filed its Common report vide Diary No. 931 dated 08.03.2022. Both RD and RoC have raised the following observation vide para 2:
- The Transferee Company is the holding company of the Transferor Company with 75% of shares.
 - The appointed date of the scheme is mentioned as 01.04.2019 which is almost three years old and hence, the date may be changed to a latest date.
 - The Transferor Company and the Transferee Company are listed both on National Stock Exchange (NSE) and the Bombay Stock



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Exchange (BSE). Both the companies must show the compliance of SEBI (Listing Obligations Disclosure Requirements), 2015 and obtain the approvals from SEBI/ Stock Exchanges and CCI.

- (d) Although the scheme has been approved by the shareholders of both the companies, provision is required to be made for persons who has dissented for the scheme since both the companies have common shareholders and the interest should be protected.
- (e) As per the Financial Statement of the Transferor Company as at 31.03.2021, the company has incurred losses to the tune of Rs 8,657 lakhs and the company also have huge negative net worth to the tune of Es. 2,77,85,00,000/-. There may be substantial negative outflow of the tax liability of the Transferee Company once the Scheme is approved. Further, the net worth of the Transferor Company has eroded and current liabilities exceed the current assets. There is material uncertainty on the ability of the company to continue as a going concern. Further transferor Company has received huge loans of Rs 13,539 lakhs from Transferee Company at 8% interest. Writing off the amount in the books of accounts of Transferee Company would further dent the financials. Hence, detailed clarification may be furnished to the Hon'ble NCLT with regard to the benefit of amalgamation of a totally loss-making with a profit-making company.
- (f) As per Note No. 28 of the financial statement of the Transferor Company as at 31.03.2021, the company being a listed company and taking into consideration public interest in the company, it is observed there is a huge negative EPS. The Transferee Company shall furnish an undertaking before the Hon'ble NCLT that the interest of the shareholders, particularly small shareholders, of both the Transferee and the Transferor shall be safeguarded.
- (g) There are various claims against the Transferor Company classified as "Contingent liabilities" relating to Income Tax matters, Civil Litigations and petitions before the Hon'ble court of Bombay Bench. Hence, the status of the said cases be furnished to the Hon'ble NCLT.



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- (h) Further, as per the Independent Auditor's Report of the Transferor company as at 31.03.2021, statutory dues pending under the Central Sales Tax Act, 1958 and the Maharashtra Value Added Tax Act, 2002 to the tune of Rs 77,91,85,393/- and the Income Tax Act, 1961 to the tune of Rs. 1, 51, 86, 680/-. The Transferee Company shall absorb the statutory dues and settle the same and furnish an undertaking to this effect before the Hon'ble NCLT.
- (i) As per Note No. 24 of the Financial Statement as at 31.03.2021 of the Transferor Company, dues payable to MSME to the tune of Rs 193 lakhs. The Transferee Company shall furnish an undertaking to the Hon'ble NCLT to absorb and settle the same.
- (j) The Transferee Company has total open charges to the tune of Rs. 14,05,30,56,000. Hence, NOC has to be submitted from all the secured creditors before approval of the Scheme.
- (k) As per the Independent Auditor's Report as at 31.03.2021 of the Transferee Company, it has various unpaid disputed statutory dues under the Income Tax Act, 1961 to the tune of Rs. 28,276 million, Customs Act, 1962 to the tune of Rs. 2 million, Service Tax (Finance Act, 1994) to the tune of Rs. 2,230 million, Central Excise Act Rs. 1768 million, Karnataka Sales Tax Act, 1957 Rs. 3 million, West Bengal Sales Tax Act to the tune of Rs. 766 million, Central and various State Sales Tax Acts to the tune of Rs. 2,201 million, various Entry Tax Acts to the tune of Rs. 342 million, Bengal Excise Act 1909 and Bengal Excise (Amendment) Act, 2012 to the tune of Rs. 15 million, The Maharashtra Prohibition Act, 1949 of Rs. 132 million and MSME dues to the tune of Rs. 640 million. The Transferee Company need to furnish an Affidavit to the Hon'ble NCLT to the effect that it shall pay the dues as and when claims are crystalized.
- (l) Both the Transferor and the Transferee Companies have huge Related Party Transactions. The companies may be asked to show the compliance of section 188 of the Companies Act, 2013 through affidavits & relevant documents and SEBI (Listing



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Obligations Disclosure Requirements), 2015 as Transferor and Transferee Companies are listed companies.

(m) The following are the matter of importance with reference to the Transferee Company which are brought to the notice of the Hon'ble Tribunal which may be taken note while approving the scheme or passing orders as may deem fit by the Hon'ble Tribunal:

- i) Ministry of Corporate Affairs (MCA) had carried out the inspection of the company in the year 2016 following which the company has compounded certain offences. However, being the Transferee Company, the follow-up actions will continue.
- ii) The Company had received notice from Securities Exchange Board of India in relation to the initial inquiry in relation to the agreement between the Company and Dr. Vijay Mallya.
- iii) The company had received notices from Directorate of Enforcement in connection with Agreement dated February 25th, 2016, entered into by the company with Dr. Vijay Mallya, former director and investigations under the Foreign Exchange Management Act, 1999 and Prevention of Money Laundering Act, 2002.
- iv) RBI had certain queries with regard to remittances made in prior years by the company to its overseas subsidiaries, past acquisition of the Whyte and Mackay group, clarifications/queries received from the authorized dealer from time to time on annual performance reports for prior years and compliances relating to the Company's overseas Branch office.
- v) The Company has dispute with IDBI Bank in relation to prepayment of principal loan amount.
- vi) Dr. Vijay Mallya, the former director of the Transferee Company has been declared as Wilful Defaulter and



Fugitive Economic Offender by the Special PMLA court, Mumbai.

- (n) This report is being submitted for the limited purpose of the scheme of arrangement and the liability of the Petitioner Company's officers in default shall continue even after merger as per Section 240 of the Companies Act, 2013 even in case approval of the scheme.
- (o) As seen from the reply of the company, it is observed that the company has given incomplete details of Investigations/Inspection against the company and also the present status. Since two compounding applications filed by the Transferee company and its defaulting directors under Section 188 and section 78 of the Companies Act, 2013 are pending, detailed clarification be furnished in this regard to the Hon'ble NCLT.
- (p) The company has mentioned at para17 of the Scheme that rationale of the Scheme is for:
- i) Simplification of the corporate structure and consolidation of the group's business.
 - ii) Realizing business efficiencies, inter alia, through optimum utilization of resources due to pooling of management, expertise and other resources of the Petitioner's and to achieve economies of scale
 - iii) Overcoming limitations on raising capital for the Transferor Company, ensuing improved allocation of capital and optimum cash flows contributing to better utilization of capacity and the overall growth of the combined entity.
 - iv) Creation of a larger asset base and facilitation of access to better financial resources.
 - v) Savings on compliance/interest costs.
 - vi) Uninterrupted operations of the Transferor Company's plant in order to stabilize its business.



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vii) Integration of the Transferor Company's operations with the Transferee Company resulting in benefits arising out of the synergies, especially since the Transferee Company is in the same line of business as the Transferor Company.

viii) Enhanced shareholder value pursuant to economies of scale and business efficiencies. However, as seen from the scheme, none of them appears to be achieved upon approval of the scheme.

The Petitioner Companies may furnish a detailed clarification/justification before the Hon'ble NCLT in this regard.

(q) As seen from para 18 of the scheme, it is mentioned that the Transferor Company has been incurring losses in the recent past and its entire net worth has eroded and the Transferee Company which is holding 75% of the equity in the Transferor Company has to account for losses to the extent of 75% of the Transferor Company while consolidating its accounts and amalgamation of Transferor Company with Transferee Company will be beneficial. However, upon examination, it is observed that:

- i) The sales of the company is completely to its holding company and related party transactions shows lesser amount and from the documents filed with ROC prima facia shows violation of the provisions of Section 188 of the Companies Act, 2013 year on year.
- ii) The company has taken loans amounting to Rs 13,539 lakh and has not paid interest on the same which is almost equal to the loan amount being Rs. 10,737 lakh.
- iii) The company has not been accounting for interest and not made the due payment to its Holding Company years together.
- iv) The company does not have trade receivables during any of the previous years.

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Hence the petitioner companies may be asked to explain as to how the scheme is beneficial.

- (r) As seen from the related party transactions, it is clear that the Petitioner Company has violated the provisions of Section 186 of the Companies Act, 2013 as it is a subsidiary beyond 2 layers as prescribed. Hence, the Transferor Company may be advised to furnish clarification in this regard to the Hon'ble NCLT.
- (s) The company in its petition has not completely disclosed the status of certain members of the UB Group who continue to be identified as promotor of the Petitioner No.2 and their willful default to the banks/financial institutions which are proceeding and pending against them due to the reasons best known to them. The Petitioner Companies may be directed to furnish clarification to the Hon'ble NCLT for non-disclosure of the facts in the petition.
- (t) As the company has not disclosed about the ultimate beneficial owner in the petition and the Directorate is of the view that the persons/member of UB Group as stated in para 2 (s) above are the ultimate beneficial owners. In this regard, the Petitioner Companies may be directed to furnish detailed information to the Hon'ble NCLT.
- (u) It appears from the Scheme that the Transferor Company is being used by the Transferee Company only to accommodate transactions and with the present scheme and amalgamation of the Transferor Company with Transferee Company would wipe out all the previous violations of the Company. Therefore, the present Scheme is prejudicial to public interest.

13. Subsequently, reply affidavit to the common report of RD & ROC have been filed by the petitioner companies vide diary No. 1434 dated 05.04.2022, inter alia stating as under:-

1. Reply to point 2(a) of the report: The fact that the Transferee Company is the holding company of the Transferor Company with 75% total shareholding is an admitted fact as already stated in paragraph (A) (v) of the Scheme.



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2. Reply to point 2(b) of the report: It is submitted that in view of the observation made by the Registrar of Companies and Regional Director, the Petitioner submit that they have no objection if the Tribunal were to direct the change of the Appointed Date if it deems fit, from 01.04.2019 to 01.04.2021, subject to no terms of the Scheme being modified as a result. The respective Board of Directors of the Petitioners have also, subject to the Hon'ble Tribunal mandating the change in the Appointed Date, given their no objection to such change vide their respective Circular Resolutions dated 02.04.2022 and 01.04.2022.

3. Reply to point 2(c) of the report: It is submitted that, in paragraph 16 of the petition it is mentioned that the Petitioners have received the no objections of BSE and NSE as per their respective observation letters dated 21.10.2020 and 22.10.2020. Copies of the observation letters issued by BSE and NSE, which also include the observations of the Securities and Exchange Board of India are produced at Annexure I to the Petition. It is further submitted that the Transferee Company currently holds 75% of the shares and voting rights and is in sole control of the Transferor Company. Since the proposed Scheme will not result in a transfer from joint control to sole control of the Transferor Company, the proposed transaction is exempted under paragraph 9 of Schedule I of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations Regulations, 2011, and therefore no notice is required to be filed with Competition Commission of India under Section 6(2) of the Competition Act, 2002.

4. Reply to point 2(d) of the report: It is submitted that the Scheme is in the best interest of the Petitioners, shareholders, employees and creditors as given in clause A(v) of Chapter 1 of the Scheme, and that the interest of all relevant stakeholders (including the dissenting shareholders and common shareholders) are fully protected under the Scheme.

It is further submitted that the scheme has been approved with requisite majority by the shareholders of the Petitioners at the meetings held on 30.09.2021 and has been approved by a majority of public

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shareholders and there are no objections to the Scheme under Section 230(4) of the Companies Act, 2013.

The Petitioner further submits that there is no discriminatory treatment to any of the dissenting shareholders and all shareholders of the Transferor Company, including any dissenting shareholders, will be entitled to shares in the Transferee Company based on the swap ratio recommended by SRBC & Co LLP, an independent chartered accountant firm, and Manuj Singhal, Registered valuer and supported by the fairness opinions issued by SEBI registered merchant bankers.

Petitioner further submits that the rights of all shareholders are already protected under the Scheme, and no special provision are required to be made for dissenting or common shareholders.

5. **Reply to point 2(e) of the report:** It is submitted that, as mentioned in paragraph (A)(v) of the scheme, given the significant losses of the Transferor Company and its negative net worth, the continuity of the Transferor Company as a going concern, would be very difficult. Therefore, the amalgamation of the Transferor Company with the Transferee Company would be beneficial to both the Petitioners, including the amalgamated company having access to uninterrupted financial and technical support and also getting the full benefit of the Transferor Company's manufacturing facilities. Further, it is denied that at present, there is material uncertainty on the ability of the Transferor Company to continue as a going concern and the management and the board of directors have concluded that there is no material uncertainty, which impacts the ability of the Transferor Company to continue as a going concern.

It is further submitted that, write off of the loan as a part of the merger will not lead to any additional financial impact as the Transferee Company has made necessary provisions in its books of accounts in compliance with the relevant accounting policy, IND AS-36 (Impairment of Assets).

6. **Reply to point 2(f) of the report:** The Transferee Company has undertaken that the interest of the shareholders, particularly the small





shareholders, of both the Transferor Company and Transferee Company are safeguarded.

- 7. Reply to point 2(g) of the Report:** It is submitted that status regarding various claims against the Transferor Company classified as "Contingent Liabilities" in the financial statements are produced as Annexure E along with the Reply. It is further submitted that as per clause 8 of the Scheme, all legal proceedings by or against the Transferor Company pending and/or arising before the Effective Date, including those arising under the Income Tax, 1961 and any other indirect tax laws, shall not abate or be discontinued but shall be continued and enforced by or against the Transferee Company.
- 8. Reply to point 2(h) of the Report:** It is submitted that as per clause 5 of the Scheme, all the liabilities of the Transferor Company, shall be transferred or deemed to be transferred to the Transferee Company so as to become the liabilities of the Transferee Company. No statutory dues owned by the Transferor Company are being extinguished or cancelled as a part of the Scheme. Therefore, the Transferee Company undertakes to absorb all statutory dues and settle the same in accordance with the Scheme and applicable law.
- 9. Reply to point 2(i) of the Report:** It is submitted that as per Clause 5 of the scheme, all the liabilities of the Transferor Company, shall be transferred or deemed to be transferred to the transferee company so as to become the liabilities of the Transferee Company. No dues payable by the Transferor Company to MSMEs are being extinguished or cancelled as a part of the Scheme. Therefore, the Transferee Company undertakes to absorb all such dues and settle the same in accordance with the Scheme and applicable law.
- 10. Reply to point 2(j) of the Report:** It is submitted that there are no secured creditors in the Transferee Company, as also evidenced in the financial statements of the Transferee Company as on 31.03.2021. The certificate of the independent chartered accountant certifying that there are no secured creditors of the Transferee Company as on 31.12.2021 has been attached along with the Reply Affidavit.. It is further submitted that the



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liabilities of the Transferee Company are neither being reduced nor being extinguished under the Scheme and Transferee Company undertakes to take all efforts to rectify the charges showing in the MCA portal.

- 11. Reply to point 2(k) of the Report:** It is submitted that the Transferee Company will continue as a going concern after the Scheme takes effect. The liabilities of the Transferee Company are neither being reduced nor being extinguished under the Scheme. The Transferee Company accordingly undertakes that it shall pay the dues as and when the claims mentioned in the Independent Auditor's Report for the financial year ended 31.03.2021 crystallise and reach final adjudication, subject to its rights and remedies available under applicable law.
- 12. Reply to point 2(l) of the Report:** It is submitted that Independent Auditor Reports of the Petitioners for the financial year ended 31.03.2021 mentions that the Petitioners have entered into transactions with related parties in compliance with the provisions of Section 177 and 188 of the Companies Act, 2013. It is further submitted that all related party transactions involving the Transferor Company have been on arm's length basis and in ordinary course of business. Further, in accordance with the SEBI Listing Regulation, the Transferor Company and Transferee Company have also duly formulated policies on related party transaction.
- 13. Reply to point 2(m) of the Report:** (i) The details of the proceedings in arising out of the inspection conducted by the MCA have been disclosed in each of the annual financial statements commencing from year ended 31.03.2016. Further, the details of the pending proceedings under the Companies Act, 1956 and Companies Act, 2013 are given in paragraph 36 of the Petition. The Transferee Company submits that it has complied with the necessary conditions imposed as arising out of each of the completed compounding proceedings, and further undertakes that it shall fully comply with the compounding/adjudication orders in the pending proceedings as may be applicable.

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(ii) It is submitted that the details of notices received from SEBI in relation to the initial inquiry, additional inquiry and matters arising out of an agreement entered into between the Transferee Company and Dr. Mallya have been disclosed in each of the annual financial statements commencing from year ended 31.03.2016. No directions or strictures have been passed against the Transferee Company pursuant to the said notices. SEBI has passed an order dated 01.06.2018 in relation to the matters specified in the notice and such order was passed only against Dr. Vijay Mallya and certain others. There were no orders or directions passed as against the Transferee Company.

(iii) It is submitted that the details of the notices received from Enforcement Directorate have been disclosed in each of the annual financial statements commencing from year ended 31.03.2016. It is submitted that the Transferee Company has not been named as an accused in any proceedings initiated by the Enforcement Directorate pursuant to its investigation. The Transferee Company has cooperated with, and undertakes to continue to cooperate with, the authorities in respect of any further investigation.

(iv) It is submitted that the Transferee Company has duly responded to the various queries that it has received in this regard. The Petitioners submit that these notices have no direct or indirect bearing on the Scheme. No further action has been taken by the RBI pursuant to any of the said notices. And also no proceedings have been initiated under the Foreign Exchange Management Act, 2000, in respect of the aforesaid transactions.

(v) It is submitted that the details in relation to the dispute with IDBI Bank has been disclosed in Annexure S to the Petition. As mandated by the observation letters issued by the Stock exchanges, this disclosure was also included in the notices issued to the shareholders of the Transferor Company and Transferee Company for the meetings convened to consider and approve the Scheme.

(vi) It is submitted that Dr. Vijay Mallya ceased to be a director of the Transferee Company on 25.02.2016 and currently holds only 0.015 in the Transferee Company. Further, it is submitted that merger

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envisages that equity shares are issued by the Transferee Company only to the public shareholders of the Transferor Company pursuant to the Scheme, and does not involve issuance of equity shares to Dr. Vijay Mallya or any of his associates/Group companies.

14. **Reply to point 2(n) of the Report:** It is submitted that the Petitioners undertake and confirm that any liabilities as per Section 240 of the Companies Act, 2013 of the Transferor Company and its directors shall continue even after the amalgamation of the Transferor Company with the Transferee Company and the dissolution of the Transferor Company once the Scheme is made effective.
15. **Reply to point 2(o) of the Report:** It is submitted that the Transferee Company has provided the complete details of all pending proceedings under the Companies Act, 1956/2013 to the Regional Director. The Report does not state what details are outstanding in relation to the investigation/inspection against the Transferee Company. Further, the pending proceedings under the Companies Act, 2013 initiated against the Transferee Company have been fully disclosed in paragraph 36 of the Petition and was also included in the notices issued to the shareholders of the Transferor Company and Transferee Company for the meetings convened to consider and approve the Scheme.
16. **Reply to point 2 (p) of the Report:** It is submitted that the Report does not provide any reasons in support of its conclusion that the Scheme does not achieve the rationale for the Scheme, as provided in the Petition. It is also unclear as to what clarifications or justifications are required by the Registrar of Companies/Regional Director.
17. **Reply to point 2(q) of the Report:** (i) It is submitted that the statement that all sales of the Transferor Company are to the Transferee Company is erroneous. The Transferor Company has made and continues to make sales to entities other than the Transferee Company. It is further submitted that the disclosure of the related party transactions in the financial statements of the Petitioners are accurate. It is submitted that the difference in the amounts of the related party transactions is on account of applicable levies in states which need separate accounting



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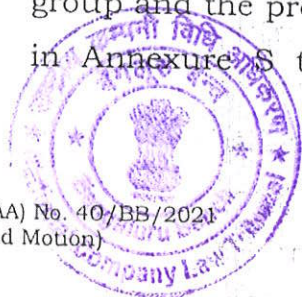
treatment in the books of the Transferor Company and Transferee Company. In the books of the Transferor Company, the amount reflected is towards the revenue being generated from sale of product/services to Transferee Company. On the other hand, in the books of the Transferee Company, the amount is based on total invoice value for product/ services.

~~(ii)(iii)~~ As mentioned in Note 10 of the financial statements of the Transferor Company for financial year ended 31.03.2021, in accordance with the inter-company loan agreement, the term loan granted by the Transferee Company is repayable on 16.08.2026. The rate of interest on the term loan was 8% for the financial year ending 31.03.2021. The Transferor Company has accounted for the interest accrued but not due amounting to INR 10,737 lakhs in the financial statements. The Transferee Company has an unconditional right to defer the interest payments until the maturity date and accordingly, the accrued interest has been considered as "non-current".

(iv) It is submitted that the Transferor Company works on an advance payment term basis with all their customers hence there are no trade receivables to be reflected in the annual financial statements of the Transferor Company.

18. Reply to point 2(r) of the Report: It is submitted that the Transferor Company is a direct subsidiary of the Transferee Company and that the Transferor Company does not have any subsidiaries. It is further submitted that as per Section 186(1) of the Companies Act, 2013, a company shall make investment through not more than two layers of investment companies. In this case, the Transferor Company is a subsidiary of the Transferee Company and there are no other layers of subsidiary in India. The holding companies of the Transferee Company outside India should not be considered for the purpose of determining the layers.

19. Reply to point 2 (s) of the Report: It is denied that the Petitioners have not disclosed the details of the status of certain members of the UB group and the proceedings. In fact, these very details have been provided in Annexure S to the petition and were also disclosed to the stock



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exchanges and as a part of the notice to the shareholders for the meetings to approve the Scheme.

20. **Reply to point 2(t) of the Report:** It is submitted that it is totally incorrect to state that the persons/members of the UB Group are the ultimate beneficial owners of the Petitioners.

The UB Group members do not hold any shares in the Transferor Company and only hold 0.80% shareholding in the Transferee Company. Further, the UB Group members only continue to be identified as promoters of the Transferee Company on account of their historical association with the Transferee Company, but they do not exercise any control whatsoever, whether directly or indirectly, over the affairs of the Transferee Company.

21. **Reply to point 2(u) of the Report:** It is vehemently denied that the Transferor Company is being used by the Transferee Company only to accommodate transactions or that the Scheme is prejudicial to public interest. It is submitted that both Petitioners are bona fide group companies. The Scheme only envisages the merger of the Transferor Company with the Transferee Company to enhance shareholder value, simplify the group structure and enable the continued operations of the Transferor Company. It is also submitted that the scheme has already received the no objections of SEBI and the stock exchanges and the requisite majorities of the shareholders of both Petitioners. It is further submitted that none of the liabilities of the Transferor Company or the Transferee Company are being extinguished or limited by the Scheme. Therefore, there is no question of the Scheme wiping out previous violations of the Petitioners.

14. The ROC and RD filed common supplementary report vide diary No 2284 dated 26.05.2022 in response to the Petitioner Companies reply dated 05.04.2022 wherein following observations were made:

- a. Para 2 (d): It is stated that the scheme is in best interest of stakeholders and there will not be any discriminatory treatment to any of the dissenting shareholders. As per the Petitioner Companies, no objections have been received under Section 240 of the Act.



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- b. Para 2 (j) : The Transferee company will continue as a going concern even if the Merger is approved. The Transferee Company is required to provide an Undertaking stating that CHG-4 will be filed for satisfaction of charges after getting the delay condoned from appropriate authority.
- c. Para 2 (m): A few matters were brought to the notice of NCLT by this office w.r.t. the Transferee company. The petitioner companies have undertaken to fully comply with the compounding/adjudication orders in the pending proceedings.
- d. Para 2(0): As seen from the reply of the company, it has failed to mention the fact of pending cases in the scheme of Amalgamation. Hence, the details of the same may be furnished before the Hon'ble NCLT along with the present status of compounding applications before approval of the Scheme.
- e. Para 2 (q): It is seen from the reply of the company that the company has clearly not accounted the interest from 2013 and interest free loan. Hence, the company has violated the provisions of section 185 and 188 of the Companies Act, 2013 and the company be directed to file necessary compounding applications before the approval of the scheme in this regard. Further, non- accounting of the same has reduced the loss of the Company for the period specified. Balance Sheet and Profit Loss Account are not portraying a true and fair view during this period and the same seems to be contrary to prudent business practices.
- f. Para 2 (r) : The clarification of the company appears to be not based on the provisions of u/s 186(1) of the Companies Act, 2013. Hence reply of the company is not satisfactory and detailed justification with regard to the observation may be furnished before the Hon'ble NCLT.
- g. Para 2 (s) The petitioner companies may be advised to furnish full facts with documentary evidence to the Hon'ble NCLT and the matter may be decided on merits,



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15. In response to the above observation made by the ROC and RD in the supplementary report dated 26.05.2022 the Petitioner companies have filed another response vide diary no.2967 dated 11.07.2022 wherein the following clarifications were given to the observation:

- a. Reply to Para 2 (d): It is submitted that the Scheme has been approved by requisite majorities of the shareholders, including the majority of the minority shareholders for each of the Petitioners. The Petitioners have not received any objections to the Scheme under Section 230(4) of the Scheme. The Petitioners further submit that all shareholders including any dissenting shareholders will be entitled to shares in the Transferee Company based on the share exchange ratio obtained from the registered valuer. Therefore, the Petitioners submit that the interest of all shareholders is already protected in the Scheme and no special provisions are required to be made for dissenting shareholders in accordance with Section 232(3)(e) of the Companies Act, 2013.
- b. Reply to Para 2 (j): It is submitted that the Transferee Company will continue as a going concern even after the Scheme is approved. Further, the Transferee Company submits that it has no secured creditors at present. The Transferee Company hereby undertakes that CHG-4 will be filed for satisfaction of charges after getting the delay condoned from the appropriate authority.
- c. Reply to Para 2 (m) : It is submitted that SEBI and RBI have already given their no objection to the Scheme. Further, the proceedings involving the ED and IDBI Bank mentioned are against the Transferee Company which will continue in the ordinary course. The Scheme has no bearing on such proceedings.
- d. Reply to Para 2 (o): It is reiterated that the pending cases have already been mentioned in paragraph 36 of the petition as well as the notice to the shareholders and a separate affidavit was filed on 14.07.2022.

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- e. Reply to Para 2 (q): It is denied that the balance sheet and profit loss account of the Petitioners do not portray a true and fair view for the relevant period. Extracts of the Audit Report issued by the independent Statutory Auditors of each of the Transferee Company as well as the Transferor Company confirming that the financial statements of the respective companies as of 31.03.2022.

It is submitted that the loans granted to and due from the Transferor Company aggregating to INR 135 crores is not currently due and matures only on 05.08.2026. Further, interest has also continued to accrue, and the rate is benchmarked with the external rates which is subject to yearly review. It is denied that the loans are interest free or that the Petitioners have not accounted for interest on the loan from 2013. As of 31.03.2022, the total loan amount due stands at INR 135.39 crores along with accrued interest Amounting to INR 117.12 crores in the books of the Transferor Company, as evidenced in the notes 10 and 11 of the financial statements of the Transferor Company for the year ended 31.03.2022.

Similarly, to ensure compliance with Section 185 and Section 188 of the Companies Act, 2013, the Transferee Company also accrued the interest in its books of accounts. Further, the Transferor Company has been routinely deducting tax at source in accordance with Section 194(A) of the Income-Tax 1061 which has also been claimed by the Transferee Company while computing the Income Tax as per the prevailing Income Tax Rules. It is only to ensure compliance with the requirements under Ind AS 36 that the Transferee Company continues to impair the recoverability of its overall investment in the Transferor company and has accordingly created an appropriate provision as well.

- f. Reply to Para 2(r): In accordance with Section 186(1), any company may make investments through not more than two layers of investment companies. It is submitted that both Petitioners are operating companies whose principal business is

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manufacture, sale and distribution of alcohol. Neither company is an "investment company", i.e., a company whose principal business is the acquisition of shares, debentures or other securities, as defined under Section 186(1). Therefore, the question does not arise of any violation of Section 186(1). In any case, the Transferee Company holds 75% of the shareholding of the Transferor Company and there are no further layers or step-down subsidiaries of the Transferor Company in India. It is reiterated that the Petitioners are in full compliance with section 186(1) of the Companies Act, 2013.

g. Reply to Para 2(s): It is again reiterated that the relevant details regarding the status of certain members of the UB group and certain members of the UB group and certain proceedings against them has been mentioned in the petition at paragraph 42 and the relevant details have been furnished at Annexure S to the Petition which was also disclosed to SEBI and stock exchanges as well as the shareholders at the meeting for approving the Scheme.

16. The Income Tax department has filed its report vide diary No. 442 dated 04.02.2022 and diary No. 581 dated 15.02.2022 wherein it is observed that there is no demand outstanding against the Transferor Company and no objection in the amalgamation of the companies and further observed that there are demand outstanding against the Transferee Company and appeal proceedings are pending in respect of the Transferee company and condition should be imposed on the Transferor company that Revenue is entitled for continuation of appeal proceedings filed by Revenue in respect of Transferee Company. The Petitioner Companies filed its reply to IT Report vide diary No. 635 dated 18.02.2022 wherein it is stated that the Transferee Company will continue as a going concern, and all pending proceedings in respect of the Petitioner No.2/ Transferee Company will continue in accordance with applicable law.

17. Official Liquidator (OL) has filed its report vide diary No. 1287 dated 25.03.2022 and some of the relevant observations made by the OL and



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the response given by the Petitioner to the above observation are as follows:

- a. Observations regarding end use of funds disbursed by Deutsche Bank. Transferee Company has used the overdraft facility money for payment of loans to its holding company United Spirits Limited and capital expenses related to capitalization of building etc., in violation of the overdraft facility terms. Further, the Transferee Company has not been issuing any utilisation certificate to Deutsche Bank in relation to the overdraft facility being availed.

Response: The transferor Company had obtained an overdraft facility from Deutsche Bank as a pure short-term facility which was to be used for working capital requirements and/or for any other requirements of the Transferor Company acceptable to DB. It is submitted that the Transferor Company has not used any amounts under the facility in violation of the utilisation specified by DB. The payments made by the Transferor Company to the Transferee Company are the nature of return of trade advances in the normal course, which have in fact has been approved by DB. Further, apart from the facility granted by DB, the Transferor Company has availed an inter corporate loan of INR 13,500 lacs from the Transferee Company on the date of availing this facility which continues to remain as an outstanding as on date. The facilities granted by DB were not used to repay this inter-company loan. The Transferor Company has clarified regarding the utilisation of funds to DB, which has not raised any objection. Further, no separate utilization certificate was required to be submitted.

- b. It is observed that Transferee Company will continue as a going concern even if the Merger is approved. The Transferee Company is required to provide an undertaking stating that CHG-4 will be filed for satisfaction of charges after getting the delay condoned from the appropriate authority.

Response: The transferee Company will continue as a going concern even after the Scheme is approved. Further, the Transferee

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Company submits that it has no secured creditors at present. In any case, as prescribed by the Regional Director/ROC, the Transferee Company hereby undertakes that CHG-4 will be filed for satisfaction of charges after getting the delay condoned from the appropriate authority (if such condonation of delay is required by applicable law)

- c. Observation regarding land underlying the Dharmabad plant. Land measuring 7 acres approx. regarding regularizing the purchase of Inam land is being litigated before the High Court of Aurangabad and Hon'ble NCLT may have an independent inspection of the land/fixed assets and the original documents kept at the Dharmabad plant of the Transferor Company, and may also take confirmation from the Sub-Registrar Office of Dharmabad Taluk as required.
- d. Response: In relation to the observation relating to paragraph IX (Land), the Petitioners submit that the proceedings before the High Court of Bombay at Aurangabad relate to only 7 acres out of 263 acres owned by the Transferor Company. Further the proceedings have no bearing whatsoever on the Scheme, and the same will continue in the name of the Transferee Company once the Scheme comes into effect. The matter is in relation to Writ Petitions No. 5634 and 5658 of 2016 pending before the High Court of Bombay (Aurangabad bench) wherein the Transferor Company filed a petition against the order of the Deputy Commissioner, Nanded which had confirmed an order of the Assistant District Commissioner, Nanded directing the Transferor Company to deposit 50% of the market value of the land amounting to INR 62,13,000 for regularization of the land. By way of interim order on 25.07.2017, the High Court granted a stay on the impugned order of the Deputy Commissioner, subject to the Transferor Company depositing INR 30,00,000 with the District Collector. The Transferor Company has since deposited this amount. On 25.09.2018, the Transferor Company gave an undertaking in court that this land will not be used for



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any non-agricultural purpose. The matter is still pending before the High Court of Bombay (Aurangadab bench).

18. OL filed its supplementary report vide diary No. 3357 dated 02.08.2022 and the Petitioner companies have replied to the supplementary reports vide diary No, 3401 dated 08.08.2022. The following are the relevant observations and responses:

a. The Petitioner have submitted that Deutsche Bank is a private sector bank, and the terms of the overdraft facility were mutually agreed between Deutsche Bank and the transferor Company has no bearing on the scheme. It is humbly submitted that the Petitioner's cannot claim an exemption in lieu of Deutsche Bank being a private sector bank as the bank is a Scheduled Commercial Bank and still bound by the RBI regulations and Guidelines. Thus, an amalgamation scheme cannot be used to channel a huge amount of loan to the Transferee Company without any security/guarantee or collateral.

Response: it is submitted that the Petitioners reiterate that the terms of the overdraft facility were mutually agreed between Deutsche Bank and the Transferor Company, and that such contractual matters have no bearing on the Scheme. It is submitted there is no "exemption" as such which is being claimed by the Petitioners. There is also no question of the Scheme being used to "channel a huge amount of loan to the Transferee Company without any security/guarantee or collateral". It is relevant to note that not only has the overdraft facility been availed of by the Transferor Company in accordance with the existing guidelines issued by the Reserve Bank of India, there is an existing letter of comfort given by the Transferee Company (as parent company) to Deutsche Bank towards the overdraft facility availed by the Transferor Company. This is also noted by Deutsche Bank in its email dated 05.08.2022. further, pursuant to the letter dated 15.02.2022 of the Reserve Bank of India, by way of the reply affidavit dated 05.04.2022, the Petitioners have undertaken to ensure that while implementing the



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Scheme, they will comply with all requirements under applicable law, including those prescribed by the Reserve Bank of India.

- b.** That the Official liquidator reiterates that the Hon'ble tribunal may allow an independent inspection of the 263 acres of land owned by the Petitioners at the Dharmabad plant location and inspection of the original documents related thereto for the reasons stated in the report dated 25.03.2022. It is also submitted that the Tribunal may also instruct Petitioners to take confirmation from the Sub-Registrar Officer of Dharmabad Taluk as required.

Response: The Transferor Company has a manufacturing plant located in Dharmabad in Maharashtra, measuring a total of 263 acres. In relation to approximately 7 acres out of a total 263 acres, the Assistant Collector, Naded, had passed an order dated 22.09.2011 ordering regularization of the said portion of the land, subject to deposit of 50% of the market value of the land amounting to Rs. 62,13,000/-, which was confirmed on 12.01.2012. Aggrieved by this order, the Transferor Company preferred an appeal before the Deputy Commissioner, Naded, who confirmed the order dated 29.12.2016. Aggrieved by the said order, the Transferee Company has filed writ petitions in W.P No. 5634 and 5658 of 2016 pending before the Hon'ble High Court of Bombay (Aurangabad bench). By way of an interim order dated 25.07.2017 the Hon'ble High Court granted a stay on the impugned order of the Deputy commissioner, Nanded, subject to the Transferor Company depositing Rs. 30,00,000/- with the District Collector. The Transferor Company has since deposited this amount. The matter is still pending consideration.

It is submitted that the said proceedings will have no bearing on the Scheme, and the same will continue in the name of the Transferee Company once the Scheme comes into effect, as provided in the Scheme. Further, it is submitted that the Transferee or any demands made by the governmental authorities in relation Company bears the risk relating to the title over the said land, or

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any demands made by the governmental authorities in relation thereto. The Transferee Company undertakes to make good any such demands, subject to its rights and remedies in law.

19. RBI has issued letter dated 16.02.2022 and reply to the said letter is filed vide diary No1432 dated 05.04.2022.
20. On 03.08.2022 and 12.08.2022, we have heard the learned Counsel for Petitioner Companies and Counsel for the ROC and IT and directed the Petitioner companies to file affidavit regarding the CDR, Sectoral Regulators and legal proceedings pending on behalf of the Transferee Company and in compliance to the above order the Learned counsel for the Petitioner companies filed affidavit dated 14.07.2022 stating that the Scheme of Amalgamation furnished at Annexure A of the Joint Petition does not envisage Corporate Debt Restructuring or Capital Reduction or any kind of arrangement with the creditors of the Petitioners. And further submits that no investigation has been instituted or is pending in relation to the Petitioners under Chapter XIV of the Act or under the corresponding provisions of Section 235 to 251 of the Companies Act, 1956 and no investigation, litigation proceedings pending against the Transferee Company or its Directors as per the terms of Section 230(2)(a) of the Act. It is further submitted that the Petitioners have each obtained letters from NSE and BSE under Regulation 37 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), 2015, in respect of the Scheme dated October 22,2020 (NSE) and October 21, 2020 (BSE) where no objection have been raised with respect to the Scheme.
21. The reports and supplementary reports of the RoC, RD, OL and IT are taken on record. Similarly, reply filed by the petitioner companies to the above mentioned reports are also taken on record.
22. The Company Petition was reserved for orders on 12.08.2022 subject to certain compliances, However, it was noted that one of the observation (Point 2(b)) in ROC /RD report is that the appointed date mentioned in the Scheme is 1.04.2019 which is almost 3 years old. In reply to the RoC report vide diary No. 1434, the Petitioner Companies submit that they have no objection if the Tribunal were to direct the



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change of appointed date if it deems fit, from 1.04.2019 to 01.04.2021, subject to no terms of the Scheme being mentioned as a result. The respective Board of Directors have also given their no objection to such change vide Resolution dated 01.04.2022 and 02.04.2022. Accordingly this Tribunal directs to change the appointed date from 01.04.2019 to 01.04.2021. However, it is observed that the Petitioner companies have not filed revised scheme with the new appointed date. Therefore the matter was posted for being mentioned on 17.10.2022. When the matter was taken up, the learned counsel for the Petitioner submits that he may be permitted to file judgments wherein filing of revised scheme is not required when appointed date is changed in view of ROC's observation. This Tribunal directed the petitioner to file the same with One week, and the matter was again reserved for ordered subject to making the above compliance.

23. In compliance to the above direction the counsel for the petitioner filed various judgments vide diary No. 4461 dated 18.10.2022. This Tribunal in light of the judgments produced, hereby direct their filing of revised Scheme is not required. It was noted that the Audit financial statements of the Petitioner as on 31.03.2021 has already been filed. The appointed date of 01.04.2021 will therefore be adopted instead of 01.04.2019 in the Scheme.
24. In view of the above discussion, we conclude that the objections/observations to the Scheme received from RD, ROC, OL and IT have been adequately replied by the petitioner companies and hence there is no impediment in approval of the Scheme.
25. The Scheme in question as annexed at Annexure-A is approved and we declare the appointed date as 01.04.2021 and further declare that the Scheme is to be binding on all the shareholders and creditors of the Transferor as well as Transferee Companies. While approving the Scheme, it is clarified that this order should not be construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. Moreover, the



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various investigation/legal proceedings under the Companies Act or any other law will be continued against the Transferee Company in accordance with the observation of the ROC and RD and other authorities especially those stated in para 2(m) of the ROC/RD report, dated 08.03.2022; and various undertaking given by the Petitioner Companies in their response filed on 05.04.2022 and 11.07.2022 including filing of compounding application, with reference to reports of various authorities have to be complied with in accordance with Law. With the sanction of the Scheme, the Transferor Company, namely Pioneer Distilleries Limited shall stand dissolved without undergoing the process of winding up resulting in increase in the authorised share capital of the Transferee Company, namely United Spirits Limited.

AND THIS TRIBUNAL DOES FURTHER ORDER:

- (i) That the petitioner companies do, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company and the files relating to Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- (ii) That the Transferee Company shall deposit an amount of Rs.75,000/- with the Pay & Accounts Office, Chennai in respect of the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad and Rs.25,000/- in favour of The Prime Minister's National Relief Fund, within a period of four weeks from the date of receipt of certified copy of this Order; and
- (iii) That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.
- (iv) The approval / sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act, 2013 and that the authorities under both the



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Acts, are at liberty to take appropriate action, in accordance with law, if so advised.

26. As per the directions, Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the petitioner companies on filing of the Schedule Property i.e., (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company by way of affidavit of the Transferor Company respectively.
27. Accordingly, CP (CAA) No.40/BB/2021, is disposed of. Copy of this Order be communicated to the Counsel for the Petitioner Companies.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)



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(KISHORE VEMULAPALLI)
MEMBER (JUDICIAL)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

DEPUTY/ASST. REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
Bengaluru Bench

SCHEME OF AMALGAMATION AND ARRANGEMENT

UNDER SECTIONS 230 to 232 OF THE COMPANIES ACT, 2013

AMONGST

PIONEER DISTILLERIES LIMITED
(Transferor Company)

AND

UNITED SPIRITS LIMITED
(Transferee Company)

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS



Amr. B. L.



M. A. Saughni

CHAPTER 1

GENERAL

(A) Background of Companies and Rationale

- (i) This scheme of amalgamation and arrangement amongst Pioneer Distilleries Limited (“**Transferor Company**”) and United Spirits Limited (“**Transferee Company**”) provides for (a) the amalgamation of the Transferor Company with the Transferee Company (“**Amalgamation**”), pursuant to the relevant provisions of the Act (defined below), as may be applicable; and (b) various other matters consequential or integrally connected therewith, in the manner provided for in this Scheme and in compliance with the provisions of the Income Tax Act, 1961, including Section 2(1B) thereof.
- (ii) The Transferor Company, a public limited company incorporated on November 25, 1992 under the Companies Act, 1956, with corporate identification number L24116KA1992PLC125992, has its registered office situated at UB Tower, Level-10, # 24, Vittal Mallya Road, Bangalore - 560 001. The equity shares of the Transferor Company are listed on the BSE Limited and National Stock Exchange of India Limited (“**Stock Exchanges**”). The Transferor Company is *inter alia* engaged in the Business (as defined below).
- (iii) The Transferee Company, a public limited company incorporated on March 31, 1999 under the Companies Act, 1956 with corporate identification number L01551KA1999PLC024991, has its registered office situated at UB Tower, # 24, Vittal Mallya Road, Bangalore - 560 001. The equity shares of the Transferee Company are listed on the Stock Exchanges. The Transferee Company is engaged in the business of distilling, rectifying and blending of spirits, and production of ethyl alcohol from fermented material.
- (iv) The Transferee Company and the Transferor Company are desirous of amalgamating the Transferor Company as a going concern with the Transferee Company in accordance with Sections 230 to 232 and/or other applicable provisions of the Act.
- (v) The Amalgamation of the Transferor Company with the Transferee Company is sought to be undertaken to achieve the following:
 - (a) simplification of the corporate structure and consolidation of the group’s business;
 - (b) realising business efficiencies, inter alia, through optimum utilisation of resources due to pooling of management, expertise and other resources of the Companies, and to achieve economies of scale;
 - (c) overcoming limitations on raising capital for the Transferor Company, ensuring improved allocation of capital and optimum cash flows contributing to better utilisation of capacity and the overall growth of the combined entity;
 - (d) creation of a larger asset base and facilitation of access to better financial



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resources;

- (e) savings on compliance / interest costs;
- (f) uninterrupted operations of the Transferor Company's plant in order to stabilize its business;
- (g) integration of the Transferor Company's operations with the Transferee Company resulting in benefits arising out of the synergies, especially since the Transferee Company is in the same line of business as the Transferor Company; and
- (h) enhanced shareholder value pursuant to economies of scale and business efficiencies.

The Transferor Company has been incurring losses in the recent past and its entire net worth has eroded. The Transferee Company, holding 75% of the equity capital of the Transferor Company, has to account to the extent of 75% of the losses of the Transferor Company while consolidating its accounts. Continuity of the Transferor Company, without the active support of the Transferee Company, would be very difficult. Amalgamation of the Transferor Company with the Transferee Company would be beneficial to both the Companies, including with respect to ease of getting uninterrupted financial and technical support and the Transferee Company getting the full benefit of the Transferor Company's manufacturing facilities.

- (vi) The Scheme is expected to be in the best interests of the shareholders, employees and the creditors of the Transferor Company and the Transferee Company.
- (vii) The Amalgamation shall comply with the provisions of Section 2(1B) of the Income Tax Act, 1961.

(B) Chapters in the Scheme

The Scheme is divided into 3 chapters, the details of which are as follows:

1. **Chapter 1:** Chapter 1 of this Scheme sets forth the background of the Companies, overview and objects of the Scheme and definitions and interpretation which are common and applicable to all chapters of the Scheme.
2. **Chapter 2:** Chapter 2 deals with the Amalgamation and transfer and vesting of all assets and liabilities of the Transferor Company to/in the Transferee Company.
3. **Chapter 3:** Chapter 3 provides for general terms and conditions applicable to this Scheme.
4. Chapters 2 is further sub-divided into the following parts:
 - (a) *Part 1* provides for the current capital structure of the Transferor Company and the Transferee Company;
 - (b) *Part 2* deals with the Amalgamation of the Transferor Company with the



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Transferee Company, in accordance with Sections 230 to 232 and/or other applicable provisions of the Act; and

(c) Part 3 deals with consideration and accounting treatment.

1. GENERAL DEFINITIONS AND INTERPRETATIONS

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

“Act” means the Companies Act, 2013 and ordinances, rules and regulations made thereunder and shall include any statutory modifications, re-enactments or amendments thereof;

“Amalgamation Consideration Shares” has the meaning ascribed to it Clause 12.1 of the Scheme;

“Applicable Law” means any applicable statute, law, regulation, ordinance, rule, judgment, order, decree, clearance, approval, directive, guideline, requirement or any similar form of determination by or decision of any Governmental Authority, that is binding or applicable to a Person, whether in effect as of the date on which this Scheme has been approved by the Board of Directors of the Companies or at any time thereafter;

“Appointed Date” means April 1, 2019 or such date as may be fixed or approved by the NCLT;

“Board of Directors” shall mean the board of directors or any committee thereof, of the Transferor Company or the Transferee Company, as the context may require;

“Business” means the business of manufacture and sale of extra neutral alcohol, malt spirits, Indian Made Foreign Liquor (IMFL) and other allied products, including bottling operations;

“Companies” shall collectively mean the Transferor Company and the Transferee Company;

“Contracts” with respect to a Person, means any agreement, contract, undertaking, or legally binding commitment entered into by such Person;

“Effective Date” means the last of the dates on which all the conditions and matters referred to in Clause 21.1 have been fulfilled, obtained or waived (to the extent possible under Applicable Law), as applicable. References in this Scheme to the date of “coming into effect of this Scheme” or “Scheme becoming effective” shall be construed accordingly;

“Encumbrance” means any options, pledge, mortgage, lien, security interest, claim, charge, pre-emptive right, easement, limitation, attachment, restraint, or any other encumbrance of any kind or nature whatsoever, including any right granted by a transaction which, in legal terms, is not only the granting of security but which has an economic or financial effect similar to the granting of security under Applicable Law;



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“Goodwill” means and includes the goodwill of Transferor Company, together with the exclusive right for the Transferee Company and its assignees to represent themselves as carrying on the Business in succession to the Transferor Company and includes the Business related claims, information, records, relationships with customers, product registrations/approvals, skilled employees, trademark, technical know-how and other Intangible Assets, as defined below;

“Governmental Authority” means any applicable central, state or local government, legislative body, regulatory or administrative authority, agency or commission or any court, tribunal, board, bureau, instrumentality, judicial, quasi-judicial or arbitral body in India or outside India and includes SEBI and the Stock Exchanges;

“Intangible Assets” means and includes all intellectual property and industrial property rights and rights in confidential information of every kind and description throughout the world, in each case whether registered or unregistered, and including but not limited to (i) rights in computer programs (whether in source code, object code, or other form), algorithms, databases, compilations and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing; (ii) copyrights and copyrightable subject matter; (iii) trademarks, service marks, names, corporate names, trade names, domain names, logos, slogans, trade dress, registered designs, design rights and other similar designations of source or origin; (iv) all know-how, patents, confidential information, trade secrets, ideas, proprietary processes, formulae, models and methodologies; (v) rights of publicity, privacy, and rights to personal information; (vi) moral rights and rights of attribution and integrity; or (vii) any rights or forms of protection of a similar nature or having equivalent or similar effect to any of the foregoing which subsist anywhere in the world;

“NCLT” means the National Company Law Tribunal at Bengaluru, or such other forum or authority as may be vested with the powers of the High Court under Sections 230 to 232 of the Act, as may be applicable;

“Person” means any individual, partnership, joint venture, firm, corporation, company, association, trust or other enterprise (whether incorporated or not) or government (central, state or otherwise), sovereign, or any agency, department, authority or political sub-division thereof, international organization, agency or authority (in each case, whether or not having separate legal personality) and shall include their respective successors and in case of an individual shall include his/her legal representatives, administrators, executors and heirs;

“Public” shall have meaning assigned to it in Rule 2(d) of the Securities Contracts (Regulation) Rules, 1957 and the term “Public Shareholders” shall be construed accordingly;

“Record Date” shall mean such date to be fixed by the respective Board of Directors of the Transferee Company and Transferor Company for the purpose of determining the members of the Transferor Company to whom shares of the Transferee Company will be allotted pursuant to this Scheme;

“Sanction Order” means the order of the NCLT sanctioning the Scheme;



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“**Scheme**” means this scheme of amalgamation and arrangement with such modification(s), if any made, in accordance with the terms hereof or the directions / observations of the Stock Exchanges or any other Governmental Authority including SEBI or the NCLT, and approved by the NCLT;

“**SEBI**” means the Securities Exchange Board of India;

“**SEBI Circular**” means the circular number CFD/DIL3/CIR/2017/21 dated 10 March 2017 issued by SEBI along with the amendments thereto;

“**SEBI Listing Regulations**” means the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 along with the amendments thereto;

“**Taxes**” or “**Tax**” or “**Taxation**” means all forms of taxation with reference to profits, gains, net wealth, asset values, turnover, gross receipts, duties (including stamp duties), levies, imposts, including without limitation corporate income-tax, wage withholding tax, fringe benefit tax, value added tax, customs, service tax, excise duties, goods and services tax, fees or levies and other legal transaction taxes, dividend/withholding tax, real estate taxes, other municipal taxes and duties, environmental taxes and duties, any other similar assessments or other type of taxes or duties in any relevant jurisdiction, together with any interest, penalties, surcharges or fines relating thereto, assessments, or addition to Tax, due, payable, levied, imposed upon or claimed to be owed in any relevant jurisdiction or country;

“**Transferor Company Shareholders**” has the meaning ascribed to it Clause 12.1 of the Scheme; and

“**Undertaking**” shall mean all the undertaking and entire business of the Transferor Company (including business, properties, assets, investments, goodwill and rights of whatever kind and nature, real or personal, tangible or intangible, that are owned, leased or licensed, liabilities, obligations and commitments of the Transferor Company) on a going concern basis, and with the continuity of business of the Transferor Company, which shall include (without limitation):

- (a) all assets wherever situated, whether movable or immovable, tangible or intangible, real or personal, in possession or reversion, corporeal or incorporeal, leaseholds and other interests of whatsoever nature, wheresoever situated including all lands, buildings, offices, marketing offices, liaison offices, furniture, fixtures, office equipment, appliances, accessories, inventories together with all present and future liabilities (including contingent liabilities) and all cash and bank balances appertaining or relating to the Transferor Company;
- (b) all current assets, including sundry debtors, receivables, loans and advances, actionable claims, bills and credit notes of the Transferor Company;
- (c) all permits, rights, entitlements, registrations and other licences, approvals, permissions, consents from various authorities, including municipal (whether granted or pending), trademarks, patents, copyrights, software programs and data (whether proprietary or otherwise), all other intellectual property, goodwill, receivables, benefit of any deposits, assets, properties or other interests, financial assets including investments of all kinds, funds belonging to or utilised for the



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Transferor Company, bank accounts, privileges, all other rights and benefits including any tax exemptions, deferrals and other benefits or privileges including any unabsorbed tax depreciation, tax losses, deferred tax assets and refund claims made by the Transferee Company before the tax authorities, any tax (direct or indirect) including advance tax paid or any tax deducted in respect of any income received, exemptions, tax credits, minimum alternate tax credits as per Section 115JAA of the Income Tax Act, 1961, any credit in respect of indirect taxes including Goods and Services Tax (GST) credits, Eligibility Certificate for Mega Project under the Package Scheme of Incentives, 2007 issued by the Government of Maharashtra, tenancies in relation to office and / or residential properties for the employees, memberships, lease rights, powers and facilities of every kind, nature, and description whatsoever, rights to use and avail of telephones, internet, facsimile connections and installations, utilities, electricity and other services, provisions, funds, benefits of all agreements, contracts and arrangements, letters of intent, memoranda of understanding, expressions of interest whether under agreements or otherwise and all other interests in connection with or relating to the Transferor Company;

- (d) all staff and employees and other obligations of whatsoever kind, including liabilities of the Transferor Company with regard to its employees, with respect to the payment of gratuity, superannuation, pension benefits and provident fund or other compensation or benefits, if any, whether in the event of resignation, death, retirement, retrenchment or otherwise;
- (e) all trade secrets, confidential information, inventions, know-how, formulae, processes, procedures, research records, records of inventions, test information, market surveys and marketing know-how of the Transferor Company;
- (f) all patents (including all reissues, divisions, continuations and extensions thereof), patent applications, patent rights, trademarks, trademark registrations, trademark applications, service marks, trade names, business names, copyrights, copyright registrations, designs, design registrations, and all rights to any of the foregoing, of the Transferor Company;
- (g) all contracts, leases, subleases, licenses, indentures, agreements, commitments and all other legally binding arrangements, whether oral or written, to which the Transferor Company is a party or by which the Transferor Company is bound;
- (h) all raw material, work-in-progress, finished goods, supplies, parts, spare parts and other inventories of the Transferor Company (including in transit, on consignment or in the possession of any third party);
- (i) all partnership interests or any other equity interest in any corporation, company, limited liability company, partnership, joint venture, trust or other business association;
- (j) all rights in and to products sold or leased;
- (k) all credits, prepaid expenses, deferred charges, advance payments, security deposits and prepaid items that are paid / held;



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- (l) all necessary records, files, papers, computer programmes, engineering and process information, manuals, data, catalogues, quotations, sales and advertising materials, lists of present and former customers, customer credit information, customer pricing information, and other records, whether in physical or electronic form in connection with or relating to the Transferor Company;
- (m) all books of accounts, ledgers, general, financial, accounting and personnel records, files, invoices, customers' and suppliers' lists, other distribution lists, billing records, sales and promotional literature, manuals, customer and supplier correspondence (in all cases, in any form or medium), of the Transferor Company;
- (n) all rights, claims, credits, advances, loans, fixed deposits, provisions and commitments, including any such items arising under insurance policies and all guarantees, warranties, indemnities and similar rights in favour of the Transferor Company in respect of any other asset or any liability appertaining or relating to the Transferor Company;
- (o) all liabilities, obligations, duties, undertakings, debt and commitments of the Transferor Company;
- (p) all accounts payable of the Transferor Company; and
- (q) any other assets and liabilities.

It is intended that the definition of Undertaking set out above would enable the transfer of all properties, assets, liabilities, employees, etc. of the Transferor Company to the Transferee Company pursuant to this Scheme.

All terms and words not defined in this Scheme shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning ascribed to them under the Act, the Securities Contract Regulation Act, 1956, the Depositories Act, 1996, other Applicable Laws, rules, regulations, bye-laws, as the case may be or any statutory modification or re-enactment thereof from time to time.

2. DATE OF COMING IN TO EFFECT

The Scheme in its present form or with any modification approved or imposed or directed by the NCLT shall come into operation from the Effective Date with effect from the Appointed Date.



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CHAPTER 2

**AMALGAMATION OF THE TRANSFEROR COMPANY WITH THE
TRANSFeree COMPANY**

Part 1

3. SHARE CAPITAL

The authorized, issued, subscribed and paid up share capital of the Transferee Company as on 31 March 2019 is below:

Particulars	Rupees
Authorized Capital	
2,740,000,000 Equity Shares of Rs. 2/- each	5,480,000,000
171,200,000 Preference Shares of Rs.10/- each	1,712,000,000
Total	7,192,000,000
Issued, Subscribed and Paid-up	
726,638,715 Equity Shares of Rs. 2/- each	1,453,277,430
Total	1,453,277,430

Subsequent to the above date, there has been no change in the authorized, issued, subscribed and paid up share capital of the Transferee Company till the date of approval of the Scheme by the Board of the Transferee Company.

The equity shares of the Transferee Company are listed on the Stock Exchanges.

The authorized, issued, subscribed and paid up share capital of the Transferor Company as on 31 March 2019 is as under:

Particulars	Rupees
Authorized Capital	
17,500,000 Equity Shares of Rs. 10 /- each	175,000,000
2,500,000 Preference Shares of Rs.10/- each	25,000,000
Total	200,000,000
Issued, Subscribed and Paid-up	
13,388,200 Equity Shares of Rs. 10/- each	133,882,000
Forfeited shares	
62,400 Equity Shares (Rs. 5/- each, paid up)	312,000
Total	134,194,000

Subsequent to the above date, there has been no change in the authorized, issued, subscribed and paid up share capital of the Transferor Company till the date of approval of the Scheme by the Board of the Transferor Company.

The equity shares of the Transferor Company are listed on the Stock Exchanges.



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Part 2

4. AMALGAMATION OF THE TRANSFEROR COMPANY WITH THE TRANSFEREE COMPANY

Upon the Scheme becoming effective and with effect from the Appointed Date, the Transferor Company shall, in accordance with Sections 230 to 232 of the Act, without any further act or deed, stand amalgamated with the Transferee Company and consequently (i) the Undertaking of the Transferor Company shall, as on the Appointed Date, stand transferred to and vested in and/or be deemed to be transferred to and vested in the Transferee Company as a going concern so as to become the undertaking of the Transferee Company by virtue of and in the manner provided in the Scheme, and (ii) the Transferor Company shall stand dissolved without being wound up.

4.1. TRANSFER OF ASSETS

4.1.1. Upon the Scheme becoming effective, as on the Appointed Date, the whole of the assets of Transferor Company, wherever situated and of whatsoever nature whether capable of passing by manual delivery and/or endorsement or otherwise however shall, under the provisions of Sections 230 to 232, without any further act or deed be transferred to and vested in and/or deemed to be transferred to and vested in the Transferee Company as a going concern so as to vest in, become and form part of the Transferee Company along with all the rights, claims, title and interest of the Transferee Company therein.

4.1.2. Without prejudice to the generality of Clause 4.1.1 above, upon the Scheme becoming effective, as on the Appointed Date:

(a) All the estate, assets, properties, rights, claims, title, interest and authorities including accretions and appurtenances of the Undertaking, of whatsoever nature and wherever situate, whether or not included in the books of the Transferor Company shall, without any further act or deed, be transferred to and vested in and/or deemed to be transferred to and vested in the Transferee Company, as a going concern, so as to become as and from the Appointed Date, the estate, assets, properties, rights, claims, title, interest and authorities of the Transferee Company.

(b) All movable assets including cash, if any, of Transferor Company which are capable of passing by manual delivery or by endorsement and delivery, shall be so delivered or endorsed as the case may be to the Transferee Company and shall become the property of the Transferee Company, to the end and intent that the ownership and property therein passes to the Transferee Company in pursuance of the provisions of Section 232 of the Act, without requiring any deed or instrument of conveyance for transfer of the same.

(c) Movable assets of the Transferor Company other than those specified in Clause 4.1.2(b) above and any intangible assets, including sundry debtors, loans, receivables, bills, credits, advances, if any, recoverable in cash or kind or for value to be received, bank accounts including bank balances, investments, cash equivalents, financial assets, insurance policies, provisions, funds, equipment, and any related capitalized items and other tangible property of every kind, nature and



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description, share of any joint assets, benefits of any bank guarantee, performance guarantee and any letter of credit, earnest money, advances and deposits, if any, with government, semi-government, local and other authorities and bodies, companies, firm, individuals, trusts, etc., the same shall, on and from the Appointed Date, stand transferred to the Transferee Company to the end and intent that the right of the Transferor Company to receive the benefit of such investments, cash equivalents, financial assets, insurance policies, provisions, funds, equipment, capitalized items and tangible property, share of any joint assets, bank guarantee, performance guarantee and any letter of credit, earnest money, advances or deposits or recover or realize all such debts (including the debts payable by such Persons or depositors to the Transferor Company) stands transferred to the Transferee Company and that appropriate entries should be passed in their respective books to record the aforesaid change, without any notice or other intimation to such debtors or other Persons (although the Transferee Company may itself without being obliged and if it so deems appropriate at its sole discretion, at any time after coming into effect of this Scheme in accordance with the provisions hereof, or if so required under any law, give notices in such form as it may deem fit and proper, to each Person, debtors or depositors, as the case may be, that pursuant to the NCLT having sanctioned the Scheme, the said asset stands transferred and vested in the Transferee Company and be paid or made good or held on account of the Transferee Company as the Person entitled thereto).

- (d) All lease and license agreements entered into by the Transferor Company with various landlords, owners and lessors in connection with use of the assets of the Undertaking of the Transferor Company, together with the security deposits, shall stand automatically transferred in favour of the Transferee Company on the same terms and conditions without any further act, instrument, deed, matter or thing being made, done or executed. The Transferee Company shall continue to pay rent amounts as provided for in such agreements and shall comply with the other terms, conditions and covenants thereunder and shall also be entitled to refund of security deposits paid under such agreements by the Transferor Company;
- (e) All immovable properties of the Transferor Company, including land together with the buildings and structures standing thereon and rights and interests in immovable properties of the Transferor Company, whether freehold or leasehold or licensed or otherwise, any tenancies in relation to warehouses, all rights, covenants, continuing rights, title and interest in connection with the said immovable properties and all documents of title, rights and easements in relation thereto shall stand transferred to and be vested in and transferred to and/or be deemed to have been and stand transferred to and vested in the Transferee Company, without any further act or deed done or being required to be done by the Transferor Company or the Transferee Company, and it shall not be necessary to obtain the consent of any third party or other Person in order to give effect to the provisions of this clause. The Transferee Company shall be entitled to exercise all rights and privileges attached to the aforesaid immovable properties and shall be liable to pay the ground rent and taxes and fulfill all obligations in relation to or applicable to such immovable properties. The mutation of the ownership or title, or interest in the immovable properties shall, upon this Scheme becoming effective, be made and duly recorded in the name of the Transferee Company by the appropriate Governmental Authority pursuant to the sanction of this Scheme by the NCLT in accordance with the terms hereof. Upon this Scheme becoming effective, until the



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owned property, leasehold property and related rights thereto, license or right to use the immovable property, tenancy rights, liberties and special status are transferred, vested, recorded, effected and / or perfected in the record of the appropriate authorities in favour of the Transferee Company, the Transferee Company shall be deemed to be authorised to carry on business in the name and style of the Transferor Company under the relevant agreement, deed, lease and / or license, as the case may be, and the Transferee Company shall keep a record and account of such transactions. For purposes of taking on record the name of the Transferee Company in the records of the Governmental Authorities in respect of transfer of immovable properties to the Transferee Company pursuant to this Scheme, the Board of Directors of the Companies may approve the execution of such documents or deeds as may be necessary, including deeds of assignment of lease or leave or license (as the case may be) by the Transferor Company in favour of the Transferee Company.

- (f) All the licenses, permissions, approvals, sanctions, consents, permits, entitlements, quotas, registrations, bids, tenders, letters of intent, expressions of intent, memoranda of understanding or similar instruments, incentives, exemptions and benefits, liberties, special status and other benefits or privileges enjoyed or conferred upon or held or availed of by the Transferor Company and all rights and benefits that have accrued or which may accrue to the Transferor Company, whether on, before or after the Appointed Date, shall, without any further act, instrument or deed, cost or charge be and stand transferred to and vested in and/or be deemed to be transferred to and vested in and be available to the Transferee Company so as to become licenses, permissions, approvals, sanctions, consents, permits, entitlements, quotas, registrations, incentives, exemptions and benefits, grants, rights, claims, liberties, special status and other benefits or privileges of the Transferor Company and shall remain valid, effective and may be enforced as fully and effectively as if, instead of the Transferor Company, the Transferee Company had been a party, a beneficiary or an obligee thereto and shall be appropriately mutated by the relevant Governmental Authorities in favour of the Transferee Company. For the avoidance of doubt and without prejudice to the generality of the foregoing, all consents, no-objection certificates, certificates, clearances, authorities (including operation of bank accounts), powers of attorney given by, issued to or executed in favour of the Transferor Company shall stand transferred to the Transferee Company as if the same were originally given by, issued to or executed in favour of the Transferee Company.
- (g) All cheques and other negotiable instruments, payment orders, electronic fund transfers (like NEFT, RTGS, etc.) received or presented for encashment which are in the name of the Transferor Company after the Effective Date shall be deemed to be in the name of the Transferee Company and credited to the account of the Transferee Company, if presented by the Transferee Company or received through electronic transfers and the bankers of the Transferee Company shall accept the same. Similarly, the banker of the Transferee Company shall honour all cheques/electronic fund transfer instructions issued by the Transferor Company for payment after the Effective Date. If required, the bankers of the Transferor Company and/or the Transferee Company shall allow maintaining and operating of the bank accounts (including banking transactions carried out electronically) in the name of the Transferor Company for such time as may be determined to be necessary by the Transferee Company for presentation and deposition of cheques,



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pay order and electronic transfers that have been issued/made in the name of the Transferor Company, subject to such accounts being operated by the Transferee Company.

- (h) All Intangible Assets including but not limited to rights in intellectual property (whether owned, licensed or otherwise, whether registered or unregistered) used in relation to the Transferor Company, including with respect to the Business, including the logo and trademark of the Transferor Company, and all other trade names, service names, trademarks, trade dress, logos, brands, corporate names, brand names, domain names, mask works, copyrights, designs, know-how and trade secrets, software and all website content (including text, graphics, images, audio, video and data), confidential business information and other proprietary information, patents, along with all rights of commercial nature including attached Goodwill, title, interest, labels and brand registrations and all such other industrial or intellectual rights of whatsoever nature and advantages of whatever nature in connection with the above including any Goodwill relating to such intellectual property, whether or not provided in the books of accounts of the Transferor Company, shall under the provisions of Sections 230 to 232 of the Act, as applicable, and all other provisions of Applicable Law, if any, without any further act, instrument or deed, cost or charge and without any notice or other intimation to any third party for the transfer of the same, be and stand transferred and vested in the Transferee Company as a going concern, so as to become, as and from the Appointed Date, the Intangible Asset of the Transferee Company.
- (i) All books, records, files, papers, engineering and process information, software, licenses for software, algorithms, programs, manuals, data, catalogues, quotations, sales and advertising materials, lists of present and former customers and suppliers, customer credit information, customer pricing information, and other records whether in physical or electronic form of the Transferor Company, including in connection with or relating to the Business, shall, under the provisions of Sections 230 to 232 of the Act, as applicable, and all other provisions of Applicable Law, if any, without any further act, instrument or deed, cost or charge and without any notice or other intimation to any third party for the transfer of the same, be and stand transferred and vested in the Transferee Company as a going concern, with effect from the Appointed Date.
- (j) All benefits of any and all corporate approvals as may have already been taken by the Transferor Company, whether being in the nature of compliances or otherwise, shall under the provisions of Sections 230 to 232 of the Act, without any further act, instrument or deed, cost or charge and without any notice or other intimation to any third party for the transfer of the same, be and stand transferred and vested in the Transferee Company as a going concern, and the said corporate approvals and compliances shall be deemed to have originally been taken/complied with by the Transferee Company.
- (k) All electricity, gas, water and any other utility connections and tariff rates in respect thereof sanctioned by various public sector and private companies, boards, agencies and authorities to the Transferor Company, together with security deposits and all other advances paid, shall stand automatically transferred in favour of the Transferee Company on the same terms and conditions without any further act, instrument, deed, matter or thing being made, done or executed. The relevant



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electricity, gas, water and any other utility companies, boards, agencies and authorities shall issue invoices in the name of the Transferee Company with effect from the billing cycle commencing from the month immediately succeeding the month in which the Effective Date falls. The Transferee Company shall comply with the terms, conditions and covenants associated with the grant of such connections and shall also be entitled to refund of security deposits placed with such utility companies, boards, agencies and authorities by the Transferor Company.

- (l) All *inter se* contracts solely between the Transferor Company and the Transferee Company shall stand cancelled and cease to operate, and appropriate effect shall be given to such cancellation and cessation in the books of accounts and records of the Transferee Company. With effect from the Appointed Date, there will be no accrual of income or expense on account of any transactions, including any transactions in the nature of sale or transfer of any goods, materials or services, between the Transferor Company and the Transferee Company. For avoidance of doubt, it is hereby clarified that with effect from the Appointed Date, there will be no accrual of interest or charges in respect of any *inter se* loans, deposits or balances between the Transferor Company and the Transferee Company.
- (m) The borrowing and investment limits of the Transferee Company under the Act shall be deemed without further act or deed to have been enhanced by the borrowing and investment limits of the Transferor Company, such limits being incremental to the existing limits of the Transferee Company. Any corporate approvals obtained by the Transferor Company, whether for purposes of compliance or otherwise, shall stand transferred to the Transferee Company and such corporate approvals and compliance shall be deemed to have been obtained and complied with by the Transferee Company.
- (n) The secured creditors of the Transferor Company and / or other holders of security over the properties of the Transferor Company shall be entitled to security only in respect of the properties, assets, rights, benefits and interest of the Transferor Company, as existing immediately prior to the amalgamation of the Transferor Company with the Transferee Company and the secured creditors of the Transferee Company and / or other holders of security over the properties of the Transferee Company shall be entitled to security only in respect of the properties, assets, rights, benefits and interest of the Transferee Company, as existing immediately prior to the amalgamation of the Transferor Company with the Transferee Company. It is hereby clarified that pursuant to the amalgamation of the Transferor Company with the Transferee Company: (a) the secured creditors of the Transferor Company and / or holders of security over the properties of the Transferor Company shall not be entitled to any additional security over the properties, assets, rights, benefits and interest of the Transferee Company and therefore, such assets which are not currently Encumbered shall remain free and available for creation of any security thereon in the future in relation to any current or future indebtedness of the Transferee Company; and (b) the secured creditors of the Transferee Company and / or holders of any security over the properties of the Transferee Company shall not be entitled to any additional security over the properties, assets, rights, benefits and interest of the Transferor Company and therefore such assets which are not currently Encumbered shall remain free and available for creation of any security thereon in future in relation to any current or future indebtedness of the Transferee Company.



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- 4.1.3. Any tax exemptions, deferrals and other benefits or privileges including (but not limited to) advance tax paid or any tax deducted in respect of any income received, exemptions, tax credits, minimum alternate tax credits as per Section 115JAA of the Income Tax Act, 1961, any credit in respect of indirect taxes including Goods and Services Tax (GST) credits, Eligibility Certificate for Mega Project under the Package Scheme of Incentives, 2007 issued by the Government of Maharashtra, advance taxes, credits in respect of taxes deducted at source, unabsorbed tax depreciation, tax losses, deferred tax assets and refund claims made by the Transferee Company before the tax authorities shall, upon the coming into effect of this Scheme, also without any further act, instrument or deed stand transferred to and vested in or be deemed to have been transferred to or vested in the Transferee Company upon the coming into effect of this Scheme.
- 4.1.4. Any assets, acquired by the Transferor Company after the Appointed Date but prior to the Effective Date shall upon the coming into effect of this Scheme also without any further act, instrument or deed stand transferred to and vested in or be deemed to have been transferred to or vested in the Transferee Company upon the coming into effect of this Scheme.
- 4.1.5. Without prejudice to the provisions of the foregoing Clauses, upon the Scheme becoming effective, the Transferor Company and the Transferee Company shall execute all necessary instruments or documents or do all the acts and deeds as may be required, including making the necessary filings with the relevant Governmental Authority or any other third party, to give formal effect to the above provisions, if required.

5. TRANSFER OF LIABILITIES

- 5.1. Upon the Scheme becoming effective, all the liabilities of the Transferor Company, as on the Appointed Date, including all secured and unsecured debts (whether in Indian Rupee (INR) or foreign currency), sundry creditors, contingent liabilities, duties, obligations and undertakings of the Transferor Company, of every kind, nature and description whatsoever and howsoever arising, raised, incurred or utilised for its business activities and operations, shall also, under the provisions of Sections 230 to 232 of the Act without any further act or deed be transferred or deemed to be transferred to the Transferee Company so as to become as and from the Appointed Date the debts, liabilities, duties, losses, obligations of the Transferee Company and further that all the liabilities incurred/contracted by the Transferor Company during the period commencing from the Appointed Date till the Effective Date shall be deemed to have been incurred/contracted by the Transferee Company and shall be deemed to be the liabilities and obligations of the Transferee Company and further that it shall not be necessary to obtain consent of any Person in order to give effect to the provisions of this Clause.
- 5.2. Where any of the loans, debts, liabilities, duties and obligations of the Transferor Company which are deemed to be transferred to the Transferee Company under this Scheme have been discharged by the Transferor Company on or after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to have been for and on account of the Transferee Company.



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- 5.3. Without prejudice to Clause 5.1, upon the coming into effect of the Scheme, all loans raised and used and all debts, liabilities, duties and obligations incurred by the Transferor Company for the operations of the Business with effect from the Appointed Date and prior to the Effective Date shall, subject to the terms of this Scheme, be deemed to have been raised, used or incurred for and on behalf of the Transferee Company, and shall also without any further act or deed be and stand transferred to and be deemed to be transferred to the Transferee Company and shall become the loans, debts, liabilities, duties and obligations of the Transferee Company on the same terms and conditions as were applicable to the Transferor Company, and the Transferee Company shall meet, discharge and satisfy the liabilities and it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such liabilities have arisen in order to give effect to the provisions of this clause.
- 5.4. The Scheme shall not operate to enlarge the security of any loan, deposit or facility created by or available to Transferor Company which shall vest in the Transferee Company by virtue of the Scheme, including for the avoidance of doubt and notwithstanding anything contained herein, that no Encumbrances shall be extended to any of the assets of the Transferee Company.
- 5.5. It is expressly provided that, no term or condition of the liabilities that are being transferred to the Transferee Company as part of the Scheme and terms on which the liabilities are transferred to the Transferee Company as part of the Scheme, shall be modified by virtue of this Scheme.
- 5.6. Upon the Scheme becoming effective, with effect from the Appointed Date, all inter-se liabilities and other receivables and payables including any loans thereof, between Transferee Company and Transferor Company, if any, due or outstanding or which may at any time immediately prior to the Appointed Date become due or remain outstanding, shall stand cancelled and be deemed to have been discharged by such cancellation and consequently, there shall remain no inter-se liability between them as of the Appointed Date and corresponding effect shall be given in the books of account and records of Transferee Company.
- 5.7. Without prejudice to the provisions of the foregoing Clauses, upon the Scheme becoming effective, the Transferor Company and the Transferee Company shall execute all instruments or documents or do all the acts and deeds as may be required, including the filing of necessary particulars and/or modifications of charge with the Registrar of Companies, to give formal effect to the above provisions, if required.
- 5.8. The provisions of this Clause 5 shall operate, notwithstanding anything to the contrary contained in any instrument, deed or writing to which the relevant liability relates or the terms of sanction or issue or any security document, all of which instruments, deeds or writings shall stand modified by the foregoing provisions.
- 6. TAXES AND TAXATION**
- 6.1. Upon the Scheme becoming effective, the Transferee Company is expressly permitted to revise its financial statements and income-tax/ indirect tax returns (where required) along with prescribed forms, filings and annexures under the Income Tax Act, 1961,



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central sales tax, applicable state value added tax, service tax laws, excise duty laws and other Tax laws, and to claim refunds and/or credit for Taxes paid (including, tax deducted at source, wealth tax, etc.) and for matters incidental thereto, if required, to give effect to the provisions of the Scheme.

- 6.2. Upon the Scheme becoming effective, all Taxes payable by, or refundable to, the Transferor Company, including any refund, claims or credits (including credits for income tax, withholding tax, advance tax, self-assessment tax, minimum alternate tax credit, central value added tax credit, goods and services tax credits, other indirect tax credits and other tax receivables) shall be treated as the tax liability, refunds, claims or credits, as the case may be, of the Transferee Company, and any tax incentives, benefits (including claims for unabsorbed tax losses and unabsorbed tax depreciation), advantages, privileges, exemptions, credits, tax holidays, remissions or reductions, which would have been available to the Transferor Company, shall be available to the Transferee Company, and following the Effective Date, the Transferee Company shall be entitled to initiate, raise, add or modify any claims in relation to such taxes on behalf of the Transferor Company.
- 6.3. All Taxes payable by the Transferor Company from the Appointed Date onwards for the operations of the Transferor Company, including the Business, shall be to the account of the Transferee Company; similarly all Tax credits pertaining to the Transferor Company, shall be made or deemed to have been made and duly complied with by the Transferee Company if so made by Transferor Company. If, during the period between the Appointed Date and the Effective Date, any Tax returns or any other filings, representations or other submissions pertaining to the Transferor Company are required to be filed or made by the Transferor Company with or to the Tax authorities, the Transferor Company shall do the same in consultation with the Transferee Company and not without the prior written consent of the Transferee Company.
- 6.4. The provisions of this Scheme, as they relate to amalgamation of the Transferor Company into the Transferee Company, have been drawn up to comply with the conditions relating to "amalgamation" as defined under Section 2(1B) of the 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 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 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 Income Tax Act, 1961. Such modification will, however, not affect the other parts of the Scheme.

7. EMPLOYEES

- 7.1. On the Scheme becoming effective, all staff and employees of the Transferor Company who are employed with the Transferor Company on the Effective Date ("**Transferred Employees**"), shall be deemed to have become the staff and employees of the Transferee Company with effect from the Effective Date or their respective joining date, whichever is later, without any break in their service and on the basis of continuity of service, and the terms and conditions of their employment with the Transferee Company shall not be less favourable than those applicable to them as employees of the Transferor Company on the Effective Date.



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- 7.2. The services of the Transferred Employees with the Transferor Company prior to the transfer, as aforesaid, shall be taken into account for the purposes of all benefits to which the Transferred Employees may be eligible, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans, superannuation plans and any other retirement benefits and accordingly, shall be reckoned therefore from the date of their respective appointment in the Transferor Company.
- 7.3. It is expressly provided that, on the Scheme becoming effective, the contributions made by the Transferor Company in respect of the Transferred Employees under Applicable Law to the provident fund, gratuity fund, contribution towards employees state insurance, superannuation fund, retirement fund or any other special fund or trusts created or existing for the benefit of the Transferred Employees (collectively referred to as the "Funds") shall be deemed to be contributions made by the Transferee Company, and the Funds shall be transferred to similar Funds created by the Transferee Company and shall be held for their benefit pursuant to this Scheme or, at the Transferee Company's sole discretion, maintained as separate Funds by the Transferee Company. Upon the Scheme becoming effective, the Transferee Company shall stand substituted for the Transferor Company, for all purposes whatsoever, including with regard to the obligation to make contributions to relevant authorities, such as the Regional Provident Fund Commissioner or to such other funds maintained by the Transferor Company, in accordance with Applicable Law. It is clarified that the services of the employees of the Transferor Company will be treated as having been continuous and not interrupted for the purpose of the said Fund or Funds.
- 7.4. In relation to any other fund created or existing for the benefit of the Transferred Employees, the Transferee Company shall stand substituted for the Transferor Company, for all purposes whatsoever, including relating to the obligation to make contributions to the said funds in accordance with the provisions of such scheme, funds, bye laws, etc. in respect of such Transferred Employees.
- 7.5. The Transferee Company shall comply with any agreement(s) / settlement(s) entered into with labour unions (if any) or employees by the Transferor Company. The Transferee Company agrees that for the purposes of the payment of any retrenchment compensation, gratuity and other termination benefits, the past services of employees with the Transferor Company, if any, shall also be taken into account, and further agrees to pay such benefits when they become due.

8. LEGAL PROCEEDINGS

All legal proceedings, including, quasi-judicial, arbitral and other administrative proceedings, of whatsoever nature by or against the Transferor Company pending and/or arising before the Effective Date, including those arising under the Income Tax Act, 1961 and any other indirect tax laws, 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 Transferee Company, as the case may be, in a manner and to a similar extent as would or might have been continued and enforced by or against the Transferor Company. The Transferee Company undertakes to have all legal or other proceedings specified in this clause, initiated by or against the Transferor Company, transferred to its name and to



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have such proceedings continued, prosecuted and enforced by or against the Transferee Company, as the case may be. Following the Effective Date, the Transferee Company may initiate any legal proceedings for and on behalf of the Transferor Company.

9. CONTRACTS, DEEDS, ETC.

- 9.1. Upon the coming into effect of the Scheme and with effect from the Appointed Date, all contracts, deeds, bonds, agreements and other instruments, if any, of whatsoever nature and subsisting or having effect on the Effective Date to which the Transferor Company is a party or to the benefit of which the Transferor Company may be eligible, and which are subsisting or having effect immediately prior to the Effective Date, shall continue in full force and effect against or in favour of the Transferee Company, and may be enforced effectively by or against the Transferee Company as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party thereto from inception.
- 9.2. Without prejudice to Clause 9.1, upon the Scheme becoming effective, with effect from the Appointed Date, all Contracts and arrangements in any form relating to the Business, including Contracts pertaining to, customers, vendors, benefits of all Contracts, whether registered or not registered, to which the Transferor Company is a party or to the benefit of which the Transferor Company may be eligible, and which are subsisting or have effect immediately before the Effective Date, shall continue in full force and effect on or against or in favour, as the case may be, of the Transferee Company and may be enforced as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obligee thereto or thereunder.
- 9.3. The Transferee Company may, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if it considers necessary, enter into, or issue or execute deeds, writings, tripartite arrangements, confirmations, novations, declarations, or other documents with, or in favour of any party to any contract or arrangement to which the Transferor Company is a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Transferee Company shall be deemed to be authorized to execute any such writings on behalf of the Transferor Company and to carry out or perform all such formalities or compliances required for the purposes referred to above on the part of the Transferor Company. The Transferor Company shall execute such writings as may be reasonably required by the Transferee Company in this regard.
- 9.4. For the avoidance of doubt, it is clarified that upon the coming into effect of this Scheme, all the rights, title, interest and claims of the Transferor Company in any leasehold/licensed properties or otherwise of the Transferor Company, including but not limited to security deposits and advance or prepaid lease or license fee, shall, on the same terms and conditions, pursuant to Section 232(4) of the Act, be transferred to and vested in or be deemed to have been transferred to and vested in the Transferee Company automatically without requirement of any further act or deed. The Transferee Company shall continue to pay rent or lease or license fee as provided for under such agreements, and the Transferee Company and the relevant landlords, owners and lessors shall continue to comply with the terms, conditions and covenants thereunder.
- 9.5. All other agreements entered into by the Transferor Company in connection with the



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assets of the Undertaking of the Transferor Company shall stand automatically transferred in favour of the Transferee Company on the same terms and conditions without any further act, instrument, deed, matter or thing being made, done or executed.

10. CONDUCT OF BUSINESSES TILL THIS SCHEME COMES INTO EFFECT

10.1. With effect from the Appointed Date and up to and including the Effective Date, the Transferor Company:

10.1.1. shall carry on and be deemed to have been carrying on the Business and other activities in relation to the operations of the Transferor Company and stand possessed of all the estates, assets, rights, title, interest, authorities, contracts, investments and strategic decisions of the Transferor Company for and on account of, and in trust for, the Transferee Company;

10.1.2. all profits or income arising or accruing in favour of the Transferor Company whether or not in relation to the Business and all Taxes paid thereon or losses, expenditures arising or incurred by the Transferor Company in relation thereto shall, for all purposes, be treated as and deemed to be the profits or income, Taxes or losses, expenditures as the case may be, of the Transferee Company;

10.1.3. any of the rights, powers, authorities, privileges, attached, related or pertaining to the Business exercised by the Transferor Company shall be deemed to have been exercised by the Transferor Company for and on behalf of, and in trust for and as an agent of the Transferee Company. Similarly, any of the obligations, duties and commitments attached, related or pertaining to the Business that have been undertaken or discharged by the Transferor Company shall be deemed to have been undertaken for and on behalf of and as an agent for the Transferee Company;

10.1.4. shall cause the Business (including making applications to any Governmental Authority for the renewal of permits which have expired) to be conducted as a going concern in trust for the Transferee Company and in the ordinary course of business; and

10.1.5. shall not, except as may be expressly required or permitted under this Scheme, make any change in its capital structure in any manner either by any increase (including by way of issue of equity and/or preference shares on a rights basis or by way of a public issue, bonus shares and/or convertible debentures or otherwise), decrease, reduction, reclassification, sub-division, consolidation, re-organization, or in any other manner which may, in any way, affect the Share Exchange Ratio, except with the prior approval of the Transferee Company.

10.2. Except with the prior approval of the Transferee Company, with effect from the date on which the Board of Directors of the Companies approve this Scheme up to and including the Effective Date, the Transferor Company shall not take any actions prohibited in terms of any agreement, arrangement, undertaking, deed or other document executed in writing *inter-alia* between the Companies and/or any of their shareholders.



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11. SAVINGS OF CONCLUDED TRANSACTIONS

The transfer and vesting of the assets and liabilities of the Transferor Company as above and the continuance of proceedings by or against the Transferor Company shall not affect any transaction or proceedings already concluded on or after the Appointed Date or till the Effective Date in accordance with this Scheme.

Part 3

12. CONSIDERATION

- 12.1. Upon coming into effect of the Scheme and in consideration for the Amalgamation, the Transferee Company shall, without any further application or deed, issue and allot its equity shares, credited as fully paid up, to all the equity shareholders holding fully paid up equity shares of the Transferor Company, whose names appear in the register of members of the Transferor Company and / or whose names appear as the beneficial owner of the shares of the Transferor Company in the records of the depository, as on the Record Date, to be fixed for the purpose of reckoning names of the equity shareholders the Transferor Company ("**Transferor Company Shareholders**"), in the following ratio:

"10 (Ten) fully paid up equity shares of face value Rs. 2 (Rupees two only) each of the Transferee Company, to be issued for every 47 (Forty Seven) fully paid up equity shares of face value Rs. 10 (Rupees ten only) each held by the Transferor Company Shareholders" (the "**Share Exchange Ratio**").

The equity shares held by the Transferee Company in the Transferor Company shall stand cancelled as an integral part of the Scheme and no equity shares of the Transferee Company shall be allotted in respect of such equity shares. The 62,400 forfeited shares of the Transferor Company shall stand extinguished and cancelled and an amount of Rs 3,12,000 shall be transferred to the head 'Capital Reserve' in the financial statement of the Transferee Company.

The equity shares of the Transferee Company issued and allotted to the Transferor Company Shareholders based on the Share Exchange Ratio provided above shall be referred to as "**Amalgamation Consideration Shares**".

- 12.2. Upon equity shares being issued by the Transferee Company to the Transferor Company Shareholders in accordance with clause 12.1 above, the shares held by the said shareholders in the Transferor Company shall be deemed to have been canceled and extinguished and be of no effect on and from such issue and allotment.
- 12.3. Pursuant to issuance and allotment of the Amalgamation Consideration Shares, in case any equity shareholder of the Transferor Company becomes entitled to a fraction of an equity share of the Transferee Company, the Transferee Company shall not issue fractional shares to such member but shall consolidate such fractions and issue consolidated shares to a trustee nominated by the Transferee Company in that behalf, who shall sell such shares and distribute the net sale proceeds (after deduction of applicable taxes and other expenses incurred) to the shareholders respectively entitled to the same in proportion to their fractional entitlements.



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- 12.4. SRBC & Co LLP, an independent chartered accountant firm, and Manuj Singhal, chartered accountant and registered valuer have issued valuation reports on the Share Exchange Ratio adopted under the Scheme for both the Companies. Saffron Capital Advisors Private Limited, a SEBI registered merchant banker, has provided its fairness opinion on the Share Exchange Ratio to the Transferor Company and Pantomath Capital Advisors (Private) Limited, a SEBI registered merchant banker, has provided its fairness opinion on the Share Exchange Ratio to the Board of Directors of the Transferee Company.
- 12.5. Equity shares to be issued by the Transferee Company to the respective Transferor Company Shareholders as above shall be subject to the Memorandum and Articles of Association of the Transferee Company and shall rank *pari passu* with the existing equity shares of the Transferee Company in all respects including dividends.
- 12.6. Equity shares in the Transferee Company shall be issued only in dematerialized form to the Transferor Company Shareholders whether or not they hold shares of the Transferor Company in physical or dematerialized form, in to the account in which the Transferor Company shares are held or such other account as is intimated by the shareholders to the Transferee Company and/or its Registrar. All the Transferor Company Shareholders who hold equity shares of the Transferor Company in physical form shall receive the equity shares in the Transferee Company, in dematerialized form provided the details of their account with the Depository Participant are intimated in writing to the Transferee Company and/or its Registrar. If not so notified, such equity shares shall be kept in abeyance and shall be issued to a Share Suspense Account maintained by the Company. Voting Rights on such shares shall be frozen as long as such shares are held in such Share Suspense Account. All corporate benefits accruing on such shares shall also be credited to such Share Suspense Account for a period of seven years and shall thereafter be transferred by the Transferee Company in accordance with provisions of Section 124(5) read with Section 124(6) of the Act and rules made thereunder.
- 12.7. The Board of Directors of the Transferee Company and the Transferor Company shall, if and to the extent required, apply for and obtain any approvals from all appropriate Governmental Authorities for the issue and allotment of equity shares to the Transferor Company Shareholders pursuant to Clause 12.1 of the Scheme.
- 12.8. Equity shares to be issued by the Transferee Company to the Transferor Company Shareholders pursuant to Clause 12.1 of this Scheme shall, subject to the receipt of necessary approvals, be listed and/or admitted to trading on the Stock Exchanges, where the shares of the Transferee Company are listed and/or admitted to trading. The Transferee Company shall enter into such arrangements and give such confirmations and/or undertakings as may be necessary in accordance with Applicable Laws for complying with the formalities of the said Stock Exchanges. The shares allotted pursuant to the Scheme shall remain frozen in the depositories system till listing/trading permission is given by the designated Stock Exchange.
- 12.9. The equity shares to be issued by the Transferee Company pursuant to this Scheme in respect of any equity shares of the Transferor Company which are held in abeyance under the Act or otherwise shall, pending allotment or settlement of dispute by order of



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a court or otherwise, also be kept in abeyance by the Transferee Company. In the event of there being any pending share transfers, whether lodged or outstanding, of any of the Transferor Company Shareholders, the Board of Directors of the Transferee Company shall be empowered to take such actions as may be necessary in order to remove any difficulties arising to the transferor of the share in the Transferee Company and in relation to the shares issued by the Transferee Company pursuant to the Scheme.

12.10. Approval of this Scheme by the shareholders of the Transferee Company shall be deemed to be the due compliance of the provisions of Section 62 of the Act and the other relevant and applicable provisions of the Act for the issue and allotment of equity shares by the Transferee Company to the Transferor Company Shareholders, as provided in this Scheme and there shall be no need to pass a separate shareholders' resolution at a general meeting for the same, as is required under Section 62 and other applicable provisions of the Act.

12.11. The equity shares of the Transferee Company issued pursuant to this Scheme may not be registered under the United States Securities Act of 1933, as amended (the "Securities Act") and the Transferee Company may elect, in its sole discretion, to rely upon an exemption from the registration requirements of the Securities Act under Section 3(a)(10) thereof or any other exemption that the Transferee Company may elect to rely upon. In the event the Transferee Company elects to rely upon an exemption from the registration requirements of the Securities Act under Section 3(a)(10) thereof, the sanction of the NCLT to this Scheme will be relied upon for the purpose of qualifying the issuance and distribution of the equity shares of the Transferee Company for such an exemption from the registration requirements of the Securities Act under Section 3(a)(10) thereof.

13. DISSOLUTION OF THE TRANSFEROR COMPANY

Upon the effectiveness of the Scheme, the Transferor Company shall be dissolved without winding up and the Board of Directors of the Transferor Company shall, without any further act, instrument or deed, be and stand dissolved.

14. ACCOUNTING TREATMENT IN THE BOOKS OF THE TRANSFEREE COMPANY

Notwithstanding anything to the contrary contained in any other clause in the Scheme, the Transferee Company shall give effect to the amalgamation of the Transferor Company in its books, in accordance with Appendix C to Ind AS 103, business combination of entities under common control, notified under Section 133 of the Act, Companies Indian Accounting Standards ('Ind AS') Rules, 2015 and other relevant provisions of the Act, and on the date determined in accordance with Ind AS.

15. INCREASE IN THE AUTHORIZED SHARE CAPITAL OF THE TRANSFEREE COMPANY

15.1. As an integral part of the Scheme, and, upon the Scheme becoming effective, the authorized share capital of the Transferor Company, as on the Effective Date, shall be deemed to be added to the authorized share capital of the Transferee Company, as on the Effective Date, without any further act or deed and without any further payment of



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stamp duty or registration fees and Clause V of the Memorandum of Association of the Transferee Company shall be altered accordingly.

- 15.2. It is clarified that the approval of the members of Transferee Company to the Scheme shall be deemed to be their consent/approval for the increase of the authorized capital, amendment of the capital clause of the Memorandum of Association of the Transferee Company under the provisions of Section 13 and 61 of the Act and other applicable provisions of the Act. Pursuant to this Scheme, the Transferee Company shall file requisite forms with the relevant Registrar of Companies to give effect to the increase in its authorized equity share capital and payment of requisite fee and duty, as may be directed.

16. BOOKS AND RECORD OF THE TRANSFEROR COMPANY

The Transferor Company acknowledges that all books, records, files, papers, engineering and process information, software, licenses for software, algorithms, programs, manuals, data, catalogues, quotations, sales and advertising materials, lists of present and former customers and suppliers, customer credit information, customer pricing information, and other records whether in physical or electronic of the Transferor Company shall be transferred to the Transferee Company on the Effective Date.

CHAPTER 3

GENERAL TERMS AND CONDITIONS

17. APPLICATION TO NCLT

- 17.1. The Transferor Company and the Transferee Company shall file joint applications before the NCLT for convening meetings of their respective members and creditors, if any, for considering, and if thought fit, approving this Scheme, with or without modification.
- 17.2. Upon this Scheme being agreed to by requisite majority of the members / creditors, if any, of the Transferor Company and the Transferee Company at such meetings, the Transferor Company and the Transferee Company shall file a joint application before the NCLT for sanctioning the Scheme and for passing appropriate orders of transfer and vesting under Section 232 of the Act.

18. LISTING AGREEMENT AND SEBI COMPLIANCE

- 18.1. Since the Transferor Company and Transferee Company are listed companies, this Scheme is subject to compliances of all requirements under the SEBI Listing Regulations and all statutory directives of SEBI in so far as they relate to sanction and implementation of the Scheme including the SEBI Circular.

19. DECLARATION OF DIVIDEND, BONUS, ETC.

- 19.1. During the period between the date of approval of this Scheme by its Board of



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Directors and up to and including the Effective Date, the Transferor Company shall not declare or pay any dividends.

- 19.2. It is clarified that the aforesaid provisions in respect of declaration of dividends, whether interim or final, are enabling provisions only and shall not be deemed to confer any right on any member of the Companies to demand or claim any dividends which, subject to the provisions of the Act, shall be entirely at the discretion of the Boards of Directors of the Companies and subject, wherever necessary, to the approval of the shareholders of the concerned Company.

20. MODIFICATION OR AMENDMENTS TO THE SCHEME

- 20.1. The Transferor Company and the Transferee Company agree that if, at any time, the NCLT or any Governmental Authority directs or requires any material modification or amendment of the Scheme, such material modification or amendment shall not be binding on the Transferor Company or the Transferee Company, except where the prior written consent of both the Transferor Company or the Transferee Company, as the case may be, has been obtained for such modification or amendment, which consent shall not be unreasonably withheld by the Transferor Company and the Transferee Company. Notwithstanding the above, if any modification or amendment to the Scheme, whether material or not, adversely affects the interest of the Transferor Company or the Transferee Company, then, such modification or amendment shall not be binding on the Transferor Company or the Transferee Company, except where the prior consent of both the Transferor Company or the Transferee Company, as the case may be, has been obtained for such modification or amendment, which consent shall not be unreasonably withheld by the Transferor Company and the Transferee Company.
- 20.2. In the event a modification or amendment to the Scheme as required by the NCLT or any Governmental Authority is not approved in accordance with this Clause 20, the Transferor Company and the Transferee Company shall enter into good faith discussions on the manner in which they shall proceed in relation to consummation of the transactions contemplated under the Scheme.
- 20.3. Notwithstanding anything contained in Clauses 20.1 and 20.2, any modification to the Scheme by any of the Companies, after receipt of sanction by the NCLT and/or the Stock Exchanges, shall be made only with the prior approval of the NCLT and/or the Stock Exchanges.

21. CONDITIONALITY OF THE SCHEME

- 21.1. This Scheme is and shall be conditional upon and subject to:
- 21.1.1. Receipt of written approval from the Directorate of Industries, Government of Maharashtra under the eligibility certificate issued for the Mega Project under Package Scheme of Incentives 2007.
- 21.1.2. The Scheme being approved by requisite majorities of such classes of Persons, including the respective members and/or creditors of the



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Companies as may be directed by the NCLT under Sections 230 to 232 of the Act.

- 21.1.3. Receipt of no-objection letters from the Stock Exchanges in respect of the Scheme and the transaction contemplated therein, which shall be in form and substance acceptable to the Companies, each acting reasonably and in good faith.
 - 21.1.4. The Scheme being sanctioned by the NCLT under Sections 230 to 232 of the Act, either on terms as originally approved by the Companies, or subject to such modifications approved by the NCLT, which shall be in form and substance acceptable to the Companies, each acting reasonably and in good faith.
 - 21.1.5. The Scheme being approved by the shareholders of the Companies through resolutions (including by the Public Shareholders through e-voting) passed in terms of paragraphs 9(a) and 9(b) of Annexure I of the SEBI Circular, as may be amended from time to time, provided that the same shall be acted upon only if the votes cast by the Public Shareholders in favour of the Scheme are more than the votes cast by the Public Shareholders against it.
 - 21.1.6. Making the necessary filings with, and obtaining approvals from, such authorities, as may be required, and any other sanctions and orders as may be directed by the NCLT in respect of the Scheme.
 - 21.1.7. Certified copy of the Order of the NCLT sanctioning the Scheme being filed with the Registrar of Companies having jurisdiction over the Companies.
 - 21.1.8. The fulfillment, satisfaction or waiver (as the case may be) of such other conditions precedent as may be agreed *inter-alia* between the Transferor Company and the Transferee Company.
 - 21.1.9. The provisions contained in this Scheme are inextricably inter-linked with the other provisions and the Scheme constitutes an integral whole. The Scheme would be given effect to only if is approved in its entirety unless specifically agreed otherwise by the respective Board of Directors of the Companies.
- 21.2. The Scheme shall come into operation from the Effective Date but with effect from the Appointed Date.

22. EFFECT OF NON-RECEIPT OF APPROVAL/SANCTION

- 22.1. In the event the Scheme does not come into effect within 24 (Twenty Four) months from the date on which the Board of Directors of the Companies have approved this Scheme ("**Long Stop Date**"), either the Transferor Company or the Transferee Company may opt to terminate this Scheme and if required may file appropriate proceedings before the concerned NCLT in this respect. Provided however, that the Transferor Company or the Transferee Company shall have the right to mutually extend the Long Stop Date, in writing.



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

23. EXPENSES CONNECTED WITH THE SCHEME

23.1. Except as stated in Clause 23.2 below, each Company shall bear its own costs, charges and expenses in relation to the transactions contemplated herein.

23.2. All costs, charges and expenses in respect of the Amalgamation of the Transferor Company with the Transferee Company in terms of or pursuant to the Scheme and in relation to the registration and the stamping of the Sanction Order including registration charges, stamp duty, transfer charges/duty/fees and all other expenses in respect of the Amalgamation, including transfer of all properties, if any, in terms of or pursuant to the Scheme shall be borne by the Transferee Company.

24. POWER TO REMOVE DIFFICULTIES

The Board of Directors of the Companies may jointly and as mutually agreed:

24.1. give such directions (acting jointly) as may be mutually agreed by the Companies as they may consider necessary to settle any question or difficulty arising under this Scheme or in regard to and of the meaning or interpretation of this Scheme or implementation thereof or in any matter whatsoever connected therewith, or to review the position relating to the satisfaction of various conditions of this Scheme and if necessary, to waive any of those.

24.2. do all acts, deeds and things as may be necessary, desirable or expedient for carrying the Scheme into effect.

25. RESIDUAL PROVISIONS

25.1. The consent of the shareholders and creditors of each of the Companies to the Scheme in accordance with the Act and the SEBI Circular, as applicable, shall be deemed sufficient for the purposes of effecting all the actions set out in this Scheme and no additional actions of the Companies or their respective shareholders and / or creditors shall be separately required.

25.2. Upon the Scheme becoming effective, the Transferee Company shall be entitled to operate all bank accounts, realise all monies and complete and enforce all pending contracts and transactions in the name of the Transferor Company to the extent necessary until the transfer of the rights and obligations of the Transferor Company to the Transferee Company under this Scheme is formally accepted and completed by the parties concerned. For the avoidance of doubt, it is hereby clarified that with effect from the Effective Date and until such time that the name of the bank accounts of the Transferor Company have been replaced with the name of the Transferee Company, the Transferee Company shall be entitled to operate the bank accounts of the Transferor Company in the name of the Transferor Company in so far as may be necessary.

25.3. The Transferee Company may, at any time after the Scheme becomes effective in



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accordance with the provisions hereof, if so required under any law or otherwise, enter into, or issue or execute deeds, writings, confirmations, novations, declarations, or other documents with, or in favour of, any party to any contract or arrangement to which any of the Transferor Company is a party or any writings as may be necessary to be executed in order to give formal effect to the provisions of the Scheme. The Transferee Company shall be deemed to be authorised to execute any such writings on behalf of the Transferor Company and to carry out or perform all such formalities or compliances required for the purposes specified above by the Transferor Company.

- 25.4. Upon the Scheme becoming effective, all licences, incentives, remissions, tax incentives, subsidies, privileges, consents, sanctions, and other authorisations, to which the Transferor Company are entitled, shall stand vested in the Transferee Company and permitted or continued by the order of sanction of the NCLT. The Transferee Company shall file the Scheme with applicable Governmental Authorities, including the Registrar of Companies, for their record, who shall take it on record pursuant to the Sanction Order of the NCLT.



A. S. L.



M. A. Sanghvi