

**NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

CA (CAA) No.32/Chd/Hry/2019

**Under Section 230-232 of the
Companies Act, 2013**

In the matter of Scheme of Amalgamation between:

- 1. Mahadev Super Coat Private Limited**
(CIN: U74899HR2006PTC075384)
having its registered office at
4th Floor, M2K Corporate Park,
Block N, Mayfield Garden, Sector 51,
Gurugram, Haryana
.....Applicant Company No. 1/Transferor Company No.1

And

- 2. Soft Vision Investment Consultant Private Limited**
(CIN: U74999HR2007PTC075573)
having its registered office at
86, Block-B, Mayfield Garden, Sector 50,
Gurugram, Haryana
.....Applicant Company No. 2/Transferor Company No.2

And

- 3. Sonoli Properties Private Limited**
(CIN: U45201HR1998PTC075382)
having its registered office at
86, Block-B, Mayfield Garden, Sector 50,
Gurugram, Haryana
.....Applicant Company No. 3/Transferor Company No.3

And

- 4. Sach Developers Private Limited**
(CIN: U70100HR2006PTC075380)
having its registered office at
86, Block-B, Mayfield Garden, Sector 50,
Gurugram, Haryana
.....Applicant Company No. 4/Transferor Company No.4

And

- 5. Superior Softech Private Limited**
(CIN: U72400HR2008PTC075385)
having its registered office at
86, Block-B, Mayfield Garden, Sector 50,
Gurugram, Haryana
.....Applicant Company No. 5/Transferor Company No.5

And

- 6. Avancer Properties Private Limited**
(CIN: U45201HR2003PTC080550)
having its registered office at
86, Block-B, Mayfield Garden, Sector 50,
Gurugram, Haryana
....Applicant Company No. 6/Transferor Company No.6

And

- 7. Vidhan Propbuild Private Limited**
(CIN: U70100HR2010PTC075383)
having its registered office at
86, Block-B, Mayfield Garden, Sector 50,
Gurugram, Haryana
....Applicant Company No. 7/Transferor Company No.7

And

- 8. Aaloukik Constructions Private Limited**
(CIN: U45201HR2005PTC075378)
having its registered office at
86, Block-B, Mayfield Garden, Sector 50,
Gurugram, Haryana
....Applicant Company No. 8/Transferor Company No.8

And

- 9. Paarth Infratech Private Limited**
(CIN: U72200HR2008PTC075379)
having its registered office at
4th Floor, M2K Corporate Park, Block N,
Mayfield Garden, Sector 51,
Gurugram, Haryana
....Applicant Company No. 9/Transferor Company No.9

With

- 10. Aakarshan Estates Private Limited**
(CIN: U45201HR1997PTC076107)
having its registered office at
86, Block-B, Mayfield Garden, Sector 50,
Gurugram, Haryana
....Applicant Company No. 10/Transferee Company

Order delivered on: 11.12.2019

**Coram: HON'BLE AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Applicants : 1. Mr. Anand Chhibbar, Senior Advocate
2. Mr. Vaibhav Sahni, Advocate

Per: Pradeep R. Sethi, Member (Technical)

ORDER

This is the joint First Motion Application filed by Applicant Companies herein, namely; Mahadev Super Coat Private Limited (Transferor Company No.1), Soft Vision Investment Consultant Private Limited (Transferor Company No.2), Sonoli Properties Private Limited (Transferor Company No.3), Sach Developers Private Limited (Transferor Company No.4), Superior Softech Private Limited (Transferor Company No.5), Avancer Properties Private Limited (Transferor Company No.6), Vidhan Propbuild Private Limited (Transferor Company No.7), Aaloukik Constructions Private Limited (Transferor Company No.8) and Paarth Infratech Private Limited (Transferor Company No.9) into Aakarshan Estates Private Limited (Transferee Company) seeking sanction of the scheme of Amalgamation (hereinafter referred to as the "Scheme") in connection with the proposed Scheme of Amalgamation (for short the "Scheme") Annexure A-1 of Applicant Companies with Applicant Transferee Company under Sections 230 to 232 of the Companies Act, 2013 (for brevity, the 'Act') and other applicable provisions read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, the 'Rules') and consequent dissolution of Transferor Companies without winding up and issuance of new Equity shares by Aakarshan as consideration for the amalgamation. The joint Application is maintainable in terms of Rule 3(2) of the Rules.

2. It is stated that the Board of Directors of the Applicant Companies in their respective meetings held on 12.06.2019, considered and unanimously approved 'Scheme' subject to sanctioning of the same by this Tribunal. Copies of these Board Resolutions are at Annexure A-4, A-9, A-14, A-19, A-24, A-29, A-34, A-39, A-44, & A-49 respectively. The Transferor Companies No.1 and 9 have authorized Mr. Amit Goyal; Transferor Company No.2 has authorized Mr. Aashish Sharma; Transferor Company No.3 & 7 have authorized Mr. Gopalkrishanan Tholur Veetil; Transferor Company No.4 has authorized Mr. Santosh Kumar Tiwari; Transferor Company No.5 has authorized Mr. Vivekananda Mall; Transferor Company No.6 has authorized Mr. Gautam Kumar Bhartia; Transferor Company No.8 has authorized Mr. Dinesh Kumar Sharma and Transferee Company has authorized Mr. Sanjay Koul, Directors severally to do all the necessary acts, matters, deeds and things as may be necessary, desirable or expedient to give effect to the resolutions and to the Scheme.

3. As per the Memorandum and Articles of Association the main objects of Transferor Company No.1 are as follows: -

“To carry on in India or elsewhere the business to manufacture produce, process/ pack, repack, supply, Import, export, buy, sell, wholesale, retail, trade and to act as agent, broker, concessional, stockiest, distributor or otherwise deal in all types of coating materials including colours, oils, paints, putties, plastic paints, emulsion paints, epoxy paints, malamine paints, metallic paints, distempers, primers, oxides, resins, varnishes, thinners, splritys, pigments, dyes, enamels, polishes, water proofing paints.”

4. The Transferor Company No.1 was incorporated as a private limited company under the provisions of the Companies Act, 1956 on 13.01.2006. The registered office of the company was shifted from Delhi to the state of Haryana vide the order of the Regional Director, Northern Region dated 14.06.2018 and fresh certificate of incorporation dated 25.08.2018 was

issued by the Registrar of Companies, NCT of Delhi and Haryana. The CIN of Transferor Company No.1 is U74899HR2006PTC075384. The Certificate of Incorporation and Memorandum & Article of Association have been annexed as Annexure A-2 respectively.

5. The authorized, issued, subscribed and paid up share capital of Transferor Company No.1 as on 31.03.2019 is as follows:

PARTICULARS	AMOUNT in (₹)
AUTHORIZED CAPITAL	
100,000 Equity Shares of ₹10/- each	1,000,000
ISSUED, SUBSCRIBED AND PAID-UP CAPITAL	
10,000 Equity Shares of ₹10/- each	100,000

6. As per the Memorandum and Articles of Association the main objects of Transferor Company No.2 are as follows: -

“1. To act as consultant, advisor and representative to all kinds of entities including individuals, HUF, AOP, private and public limited companies, governmental and regulatory organisations, funds, trusts, foundations or any other legal or natural entity whether in India or abroad for investment in mutual funds, government bonds, FCCBS, insurance, capital market and related other financial instruments.” etc

7. The Transferor Company No.2 was incorporated as a private limited company on 04.04.2007 under the provisions of the Companies Act, 1956. The registered office of the company was shifted from Delhi to the state of Haryana and fresh certificate of incorporation dated 06.09.2018 was issued by the Registrar of Companies, NCT of Delhi and Haryana. The CIN of the Transferor Company No.2 is U74999HR2007PTC075573. The Certificate of Incorporation and Memorandum of Article of Association are annexed as Annexure A-7.

8. The authorized, issued, subscribed and paid up share capital of Transferor Company No.2 as on 31.03.2019 as follows:

PARTICULARS	AMOUNT in (₹)
AUTHORIZED CAPITAL	
10,000 Equity Shares of ₹10/- each	100,000
ISSUED, SUBSCRIBED AND PAID-UP CAPITAL	
10,000 Equity Shares of ₹10/- each	100,000

9. As per the Memorandum and Articles of Association the main objects of Transferor Company No.3 are as follows: -

“1. To carry on the business as owners, builders, colonisers, developers, promoters, proprietors, occupiers, lessors, lessees and contractors, maintainers and mortgagers of residential, commercial and industrial buildings, colonies, mills and factory's buildings, workshops building, cinema's houses and deal in all kinds of immovable properties whether belonging to the Company or not.” etc

10. The Transferor Company No.3 was incorporated as a private limited company on 21.07.1998 under the provisions of the Companies Act, 1956. The registered office of the company was shifted from Delhi to the state of Haryana vide the order of the Regional Director, Northern Region dated June 14, 2018 and fresh certificate of incorporation dated 25.08.2018 was issued by the Registrar of Companies, NCT of Delhi and Haryana. The CIN of Transferor Company No.3 is U45201HR1998PTC075382. The Certificate of Incorporation and Memorandum of Article of Association are annexed as Annexure A-12.

11. The authorized, issued, subscribed and paid up share capital of Transferor Company No.3 as on 31.03.2019 as follows:

PARTICULARS	AMOUNT in (₹)
AUTHORIZED CAPITAL	
10,000 Equity Shares of ₹10/- each	100,000
ISSUED, SUBSCRIBED AND PAID-UP CAPITAL	
10,000 Equity Shares of ₹10/- each	100,000

12. As per the Memorandum and Articles of Association the main objects of Transferor Company No.4 are as follows: -

“1. To carry on the business as builders, contractors, developers, colonizers, dealers, agent, lesser, mortgager and to otherwise deal in immovable properties, industrial buildings, workshops, factory sheds, residential or commercial buildings, multiplexes, bridges, dams, cinema halls, malls, farms, hotels.” etc.

13. The Transferor Company No.4 was incorporated as a private limited company on 13.02.2006 under the provisions of the Companies Act, 1956. The registered office of the company was shifted from Delhi to the state of Haryana and fresh certificate of incorporation dated 25.08.2018 was issued by the Registrar of Companies, NCT of Delhi and Haryana. The CIN of Transferor Company No.4 is U70100HR2006PTC075380. The Certificate of Incorporation and Memorandum of Article of Association are annexed as Annexure A-17.

14. The authorized, issued, subscribed and paid up share capital of Transferor Company No.4 as on 31.03.2019 as follows:

PARTICULARS	AMOUNT in (₹)
AUTHORIZED CAPITAL	
10,000 Equity Shares of ₹10/- each	100,000
ISSUED, SUBSCRIBED AND PAID-UP CAPITAL	
10,000 Equity Shares of ₹10/- each	100,000

15. As per the Memorandum and Articles of Association the main objects of Transferor Company No.5 are as follows: -

“1. To carry on in India or elsewhere the business of call centres, Web centres, internet services provider including registration of domain names, Designing and-hosting of the Websites and other related services, Web application, Internet and Internet/network related system/ solution including setting up portals and other commercial/customer information/transaction/direct response services via the Media of Internet/ Telecommunication, Electronics and audio/video technologies, Data processing, Data Warehousing, Data mining, setting up of all types of communication system solution, electronic commerce related applications, manpower training enterprises resource planning, IT resource Management, Establishing computer training institutes, recruiting and deploying trained software professionals in India/or abroad, E-commerce activities including of publicity, aggregating collecting/collating compiling, analyzing, disseminating, researching, publishing, vending, buying, selling, Importing/Exporting and otherwise dealing in all kinds of economic, commercial and technical information including buying, selling, making, trading, and otherwise dealing in all kinds of products on the Internet, business as consultants and advisors whether India or abroad on matters related to design/development of processes system and software improving, exporting, buying, selling, maintaining and licensing call centers, system and packages including all related software instrumentation and services and development ” etc.

16. The Transferor Company No.5 was incorporated as a private limited company on 01.02.2008 under the provisions of the Companies Act, 1956. The registered office of the company was shifted from Delhi to the state of Haryana and fresh certificate of incorporation dated 25.08.2018 was issued by the Registrar of Companies, NCT of Delhi and Haryana. The CIN of Transferor Company No.5 is U72400HR2008PTC075385. The Certificate of Incorporation and Memorandum of Article of Association are annexed as Annexure A-22.

17. The authorized, issued, subscribed and paid up share capital of Transferor Company No.5 as on 31.03.2019 as follows:

PARTICULARS	AMOUNT in (₹)
AUTHORIZED CAPITAL	
10,000 Equity Shares of ₹10/- each	100,000
ISSUED, SUBSCRIBED AND PAID-UP CAPITAL	
10,000 Equity Shares of ₹10/- each	100,000

18. As per the Memorandum and Articles of Association the main objects of Transferor Company No.6 are as follows: -

- “1. To carry on the business of General and Government contractors, builders, engineers (mechanical, electrical, civil, Irrigation, radio and in all its branches).
2. To lay out, develop, construct, build, erect, demolish, re-erect, alter, repair, re-model or do any other work in connection with any building or building, scheme, roads, highways, docks, ships, sewers, bridges, canals, wells, springs, sarais, dams, power plants, bours, wharves, ports, reservoirs, embankments, tramway, railways, irrigations, reclamations, improvements, sanitary, water, gas, electric light, telephonic, telegraphic and power supply works or any other structural or, architectural work of any kind whatsoever and for such purpose to prepare estimates, designs, plans, specification or models and do such other or any act that may be requisite therefor.” etc.

19. The Transferor Company No.6 was incorporated as a private limited company on 15.10.2003 under the provisions of the Companies Act, 1956. The registered office of the company was shifted from State of Delhi to the state of Haryana and a fresh certificate of incorporation dated 25.05.2019 was issued by the Registrar of Companies, NCT of Delhi and Haryana. The CIN of the Company is U45201HR2003PTC080550. The Certificate of

Incorporation and Memorandum and Article of Association are annexed as Annexure A-27.

20. The authorized, issued, subscribed and paid up share capital of Transferor Company No.6 as on 31.03.2019 as follows:

PARTICULARS	AMOUNT in (₹)
AUTHORIZED CAPITAL	
10,00,000 Equity Shares of ₹10/- each	10,00,000
ISSUED, SUBSCRIBED AND PAID-UP CAPITAL	
3,10,000 Equity Shares of ₹10/- each	31,00,000

21. As per the Memorandum and Articles of Association the main objects of Transferor Company No.7 are as follows: -

“1. To carry on the business of promoters, builders, developers, realtors, colonisers, architects, contractors, sub-contractors, dealers, planners, designers, construction engineers, decorators, interior decorators, fabricators, engineers, developers of infrastructure such as township, commercial complex road, and highways, bridge, canals, culverts, fountains, reservoirs, and dam, sanitary works, sewers, hydel projects, power supply works, and real estate agents and to engage in all types of construction activities.” etc.

22. The Transferor Company No.7 was incorporated as a private limited company on 12.10.2010 under the provisions of the Companies Act, 1956. The registered office of the company was shifted from the State of Delhi to the state of Haryana and fresh certificate of incorporation dated 25.08.2018 was issued by the Registrar of Companies, NCT of Delhi and Haryana. The CIN of Transferor Company No.7 is U70100HR2010PTC075383. The Certificate of Incorporation and Memorandum of Article of Association are annexed as Annexure A-32.

23. The authorized, issued, subscribed and paid up share capital of Transferor Company No.7 as on 31.03.2019 as follows:

PARTICULARS	AMOUNT in (₹)
AUTHORIZED CAPITAL	
2,50,000 Equity Shares of ₹10/- each	25,00,000
ISSUED, SUBSCRIBED AND PAID-UP CAPITAL	
10,000 Equity Shares of ₹10/- each	1,00,000

24. As per the Memorandum and Articles of Association the main objects of Transferor Company No.8 are as follows: -

- “1. To carry on the business as owners builders, colonizers, developers, promoters, proprietors, occupiers, lessors, civil contractors, maintainer and mortgages of residential, commercial and industrial buildings, colonies, hotels, cinema Halls, mills sheds and building, workshop's building, cinema's house building and to deal in all kinds of immovable properties whether belonging to the company or not.
2. To erect, re-erect, repair and construct houses building or civil, electrical, mechanical and constructional works of every Description on any land of the company or upon any other lands or immovable property and to purchase, take on lease, acquire in exchange or otherwise own, Hold occupy, construct, erect, alter, develop, colonise, decorate, furnish, pull Down, improve, repair, renovate, build, plan layout, set transfer, mortgage, charge, Assign let out, hire, sublet or sublease, all types of lands, plots, buildings, Hereditaments, bungalows quarters, offices, flats, chawls, warehouses, godowns, Picture halls, shops, stalls, markets, hotels, and restaurants, buildings, lands, estates and immovable properties, whether freehold or leasehold of any nature and description and wherever situated in any way and partly consideration for a gross sum or rent in one partly in other consideration.”etc.

25. The Transferor Company No.8 was incorporated as a private limited company on 31.05.2005 under the provisions of the Companies Act,

1956. The registered office of the company was shifted from Delhi to the state of Haryana and fresh certificate of incorporation dated 25.08.2018 was issued by the Registrar of Companies, NCT of Delhi and Haryana. The CIN of Transferor Company No.8 is U45201HR2005PTC075378. The Certificate of Incorporation and Memorandum of Article of Association are annexed as Annexure A-37.

26. The authorized, issued, subscribed and paid up share capital of Transferor Company No.8 as on 31.03.2019 as follows:

PARTICULARS	AMOUNT in (₹)
AUTHORIZED CAPITAL	
10,00,000 Equity Shares of ₹10/- each	1,00,00,000
ISSUED, SUBSCRIBED AND PAID-UP CAPITAL	
10,000 Equity Shares of ₹10/- each	1,00,000

27. As per the Memorandum and Articles of Association the main objects of Transferor Company No.9 are as follows: -

- “1. *To acquire by purchase, lease, exchange, hire or otherwise of lands and property of any tenure or any interest in the same.*
2. *To construct the buildings, dams, roads, commercial complexes and to develop real estate and to act as colonizer and developer.*
3. *To erect and construct houses, buildings or works of every description on any land of the Company or upon any other land and property, and to pull down, rebuild, enlarge, alter & improve existing houses buildings or works thereon, to convert and appropriate any such land into and for roads streets, square, gardens & other conveniences and generally to deal with and improve the property.*

4. *To sell, lease, let, mortgage or dispose of the lands, houses, buildings and other property.*
5. *To undertake or direct the construction and management of the property, buildings, lands and estates.*
6. *To act as a contractors for any person or government authorities for the construction of buildings of all descriptions, roads, bridges, earthwork, sewers, tanks, drains, culverts, channels, sewage or other works or things that may be necessary or convenient for any of the objects.”*

28. The Transferor Company No.9 was incorporated as a private limited company on 19.03.2008 under the provisions of the Companies Act, 1956. The registered office of the company was shifted from Delhi to the state of Haryana and fresh certificate of incorporation dated 25.08.2018 was issued by the Registrar of Companies, NCT of Delhi and Haryana. The CIN of Transferor Company No.9 is U72200HR2008PTC07537. The Certificate of Incorporation and Memorandum of Article of Association are annexed as Annexure A-42.

29. The authorized, issued, subscribed and paid up share capital of Transferor Company No.9 as on 31.03.2019 as follows:

PARTICULARS	AMOUNT in (₹)
AUTHORIZED CAPITAL	
1,500,000 Equity Shares of ₹10/- each	15,000,000
ISSUED, SUBSCRIBED AND PAID-UP CAPITAL	
1,340,000 Equity Shares of ₹10/- each	13,400,000

30. As per the Memorandum and Articles of Association the main objects of Transferee Company are as follows: -

- “1. *To carry on the business of General and Government contractors, builders.*

2. *To lay-out, develop, construct, build, erect, demolish, re-erect, alter, repair, re-model or do any other work in connection with any building or building scheme, roads, highways docks, ships, sewers, bridges, canals, wells, springs, serais, dams, power plants, bours, wharves, ports, reservoirs, embankments, tramways, railways, irrigations, reclamations, improvements, sanitary, water, gas, electric light, telephonic, and power supply works or any other structural or architectural work of any kind and for such purpose to prepare estimates, designs, plants, specification or models.” etc.*

31. The Transferee Company was incorporated as a private limited company on 18.06.1997 under the provisions of the Companies Act, 1956. The registered office of the company was shifted from the state of Delhi to the state of Haryana and fresh certificate of incorporation dated 28.09.2018 was issued by the Registrar of Companies, NCT of Delhi and Haryana. The CIN of Transferee Company is U45201HR1997PTC076107. The Certificate of Incorporation and Memorandum of Article of Association are annexed as Annexure A-47.

32. The authorized, issued, subscribed and paid up share capital of Transferee Company as on 31.03.2019 as follows:

PARTICULARS	AMOUNT in (₹)
AUTHORIZED CAPITAL	
10,00,000 Equity Shares of ₹10/- each	1,00,00,000
ISSUED, SUBSCRIBED AND PAID-UP CAPITAL	
5,10,000 Equity Shares of ₹10/- each	51,00,000

There has been no change in the capital structure of all the Applicant Companies post 31.03.2019 till the date of filing of this company application.

33. The Learned counsel for the Applicant Companies submitted that as on 12.06.2019, Transferor Company No.1 has 2 equity shareholders out of which one is Transferor Company No.9 holding 9900 equity shares and remaining 100 equity shares are held by Mr. Madhu Kumar Khandelia. Both the equity shareholders have given their consent/no objection to the Scheme and for the dispensation of the meeting of the shareholders. Transferor Company No.9 has authorized Mr. Amit Goyal vide Board Resolution dated 12.06.2019. The consent affidavit along with Board Resolution is attached as Annexure-5.

34. As per the certificate of ASHM & Associates, Chartered Accountants (Annexure A-6 Colly), there are nil secured creditors in Transferor Company No.1 as on 30.06.2019.

35. The Learned counsel for the Applicant Companies submitted that as on 30.06.2019, the Transferor Company No.1 has one unsecured creditor i.e. The Transferor Company No.9 holding ₹83,717/- amount of unsecured debt. Transferor Company No.9 has given its consent to the Scheme and for the dispensation of the meeting of unsecured creditors by way of affidavit of Mr. Madhu Kumar Khandelia, Director authorized vide Board Resolution dated 12.06.2019 attached at Annexure A-6 (Colly).

36. The Transferor Company No.2 has 2 equity shareholders namely Divya Buildmart Private Limited and Dilse Investment Pvt. Ltd. holding equity shares of ₹50,000/- each. Both the equity shareholders have given their consents/no objection to the Scheme and for the dispensation of the meeting of equity shareholders. M/s Divya Buildmart Private Limited has authorized Mr. Digant Goel, Director vide Board Resolution dated 18.06.2019 and M/s Dilse Investment Pvt. Ltd. has authorized Mr. Gautam Kumar Bhartia, Director vide

Board Resolution dated 17.06.2019. The consent affidavits and Board Resolution are attached as Annexure A-10 (Colly).

37. As per the certificate of AKLR & Co. LLP, Chartered Accountants (Annexure A-11 Colly), there are nil secured creditors in Transferor Company No.2 as on 06.07.2019.

38. As per the Certificate of AKLR & Co. LLP, Chartered Accountants, the Transferor Company No.2 has 5 unsecured creditors as on 06.07.2019. Out of 5 unsecured creditors 2 are companies namely; MKJ Enterprises Ltd. having ₹50,25,150/- amount of unsecured debt and Budhpur Buildcon Pvt. Ltd. having ₹3,00,60,843/- amount of unsecured debt. Remaining 3 unsecured creditors are individuals namely Amisha Sharma having ₹5,00,00,000/- amount of unsecured debt; Manoj Kumar holding ₹11,08,000/- amount of unsecured debt and Mr. Inderpal having 5,00,000/- amount of unsecured debt. All the unsecured creditors have given their consent/no objection to the Scheme for the dispensation of the meeting of unsecured creditors. MKJ Enterprises Ltd. has authorized Mr. Radhe Shyam Khetan, Director vide Board Resolution dated 14.06.2019 and Budhpur Buildcon Pvt. Ltd. has authorized Mr. Pritam Shah vide Board Resolution dated 25.06.2019. The consent affidavits and Board Resolutions are attached as Annexure A-11.

39. The learned counsel for the Applicant Companies submits that as on 12.06.2019, the Transferor Company No.3 has 2 equity shareholders namely Dilse Investment Pvt. Ltd. and Sach Realtors Pvt. Ltd. holding 5,000 equity shares each. Both the equity shareholders have given their consents/no objection to the Scheme and for the dispensation of the meeting of equity shareholders. M/s Dilse Investment Pvt. Ltd. has authorized Mr. Gautam

Kumar Bhartia, Director vide Board Resolution dated 17.06.2019 and Sach Realtors Pvt. Ltd. has authorized Mr. Utsav Agarwal, Director vide Board Resolution dated 17.06.2019. The consent affidavits and Board Resolution are attached as Annexure A-15 (Colly).

40. As per the certificate of AKLR & Co. LLP, Chartered Accountants (Annexure A-11 Colly), there are nil secured creditors in Transferor Company No.3 as on 30.06.2019.

41. As per the Certificate of AKLR & Co. LLP, Chartered Accountants, the Transferor Company No.3 has 3 unsecured creditors as on 30.06.2019 namely; Adani Estates Pvt. Ltd. having ₹11,00,00,000/- amount of unsecured debt; Dynamic Drilling & Service (P) Ltd. having ₹4,50,00,000/- amount of unsecured debt and MKJ Enterprises Ltd. having ₹1,51,00,320/- amount of unsecured debt. All the unsecured creditors have given their consent/no objection to the Scheme for the dispensation of the meeting of unsecured creditors. Adani Estates Pvt. Ltd. has authorized Mr. Pritam Shah, Authorized Representative vide Board Resolution dated 25.06.2019; Dynamic Drilling & Service (P) Ltd. has authorized Mr. Sushil Kumar Routray, Director vide Board Resolution dated 29.06.2019 and MKJ Enterprises Ltd. has authorized Mr. Radhe Shyam Khetan, Director vide Board Resolution dated 14.06.2019. The consent affidavits and Board Resolutions are attached as Annexure A-16 (Colly).

42. The learned counsel for the Applicant Companies submits that as on 12.06.2019, the Transferor Company No.4 has 2 equity shareholders namely, Jainco Finlease and Investment Private Limited and Virtue Finance Limited holding 5,000 equity shares each. Both the equity shareholders have given their consents/no objection to the Scheme and for the dispensation of

the meeting of equity shareholders. Jainco Finlease and Investment Private Limited has authorized Mr. Harish Pandey, Director vide Board Resolution dated 17.06.2019 and Virtue Finance Limited has authorized Mr. Ravi Bhinda, Director vide Board Resolution dated 17.06.2019. The consent affidavits and Board Resolution are attached as Annexure A-20 (Colly).

43. As per the certificate of AKLR & Co. LLP, Chartered Accountants (Annexure A-21 Colly), there are nil secured creditors in Transferor Company No.4 as on 30.06.2019.

44. As per the Certificate of AKLR & Co. LLP, Chartered Accountants, the Transferor Company No.4 has 6 unsecured creditors as on 30.06.2019. Out of 6 unsecured creditors, 2 are companies namely, MKJ Enterprises Ltd. having ₹2,93,87,320/- amount of unsecured debt and Rosmerta Technologies Ltd. having ₹2,10,23,301/- amount of unsecured debt. Remaining 4 unsecured creditors are individuals namely, Prem Wati having ₹10,00,000/- amount of unsecured debt; Ninder Singh holding ₹5,00,000/- amount of unsecured debt; Bimla holding ₹10,00,000/- amount of unsecured debt and Manoj Kumar having 15,00,000/- amount of unsecured debt. All the unsecured creditors have given their consent/no objection to the Scheme for the dispensation of the meeting of unsecured creditors. MKJ Enterprises Ltd. has authorized Mr. Radhe Shyam Khetan, Director vide Board Resolution dated 14.06.2019 and Rosmerta Technologies Limited has authorized Mr. Sandeep Malik, Director vide Board Resolution dated 27.06.2019. The consent affidavits and Board Resolutions are attached as Annexure A-21 (Colly).

45. The learned counsel for the Applicant Companies submits that as on 12.06.2019, the Transferor Company No.5 has 2 equity shareholders

namely, Sach Realtors Pvt. Ltd. and Sheetal Nath Properties Pvt. Ltd. holding 5,000 equity shares each. Both the equity shareholders have given their consents/no objection to the Scheme and for the dispensation of the meeting of equity shareholders. Sach Realtors Pvt. Ltd. has authorized Mr. Utsav Agarwal, Director vide Board Resolution dated 17.06.2019 and Sheetal Nath Properties Pvt. Ltd. has authorized Mr. Ajikumar Veetil Kizhakkilottu, Director vide Board Resolution dated 17.06.2019. The consent affidavits and Board Resolution are attached as Annexure A-25 (Colly).

46. As per the certificate of AKLR & Co. LLP, Chartered Accountants (Annexure A-26 Colly), there are nil secured creditors in Transferor Company No.5 as on 30.06.2019.

47. As per the Certificate of AKLR & Co. LLP, Chartered Accountants, the Transferor Company No.5 has 2 unsecured creditors as on 30.06.2019 namely, MKJ Enterprises Ltd. having ₹2,31,65,994/- amount of unsecured debt and Vinayak Facility Management Pvt. Ltd. having ₹5,24,576/- amount of unsecured debt. All the unsecured creditors have given their consent/no objection to the Scheme for the dispensation of the meeting of unsecured creditors. MKJ Enterprises Ltd. has authorized Mr. Radhe Shyam Khetan, Director vide Board Resolution dated 14.06.2019 and M/s. Vinayak Facility Management Pvt. Ltd. has authorized Mr. Harish Pandey, Director vide Board Resolution dated 18.06.2019. The consent affidavits and Board Resolutions are attached as Annexure A-26 (Colly).

48. The learned counsel for the Applicant Companies submits that as on 12.06.2019, the Transferor Company No.6 has 4 equity shareholders namely, Sheetal Nath Properties Pvt. Ltd. holding 80,000 equity shares; Jainco Finlease and Investments Pvt. Ltd. holding 10,4000 equity shares;

Sach Realtors Pvt. Ltd. holding 2,000 equity shares and Virtue Finance Limited holding 1,24,000 equity shares. All the equity shareholders have given their consents/no objection to the Scheme and for the dispensation of the meeting of equity shareholders. Sheetal Nath Properties Pvt. Ltd. has authorized Mr. Ajikumar Veetil Kizhakkilottu, Director vide Board Resolution dated 17.06.2019; Jainco Finlease and Investment Private Limited has authorized Mr. Harish Pandey, Director vide Board Resolution dated 17.06.2019; Sach Realtors Pvt. Ltd. has authorized Mr. Utsav Agarwal, Director vide Board Resolution dated 17.06.2019 and Virtue Finance Limited has authorized Mr. Ravi Bhinda, Director vide Board Resolution dated 17.06.2019. The consent affidavits and Board Resolution are attached as Annexure A-30 (Colly).

49. As per the certificate of AKLR & Co. LLP, Chartered Accountants (Annexure A-31 Colly), there are nil secured creditors in Transferor Company No.6 as on 21.05.2019.

50. As per the Certificate of AKLR & Co. LLP, Chartered Accountants, the Transferor Company No.6 has 2 unsecured creditors as on 21.05.2019 namely, ASF Infotech Pvt. Ltd. having ₹6,02,81,096/- amount of unsecured debt and Idol Infotech Pvt. Ltd. having ₹3,03,84,657/- amount of unsecured debt. All the unsecured creditors have given their consent/no objection to the Scheme for the dispensation of the meeting of unsecured creditors. ASF Infotech Pvt. Ltd. has authorized Mr. Yogender Singh Rawat, Director vide Board Resolution dated 25.06.2019 and Idol Infotech Pvt. Ltd. has authorized Mr. Raj Narain Saraf, Director vide Board Resolution dated 28.06.2019. The consent affidavits and Board Resolutions are attached as Annexure A-31 (Colly).

51. The learned counsel for the Applicant Companies submits that as on 12.06.2019, the Transferor Company No.7 has 2 equity shareholders namely, Sheetal Nath Properties Pvt. Ltd and Virtue Finance Limited holding 5,000 equity shares each. Both the equity shareholders have given their consents/no objection to the Scheme and for the dispensation of the meeting of equity shareholders. Sheetal Nath Properties Pvt. Ltd. has authorized Mr. Ajikumar Veetil Kizhakkilottu, Director vide Board Resolution dated 17.06.2019 and Virtue Finance Limited has authorized Mr. Ravi Bhinda, Director vide Board Resolution dated 17.06.2019. The consent affidavits and Board Resolution are attached as Annexure A-35 (Colly).

52. As per the certificate of AKLR & Co. LLP, Chartered Accountants (Annexure A-36 Colly), there are nil secured creditors in Transferor Company No.7 as on 30.06.2019.

53. As per the Certificate of AKLR & Co. LLP, Chartered Accountants, the Transferor Company No.7 has 1 unsecured creditor as on 30.06.2019 namely Adani Estates Pvt. Ltd. having ₹27,60,00,000/- amount of unsecured debt. The unsecured creditor has given its consent/no objection to the Scheme and for the dispensation of the meeting of unsecured creditor. By way of affidavit of Mr. Pritam Shah, Authorized Representative of Adani Estates Pvt. Ltd. authorized vide Board Resolution dated 25.06.2019. The consent affidavit alongwith Board Resolution is attached as Annexure A-36 (Colly).

54. The learned counsel for the Applicant Companies submits that as on 12.06.2019, the Transferor Company No.8 has 3 equity shareholders namely, Jainco Finlease and Investments Pvt. Ltd. and Virtue Finance Limited holding 4,000 equity shares each and Sach Realtors Pvt. Ltd. holding 2000

equity shares. All the equity shareholders have given their consents/no objection to the Scheme and for the dispensation of the meeting of equity shareholders. Jainco Finlease and Investment Private Limited has authorized Mr. Harish Pandey, Director vide Board Resolution dated 17.06.2019; Sach Realtors Pvt. Ltd. has authorized Mr. Utsav Agarwal, Director vide Board Resolution dated 17.06.2019 and Virtue Finance Limited has authorized Mr. Ravi Bhinda, Director vide Board Resolution dated 17.06.2019. The consent affidavits and Board Resolution are attached as Annexure A-40 (Colly).

55. As per the certificate of AKLR & Co. LLP, Chartered Accountants (Annexure A-41 Colly), there are nil secured creditors in Transferor Company No.8 as on 30.06.2019.

56. As per the Certificate of AKLR & Co. LLP, Chartered Accountants, the Transferor Company No.8 has 5 unsecured creditors as on 30.06.2019 namely; Avees Trading & Finance Pvt. Ltd. having ₹2,00,00,000/- amount of unsecured debt; Budhpur Buildcon Pvt. Ltd. having ₹6,50,00,000/- amount of unsecured debt; MKJ Enterprises Ltd. having ₹6,60,52,997/- amount of unsecured debt; Aakarshan Estates Pvt. Ltd. having ₹3,70,00,000/- and Vipul Limited having ₹2,00,00,000/- amount of unsecured debt. All the unsecured creditors have given their consent/no objection to the Scheme for the dispensation of the meeting of unsecured creditors. Avees Trading & Finance Pvt. Ltd. has authorized Mr. Bhal Chandra Khaitan, Director vide Board Resolution dated 26.07.2019; Budhpur Buildcon Pvt. Ltd. has authorized Mr. Pritam Shah vide Board Resolution dated 25.06.2019; MKJ Enterprises Ltd. has authorized Mr. Radhe Shyam Khetan, Director vide Board Resolution dated 14.06.2019; Aakarshan Estates Pvt. Ltd. has authorized Mr. Sanjay Koul Director, vide Board Resolution dated 12.06.2019 and Vipul

Limited has authorized Mr. Punit Beriwal, Director vide Board Resolution dated 22.07.2019. The consent affidavits and Board Resolutions are attached as Annexure A-41 (Colly).

57. The learned counsel for the Applicant Companies submits that as on 12.06.2019, the Transferor Company No.9 has 4 equity shareholders namely, Dilse Investment Pvt. Ltd. holding 3,65,000 equity shares; Jainco Finlease and Investments Pvt. Ltd. holding 5,00,000 equity shares; Sach Realtors Pvt. Ltd. holding 320000 equity shares and Virtue Finance Limited holding 15,5000 equity shares. All the equity shareholders have given their consents/no objection to the Scheme and for the dispensation of the meeting of equity shareholders. Dilse Investment Pvt. Ltd. has authorized Mr. Gautam Kumar Bhartia, Director vide Board Resolution dated 17.06.2019; Jainco Finlease and Investment Private Limited has authorized Mr. Harish Pandey, Director vide Board Resolution dated 17.06.2019; Sach Realtors Pvt. Ltd. has authorized Mr. Utsav Agarwal, Director vide Board Resolution dated 17.06.2019 and Virtue Finance Limited has authorized Mr. Ravi Bhinda, Director vide Board Resolution dated 17.06.2019. The consent affidavits and Board Resolution are attached as Annexure A-45 (Colly).

58. As per the certificate of Doogar & Associates, Chartered Accountants (Annexure A-46 Colly), there is one secured creditor in Transferor Company No.9 as on 21.05.2019 namely, Allahabad Bank having ₹25,20,66,715/- amount of secured debt. It has been prayed in the application that meeting of the secured creditor of Transferor Company No.9 namely Allahabad Bank may be convened.

59. The Transferor Company No.9 filed additional affidavit dated 19.09.2019 (Diary No.5005 dated 23.09.2019) of Mr. Amit Goyal, Director of

Transferor Company No.9 stating therein that the secured creditor of Transferor Company No.9 i.e. Allahabad Bank will get transferred as the secured creditor in the Transferee Company and even post amalgamation, there will be only one secured creditor in the Transferee Company since none of the Transferor Companies and Transferee Company (apart from the secured creditor in Applicant Company No.9, supra) has any secured creditor. Post amalgamation the security of the secured creditor will remain 'as in' and not altered and the rights and interests of the secured creditor will not be impacted or compromised in any manner, whatsoever. Further it is stated that since the net worth of the Transferee Company (merged entity) post scheme will be more than it is before the scheme, the Transferee Company will make the payments to creditors (both secured and unsecured) in the ordinary course of business. Prayer for dispensation of the meeting of the secured creditor of Transferor Company No.9 has been made in the affidavit dated 19.09.2019 as the net worth of the merged entity will be higher post scheme and the security provided to the secured creditor will remain intact.

60. As per certificate of Doogar & Associates, Chartered Accountants, there are 58 unsecured creditors of Transferor Company No.9 as on 21.05.2019 amounting to ₹42,20,90,144/- (Annexure A-46). Out of 58 unsecured creditors, 42 unsecured creditors amounting to ₹30.60 crores had already accorded their consents by way of affidavit attached as Annexure A-46(colly) of the application. Vide additional affidavit dated 19.09.2019 (Diary No.5005 dated 23.09.2019), it has been submitted that one of the unsecured creditor of Transferor Company No.9, M/s. Adani Ports and SEZ Ltd. amounting to ₹10.93 crores has been paid off on 04.09.2019 by the Applicant Transferor Company No.9 and no due confirmation by way of letter dated

19.09.2019 received from M/s. Adani Ports and SEZ Ltd is attached as Exhibit A of the affidavit. Therefore, Transferor Company No. 9 has now only 57 unsecured creditors amounting to ₹31.27 crores, out of which 42 unsecured creditors amounting to ₹30.60 crores (97% of the unsecured creditors in value) as stated above had already consented to the scheme and for the dispensation of the meeting of the unsecured creditors. Therefore, Transferor Company No.9 has prayed for the dispensation of the meeting of the unsecured creditors.

61. The learned counsel for the Applicant Companies submits that as on 12.06.2019, the Transferee Company has 4 equity shareholders namely, Dilse Investment Pvt. Ltd. holding 11300 shares; Jainco Finlease and Investments Pvt. Ltd. holding 162600 shares; Sach Realtors Pvt. Ltd. holding 71,000 equity shares and Virtue Finance Limited holding 16,3400 equity shares. All the equity shareholders have given their consents/no objection to the Scheme and for the dispensation of the meeting of equity shareholders. Dilse Investment Pvt. Ltd. has authorized Mr. Gautam Kumar Bhartia, Director vide Board Resolution dated 17.06.2019; Jainco Finlease and Investment Private Limited has authorized Mr. Harish Pandey, Director vide Board Resolution dated 17.06.2019; Sach Realtors Pvt. Ltd. has authorized Mr. Utsav Agarwal, Director vide Board Resolution dated 17.06.2019 and Virtue Finance Limited has authorized Mr. Ravi Bhinda, Director vide Board Resolution dated 17.06.2019. The consent affidavits and Board Resolutions are attached as Annexure A-50 (Colly).

62. As per the certificate of Ajay Gautam & Co., Chartered Accountants (Annexure A-51 Colly), there are nil secured creditors in Transferee Company as on 30.06.2019.

63. As per the Certificate of Ajay Gautam & Co., Chartered Accountants, the Transferee Company has one unsecured creditor namely Adani M2K Project LLP having ₹98,50,00,000/- amount of unsecured debt. The unsecured creditor has given their consent/no objection to the Scheme for the dispensation of the meeting of unsecured creditor. Adani M2K Project LLP has authorized Mr. Pritam Shah, Director vide Board Resolution dated 18.07.2019. The consent affidavits and Board Resolutions are attached as Annexure A-51 (Colly).

64. We have heard the learned counsel for the Applicant Companies and have perused the records and the supporting documents/papers filed along with the "Scheme" contemplated between the Applicant Companies.

65. The learned counsel submitted that the valuation report of Mr. Amrish Garg, Registered Valuer, Securities & Financial Assets registered with the Insolvency and Bankruptcy Board of India (IBBI), has also been annexed as Annexure A-52. The following Share Exchange Ratio has been proposed in the aforesaid report:

- a. *For merger of Mahadev into Aakarshan: 0.0042 equity shares of INR 10/- each (face value per share) of the Transferee Company to be issued for every 10 equity shares of INR 10/- each (face value per share) of Mahadev.*
- b. *For merger of Soft Vision into Aakarshan: 31.24 equity shares of INR 10/- each (face value per share) of the Transferee Company to be issued for every 10 equity shares of INR 10/- each (face value per share) of Soft Vision.*
- c. *For merger of Sonoli into Aakarshan: 25.33 equity shares of INR 10/- each (face value per share) of the Transferee Company to be issued for every 10 equity shares of INR 10/- each (face value per share) of Sonoli.*
- d. *For merger of Sach into Aakarshan: 22.69 equity shares of INR 10/- each (face value per share) of the Transferee*

Company to be issued for every 10 equity shares of INR 10/- each (face value per share) of Sach.

- e. *For merger of Superior into Aakarshan: 11.60 equity shares of INR 10/- each (face value per share) of the Transferee Company to be issued for every 10 equity shares of INR 10/- each (face value per share) of Superior.*
- f. *For merger of Avancer into Aakarshan: 3.59 equity shares of INR 10/- each (face value per share) of the Transferee Company to be issued for every 10 equity shares of INR 10/- each (face value per share) of Avancer.*
- g. *For merger of Vidhan into Aakarshan: 0.0042 equity shares of INR 10/- each (face value per share) of the Transferee Company to be issued for every 10 equity shares of INR 10/- each (face value per share) of Vidhan.*
- h. *For merger of Aaloukik into: 158.69 equity shares of INR 10/- each (face value per share) of the Transferee Company to be issued for every 10 equity shares of INR 10/- each (face value per share) of Aaloukik.*
- i. *For merger of Paarth into Aakarshan: 1.73 equity shares of INR 10/- each (face value per share) of the Transferee Company to be issued for every 10 equity shares of INR 10/- each (face value per share) of Paarth.”*

66. The Scheme (Annexure A-1) also deals with and takes care of the interest of staff, workmen and employees of Transferor Companies by virtue of clause 10 which is reiterated as under:-

“On the Scheme coming into effect, all staff and employees of Transferor Companies in service on such date shall be deemed to have become staff and employees of the Transferee Company without any break or interruption in their service as a result of the transfer for the purpose of any payment on any retrenchment, compensation or other benefits, and on the basis of continuity of service and the terms and conditions of their employment with the Transferee Company shall not be less favorable than those applicable to them with reference to Transferor Companies on the Effective Date.

67. As per Clause 8 of the Scheme all legal proceedings of whatsoever nature by or against Transferor Companies pending and/or arising at the Appointed Date and relating to Transferor Companies or its properties,

assets, debts, liabilities, duties and obligations, shall be continued and/or enforced until the Effective Date and from the Effective Date 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 Transferor Companies. On and from the Effective Date, the Transferee Company may, if required, initiate any legal proceedings in its name in relation to Transferor Companies in the same manner and to the same extent as would or might have been initiated by the Transferor Companies.

68. It is also stated that no proceedings are pending under Section 206 to 229 of the Companies Act, 2013 against Applicant Companies and no corporate debt restructuring is envisaged in the proposed scheme of amalgamation. Further it is stated that the Applicant Companies are unlisted companies and are not regulated by any sectoral regulators.

69. The Learned Counsel for the Applicant Companies also represented that all the Applicant Companies have filed their audited financial statements for the period ended 31.03.2018, along with un-audited (provisional) financial statements for the period ended 31.03.2019 attached as Annexures A-3, A-8, A-13, A-18, A-23, A-28, A-33, A-38, A-43 and A-48 of the paper books.

70. The Statutory Auditors of all the Applicant Companies have furnished certificates (Annexure A-53) stating that the accounting treatment contained in the Scheme is in conformity the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.

71. As per Clause 1(b) of the Scheme, the Appointed Date for Amalgamation will be 01.04.2019, or such other date, as the Hon'ble National Company Law Tribunal or any other competent authority may approve.

72. When the matter was listed on 31.10.2019, the learned counsel for the Applicant Companies submitted that in the main petition prayer was made for convening the meeting of the sole secured creditor of the Transferor Company No.9 as consent affidavit was not obtained from them but vide additional affidavit (diary No.5005 dated 23.09.2019) prayer was again made for dispensing with the meeting of the sole secured creditor of the Transferor Company No.9, but the same is not pressed. The orders were reserved on 31.10.2019.

73. Thereafter it was noticed that no rationale of the scheme has been filed by the petitioner companies. During the course of hearing on 13.11.2019, it was submitted by the learned counsel for the petitioner companies that the rationale of the scheme is not given in the application and it was only stated in Para No.14 of the application that the Board of Directors of the applicant companies are desirous to consolidate the companies with a view to consolidate the operations and rationalize the existing structure and have therefore formulated the Scheme for this purpose. It was however, stated that the rationale was available in Para K of Section-A of the Scheme reading as follows:-

“The present Scheme involves amalgamation of Mahadev, Soft Vision, Sonoli, Sach Developers, Superior, Avancer, Vidhan, Aaloukik and Paarth into Aakarshan with effect from 01.04.2019. The management is of the view that it would be prudent to amalgamate these companies so as to form a single entity for consolidation of group companies and reduction in general and administrative costs.”

The matter was accordingly reserved for orders on 13.11.2019.

74. As discussed in Para No.72 (supra), the meeting of the sole secured creditor of the Transferor Company No.9 is to be held. As regard the unsecured creditors of Transferor Company No.9, the discussion is in Para No.60 (supra). Out of total 58 unsecured creditors of Transferor Company No.9 as on 21.05.2019 amounting to ₹42,20,90,144, the consent affidavits were filed only for 42 unsecured creditors amounting to ₹30.60 crores. Therefore, the criteria laid down under Section 230(9) of the Act of at least 90% value, agreeing and confirming, by way of affidavit to the Scheme of compromise or arrangement for the purpose of dispensing with the calling of the meeting of the creditors is not satisfied. The contention of Transferor Company No.9 was that M/s Adani Ports and Special Economic Zone Ltd. (₹10.93 crores) was paid off on 04.09.2019 and thereby, the Transferor Company No.9 has only 57 unsecured creditors amounting to ₹31.27 crores, out of which 42 unsecured creditors amounting to ₹30.60 crores (97% of the unsecured creditors in value) have consented to the Scheme and therefore, the meeting of the unsecured creditors be dispensed with.

75. We have carefully considered the contentions raised. Section 230(9) of the Act provides for dispensation with calling of a meeting of creditors or class of creditors where such creditors or class of creditors, having at least 90% value, agree and confirm, by way of affidavit, to the Scheme of compromise or arrangement. Therefore, the consent affidavits of at least 90% value have to be filed in respect of the total value of the creditors as on a particular date. In the present case, admittedly, the criteria is not satisfied in respect of the total value of creditors as on 21.05.2019. Receipt of fresh credits and payments to creditors is an ongoing process and thereby, the total value of outstanding creditors changes with every day. As discussed above,

Section 230(9) of the Act has reference to the total value of the creditors on a particular date and the satisfaction of the criteria of 90% value has to be with reference to the total value of the creditors on that date. The total value of the unsecured creditors as on 04.09.2019 is not available to show whether the consent affidavits already filed would meet the criteria of 90% of the total value of the unsecured creditors as on 04.09.2019. Therefore, the subsequent payment to one of the creditors is not relevant for the purpose of determining the fulfillment of the criteria of 90% of the total value of the unsecured creditors as on 21.05.2019. The meeting of the unsecured creditors of Transferor Company No.9 is directed to be convened.

76. In view of the above, following directions are issued with respect to calling, convening and holding of meetings of the shareholders, secured creditors and unsecured creditors or dispensing with the same as well as issue of notices including by way of paper publication which are as follows:

A. In relation to Applicant Transferor Companies No.1 to 8 and of Applicant Transferee Company:

- i. Meetings of the equity shareholders of **Applicant Transferor Companies No.1 to 8 and of Applicant Transferee Company** are dispensed with as the consent affidavits of all the equity shareholders have been obtained and placed on record.
- ii. Since there are no secured creditors in Applicant Transferor Companies No.1 to 8 and Applicant Transferee Company, there is nothing to convene the meetings.
- iii. Meeting of the unsecured creditors of **Applicant Transferor Companies No.1 to 8 and of Applicant Transferee Company**

are dispensed with as the consent affidavits of all the unsecured creditors have been obtained and placed on record.

B. In relation to Applicant Transferor Company No.9:

- i. Meeting of the equity shareholders is dispensed with as the consent affidavit of all the equity shareholders have been obtained and placed on record.
- ii. Meeting of the secured creditors to be convened on 31.01.2020 at 03:00 p.m. at 4th Floor, M2K Corporate Park, Block N, Mayfield Garden, Sector 51, Gurugram, Haryana - 122003 subject to the notice of meeting being issued. The quorum of the meeting shall be 1 in number and 100% of the value of the secured creditors.
- iii. Meeting of the unsecured creditors to be convened on 31.01.2020 at 04:30 p.m. at 4th Floor, M2K Corporate Park, Block N, Mayfield Garden, Sector 51, Gurugram, Haryana - 122003 subject to the notice of meeting being issued. The quorum of the meeting shall be 23 in number and 40% of the value of the unsecured creditors.

- C. In case the required quorum as noted above for the meetings of the Transferor Company No.9 is not present at the commencement of the meetings, the meetings shall be adjourned by 30 minutes and thereafter the persons present, and voting shall be deemed to constitute the quorum. For the purposes of completing the quorum the valid proxies and Authorized Representatives shall also be considered, if the proxy in

the prescribed form, duly signed by the persons entitled to attend and vote at the meeting, is filed with the respective Registered Office of the Applicant Company No.9 at least 48hours before the meeting. The Chairperson and the Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy register is properly maintained.

- D. Mr. Satyaveer Singh, Advocate, House No. 139, Sector 23-A, Chandigarh (Mobile No.8262000017), e-mail id: satyaveersingh86@gmail.com is appointed as the Chairperson for the meeting to be called under this order. He shall be paid a fee of ₹1,60,000/- (Rupees one lac, sixty thousand only) for his services as the Chairperson.
- E. Mr. Abhishek Gupta, Advocate, H. No. 105, Aradhana Bhawan, Commercial Complex, Azadpur, Delhi-110033 (Mobile No. 9999959779), is appointed as the Alternate Chairperson for the meetings to be called under this order. He shall be paid fee of ₹1,00,000/- (Rupees one lac only) for his services as the Alternate Chairperson.
- F. Mr. Vishwajeet Gupta, Company Secretary, email id:vishwajeetgupta@gmail.com, Mobile No.9815284474 is appointed as the common Scrutinizer for the above meetings to be called under this order. He shall be paid fee of ₹70,000/- (Rupees seventy thousand only) for his services as the Scrutinizer.
- G. The fees of the Chairperson, Alternative Chairperson and Scrutinizer along with travelling expenses and other out of pocket expenses for them shall be borne by the Transferor Company No.9.

- H. It is further directed that individual notice of the said meetings shall be sent by the Transferor Company No.9 to the creditors through registered post or speed post or through courier 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 required to be sent under the Companies Act, 2013 and the applicable Rules along with the proxy forms and any other documents as may be prescribed under the Act shall also be duly sent with the notice.
- I. It is further directed that along with the notice, Transferor Company No.9 shall also send, statement explaining the effect of the scheme on the creditors, key managerial personnel, promoters and non-promotor members etc. along with effect of the arrangement for amalgamation 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.
- J. It is also directed that the supplementary accounting statement of Transferee Company as on 31.12.2019, be also circulated for the aforesaid meetings in terms of Section 230 (2) of the Act, apart from other requirements of Section 230 (2) of the Act.
- K. That the Transferor Company No.9 shall publish the advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date and the place and time of meeting as aforesaid, to be published in the “Financial Express” (English), Haryana Edition and “Jansatta” (Hindi), Haryana Edition. It be stated in the advertisement

that the copies of “Scheme”, the Explanatory Statement required to be published pursuant to Section 230 to 232 of the “Act” and the form of proxy shall be provided free of charge at the registered office of the Transferor Company No.9. The Transferor Company No.9 shall also publish the notice on their respective website, if any.

- L. It shall be the responsibility of the Transferor Company No.9 to ensure that the notice is sent under the signature and supervision of the authorized representative of the company on the basis of Board resolution and that they shall file their affidavits in the Tribunal at least ten days before the date fixed for the meeting.
- M. Voting shall be allowed on the “Scheme” in person or by proxy or through electronics means or by postal ballot as may be applicable to the Transferor Company No.9 under the Act and the Rules framed thereunder.
- N. 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. He would be fully assisted by the authorized representative/Company Secretary of the Transferor Company No.9 and the Scrutinizer, who will assist the Chairperson and Alternate Chairperson in preparing and finalizing the report.
- O. The Transferor Company No.9 shall individually and in compliance of subsection (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 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, NCT of Delhi and Haryana, (iii) Official Liquidator, Punjab, Haryana and Chandigarh and (iv) Income Tax Department through the Nodal Officer – Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh and Commissioner of Income Tax within whose jurisdiction the Applicant Companies are assessed by mentioning the PAN number of the Applicant Companies and such other sectoral regulator(s) governing the business of the Transferor Company No. 9, if any, stating that representations, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representation shall be simultaneously sent to the concerned companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

- P. The Transferor Company No.9 shall furnish a copy of the Scheme free of charge within one day of any requisition for the Scheme made by any creditor entitled to attend the meeting as aforesaid.
- Q. The authorized representative(s) of the Transferor Company No.9 shall furnish affidavit of service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the date of meeting.
- R. 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 Transferor Company No.9.

75. 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 copy of the same to the Chairperson, Alternative Chairperson and the Scrutinizer.

Pronounced in the open Court.

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

Sd/-
(Pradeep R. Sethi)
Member (Technical)

December 11, 2019
Anchal