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National Company Law Tribunal
New Delhi

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

NEW DELHI

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

COMPANY PETITION NO. 21 OF 2016

CONNECTED WITH

COMPANY APPLICATION (MAIN) NO. 179 OF 2015

(TRANSFERRED FROM THE FILE OF HON'BLE HIGH COURT OF DELHI)

IN THE MATTER OF SECTION 391 & 394 OF

THE COMPANIES ACT, 1956

(PRESENTLY SECTIONS 230-232 OF THE COMPANIES ACT, 2013)

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT

AMONGST

JYOTI KNITS PRIVATE LIMITED

Company Incorporated under Companies Act, 1956
Having registered office at:
40-41, Community Centre, New Friends Colony

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New Delhi-110025 ...TRANSFEROR/ PETITIONER NO.1 COMPANY

AND

MAYUR KNITS PRIVATE LIMITED
Company Incorporated under Companies Act, 1956
Having registered office at:
40-41, Community Centre, New Friends Colony
New Delhi-110025 ...TRANSFEROR / PETITIONER NO.2 COMPANY

AND

ESSAY MARKETING COMPANY LIMITED
Company Incorporated under Companies Act, 1956
Having registered office at:
40-41, Community Centre, New Friends Colony
New Delhi-110025 ...TRANSFEROR / PETITIONER NO.3 COMPANY

AND

RAGHAV KNITS AND TEXTILES PRIVATE LIMITED
Company Incorporated under Companies Act, 1956
Having registered office at:
40-41, Community Centre, New Friends Colony
New Delhi-110025 ...TRANSFEROR / PETITIONER NO.4 COMPANY

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AND

ARSHIA TRADE MART PRIVATE LIMITED
Company Incorporated under Companies Act, 1956
Having registered office at:
40-41, Community Centre, New Friends Colony
New Delhi-110025 ...TRANSFEROR / PETITIONER NO.5 COMPANY

WITH

AGARWAL FINESTATE PRIVATE LIMITED
Company Incorporated under Companies Act, 1956
Having registered office at:
40-41, Community Centre, New Friends Colony
New Delhi-110025 ... TRANSFEREE / PETITIONER NO.6 COMPANY

AND

Their respective Shareholders and Creditors

ADVOCATE FOR THE PETITIONERS: Mr. Anil Goel, Advocate

FOR REGIONAL DIRECTOR, (NR), MCA: Mr. Manish Raj, Company Prosecutor

FOR OFFICIAL LIQUIDATOR: Ms. Chetana Kandpal, Company Prosecutor, Office of Official Liquidator, Delhi

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ORDER

Order Delivered on:
11.10.2017

1. This petition filed by the companies above named is coming up finally before us on 10.08.2017 for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of amalgamation of the Transferor/ Petitioner Companies No.1 to 5 with the Transferee/ Petitioner Company No.6. A perusal of the petition discloses that initially the application seeking the dispensation of the meetings of equity shareholders, secured and unsecured creditors were filed before the Hon'ble High Court of Delhi in CA (M) 179/2015. The Hon'ble High Court of Delhi vide its order dated 23rd December, 2015, was pleased to dispense with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the Petitioner Companies in view of their consents having been obtained and produced before it or there was none therefore the necessity of convening the meeting did not arise as the case may be.

2. Under the circumstances, the petitioners have filed their joint petitions for sanction of the Scheme of Arrangement before the Hon'ble High Court of Delhi under the erstwhile provisions, subsequent to the order of dispensation of the meeting ordered by the Hon'ble High Court of Delhi on 23rd December, 2015.

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3. On 13.01.2016 the Hon'ble High Court of Delhi ordered Notice in the Second Motion petition in C.P. No.21/2016 moved by the petitioners under Sections 391 to 394 of the Companies Act, 1956 read with relevant Rules of the Companies (Court) Rules, 1959 in connection with the scheme of amalgamation, to the Registrar of Companies, Regional Director and the Official Liquidator. The Petitioners were also directed vide said order to carry out publication in the newspapers "Business Standard" in English (Delhi Edition) and in Hindi (Delhi Edition).

4. While the joint petition in C.P.No. 21 of 2016 was pending disposal since the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 had been notified w.e.f. 15.12.2016 wherein the power to consider such schemes have now been vested with the National Company Law Tribunal, the Hon'ble High Court of Delhi pursuant to the notification bearing No. DL.33004/99 dated 7.12.2016 issued by the Ministry of Corporate Affairs has transferred/transmitted the records of the above petition to this Tribunal vide order dated 27.02.2017, for our consideration.

5. In view of the above, the petition of Second Motion as above filed by the petitioners jointly before the Hon'ble High Court and subsequently transferred is taken up for final consideration by us. The petitioners, it is seen from the records have filed an affidavit dated 19.04.2016 in relation to the compliance of the orders passed by the Hon'ble High Court of Delhi dated 13.01.2016 and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the Hon'ble High Court of Delhi in one issue of the 'Business Standard' in English edition and

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'Hindi edition on 14.04.2016. Further, it has also been stated by the Learned Counsel for the Petitioner Companies that notices have been issued to the Regional Director, Northern Region as well as to the Official Liquidator attached to the High Court, Delhi in compliance with the order dated 13.01.2016 and in proof of the same acknowledgement made by the respective offices have also been enclosed.

6. Further, it is also seen that pursuant to the directions from Regional Director, Northern Region, a copy of the Company Petition has also been served on the jurisdictional Income Tax Officer of the Petitioner Companies. The representative of the Official Liquidator has filed an affidavit dated 21.04.2016 stating that the office of Official Liquidator does not have any objection to the scheme being approved. Further, Regional Director, Northern Region has also filed the Affidavit dated 22.04.2016 before the Hon'ble High Court, New Delhi and have stated that there is no objection to the sanction of the Scheme. However Regional Director has stated in the affidavit of his that the Registrar of Companies has made few observations in para 7 which is to the following effect:

> *"Para 7*
> *It has been mentioned in para 5.3 of the scheme that all debts, liabilities, duties and obligations of the Transferor Companies shall without any further act or deed be and stand transferred to the transferee Company. All inter se loans between the Transferor Companies and the Transferee Company, if any, shall stand nullified. All other loans (except the loans from Anderson Dealtrade Pvt Ltd and Agarwal Trademart Private Limited) shall*

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be converted into the equity shares of face value of Rs. 10 each/- of Transferee Company. In this regard it is submitted that the proposed scheme of Arrangement neither disclosed the parties/ lenders interested in the said debt restructuring nor the petitioners have submitted any resolution/ agreement entered into between the petitioners and such lenders.

7. In response to this observation the petitioner companies have filed affidavit dated 7th May, 2016 stating that the observation of Registrar of Companies is not correct as all the parties/ lenders whose loan shall get converted into equity shares on approval of the scheme have already given their respective consents to the scheme of Arrangement supported by their respective board resolutions.

8. Further observation made in para 7 (ii) is that AOC-4 filed by the Transferee Company shows that the Transferee Company is an NBFC and also Balance Sheet of the Transferor Companies shows that all these companies are engaged in investment and/ or granting loans and advances so they should be asked whether they are an NBFC and if so whether they have acquired the prior permission of RBI.

9. In response to this observation, the petitioner companies has submitted that they admit that Transferee Company is an NBFC duly registered with RBI and RBI vide its letter dated 10th April, 2017 has given the permission to the Transferee Company for scheme of Amalgamation with Non-NBFC five petitioner Companies.

Hence the observations of the RD in the above circumstances does not carry much conviction and hence are not treated as material and the above undertaking given by the Petitioner Companies are taken on record and the said objection is closed.

10. A perusal of the representation of Regional Director shows that notice to the Principal Commission of Income Tax, Delhi had been duly sent and that no specific comments/ observation have been received raising any objections to the scheme for which sanction is sought presently.

11. That the Petitioner Companies have complied with proviso to Section 230 (7) proviso/ Section 232 (3) by filing the certificate of the Company's Auditor's.

12. The counsel for Petitioners have filed an affidavit dated 23.04.2016 stating that they have not received any objections from third party and public at large for the purpose of

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sanction to the present Scheme of Amalgamation. The above statement is taken on record. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation annexed as Annexure –A-2 with the Company Petition as well as the prayer made therein.

13. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

14. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER

(1) That all the property, rights and powers of the Transferor Companies be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and vest in the Transferee company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same; and

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(2) That all the liabilities and duties of the Transferor Companies be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company; and

(3) That all proceedings now pending by or against the Transferor Companies be continued by or against the Transferee company; and

(4) That as per clause 7 of the scheme, all the employees of the Transferor Companies in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service.

(5) That the Transferee Company do without further application allot to the persons entitled of the Transferor Company, as have not given such notice of dissent, as is required by clause 6 of the SCHEME OF AMALGAMATION herein the shares in the transferee company to which they are entitled under the said SCHEME OF AMALGAMATION;

(6) That Transferor Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on the file kept by him in relation to the Transferee

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company and the files relating to the said both companies shall be consolidated accordingly;

(7) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

Sd/- 11/10/17

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta

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Premchand 16/10/17

प्रेमचन्द / Prem Chand
सहायक निदेशक / Assistant Director
राष्ट्रीय कम्पनी विधि अधिकरण / National Company law Tribunal
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Annexure-A2

(61)

SCHEME OF ARRANGEMENT

BETWEEN

JYOTI KNITS PRIVATE LIMITED

(The Transferor Company No. 1)

MAYUR KNITS PRIVATE LIMITED

(The Transferor Company No. 2)

ESSAY MARKETING COMPANY LIMITED

(The Transferor Company No. 3)

RAGHAV KNITS & TEXTILES PRIVATE LIMITED

(The Transferor Company No. 4)

ARSHIA TRADE MART PRIVATE LIMITED

(The Transferor Company No. 5)

..... TRANSFEROR COMPANIES

AND

AGARWAL FINESTATE PRIVATE LIMITED

(The Transferee Company)

AND

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For Jyoti Knits Private Limited
Director / Authorised Signatoy

For Mayur Knits Pvt. Ltd.
Director / Authorised Signatoy

For Essay Marketing Company Ltd.
Director / Authorised Signatory

For Raghav Knits And Textiles Pvt. Ltd.
Director / Authorised Signatoy

For Arshia Trade Mart Pvt. Ltd.
Director/Authorised Signatory

For Agarwal Finestate Pvt. Ltd
Director/Authorised Signatory

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Under Sections 391 to 394 of the Companies Act 1956

This Scheme of Arrangement is presented under sections 391 to 394, and other applicable provisions, if any, of the Companies Act, 1956 for the Amalgamation of the JYOTI KNITS PRIVATE LIMITED, MAYUR KNITS PRIVATE LIMITED, ESSAY MARKETING COMPANY LIMITED, RAGHAV KNITS & TEXTILES PRIVATE LIMITED and ARSHIA TRADE MART PRIVATE LIMITED with AGARWAL FINESTATE PRIVATE LIMITED and the conversion of their unsecured loans into the equity shares of the AGARWAL FINESTATE PRIVATE LIMITED.

The Scheme is divided into following parts:

(i) **Part A-** Deals with Definitions;

(ii) **Part B-** Deals with the Amalgamation of JYOTI KNITS PRIVATE LIMITED, MAYUR KNITS PRIVATE LIMITED, ESSAY MARKETING COMPANY LIMITED, RAGHAV KNITS & TEXTILES PRIVATE LIMITED and ARSHIA TRADE MART PRIVATE LIMITED with AGARWAL FINESTATE PRIVATE LIMITED and the conversion of their unsecured loans into the equity shares of the AGARWAL FINESTATE PRIVATE LIMITED.

(ii) **Part C-** Deals with General Terms and Conditions.

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For Jyoti Knits Private Limited
Director / Authorised Sigatoy

For Mayur Knits Pvt. Ltd.
Director / Authorised Sigatoy

For Essay Marketing Company Ltd.
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Director / Authorised Sigatoy

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Director/Authorised Signatory

For Agarwal Finestate Pvt. Ltd
Director/Authorised Signatory

PART A

1 DEFINITIONS

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

1.1 "**Act**" means the the Companies Act, 1956 (1 of 1956) and the Rules made thereunder and the applicable provisions of the Companies Act, 2013 (18 of 2013) and the Rules made thereunder.

1.2 "**Appointed Date**" means the 1st day of April, 2015 or such other date as the Hon'ble High Court may direct / fix.

1.3 "**Effective Date**" means the later of the dates on which certified copy(ies) of the Order(s) of the Hon'ble High Court of Delhi, at New Delhi or National Company Law Tribunal, as the case may be, vesting the assets, properties, liabilities, rights, duties, obligations and the likes of the Transferor Companies in the Transferee Company is/are filed with the Registrar of Companies, NCT of Delhi & Haryana, New Delhi after obtaining all other consents, approvals, permissions, resolutions, agreements, sanctions and orders necessary thereto.

1.4 "**High Court**" means the Hon'ble High Court of Delhi at New Delhi to which this Scheme of Arrangement in its present form is to be submitted for sanctioning of the Scheme under Sections 391 to 394 of the Act, and shall include the National Company Law Tribunal, if applicable.

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1.5 **"Scheme"** or **"the Scheme"** or **"this Scheme"** means this Scheme of Arrangement in its present form or with any modification(s) made under Clause 5 Part B of this Scheme and as approved or directed by the Hon'ble High Court of Delhi or any other appropriate authority.

1.6 **"Shareholders"** with reference to the Transferor Companies means person(s) holding equity shares in the Transferor Companies and whose names are entered and registered as members in the Register of members of the said Company, AND with reference to the Transferee Company means persons holding equity shares in the Transferee Company and whose names are entered and registered as members in the Register of members of the said Company.

1.7 **"The Transferor Company No. 1" or "JKPL"** shall mean JYOTI KNITS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its Registered Office at 40-41, Community Centre, New Friends Colony, New Delhi-110025.

1.8 **"The Transferor Company No. 2" or "MKPL"** shall mean MAYUR KNITS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its Registered Office at 40-41, Community Centre, New Friends Colony, New Delhi-110025.

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1.9 **"The Transferor Company No. 3" or "EMCL"** shall mean ESSAY MARKETING COMPANY LIMITED, a company incorporated under the Companies Act, 1956 and having its Registered Office at 40-41, Community Centre, New Friends Colony, New Delhi-110025.

1.10 **"The Transferor Company No. 4" or "RKTPL"** shall mean RAGHAV KNITS & TEXTILE PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its Registered Office at 40-41, Community Centre, New Friends Colony, New Delhi-110025.

1.11 **"The Transferor Company No. 5" or "ATMPL"** shall mean ARSHIA TRADE MART PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its Registered Office at 40-41, Community Centre, New Friends Colony, New Delhi-110025.

1.12 **"The Transferee Company" or "AFPL"** shall mean AGARWAL FINESTATE PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its Registered Office at 40-41, Community Centre, New Friends Colony, New Delhi-110025.

1.12 **"The Transferor Companies"** shall mean JKPL, MKPL, EMCL, RKTPL and ATMPL collectively.

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1.13 **"Transferred Undertakings of a Transferor Company"** shall mean and include all of the undertakings of a Transferor Company and shall mean and include the following as on the Appointed Date: -

(a) All the present and future assets including freehold and/ or leasehold immovable assets and movable assets together with all investments, all present and future liabilities and debts and undertakings of the Transferor Company, as per the records of Transferor Company;

(b) All licenses, approvals, permissions, consents, registrations and certifications, rights, entitlements, agreements and all other rights and facilities of every kind, nature and description whatsoever of Transferor Company.

(c) All application monies, advance monies, earnest monies and/or security deposits paid, payments against other entitlements of the Transferor Company;

(d) All the debts, liabilities, duties, responsibilities and obligations of Transferor Company;

(f) All present and future investments including long term, short term, quoted, unquoted investments in different instruments including shares, debentures, units, warrants, bonds etc. as per the records of the Transferor Company.

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2. BENEFITS OF SCHEME OF ARRANGEMENT

2.1 The proposed Scheme will result in formation of a larger Company enabling further growth and development of the businesses of the said Companies. The Scheme will enable the undertakings and business of the said Companies to obtain greater facilities possessed and enjoyed by one large Company compared to various small Companies for raising capital, securing and conducting trade and business on favourable terms and other related benefits.

2.2 The Scheme will enable the Companies concerned to rationalize and streamline their management, businesses and finances and lead to a better economic control, over the running and management of the businesses and undertakings of the said Companies.

2.3 The businesses of the Transferor Companies and the Transferee Company could be combined conveniently and advantageously and in such a manner so as to take up the activities, which will relate more to the business of the Transferee Company.

2.4 The Scheme will result in reduction of overheads and other expenses, reduction in administrative and procedural work, eliminate duplication of work, transaction cost, better and more productive utilization of various

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resources and will enable the undertakings concerned to effect internal economies and optimize productivity.

2.5 The Scheme will contribute in furthering and fulfilling the objects of the Companies concerned and enabling the optimum growth and development of their combined businesses.

2.6 With the enhanced capabilities and resources at its disposal, the Amalgamated Company will have greater flexibility to market and meet customer needs and will be able to compete more effectively. Thus, further strengthening its market position.

2.7 The amalgamation will enable the Companies to pool in their financial, managerial, technical and other resources and use the financial, managerial, technical, and marketing and distribution expertise of each other.

3. Share capital

3.1 The capital structure of the Transferee Company (AFPL) as on 31st March, 2015, is as follows:

Particulars	Amount (In Rs.)
Authorised Capital	
10,00,000 Equity Shares of Rs. 10/- each	1,00,00,000

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Total	1,00,00,000
Issued, Subscribed and Paid-up capital	
8,03,020 Equity Shares of Rs.10/- each fully paid-up	80,30,200
Total	80,30,200

Subsequent to 31-03-2015, there is no change in the share capital.

3.2 The capital structure of the Transferor Company No. 1 (JKPL) as at 31st March, 2015 is as follows:

Particulars	Amount (In Rs.)
Authorised Capital	
250,000Equity Shares of Rs.10/- each	2,500,000
Total	2,500,000
Issued, Subscribed and Paid-up capital	
245,020 Equity Shares of Rs.10/- each fully paid-up	2,450,200
Total	2,450,200

Subsequent to 31-03-2015 there is no change in the share capital.

3.3 The capital structure of the Transferor Company No. 2 (MKPL) as at 31st March, 2015 is as follows:

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Particulars	Amount (In Rs.)
Authorised Capital	
1,000,000Equity Shares of Rs.10/- each	10,000,000
Total	10,000,000
Issued, Subscribed and Paid-up capital	
999,520 Equity Shares of Rs.10/- each fully paid-up	9,995,200
Total	9,995,200

Subsequent to 31-03-2015 there is no change in the share capital.

3.4 The capital structure of the Transferor Company No. 3 (EMCL) as at 31st March, 2015 is as follows:

Particulars	Amount (In Rs.)
Authorised Capital	
500,000Equity Shares of Rs.10/- each	5,000,000
Total	5,000,000
Issued, Subscribed and Paid-up capital	
480,070 Equity Shares of Rs.10/- each	4,800,700

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Director/Authorised Signatory

fully paid-up	
Total	4,800,700

Subsequent to 31-03-2014 there is no change in the share capital.

3.5 The capital structure of the Transferor Company No. 4 (RKTPL) as at 31st March, 2015 is as follows:

Particulars	Amount (In Rs.)
Authorised Capital	
250,000Equity Shares of Rs.10/- each	2,500,000
Total	2,500,000
Issued, Subscribed and Paid-up capital	
245,020 Equity Shares of Rs.10/- each fully paid-up	2,450,200
Total	2,450,200

Subsequent to 31-03-2015 there is no change in the share capital.

3.6 The capital structure of the Transferor Company No. 5 (ATMPL) as at 31st March, 2015 is as follows:

Particulars	Amount (In Rs.)
Authorised Capital	
50,000 Equity Shares of Rs.10/- each	500,000

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Total	500,000
Issued, Subscribed and Paid-up capital	
10000 Equity Shares of Rs.10/- each fully paid-up	100,000
Total	100,000

Subsequent to 31-03-2015 there is no change in the share capital.

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

The Scheme set out herein in its present form or with any modification(s) as approved, imposed or directed by the High Court of Judicature at Delhi, shall be operative from the Appointed Date mentioned herein but shall be effective from the Effective Date.

PART B

AMALGAMATION OF JYOTI KNITS PRIVATE LIMITED, MAYUR KNITS PRIVATE LIMITED, ESSAY MARKETING COMPANY LIMITED, RAGHAV KNITS & TEXTILES PRIVATE LIMITED AND ARSHIA TRADE MART PRIVATE LIMITED WITH AGARWAL FINESTATE PRIVATE LIMITED AND THE CONVERSION OF THEIR UNSECURED LOANS INTO THE EQUITY SHARES OF THE AGARWAL FINESTATE PRIVATE LIMITED

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5 TRANSFER AND VESTING OF UNDERTAKING

5.1 Upon the coming into effect of the Scheme and with effect from the Appointed Date and subject to the provisions of the Scheme, the entire business and whole of the undertaking of the Transferor Companies as a going concern including all the debts, liabilities, duties and obligations and also including, without limitation, all properties and assets (whether movable or immovable, tangible or intangible, real or personal, corporeal or incorporeal of whatsoever nature and wherever situated belonging to or in the ownership, power or possession and / or in the control of or vested in or granted in favour of or enjoyed by the Transferor Companies) such as industrial and other licences, permits, quotas, approvals, import entitlements, excise licence and registrations, lease, tenancy rights in relation to office and residential properties, permissions, investments, buildings, plant and machinery, office equipments, vehicles, incentives if any, and all other rights, title, interest labels and brand registrations, copyrights, patents, trademarks, trade names and other industrial or intellectual property rights of any nature whatsoever, contracts, agreements, consent, approvals or powers of every kind nature and description whatsoever shall under the provisions of Sections 391 to 394 of the Act and pursuant to the orders of the High Courts sanctioning this

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Scheme and without further act, instrument or deed, but subject to the charges affecting the same as on the Effective Date, be transferred and/or deemed to be transferred to and vested in AFPL so as to become the properties and assets of AFPL.

5.2 All statutory licences, permissions, approvals or consents to carry on the operations of the Transferor Companies shall stand vested in or transferred to AFPL without any further act or deed and shall be appropriately mutated by the statutory authorities concerned in favour of AFPL upon the vesting and transfer of the Undertakings of the Transferor Companies pursuant to this Scheme. The benefit of all statutory and regulatory permissions, factory licences, environmental approvals and consents, sales tax registrations or other licences and consents shall vest in and become available to AFPL pursuant to this Scheme. In so far as the various incentives, subsidies, rehabilitation schemes, special status and other benefits or privileges enjoyed, granted by any Government body, local authority or by any other person, or availed of by Transferor Companies, as the case may be, are concerned, the same shall vest with and be available to AFPL on the same terms and conditions.

Provided that notwithstanding anything contained in any document, papers or writings executed by Transferor Companies, this Scheme shall

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not operate to enlarge the security for any loan, deposit or facility created by or available to Transferor Companies which shall vest in AFPL by virtue of the Scheme and AFPL shall not be obliged to create any further, or additional security therefore as a condition for approval of the Scheme, after the Scheme has become effective or otherwise.

5.3 All debts, liabilities, duties and obligations of the Transferor Companies shall, without any further act or deed be and stand transferred to the Transferee Company. All inter se loans between the Transferor Companies and the Transferee Company, if any, shall stand nullified. All other loans (except the loans from Anderson Dealtrade Pvt. Ltd. and Agarwal Trademart Pvt. Ltd.) shall be converted into the equity shares of face value of Rs. 10/- each of Transferee Company. The equity shares of the Transferee Company have been valued, as on March 31, 2015 at Rs. 29.64 per share pursuant to the valuation report received from the Chartered Accountant and accordingly the conversion of loan into equity shares would take place at a value of Rs. 29.64 per share. Any fraction of shares, if any, will be rounded off to the nearest whole numbers.

5.4 This Part B of the Scheme has been drawn up to comply with the conditions relating to "Amalgamation" as specified under section 2(1B) of the Income-tax Act, 1961. If any terms or provisions of the Scheme are

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found or interpreted to be inconsistent with the provisions of the said section 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.

5.5 With effect from the Effective Date and subject to any corrections and adjustments as may, in the opinion of the Board of Directors of the Transferee Company be required, the reserves of the Transferor Companies will be merged with those of the Transferee Company in the same form as they appeared in the financial statements of the Transferor Companies. In other words, the identity of the reserves of the Transferor Companies will be preserved at the hands of the Transferee Company.

5.6 Any inter se contracts between the Transferor Companies and the Transferee Company shall stand adjusted and vest in the Transferee Company upon the sanction of the Scheme and upon the Scheme becoming effective.

5.7 The transfer and vesting of the Undertakings of the Transferor Companies as specified in above points shall not affect any transaction or proceeding

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already concluded by the Transferor Companies in the ordinary course of business on and after the Appointed Date to the end and intent that the Transferee Company accepts on behalf of itself all acts, deeds and things done and executed and all transactions or proceedings already concluded by the Transferor Companies.

5.8 The transfer referred in para 5.1 above shall be carried out as follows:

(i) All the movable assets of the Transferor Companies, including furniture and fixtures, vehicles, computers and printers, office equipments, cash on hand, etc. shall be physically handed over by manual delivery (together with duly executed transfer forms or other documents as may be required) to AFPL along with such other documents as may be necessary to the end and intent that the property therein passes to AFPL on such delivery.

(ii) In respect of movable assets, other than those specified in sub-clause (i) above, including sundry debtors, outstanding loans, recoverable in cash or in kind or value to be received, bank balance and deposits the following modus operandi shall be followed:

The Transferor Companies shall give notice in such form as it may deem fit and proper to each party, debtors or depositee as the case may be, that pursuant to the High Court or such other competent

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authority, as may be applicable, having sanctioned the Scheme, the said debt, loan, advances etc., be paid or made good or held on account of AFPL as the persons entitled thereto, to the end and intent that the right of the Transferor Companies to recover or realize the same stands extinguished. AFPL may, if required, give notice in such form as it may deem fit and proper to each person, debtor or depositee pursuant to High Court or such other competent Authority as may be applicable, having sanctioned the Scheme, the said person, debtor or depositee should pay the debt, loan or advance or make good the same or hold the same to its account and that the right of AFPL to recover or realize the same is in substitution of the right of the Transferor Companies.

6. CONSIDERATION

6.1 Based on the valuation report determining the share exchange ratio for the Scheme and upon coming into effect of the Scheme, and in consideration for the transfer of and vesting of the assets and liabilities of the Transferor Companies in AFPL, AFPL shall, (subject to Clauses 6.2 and 6.3) without any further act or deed and without the surrender of share certificates of the Transferor Companies, but subject to necessary approvals, if any, being granted, issue and allot equity shares to the extent indicated below, to the members of the Transferor Companies, holding

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fully paid-up shares and whose names appear in the Register of Members of Transferor Companies or other legal representatives or other successors in title as may be recognized by the board of directors of the AFPL in the following proportion viz.:

For every 100 equity shares of Rs.10/- each fully paid up of JKPL (Transferor Company No. 1), 313 equity Shares of Rs.10/- each fully paid up of AFPL (Transferee Company).

For every 100 equity shares of Rs.10/- each fully paid up of MKPL (Transferor Company No. 2), 48 equity Shares of Rs.10/- each fully paid up of AFPL (Transferee Company).

For every 100 equity shares of Rs.10/- each fully paid up of EMCL (Transferor Company No. 3), 286 equity Shares of Rs.10/- each fully paid up of AFPL (Transferee Company).

For every 100 equity shares of Rs.10/- each fully paid up of RKTPL (Transferor Company No. 4), 132 equity Shares of Rs.10/- each fully paid up of AFPL (Transferee Company).

For every 100 equity shares of Rs.10/- each fully paid up of ATMPL (Transferor Company No. 5), 58 equity Shares of Rs.10/- each fully paid up of AFPL (Transferee Company).

Equity shares allotted by AFPL under this Scheme shall be hereinafter referred to as "**New Equity Shares**".

6.2 All inter-se shareholding of the Transferor Companies shall also stand cancelled. Upon New Equity Shares being issued and allotted by AFPL to the shareholders of the Transferor Companies, in accordance with Clause

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6.1, the share certificates in relation to the shares held by the said shareholders in the Transferor Companies shall be deemed to have been cancelled and extinguished and be of no effect on and from such issue and allotment.

6.3 No fractional shares shall be issued by the Transferee Company in respect of the fractional entitlements, if any, to which the members of the Transferor Companies may be entitled on issue and allotment of the New Equity Shares of the Transferee Company. The Directors of the Transferee Company shall instead consolidate all such fractional entitlements to which the members of the Transferor Companies may be entitled on issue and allotment of New Equity Shares as aforesaid and thereupon issue and allot Equity Shares in lieu thereof to a Director or an Officer of the Transferee Company on the express understanding that he shall sell the same in the market at the best available price and pay to the Transferee Company, the net sale proceeds thereof, whereupon, the Transferee Company shall distribute such net sale proceeds to the members of the Transferor Companies in proportion to their fractional entitlements.

6.4 The issue and allotment of New Equity Shares to the members of Transferor Companies, as provided in the Scheme, shall be deemed to be

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made in compliance with the procedure laid down under section 81(1A) and any other provisions of the Act, to the extent applicable.

6.5 AFPL shall, if and to the extent required, apply for and obtain any approvals from concerned regulatory authorities for the issue and allotment by AFPL of New Equity Shares to the members of the Transferor Companies under the Scheme.

6.6 The New Equity Shares to be issued to the members of the Transferor Companies under Clause 6.1 shall be subject to the Memorandum and Articles of Association of AFPL and shall rank pari passu with the existing equity shares of AFPL in all respects including dividend.

6.7 The present authorized capital of Transferor Companies shall be merged with the authorized capital of AFPL without any further action or deed and AFPL will, if necessary, further increase its Authorised Share Capital to facilitate the issue and allotment of its shares to Transferor Companies as provided hereinbefore.

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7 STAFF, WORKMEN & EMPLOYEES

7.1 On the Scheme becoming operative, all staff, workmen and employees of the Transferor Companies in service on the Effective Date shall be deemed to have become staff, workmen and employees of AFPL with

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effect from the Appointed Date without any break in their service and on the basis of continuity of service, and the terms and conditions of their employment with AFPL shall not be less favourable than those applicable to them with reference to the Transferor Companies.

7.2 As far as the Provident Fund, Gratuity Fund, Superannuation Fund or any other special fund created or existing for the benefit of such permanent employees of the Transferor Companies are concerned, on and from the Effective Date, AFPL shall stand substituted for the Transferor Companies for all the purposes whatsoever related to administration or operation of such Funds in accordance with provisions of such Funds according to the terms provided in the respective trust deeds or other documents. It is the aim and intent that all the rights, duties, powers and obligations of the Transferor Companies in relation to such Funds shall become those of AFPL. It is clarified that the services of such permanent employees of the Transferor Companies will be treated as having been continuous and not interrupted for the purposes of such Funds.

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8 LEGAL PROCEEDINGS

8.1 If any suit, appeal or other proceeding of whatever nature by or against the Transferor Companies is pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of the

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arrangement by anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against AFPL 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 Companies as if this Scheme had not been made.

8.2 The transfer of the entire business and the undertaking of the Transferor Companies to AFPL and the continuance of all contracts or proceedings by or against the Transferor Companies shall not affect any contracts or proceedings already concluded by the Transferor Companies on or after the Appointed Date to the end and intent that AFPL accepts and adopts all acts, deeds, matters and things done and/or executed by the Transferor Companies in regard thereto as having been done or executed on behalf of AFPL.

9. CONTRACTS, DEEDS AND OTHER INSTRUMENTS

Subject to the other provisions of the Scheme, all contracts, deeds, bonds, agreements for tenancies, arrangements and other instruments of whatsoever nature to which the Transferor Companies is/are a party, the benefit to which the Transferor Companies is/may be eligible, subsisting or operative in Transferor Companies on or before the Effective Date, shall be in full force and effect against or in favour of

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AFPL and may be enforced as fully and effectively as if instead of the Transferor Companies, AFPL had been a party or beneficiary thereto from inception. AFPL shall enter into and/or issue and/or execute deeds, writings or confirmation or enter into any tripartite agreement, confirmations or novations to which the Transferor Companies will, if necessary, also be a party in order to give formal effect to the provisions of this Scheme, if so required or becomes necessary. Further, AFPL shall be deemed to be authorised to execute any such deeds, writings or confirmations on behalf of the Transferor Companies and to implement or carry out all formalities required on the part of the Transferor Companies to give effect to the provisions of this Scheme.

10. TRANSACTIONS BETWEEN APPOINTED DATE AND EFFECTIVE DATE

10.1 With effect from the Appointed Date and upto the Effective Date,

i) Transferor Companies shall carry on and be deemed to have carried on their business and activities and shall be deemed to have held and stood possessed of and shall hold and stand possessed of their entire business and undertakings for and on account of and in trust for AFPL;

ii) all the profits or income accruing or arising to the Transferor Companies or expenditure or losses incurred by the Transferor Companies shall, for

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all purposes be treated and deemed to be the profits or income or expenditure or losses (as the case may be) of AFPL;

iii) shall not vary the terms and conditions of the employment of their employees except in the ordinary course of business;

iv) shall not, without the written consent of the Transferee Company, undertake any new business;

v) Transferor Companies shall carry on their business and activities with reasonable diligence and business prudence and shall not venture into/expand any new businesses, alienate, charge, mortgage, encumber or otherwise deal with the significant assets or any part thereof except in the ordinary course of business without the prior written consent of AFPL.

vi) Transferor Companies 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 AFPL;

vii) Transferor Companies shall not without the prior written consent of AFPL, except as contemplated under the Scheme, issue or allot any further securities, either by way of rights or bonus or otherwise. AFPL may in its sole discretion and without requiring any approval from the Transferor Companies, issue and allot further securities in any manner,

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whatsoever.

10.2 AFPL shall be entitled, pending sanction of the Scheme, to apply to the Central Government, State Government, Union Territories and all other concerned agencies, departments and authorities (statutory or otherwise) as are necessary under any law for such consents, approvals and sanctions, which AFPL may require to carry on the business of the Transferor Companies. With effect from the Effective Date and till such times the names of the Bank accounts of the Transferor Companies would be replaced with that of the Transferee Company, the Transferee Company shall be entitled to operate the banks accounts of the Transferor Companies in the names of the Transferor Companies in so far as may be necessary.

11 SAVING OF CONCLUDED TRANSACTIONS

The transfer of Undertakings of the Transferor Companies pursuant to this Scheme, and the continuance of proceedings by or against AFPL under Clause 8 above shall not affect any transaction or proceedings already concluded or liabilities incurred, or any liabilities discharged by the Transferor Companies subject to the provisions of Clause 10 above on or after the Appointed Date till the Effective Date, to the end and intent that AFPL shall accept and adopt all acts, deeds and things done

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and executed by the Transferor Companies in respect thereto as done and executed on behalf of itself.

12. ACCOUNTING TREATMENT IN THE BOOKS OF AFPL

On the Scheme becoming effective, AFPL shall account for the amalgamation as under:

(i) Save and except as provided in sub-clause (ii) below, AFPL shall record the values of the tangible assets and liabilities of the Transferor Companies at its fair value/book value

(ii) AFPL shall credit the aggregate face value of the New Equity Shares of AFPL issued by it to the members of Transferor Companies pursuant to this Scheme to the Share Capital Account in its books of account;

(iii) The investments held by AFPL in Transferor Companies as well as investments held by the Transferor Companies inter-se will stand cancelled and there shall be no further obligation/outstanding in that behalf;

(iv) The inter-corporate deposits / loans and advances outstanding between AFPL and Transferor Companies and amongst the Transferor Companies inter-se will stand cancelled and there shall be no further obligation/outstanding in that behalf;

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(v) All costs and expenses incurred as per Clause 18 below as well as other costs, whether of AFPL or of the Transferor Companies, incidental with the finalisation of this Scheme and to put it into operation, including expenses in connection with excise and label re-registrations, all advisory fees, stamp duty charges, meeting expenses, professional fees, consultant fees & expenses and any other expenses or charges attributable to the implementation of the Scheme, shall be borne by AFPL and, in the books of Transferor Companies, be kept in a "amalgamaton suspense" account and adjusted against the general reserves in the books of AFPL on completion of the Scheme;

(vi) The difference between the value of net assets of the Transferor Companies transferred to AFPL pursuant to the High Court order over the face value of New Equity Shares issued by AFPL and after giving effect to sub-clause (iii) above and adjusting the appreciation and/or diminution, if and to the extent considered appropriate by the Board of Directors of AFPL, in the value of certain of its assets, whether fixed or current, as on the Appointed Date in the books of account of AFPL shall; in case of surplus, an amount, as may be considered appropriate by the Board be credited to General Reserve Account and in case of deficit, be debited to General Reserve Account.

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(vii) Further, in case of any differences in accounting policy between AFPL and the Transferor Companies, the accounting policies followed by AFPL will prevail and the difference till the Appointed Date, as the case may be, will be quantified and adjusted in the General Reserve Account mentioned earlier to ensure that the financial statements of AFPL reflect the financial position on the basis of consistent accounting policy.

(viii) The Transferee Company shall comply with the accounting treatment as prescribed under Accounting Standard-14 i.e. 'Accounting for Amalgamation' issued by the Institute of Chartered Accountants of India.

13. DIVIDEND AND PROFITS

13.1 Transferor Companies shall be entitled to declare and pay dividends, whether interim or final, to their respective shareholders in respect of the financial year/ accounting period prior to the Appointed Date. The Transferor Companies shall obtain the consent of the Board of Directors of AFPL before declaration of any dividend. Transferor Companies shall not transfer any amount from the reserves or amount lying in credit to the Profit and Loss Account on the Appointed Date for the purpose of payment of dividend without consent of the AFPL.

13.2 Subject to the provisions of the Scheme, the profits of the Transferor Companies for the period beginning from the Appointed Date shall

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belong to and are the profits of the AFPL and will be available to the AFPL in respect of its financial year ending on 31st March, 2014 or any year thereafter.

13.3 It is clarified, however, that the aforesaid provisions in respect of declaration of dividend are enabling provisions only and shall not be deemed to confer any right on any member of the Transferor Companies or AFPL to demand or claim any dividend which shall be entirely at the discretion of the Board of Directors and subject to the provisions of the said Act.

PART C – GENERAL

14. APPLICATION TO THE HIGH COURT OR SUCH OTHER COMPETENT AUTHORITY

The Transferor Companies and AFPL shall make applications / petitions under Sections 391 to 394, and other applicable provisions of the Act to the High Court or other appropriate authority for sanction of this Scheme and for dissolution of the Transferor C without winding-up under the provisions of law.

15. MODIFICATION/AMENDMENT TO THE SCHEME

15.1 On behalf of the Transferor Companies and AFPL, the Board of Directors of respective companies, may consent on behalf of all persons

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concerned, to any modifications or amendments of the Scheme and without prejudice to the generality of the foregoing, any modification to the Scheme involving withdrawal of any of the parties to the Scheme at any time and for any reason whatsoever, or to any conditions or limitations that the High Court or any other authority may deem fit to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them (i.e. the Board of Directors) 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.

15.2 For the purpose of giving effect to this Scheme or to any modification thereof the Board of Directors of AFPL may give and are authorised to give such directions including directions for settling any question of doubt or difficulty that may arise.

16. SCHEME CONDITIONAL ON APPROVAL / SANCTIONS

The Scheme is conditional upon and subject to the following:

(i) The requisite consent, approval or permission of the Central Government or any other statutory or regulatory authority, which by law may be necessary for the implementation of this Scheme.

(ii) The sanction of the High Court or any other authority under Sections 391 to 394 of the Act in favour of the Transferor

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Companies and AFPL under the said provisions and to the necessary order or orders under Section 394 of the Act being obtained and the same being filed with the Registrar of Companies.

(iii) The approval by the requisite majority of members /creditors of Transferor Companies & AFPL as may be directed by the High Court or any other appropriate authority.

17. EFFECT OF NON-RECEIPT OF APPROVALS / SANCTIONS

In the event of any of the said sanctions and approvals referred to in the preceding Clause 16 not being obtained and/or the Scheme not being sanctioned by the Hon'ble High Court or such other competent authority and/or the order or orders not being passed as aforesaid by the Hon'ble High Court, this Scheme shall at the sole option of AFPL stand revoked, cancelled and be of no effect (either wholly or partially), 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.

18. COSTS

All costs, charges and expenses of the Transferor Companies and the Transferee Company respectively in relation to or in connection with the Scheme and

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incidental to the completion of the amalgamation of the Transferor Companies in pursuance of this Scheme shall be borne and paid by the Transferee Company. If, however, for any reason whatsoever this Scheme is not sanctioned by the Hon'ble High court or for any other reason this Scheme cannot be implemented, the parties to this Scheme shall bear their respective costs and expenses in connection with this Scheme of Arrangement.

19. DISSOLUTION OF THE TRANSFEROR COMPANIES

On the Scheme becoming effective, the Transferor Companies shall be dissolved without any further act or deed or without being wound up.

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