

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CSP No. 852/230-232/NCLT/MB/MAH/2017  
CSP No. 853/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Borax Morarji Limited  
.....Petitioner in CSP 852/2017  
(Transferor Company)

M/s. The Dharamsi Morarji Chemical Company  
Limited

.....Petitioner in CSP 853/2017  
(Transferee Company)

Order delivered on: 18.10.2017

**Coram :**

Hon'ble M. K. Shrawat, Member (J)  
Hon'ble Bhaskara Pantula Mohan, Member (J)

**For the Petitioner :**

Adv. Hemant Sethi, i/b. Hemant Sethi & Co., Advocates for the Petitioners

**For the Regional Director :**

Mr. Ramesh Gholap – Asst. Director (WR).

*Per : Bhaskara Pantula Mohan, Member (J)*

**COMMON ORDER**

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, for Scheme of Amalgamation of M/s. Borax Morarji Limited (Transferor Company) with M/s. The Dharamsi Morarji Chemical Company Limited (Transferee Company).

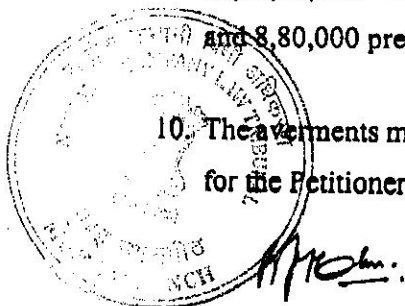


The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

*M. Mohan:*

3. The Transferor Company is currently engaged in the business of manufacturing and trading of Borax and Boric acid.
4. The Transferee Company is engaged in the business of manufacture of acids, salts, tannin extracts, chemical, pigments, industrial and other preparations and articles, compounds, oils, paints, pigments and varnishes, drug, dye-ware paint and others
5. The amalgamation of the Transferor Companies with the Transferee Company would *inter alia* have the following benefits:
  - a) Operational rationalization, organizational efficiency and optimal utilization of various resources due to pooling of management, administrative and technical skills of various resources of both the companies, better administration, and cost reduction, including reduction in managerial, administrative and other common costs;
  - b) Focused attention approach on the businesses and better alignment, coordination and streamlining of day to day operations of both the companies, leading to improvement in overall working culture and environment;
  - c) Creation of value for various stakeholders and shareholders of both the companies, as a result of all of the foregoing; and
  - d) Greater administrative efficiency.
6. The Authorised Share Capital of the Transferor Company is ₹ 20,00,00,000/- comprising of 1,00,00,000 equity shares of ₹ 10/- each and 1,00,00,000 preference shares of ₹ 10/- each.
7. The Issued Share capital of the Transferor Company is ₹ 13,51,97,000/- comprising of 45,19,698 equity shares of ₹ 10/- each, fully paid up and 90,00,000 8% cumulative non-convertible preference shares of ₹ 10/- each, fully paid up.
8. The Authorised Share Capital of the Transferee Company is ₹ 40,00,00,000/- comprising of 3,00,00,000 equity shares of ₹ 10/- each and 10,00,000 preference shares of ₹ 100/- each.
9. The Issued, Subscribed and Paid- up Share Capital of the Transferee Company is ₹ 30,05,78,000/- comprising of 2,12,57,821 equity shares of ₹ 10/- each, fully paid up and 8,80,000 preference shares of ₹ 100/- each, fully paid up.

10. The averments made in the petitions and the submissions made by the Learned Counsel for the Petitioners are:



- a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
- b) The Regional Director has filed his Report on 13<sup>th</sup> October, 2017 inter alia stating therein that, save and except as stated in paragraph IV of the said report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

*"IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:*

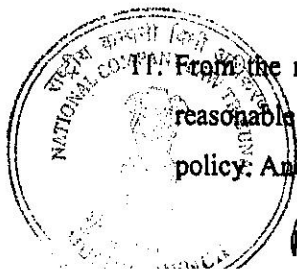
- a) In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
- b) As per existing practice, this Directorate has also issued a letter dated 10/10/2017 to IT Department requesting them to file their objections / comments, if any, directly to the Hon'ble NCLT, Mumbai.*
- c) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
- d) Para 10 of the scheme speaks about Reduction of Securities Premium Account and adjustment of Capital Reserve.*
- e) Para 8 of the scheme speaks about aggregation of Authorized Capital. In this regard Hon 'b/e NCLT may direct Transferee Company to comply with provisions of Section 232 3(i) of the Companies Act, 2013.*
- f) In Para 23 of the ROC Report it has been stated that the transferee company was inspected u/s 209 A of the Companies*

*APR 2018*



Act, 2013 in the year 2013 and supplementary inspection is under process.

- c) Apropos observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioners submits that, 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) etc.
- d) Apropos observations made in paragraph IV (c) of the Report of Regional Director is concerned, it is submitted that, the Petitioner Companies undertake to comply with all applicable provisions of the Income-tax Act 1961 and all tax issue arising out of the Scheme will be met and answered in accordance of law.
- e) Apropos observations made in paragraph IV (e) of the Report of Regional Director is concerned, it is submitted that, the Petitioner Transferee Company undertakes to comply with all applicable provisions of section 232 (3) (i) of the Companies Act, 2013.
- f) Apropos observations made in paragraph IV (f) of the Report of Regional Director is concerned, it is submitted that, the Transferee Company will continue to be in existence and shall not be dissolved on the amalgamation. Hence, the Transferee Company will fully support and comply with the procedure required to complete the inspection under section 209A of the Companies Act, 2013.
- g) The Official Liquidator has filed report inter alia, stating therein that, the affairs of the Transferor Companies have been conducted in a proper manner and the said Scheme is not prejudicial to the interest of Public. It is further stated that the Transferor Companies may be ordered to be dissolved without winding up.
- h) Further the Learned Counsel for the Petitioners submitted that, neither the Petitioners nor the Tribunal has received any objection to the said Scheme of Amalgamation between the Transferor Company and Transferee Company.

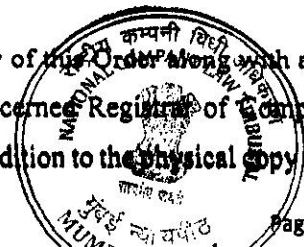


From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this Bench, to the Petitioner Companies, do Order that:

*[Signature]*

- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) Further that, the Transferee Company shall comply with the ongoing supplementary inspection by RoC u/S. 209 A of the Companies Act, 2013.
- d) Transferor Company to be dissolved without winding up from the date of this Scheme becomes effective.
- e) In lieu of consideration of this Scheme, 1 fully paid up Equity Share of ₹ 10/- each of the Transferee Company shall be issued and allotted for every 2 fully paid up equity shares of ₹ 10/- each held in the Transferor Company.
- f) And further, 10 fully paid up Equity Share of ₹ 10/- each of the Transferee Company shall be issued and allotted for every 108 fully paid up preference shares of ₹ 10/- each held in the Transferor Company.
- g) The Authorised Share Capital of the Transferee Company shall stand increased after this Scheme becomes effective.
- h) Further, as the present Authorised Share Capital of the Transferee Company is not meeting up with the requirements after the Amalgamation, hence, the Transferee Company shall, on or before the allotment of shares in the Scheme of Amalgamation, increase its Authorised Share Capital by creation of such number of Equity Shares or Preference Shares of such value as may be necessary to fulfil its obligations under the Scheme. And the Transferee Company shall comply with the applicable provisions of the Act and Rules therein, for raising of its Authorised Share Capital.
- a) Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within

*Handwritten signature*



30 days from the date of issuance of the Order by the Registry, duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.

- b) The Petitioner Companies to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, 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 the Order.
- c) Each Petitioner Companies to pay cost of ₹ 25,000/- (₹ Twenty Five Thousand only) to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- d) The Transferor Company i.e. Petitioner in CSP 852/2017, to pay cost of ₹ 25,000/- (₹ Twenty Five Thousand only) to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- e) All authorities concerned to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- f) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- g) The Scheme is hereby sanctioned and the appointed date of the Scheme is fixed as 1<sup>st</sup> April, 2016.

12. Ordered accordingly. Consigned to Records.

sd/-

**BHASKARA PANTULA MOHAN**  
**MEMBER (JUDICIAL)**

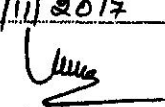
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**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**

**Dated : 18<sup>th</sup> October, 2017**



Certified True Copy  
Copy Issued "free of cost"  
On 10/11/2017

  
Deputy Director

National Company Law Tribunal, Mumbai Bench

**SCHEME OF ARRANGEMENT  
BETWEEN  
BORAX MORARJI LIMITED  
(AS THE TRANSFEROR COMPANY)**

**AND**

**THE DHARAMSI MORARJI CHEMICAL COMPANY LIMITED  
(AS THE TRANSFEREE COMPANY)**

**AND**

**THEIR RESPECTIVE SHAREHOLDERS AND ALL CONCERNED**

**UNDER SECTION 230 TO 232 READ WITH SECTION 52 OF THE  
COMPANIES ACT, 2013 AND OTHER APPLICABLE PROVISIONS OF THE  
COMPANIES ACT, 2013 AND RULES FRAMED THEREUNDER**

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**(A) PREAMBLE**

This Scheme of Arrangement ("Scheme") is presented under Section 230 to 232 read with Section 52 and other applicable provisions of the Companies Act, 2013 and the rules and regulations made thereunder, for amalgamation of Borax Morarji Limited ("BML" or "the Transferor Company") into The Dharamsi Morarji Chemical Company Limited ("DMCC" or "the Transferee Company") on a going concern basis, and matters incidental thereto

**(B) Parts of the Scheme**

This Scheme of Arrangement is divided into the following parts:

- Part I** – Deals with preliminary of the Scheme, definitions of the terms used in this Scheme, objects and rationale of the Scheme and share capital
- Part II** – Deals with amalgamation of the Transferor Company into the Transferee Company; and
- Part III** – Deals with General Clauses, Terms and Conditions



**PART I - PRELIMINARY DEFINITIONS AND INTERPRETATIONS**

**1. PRELIMINARY**

1.1 **Borax Morarji Limited, ("BML" or "the Transferor Company"),** was originally incorporated as a public limited company under the name and style of "Borax Morarji Limited" on August 27, 1963 under the Companies Act, 1956 vide Corporate Identity Number L24100MH1963PLC012706 with having its registered office at Prospect Chambers, 317-321, Dr D N Road, Mumbai 400001, Maharashtra

**The Dharamsi Morarji Chemical Company Limited, ("DMCC" or "the Transferee Company"),** was originally incorporated as a public limited company under the name and style of "The Dharamsi Morarji Chemical Company Limited" on September 25, 1919 vide Corporate Identity Number L24110MH1919PLC000564 under the Indian Companies Act, VII of 1913 and having its registered office at Prospect Chambers, 317/21, D N Road, Fort, Mumbai 400001.

1.2 The Transferor Company is primarily engaged in the business of manufacturing and dealing in Borax and Boric Acid. The main objects are set out in the Memorandum of Association. Some of them are as under:

**A. THE MAIN OBJECTS OF THE COMPANY TO BE PURSUED ON ITS INCORPORATION:**

1. *To carry on the business as manufacturers, producers, importers, exporters, merchants, distributors, commission agents, and brokers of, and wholesale and retail dealers in Borax and Boric Acid, their derivatives, by-products and compounds, and other heavy chemicals and fine chemicals, and of and in all kinds of chemicals, chemical preparations or substances industrial,*





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*agricultural, medicinal, pharmaceutical, toilet or otherwise, and allied and auxiliary products and intermediates thereof.*

- 2. *To manufacture, produce, import, export, buy, sell, and deal in acids, alkalies, oleum and all residual products resulting from the manufacture or use of such acids and alkalies.*
- 3. *To carry on the business manufacturers, producers, importers, exporters, merchants, distributors, commission agents, brokers of and wholesale and retail dealers in paints, pigments, varnishes, lacquers, plastics, paper, rubber goods, artificial leather, soap, cosmetics, metals and alloys.*
- 4. *To carry on the business of chemists, analytical chemists, metallurgists, oil and colourmen, ye makers, gas makers, and makers of and dealers in proprietary articles of all kinds including chemical materials and apparatus.*

1.3 The Transferee Company is primarily engaged in the business of manufacture of acids, salts, tannin extracts, chemical, pigments, industrial and other preparations and articles, compounds, oils, paints, pigments and varnishes, drug, dyeware paint and others. The main objects are set out in the Memorandum of Association. Some of them are as under:

**A. THE OBJECTS TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE:**

- 1. *To carry the trade or business of manufacture of acids, salts, tannin extracts, chemical, industrial and other preparations and articles, compounds, oils, paints, pigments and varnishes, drug, dyeware paint or other substances or things and to purchase, manufacture, sell and generally deal in all materials, substances and things required for or incidental to the manufacture, preparation, adaption or use of acids, salts, chemicals and other preparations and articles.*



- (1A) To carry on the business of manufacturing of, dealers and workers in, sellers, Importers and exporters of cement of all types, lime, plasters, clay, granules, sand, artificial stone and all kinds and products or things which may be manufactures out or with cement or in which the use of cement may be made.
- (1B) To manufacture., buy, sell, refine, manipulate, import, export or otherwise deal in all kinds of disinfectants, insecticides, fungicides, manures, sprayers, as also protectives and preservatives and to investigate all means, devices, inventions and improvements tending to increase the use of fertilizers and manures and advance the interests of agriculture and the fertilizer industry.
- (1C) To carry on business of hiring out computer time and also providing punching and programming services termed 'software' by methods of system analysis or other similar methods and by the use and employment of computer and other electronic devices involving technical data compilation and processing and sale thereof.
- (1D) To carry on the business of shipowners and to purchase, charter, hire ships or vessels.
- (1E) To carry on the business of leading and hire purchase finance Company and to provide on lease or on hire purchase all types of industrial and office plant, equipment, machinery, vehicles and buildings
- (1F) To carry on the business of manufacture of equipments including equipment for energy saving and pollution control, components, accessories, apparatus and parts thereof required for industries in general and the chemical and fertilizer industry in particular.

1.6

- 1.4 The Transferor Company and the Transferee Company are promoted by the same Group.
- 1.5 The Promoters (shareholders) of the Transferor Company as on December 31, 2016 are:



Sr. No.	Name of the Promoters	Address of Promoters
1	Lalit N. Goculdas	Mathradas Goculdas Bunglow, 12 French Bridge, Chowpatty, Mumbai – 400 007.
2	Radha L. Goculdas	Mathradas Goculdas Bunglow, 12 French Bridge, Chowpatty, Mumbai – 400 007.
3	Ranchoddas Mathradas Goculdas	Mathradas Goculdas Bunglow, 12 French Bridge, Chowpatty, Mumbai – 400 007.
4	Sonali B. Goculdas	Mathradas Goculdas Bunglow, 12 French Bridge, Chowpatty, Mumbai – 400 007.
5	Bimal L. Goculdas	Mathradas Goculdas Bunglow, 12 French Bridge, Chowpatty, Mumbai – 400 007.
6	Jasraj Trading Company	53/57, Laxmi Insurance Building, Sir P.M. Road, Fort, Mumbai 400 001.
7	Phoenix Distributors Pvt Ltd	53/57, Laxmi Insurance Building, Sir P.M. Road, Fort, Mumbai 400 001.
8	The Natural Gas Company Pvt Ltd	53/57, Laxmi Insurance Building, Sir P.M. Road, Fort, Mumbai 400 001.
9	Bharti Laxmikumar Goculdas	Mathradas Goculdas Bunglow, 12 French Bridge, Chowpatty, Mumbai – 400 007.
10	Laxmikumar Narottam Goculdas	Mathradas Goculdas Bunglow, 12 French Bridge, Chowpatty, Mumbai – 400 007.

There has been no change in the list of promoters since the above mentioned date till the date of approval by the Board to the scheme.

1.6 The Promoters (shareholders) of the Transferee Company as on December 31, 2016 are:

Sr No.	Name of the Promoters	Address of Promoters
1	Lalit N. Goculdas	Mathradas Goculdas Bunglow, 12 French Bridge, Chowpatty, Mumbai – 400 007.



2	Harisingh Narottamdas Goculdas	Mathradas Goculdas Bungalow, 12 French Bridge, Chowpatty, Mumbai - 400 007.
3	Radha L. Goculdas	Mathradas Goculdas Bungalow, 12 French Bridge, Chowpatty, Mumbai - 400 007.
4	Ranchoddas Mathradas Goculdas	Mathradas Goculdas Bungalow, 12 French Bridge, Chowpatty, Mumbai - 400 007.
5	Sonali B. Goculdas	Mathradas Goculdas Bungalow, 12 French Bridge, Chowpatty, Mumbai - 400 007.
6	Mulraj Dwarkadas Goculdas	Mathradas Goculdas Bungalow, 12 French Bridge, Chowpatty, Mumbai - 400 007.
7	Bimal L. Goculdas	Mathradas Goculdas Bungalow, 12 French Bridge, Chowpatty, Mumbai - 400 007.
8	Kosan Industries Pvt Ltd	53/57, Laxmi Insurance Building, Sir P.M. Road, Fort, Mumbai 400 001.
9	Jasraj Trading Company	53/57, Laxmi Insurance Building, Sir P.M. Road, Fort, Mumbai 400 001.
10	L. P. Gas Equipment Pvt Ltd	53/57, Laxmi Insurance Building, Sir P.M. Road, Fort, Mumbai 400 001.
11	Phoenix Distributors Pvt Ltd	53/57, Laxmi Insurance Building, Sir P.M. Road, Fort, Mumbai 400 001.
12	The Natural Gas Company Pvt Ltd	53/57, Laxmi Insurance Building, Sir P.M. Road, Fort, Mumbai 400 001.
13	Bharti Laxmikumar Goculdas	Mathradas Goculdas Bungalow, 12 French Bridge, Chowpatty, Mumbai - 400 007.
14	Laxmikumar Narottam Goculdas	Mathradas Goculdas Bungalow, 12 French Bridge, Chowpatty, Mumbai - 400 007.

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There has been no change in the list of promoters since the above mentioned date till the date of approval by the Board to the scheme.



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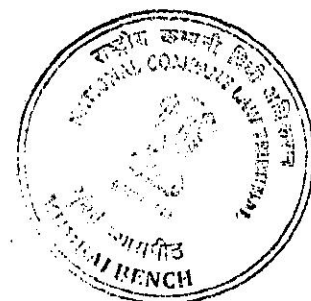
1.7 The present Directors of the Transferor Company as on December 31, 2016 are:

Sr No	Name of the Directors	Address
1	Laxmikumar Narottam Goculdas	Mathradas Goculdas Bunglow, 12 French Bridge, Chowpatty, Mumbai – 400 007.
2	Bimal Lalitsingh Goculdas	Mathradas Goculdas Bunglow, 12 French Bridge, Chowpatty, Mumbai – 400 007.
3	Mitika Laxmikumar Goculdas	Mathradas Goculdas Bunglow, 12 French Bridge, Chowpatty, Mumbai – 400 007.
4	Sanjeev Vishwanath Joshi	602, Shivkripa CHS, Nanda Parkar Marg, Vileparle – East, Mumbai 400 057.
5	Arvind W Ketkar	4, Saukhya, Opp. BMC Hospital, V.N. Purav Marg, Chunabhatti, Mumbai 400 042.
6	Dilip Trimbak Gokhale	6, Parvati Niwas, Veer Savarkar Road, Dombivali (East) – 421 201.

There has been no change in the Directors since the above mentioned date till the date of approval by the Board to the scheme.

1.8 The present Directors of the Transferee Company as on December 31, 2016 are:

Sr No	Name of the Directors	Address
1	Laxmikumar Narottam Goculdas	Mathradas Goculdas Bunglow, 12 French Bridge, Chowpatty, Mumbai – 400 007.
2	Haridas Tricumdas Kapadia	Shree Satyam CHS Ltd., Shivaji Road, Sai Section, Ambernath, 421501.
3	Madhu Thakorlal Ankleshwaria	7, Gocul Niwas, Bajaj Road, Vile Parle (West) Mumbai 400 056.
4	Arvind W Ketkar	4, Saukhya, Opp. BMC Hospital, V.N. Purav Marg, Chunabhatti, Mumbai 400 042.



5	Mitika Laxmikumar Goculdas	Mathradas Goculdas Bunglow, 12 French Bridge, Chowpatty, Mumbai - 400 007.
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There has been no change in the Directors since the above mentioned date till the date of approval by the Board to the scheme.

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1.9 The proposed amalgamation would enable the Transferee Company to focus on the businesses of both the companies in a more professional manner and to create a more competitive business both in scale and operations. The Transferee Company would develop combined long-term corporate strategies and financial policies, thus enabling better management and accelerated growth of the business.

2.2

1.10 The Scheme does not affect the rights of the creditors of the Transferor Company and the Transferee Company. There will not be any reduction in amounts payable to the creditors of the Transferor Company and the Transferee Company post sanctioning of the Scheme.

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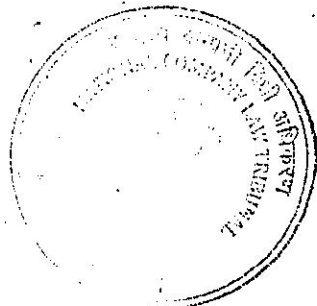
1.11 The members of the Transferor Company shall be allotted shares in the Transferee Company as per the exchange ratio stated in Clause 7 of this Scheme.

2.4

1.12 The Board of the Transferor Company and Transferee Company are of the view that the rights and obligations of each of the equity shareholders of the Transferor Company and the Transferee Company respectively are not impacted in any way post sanctioning of the Scheme.

1.13 There are no proceedings/investigation pending against the Transferor Company and the Transferee Company under Sections 210 to 217, 219, 220, 223, 224, 225, 226 & 227 of the Companies Act, 2013.

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2. **DEFINITIONS**

In this Scheme of Arrangement, unless inconsistent with the subject or context, the following expressions shall have the following meanings:

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- 2.1 “Act” means the Companies Act, 2013 and the rules and regulations made thereunder shall include any statutory modifications, alterations, re-enactment or amendments thereof for the time being in force and Companies Act, 1956 and the rules and regulations made thereunder to the extent provisions of Companies Act, 2013 are not notified.
- 2.2 “Appointed Date” means 1<sup>st</sup> April, 2016 or such other date as the Board of Directors of the Transferor Company or the Transferee Company or as the Tribunal may direct.
- 2.3 “BML” or “the Transferor Company” means Borax Morarji Limited, (E-mail id: [info@boraxmorarji.com](mailto:info@boraxmorarji.com)), (CIN L24100MH1963PLC012706), PAN:AAACB0507E) a public limited company incorporated on August 27, 1963 under the Companies Act, 1956, listed on the Bombay Stock Exchange and having its registered office at Prospect Chambers, 317-21, Dr D N Road, Mumbai 400001.
- 2.4 “Board of Directors” or “Board” means the board of directors of Borax Morarji Limited or The Dharamsi Morarji Chemical Company Limited, as the case may be, and unless repugnant to the subject, context or meaning thereof, shall be deemed to include every committee (including any committee of directors) or any person authorized by the board of directors or by any such committee.
- 2.5 “DMCC” or “the Transferee Company” means The Dharamsi Morarji Chemical Company Limited, (E-mail id: [info@dmcc.com](mailto:info@dmcc.com)), (CIN



L24110MH1919PLC000564), (PAN: AA ACT5000E), a public limited company incorporated on September 25, 1919 under the Indian Companies Act, VII of 1913, listed on the Bombay Stock Exchange and having its registered office at Prospect Chambers, 317/21, D N Road, Fort, Mumbai 400001.

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2.6 **“Effective Date”** or **“coming into effect of this Scheme”** or **“upon the scheme becoming effective”** or **“effectiveness of the scheme”** means the date on which the certified copies of the orders of Tribunal under Sections 230 to 232 read with Sections 52 of the Companies Act, 2013 sanctioning the Scheme are filed with the Registrar of Companies, Mumbai.

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2.7 **“Record Date”** means in respect of amalgamation of the Transferor Company into the Transferee Company, the date to be fixed by the Board of Directors of the Transferee Company for the purposes of determining the shareholders of the Transferor Company to whom shares would be issued in accordance with Clause 7.1 of this Scheme.

2.8 **“Scheme”** or **“the Scheme”** or **“this Scheme”** or **“this Scheme of Arrangement”** means this Scheme of Arrangement in its present form (along with any annexures, schedules, etc., annexed/attached hereto) or with any modification(s) and amendments made under Clause 18 of this Scheme from time to time and with appropriate approvals and sanctions as imposed or directed by the Tribunal or such other competent authority, as may be required under the Act, as applicable, and under all other applicable laws.

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2.9 **“Transition period”** means period starting from the date immediately after the Appointed Date till the Effective Date





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2.10 "Tribunal" means the National Company Law Tribunal, Mumbai Bench having jurisdiction in relation to the Transferor Company and Transferee Company.

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

In this Scheme, unless the context otherwise requires:

- (i) references to "persons" shall include individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
- (ii) the headings are inserted for ease of reference only and shall not affect the construction or interpretation of the relevant provision of this Scheme;
- (iii) any phrase introduced by the terms "including", "include" or any similar expression shall be construed without limitation;
- (iv) references to one gender includes all genders; and
- (v) words in the singular shall include the plural and *vice versa*.

### 3. OBJECT AND RATIONALE FOR THE SCHEME OF ARRANGEMENT

3.1 Currently, the Transferor Company is, inter alia, engaged in the business of manufacturing and dealing in Borax and Boric Acid. The Transferee Company is primarily engaged in the business of manufacture of acids, salts, tannin extracts, chemical, pigments, industrial and other preparations and articles, compounds, oils, paints, pigments and varnishes, drug, dyeware paint and others



3.2 The proposed amalgamation would enable the Transferee Company to focus and create a more competitive business both in scale and operations. The Transferee Company would develop long-term corporate strategies and financial policies with respect to the combined business and harness synergies on consolidation of business, thus enabling better management and accelerated growth of the Transferor Company.

3.3 The proposed amalgamation and restructuring would result in the following benefits:

(a) Operational rationalization, organizational efficiency and optimal utilization of various resources due to pooling of management, administrative and technical skills of various resources of both the companies, better administration, and cost reduction, including reduction in managerial, administrative and other common costs;

(b) Focused attention approach on the businesses and better alignment, coordination and streamlining of day to day operations of both the companies, leading to improvement in overall working culture and environment;

(c) Creation of value for various stakeholders and shareholders of both the companies, as a result of all of the foregoing; and

(d) Greater administrative efficiency

5.2

#### 4. DATE OF TAKING EFFECT AND OPERATIVE DATE

The Scheme shall be effective in its present form or with any modification(s) approved or imposed or directed by the Tribunal or any other appropriate authority or made as per Clause 18 of the Scheme shall be effective from the Appointed Date respectively.

#### 5. SHARE CAPITAL



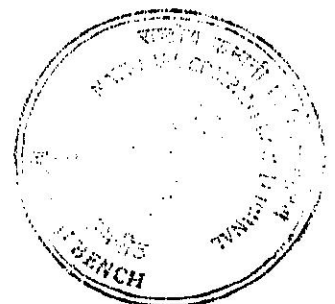
- 5.1 The share capital of the Transferor Company as on its latest audited Balance Sheet dated 31st March, 2016 is as under:

Particulars	Amount (in Rs.)
<b>Authorized share capital</b>	
10,000,000 equity shares of Rs.10/- each	100,000,000
10,000,000 preference shares of Rs.10/- each	100,000,000
<b>TOTAL</b>	<b>200,000,000</b>
<b>Issued, subscribed and paid-up share capital</b>	
4,519,698 equity shares of Rs.10/- each fully paid up	45,196,980
9,000,000 8% Cumulative Non-convertible Preference Shares of Rs.10/- each fully paid up	90,000,000
<b>TOTAL</b>	<b>135,196,980</b>

As on the date of approval of the Scheme by the Board of Directors of the Transferor Company, there is no change in the authorized, issued, subscribed and paid-up share capital of the Transferor Company.

- 5.2 The share capital of the Transferee Company as on its latest audited Balance Sheet dated 31<sup>st</sup> March, 2016 is as under:

Particulars	Amount (in Rs.)
<b>Authorized share capital</b>	
30,000,000 equity shares of Rs.10/- each	300,000,000
1,000,000 preference shares of Rs.100/- each	100,000,000
<b>TOTAL</b>	<b>400,000,000</b>
<b>Issued, subscribed and paid-up share capital</b>	
21,257,821 equity shares of Rs.10/- each	212,578,210
880,000 preference shares of Rs.100/- each	88,000,000



<b>TOTAL</b>	<b>300,578,210</b>
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As on the date of approval of the Scheme by the Board of Directors of the Transferee Company, authorized, issued, subscribed and paid-up share capital of the Transferee Company stands as follows:

Particulars	Amount (in Rs.)
<b><u>Authorized share capital</u></b>	
30,000,000 equity shares of Rs.10/- each	300,000,000
1,000,000 preference shares of Rs.100/- each	100,000,000
<b>TOTAL</b>	<b>400,000,000</b>
<b><u>Issued, subscribed and paid-up share capital</u></b>	
21,846,751 equity shares of Rs.10/- each	218,467,510
280,000 preference shares of Rs.100/- each	28,000,000
<b>TOTAL</b>	<b>246,467,510</b>

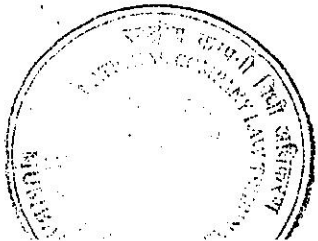
The shares of both the Transferor Company and the Transferee Company are listed on the BSE Limited.

## PART II

### AMALGAMATION OF THE TRANSFEROR COMPANY

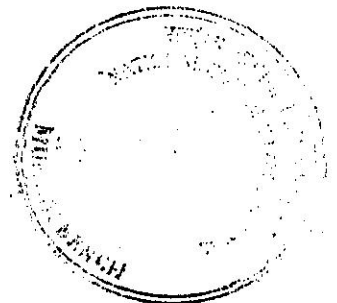
#### 6. **TRANSFER AND VESTING OF TRANSFEROR COMPANY OF THE TRANSFEROR COMPANY INTO TRANSFEREE COMPANY**

- 6.1. Upon the coming into effect of this Scheme and with effect from the Appointed Date, the Transferor Company together with all the respective properties,



assets, investments, liabilities, rights, benefits, interests, title or power of every kind, nature, description and obligations therein shall, pursuant to the provisions of Section 230 to 232 of the Act and in accordance with Section 2(1B) of the Income-tax Act, 1961, without any further act, deed, matter or thing, be and stand merged and transferred to and vested in and shall be deemed to be transferred to and vested in the Transferee Company on a going concern basis in the manner described hereunder, and shall become the property of and an integral part of the Transferee Company.

- 6.2. If any terms or provisions of the Scheme are found or interpreted to be inconsistent with the provisions of the said Section 2(1B) of the Income-tax Act, 1961 at a later date including resulting from an amendment of law or for any other reason whatsoever, the provisions of the said Section of the Income-tax Act, 1961 shall prevail and the Scheme shall stand modified to the extent determined necessary to comply with Section 2(1B) of the Income-tax Act, 1961. Such modification will however not affect the other parts of the Scheme.
- 6.3. Without prejudice to the generality of Clause 6.1, upon the coming into effect of this Scheme and with effect from the Appointed Date, all the assets of or used for the Transferor Company, as are movable in nature or incorporeal property or are otherwise capable of transfer by manual delivery or by endorsement and delivery, or by vesting and recorded pursuant to this Scheme including without limitation plant and machinery, whether leased or otherwise, other fixed assets, vehicles, furniture, fixtures and appliances, computers and office equipment pertaining to the Transferor Company, shall stand vested in the Transferee Company, and shall become the property and an integral part of the Transferee Company. The vesting pursuant to this sub-Clause shall be deemed to have occurred by manual delivery or endorsement and delivery, as appropriate to the asset or property being vested, and the title to such asset or property shall be deemed to have transferred and vested accordingly.



6.4. In respect of movables other than those dealt with in Clause 6.3 above including all current assets, investments in shares and any other securities, sundry debts, receivables, bills, credits, loans and advances related to Transferor Company, if any, whether recoverable in cash or in kind or for value to be received, deposits including accrued interest, bank balances, cash balances, development rights, advances paid to any parties for any business purpose, earnest money, security deposits, retention monies and any deposits with any Government, quasi government, local or other authority or body or with customers or any company or other person, upon the coming into effect of this Scheme and with effect from Appointed Date, the same shall, without any further act, instrument or deed, stand transferred to and vested in the Transferee Company without any notice or other intimation to the debtors and the same shall also be deemed to have been transferred by way of delivery of possession of the respective documents in this regard.

6.6

6.5. All immovable properties in connection with the Transferor Company, including land together with the buildings and structures standing thereon and rights and interests in immovable properties of the Transferor Company, whether freehold or leasehold (including any right to use) or licensed or otherwise and all documents of title, rights and easements in relation thereto shall stand transferred to and be vested in /or be deemed to have been and stand transferred to and vested in the Transferee Company, without any further act or deed done or being required to be done by the Transferor Company and/or the Transferee Company, and without any approval or acknowledgement of any third party. 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, charges, 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, upon this Scheme becoming effective, 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 Court in

6.7



accordance with the terms hereof. The Transferor Company shall take all steps as may be necessary to ensure that lawful and peaceful possession, right, title, interest of such immovable property of the Transferor Company is given to the Transferee Company in accordance with the terms hereof.

6.6. Without prejudice to the generality of paragraphs above, upon the coming into effect of this Scheme and with effect from the Appointed Date, any and all intellectual property rights, know-how, patents, trademarks and confidential information which is owned by or licensed to the Transferor Company, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world including any and all registrations, goodwill, licenses, trademarks, service marks, copyrights, domain names, applications for copyrights, trade names and trademarks, appertaining to the Transferor Company, if any, shall stand transferred to and vested in the Transferee Company. The Transferee Company and the Transferor Company shall, on the Effective Date, intimate the relevant authorities in relation to the transfer of these intellectual property rights from the Transferor Company to the Transferee Company pursuant to the merger.

6.7. In so far as loans and borrowings of the Transferor Company pertaining to the general or multipurpose loans and liabilities, without any further act or deed, become loans and borrowings of the Transferee Company, and all rights, powers, duties and obligations in relation thereto shall be and stand vested in and shall be exercised by or against the Transferee Company as if it had entered into such loans and incurred such borrowings. Thus, the primary obligation to redeem or repay such liabilities upon the Scheme becoming effective shall be that of the Transferee Company.



6.8. In so far as the existing Encumbrance, if any, in respect of the loans, borrowings, debts, liabilities, is concerned, such Encumbrance shall, without any further act, instrument or deed be modified and shall be extended to and shall operate only over the assets comprised in Transferor Company which have been Encumbered in respect of the transferred liabilities as transferred to the Transferee Company pursuant to this Scheme. Provided that if any of the assets comprised in Transferor Company which are being transferred to the Transferee Company pursuant to this Scheme have not been Encumbered in respect of the transferred liabilities, such assets shall remain unencumbered and the existing Encumbrance referred to above shall not be extended to and shall not operate over such assets. The absence of any formal amendment which may be required by a lender or third party shall not affect the operation of the above.

6.1

6.9. The transfer and vesting as aforesaid shall be subject to subsisting charges, if any, in respect of any assets of the Transferor Company.

The Scheme shall not operate to enlarge the security for any loan, deposit or facility availed by the Transferor Company, and the Transferee Company shall not be obliged to create any further or additional security thereof after the Effective Date or otherwise.

6.1

6.10. In so far as the existing security in respect of the loans or borrowings of the Transferor Company and other liabilities of the Transferor Company are concerned, such security shall, without any further act, instrument or deed be continued with the Transferee Company. The Transferor Company and the Transferee Company shall file necessary particulars and/or modification(s) of charge, with the Registrar of Companies to give formal effect to the above provisions, if required.

6.1

6.11. Upon the coming into effect of this Scheme and with effect from the Appointed Date, all liabilities, duties and obligations and undertakings of the Transferor Company of every kind, nature and description whatsoever and howsoever



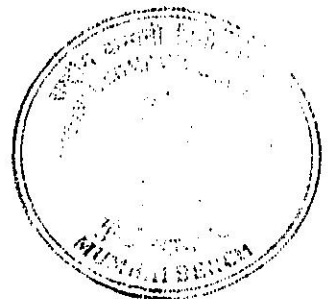


arising, raised or incurred or utilised for the Transferor Company shall, stand transferred to and vested in or deemed to be transferred to and vested in the Transferee Company under the provisions of Sections 230 to 232 of the Act and other applicable provisions, if any, of the Act, without any further act, instrument, deed, matter or thing. The Transferee Company shall, and does hereby undertake to meet, discharge and satisfy the same in terms of their respective terms and conditions, if any. It is hereby clarified that it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, liabilities, duties and obligations have arisen in order to give effect to the provisions of this Clause [6.11.]

6.12. Where any of the liabilities and obligations attributed to the Transferor Company have been discharged by the Transferor Company after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to have been for and on behalf of the Transferee Company.

6.13. Upon the coming into effect of this Scheme and with effect from the Appointed Date, all records, files, papers, engineering and process information, product and service information (including documentation, designs, formulae, drawings, data, specifications, manuals, and instructions), computer programs, software, manuals, data catalogues, quotations, sales and advertising materials, business plans, budgets, forecasts and estimates, list of present and former customers and suppliers, customers credit information, customers pricing information, tax records, records to be maintained under any law, rule or regulation, and other records, whether in physical, electronic, machine readable or other form, in connection with or relating to the Transferor Company, shall stand transferred to or vested in the Transferee Company.

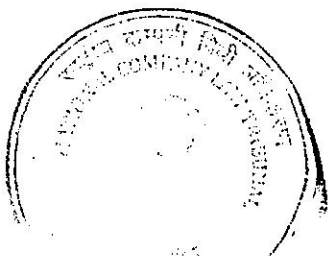
6.14. Pursuant to the coming into effect of this Scheme, the Transferee Company shall, if so required under any law or otherwise, execute deeds of



confirmation, assignment or novation or other writings or arrangement with any party to any contracts, deeds, bonds, agreements, commitments, understandings, binding arrangements, licences, purchase orders and all other forms of engagements, arrangements and agreements in relation to the Transferor Company and any offers, tenders, permits, rights, subsidies, concessions, entitlements, clearances, licenses (including the licenses granted by any governmental, statutory or regulatory bodies) or the like and other instruments of whatsoever nature to which the Transferor Company is a party in order to give formal effect to the above provisions. The Transferee Company shall, be deemed to be authorized to execute any such writings on behalf of the Transferor Company to carry out or perform all such formalities or compliances referred to above on part of the Transferor Company.

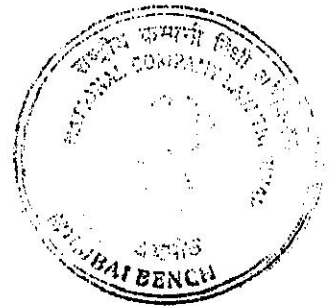
6.15. Upon the coming into effect of this Scheme and with effect from the Appointed Date, all existing and future incentives, unavailed credits and exemptions, benefits, advantages, privileges, remissions, reductions of carried forward tax losses (including depreciation) and other statutory benefits, including in respect of income tax (including and not limited to advance income tax, taxes deducted at source, MAT credits), excise (including Modvat / Cenvat), customs, VAT, sales tax, service tax etc., to which the Transferor Company is entitled to shall be available to and vest in the Transferee Company. The Transferor Company and the Transferee Company shall be entitled, wherever necessary, to revise their returns filed under various laws, as may be applicable, including returns filed under the Income Tax, Wealth Tax, Commercial Tax/ Trade Tax/ Sales Tax/ VAT, Entry Tax, Central Excise laws, and also, without limitation, the TDS/TCS certificates.

6.16. Upon coming into effect of the Scheme, and with effect from the Appointed Date, the Transferee Company is also expressly permitted to revise its income tax returns and other returns filed under the Tax Laws and to claim refunds,



advance tax including MAT and withholding tax credits, etc., pursuant to the provisions of this Scheme

- 6.17. It is clarified that the taxes paid by the Transferor Company relating to the period on or after the Appointed Date including by way of deduction at source, which pertain to the Transferor Company, will be deemed to be the taxes paid by the Transferee Company and the Transferee Company shall be entitled to claim credit for such taxes deducted / paid against its tax liabilities notwithstanding that the certificates / challans or other documents for payment of such taxes are in the name of the Transferor Company.
- 6.18. Pursuant to the coming into effect of this Scheme with effect from Appointed Date, the Transferee Company shall be entitled to secure the record of the change in the legal ownership upon the vesting of the assets of the Transferor Company, in accordance with the provisions of Sections 230 to 232 of the Act. The Transferor Company and the Transferee Company shall be jointly and severally authorised to execute any writings and / or carry out any formalities or compliance in this regard.
- 6.19. All the licenses, permits, quotas, consents, exemptions, registrations, no-objection certificates, approvals (including, but not limited to, environmental approvals, statutory and regulatory approvals), permissions, registrations and benefits, subsidies, concessions, grants, rights, electricity, gas, water and other service connections, telephone lines, communication facilities, installations, utilities, claims, leases, tenancy rights, liberties, special status and other benefits or privileges enjoyed or conferred upon or held or availed of by the Transferor Company and all rights and benefits that have accrued or which may accrue to the Transferor Company whether before or after the Appointed Date, shall, under the provisions of Sections 230 to 232 of the Act and all other applicable provisions, if any, without any further act, instrument or deed, cost or charge be and stand transferred to and vest in or be deemed to be transferred



to and vested in and be available to the Transferee Company so as to become as and from the Appointed Date the licenses, permits, quotas, consents, exemptions, registrations, no-objection certificates, approvals (including, but not limited to, environmental approvals, statutory and regulatory approvals), permissions, registrations, incentives, accumulated tax losses, tax deferrals and benefits, subsidies, concessions, grants, rights, electricity, gas, water and other service connections, telephone lines, communication facilities, installations, utilities, claims, leases, tenancy rights, liberties, special status and other benefits or privileges of the Transferee Company and shall remain valid, effective and enforceable on the same terms and conditions.

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## 7. ISSUE OF SHARES

7.1. Upon the coming into effect of this Scheme and in consideration for the transfer of and vesting of the assets and liabilities of the Transferor Company into the Transferee Company pursuant to merger, the Transferee Company shall issue and allot at fair values, credited as fully paid up, to the members of the Transferor Company or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of the Transferor Company and approved by them whose names appear in the Register of Members on the Record Date as under:

7.5.

*"1 ("One") Equity Share in Transferee Company of INR 10 ("Indian Rupees Ten") each fully paid up for every 2 ("Two") fully paid up equity shares of INR 10 ("Indian Rupees Ten") each in the Transferor Company".*

*"10 ("Ten") Equity Shares in Transferee Company of INR 10 ("Indian Rupees Ten") each fully paid up for every 108 ("One Hundred and Eight") fully paid up Preference shares of INR 10 ("Indian Rupees Ten") each in the Transferor Company".*



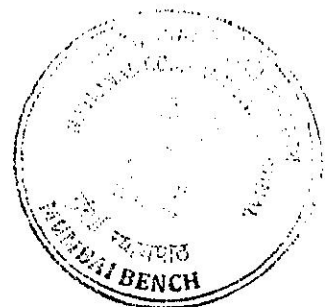
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- 7.2. The Preference shares in the Transferor Company shall not be entitled to any consideration in respect of the total cumulative dividend accrued and unpaid on such Preference shares of the Transferor Company.
- 7.3. The equity shares issued and allotted by the Transferee Company in terms of this Scheme shall rank pari-passu in all respects with the existing equity shares of the Transferee Company.
- 7.4. The consideration in the form of equity shares shall be issued and allotted by the Transferee Company in dematerialized form to all the shareholders of the Transferor Company holding such shares in dematerialized form and in physical form to all those shareholders of the Transferor Company holding such shares in physical form. Further, the Transferee Company shall ensure that the shares so allotted pursuant to this clause are listed on the stock exchanges where existing shares of the Transferee Company are listed.
- 7.5. No shares shall be allotted in respect of fractional entitlements, by DMCC to which the members of BML may be entitled on allotment of shares as per Clause 7.1. The Board of Directors of DMCC shall, instead consolidate all such fractional entitlements and thereupon allot equity shares in lieu thereof to a person authorized by the Board of Directors of DMCC in this behalf who shall hold the shares in trust on behalf of the members of BML entitled to fractional entitlements with the express understanding that person shall sell the same in the market at such time or times and at such price or prices in the market and to such person, as he deems fit, and pay to DMCC, the net sale proceeds thereof, whereupon DMCC shall distribute such net sale proceeds, subject to tax deductions as applicable, to the members of BML in proportion to their respective fractional entitlements.



- 7.6. The equity shares to be issued by the Transferee Company to the equity shareholders of the Transferor Company shall be subject to the Scheme and the Memorandum and Articles of Association of the Transferee Company.
- 7.7. The Transferee Company shall, if necessary and to the extent required, increase its Authorized Share Capital to facilitate issue of equity shares under this Scheme.
- 7.8. It is clarified that no special resolution under Section 42, Section 62 or any other applicable provisions of the Act shall be required to be passed by the Transferee Company separately in a general meeting for issue and allotment of equity shares to the Shareholders of the Transferor Company. The Securities Premium recorded by the Transferee Company on issue of shares under this clause, shall be considered by the Transferee Company for giving effect to provisions of Clause 10 of the Scheme.

8.3.

#### 8. AGGREGATION OF AUTHORISED CAPITAL

- 8.1. The provisions of this Clause shall operate notwithstanding anything to the contrary in any other instrument, deed or writing.
- 8.2. Upon this Scheme becoming effective, the authorised share capital of the Transferee Company shall automatically stand increased without any further act, instrument or deed on the part of the Transferee Company including payment of stamp duty and fees payable to Registrar of Companies, Maharashtra, Mumbai by the authorised share capital of the Transferor Company as on the Effective Date and the Memorandum of Association and Articles of Association of the Transferee Company (relating to the authorized share capital) shall, without any further act, instrument or deed, be and stand

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altered, modified and amended, and the consent of the shareholders to the Scheme shall be deemed to be sufficient for the purposes of effecting this amendment, and no further resolution(s) under the provisions of the Act would be required to be separately passed. For this purpose, the filing fees and stamp duty, if any already paid by the Transferor Company on its authorized share capital shall be utilized and applied to the increased share capital of the Transferee Company, and shall be deemed to have been so paid by the Transferee Company on such combined authorised share capital and accordingly, the Transferee Company shall not be required to pay any fees / stamp duty on the authorised share capital so increased.

- 8.3. Pursuant to the Scheme becoming effective and consequent upon the amalgamation of the Transferor Company into the Transferee Company, the authorised share capital of the Transferee Company will be as under:

Share Capital	Amount
40,000,000 equity shares of Rs.10/- each	400,000,000
2,000,000 preference shares of Rs.100/- each	200,000,000
<b>Total</b>	<b>600,000,000</b>

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- 8.4. It is clarified that no special resolution under Section 13, 14, 61 of the Companies Act, 2013 shall be required to be passed by the Transferee Company separately in a general meeting for increase in authorised share capital or for issue and allotment of equity shares to the shareholders of the Transferor Company pursuant to the Scheme and Clause V of the Memorandum of Association of the Transferee Company shall stand substituted by virtue of the Scheme to read as follows



V. The Authorized Share Capital of the Company is Rs. 60,00,00,000 (Rupees Sixty Crores Only) consisting of 4,00,00,000 Equity Shares of Rs. 10 each and 20,00,000 Preference Shares of Rs. 100 each

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9.3.

with power to increase or reduce the capital for the time being into several classes and to attach thereto respectively such preferential, deferred, qualified or special rights, privileges or conditions as may be determined by or in accordance with the Articles of Association of the Company and to vary, modify or abrogate any such rights, privileges or conditions in such manner as may for the time being be provided by the Articles of Association of the Company.

10.

**9. ACCOUNTING TREATMENT IN THE BOOKS OF THE TRANSFEREE COMPANY ON AMALGAMATION**

10.1

With effect from the Effective Date, the Transferee Company shall follow the accounting treatment for the amalgamation in accordance with provisions of applicable Accounting Standards such that:

10.2

Upon the coming into effect of this Scheme, the Transferee Company shall on the Appointed Date record the assets and liabilities of the Transferor Company at their fair values as determined by the Board of Directors of the Transferee Company. As considered appropriate for the purpose of reflecting the fair value of assets and liabilities of the Transferor Company taken over by the Transferee Company, suitable effect may be given including, but not restricted to, application of relevant accounting policies and methods followed by the Transferee Company.

- 9.1. The Transferee Company shall credit to its equity share capital account, the face value of equity shares issued as per Clause 7.1 of this Scheme.





9.2. The inter-company balances, if any, appearing in the books of accounts of the Transferee Company and the Transferor Company, will stand cancelled.

9.3. The difference being the excess of the fair value of assets and liabilities of the Transferor Company transferred to the Transferee Company, over the fair value of equity shares allotted as per Clause 7.1 and after considering the adjustment mentioned in Clause 9.2 above, would be recorded as Capital Reserve. Shortfall, if any, shall be recorded as Goodwill.

#### 10. REDUCTION OF SECURITIES PREMIUM ACCOUNT AND ADJUSTMENT OF CAPITAL RESERVE

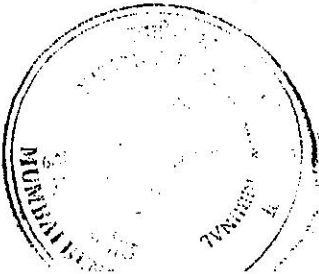
10.1. On the Scheme becoming effective and after giving effect to the provisions of Clause 9, accumulated losses and Deferred Tax Assets as on the Appointed Date in the books of the Transferee Company shall be adjusted against the Capital Reserve (not exceeding Rs.33.63 Crores) and balance against the amount lying in Securities Premium Account.

10.2. The application and reduction of Securities Premium account as per Clause 10.1 above shall be effected as an integral part of the Scheme itself and in accordance with the provisions of Section 66 read with Section 52 and other applicable provisions of the Companies Act 2013 and the order of the Tribunal or any appropriate authority sanctioning the Scheme shall be deemed to be also the order under Section 66 of the Act for the purpose of confirming the reduction of capital. The reduction would not involve either a diminution of liability in respect of unpaid share capital or payment of paid-up share capital and the provisions of Section 66 of the Act will not be applicable.



**11. EMPLOYEES**

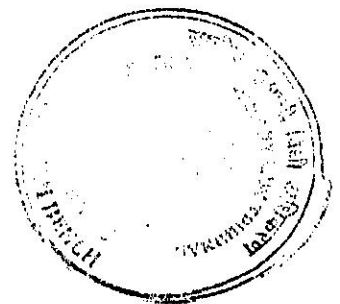
- 11.1. On the Scheme becoming effective, all staff and employees of the Transferor Company, in service on the Effective Date shall be deemed to have become staff and employees of the Transferee Company without any break in their service and on the basis of continuity of service, and the terms and conditions of their employment with the Transferee Company shall not be less favourable than those applicable to them with reference to their employment in the Transferor Company.
- 11.2. It is expressly provided that, on the Scheme becoming effective, the Provident Fund, Gratuity Fund, Superannuation Fund or any other Special Fund or Trusts, if any, created or existing for the benefit of the staff and employees of the Transferor Company or 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 in relation to such Fund or Funds shall become those of the Transferee Company. It is clarified that the services of the staff and employees of the Transferor Company will be treated as having been continuous for the purpose of the said Fund or Funds.
- 11.3. With effect from the date of filing of the Scheme with the Tribunal and up to and including the effective date, the Transferor Company shall not vary the terms and conditions of employment of any of the employees of the Transferor Company except in the ordinary course of business or without the prior consent of Board of Directors of the Transferee Company or pursuant to any pre-existing obligation undertaken by the Transferor Company.



## 12. CONDUCT OF BUSINESS DURING THE TRANSITION PERIOD

### 12.1. During the Transition Period:

- (a) The Transferor Company shall carry on, and be deemed to have carried on the business, operations or activities of the Transferor Company and shall be deemed to have held and stood possessed of and shall hold and stand possessed of all the assets, properties, rights, title, interest, liabilities, authorities, contracts, investments and decisions relating to Transferor Company for and on account of, on behalf of and / or in trust for, the Transferee Company.
- (b) All profits or income accruing or arising to the Transferor Company, or losses arising or expenditure incurred by it (including taxes, if any, accruing or paid in relation to any profits or income), in relation to the Transferor Company, shall for all purposes be treated as, and be deemed to be treated as, the profits or income or losses or expenditure, as the case may be, of the Transferee Company. The Transferor Company shall not incur any expenditure except in the normal course of business.
- (c) Any of the rights, powers, authorities, privileges attached, exercised by the Transferor Company shall be deemed to have been exercised by it for and on behalf of, and in trust for and as an agent of the Transferee Company.
- (d) The Transferor Company shall carry on the business of the Transferor Company with reasonable diligence and business prudence and in the same manner as it had been doing hitherto and shall not in respect of the said undertaking, undertake any additional financial commitments of any nature whatsoever, borrow any amounts or incur any other liabilities or expenditure, issue any additional guarantees, indemnities, letters of comfort or commitment either for itself or on behalf of its subsidiaries or group companies or any third party, or sell, transfer, alienate, charge, mortgage or encumber or deal, except (i) when the same is expressly



provided in this Scheme; or (ii) when the same is in the ordinary course of business as carried on by it as on the date of filing of this Scheme in the Hon'ble Tribunals; or (iii) when a written consent of the Transferee Company has been obtained in this regard.

12.4.

(e) All assets howsoever acquired by the Transferor Company for carrying on the business, operations or activities and the liabilities shall be deemed to have been acquired and are also contracted for and on behalf of the Transferee Company; however no onerous or extraordinary asset shall have been acquired by, or onerous liability be incurred by the Transferor Company after the Appointed Date without prior written consent of the Transferee Company.

(f) The Transferor Company shall not utilize the profits or income, if any, for the purpose of declaring or paying any dividend or for any other purpose in respect of the period falling on and after the Appointed Date, without the prior written consent of the Board of Directors of the Transferee Company.

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12.2. The Transferor Company shall, pending sanction of the Scheme, apply to the Central Government, State Government, and all other agencies, department and statutory authorities concerned, wherever necessary, for such consents, approvals, sanctions, registration, exemptions as may be required / granted under any law for the time being in force which the Transferor Company and the Transferee Company require in relation to the amalgamation of the Transferor Company into the Transferee Company or which the Transferee Company requires to own the Transferor Company and carrying on the Transferor Company on a going concern basis.

12.3. The transfer of assets, properties and liabilities of Transferor Company and the continuance of proceedings relating thereto by or against the Transferor Company shall not affect any transaction or proceedings already concluded by the Transferor Company on or after the Appointed Date to the end and intend

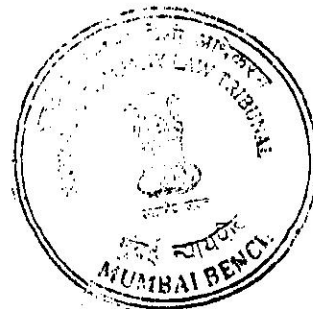


that the Transferee Company accepts and adopts all acts, deeds things done and duly executed by the Transferor Company, in regard thereto as done executed by the Transferee Company on behalf of itself.

12.4. For the sake of clarity, it is confirmed that all assets or investments, properties, right, title or interest acquired by the Transferor Company after the Appointed Date but prior to the Effective Date in relation to the Transferor Company shall also, without any further act, instrument or deed, be and stand transferred to and vested in and be deemed to have been transferred to and vested in the Transferee Company upon the coming into effect of this Scheme pursuant to the provisions of Section 230 to 232 of the Act.

### 13. LEGAL PROCEEDINGS

13.1. If any suit, appeal or other proceedings of whatever nature by or against the Transferor Company is pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of this merger or by anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Company as if the Scheme had not been made. In the event that the legal proceedings referred to herein require the Transferor Company and the Transferee Company to be jointly treated as parties thereto, Transferee Company shall be added as party to such proceedings and shall prosecute and defend such proceedings in co-operation with the Transferor Company. In the event of any difference or difficulty in determining as to whether any specific legal or other proceeding relates to Transferor Company or not, a certificate issued by the Board of Directors of the Transferor Company as to whether such proceeding relates to Transferor Company or not, shall be conclusive evidence of the matter.



13.2. The Transferee Company undertakes to have all legal or other proceedings initiated by or against the Transferor Company referred to in Clause 13.1 above transferred into its name and to have the same continued, prosecuted and enforced by or against the Transferee Company to the exclusion of Transferor Company.

13.3. On and from the Effective Date, the Transferee Company shall, and may, if required, initiate, continue any legal proceedings in relation to the Transferor Company.

#### 14. **CONTRACTS, DEEDS OTHER INSTRUMENTS**

14.1. Subject to the other provisions of the Scheme, all contracts, deeds, bonds, agreements, commitments, understandings, binding arrangements, licences, purchase orders and all other forms of engagements, arrangements and agreements and any offers, tenders or the like and other instruments of whatsoever nature to which the Transferor Company is a party, or the benefit to which the Transferor Company may be eligible, subsisting or operative immediately on or before the Effective Date, of this Scheme entered into by the Transferor Company prior to the Appointed Date and which are in effect (in whole or in part) as at the Appointed Date in accordance with the terms and conditions thereof, and those which are not listed therein but entered into by the Transferor Company between the Appointed Date and the Effective Date shall be in full force and effect against or in favour of the Transferee Company and may be enforced as fully and effectively as if instead of the Transferor Company, the Transferee Company had been a party or beneficiary thereto.



proceedings  
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Transferor

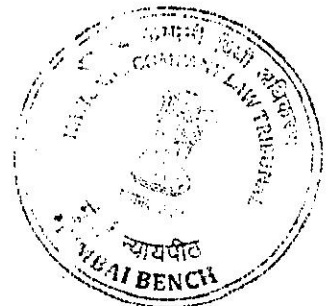
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14.2. Further, without prejudice to the transfer and vesting of the Transferor Company to and in the Transferee Company, the Transferee Company shall be deemed to be authorised to execute any such deeds, writings, assignment and /or novation's or enter into any tripartite arrangements, 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 or at any time after this Scheme becomes effective, if so required or becomes necessary. The contracts entered into by the Transferor Company till the Effective Date shall be vested in the Transferee Company and unless required under such contract, the Transferee Company would not be required to carry out assignment of such contracts with any party whatsoever.

14.3. Pursuant to merger, the Transferee Company shall be deemed to be authorised to bid for any tender of any private entity or any Government or public sector undertaking and to implement to the same extent as it would or might have been carried on by the Transferor Company. For calculating any pre-qualification criteria such as financial, technical, etc. for the Transferor Company, the track record and qualifications of the Transferor Company shall be considered and shall deemed to automatically vest in the Transferee Company pursuant to the Scheme for purpose of such tenders.

14.4. It is hereby clarified that if any contracts, deeds, bonds, agreements, schemes, arrangements or other instruments of whatsoever nature in relation to the Transferor Company to which the Transferor Company is a party, cannot be transferred to the Transferee Company for any reason whatsoever, the Transferor Company shall hold such contracts, deeds, bonds, agreements, schemes, arrangements or other instruments of whatsoever nature in trust for the benefit of the Transferee Company. To the extent permitted under the terms of such contracts, the Transferor Company shall subcontract the same to the Transferee Company. Further, the Transferor Company shall, at its cost



and expense, provide such reasonable assistance as is requested by the Transferee Company to enable it, so far as possible, to make independent arrangements with the other party to such contract including introducing the Transferee Company to the relevant third party.

14.5. If at any time it is identified that the Transferor Company is a party to a contract in respect of any intellectual property right related to the Transferor Company, owned by a third party, which by its terms cannot be assigned to the Transferee Company, the Transferor Company shall (whether and to the extent permitted by the terms of such contract) grant or procure the grant to the Transferee Company of a sub-licence to use and exploit such intellectual property right. When the Transferor Company is not permitted by the terms of such contract to grant a sub-licence to the Transferee Company, the Transferor Company shall, at its cost and expense, provide such reasonable assistance as is requested by the Transferee Company to enable it, so far as possible, to make independent arrangements with the other party to such contract including introducing the Transferee Company to the relevant third party.

14.6. As a consequence of the merger of the Transferor Company into the Transferee Company in accordance with or pursuant to this Scheme, the recording of change in name in the records of the statutory or regulatory authorities from the Transferor Company to the Transferee Company, whether relating to any licence, permit, approval or any other matter, or whether for the purposes of any transfer, registration, mutation or any other reason, shall be carried out by the concerned statutory or regulatory or any other authority.

#### 15. SAVING OF CONCLUDED TRANSACTIONS





The transfer and vesting of businesses and the continuance of proceedings by or against the Transferor Company, to the extent it relates to the Transferor Company above shall not affect any transaction or proceedings already concluded by the Transferor Company on or before the Appointed Date till the Effective Date, to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things done and executed by the Transferor Company in respect thereto as done and executed on behalf of itself.

**16. DISSOLUTION OF THE TRANSFEROR COMPANY**

On the Scheme becoming effective, the Transferor Company shall stand dissolved without being wound-up. Further, on and from the Effective Date, the name of the Transferor Company shall be struck off from the records of the Registrar of Companies, Maharashtra, Mumbai.

**PART III**

**GENERAL CLAUSES, TERMS AND CONDITIONS**

**17. APPLICATION TO THE TRIBUNAL OR SUCH OTHER COMPETENT AUTHORITY**

17.1. The Transferor Company and the Transferee Company shall make all necessary applications / petitions under Sections 230 to 232 read with Section 52 of the Companies Act, 2013 and other applicable provisions of the said Act to the



Tribunal of Mumbai for sanction of this Scheme under the provisions of the law.

19.

**18. MODIFICATION / AMENDMENT TO THE SCHEME**

18.1. Subject to approval of Tribunal, the Transferor Company and the Transferee Company by their respective Board of Directors or any duly authorized committee may make or consent to, on behalf of all persons concerned, any modifications or amendments to the Scheme, or to any conditions or limitations that the Tribunal or any other authority may deem fit to direct or impose, or which may otherwise be considered necessary, desirable or appropriate by the respective Board of Directors or committees, including withdrawal of this Scheme and solve all difficulties that may arise for carrying out the Scheme and do all acts, deeds and things necessary for putting the Scheme into effect. No modification or amendment to the Scheme will be carried out or effected by the Board without approaching the Tribunal.

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18.2. The Transferor Company and the Transferee Company shall be at liberty to withdraw from this Scheme, in case of any condition or alteration imposed by the Honourable Tribunal or any other authority or any bank or financial institution is unacceptable to them or otherwise if so mutually agreed.

18.3. For the purpose of giving effect to this Scheme or to any modification thereof, the Board of Directors of the Transferor Company and the Transferee Company or any other duly authorized committee thereof are authorized severally to give such directions including directions for settling any question of doubt or difficulty that may arise under this Scheme or in regard to and of the meaning or interpretation of this Scheme or implementation thereof or in



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any matter whatsoever connected therewith (including in case of issue and allotment of shares), and such determination or directions, as the case may be, shall be binding on all parties, in the same manner as if the same were specifically incorporated in the Scheme.

19. **CONDITIONALITY OF THE SCHEME**

The Scheme is conditional upon and subject to the following:

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- (a) The Scheme being approved by the respective requisite majorities of the members and/or creditors of the Transferor Company and the Transferee Company as required under the Act and as may be directed by the Honorable Tribunal and / or any other competent authority and it being sanctioned by the Honorable Tribunal and/or any other competent authority, as may be applicable.
  - (b) The requisite sanctions, approvals, no-objections or consents of any governmental or regulatory authority, as may be required by law,
  - (c) The certified copy of the order of the NCLT sanctioning the Scheme, being filed with the Registrar of Companies, Maharashtra at Mumbai, by the Transferor Company and the Transferee Company.

20. **EFFECT OF NON-RECEIPT OF APPROVALS / SANCTIONS**

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(i) In the event of any of the said sanctions and approvals referred to in the preceding Clause 19 not being obtained, or in the event of this Scheme failing to take effect, before March 31, 2018, this Scheme shall stand revoked, cancelled and be of no effect, save and except in respect of any act or deed done prior thereto as is contemplated hereunder or as to any rights and / or liabilities which might have arisen or accrued pursuant thereto and which shall be governed and be preserved or worked out as is specifically provided in the Scheme or as may otherwise arise in law.



**21. BINDING EFFECT:**

Upon the Scheme becoming effective, the same shall be binding on the Transferor Company and the Transferee Company and all concerned parties without any further act, deed, matter or thing.

**22. EXECUTING DEEDS OR ARRANGEMENTS TO GIVE EFFECT TO THE SCHEME :**

The Transferee Company, at any time after the Transition period in accordance with the provisions hereof, if so required under any law or otherwise, will execute deeds of confirmation or other writings or arrangements with any party to any contract or arrangement in relation to the Transferor Company to which any of the Transferor Company is a party in order to give formal effect to the provisions of the Scheme. The Transferee Company shall, under the provisions of this Scheme, be deemed to be authorised to execute any such writings on behalf of the Transferor Company and to carry out or perform all such formalities or compliances, referred to above, on behalf of the Transferor Company.

**23. COSTS**

All costs, charges, taxes including duties, levies and all other expenses, if any (save as expressly otherwise agreed), incurred in carrying out and implementing this Scheme and matters incidental thereto, shall be borne by the Transferee Company.

**24. SEVERABILITY**



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If any part of this Scheme 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 this Scheme and this 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 Transferor Company and the Transferee Company (acting through their respective Boards of Directors) shall attempt to bring about appropriate modification to this Scheme, as will best preserve for the Parties, the benefits and obligations of this Scheme, including but not limited to such part.

Verified True Copy  
copy made "at cost"  
On 10/11/2017

  
Deputy Director  
National Company Law Tribunal, Mumbai Bench



BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH  
COMPANY SCHEME PETITION NO 853 OF 2017  
CONNECTED WITH  
COMPANY SCHEME APPLICATION NO 730 OF 2017.

In the matter of the Companies Act, 2013;

AND

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

AND

In the matter of Scheme of Arrangement between Borax Morarji Limited ('the Transferor  
Company') and The Dharamsi Morarji Chemical Company Limited ('the Transferee  
Company') and their respective shareholders

CERTIFIED COPY OF THE ORDER DATED 18<sup>th</sup>  
OCTOBER 2017 AND THE SCHEME ANNEXUED  
TO THE PETITION

**The Dharamsi Morarji Chemical Company Limited**

..... **The Petitioner Company**



**HEMANT SETHI & Co**  
**ADVOCATES FOR THE PETITIONER**