

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

CSP No. 72 of 2018
CSP No. 71 of 2018
In
CSA No. 1015 of 2017
CSA No. 1016 of 2017

In the matter of the Companies Act, 2013
And

In the matter of Sections 230 to Section
232 of the Companies Act, 2013 and other
applicable provisions of the Companies
Act, 2013

And

In the matter of Scheme of Amalgamation
of BKC Enterprises Private Limited, the
Transferor Company with Allied Blenders
and Distillers Private Limited, the
Transferee Company and their respective
Shareholders

BKC ENTERPRISES PRIVATE LIMITED ... Petitioner/ Transferor Company

And

ALLIED BLENDERS AND DISTILLERS PRIVATE LIMITED

.... Petitioner/ Transferee Company

Order delivered on 16th May, 2018

Coram:

Hon'ble Shri. B.S.V Prakash Kumar, Member (Judicial)
Hon'ble Shri. Ravikumar Duraisamy, Member (Technical)

For the Petitioner(s) : Mr. Hemant Sethi i/b Hemant Sethi & Co

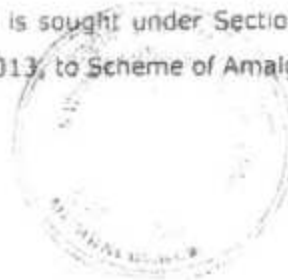
For Regional Director: Mr. S Ramakantha, Joint Director in the office of
Regional Director

For Official Liquidator: Mr. Santosh Dalvi, Office Assistant in office of
Official Liquidator

Per: Ravikumar Duraisamy, Member (Technical)

ORDER

1. Heard the learned counsel for the Petitioner Companies.
2. The sanction of the Tribunal is sought under Sections 230 and 232 of the Companies Act, 2013, to Scheme of Amalgamation of



BKC Enterprises Private Limited, the Transferor Company with Allied Blenders and Distillers Private Limited, the Transferee Company and their respective Shareholders ("Scheme").

3. Learned Counsel for the Petitioner Companies states that the Petitioner/ Transferee Company is primarily engaged in the business activity of manufacturing, marketing and sale of alcoholic beverages in India and overseas market.
4. The Counsel for the Petitioner Companies submits that the Scheme was approved by the Board of Directors in their respective meetings held on 24th October 2017. The Appointed Date fixed under the scheme is 1st April 2017. The amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits:
 - Create transparency in the holding structure;
 - Reducing number of entities thereby reducing managerial overlaps, which are necessarily involved in running multiple entities; and
 - Reduce regulatory and legal compliances / filings including accounting, reporting requirements, audit requirements, tax filings, etc. and consequential reduction in administrative costs.
5. The Transferor Company and Transferee Company have approved the said Scheme by passing the Board Resolution (Annexed to the respective Company Scheme Petitions filed by the Petitioner Companies).
6. Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble National Company Law Tribunal, Mumbai bench and has filed necessary affidavits of compliance with the National Company Law Tribunal, Mumbai bench. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956/ 2013 and the Rules made there under



whichever is applicable. The said undertaking given by the Petitioner Companies is accepted.

7. The Regional Director ('RD') has filed a Report dated 26th day of April, 2018 stating therein, that the Tribunal may consider the observations and pass such other order or orders as deemed fit and proper in the facts and circumstances of the case post considering the observations made at Sr. No. IV (a) to (g) mentioned in his report.

In paragraphs IV (a) to (g), of the said Report it is stated that:-

- a) *In addition to compliance of AS-14 (IND AS-103) the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.*
- b) *The petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on Petitioner Company(s).*
- c) *As regards Clause No.17 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorised Share Capital, subsequent to the Amalgamation for setting-off of fees paid by the Transferor Company on its Authorized Share Capital in accordance with the provisions of section 232(3)(i) of Companies Act, 2013.*
- d) *Petitioner companies has not submitted admitted copy of the Petition, Minutes of order of Hon'ble NCLT. In this regard petitioner companies has to undertake to submit the same for the record of Regional Director and also undertake that the scheme as admitted with the Honble NCLT through company petition and the scheme which is served to the Regional Director through Company Application is one and the same, and in case of deviation, if any, shall be bought to the notice of the Regional Director.*
- e) *Both the Petitioner Companies are defaulting in filing of the Annual Returns and Financial Statements for the Financial year 2016-2017. In this regard, the Deponent prays that no*



approval can be granted to a defaulting company till the filing is made as read with proviso of rule 7 of companies (Registration Offices and Fees) Rules, 2014.

- f) As per Clause 1.5 of the scheme, "Effective Date" means the last of the dates on which the certified or authenticated copy of the order of NCLT sanctioning the scheme are filed with the Registrar of Companies by the Transferor Company and the Transferee Company to give effect to the final order of NCLT sanctioning the scheme. In this regard, it is submitted that section 232(6) of the Companies Act, 2013 states that the scheme under this Section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not a date subsequent to the appointed date. The Deponent prays that the Appointed Date and Effective Date must be same. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.
- g) Petitioner in the clause 13.7 of the scheme has inter alia mentioned that the Transferee Company shall, if and to the extent required, increase and/or reclassify its Authorised share capital to facilitate issue of New Equity Shares under this scheme. In this regard, The Deponent prays that the Hon'ble Court may pass orders to comply with sec 61, r/w sec 13, sec. 64 and other applicable sections of the Companies Act, 2013".

8. The Petitioner Companies states that the above observations have been clarified points 2.1 to 2.7 of affidavit dated 9th May 2018 filed by the Petitioners as reproduced below:

2.1. With reference to the observation set out in paragraph IV (a) of the RD Report, the Petitioner Companies undertakes to pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) apart from compliances of AS-14 (IND-AS -103) etc.

2.2. With reference to the observation set out in paragraph IV (b) of the RD Report, the Petitioner Companies have already served notices under section 230(5) to the concerned authorities which are likely to be affected by the scheme of amalgamation. It is clarified that the approval of the scheme by this Tribunal shall not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Companies.



2.3. With reference to the observation set out in paragraph IV (c) of the RD Report in relation to clause No. 17 (i.e. Combination Of Authorized Share Capital) of the Scheme, the Petitioner Companies undertakes that the fees payable by the Transferee Company on its the Authorized Share Capital will be subsequent to the Amalgamation for setting-off of fees paid by the Transferor Company on its Authorized Share Capital in accordance with the provisions of section 232(3)(i) of the Companies Act, 2013.

2.4. With reference to the observation set out in paragraph IV (d) of the RD Report, the Petitioners clarify that the copy of the scheme as admitted with this Tribunal through company scheme petition and the scheme which is served to the Regional Director through company scheme application is one and the same, and there is no deviation.

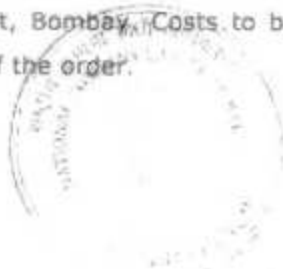
2.5. With reference to the observation set out in paragraph IV (e) of the RD Report, the Petitioners submit that the Petitioner Companies have filed all Annual Returns and Financials Statements for the Financial Year 2016-2017 with the Registrar of Companies. The copies of the relevant applicable forms along with e-challahs are attached as Annexure B in the affidavit.

2.6. With reference to the observation set out in paragraph IV (f) of the RD Report, the Petitioner Companies undertakes that the scheme will be effective from the appointed date 01st April 2017 and in terms of section 232(6) as mentioned in clause 2 of the scheme.

2.7. With reference to the observation set out in paragraph IV (g) of the RD Report, in relation to clause No. 13.7 (pertaining To Discharge Of Consideration) of the Scheme the Transferee Company undertakes to comply with all relevant and applicable provisions including section 61 read with section 13 and section 64 of the Companies Act, 2013 and the rules framed thereunder with regard to increase and /or reclassification of its Authorized Share Capital to facilitate issue of New Equity shares under the scheme".



9. The observations made by the Regional Director have been explained by the Petitioners in paragraph 8 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
10. The Official Liquidator has filed his report dated 16th April 2018 inter alia, stating therein that the affairs of the Petitioner/ Transferor Company have been conducted in a proper manner and that the Petitioner/ Transferor Company may be ordered to be dissolved.
11. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
12. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petitions No. 71 and 72 of 2018 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
13. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of receipt of this order.
14. The Transferee Company to lodge certified copy of this order and as certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of this order.
15. The respective Petitioner Companies to pay cost of Rs. 25,000/- to the Regional Director, Western Region, Mumbai and the respective Transferor Company to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.



- 16. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
- 17. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.



RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)



B.S.V. PRAKASH KUMAR
MEMBER (JUDICIAL)

Certified ✓
 Date of _____ 29/5/2018 _____
 Pages _____ 7 _____
 Fee Rs. _____ 35 _____
 Appointed by _____ 19/7/2018 _____
 Copy to _____ 19/7/2018 _____
 Copy to _____

Registrar
National Company Law Tribunal, Mumbai Bench



SCHEME OF AMALGAMATION
OF
BKC ENTERPRISES PRIVATE LIMITED
WITH
ALLIED BLENDERS AND DISTILLERS PRIVATE LIMITED
AND
THEIR RESPECTIVE SHAREHOLDERS

(Under Sections 230 to 232 of the Companies Act, 2013 and the rules made thereunder or any other section for the time being in force)

PREAMBLE

This Scheme of Amalgamation (the "Scheme") is presented under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 for Amalgamation of BKC Enterprises Private Limited ("BKCEPL") with Allied Blenders and Distillers Private Limited ("ABDPL").

The Scheme has been formulated and presented under section 230 to 232 and other applicable provisions of the Companies Act, 2013 and relevant applicable provisions of the Companies Act, 1956 and the rules made thereunder or any other section for the time being in force.

(A) Description of Companies

1. BKC Enterprises Private Limited (hereinafter referred to as "BKCEPL" or "Transferor Company"), was incorporated as a private limited company under the Companies Act 1956, on the 15th day of July 2009 (CIN - U45202MH2009PTC184091) PAN - AADC8317P. Its registered office is situated at 394-C, Lamington Chambers, Lamington Road, Mumbai 400 004, Maharashtra, India.
2. Allied Blenders and Distillers Private Limited (hereinafter referred to as "ABDPL" or "Transferee Company"), was incorporated as a private limited company under the Companies Act 1956, on the 08th day of October 2008 (CIN - U15511MH2008PTC187388) PAN - AAACY3846K. Its registered office is situated at 394-C, Lamington Chambers, Lamington Road, Mumbai 400 004, Maharashtra, India.

(B) Rationale and purpose of the Scheme

1. Both the Transferor Company and the Transferee Company are a part of same group. The Transferee Company is a subsidiary of the Transferor Company.
2. Amongst other benefits, the amalgamation would result in the following benefits:
 - a. Create transparency in the holding structure;
 - b. Reducing number of entities thereby reducing managerial overlaps, which are necessarily involved in running multiple entities;
 - c. Reduce regulatory and legal compliances / filings including accounting, reporting requirements, audit requirements, tax filings, etc. and consequential reduction in administrative costs;
 - d. The Transferee Company is a subsidiary of the Transferor Company and amalgamation shall be beneficial to the shareholders, employees and creditors as it will result in reduction of shareholding layers;
3. There is no likelihood that any creditor, either of the Transferor Company or of the Transferee Company, would be prejudiced in any manner as a result of the Scheme; and the amalgamation of the Transferor Company with the Transferee Company with effect from the Appointed Date (as hereinafter defined) is in the interest of the shareholders, creditors, employees and other stakeholders of the Transferor Company and the Transferee Company. It is hereby clarified that while the Scheme is between the shareholders of the Transferor Company and the Transferee Company, none of the creditors of the Transferor Company or the Transferee Company will be adversely affected by the Scheme.



- 4. The amalgamation of the Transferor Company with the Transferee Company pursuant to and in accordance with this Scheme shall take place with effect from the Appointed Date and shall be in accordance with Section 2(1B) of the Income Tax Act, 1961.

(C) Parts of the Scheme

The Scheme is divided into the following parts:

- 1. Part A deals with the definitions, and the share capital of the Transferor Company and Transferee Company;
- 2. Part B deals with amalgamation of Transferor Company with Transferee Company; and
- 3. Part C deals with other terms and conditions.

PART A – DEFINITIONS AND SHARE CAPITAL

1. DEFINITIONS

In this Scheme (as defined hereinafter), unless inconsistent with the subject or context, the following expressions shall have the meaning as mentioned herein below:

- 1.1. "Act" or "the Act" means the Companies Act, 2013, the rules and regulations made there under and shall include any statutory modification or re-enactment or amendment thereof for the time being in force.
- 1.2. "Appointed Date" for the purpose of this Scheme (including for the purposes of Income Tax Act, 1961) means 1st April, 2017.
- 1.3. "Appropriate Authority" means any governmental, statutory, departmental or public body or authority, including Registrar of Companies, National Company Law Tribunal and National Company Law Appellate Tribunal.
- 1.4. "Board" or "Board of Directors" means the board of directors of the Transferor Company or the Transferee Company, as the case may be, and shall unless it be repugnant to the context or otherwise, includes a Committee of Directors or any person authorized by the Board of Directors or such Committee of Directors.
- 1.5. "Effective Date" means the last of the dates on which the certified or authenticated copy of the order of the NCLT sanctioning the Scheme are filed with the Registrar of Companies by the Transferor Company and the Transferee Company to give effect to the final order of NCLT sanctioning the Scheme.
- 1.6. "Indirect tax(es)" means all levies under central or state or municipal enactments by whatever name called and includes service tax under Chapter V of Finance Act, 1994 and applicable cesses, Special Economic Zone Act, 2005 ("SEZ Act") CENVAT credit, excise duty, customs duty, Central Goods and Services Tax Act, Maharashtra State Goods and Services Tax Act 2017, Integrated Goods and Services Tax Act 2017, Value Added Tax ("VAT"), entry tax, octroi, cesses, etc by whatever name called and schemes/ procedures laid down in the Foreign Trade Policy as issued and amended from time to time. Further, a reference to recovery of indirect taxes, in any manner, under this Scheme shall include recovery of consequential interest and penal impositions under the relevant law.
- 1.7. "IT Act" means the Income Tax Act, 1961, including any statutory modifications, re-enactments or amendments thereof for the time being in force read with the relevant rules, regulations and/or circulars issued thereunder;
- 1.8. "NCLT" means the National Company Law Tribunal, Bench of Mumbai, having jurisdiction over the Transferor Company and Transferee Company.
- 1.9. "Registrar of Companies" or the "ROC" means the Registrar of Companies, Mumbai, Maharashtra.
- 1.10. "Scheme of Amalgamation" or "Scheme" or "the Scheme" or "this Scheme" means this Scheme of Amalgamation in its present form or with such modifications and amendments as per Clause 20 of this Scheme or as may be made from time to time, and with requisite approvals and sanctions of the NCLT and other relevant regulatory authorities, as may be required under the Act and under all other applicable laws.



- 1.11. "Transferee Company" or "ABDPL" means Allied Blenders and Distillers Private Limited, a Company incorporated under the Act on the 08th day of October 2008 and having its registered office at 394-C, Lamington Chambers, Lamington Road, Mumbai 400 004, Maharashtra, India.
- 1.12. "Transferor Company" or "BKCEPL" means BKC Enterprises Private Limited, a Company incorporated under the Act on the 15th day of July 2009 and having its registered office at 394-C, Lamington Chambers, Lamington Road, Mumbai 400 004, Maharashtra, India.
- 1.13. "Undertaking" means and include the whole of the undertaking/ business of Transferor Company, on a going concern basis, and includes without limitation the following:
- a) all the assets and properties (whether movable or immovable, tangible or intangible, real or personal, in possession or reversion, corporeal or incorporeal, present, future or contingent of whatsoever nature and whether or not recorded in the books of accounts) including all investments of the Transferor Company as on the Appointed Date.
 - b) all the secured and unsecured debts, liabilities, duties and obligations of the Transferor Company as on the Appointed Date.
 - c) all employees engaged by the Transferor Company (if any).
 - d) Without prejudice to the generality of sub-clause (a) to (c) above, with effect from the Appointed Date, the undertaking of the Transferor Company including their assets, all receivables, book debts, notes receivable, deposits, cash balances with bank, contingent rights or benefits, earnest moneys, fixed assets, current assets, sundry debtors, fixed deposits, security deposits, accrued income, loans & advances, prepaid expenses, advance paid to customers, advance paid towards rents, and all other advances or deposits paid by the Transferor Company, benefit of any security arrangements or under any guarantees, reversions, powers, authorities, allotments, approvals, permits and consents, quotas, rights, entitlements, contracts, software and other licenses, municipal permissions, licenses permits, approvals, authorizations, rights to use and avail of telephones, telexes, facsimile, email, internet, leased line connections and installations, utilities, electricity and other services, provisions, funds, all records, files, papers, computer programmes, manuals, data, catalogues, sales and advertising materials, other Intellectual Property Rights, registrations, contracts including contracts with suppliers and client contracts, engagements, arrangements of all kind, privileges and all other rights including sales tax deferrals, title, interests, other benefits (including tax benefits), leasehold rights, tenancy rights, patents, domain names, trademarks, trade names, copyrights, rights of any nature whatsoever including know-how, investments of any kind, allotments, approvals, consents, licenses, registrations, contracts, engagements, arrangement of all kind, benefits under the agreements/contracts, rights, titles, interests, benefits and advantages of whatsoever nature and wheresoever situated, permits, authorizations, whether applied for or to be applied for after the Appointed Date or, authorities, privileges, electricity, water and other service connections, cash balances, immovable property, security deposits, refunds, outstanding balances, stocks, investments, rights and powers of every kind, nature and description whatsoever, privileges, liberties, all benefits (including the amount of loss brought forward and unabsorbed depreciation as per books of account, accumulated losses and allowance for unabsorbed depreciation, as per the provisions of Section 72A and other applicable provisions of the Income Tax Act, 1961), incentives, income tax, minimum alternate tax i.e. tax on book profits, tax credits (including but not limited to minimum alternate tax paid under Section 115JA/115JB of the Income Tax Act, 1961 and the right to claim credit therefore in accordance with the provisions of Section 115JAA of the Income Tax Act, 1961, right to claim credit in respect of all advance taxes, tax deducted at source, tax collected at source, all other rights including indirect taxes, credits in respect of value added tax, sales tax, CENVAT credits, goods and services tax, etc) and other claims and powers, all books of accounts, documents and records of whatsoever nature and wheresoever situated belonging to or in the possession of or granted in favour of or enjoyed by the Transferor Company, as on the Appointed Date;
 - e) It is intended that the definition of Undertaking under this clause would enable the transfer of all property, assets, investments, rights, duties, employees and liabilities of the Transferor Company to the Transferee Company, pursuant to this Scheme, without any further act or deed.



- 1.14. All terms and words not defined in this Scheme shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning as ascribed to them under the Act, IT Act, and other applicable laws, rules, regulations and byelaws as the case may be, including any statutory modification or re-enactment thereof from time to time.
- 1.15. References to clauses and recitals, unless otherwise provided, are to clauses and recitals of and to this Scheme.
- 1.16. References to any of the terms taxes, duty, levy, cess in the Scheme shall be construed as reference to all of them whether jointly or severally.
- 1.17. In this Scheme, unless the context otherwise requires:
- (i) references to "persons" shall include individuals, bodies corporate (whether incorporated or not), unincorporated associations and partnerships;
 - (ii) the headings are inserted for ease of reference only and shall not affect the construction or interpretation of this Scheme;
 - (iii) references to one gender includes all genders; and
 - (iv) words in singular shall include the plural and vice-versa.

2. DATE OF TAKING EFFECT AND OPERATIVE DATE

The Scheme set out herein in its present form or with any modification(s) approved or imposed or directed by the NCLT, unless otherwise specified in the Scheme, shall be effective from the Appointed Date but shall be operative from the Effective Date.

3. SHARE CAPITAL

- 3.1. The Authorised, issued, subscribed and paid-up share capital of the Transferor Company as on March 31, 2017 is as under: -

Particulars	Rupees
Authorised Capital	
8,30,000 Equity Shares of Rs. 10 each	83,00,000
TOTAL	83,00,000
Issued, Subscribed and Paid-up Capital	
636,333 Equity Shares of Rs. 10 each fully paid-up	63,63,330
TOTAL	63,63,330

Subsequent to 31st March, 2017 and as on date of approval of the Scheme by the Board of Directors of the Transferor Company, there is no change in the Authorised, issued, subscribed and paid-up share capital of the Transferor Company.

- 3.2. The Authorised, issued, subscribed and paid-up share capital of the Transferee Company as on March 31, 2017 is as under:

Particulars	Rupees
Authorised Capital	
2,06,00,000 Equity Shares of Rs. 10 each	20,60,00,000
3,50,00,000 Preference Shares of Rs. 10 each	35,00,00,000
TOTAL	55,60,00,000
Issued, Subscribed and Paid-up Capital	
1,17,80,000 Equity Shares of Rs. 10 each fully paid-up	11,78,00,000
3,50,00,000 Preference Shares of Rs. 10 each fully paid up	35,00,00,000
TOTAL	46,78,00,000

Of the above, 1,13,18,200 Equity Shares of Rs 10 each fully paid-up (96.08%) and 3,49,72,031 Preference Shares of Rs 10 each fully paid-up (99.92%) are held by the Transferor Company.

Subsequent to 31st March, 2017 and as on date of approval of the Scheme by the Board of Directors of the Transferee Company there has been a change in the Authorised, issued, subscribed and paid-up share capital of the Transferee Company. The revised authorised issued, subscribed and paid-up share capital of the Transferee Company as on date of approval of the Scheme by the Board of Directors of the Transferee Company is as under:

Particulars	Rupees
Authorised Capital	



5,56,00,000 Equity Shares of Rs. 10 each	55,60,00,000
TOTAL	55,60,00,000
Issued, Subscribed and Paid-up Capital	
4,71,13,333 Equity Shares of Rs. 10 each fully paid-up	47,11,33,330
TOTAL	47,11,33,330

Of the above, 4,65,10,231 Equity Shares of Rs 10 each fully paid-up (98.72%) are held by the Transferor Company.

PART B – AMALGAMATION OF TRANSFEROR COMPANY WITH TRANSFEREE COMPANY

4. TRANSFER AND VESTING OF UNDERTAKING OF TRANSFEROR COMPANY

Pursuant to the Effective Date and with effect from the Appointed Date:

- 4.1 Subject to the provisions of the Scheme, the entire Undertaking of Transferor Company, as defined in Clause 1.13, shall subject to the provisions of this Clause in relation to the mode of transfer and vesting and pursuant to the provisions of Sections 230 to 232 and other applicable provisions, if any, of the Act, and without any further act or deed, be transferred to and vested in and is deemed to be transferred to and vested in the Transferee Company, as a going concern.
- 4.2 The whole of the Undertaking of the Transferor Company comprising their entire business, all assets (including but not limited to intangible assets) and liabilities, whether or not recorded in the books of accounts of the Transferor Company, of whatsoever nature and wheresoever situated, including the immovable properties, if any, shall, under the provisions of Sections 230 to 232 and all other applicable provisions of the Act, without any further act or deed, be transferred to and vested in and be deemed to be transferred to and vested in the Transferee Company as a going concern so as to become, as from the Appointed Date, the Undertaking of the Transferee Company and to vest in the Transferee Company all the rights, title, interest or obligations of the Transferor Company therein.
- 4.3 All movable assets including cash in hand, if any, of the Transferor Company, capable of transfer by manual delivery or by endorsement and delivery, shall be so delivered or endorsed and delivered as the case may be, to the Transferee Company and shall be deemed to have been physically handed over by physical delivery or by endorsement and delivery, as the case may be, without the need to execute any separate deed or instrument of conveyance, to the Transferee Company to the end and intent that the property and benefit therein passes to the Transferee Company with effect from the Appointed Date. Such delivery shall be made on a date mutually agreed upon between the Board of Directors of the Transferor Company and the Transferee Company.
- 4.4 In respect of movable assets, other than those specified in sub-clause 4.3 above, including actionable claims, transfer of sundry debtors, related investments and outstanding loans and advances, if any, recoverable in cash or in kind or value to be received, bank balances, deposits, if any, with Government, Semi-Government, local and other authorities and bodies, customers and other persons, and Indemnity, Guarantee, undertaking furnished to any department or authority of the State and / or Central Government, the Transferor Company shall give notice in such form as it may deem fit and proper to each party, debtor, depositor or loanee of Transferor Company as the case may be, that pursuant to the Orders of the NCLT sanctioning the Scheme, the said debt, loan, advances, etc. to be paid or made good or held on account of the Transferee Company as the person entitled thereto, to the end and intent that the right of the Transferor Company to recover or realize the same stands extinguished, and that such rights to recover or realize the same shall vest in the Transferee Company. The Transferee Company may, if required, give notice in such form as it may deem fit and proper to each person, debtor or depositor or loanee that pursuant to the Orders of the NCLT sanctioning the Scheme, the said person, debtor or depositor should pay the debt, loan or advance or make good the same or hold the same to the account of the Transferee Company and that the right of the Transferee Company to recover or realise the same is in substitution of the right of the Transferor Company.
- 4.5 In relation to the assets, properties and rights including rights arising from contracts, deeds, instruments and agreements, if any, belonging to the Transferor Company, which require separate documents of transfer including documents for attornment or endorsement, as the case may be, the Transferee Company will execute the necessary



documents of transfer including documents for attornment or endorsement, as the case may be, as and when required.

- 4.6 All immovable properties of the Transferor Company, including land together with the buildings and structures standing thereon and rights and interests in immovable properties, whether freehold or leasehold or otherwise and all documents of title, rights and easements in relation thereto shall stand transferred to and be vested in and/or be deemed to have been 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 and/or the Transferee Company. The Transferor Company shall take all steps as may be necessary to ensure that vacant, lawful, peaceful and unencumbered possession, right, title, interest of its immovable property is given to the Transferee Company. 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 or substitution of the title to the immovable properties shall, on and from the Effective date, be made and duly recorded in the name of the Transferee Company by the appropriate authorities pursuant to the sanction of this Scheme by the NCLT in accordance with the terms hereof.
- 4.7 All debts, liabilities, contingent liabilities, duties and obligations of every kind, nature, description, whether or not provided for in the books of accounts and whether disclosed or undisclosed in the balance sheet of the Transferor Company shall also, under the provisions of Section 230 to 232 of the Act, without any further act or deed, be transferred to or be deemed to be transferred to the Transferee Company so as to become as from the Appointed Date the debts, liabilities, contingent liabilities, duties and obligations of the Transferee Company and the Transferee Company shall undertake to meet, discharge and satisfy the same in terms of their respective terms & conditions. It is hereby clarified that it shall not be necessary to obtain the prior consent of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, liabilities, contingent liabilities, duties and obligations have arisen in order to give effect to the provisions of this Clause 4.
- 4.8 However, the Transferee Company may, at any time, on and from the Effective date, in accordance hereof, if so required, under any law or otherwise, execute deeds of confirmation in favour of other party to the contract or arrangement to which the Transferor Company is a party or any writing, as may be necessary, in order to give formal effect to the above provisions. The Transferee Company shall under the provisions of the Scheme be deemed to be authorised to execute any such writings on behalf of the Transferor Company as well as to implement and carry out all such formalities and compliances referred to above.
- 4.9 Provided always that the Scheme shall not operate to enlarge the security for any loan, deposit or facility availed of by the Transferor Company or the Transferee Company, and the Transferee Company shall not be obliged to create any further or additional security therefore after the Effective Date or otherwise.
- 4.10 In so far as the various incentives, subsidies, special status and other benefits or privileges enjoyed, granted by any Government body, local authority or by any other person and availed of by the Transferor Company are concerned, the same shall vest with, and be available to, the Transferee Company on the same terms and conditions.
- 4.11 Loans or other obligations, if any, due between or amongst the Transferor Company and the Transferee Company shall stand cancelled and there shall be no liability in that behalf. In so far as any shares, or notes issued by the Transferor Company, and held by the Transferee Company and vice versa are concerned, the same shall, stand cancelled without any further act or deed as on the Effective Date, and shall have no effect and the Transferor Company or the Transferee Company, as the case may be, shall have no further obligation outstanding in that behalf.
- 4.12 Where any of the assets and liabilities/obligations attributed to the Transferor Company on the "Appointed Date" has been sold/discharged by the Transferor Company after the "Appointed Date" and prior to the "Effective Date", such sale/discharge shall be deemed to have been for and on behalf of the Transferee Company.
- 4.13 All permits, quotas, rights, entitlements, tenancies and licenses relating to brands, trademarks, patents, copy rights, privileges, powers, facilities of every kind and description of whatsoever nature in relation to the Undertaking of the Transferor Company and which



are subsisting or having effect immediately before the Appointed Date, shall be and remain in full force and effect in favour of the Transferee Company and may be enforced fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a beneficiary or oblige thereto.

- 4.14 Any statutory licenses, permissions, approvals and/or consents held by the Transferor Company required to carry on operations shall stand vested in or transferred to the Transferee Company without any further act or deed and shall be appropriately mutated by the statutory authorities or any other person concerned therewith in favour of the Transferee Company. The benefit of all statutory and regulatory permissions, licenses, environmental approvals and consents including the statutory licenses, permissions or approvals or consents required to carry on the operations of the Transferor Company shall vest in, and become available to, the Transferee Company.
- 4.15 The entitlement to various benefits under incentive schemes and policies in relation to the Undertaking of the Transferor Company shall stand transferred to, and be vested in, and/or be deemed to have been transferred to, and vested in, the Transferee Company together with all benefits, entitlements and incentives of any nature whatsoever. Such entitlements shall include but shall not be limited to income-tax (including the amount of loss brought forward and unabsorbed depreciation as per books of account, accumulated losses and allowance for unabsorbed depreciation, as per the provisions of Section 72A and other applicable provisions of the Income Tax Act, 1961, unexpired credit for minimum alternate tax), goods and services tax, sales tax, value added tax, turnover tax, service tax, CENVAT credit and other incentives in relation to the Undertaking of the Transferor Company to be claimed by the Transferee Company with effect from the Appointed Date as if the Transferee Company was originally entitled to all such benefits under such incentive scheme and/or policies, subject to continued compliance by the Transferee Company of all the terms and conditions subject to which the benefits under such incentive schemes were made available to the Transferor Company.
- 4.16 Since each of the permissions, approvals, consents, sanctions, remissions, holidays, incentives, concessions and other authorizations relating to the Undertaking of the Transferor Company, shall stand transferred under this Scheme to the Transferee Company, the Transferee Company shall file the relevant intimations, if any, for the record of the statutory authorities who shall take them on file, on and from the Effective date.
- 4.17 From the "Effective Date" and till such time that the names of the bank accounts of the Transferor Company including but not limited to balances with scheduled banks in current accounts and in deposit accounts are replaced with that of the Transferee Company, the Transferee Company shall be entitled to operate the bank accounts of the Transferor Company, in its name, in so far as may be necessary.
- 4.18 All cheques and other negotiable instruments, payment orders received or presented for encashment which are in the name of the Transferor Company after the Effective Date shall be accepted by the bankers of the Transferee Company and credited to the account of the Transferee Company, if presented by the Transferee Company. Similarly, the bankers of the Transferee Company shall honour all cheques issued in the name of the Transferor Company for payment after the Effective Date. If required, the Transferor Company shall allow maintaining of banks accounts in the name of Transferor Company by the Transferee Company for such time as may be determined to be necessary by the Transferor Company for presentation and deposit of cheques and pay orders that have been issued in the name of the Transferor Company. It is hereby expressly clarified that any legal proceedings by or against the Transferor Company in relation to cheques and other negotiable instruments, payment orders received or presented for encashment which are in the name of the Transferor Company shall be instituted, or as the case may be, continued, by or against, the Transferee Company after the coming into effect of the Scheme.
- 4.19 On and from the Effective date, the intangible assets including various business or commercial rights, etc. belonging to but not recorded in books of the Transferor Company shall be transferred to and vested with the Transferee Company. Such intangible assets shall, for all purposes, be regarded as intangible assets in terms of Explanation 3 (b) to Section 32(1) of IT Act and shall be eligible for depreciation there under at the prescribed rates.
5. **LEGAL PROCEEDINGS AND OTHER PROCEEDINGS**
- 5.1 Pursuant to the Effective Date, all legal, or other proceedings, (including before any



statutory or quasi-judicial authority or tribunal) by or against the Transferor Company under any statute, pending and/or arising at the Appointed Date shall be continued and/or enforced until the Effective Date by the Transferor Company. In the event of the Transferor Company failing to continue or enforce any legal proceeding, the same may be continued or enforced by the Transferee Company, at the cost of the Transferee Company. As and from the Effective Date, the legal proceedings shall be continued and enforced by or against the Transferee Company in the same manner and to the same extent as would or might have been continued and enforced by or against the Transferor Company.

Further, the aforementioned proceedings shall not abate or be discontinued nor be in any way prejudicially affected by reason of the amalgamation of the Transferor Company with the Transferee Company or anything contained in the Scheme.

5.2 Pursuant to the Effective Date, the Transferee Company shall and may, if required, initiate any legal proceedings in relation to the Transferor Company in the same manner and to the same extent as would or might have been initiated by the Transferor Company.

5.3 After the Appointed Date, if any proceedings are taken against the Transferor Company above, the same shall be defended by and at the cost of the Transferee Company.

6. **CONTRACTS, DEEDS, BONDS AND OTHER INSTRUMENTS**

6.1 On and from the Effective Date and subject to the other provisions of this Scheme, all contracts, deeds, bonds, agreements, lease agreements, leave and license agreements, licenses, engagements, certificates, permissions, consents, approvals, concessions, and incentives (including but not limited to benefits under the IT Act, service tax laws, excise duty laws, central sales tax, applicable state value added tax laws and other incentives), remissions, remedies, subsidies, guarantees and other instruments, if any, of whatsoever nature to which the Transferor Company is a party and which have not lapsed and are subsisting or having effect on the Effective Date shall be in full force and effect against or in favour of the Transferee Company, (as the case may be) and may pursuant to the Effective Date of this Scheme, be enforced 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. The Transferee Company may thereupon enter into and/or issue and/or execute deeds, writings or confirmations or enter into any tripartite arrangements, confirmations or novations, to which the Transferor Company will, if necessary, also be party in order to give formal effect to the provisions of this Scheme, if so required or if so considered necessary. The Transferee Company shall be deemed to be authorised to execute any such deeds, writings or confirmations on behalf of the Transferor Company and to implement or carry out all formalities required on the part of the Transferor Company to give effect to the provisions of this Scheme.

7. **EMPLOYEES**

7.1 All staff, workmen and employees of the Transferor Company, in service on the Effective Date shall be deemed to have become the staff, workmen and employees of the Transferee Company, without any interruption of or 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 with reference to the Transferor Company, on the Effective Date.

7.2 It is expressly provided that, the provident fund, gratuity fund, superannuation fund or any other special fund or trusts including any employment benefits, terminal benefits etc (hereinafter referred as "Fund or Funds") created or existing for the benefit of the staff, workmen and employees of the Transferor Company, pursuant to the Effective Date, the Transferee Company shall stand substituted for the Transferor Company for all purposes whatsoever in relation to the administration or operation of such fund or funds or in relation to the obligation to make contributions to the said fund or funds in accordance with the provisions thereof as per the terms provided in the respective trust deeds, if any, to the end and intent that all rights, duties, powers and obligations of the Transferor Company relating to such fund or funds shall become those of the Transferee Company and all the rights, duties and benefits of the staff and employees of the Transferor Company under such Fund or Funds shall be protected, subject to the provisions of law for the time being in force. It is clarified that the services of the staff, workmen and employees of the Transferor Company, will be treated as having been continuous for the purpose of the said fund or funds.

7.3 In so far as the fund or funds created or existing for the benefit of the employees of the



Transferor Company, pursuant to the Effective Date of this Scheme, balances lying in the accounts of the employees of the Transferor Company in the said fund or funds as on the Effective Date shall stand transferred from the respective fund or funds of the Transferor Company to the corresponding fund or funds set up by the Transferee Company.

8. INTER-SE TRANSACTIONS

Pursuant to the Effective Date, any loans, advances, obligations and any other transactions (including any billings, interest, guarantees, letters of credit, letters of comfort or any other instruments or arrangements) between the Transferor Company and the Transferee Company shall, ipso facto, stand cancelled and discharged and there shall be no rights, liabilities or obligations outstanding as between the relevant parties and appropriate effect shall be given to such cancellation and discharge in the books of accounts and records of the Transferee Company. For the avoidance of doubt, it is hereby clarified that pursuant to the Effective Date, there will be no accrual of interest or other charges in respect of any loans, advances and other obligations as between any of the Transferor Company and the Transferee Company.

9. SAVINGS OF CONCLUDED TRANSACTIONS

Subject to the terms of this Scheme, the transfer and vesting of the Undertaking of the Transferor Company under Clause 4 above and the continuance of proceedings by or against the Transferee Company under Clause 5 above and the effectiveness of contracts and deeds under Clause 6 above shall not affect any transactions or proceedings or contracts or deeds already concluded by Transferor Company on or before the Appointed Date, to the end and intent that Transferee Company accepts and adopts all acts, deeds and things made, done and executed by Transferor Company as acts, deeds and things made, done and executed by or on behalf of Transferee Company.

10. BUSINESS AND PROPERTY IN TRUST FOR TRANSFEE COMPANY:

10.1 With effect from the Appointed Date upto and including the Effective Date:

(a) The Transferor Company shall carry on and be deemed to have carried on its business and activities and shall stand possessed of whole of its undertaking, in trust for the Transferee Company and shall account for the same to the Transferee Company.

(b) Any income or profit accruing or arising to the Transferor Company and all costs, charges, expenses and losses or taxes (including but not limited to advance tax, tax deducted at source, tax on book profits credit, taxes withheld/paid in a foreign country, etc), incurred by the Transferor Company shall for all purposes be treated as the income, profits, costs, charges, expenses and losses or taxes, as the case may be, of the Transferee Company and shall be available to the Transferee Company for being disposed of in any manner as it thinks fit.

10.2 With effect from the Appointed Date, all debts, liabilities, duties and obligations of the Transferor Company as on the close of business on the date preceding the Appointed Date; whether or not provided in the books of the Transferor Company, and all liabilities, debts, duties, obligations of the Transferor Company which arise or accrue on or after the Appointed Date shall be deemed to be the debts, liabilities, duties and obligations of the Transferee Company.

11. CONDUCT OF BUSINESS TILL EFFECTIVE DATE

11.1 With effect from the Appointed Date and upto the Effective Date:

(a) The Transferor Company shall carry on its business with reasonable diligence and in the same manner as it has been doing hitherto, and the Transferor Company shall not alter or substantially expand its business except with the written concurrence of the Transferee Company.

(b) The Transferor Company shall not, without the written concurrence of the Transferee Company, alienate, charge or encumber its undertaking(s)/business or part of its undertaking(s)/business, except in the ordinary course of business or pursuant to any pre-existing obligation undertaken prior to the date of acceptance of the Scheme by the Board of Directors of the Transferee Company.

11.2 On and after the Appointed Date and until the Effective Date, the Transferor Company shall not without the prior written approval of the Board of Directors of the Transferee Company



except as contemplated under the Scheme, issue or allot any further securities, either by way of rights or bonus or otherwise.

- 11.3 With effect from the Effective Date, the Transferee Company shall commence and carry on and shall be authorised to carry on the businesses carried on by the Transferor Company.
- 11.4 The Transferee Company shall be entitled, pending the sanction of the Scheme, to apply to the Central Government and all other agencies, departments and authorities concerned as are necessary under any law for such consents, approvals and sanctions which the Transferee Company may require to own and carry on the business of the Transferor Company.

12. COMPLIANCE WITH TAX LAWS

- 12.1 This Scheme has been drawn up to comply with the conditions relating to "Amalgamation" as specified under Section 2(1B) of the IT Act and other relevant provisions of the IT Act. If any terms or provisions of the Scheme are found or interpreted to be inconsistent with the provisions of the said section at a later date including resulting from a retrospective amendment of law or for any other reason whatsoever, till the time the Scheme becomes effective, the provisions of the said section of the IT Act shall prevail and the Scheme shall stand modified to the extent determined necessary to comply with Section 2(1B) of the IT Act and other relevant provisions of the IT Act.
- 12.2 Pursuant to the Effective Date, the Transferor Company and the Transferee Company are expressly permitted to revise, its financial statements and returns along with prescribed forms, filings and annexures under the IT Act, Wealth-tax Act, 1957 (including for the purpose of re-computing tax on book profits, fringe benefit tax, wealth tax purposes and claiming other tax benefits), indirect tax, service tax law and other tax laws, and to claim refunds and/or credits for taxes paid, and to claim tax benefits etc. and for matters incidental thereto, if required to give effect to the provisions of the Scheme from the Appointed Date.
- 12.3 All tax assessment proceedings/ appeals of whatsoever nature by or against the Transferor Company pending and/or arising at the Appointed Date and relating to the Transferor Company shall be continued and/or enforced until the Effective Date as desired by the Transferee Company. As and from the Effective Date, the tax proceedings shall be continued and enforced by or against the Transferee Company in the same manner and to the same extent as would or might have been continued and enforced by or against the Transferor Company.
- Further, the aforementioned proceedings shall not abate or be discontinued nor be in any way prejudicially affected by reason of the amalgamation of the Transferor Company with the Transferee Company or anything contained in the Scheme.
- 12.4 Any tax liabilities under the I.T. Act, Wealth-tax Act, 1957, Customs Act 1962, Service Tax laws, applicable State Value Added Tax laws or other applicable laws/ regulations dealing with taxes/ duties/ levies allocable or related to the Transferor Company to the extent not provided for or covered by tax provision in the accounts made as on the date immediately preceding the Appointed Date shall be transferred to Transferee Company. Any surplus in the provision for taxation / duties/ levies account including advance tax and tax deducted at source as on the date immediately preceding the Appointed Date will also be transferred to the account of the Transferee Company.
- 12.5 Any refund under the IT Act, Wealth Tax Act, Customs Act 1962, Service Tax laws, applicable State Value Added Tax laws or other applicable laws/ regulations dealing with taxes/ duties/ levies allocable or related to the Transferor Company and due to Transferor Company consequent to the assessment made on Transferor Company for which no credit is taken in the accounts as on the date immediately preceding the Appointed Date shall also belong to and be received by the Transferee Company. Further, any tax deducted at source by Transferor Company / Transferee Company on payables, loans, advances, obligations and any other transactions (including any billings, guarantees, letters of credit, letters of comfort or any other instruments or arrangements) to Transferee Company / Transferor Company on account of Inter Corporate loans or balances, advances, obligations or any other transactions between Transferor Company and Transferee Company which has been deemed not to be accrued, shall be deemed to be



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advance taxes paid by the Transferee Company and shall, in all proceedings, be dealt with accordingly.

- 12.6 All taxes including income-tax, tax on book profits, fringe benefit tax, sales tax, excise duty, custom duty, service tax, value added tax, goods and services tax, etc. paid or payable by the Transferor Company in respect of the operations and/ or the profits of the Undertaking before the Appointed Date, shall be on account of the Transferor Company and, in so far as it relates to the tax payment (including, without limitation, income-tax, tax on book profits, sales tax, excise duty, custom duty, service tax, value added tax, goods and services tax, etc.) whether by way of deduction at source, advance tax or otherwise howsoever, by the Transferor Company in respect of the profits or activities or operation of the business after the Appointed Date, the same shall be deemed to be the corresponding item paid by the Transferee Company and shall, in all proceedings, be dealt with accordingly. Further, any tax deducted at source by Transferor Company/ Transferee Company on payables to Transferee Company/ Transferor Company respectively which has been deemed not to be accrued, shall be deemed to be advance taxes paid by the Transferee Company and shall, in all proceedings, be dealt with accordingly.
- 12.7 Obligation for deduction of tax at source on any payment made by or to be made by the Transferor Company under the IT Act, Wealth-tax Act, 1957, service tax laws, customs law, state value added tax or other applicable laws / regulations dealing with taxes/ duties / levies shall be made or deemed to have been made and duly complied with by the Transferee Company.
- 12.8 Without prejudice to the generality of the above, all benefits, incentives, losses (including but not limited to book losses, tax losses), book unabsorbed depreciation, tax unabsorbed depreciation, accumulated losses, credits (including, without limitation income tax, MAT paid under section 115JA/115JB of the Income Tax Act 1961 and the right to claim credit therefor in accordance with the provisions of section 115JAA of the Income Tax Act 1961, tax deducted at source, wealth tax, service tax, Goods and Services Tax Act, excise duty, central sales tax, applicable state value added tax, customs duty drawback, etc.) to which the Transferor Company is entitled in terms of applicable laws, shall be available to and vest in the Transferee Company, upon this Scheme coming into effect.
- 13. DISCHARGE OF CONSIDERATION
- 13.1 On and from the Effective Date, and in consideration for the transfer of and vesting of the properties, assets, liabilities and undertaking of the Transferor Company in the Transferee Company in terms of this Scheme, the Transferee Company, shall without any further application or deed, issue and allot fully paid-up equity shares to the extent indicated below ("New Equity Shares") of the Transferee Company to the shareholders of the Transferor Company holding fully paid-up equity shares and whose names appear in the Register of Members of the Transferor Company on the Effective Date or to such of their respective heirs, executors, administrators, assignees, or other legal representatives or other successors in title as may be recognized by the Board of Directors of the Transferee Company in the proportion of their existing shareholding:
"4,65,10,231 equity shares of ABDPL (face value of INR 10 each) to be issued and allotted to shareholders of BKCEPL in the proportion of the number of equity shares held by the shareholders in BKCEPL"
- 13.2 In case any shareholder's holding in the Transferor Company is such that the shareholder becomes entitled to a fraction of New Equity Shares on Amalgamation, the number of Equity shares to be issued to such shareholder shall be rounded up to next immediate whole number.
- 13.3 Subject to the provisions of this Scheme, the New Equity Shares to be issued and allotted to the shareholders of the Transferor Company pursuant to Clause 13.1 above, shall in all respects, rank pari passu with the existing equity shares of the Transferee Company in respect of dividend, bonus, right shares, voting rights and other corporate benefits.
- 13.4 The New Equity Shares to be issued and allotted by Transferee Company in terms hereof will be subject to the Memorandum and Articles of Association of Transferee Company.



- 13.5 The Transferee Company shall, if and to the extent required, apply for and obtain any approvals from concerned regulatory authorities for the issue and allotment of New Equity Shares to the members of the Transferor Company under the Scheme.
- 13.6 The New Equity Shares of Transferee Company will be issued in physical or demat form to all the equity shareholders who hold shares of the Transferor Company.
- 13.7 The Transferee Company shall, if and to the extent required, increase and / or reclassify its Authorized share capital to facilitate issue of New Equity Shares under this Scheme.
- 13.8 The approval of this Scheme by the shareholders of Transferee Company shall be deemed to be due compliance of the provisions of Section 62 of Companies Act, 2013 and other relevant and applicable provisions of the Act for the issue and allotment of New Equity Shares by the Transferee Company to the shareholders of the Transferor Company as provided in this Scheme.
- 13.9 The issue and allotment of New Equity Shares in Transferee Company to the shareholders of the Transferor Company as provided in the Scheme as an integral part thereof, shall be deemed to have been carried out as if the procedure laid down under Section 62 of Companies Act, 2013 and any other applicable provisions of the Act were duly complied with.

14. CANCELLATION OF SHARES

- 14.1 Upon the Scheme becoming effective, the Equity Shares held by the Transferor Company in the Transferee Company shall stand cancelled and accordingly, the Paid-up Equity Share Capital of the Transferee Company shall stand reduced to that extent.
- 14.2 The cancellation and the consequent reduction of the share capital of the Transferee Company as provided in Clause 14.1 shall be done as an integral part of the Scheme and not in accordance with Section 68 of the Act and the order of the NCLT sanctioning the Scheme shall be deemed to be an order under Section 68 of the Act confirming the reduction.

15. ACCOUNTING TREATMENT IN BOOKS IN THE BOOKS OF THE TRANSFEEE COMPANY

- 15.1 The Transferee Company shall account for amalgamation in its books of accounts in accordance with accounting prescribed under 'pooling of interest' method in Indian Accounting Standard (Ind AS) 103 - Business Combinations as notified under Section 133 of the Act read together with paragraph 3 of The Companies (Indian Accounting Standard) Rules, 2015.

16. DISSOLUTION OF THE TRANSFEROR COMPANY

Pursuant to the Effective Date, the Transferor Company shall be dissolved without winding up pursuant to the provisions of Section 232 of the Act and the Board of Directors and any committees thereof of the Transferor Company shall without any further act, instrument or deed be and stand dissolved.

17. COMBINATION OF AUTHORISED SHARE CAPITAL

On and from the Effective Date, the authorized share capital of the Transferee Company shall automatically stand enhanced by the authorized share capital of the Transferor Company (as on the Effective Date) without any further act, instrument or deed on part of the Transferee Company, including without payment of stamp duty and fees payable to the ROC. The provisions in the memorandum and articles of association of the Transferee Company (relating to the authorized share capital) shall, without any further act, instrument or deed, be and hereby stand altered, modified and amended, and the consent of the shareholders to this Scheme shall be deemed to be sufficient for the purposes of effecting this amendment, and no further resolution(s) under the applicable provisions of the Act would be required to be separately passed, as the case may be and for this purpose the stamp duties and fees paid on the authorized capital of the Transferor Company shall be utilized and applied to be the increased authorized share capital of the Transferee Company and there would be no requirement for any further payment of the stamp duty and/ or fee by the Transferee Company for increase in the authorized share capital to that extent.



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PART C - OTHER TERMS AND CONDITIONS

18. APPLICATION TO THE NCLT

- 18.1 The Transferor Company and the Transferee Company shall, if required, with all reasonable dispatch, make applications / petitions to the NCLT or such other appropriate authority under Sections 230 to 232 and other applicable provisions of the Act, seeking orders for dispensing with or convening, holding and conducting of the meetings of the respective classes of the members and/or creditors of the Transferor Company and the Transferee Company as may be directed by the respective NCLT or such other appropriate authority.
- 18.2 On the Scheme being agreed to by the requisite majorities of the classes of the members of the Transferor Company and the Transferee Company, whether at a meeting or otherwise, as directed by the NCLT or such other appropriate authority, the Transferor Company and the Transferee Company shall, with all reasonable dispatch, apply to the NCLT or such other appropriate authority for sanctioning the Scheme under Sections 230 to 232 of the Act, and for such other order or orders, as the said NCLT or such other appropriate authority may deem fit for carrying this Scheme into effect.

19. RATIFICATION

The Transferee Company shall accept all acts, deeds and things relating to the Undertaking and executed by and/or on behalf of Transferor Company on and after the Appointed Date as acts, deeds and things done and executed by and/or on behalf of the Transferee Company.

20. MODIFICATION/AMENDMENT TO THE SCHEME

- 20.1 The Transferor Company and the Transferee Company, through their Directors or Committee of Directors or through any Director(s) or Company Secretary authorized in that regard, may consent on behalf of all persons concerned, to any modifications or amendments of this Scheme or to any conditions which the NCLT and/or any other Authorities under law may deem fit to approve of or impose or which may otherwise be considered necessary or desirable for settling any question or doubt or difficulty that may arise in carrying out this Scheme and do all acts, deeds and things as may be necessary, desirable or expedient for putting this Scheme into effect.
- 20.2 For the purpose of giving effect to this Scheme or to any modification, amendment or condition thereof, the Directors of the Transferee Company are authorized to give such directions and/or to take such step as may be necessary or desirable including any directions for settling any question or doubt or difficulty whatsoever that may arise. Such power is always subject to the approval of the NCLT.

20.3 All amendments/ modifications to the Scheme shall be subject to the approval of NCLT.

21. CONDITIONALITY AND EFFECTIVENESS OF THE SCHEME

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

- 21.1 The Scheme being agreed to by the respective requisite majorities of the members of the Transferor Company as may be required by the NCLT either at the meeting or through consent/ no objection letters on the application made for directions under Section 230 of the Act for calling/ dispensing of the meeting and necessary resolution if any, passed under the Act for the purpose.
- 21.2 The Scheme being sanctioned by the NCLT under Sections 230 to 232 of the Act and other applicable provisions of the Act being obtained by Transferor Company and the Transferee Company.
- 21.3 The certified copies of the Order of the NCLT under Section 230 to 232 of the Act sanctioning the Scheme are filed with the Registrar of Companies at Mumbai.

22. EFFECT OF NON-RECEIPT OF APPROVALS / SANCTIONS



- 22.1 In the event of any of the approvals or conditions required to be obtained or fulfilled are not obtained or complied with within such period or periods as may be agreed upon by and between the Transferor Company and the Transferee Company (through their respective Board of Directors) the Scheme shall become null and void and in that event no rights or liabilities whatsoever shall accrue to or be incurred inter se between the Transferor Company and the Transferee Company.
- 22.2 If any part of this Scheme hereof is invalid, ruled illegal by any court of competent jurisdiction, or unenforceable under present or future laws, then it is the intention of the parties that such part shall be severable from the remainder of the Scheme, and the Scheme shall not be affected thereby, unless the deletion of such part shall cause this Scheme to become materially adverse to any party, in which case the parties shall attempt to bring about a modification in the Scheme, as will best preserve for the parties the benefits and obligations of the Scheme, including but not limited to such part.
- 22.3 The Board of Directors of the Transferor Company and the Transferee Company shall be entitled to withdraw this Scheme prior to the Effective Date.
- 22.4 Further, the Board of Directors of the Transferor Company and the Transferee Company shall be entitled to revoke, cancel and declare the Scheme of no effect if such boards are of view that the coming into effect of the Scheme in terms of the provisions of this Scheme or filing of the drawn up orders with any authority could have adverse implication on either or both of the companies.
- 22.5 The Transferor Company and the Transferee Company shall be at liberty to withdraw from this Scheme, in case any condition or alteration imposed by the NCLT or any other authority is not on terms acceptable to them.

23. RESOLUTIONS

Pursuant to the Effective Date, the resolutions, if any, of Transferor Company, which are valid and subsisting on the Effective Date, shall continue to be valid and subsisting and be considered as resolutions of the Transferee Company and if any such resolutions have any monetary limits approved under applicable law, then the said limits shall be added to the limits, if any, under like resolutions passed by the Transferee Company and shall constitute the aggregate of the said limits in the Transferee Company. In case no resolutions have been passed by the Transferee Company approving any monetary limits prescribed under applicable law, the resolutions passed by the Transferor Company shall be deemed to be the resolutions passed by the Transferee Company, until the same are modified by the Transferee Company.

24. SEVERABILITY

If any provision(s) of this Scheme, in the opinion of the NCLT or Boards of the Transferor Company and the Transferee Company, is found to be unviable for any reason whatsoever, the same shall not affect the validity or implementation of the other parts and/or provisions of this Scheme.

25. COSTS, CHARGES & EXPENSES

All costs, charges, taxes including duties (including the stamp duty, if any, applicable in relation to this Scheme), levies and all other expenses, if any (save as expressly otherwise agreed) of the Transferor Company and the Transferee Company arising out of or incurred in carrying out and implementing this Scheme and matters incidental thereto shall be borne and paid by the Transferee Company.



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Certified True Copy
Date of Application 29/5/2018
Number of Pages 14
Fee Paid Rs. 70
Applicant called for collection copy on 19/7/2018
Copy prepared on 19/7/2018
Copy issued on 19/7/2018



Assistant Registrar

National Company Law Tribunal, Mumbai Bench

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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH, at MUMBAI

COMPANY SCHEME PETITION NO 71 OF 2018

In the matter of the Companies Act, 2013

And

In the matter of Sections 230 to Section 232 of the
Companies Act, 2013 and other applicable
provisions of the Companies Act, 2013

And

In the matter of Scheme of Amalgamation of
BKC Enterprises Private Limited, the Transferor
Company with Allied Blenders and Distillers Private
Limited, the Transferee Company and their
respective Shareholders

**ALLIED BLENDERS AND DISTILLERS PRIVATE
LIMITED**

.....Petitioner

CERTIFIED COPY OF ORDER DATED 16th
DAY OF MAY 2018 AND THE SCHEME
ANNEXED TO THE PETITION



HEMANT SETHI & CO

ADVOCATES FOR PETITIONER

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