

Company Application No. 146 of 2010
In the High Court at Calcutta
Original Jurisdiction

In the matter of :
The Companies Act, 1956.

And

In the matter of :
An application under Sections 391(1) and 393 of the said Act.

And

In the matter of :
TIL Limited, a company incorporated under the provisions of the
Companies Act, 1956 having its Registered Office at 1, Taratolla
Road, Garden Reach, Kolkata 700 024, within the aforesaid
jurisdiction.

And

In the Matter of:
Tractors India Private Limited, a company incorporated under the
provisions of the Companies Act, 1956 having its Registered Office
at 1, Taratolla Road, Garden Reach, Kolkata 700 024, within the
aforesaid jurisdiction.

1. TIL Limited
2. Tractors India Private Limited

..... Applicants

To
The Equity Shareholders of :
TIL Limited

TAKE NOTICE that by an order dated the 15th day of March, 2010 the Hon'ble High Court at Calcutta has directed that separate meeting of the Equity Shareholders of TIL Limited, the Applicant No.1 abovenamed, be convened and held at 1, Taratolla Road, Garden Reach, Kolkata 700 024, on Monday, the 12th day of April, 2010 at 4:15 p.m., for the purpose of considering and if thought fit, approving, with or without modification, the proposed Scheme of Arrangement between the Applicant No.1 with the Applicant No.2 and their respective shareholders.

TAKE FURTHER NOTICE that in pursuance of the said order separate meeting of the Equity Shareholders of the Applicant no. 1 will be held at 1, Taratolla Road, Garden Reach, Kolkata 700 024, on Monday, the 12th day of April, 2010 at 4.15 p.m., when you are requested to attend at the concerned meeting.

TAKE FURTHER NOTICE that you may attend and vote at the said meeting, in person or by proxy, provided that a proxy in the prescribed form, duly signed by you, is deposited at the registered office of the Applicant No. 1 Company as aforesaid not later than 48 hours before the respective meeting.

The Court has appointed Mr. Deb Mukherjee, Advocate to be the Chairperson for the meeting of the Equity Shareholders of the Applicant No.1.

A copy each of the said Scheme of Arrangement, the Statement under Section 393 of the Companies Act, 1956 and a form of Proxy is enclosed herewith.

Dated this 19th day of March, 2010

CHAIRPERSON APPOINTED FOR THE MEETING

[NOTE : All alterations made in the form of proxy should be initialed.]

Settled by :

Drawn by :
PHIROZE EDULJI
Advocate
6, Old Post Office Street
Basement, Room No. 28
Kolkata - 700 001
Advocates for Applicants

(MOUSUMI BANERJEE)
Assistant Registrar (Company)
High Court, O.S. Calcutta.

SCHEME OF ARRANGEMENT

UNDER SECTION 391 TO 394 OF THE COMPANIES ACT, 1956

BETWEEN

TIL LIMITED

.....Transferor Company

And

TRACTORS INDIA PRIVATE LIMITED

.....Transferee Company

And Their Respective Shareholders and Creditors

PART 1 – GENERAL

- A. TIL Limited (hereinafter referred to as the “Transferor Company”) is a public limited company governed by the provisions of the Companies Act, 1956, having its registered office at 1, Taratolla Road, Garden Reach, Kolkata 700 024 . The equity shares of the Transferor Company are listed on the Bombay Stock Exchange Limited, National Stock Exchange of India Limited and the Calcutta Stock Exchange Limited.
- B. Tractors India Private Limited (hereinafter referred to as the “Transferee Company”) is a company incorporated under the Companies Act, 1956, having its registered office at 1, Taratolla Road, Garden Reach, Kolkata 700 024. The Transferee Company is, inter-alia, authorized to carry on the business of manufacturers, importers, and exporters, distributors, dealers, buyers and sellers, repairers, hirers of all kinds of wheeled and track tractors and vehicles, diesels and other engines, motors, machinery, material handling, earthmoving, construction and mining equipment and of all appliances, apparatus, utensils, accessories connected with or ancillary to the manufacture or marketing thereof in particular to deal therein in any capacity whatsoever.
- C. In order to achieve synergy and efficiency of operations and management and with the end and intent of realigning the business operations undertaken by the Transferor Company, the Transferor Company has, as part of its overall business reorganization plan, determined to concentrate on, and strengthen its core competencies, in the interests of maximizing overall shareholder value. Therefore, with a view to operate Transferred Undertaking (defined hereinafter) independently, the Transferor Company proposes that the Transferred Undertaking be transferred to and vested in the Transferee Company by a slump sale to be undertaken through this Scheme (as hereinafter defined) under the provisions of Section 391 – 394 and other relevant provisions of the Act (as defined hereinafter) for such consideration and in such manner as provide for in this Scheme.
- D. This Scheme of Arrangement under Sections 391 to 394 of the Companies Act, 1956, provides for the transfer of the Transferred Undertaking of the Transferor Company as a going concern on a slump sale basis to the Transferee Company.

1. Definitions

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

- (A) “Act” means the Companies Act, 1956 or any statutory modification or re-enactment thereof for the time being in force;
- (B) “Appointed Date” means First day of April in the year Two Thousand and Ten (1st April, 2010)
- (C) “Board of Directors” in relation to each of the Transferee Company and the Transferor Company, as the case may be, shall, include a committee directors;
- (D) “Consideration” shall have the meaning assigned to it in Clause 16(a) hereof;

- (E) **“Effective Date”** means the date on which all the conditions and matters referred to in Clause 17 hereof have been fulfilled;
- (F) **“High Court”** shall mean the High Court at Kolkata.
- (G) **“Remaining Business”** means all the business and the divisions of the Undertaking of Transferor Company other than those comprised in the Transferred Undertaking), and shall include (i) any asset, contract, deed, bond, offer, agreement, scheme, arrangement, or other instrument of whatsoever nature which has not been transferred to the Transferee Company; and (ii) all services, resources and infrastructure facilities which are shared amongst the various units and group entities of the Transferor Company, including the domain names including ‘tilindia’ and group performance management software and intranet service and all other official websites.
- (H) **“Scheme”** means this Scheme of Arrangement in its present form or with any modification(s) approved or imposed or directed by the Court;
- (I) **“Schedule(s)”** shall mean the schedule(s) to this Scheme
- (J) **“Transferred Employees”** shall have the meaning assigned to it in Clause 10 hereof;
- (K) **“Transferred Undertaking”** means all the undertakings including, properties and liabilities, of whatsoever nature and kind and whatsoever situate, of the Transferor Company pertaining to dealership business of Caterpillar (CAT), to be transferred on a going concern basis, which shall mean and include (without limitation):
- (i) all assets, movable and immovable, real or personal, in possession or reversion, corporeal or incorporeal, tangible or intangible of whatsoever nature, where so ever situate, whether in India or abroad, including all lands, buildings, warehouses, offices, plant and machinery, vehicles, equipments, appliances, accessories, furniture, fixtures, sundry debtors, inventories, cash and bank accounts (including bank balances), bills of exchange, benefit of any deposits, financial assets, investments, benefit of any bank guarantees and letters of credit in relation to the Transferred Undertaking, funds belonging to or proposed to be utilized for the Transferred Undertaking, loans (excluding inter divisional loans) and advances together with all present and future liabilities (including contingent liabilities pertaining to the Transferred Undertaking) as appearing in the books of Transferor Company for the CAT business as on the Appointed Date;
 - (ii) all permits, quotas, rights, entitlements, license, approvals, authorizations, consents, tenancies, offices, software programs and data (whether proprietary or otherwise), goodwill, privileges, all other rights, benefits and entitlements including tax exemptions, deferrals and other benefits or privileges, lease rights (including the benefit of any applications made therefore), powers and facilities of every kind, nature and description whatsoever, rights to use and avail of telephones, telexes, facsimile connections, communication facilities, installations, utilities, electricity and other services, provisions, funds, benefits of all agreements, contracts and arrangements (including without limitation any customer contracts, supply contracts or other contracts or agreements) and all other interests in connection with or relation to the Transferred Undertaking as on the Appointed Date.
 - (iii) All trademark, copy rights, all other intellectual property rights or to use the same; as may be determined or agreed under an agreement to be entered or executed between the Transferor and Transferee Company separately and shall be deemed as part of this Scheme for all purpose and means;
 - (iv) All investments, loans and advances, including accrued interest thereon, of the Transferor Company appertaining to the Transferred Undertaking as on the Appointed Date;
 - (v) All the employees of the Transferor Company engaged in the Transferred Undertaking as on the Appointed Date;
 - (vi) All debts, liabilities, contingent liabilities, duties and obligations, secured or unsecured, whether provided for or not or disclosed in the books of account of the Transferor Company (other than corporate taxes on profits under the Income Tax Act, 1961 prior to Effective Date) relating to the Transferred Undertaking as on the Appointed Date; and

- (vii) All necessary records, files, papers, engineering and process information, computer programmes, manuals, data, catalogues, quotations, sales and advertising materials, list of present and former customers and suppliers, customer credit information, customer pricing information and other records in connection with or relating to the Transferred Undertaking as on the Appointed Date;

2. Interpretation

- (a) References in this Scheme to the date of "**coming into effect of this Scheme**" or "**effectiveness of this Scheme**" shall mean the Effective Date;
- (b) Wherever reference is made to the Hon'ble High Court in this Scheme, the reference would include, if appropriate, reference to the National Company Law Tribunal or such other forum or authority, as may be vested with any of the powers of a High Court under the Act;
- (c) References to a person include any individual, firm, body corporate (wherever incorporated), government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality);
- (d) References to clauses, recitals and schedules, unless otherwise provided, are to clauses, recitals and schedules of and to this Scheme;
- (e) The heading herein shall not affect the construction of this Scheme;
- (f) The singular shall include the plural and vice versa; and references to one gender include all genders;
- (g) Any phrase introduced by the terms "including", "include", "in principal" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (h) The Schedule to this Scheme forms an integral and inseparable part of this Scheme.

3. Share Capital

- (a) The capital structure of the Transferor Company, as on September 30, 2009 is as under:
- | | | |
|----|--|----------------|
| A. | Authorized Capital | Amount in Rs. |
| | 2, 00, 00,000 Equity Shares of Rs 10/- each | 20,00,00,000/- |
| B. | Issued, Subscribed and paid up Share Capital | Amount in Rs. |
| | 100, 30,265 Equity Shares of Rs 10/- each | 10,03,02,650/- |
- (b) The capital structure of the Transferee Company, as on September 30, 2009 is as under:
- | | | |
|----|--|---------------|
| A. | Authorized Capital | Amount in Rs. |
| | 1,00,000 Equity Shares of Rs 10/- each | 10,00,000/- |
| B. | Issued, Subscribed and paid up Share Capital | Amount in Rs. |
| | 10,570 Equity Shares of Rs 10/- each | 1, 05,700/- |

PART – II

OBJECTS AND RATIONALE FOR THE SCHEME :

- 4 (a) The Transferor Company is primarily engaged in the business of manufacture and sale, importers, and exporters, distributors, dealers, buyers and sellers, repairers, hirers of all kinds of wheeled and track tractors and vehicles, diesels and other engines, motors, machinery, material handling, earthmoving, construction and mining equipment and of all appliances, apparatus, utensils, accessories connected with or ancillary to the manufacture or marketing thereof in particular to deal therein in any capacity whatsoever and also having the dealership business of Caterpillar Inc, USA, which is carried on by one of its division, viz. Caterpillar Business (CAT). As part of an overall business re-organisation plan and in order to achieve greater efficiencies in operations and with the intent of providing focus and greater attention to its main business activity of manufacture and sale of CAT business, it is considered desirable and expedient to demerge the CAT business Undertaking of the Transferor Company to the Transferee Company.

- (b) The demerger will enable the Transferor Company to focus on its core business of manufacturing and sale of all kinds of vehicles, and other engines, motors, machinery, material handling equipment and of all appliances, apparatus, utensils, accessories connected with or ancillary to the manufacture or marketing thereof in particular to deal therein in any capacity whatsoever and other such businesses and more efficient utilisation of its resources. The same will also help the Transferee Company to capitalise on growth opportunities available to it in the dealership of CAT business including independent collaboration, joint venture and future expansion in the said business.
- (c) The businesses and activities of the respective companies will be carried on more economically, conveniently and advantageously under the scheme and the same will have beneficial results for the said companies, their shareholders and all concerned.

TRANSFER OF THE TRANSFERRED UNDERTAKING

The Transferred Undertaking shall be demerged and transferred to and vested in or be deemed to be transferred to and vested in the Transferee Company in the following manner:

5. (a) Upon the coming into effect of the Scheme and with effect from the Appointed Date, the Transferred Undertaking (including all the estates, assets, rights, properties, liabilities, obligations, title, interest and authorities including accretions and appurtenances of the Transferred Undertaking) shall, subject to the provisions of this Clause in relation to the mode of vesting and pursuant to Section 394(2) of the Act and without any further act or deed, be transferred to and vested in or be deemed to have been transferred to and vested in the Transferee Company as a going concern on a slump sale basis so as to become as and from the Effective Date, the estates, assets, rights, properties, liabilities, obligations, title, interest and authorities of the Transferee Company, subject to the charges thereon in favour of banks and / or financial institutions in relation to the liabilities being transferred to the Transferred Undertaking under this Scheme.
- (b) Upon the coming into effect of the Scheme and with effect from the Appointed Date, all the immovable assets and rights and interests in immovable properties pertaining to the Transferred Undertaking, whether freehold or leasehold or otherwise and the terms of such permitted usage are also mentioned therein and all documents of title, rights and easements in relation thereto shall pursuant to the provisions of Section 394 of the said Act stand transferred to and be vested in and transferred to and/or be deemed to have been transferred to and vested in the Transferee Company, without any further act, instrument or deed, so as to become as and from the Appointed Date the immovable assets of the Transfer, 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 and exercise all rights and privileges attached thereto and shall be liable to pay the ground rent, taxes and to fulfill all obligations in relation to or applicable to such immovable properties. The Transferee Company shall under the provisions of this Scheme be deemed to be authorized to execute any such instruments, deeds and writings on behalf of the Transferor Company to implement or carry out all such formalities or compliances on the part of the Transferor Company and to be carried out or performed in order to give effect to the provisions of this Clause;
- (c) In respect of such of the assets of the Transferred Undertaking as are movable in nature or are otherwise capable of transfer by delivery or by endorsement and delivery, the same shall stand transferred by the Transferor Company upon coming into effect of the Scheme and with effect from the Appointed Date pursuant to the provisions of Section 394 of the Act without requiring any deed or instrument of conveyance for transfer of the same, and shall become the property of the Transferee Company as an integral part of the Transferred Undertaking, subject to the charges thereon in favour of banks and / or financial institutions in relation to the liabilities being transferred to the Transferred Undertaking under this Scheme.

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- (d) In respect of such of the assets of the Transferred Undertaking other than those referred to in Clause 5(b) above, the same shall, as more particularly provided in Clause 5(a) above, without any further act, instrument or deed, be transferred to and vested in and / or be deemed to be transferred to and vested in the Transferee Company upon coming into effect of the Scheme and with effect from the Appointed Date pursuant to the provisions of Section 394 of the Act.
- (e) All assets, estate, rights, title, interest and authorities acquired by the Transferor Company prior to, or as on the Effective Date for operation of the Transferred Undertaking shall also stand transferred to, and vested in the Transferee Company upon the coming into effect of the Scheme and with effect from the Effective Date.
- 6 (a) Upon the coming into effect of this Scheme on the Effective Date and subject to the provisions of this Scheme, all contracts (including without limitation contracts with employee unions), deeds, bonds, offers, agreements, schemes, arrangements and other instruments of whatsoever nature in relation to the Transferred Undertaking, to which the Transferor Company is a party or to the benefit of which the Transferor Company is or may be eligible, and which are subsisting or having effect immediately before the Appointed Date, shall, without any further act or deed, be in full force and effect on or against or in favour, as the case may be, of the Transferee Company and may be enforced, without any further act or deed, as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obligee thereto. It shall not be necessary to obtain the consent of any third party or other person who is party to any such contracts, deeds, bonds, offers, agreements, schemes, arrangements and other instruments to give effect to the provisions of this Clause 5 of the Scheme.
- (b) Without prejudice to the other provisions of the Scheme and notwithstanding that the transfer and vesting of the Transferred Undertaking occurs by virtue of this Scheme itself, the Transferee Company may, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required, under any law or otherwise, execute deeds, confirmations or other writings or arrangements with any party to any contract or arrangement to which the Transferor Company is a party (including securing the change of record of rights and any other records relevant for mutating the legal ownership of any immovable property vested with the Transferee Company and relating to the Transferred Undertaking) or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Transferor Company shall, if requested by the Transferee Company, co-operate and also be a party to such deeds, confirmations or other writings or arrangements by executing such writings as may be necessary, without any liability in this regard.
- (c) Without prejudice to the generality of the foregoing, upon the coming into effect of this Scheme on the Appointed Date, all consents, permissions, licenses, approvals, certificates, clearances and authorities given by, issued to or executed in favour of the Transferor Company in relation to the Transferred Undertaking as on the Appointed Date 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, and the rights and benefits under the same shall be available to the Transferee Company.
- (d) Without prejudice to the generality of the foregoing, upon coming into effect of this Scheme on the Appointed Date, all consents, permissions, licenses, approvals, certificates, clearances and authorities in respect to or under the provision(s) of the Factories Act, Industrial Disputes Act, Industries (Development & Regulation) Act, Payment of Wages Act, Payment of Gratuity Act, Payment of Bonus Act, Contract Labour (R & A) Act, Industrial Employment Standing Orders Act, Employment Exchange Act, State Labour Welfare Fund Act, Apprentices Act, Motor Vehicles Act, Environment Protection Act & Pollution Control Act, Electricity Act, State Tax on Professions, Trades, Ceiling and Employments Act of the respective States, Professional Tax Act, Shops & Establishment Act of respective States, given by, issued to or executed in favour of the Transferor Company in relation to the Transferred Undertaking as on the Appointed Date shall stand transferred or deemed amended to or in favour of the Transferee Company as if the same were originally given by, issued to or executed in favour of the Transferee Company, and the rights and benefits under the same shall be available to the Transferee Company.

7. (a) Upon the coming into effect of the Scheme on the Appointed Date, the liabilities pertaining to the Transferred Undertaking shall without any further act or deed be and stand transferred to the Transferee Company and shall thereupon become the debts, liabilities and obligations of the Transferee Company which the Transferee Company undertakes to meet, discharge and satisfy to the exclusion of the Transferor Company. 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 sub-clause.
- (b) All loans raised and used and all liabilities and obligations incurred by the Transferor Company pertaining to the Transferred Undertaking prior to the Appointed Date shall be deemed to have been raised, used or incurred for and on behalf of the Transferee Company and to the extent they are outstanding on the Effective Date, shall also without any further act or deed be and stand transferred to the Transferee Company and shall become the liabilities and obligations of the Transferee Company which shall meet, discharge and satisfy the same to the exclusion of the Transferor Company. However, otherwise, the Transferor and Transferee Company may mutually decide the allocation of Banking arrangements and / or credit facilities with respective Banks.
8. (a) Upon the coming into effect of the Scheme, all legal or other proceedings (including any proceedings before any statutory or quasi judicial authority or tribunal) by or against the Transferor Company under any statute, whether pending on the Appointed Date or which may be instituted in future in respect of any matter and in each case insofar as they relate to the Transferred Undertaking shall be continued and be enforced by or against the Transferee Company with effect from the Effective Date. In the event that the legal proceedings referred to herein require both the Transferor Company and Transferee Company to be parties thereto, the Transferee Company shall be added and / or replaced in place of Transferor Company as a party to such proceedings and shall prosecute or defend such proceedings in cooperation with the Transferor Company. The Transferor Company and the Transferee Company shall agree on the list of such proceedings which pertain to the Transferred Undertaking, and the same shall be binding on the Transferee Company.
- Provided however, in relation to any proceedings referred to above, the Transferor Company shall render all necessary assistance including documents and records that it possesses or controls to the extent necessary for the purposes of enabling the Transferee Company to take necessary action in relation to such proceedings and the Transferee Company shall be provided with copies of related and requisite documents and records. It is clarified that any costs in relation to such proceedings shall be borne by the Transferee Company.
- (b) The Transferee Company undertakes to have all legal, taxation (other than taxes on profits under the Income Tax Act, 1961) or other proceedings initiated by or against the Transferor Company in relation to the Transferred Undertaking referred to in Clause 7 (a) above transferred into its name and to have the same continued, prosecuted and enforced by or against the Transferee Company to the exclusion of the Transferor Company and at the cost and expense of the Transferee Company.
9. From the Appointed Date all profits accruing to the Transferor Company, or losses arising or incurred by it (including the effect of taxes if any thereon), relating to the Transferred Undertaking shall for all purposes, become the profits, taxes or losses, as the case may be, of the Transferee Company. It is hereby clarified that for the period prior to the Appointed Date, all profits accruing to the Transferor Company in relation to the Transferred Undertaking, or losses arising or incurred (including the effect of taxes if any thereon), in relation to the Transferred Undertaking prior to the Appointed Date, shall for all purposes, be the profits, taxes or losses, as the case may be, of the Transferor Company.

10. (a) The Transferee Company undertakes to engage, on and from the Effective Date, such of the employees of the Transferor Company as are engaged in the Transferred Undertaking and who are in the employment of the Transferor Company as on the Effective Date ("Transferred Employees"). All expenses, emoluments and liabilities relating to the Transferred Employees shall be borne and paid by the Transferee Company on and from the Effective Date. The service of each such Transferred Employee shall not be affected by such transfer and the terms and conditions of service applicable to each such Transferred Employee after such transfer shall not be less favorable than those applicable to him immediately before the transfer. The transfer of such employee and their employment for all purpose and means shall be deemed in compliance with the provision of Section 25FF of the Industrial Disputes Act, 1947. The Transferee Company shall be legally liable to pay to each such Transferred Employee, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer. The Transferee Company agrees that for the purpose of payment of any compensation, gratuity and other terminal benefits, the past services of such Transferred Employees with the Transferor Company shall also be taken into account and the methodology for computation of retirement benefits shall remain the same as followed by the Transferor Company, and agrees and undertakes to pay the same as and when payable.
- (b) (i) Insofar as the existing provident fund trust, i.e., Tractors India Ltd Provident Institution created by the Transferor Company for its employees (including the Transferred Employees) are concerned, the balance standing credit to the account of each of the Transferred Employees who are eligible for benefits under such trusts and such balance being equal to the aggregate amount such Transferred Employees are entitled to in relation to the period prior to the Effective Date, shall remain in the said provident fund trust .
- (ii) Insofar as the existing superannuation trust created, i.e., Tractors India Ltd Superannuation Fund by the Transferor Company for its employees (including Transferred Employees) is concerned, an amount equivalent to the liability under actuarial valuation of the Trust Fund of the Transferor Company and / or any contribution with respect to the Transferred Employees as of the Effective Date shall remain in the said superannuation fund trust.
- (iii) Insofar as the existing gratuity trust created, i.e., Tractors India Ltd Staff Gratuity Fund by the Transferor Company for its employees (including Transferred Employees) is concerned, an amount equivalent to the liability under actuarial valuation of the Trust Fund of the Transferor Company and / or any contribution with respect to the Transferred Employees as of the Effective Date shall remain in the said gratuity fund trust.
- (iv) Notwithstanding anything stated above the said transferred employees as on effective date and / or new employees who may join the Transferee Company after the effective date shall be entitled to become the member of the existing provident fund trust, created by the Transferor Company for its employees (including the Transferred Employees) are concerned, The rules and regulations of the said Tractors India Ltd Provident Institution trust including any amendment, modification etc thereof took place from time to time after the effective date shall be applicable to all transferred employees and new employees of Transferee Company who are the member of the said trust / fund.
- (v) Notwithstanding anything stated above the said transferred employees as on effective date and / or new employees who may join the Transferee Company after the effective date shall be entitled to become the member of the existing superannuation fund trust, created by the Transferor Company for its employees (including the Transferred Employees) are concerned, The rules and regulations of the said Tractors India Ltd Superannuation Fund trust including any amendment, modification etc thereof took place from time to time after the effective date shall be applicable to all transferred employees and new employees of Transferee Company who are the member of the said trust / fund.

- (vi) Notwithstanding anything stated above the said transferred employees as on effective date and / or new employees who may join the Transferee Company after the effective date shall be entitled to become the member of the existing gratuity fund trust, created by the Transferor Company for its employees (including the Transferred Employees) are concerned,. The rules and regulations of the said Tractors India Ltd Staff Gratuity Fund trust including any amendment, modification etc thereof took place from time to time after the effective date shall be applicable to all transferred employees and new employees of Transferee Company who are the member of the said trust / fund.
- (c) Notwithstanding anything stated in Clause 10 above or else where of this Scheme, the Transferee Company undertakes that the existing Employees Welfare measures including funds, trusts and arrangement, organised and created by Transferor Company for its employees of CAT Business shall be continued after the effective date for the benefit of such Transferred employees, including employees who may join the Transferee Company after the Effective Date on the same terms and conditions; and with effect from Effective Date. The Transferee Company shall make the necessary contributions for such employees or Transferred Employees to the said funds maintained by the Transferor Company
- (d) In relation to the above mentioned funds created or existing for the benefit of the Employees of Transferor Company including the Transferred Employees, upon the Effective Date, the Transferee Company shall make necessary contribution to the said fund 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 towards or in respect to the statutory contribution for the said Transferred Employees and new employees who are the member of said funds .
11. The Transfer and vesting of the assets, liabilities and obligations of the Transferred Undertaking and the continuance of the proceedings by or against the Transferee Company pursuant to this Scheme shall not affect any transaction or proceedings already completed by the Transferor Company on the Effective Date.

12. **TRANSACTION BETWEEN APPOINTED DATE AND EFFECTIVE DATE**

- a. **Operative Date of the Scheme** : The Scheme though effective from the Appointed Date, shall be operative from the Effective Date;
- b. **Assets and Liabilities** : All the assets and liabilities resulting from the operations of the Undertaking of Transferor Company pertaining to the Transferred Undertaking from the Appointed Date onwards shall stand transferred to and vested in the Transferee Company on the Effective Date;
- c. **Profits and Losses**:With effect from the Appointed Date and upto the Effective Date all the profits or incomes accruing or arising to the Undertaking of Transferor Company pertaining to the Transferred Undertaking or expenditure or losses arising or incurred by the Undertaking pertaining to the Transferred Undertaking shall for all purposes be treated and be deemed to be and accrue as the profits or incomes or expenditure or losses of the Transferee Company;
- d. **Transactions and Proceedings**: The transfer of property and liabilities and continuance of proceedings under this Scheme shall not affect any transactions or proceedings already concluded by Transferor Company in the ordinary course of business on or after the Appointed Date till the Effective Date to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things lawfully done and executed by Transferor Company to the same extent as if done and executed by the Transferee Company on its own behalf;
- e. **Debts and Obligations**:It is clarified that all debts, liabilities, duties and obligations of Transferor Company pertaining to the Transferred Undertaking as on the Appointed Date whether provided for or not in the books of accounts of Transferor Company and all other liabilities which may accrue or arise after the Appointed Date till the Effective Date to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things lawfully done and executed by Transferor Company to the same extent as if done and executed by the Transferee Company on its own behalf;

- f. **Conduct of Business** : With effect from the Appointed Date, Transferor Company :
- i. Shall be deemed to have held and stood possessed of and shall hold and stand possessed of the entire Transferred Undertaking for and on account of and for the benefit of and in trust for the Transferee Company; and
 - ii. Shall carry on and be deemed to be carrying on all businesses and activities relating to the Transferred Undertaking for and on account of and for the benefit of and in trust for the Transferee Company.
- g. **Transferor Company to carry on its Business with Diligence:** With effect from the Appointed Date, Transferor Company has carried on and hereafter undertakes to carry on its business with reasonable diligence and utmost business prudence. From the date of the acceptance of this Scheme by the respective Board of Transferor Company and the Transferee Company, Transferor Company shall not alienate, charge, encumber, mortgage or otherwise deal with the Transferred Undertaking including any of the said assets or any part thereof, without the prior written consent of the Transferee Company, save and except in the ordinary course of business, or pursuant to any pre-existing obligation undertaken by Transferor Company prior to the Appointed Date;
- h. **Enforcement of Legal Proceedings:** All proceedings of whatsoever nature (legal and others, including any suits, appeals, arbitration, execution proceedings, revisions, writ petitions, if any) by or against Transferor Company pertaining to the Transferred Undertaking shall not abate, be discontinued or be in any way prejudicially affected by reasons of this Scheme or the transfer of the Transferred Undertaking or of anything contained in this Scheme, but the said proceedings, shall till the Effective Date be continued, prosecuted and enforced by or against Transferor Company as if this scheme had not been made and thereafter be continued, prosecuted and enforced by or against the Transferee Company Transferee Company in the same manner and to the same extent as they would or might have been continued, prosecuted, enforced by or against Transferor Company if this Scheme had not been made. The Transferee Company shall take steps to have the abovementioned proceedings continued in its name;
- i. **Enforcement of Contracts:** Subject to the other provisions of this Scheme, all lawful agreements, arrangement, bonds, contracts, deeds and other instruments of whatsoever nature relating to the Transferred Undertaking and to which Transferor Company is a party to or to the benefit of which it may be eligible and which are subsisting or operative or having effect, shall till the Effective Date, be in full force and effect and may be enforced as fully and effectual, as if the Scheme had not been made and thereafter, shall be in full force and effect against or in favor of the Transferee Company, as the case may be, and may be enforced as fully and effectual as if, instead of Transferor Company, the Transferee Company had been a party or beneficiary thereto, subject to such changes and variations in the terms, conditions and provisions thereof as may be mutually agreed to between the Transferee Company and other parties thereto. The Transferee Company shall enter and/or issue and/or execute deeds, writings or confirmations or enter into any arrangement, confirmations or novations in order to give formal effect to the provisions of this Clause, if so required or if it becomes necessary.

PART III – REMAINING BUSINESS

13. (a) The Remaining Business and all the assets, rights, title, liabilities and obligations pertaining thereto shall continue to belong to and be vested in and be managed by the Transferor Company.
- (b) All Legal, taxation or other proceedings by or against the Transferor Company and relating to the Remaining Business under any statute, whether pending on the Effective Date or which may be instituted in future whether or not in respect of any matter arising before the Effective Date (including those relating to any property, right, power, liability, obligation or duties of the Transferor Company in respect of the Remaining Business) shall be continued and enforced by or against the Transferor Company.

PART IV – INDEMNITY

14. (a) The Transferee Company shall indemnify the Transferor Company from and against any and all costs, expenses and liabilities arising out of or relating to any (i) act or omission undertaken by the Transferor Company in relation to the Transferred Undertaking after the Effective Date in pursuance of the provisions of this Scheme; or (ii) the operations or conduct of the Transferred Undertaking after the Effective Date.
- (b) On and after the Effective Date, if proceedings are taken against the Transferee Company by reason of the conveyance of the Transferred Undertaking under the Scheme in respect of any matter pertaining to the Remaining Business, the Transferee Company shall defend the same in accordance with the advice of the Transferor Company and at the cost of the Transferor Company and the latter shall reimburse and indemnify the Transferee Company for all costs, expenses and liabilities incurred by the Transferee Company arising out of or relation to such proceeding against the Transferee Company.

Provided however, in relation to any proceedings referred to in this Clause 12 (b), the Transferor Company shall be entitled to take control of such proceedings in consultation with the Transferee Company, and the Transferee Company shall render all necessary assistance including documents and records that it possesses or controls to the extent necessary for the purposes of enabling the Transferor Company to take necessary action in relation to such proceedings and the Transferor Company shall be provided with copies of related and requisite documents and records. It is clarified that any costs in relation to such proceedings shall be borne by the Transferor Company.

PART V – SECURITY

15. (a) Insofar as the existing security over the assets of the Transferor Company in respect of the liabilities forming part of the Transferred Undertaking is concerned, such security shall, without any further act, instrument or deed be modified and shall be extended to and shall operate only over the assets comprising the Transferred Undertaking which have been charged and secured in respect of the liabilities pertaining to the Transferred Undertaking.

Provided that if any assets comprising the Transferred Undertaking which are being transferred to the Transferee Company pursuant to the Scheme have not been charged or secured in respect of the liabilities pertaining to the Transferred Undertaking, such assets shall remain unencumbered and the existing security referred to above shall not be extended to and shall not operate over such assets unless otherwise determined by the Board of Directors of the Transferee Company. The absence of any formal amendment which may be required by a lender or third party shall not affect the above.

- (b) Insofar as the assets comprising the Remaining Business are concerned, the security relating to the liabilities pertaining to the Transferred Undertaking over such assets shall, without any further act, instrument or deed be released and discharged from the obligations and security relating to the same. The absence of any formal amendment which may be required by a lender or third party shall not affect the above.
- (c) Insofar as the assets comprising the Transferred Undertaking which are being transferred to the Transferee Company pursuant to this Scheme are concerned, the security and charge over such assets relating to any loans, borrowing or debentures which are not transferred pursuant to this Scheme (and which shall continue with the Transferor Company) shall, without any further act, instrument or deed be released and discharged from such encumbrance and shall no longer be available as security in relation to the Remaining Business. The absence of any formal amendment which may be required by a lender or third party shall not affect the above.
- (d) The provisions of this Clause shall operate, notwithstanding anything to the contrary contained to any deed or writing or terms of sanction or issue or any security documents all of which instruments shall stand modified and / or superseded by this Clause.

PART VI – CONSIDERATION

16. (a) On the Effective Date or on such later date as the Transferor Company may consent to in writing the Transferee Company, in consideration of the slump sale, i.e., the transfer and vesting of the Transferred Undertaking in the Transferee Company, shall pay to the Transferor Company a sum which shall not less than Rs 948 Millions (Rupees Nine hundred and Forty eight millions) and not more than Rs. 1108 Millions (Rupees One thousand one hundred and eight millions) (“Consideration”). The said consideration shall be paid to the Transferor Company by issue of fresh equity shares in the transferee company.
- (b) The Transferred Undertaking has been duly valued the above mentioned consideration by KPMG India Private Limited, an independent valuer having office at Infinity Benchmark, Plot No. G-1, 10th Floor, Block – EP & GP, Sector – V, Salt Lake City, Kolkata 700 091 and submitted its report dated 13th November, 2009 to Transferor Company and Transferee Company. The said valuation is non-itemized lump-sum valuation based on enterprise value. Further, Swapn De & Associates, Chartered Accountants, independent chartered accountant, has provided a fairness report dated 14th November, 2009 on fairness of the Consideration determined for the transfer of the Transferred Undertaking to the Transferee Company.

PART VII – GENERAL TERMS AND CONDITIONS

17. The Transferor Company and the Transferee Company shall make necessary applications before the High Court for the sanction of this Scheme under Section 391 and 394 of the Act and the same shall be effective after the filling of said order of the High Court with the Registrar of Companies, West Bengal.
18. The Transferor Company (by its Board of Directors) and the Transferee Company (by its Board of Directors), either by themselves or through a committee appointed by them in this behalf, may in their full and absolute discretion :
- (a) assent to any alteration or modification to this Scheme which the High Court and / or any other authority may deem fit to approve or impose. In the event any of the conditions that may be imposed by the High Court and / or any regulatory or statutory authority are unacceptable to the Transferor Company, and / or the Transferee Company, then they are at liberty to withdraw from the Scheme;
- (b) give such directions as they may consider necessary to settle any question or difficulty arising under the Scheme or in regard to and of the meaning or interpretation of the Scheme or implementation thereof or in any matter whatsoever connected therewith (including any question or difficulty arising in connection with any deceased or insolvent shareholders, depositors or debenture-holders of the respective companies) or to review the position relating to the satisfaction of various conditions of the Scheme and if necessary, to waive any of those (to the extent permissible under law);
- (c) modify, vary or withdraw the Scheme prior to the sanction of the Scheme by the respective shareholders or the High Court in any manner at any time.
19. The Scheme is conditional upon and subject to the following :
- (a) the Scheme being agreed to by the respective requisite majorities of the members and creditors (where applicable) of the Transferor Company and the Transferee Company as required under the Act and the requisite orders of the High Court being obtained;
- (b) 'no objection certificate (noc)' from the respective Bankers from whom the Transferor Company has obtained loan and has not been fully repaid.
- (c) the certified copies of the court orders referred to in this Scheme being filed with the Registrar of Companies, West Bengal; and
- (d) an amount equal to the Consideration having been paid by issue of fresh share capital by the Transferee Company to the Transferor Company.
20. The Transferor Company (through its Board of Directors) shall have the right to waive any of the conditions referred to in Clause 18 above (other than those required to be complied with by law) and the waive of such condition shall not affect in any manner the coming into effect of the Scheme.

21. If any part of this Scheme is found to be unworkable for any reason whatsoever, the same shall not, subject to the decision of the Transferor Company and the Transferee Company, affect the validity or implementation of the other parts and / or provisions of this Scheme.
- a. In the event of non-fulfillment of any or all the obligations under the Scheme, by either the Transferor Company or the Transferee Company, the non performance of which will put the other company under any obligation, then such defaulting company will indemnify all costs/interest, etc. to the other company, subject to a specific provision if any to the contrary under the Scheme.
 - b. All costs, charges, levies and duties (including stamp duty and registration fees, if applicable), taxes (other than corporate taxes on profits under the Income Tax Act, 1961) and expenses in relation to or in connection with or incidental to the Scheme or implementation thereof shall be borne and paid for by the Transferee Company; and if and to the extent that the Transferor Company is required to bear the same, the Transferee Company shall promptly reimburse the same to the Transferor Company.
 - c. Upon this Scheme becoming effective, the shareholders, creditors and counter parties to contracts of both the Transferor Company and the Transferee Company shall be deemed to have also accorded their approval under all relevant provisions of the Act for giving effect to the contained in this Scheme.

C.A. NO. 146 OF 2010
IN THE HIGH COURT AT CALCUTTA
ORIGINAL JURISDICTION

In the matter of:
The Companies Act, 1956;

And

In the matter of:
An application under Section 391(1) and 393 of the said Act;

And

In the matter of:
TIL Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 1, Taratala Road, Garden Reach, Kolkata – 700 024, within the aforesaid jurisdiction;

And

In the matter of:
Tractors India Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its office at 1, Taratala Road, Garden Reach, Kolkata – 700 024, within the aforesaid jurisdiction.

1. TIL Limited
2. Tractors India Private Limited.

..... Applicants

STATEMENT UNDER SECTION 393 OF THE COMPANIES ACT, 1956.

- I. The accompanying notice has been sent for convening separate meeting of the Equity Shareholders of TIL Limited, the Applicant No.1 abovenamed (hereinafter referred to as the "Transferor Company"), for the purpose of considering and if thought fit, approving, with or without modification, the proposed Scheme of Arrangement of the Applicant No.1 with the Applicant No.2. Pursuant to the order dated 15th March, 2010 the meeting of the Equity Shareholders of the applicant company no.2 has been dispensed with. The detailed terms of the Arrangement will appear from the enclosed draft of the Scheme.
- II. The object of the application to the High Court at Calcutta is to obtain its sanction to Scheme of Arrangement of TIL Limited, with Tractors India Private Limited, whereby all the properties, rights and claims whatsoever of the Transferred Undertaking of the Transferor Company together with all rights and obligations relating thereto is proposed to be transferred to the Transferee Company on going concern basis on the terms and conditions fully stated in the said Scheme of Arrangement.
- III. The Transferee Company is a wholly owned subsidiary of the Transferor Company.
- IV. The circumstances and/or reasons and/or grounds that have necessitated and/or justified the said scheme of arrangement are, inter alia, as follows:-
 - (a) The Transferor Company is primarily engaged in manufacture and sale, importers and exporters, distributors, dealers, buyers and sellers, repairers, hirers of all kinds of wheeled tractors and vehicles, diesels and other engines, motors, machinery, material handling, earthmoving, construction and mining equipment and of all appliances, apparatus, utensils, accessories connected with or ancillary to the manufacturer or marketing thereof in particular to deal therein in any capacity whatsoever.

- (b) The said transfer of undertaking / business of CAT would enable the Transferor Company to focus on its core business of manufacture and sale of all kinds of vehicles and other engines, motors, machinery, and/or all appliances, apparatus etc and marketing thereof in particular to deal with therein in any capacity whatsoever and other such businesses for more efficient utilization of its resources. The same will also help the Transferor Company to capitalize growth opportunities available to it in the dealership of Caterpillar Business.
- (c) The business activities of the respective companies will be carried on more economically, efficiently and advantageously under the scheme and the same will be beneficial for the said companies, shareholders and all concerned;
- (d) The said scheme will enable the companies concerned to realize and streamline their management, business and function and will pay way for better more production and economical way of the running of the operations;
- (e) The business of both the companies will be carried on more economically and profitably under the scheme;
- (f) The said scheme will contribute in furthering and fulfilling the objects of the businesses concerned and in the growth and expansion of their businesses;
- (g) The scheme will have beneficial results from the companies concerned, their shareholders, employees and all concerned;
- (h) The Transferee Company is wholly owned subsidiary of the Transferor Company.

V. SALIENT FEATURES OF THE SCHEME :-

The salient features of the Scheme of Amalgamation are summarised for your convenience as follows :-

- (A) The "Appointed Date" means the 1st day of April, 2010.
- (B) "Effective Date" means the date when the Certified copy of the Order sanctioning the Scheme of Arrangement is filed with the Registrar of Companies, West Bengal by all the Companies respectively.
- (C) With effect from the Appointed Date, the undertakings of the Transferor Companies shall without further act or deed be transferred to and be vested or deemed to be vested in the Transferee Company pursuant to section 394(2) of the Act, subject, to all charges, liens, mortgages, lispenses, if any, then affecting the same or any part thereof.
- (D) It is expressly provided that in respect of such assets as are movable in nature or are otherwise capable of transfer by manual/physical delivery or by confirmation or by consent or agreement with any third party, the same shall be so transferred and or made over by the Transferor Companies to the Transferee Company and shall become the property of the Transferee Company pursuant to the provisions of Section 394 of the said Act, 1956 as an integral part of the undertakings.
- (E) (i) Upon the coming into effect of the Scheme and with effect from the Appointed Date, the Transferred Undertaking (including all the estates, assets, rights, properties, liabilities, obligations, title, interest and authorities including accretions and appurtenances of the Transferred Undertaking) shall, subject to the provisions of this Clause in relation to the mode of vesting and pursuant to Section 394(2) of the Act and without any further act or deed, be transferred to and vested in or be deemed to have been transferred to and vested in the Transferee Company as a going

concern on a slump sale basis so as to become as and from the Effective Date, the estates, assets, rights, properties, liabilities, obligations, title, interest and authorities of the Transferee Company, subject to the charges thereon in favour of banks and / or financial institutions in relation to the liabilities being transferred to the Transferred Undertaking under this Scheme.

- (ii) Upon the coming into effect of the Scheme and with effect from the Appointed Date, all the immovable assets and rights and interests in immovable properties pertaining to the Transferred Undertaking, whether freehold or leasehold or otherwise and the terms of such permitted usage are also mentioned therein and all documents of title, rights and easements in relation thereto shall pursuant to the provisions of Section 394 of the said Act stand transferred to and be vested in and transferred to and/or be deemed to have been transferred to and vested in the Transferee Company, without any further act, instrument or deed, so as to become as and from the Appointed Date the immovable assets of the Transferor, 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 and exercise all rights and privileges attached thereto and shall be liable to pay the ground rent, taxes and to fulfill all obligations in relation to or applicable to such immovable properties. The Transferee Company shall under the provisions of this Scheme be deemed to be authorized to execute any such instruments, deeds and writings on behalf of the Transferor Company to implement or carry out all such formalities or compliances on the part of the Transferor Company and to be carried out or performed in order to give effect to the provisions of this Clause;
 - (iii) In respect of such of the assets of the Transferred Undertaking as are movable in nature or are otherwise capable of transfer by delivery or by endorsement and delivery, the same shall stand transferred by the Transferor Company upon coming into effect of the Scheme and with effect from the Appointed Date pursuant to the provisions of Section 394 of the Act without requiring any deed or instrument of conveyance for transfer of the same, and shall become the property of the Transferee Company as an integral part of the Transferred Undertaking, subject to the charges thereon in favour of banks and / or financial institutions in relation to the liabilities being transferred to the Transferred Undertaking under this Scheme.
 - (iv) In respect of such of the assets of the Transferred Undertaking other than those referred to above, the same shall, as more particularly provided above, without any further act, instrument or deed, be transferred to and vested in and / or be deemed to be transferred to and vested in the Transferee Company upon coming into effect of the Scheme and with effect from the Appointed Date pursuant to the provisions of Section 394 of the Act.
 - (v) All assets, estate, rights, title, interest and authorities acquired by the Transferor Company prior to, or as on the Effective Date for operation of the Transferred Undertaking shall also stand transferred to, and vested in the Transferee Company upon the coming into effect of the Scheme and with effect from the Effective Date.
- (F) Upon the coming into effect of this Scheme on the Effective Date and subject to the provisions of this Scheme, all contracts (including without limitation contracts with employee unions), deeds, bonds, offers, agreements, schemes, arrangements and other instruments of whatsoever nature in relation to the Transferred Undertaking, to which the Transferor Company is a party or to the benefit of which the Transferor Company is or may be eligible, and which are subsisting or having effect immediately before the Appointed Date, shall, without any further act or deed, be in full force and effect on or against or in favour, as the case may be, of the Transferee Company and may be enforced, without any further act or deed, as fully and effectually as if, instead of the Transferor Company, the Transferee

Company had been a party or beneficiary or oblige thereto. It shall not be necessary to obtain the consent of any third party or other person who is party to any such contracts, deeds, bonds, offers, agreements, schemes, arrangements and other instruments to give effect to the provisions of the Scheme.

- (G) Without prejudice to the generality of the foregoing, upon the coming into effect of this Scheme on the Appointed Date, all consents, permissions, licenses, approvals, certificates, clearances and authorities given by, issued to or executed in favour of the Transferor Company in relation to the Transferred Undertaking as on the Appointed Date 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, and the rights and benefits under the same shall be available to the Transferee Company.
- (H) Upon the coming into effect of the Scheme on the Appointed Date, the liabilities pertaining to the Transferred Undertaking shall without any further act or deed be and stand transferred to the Transferee Company and shall thereupon become the debts, liabilities and obligations of the Transferee Company which the Transferee Company undertakes to meet, discharge and satisfy to the exclusion of the Transferor Company. 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 sub-clause.
- (I) Upon the coming into effect of the Scheme, all legal or other proceedings (including any proceedings before any statutory or quasi judicial authority or tribunal) by or against the Transferor Company under any statute, whether pending on the Appointed Date or which may be instituted in future in respect of any matter and in each case insofar as they relate to the Transferred Undertaking shall be continued and be enforced by or against the Transferee Company with effect from the Effective Date. In the event that the legal proceedings referred to herein require both the Transferor Company and Transferee Company to be parties thereto, the Transferee Company shall be added and / or replaced in place of Transferor Company as a party to such proceedings and shall prosecute or defend such proceedings in cooperation with the Transferor Company. The Transferor Company and the Transferee Company shall agree on the list of such proceedings which pertain to the Transferred Undertaking, and the same shall be binding on the Transferee Company.

Provided however, in relation to any proceedings referred to above, the Transferor Company shall render all necessary assistance including documents and records that it possesses or controls to the extent necessary for the purposes of enabling the Transferee Company to take necessary action in relation to such proceedings and the Transferee Company shall be provided with copies of related and requisite documents and records. It is clarified that any costs in relation to such proceedings shall be borne by the Transferee Company.

- (J) The Transferee Company undertakes to engage, on and from the Effective Date, such of the employees of the Transferor Company as are engaged in the Transferred Undertaking and who are in the employment of the Transferor Company as on the Effective Date ("Transferred Employees"). All expenses, emoluments and liabilities relating to the Transferred Employees shall be borne and paid by the Transferee Company on and from the Effective Date. The service of each such Transferred Employee shall not be affected by such transfer and the terms and conditions of service applicable to each such Transferred Employee after such transfer shall not be less favorable than those applicable to him immediately before the transfer. The transfer of such employee and their employment for all purpose and means shall be deemed in compliance with the provision of Section 25FF of the Industrial Disputes Act, 1947. The Transferee Company shall be legally liable to pay to each such Transferred Employee, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

The Transferee Company agrees that for the purpose of payment of any compensation, gratuity and other terminal benefits, the past services of such Transferred Employees with the Transferor Company shall also be taken into account and the methodology for computation of retirement benefits shall remain the same as followed by the Transferor Company, and agrees and undertakes to pay the same as and when payable.

- i. The Transferee Company undertakes that the existing Employees Welfare measures including funds, trusts and arrangement, organised and created by Transferor Company for its employees of CAT Business shall be continued after the effective date for the benefit of such Transferred employees, including employees who may join the Transferee Company after the Effective Date on the same terms and conditions; and with effect from Effective Date. The Transferee Company shall make the necessary contributions for such employees or Transferred Employees to the said funds maintained by the Transferor Company
- ii. In relation to the above mentioned funds created or existing for the benefit of the Employees of Transferor Company including the Transferred Employees, upon the Effective Date, the Transferee Company shall make necessary contribution to the said fund 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 towards or in respect to the statutory contribution for the said Transferred Employees and new employees who are the member of said funds .

(K.) The Transfer and vesting of the assets, liabilities and obligations of the Transferred Undertaking and the continuance of the proceedings by or against the Transferee Company pursuant to this Scheme shall not affect any transaction or proceedings already completed by the Transferor Company on the Effective Date.

(L) With effect from the Appointed Date, Transferor Company:

- i. Shall be deemed to have held and stood possessed of and shall hold and stand possessed of the entire Transferred Undertaking for and on account of and for the benefit of and in trust for the Transferee Company; and
- ii. Shall carry on and be deemed to be carrying on all businesses and activities relating to the Transferred Undertaking for and on account of and for the benefit of and in trust for the Transferee Company.

(M) On the Effective Date or on such later date as the Transferor Company may consent to in writing the Transferee Company, in consideration of the slump sale, i.e., the transfer and vesting of the Transferred Undertaking in the Transferee Company, shall pay to the Transferor Company a sum which shall not less than Rs 948 Millions (Rupees Nine hundred and Forty eight millions) and not more than Rs. 1108 Millions (Rupees One thousand one hundred and eight millions) ("Consideration"). The said consideration shall be paid to the Transferor Company by issue of fresh equity shares in the transferee company.

VI. Latest Financial Position of the Transferor Company No.1 as on 31.3.2009:-

- (i) The Transferor Company No.1 had neither issued nor agreed to issue any debentures.
- (ii) Apart from the current liabilities and provisions which are incurred and disposed of in the normal course of business the Transferor Company has secured loans of Rs.6,85,125,000/- and unsecured loans of Rs.4,49,165,000/-.

	<u>Amount in Rs.'000</u>
Paid up and share capital	1,00,303
Add: Equity Warrants	87,815
	<u>1,88,118</u>
Add: Reserves and surplus	13,97,943
Less: Preliminary Expenses	15,86,061
Net: Shareholders' fund	Nil
Assets (Including Current Assets)	15,86,061
Less: Liabilities (Current Liabilities & Provisions and Deferred Tax Liabilities)	45,15,159
Excess of Assets over Liabilities	29,29,098
	<u>15,86,061</u>

(iii) Subsequent to the date of the aforesaid accounts there has been no other substantial changes in the financial position of the Transferor Company except that arising or resulting from the usual course of business.

Latest Financial Position of the Transferee Company as on 31.3.2009 –

- (i) The Transferee Company had neither issued nor agreed to issue any debentures.
- (ii) Apart from the current liabilities and provisions which are incurred and disposed of in the normal course of business the Transferee Company has no other liabilities.

	<u>Amount in Rs.</u>
Paid up and share capital	1,05,700
Add: Reserves and surplus	NIL
	<u>1,05,700</u>
Less : Profit & Loss (Debit Balance)	35,765
Less : Misc. expenses, extent of not written off	8,400
Net Shareholders' fund	61,535
Assets (including Current Assets)	78,741
Less: Liabilities (including Unsecured Loans, current Liabilities& Provisions)	17,206
Excess of Assets over Liabilities	<u>61,535</u>

(iii) Subsequent to the date of the aforesaid accounts there has been no other substantial changes in the financial position of the Transferee Company except that arising or resulting from the usual course of business.

VII. The aggregate assets of all the Applicant Companies are more than sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any of the creditors of the Applicant Companies in any manner whatsoever and due provisions have been made for payment of all liabilities as and when the same fall due in usual course.

VIII. DIRECTORS' SHAREHOLDING / DIRECTORS' INTEREST IN RESPECTIVE APPLICANT COMPANIES:

- (i) Sri. A. Mazumdar, Chairman and Sri. S. Mazumder, Vice-Chairman and Managing Director, and only whole-time Directors of the Transferor Company and they are not Director of the Transferee Company. The Transferor Company has other five non-executive independent Directors and none of them has any pecuniary relation with the Transferee Company.

- (ii) The said wholetime directors of the Transferor Company hold the following Equity Shares in the Transferor Company :-

Sl. No.	Name of the Director	No. of Equity Shares
i.	Sri. A. Mazumdar	588301 (5.87%)
ii.	Sri. S.Mazumder	24360 (0.24%)

- (iii) The Transferee Company is wholly-owned subsidiary of the Transferor Company and accordingly Transferor Company holds all 10570 equity shares in the Transferee Company. None of the Directors of the Transferee Company holds an Equity Shares in the Transferee Company.

Sl. No.	Name of the Director	No. of Equity Shares
1.	Sri. A. Banerjee	NIL
2.	Sri. S. Das	NIL

Save as aforesaid, none of the Directors of the Applicant Companies have any other personal and/or material interest in the said Scheme.

- IX. Save as aforesaid none of the directors of the Applicant Companies have any material interest in the said Scheme of Amalgamation except as shareholders in general the extent of which will appear from the Register of the Directors' Shareholdings maintained by the Applicant Companies respectively.
- X. The exchange ratio of shares of the Applicant Companies has been fixed on a fair and reasonable basis and on the basis of the Valuation Report prepared by a firm of Chartered Accountants.
- XI. There are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 against any of the Applicant Companies.
- XII. Copies of the following documents are open for inspection at the registered office of the Applicant Companies between 11.00 A.M. and 1.00 P.M. on any working day:-
- Memorandum & Articles of Association of all the Applicant Companies.
 - Annual Audited Accounts of all the Applicant Companies for the year ended as on 31st March, 2009.
 - Valuation report
 - Scheme of Arrangement

Drawn by :	Settled by :
sd/- Phiroze Edulji Advocate 6, Old Post Office Street, Basement Room no. 28, Kolkata. - 7000 001	sd/- (MOUSUMI BANERJEE) Assistant Registrar (Company) High Court, O.S. Calcutta. 19.03.2010

Company Application No. 146 of 2010
In the High Court at Calcutta
Original Jurisdiction

In the matter of :

An application under Sections 391(1) and 393 of the Companies Act, 1956.

And

In the matter of :

1. TIL Limited, a company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 1, Taratolla Road, Garden Reach, Kolkata 700 024, within the aforesaid jurisdiction.

And

In the Matter of:

2. Tractors India Private Limited , a company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 1, Taratolla Road, Garden Reach, Kolkata 700 024, within the aforesaid jurisdiction.

.....
.....
Applicants

PROXY

I/We the undersigned Equity Shareholders of TIL Limited, being the applicant no.1 do hereby nominate and appoint Shri/Smt. _____ of

_____ and failing him/her Shri/Smt. _____

_____ as my/our PROXY to act for me/us at the meeting of the Equity Shareholders of the Applicant No.1 to be held at 1, Taratolla Road, Garden Reach, Kolkata 700 024, on Monday, the 12th day of April, 2010 at 4:15 p.m. for the purpose of considering and, if thought fit, approving with or without modification, the proposed Scheme of Arrangement of the Applicant Nos.1 with the Applicant No.2 and at such meeting or any adjournment thereof to vote* _____ the Scheme for me/us and in my/our name.

Dated this _____ day of _____, 2010.

(Strike out whatever not applicable)

Signature: _____ (Revenue Stamp)

Name:

Address:

Ledger Folio No./

DP-ID No./Client ID No.

- NOTE:
1. Please affix appropriate Revenue Stamp before putting signature.
 2. The Proxy must be deposited at the Registered Office of the respective applicant atleast 48 hours before the time of holding the meeting.

* (If you want to vote in favour of the Scheme with or without modification put 'FOR' and in case you intend to vote against put 'AGAINST').