

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

CA (CAA) No.39/Chd/Hry/2023

(1st Motion)

**Under Sections 230 to 232 read with
Section 66 and other applicable
provisions of the Companies Act, 2013
read with Companies (Compromises,
Arrangements and Amalgamation)
Rules, 2016**

IN THE MATTER OF SCHEME OF ARRANGEMENT OF:

Napino Auto and Electronics Ltd.

with its registered office at

Plot No. 7, Sector 3

IMT Manesar

Gurugram, Haryana, India- 122050

PAN: AAACN4973G

CIN: U34300HR1991PLC031470

..... First Applicant Company/Napino Auto/Demerged Company

And

Napino Tech Ventures Private Ltd.

with its registered office at

Plot No. 7, Sector 3

IMT Manesar

Gurgaon, Haryana, India-122051

PAN: AAICN7183N

CIN: U34300HR2023PTC109353

..... Second Applicant Company/Napino Tech/Resulting Company

Order delivered on: 21.12.2023

**Coram: HON'BLE DR. P.S.N. PRASAD, MEMBER (JUDICIAL)
HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

Present: -

For the Applicant Companies: Mr. Saurabh Khanna and Raghav Garg Advocates

**Per: Dr. P.S.N. Prasad , Member (Judicial)
Mr. Umesh Kumar Shukla, Member (Technical)**

ORDER

This is a joint First Motion Application filed by Applicant Companies namely; **Napino Auto and Electronics Ltd.** (for short hereinafter referred to as First Applicant Company) and **Napino Tech Ventures Private Ltd.** (for short hereinafter referred to as Second Applicant Company) under Section 230-232 read with Section 66 and other applicable provisions of the of the Companies Act, 2013 (the Act) read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for short hereinafter referred to as the Rules) in relation to the Scheme of Arrangement between the Applicant Companies and their shareholders and creditors (hereinafter referred to as Scheme) The said Scheme of Arrangement is attached as Annexure C of the Application.

2. The registered office of the First Applicant Company is at Plot No. 7, Sector 3, IMT Manesar, Gurugram-122050, Haryana, India, which is situated in the State of Haryana and therefore, it is under the territorial jurisdiction of this Bench. The registered office of the Second Applicant Company is Plot No. 7, Sector 3, IMT Manesar, Gurgaon-122051, Haryana, India, which is situated in the State of Haryana and therefore, it is under the territorial jurisdiction of this Bench.

3. The First Applicant Company has prayed for dispensing with requirement for convening the meeting of the equity shareholders in view of the consent affidavits given by 10 out of 11 equity shareholders holding 99.99% of the shareholding as on 30.06.2023 to the Scheme and the same are annexed as Annexure G1 with the application. Similarly, the Second Applicant Company has prayed for dispensing with requirement for convening the meeting of the equity shareholders in view of the consent affidavits given by 2 shareholders holding 100% of the shareholding as on 15.06.2023 to the scheme and the same are annexed as Annexure H1 with the application.

4. It is further prayed to issue directions for convening the meetings of the secured and unsecured creditors of First Applicant Company including the directions regarding issuance of notices, appointment of Chairperson, Alternate Chairperson and Scrutinizer and fixing of their fees, fixing of quorum for the meetings, and publication of advertisement in newspapers.

5. It is further prayed that there is no requirement for convening meetings of the secured and unsecured creditors of the Second Applicant Company in view of the fact that there are no secured and unsecured creditors of the same.

6. The First Applicant Company is engaged in the business of manufacturing and supplying of automotive electronic products and has set out its main objects as:

"1. To carry on the business of manufacturers, traders, dealers, importers, exporters, consultants, job workers, distributors, repairers, hirers and commission agent of all type of auto electric parts, auto & parts, tractor parts, cycle parts etc. used in automobiles such as motor cars, motor cycles, scooters, mopeds, cycles and things used in manufacturing, maintenance and working thereof.

2. To carry on business of manufacturers, traders, dealers, importers, exporters, consultants distributors, job workers, repairers, hirers and commission agent of all kind of electricals,

electromechanical and electronic goods, systems, equipments, appliances, devices, apparatus, instruments, part and components thereof, electronic games and toys, electronic gadgets, electronic circuits, controls, computers, business machines, lighting equipments, and all other electronic and electrical goods, components, parts and accessories thereof for industrial agriculture, defence, railway, communication, aviation, transport, medical, research, recreational educational or for domestic purpose.

3. To carry on the business of electricians and electrical engineers and to provide technical know-how for items mentioned in para (1) and (2) above.

.....

11. To acquire or amalgamate, absorb or merge with any other company or companies or to form, promote subsidiaries having objects altogether or in part similar to those of this company."

7. The Second Applicant Company is engaged in the business of developing and selling software relating to Internet of Things (IOT) products has set out its main objects as:

"1. To carry on the business of manufacturing, buying, selling, reselling, importing, exporting, transporting, storing, developing, promoting, marketing or supplying, trading, assembling, repairing, dealing in any manner whatsoever in of products and parts for two wheelers/ three wheelers/ four wheelers/ commercial vehicles, other electrical and electronic goods, products related to internet of things/ digital solutions, industrial and consumer durable products.

2. To carry on the business of research, design and development of products and parts for two wheelers/ three wheelers/ four wheelers/ commercial vehicles, other electrical and electronic goods, products related to internet of things/ digital solutions on retail as well as on wholesale basis in India or elsewhere and to acquire and offer expertise, know how, license and/or services of any kind and advise new avenues in business activity relating and to acquire all kinds of industrial and commercial enterprises engaged in similar kind of trade, business and commercial activities for exponential growth and also entered into Joint ventures with other companies engaged in similar business activity.

.....

4. To form incorporate, promote, purchase, acquire, undertake or takeover, the whole or any part of the business, profession, goodwill, assets, properties (movable or immovable) contracts, agreements, rights, privileges, effects, obligations and liabilities of any persons, firm or company or companies carrying on all or any of proposing to carry on or ceasing to carry on any business, profession or activities which the company is authorized to carry on or the acquisition of all or any of the properties, rights and assets of any company or subject to the provisions of the Companies Act, 2013, the control and management of the company or the undertaking of the

acquisitions of any other object or objects which in the opinion of the Company could or might directly or indirectly be beneficial or advantageous to the Company and to pay all or any of the costs and expenses incurred in connection with any such promotion or incorporation or takeover or acquisition and to remunerate any person, firm or company in any manner, it shall think fit for services rendered or to be rendered for and in respect of such promotion or incorporation or takeover or acquisition or in obtaining subscription of or the placing of any shares, stocks, bonds, debentures, obligations or securities of any such company or companies, subject to the provisions of the Companies Act, 2013.

.....

7. To acquire or amalgamate, absorb or merge with any other company or companies or to form, promote subsidiaries having objects altogether or in part similar to those of this company."

8. The purpose and rationale of the Scheme as pleaded by the applicant companies is reproduced below:

"16. Rationale for the Proposed Scheme:

"Pursuant to the proposed demerger, the management of the respective companies foresee the following benefits:

a) The segregation will enable greater/enhanced focus of the management and thereby facilitate the management to efficiently exploit opportunities for each businesses;

b) Proposed restructuring will create enhanced value for shareholders and allow a focused strategy and specialization for sustained growth, which would be in the best interest of all the stakeholders;

c) It will allow management to pursue independent growth strategies for each businesses; and

d) It will allow in creating the ability to achieve valuation based on respective risk-return profile and cash flows, attracting the right investors and thus enhancing flexibility in accessing capital."

9. The Applicant Companies have submitted that, the Board of Directors of the Applicant Companies vide their respective Board resolutions dated 06.07.2023 approved and adopted the Scheme of Arrangement between the Applicant companies and their respective shareholders and creditors. The Certified True copies of the Board Resolutions of the applicant companies approving the scheme is attached as Annexure D1 and Annexure D2 of the application.

10. The appointed date of the Scheme as mentioned in the Clause 1.2 of Scheme of Arrangement is defined as, "Appointed Date means 1st April, 2023 or such other date as may be fixed or approved by NCLT". The Scheme of Arrangement is attached as Annexure-C of the application.

11. The First Applicant Company has annexed the audited financial statements as on 31.03.2022 and the Unaudited Provisional Statement of Accounts as on 31.03.2023 with the Application as Annexure A2 and Annexure A3 respectively. The management certified carved-out financials of the Demerged Undertaking of First Applicant Company as 31.03.2023 is annexed and marked as Annexure A-4.

12. The Second Applicant Company has filed the unaudited provisional financial statements as on 31.03.2023, which is attached as Annexure-B2 of the application.

13. The copy of the certificate dated 06.07.2023 issued by the statutory auditors of the First Applicant Company and the Second Applicant Company confirming the compliance of the accounting treatment specified in the scheme to be in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 is annexed as Annexure E and Annexure E1 respectively.

14. It is further submitted that as per the Share Exchange Ratio Report dated 06.07.2023 issued by Mr. Aashay Hasmukh Dedhia, Registered Valuer bearing registration No. IBBI/RV/07/2021/13796 is attached as Annexure-F. The opinion shared in the Share Exchange Ratio is given below: -

"11 Opinion on Share Entitlement Ratio

As mentioned above in consideration of the demerger, Napino Tech will issue equity shares to the equity shareholders of Napino Auto on a proportionate basis. The Share Entitlement Ratio for the Proposed Transaction is determined

based on the desired capital structure of Napino Tech post demerger, as decided by the management.

Accordingly, the management has recommended the following equity share entitlement ratio in consideration for the demerger of the Demerged Undertaking based on the desired capital structure of Napino Tech post demerger.

"1 (One) fully paid up equity share of INR 10/-each of Napino Tech Ventures Private Limited shall be issued and allotted for every 100 (One Hundred) equity shares of INR 10/- each held in Napino Auto and Electronics Limited".

Based on our review, information made available to us and discussions with the management, in our opinion, the aforementioned Share Entitlement Ratio in consideration for the proposed demerger of Demerged Undertaking of Napino Auto into Napino Tech is reasonable.

We believe that the aforesaid Share Entitlement Ratio is fair considering that all the shareholders of Napino Auto are and will, upon proposed demerger, be ultimate beneficial owners of Napino Tech in substantially the same ratio (inter-se) as they hold shares in Napino Auto"

15. The Applicant companies have submitted in their application that none of the applicant companies are listed on any recognized stock exchange in India nor governed by any specific sectoral regulator and that none of the applicant companies are registered Non-Banking Financial Companies. The Scheme (Annexure C) refers to the services and benefits of employees of the Applicant Companies, by virtue of Clause 9 of the Scheme.

16. The Applicant companies have stated in Para 34 of the application that no winding up petition and/or insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 is pending against any of the Applicant Companies to the best of our knowledge and belief and there are no proceedings pending investigation under the Companies Act, 1956/ Companies Act, 2013 against the Applicant companies. The procedure of continuity and institution of Legal Proceedings as

proposed under Clause 10 and Clause 13 of the Scheme of Arrangement is briefly summarised below:

- a. All legal proceedings, arbitration proceedings, proceedings in relation to cheques and other negotiable instruments, payment orders received or presented for encashment, etc. by or against Napino Auto in relation to the Demerged Undertaking pending and/or arising at the Appointed Date shall be continued and enforced by or against Napino Tech.
- b. All tax assessment proceedings/appeals of whatsoever nature by or against Napino Auto in relation to the Demerged Undertaking pending and/or arising at the Appointed Date shall be continued and/or enforced until the Effective Date by Napino Auto. As and from the Effective Date, the tax proceedings shall be continued and enforced by or against Napino Tech.
- c. On and from the Effective Date, Napino Tech shall initiate any legal proceedings in relation to the business of Demerged Undertaking of Napino Auto.
- d. All legal, taxation and other proceedings by or against Napino Auto whether pending on the Appointed Date or which may be instituted in future, and relating to the Remaining Business of Napino Auto shall be continued and enforced by or against Napino Auto.

17. The Applicant Companies has furnished the following documents: -

- Copy of Company Master Data of First Applicant Company (Annexure-A)
- Copy of Certificate of Incorporation, Memorandum and Articles of Association of First Applicant Company (Annexure-A1)
- Copy of the audited Financial Statements as on 31.03.2022 of First Applicant Company (Annexure- A2)
- Copy of the unaudited Financial Statements as on 31.03.2023 of First Applicant Company (Annexure-A3)
- Management certified carved-out financials of the Demerged Undertaking of First Applicant Company as on 31.03.2023 (Annexure - A4)

- Certified true copy of the List of Directors of First Applicant Company as on 15.06.2023 (Annexure-A5)
- Copy of Company Master Data of Second Applicant Company (Annexure-B)
- Copy of Certificate of Incorporation, Memorandum and Articles of Association of Second Applicant Company. (Annexure-B1)
- Copy of the unaudited Financial Statements as on 31.03.2023 of the Second Applicant Company. (Annexure - B2)
- Certified true copy of the List of Directors of Second Applicant Company as on 15.06.2023 (Annexure - B3)
- Scheme of Arrangement (Annexure-C)
- Certified true copy of Board Resolution dated 06.07.2023 of First Applicant Company (Annexures - D1)
- Certified true copy of Board Resolution dated 06.07.2023 of Second Applicant Company (Annexures – D2)
- Copy of certificate issued by the statutory auditor of the First Applicant Company in relation to accounting treatment proposed in the Scheme (Annexure-E).
- Copy of certificate issued by the statutory auditor of the Second Applicant Company in relation to accounting treatment proposed in the Scheme (Annexure E-1)

- Copy of Share Entitlement Ratio Report issued by Mr. Aashay Hasmukh Dedhia dated 06.07.2023, Registered Valuer Securities or Financial Assets (IBBI Regn. No- IBBI/RV/07/2021/13796) (Annexure-F).
- Certificate from Chartered Accountant dated 06.07.2023 certifying list of the equity shareholders of the First Applicant Company as on 30.06.2023 (Annexure-G).
- Consent affidavits of equity shareholders of the First Applicant Company (Annexure-G1).
- Certificate from Chartered Accountant dated 07.07.2023 certifying list of the equity shareholders of the Second Applicant Company as on 15.06.2023(Annexure-H).
- Consent affidavits of equity shareholders of Second Applicant Company (Annexure-H1)
- Certificate from Chartered Accountant dated 07.07.2023 certifying the list of Secured Creditors of the First Applicant Company as on 15.06.2023. (Annexure-I).
- Certificate from Chartered Accountant dated 07.07.2023 certifying the list of Unsecured Creditors of First Applicant Company as on 15.06.2023. (Annexure-I1).
- Certificate from Chartered Accountant dated 07.07.2023 certifying that there are no Secured Creditors of Second Applicant Company as on 15.06.2023 (Annexure-J).

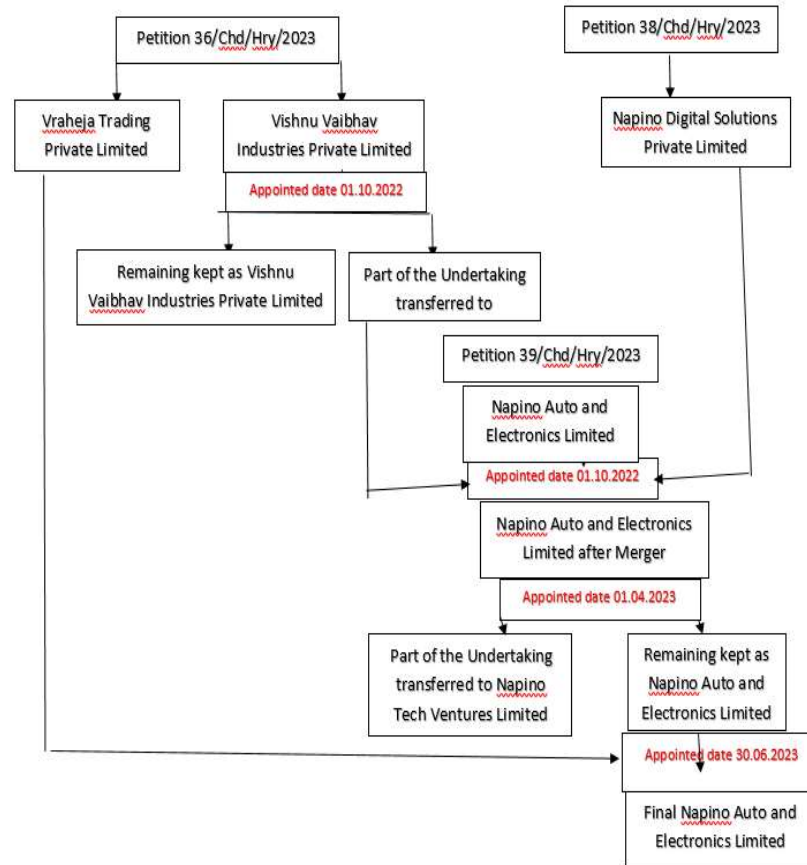
- Certificate from Chartered Accountant dated 07.07.2023 certifying that there are no Unsecured Creditors of Second Applicant Company as on 15.06.2023 (Annexure-J1).

18. The Applicant Companies have furnished the details of the Shareholders, Secured Creditors and Unsecured Creditors as follows:

Name of the Applicant Companies	Shareholders along with their consent on affidavit		Creditors along with their consents on affidavit			
	Equity Shareholders	Consents submitted on affidavit	Secured Creditors	Consents submitted on affidavit	Unsecured Creditors	Consents submitted on affidavit
First Applicant Company/Napino Auto	11	10 in number/ 99.9% in value	4	N/A meeting to be convened	524	N/A meeting to be convened
Second Applicant Company/Napino Tech	2	2 in number/100% in value	0	N/A	0	N/A

19. Accordingly, the directions of this Bench in the present case are as under: -

- I. It is noted that there are two other connected petitions CA(CAA)36/Chd/Hry/2023) and (CA(CAA) 38/Chd/Hry/2023 pending for approval of this Tribunal involving Napino Auto and Electronics Limited. On examination of these petitions, it is noted that different appointed dates have been mentioned for different proposals as shown in the flow-chart given below:



On perusal of the above flow-chart, it is noted that the Vishnu Vaibhav Industries Private Ltd (hereinafter referred to as VVIPL) is proposed to be demerged on 01.10.2022 and the demerged undertaking of VVIPL (Petition No. 36) and Napino Digital Solutions Private Ltd (hereinafter referred to as NDSPL) (Petition No. 38) are proposed to be merged in Napino Auto and Electronics Ltd. (hereinafter referred to as NAEL) on 01.10.2022. After the merger of above undertaking/company, NAEL is proposed to be demerged on 01.04.2023 (Petition No. 39). Thereafter, on 30.06.2023, Vraheja Trading Pvt. Ltd. (hereinafter referred to as VTPL) (Petition No. 36) is proposed to be merged with the demerged undertaking of NAEL. In view of the above interplay of the companies involved in the said three petitions,

this tribunal hereby prescribes the appointed date of scheme as 01.04.2023.

- II. The meeting of the Equity Shareholders of both Applicant companies is dispensed with and the requirement of issue and publication of notices is also being dispensed with in view of the fact that 10 out of 11 equity shareholders holding 99.99% of the shareholding of First Applicant Company as on June 30, 2023 and 2 out of 2 equity shareholders of Second Applicant Company holding 100% of the equity shareholding as on June 15, 2023 have consented by way of affidavit to the scheme and towards disposing with their meetings.
- III. The meeting of secured and unsecured creditors of Second Applicant Company is being hereby dispensed with keeping in view the fact that there are no secured and unsecured creditors for the same.
- IV. The meetings of the secured creditors of First Applicant Company be convened as prayed for, on such date, time and venue either personally/ physically or through video conferencing with facility of remote e-voting, as may be decided by the Chairperson with the consent of Alternate Chairperson and Scrutiniser subject to individual notices being issued to the secured creditors of the First Applicant Company. The quorum of the meeting of the secured Creditors shall be 2 in number or 40% in value of the secured Creditors.
- V. The meetings of the unsecured creditors of First Applicant Company be convened as prayed for, on such date, time and venue either personally/ physically or through video conferencing with facility of remote e-voting, as

may be decided by the Chairperson with the consent of Alternate Chairperson and Scrutiniser subject to individual notices being issued to the secured creditors of the First Applicant Company. The quorum of the meeting of the unsecured Creditors shall be 210 in number or 40% in value of the unsecured Creditors.

- VI. In case the required quorum as noted above for the meetings is not present at the commencement of the meeting, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to constitute the quorum.
- VII. Mr. Viren Sharma, Advocate, Address: House No. 1600, Sector 18D, Chandigarh 160018 , Mobile No. 9501019920, email adv.virensharma@gmail.com , is appointed as the Chairperson for the meeting to be called under this order. An amount of Rs.1,00,000/- (Rupees One Lakh Only) be paid for his services as the Chairperson.
- VIII. Mr. Ajaypal Singh Madaan, Advocate, Office Kothi No. 41, Block F-2, Sector 85, Mohali, Mobile No. 8146609197, e-mail id: asmlawoffices@gmail.com , is appointed as the Alternate Chairperson for the meeting to be called under this order. An amount of Rs75,000/- (Rupees Seventy-Five Thousand only) be paid for his services as the Alternate Chairperson.
- IX. Mr. Rajnish Kumar, CS, Address: Cabin 216, 2nd floor, SCO 58-59 Northern Stock Exchange, Sector 17-D, Chandigarh, Mobile No. 9988501478, email id: cs.rajnishthakur@gmail.com, is appointed as the Scrutinizer for the

meeting to be called under this order. An amount of Rs.50,000/- (Rupees Fifty-Thousand Only) be paid for his services as the Scrutinizer.

- X. The fee of the Chairperson, Alternate Chairperson and Scrutinizer and other out of pocket expenses for them shall be borne by the Applicant Companies jointly.
- XI. The First Applicant Company is required to serve the notices to the secured and unsecured creditors of the First Applicant Company as discussed in Para IV and V above, through courier or speed post or registered post, or e-mail, 30 days in advance before the schedule date of meeting, indicating the day, date, the place and time as aforesaid, together with a copy of the Scheme, copy of explanatory statement with valuation report, copy of this order and any other documents as may be prescribed under the Act as per the list of creditors as on the date of passing of this Order in the same manner as the notices are to be served to various authorities as per Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- XII. It is directed that the audited accounting statement of Applicant Companies as on 31.03.2023 and the provisional accounting statement on a subsequent date in terms of Section 232 (2) (e) of the Act be also circulated for the aforesaid meeting.
- XIII. It is also directed that along with the notices, Applicant Companies shall also send, statements explaining the effect of the scheme on the creditors, key managerial personnel, promoters and non-promoter members etc. along with effect of the scheme of arrangement on any material interests of

the Directors of the Company or the debenture trustees, if any, as provided under sub-section (3) of Section 230 of the Act.

- XIV. That the Applicant Companies shall publish advertisement with a gap of at least 30 days before the aforesaid meeting, indicating the day, date and place and the time of meeting as aforesaid, in newspapers having wide circulation in Haryana, where the registered Office of the applicant companies are situated namely "Financial Express" (English) and "Dainik Bhaskar (Hindi). It be stated in the advertisement that the copies of "Scheme", the Explanatory Statement required to be published are pursuant to Section 230 to 232 of the Act. The Applicant Companies shall also publish the notice on their websites, if any.
- XV. It shall be the responsibility of the Applicant Companies to ensure that the notices are sent under the signature and supervision of the authorized representative of the company on the basis of Board resolutions and that they shall file their affidavits in the Tribunal at least ten days before the date fixed for the meeting.
- XVI. Voting shall be allowed on the "Scheme" through electronic means which will remain open for a period as mandated under Clause 8.3 of Secretarial Standards on General Meetings to the Applicant Companies under the Act and the Rules framed thereunder.
- XVII. The Scrutinizer's report will contain his/her findings on the compliance to the directions given in Para XI to XVI above.

XVIII. The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA-4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 7 (seven) days of the conclusion of the meeting. The Chairperson would be fully assisted by the authorized representative/Company Secretary of the Applicant Companies and the Scrutinizer, who will assist the Hon'ble Chairperson and Alternate Chairperson in preparing and finalizing the report.

XIX. The Applicant Companies shall individually and in compliance of sub-section (5) of Section 230 of the Act and Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA-3 along with copy of the Scheme, Explanatory Statement, Copy of this order and the disclosures mentioned in Rule 6 of the "Rules" to (i) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi (ii) Registrar of Companies, Delhi & Haryana (iii) the Official Liquidator (attached to Punjab and Haryana High Court); and (iv) Income Tax Department through the Nodal Officer – Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh by mentioning the PAN number of the Applicant Companies; and to such other Sectoral Regulator(s) governing the business of the Applicant Companies, if any, stating that report on the same, if any, shall be sent to this Tribunal within a period of 30 days from the date of receipt of such notice and copy of such report shall be simultaneously sent to the applicant companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

- XX. The Applicant Companies shall furnish a copy of the Scheme, Explanatory Statement, Accounting Statements (referred to para XII) and the disclosures mentioned in Rule 6 of “the Rules” free of charge within one day of any requisition for the Scheme made by any creditor or member/shareholder.
- XXI. The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meeting.
- XXII. All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the Rules as well as the provisions of the Companies Act, 2013 by the Applicant Companies.
20. With the aforesaid directions, this First Motion Application stands disposed of. A copy of this order be supplied to the learned counsel for the Applicant Companies who in turn shall supply a copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer immediately.

-Sd-
(Umesh Kumar Shukla)
Member (Technical)

-Sd-
(Dr. P.S.N. Prasad)
Member (Judicial)

December 21, 2023

VVC