

THE COMPANIES ACT, 1956
COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
OF
AKSH OPTIFIBRE LIMITED

PRELIMINARY

1. Unless the context otherwise requires, words or expression contained in these Articles shall bear the same meaning as in the Act.

The marginal notes hereto shall not effect the construction hereof and in these presents, unless there be something in the subject or context inconsistent therewith.

“The Act” means the Companies Act, 1956.

“These Articles” means these Articles of Association as originally framed or as altered by Special Resolution from time to time.

“The Company” means Aksh Optifibre Limited.

“The Directors” means the Directors of the Company for the time being.

“The Office” means the Registered Office of the Company for the time being.

“The Register” means the Register of Members to be kept pursuant to Section 150 of the Act.

“Dividend” includes bonus.

“Month” means calendar month.

“Year” means a calendar year and “Financial Year” shall have the meaning assigned thereto by Section 2(17) of the Act.

“Proxy” includes Attorney duly constituted under a Power of Attorney.

“Seal” means the Common Seal of the Company.

“In Writing” and “Written” shall include printing, lithography and other models of representing or reproducing words in a visible form, Words imparting the singular number only include the plural number and vice versa, Words imparting the masculine gender only include the feminine gender, Words importing persons include corporations.

2. Save as provided herein the regulations contained in Table “A” in Schedule 1 of the Act shall not apply to the Company

Table ‘A’ not to apply

SHARES

3. The Authorized Share Capital of the Company shall be such amount and be divided into such shares as may from time to time be provided in Clause V of the Memorandum of Association and Company shall contain a minimum paid up capital of Rupees 5 Lac(Amended vide special resolution passed at the Extra ordinary General Meeting held on 28th February, 2006)

Share Capital

4. The Company shall have power to issue Preference Shares carrying right to redemption out of profits which would otherwise be available for dividend, or out of the proceeds of a fresh issue of shares made for the purpose of such redemption, or liable to be redeemed at the option of the Company, and the Board may, subject to the provisions of Section 80 of the Act, exercise such power in such manner as it thinks fit.

Redeemable Preference Shares

- Debentures* 4A. The Company shall have the power to issue convertible/non-convertible Debentures subject to the provision of the Act and the approval of controller of capital issue if so required.
- Sweat Equity* 4B. Subject to the provisions of section 79A of the Companies Act, 1956, including any statutory modification(s) or re-enactment thereof for the time being in force and/or as may be re-enacted from time to time, the Company may issue sweat equity shares of a class of shares already issued.

(Inserted vide special resolution passed at the Annual General Meeting held on 30th June 2000)
- Allotment of Shares* 5. Subject to the provisions of these Articles, the shares shall be under the control of the Directors who may allot or otherwise dispose off the same on such terms and condition and at such time as the Directors think fit and with power to issue any shares as fully paid up in consideration of services rendered to the Company in its formation or otherwise, provided that where the Directors decide to increase the issued capital of the Company by the issue of further shares, the provisions of Section 81 of the Act will be complied with. Provided further that the option or right to call of shares shall not be given to any person except with the sanction of the Company in general meeting.
- Buy Back of Shares* 5A. The Company may subject to the provisions of the Companies Act, 1956, including any statutory modification(s) or re-enactment thereof for the time being in force and/ or as may be re-enacted from time to time, buy back its own fully paid Equity Shares or such other securities of the Company from time to time, whether or not they are redeemable, at such rate(s) and on such terms as the Board may deem proper and make payment(s) for such purchases and to keep them alive/cancel them and/ or resell from time to time such number(s) of the shares so purchased at such rate(s) and on such terms and conditions as the Board may deem proper, in accordance with the provisions of the Company Act and any other law/ rules and regulations as may be applicable from time to time, which shall not be construed as reduction of Equity Share Capital under Section 100 to 104 and Section 402 of the Act.

(Inserted vide special resolution passed at the Annual General Meeting held on 5th November, 1997.)
- Issue of Shares at a discount* 6. Subject to the provisions of the Act, it shall be lawful for the company to issue at a discount, shares of a class already issued.
- Commission for placing Shares* 7. The company may, subject to compliance with the provisions of Section 76 of the Act, exercise the powers of paying commission on the issue of shares and debentures.

The commission may be paid or satisfied in cash or shares, debentures or debenture stock of the Company.
- Brokerage* 8. The Company may pay a reasonable sum or brokerage, subject to the ceiling prescribed under the Act.
- Trusts not recognized* 9. Subject to Section 187-C of the Act, the Company shall be entitled to treat the registered holder of any share as the absolute owner thereof and accordingly shall not, except as ordered by a Court of competent jurisdiction or as by law required, be bound to recognize any trust, benami or equitable or other claim to or interest in such shares on any fractional part of a share whether or not it shall have express or other notice thereof.

CERTIFICATE

- Certificate* 10. The certificate to title to shares shall be issued under the Seal of the Company.
- Member's right to certificate* 11. Every member shall be entitled free of charge to one or more certificates in marketable for the shares of each class registered in his name or, if any member so wishes, to several certificate each for one or more of such shares. Unless the conditions of issue of any shares otherwise provide, the Company shall either within two months after the date of

allotment and on surrender to the Company of its letter making the allotment or of its fractional coupons of requisite value (save in the case of issue against letters of acceptance or of renunciation or in case of issue of bonus shares) or within one month of receipt of the application for registration of the transfer, sub division, consolidation, renewal or exchange of any of its shares, as the case may be, complete, and have ready for delivery the certificates of such shares. Every certificate of shares, shall specify the name of the person in whose favor the certificate is issued, the shares to which it relates and the amount paid up thereon. Particulars of every certificate issued shall be entered in the Register maintained in the form set out in the Companies (issue of Share Certificate) Rules, 1960.

- 12.(1) If any certificate of any share or shares be surrendered to the Company for subdivision or consolidation or if any certificate be defaced, torn or old, decrepit, wornout or where the cages on the reverse for recording transfer have been duly utilised, then upon surrender thereof to the Company, the Board, may order the same to be cancelled and may issue a new certificate in lieu thereof, and if any certificate be lost or destroyed, then upon proof thereof to the satisfaction of the Board, and on such indemnity as the Board thinks fit being given a new certificate in lieu thereof, shall be given to party entitled to the shares to which such lost or destroyed certificate relate. Where a new certificate has been issued as aforesaid it shall state on the face of it and against the stub or counterfoil that it is issued in lieu of a share certificate or is a duplicate issued for the one so replaced and in the case certificate issued in place of one which has been lost or destroyed, the word "duplicate" shall be stamped or punched in bold letters cross across the face thereof. For every certificate issued under this Article, there shall be paid to the Company such out of pocket expenses incurred by the Company in investigating evidence as the Board may determine.
- (2) No fees shall be charged for sub-division and consolidation of share and debenture certificates and for sub-division of letters of allotment and split, consolidation, renewal and pucca transfer receipts into denominations corresponding to the market units of trading, for sub-division of renounceable letters of right, for issue of new certificate in replacement of those which are old, decrepit or worn out, or where the cages on the reverse for recording transfers have been fully utilised. Provided that the Company may charge such fees as may be agreed by it with the Stock Exchange with which its shares may be enlisted for the time being for issue of new certificates in replacement of those that are torn, defaced, lost or destroyed and for sub-division and consolidation of share and debenture certificates and for subdivision of letter of allotment and split, consolidation, renewal and pucca transfer receipts into denominations other than those fixed for the market units of trading. However, the company shall not sub-divide/consolidate a share certificate comprising of shares other than the marketable lot.

As to issue of new certificates

DEMATERIALIZATION OF SECURITIES

(Inserted vide special resolution passed at the Annual General Meeting held on 24th March 2000)

- 12 A. (1) For the purpose of this Article :-

Definitions

"Beneficial Owner" means a person or persons whose name is recorded as such with a depository.

"SEBI" means the Securities Exchange Board of India.

"Depository" means a company formed and registered under the

Companies Act, 1956 and which has been granted a certificate of registration to act as a depository under the Securities & Exchange Board of India Act, 1992 ; and

"Security" means such security as may be specified by SEBI from time to time.

<i>Dematerialization of Securities</i>	(2)	Notwithstanding anything contained in these Articles, the Company shall be entitled to dematerialize its securities and to offer securities in dematerialized form pursuant to the Depositories Act, 1956.
<i>Options for investors</i>	(3)	Every person subscribing to securities offered by the Company shall have the option to receive security certificates or to hold the securities with a depository. Such a person who is the beneficial owner of the securities can at any time opt out of a depository, if permitted by the law, in respect of any security in the manner provided by the Depositories Act and the Company shall, in the manner and within the time prescribed, issue to the beneficial owner the required Certificates of Securities.
<i>Securities in Depositories to be in fungible form</i>	(4)	All Securities held by a depository shall be dematerialized and be in fungible form. Nothing contained in Section 153, 153A, 153B, 187C and 372A of the Act shall apply to a depository in respect of the securities held by it on behalf of the beneficial owners.
<i>Rights of Depositories and Beneficial Owners</i>	(5)	<p>(a) Notwithstanding anything to the contrary contained in the Act or these Articles, a depository shall be deemed to be the registered owner for the purpose of effecting transfer of ownership of security on behalf of the beneficial owner.</p> <p>(b) Save as otherwise provided in (a) above, the depository as the registered owner of the securities shall not have any voting rights or any other rights in respect of the securities held by it.</p> <p>(c) Every person holding securities of the Company and whose name is entered as the beneficial owner in the records of the depository shall be deemed to be a member of the Company. The beneficial owner of securities shall be entitled to all the rights and benefits and be subject to all the liabilities in respect of his securities, which are held by a depository.</p>
<i>Services of Documents</i>	(6)	Notwithstanding anything in the Act or these Articles to the contrary, where securities are held in a depository, the records of the beneficial ownership may be served by such depository on the Company by means of electronics, mode or by delivery of floppies or disc.
<i>Transfer of Securities</i>	(7)	Nothing contained Section 108 of the Act or these shall apply to a transfer of securities effected by a transferor and transferee both of whom are entered as beneficial owners in the records of a depository.
<i>Allotment of Securities dealt with in a Depository</i>	(8)	Notwithstanding anything in the Act or these Articles, where securities are dealt with by a depository , the Company shall intimate the details thereof to the depository immediately on allotment of such securities.
<i>Distinctive numbers of Securities held in a Depository</i>	(9)	Nothing contained in the Act or these Articles regarding the necessity of having distinctive numbers of securities issued by the Company shall apply to securities held with a depository.
<i>Register and index of Beneficial Owners</i>	(10)	The Register and index of Beneficial owners maintained by a depository under the Depositories Act, 1966 shall be deemed to be the Register and Index of Members and Security holders for the purpose of these Articles.

JOINT-HOLDERS OF SHARES

<i>Fee on sub-division of shares, issue of new certificates</i>	13.	Where two or more persons are registered as the holders of any share they shall be deemed to hold the same as joint-tenants with benefit of survivorship subject to provisions following and to the other provisions of these Articles relating to joint holders :-
<i>Maximum number</i>	(a)	The Company shall not be bound to register more than three persons as the joint holder of any share.
<i>Liability several as well as joint</i>	(b)	The joint holders of a share be liable severally as well as jointly in respect of all payments which ought to be made in respect of such shares.

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| (c) | On the death of any one of such joint-holders the survivor or survivors shall be only person recognized by the Company as having any title to or interest in such share but the Board may require such evidence of death as it may deem fit. | <i>Survivors of jointholders only recognized</i> |
| (d) | Only the person whose name stands first in the Register as one of the jointholders of any share shall be entitled to delivery of the certificate relating to such share. | <i>Delivery of Certificate</i> |

CALLS

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| 14. | The Directors may, from time to time, subject to the terms on which any shares, may have been issued, make such calls as they think fit upon the members in respect of all moneys unpaid on the shares held by them respectively and not by the conditions of allotment thereto made payable at fixed times and each member shall pay the amount of every call so made on him to the persons and at the times and places appointed by the Directors. A call may be made payable by installments. | <i>Calls</i> |
| 15. | A call shall be deemed to have been made at the time when the resolution of the Directors authorizing such call was passed. | <i>When call deemed to have been made</i> |
| 16. | Not less than 30 (Thirty) days notice of any call shall be given specifying the time and place of payment and to whom such call shall be paid. | <i>Notice of call</i> |
| 17. | If by the terms of issue of any share or otherwise the whole or part of the amount of issue price thereof is made payable at any fixed time or by installments at fixed times, every such amount of issue price of installment thereof shall be payable as if it was a call duly made by the Directors and of which due notice had been given and all the provisions herein contained in respect of calls shall apply to such amount or issue price or installments accordingly. | <i>Amount payable</i> |
| 18. | If the sum payable in respect of any call or installment be not paid on or before the day appointed for the payment thereof, the holder for the time being of the share in respect of which the call shall have been made or the installment shall be due, shall pay interest for the same at the rate of 21 (Twenty One) percent per annum, from the day appointed for the payment thereof to the actual payment or at such other rate as the Directors may determine but they shall have power to waive the payment thereof wholly or in part.

(Amended vide special resolution passed at the Annual General Meeting held on 31st July, 1995.) | <i>Interest to be Charged on nonpayment of call</i> |
| 19. | On the trial or hearing of any action or suit brought by the Company against any member or his representative to recover any debt or money claimed to be due to the Company in respect of his shares, it shall be sufficient to prove that the name of the defendant is, or was when the claim arose, on the Register of the Company as a holder, or one of the holders of the number of shares in respect of which such claim is made, that the resolution making the call is duly recorded in the minute book and that the amount claimed is not entered is paid in the books of the Company and it shall not be necessary to prove the appointment of the Directors who made any call nor that a quorum of Directors was present at the meeting at which any call was made nor that such meeting was duly convened or constituted, nor any other matter whatsoever, but the proof of the matters aforesaid shall be conclusive evidence of the debt. | <i>Evidence in actions by Company against shareholders</i> |
| 20. | The Board may, if it thinks fit, receive from any member willing to advance the same, all or any part of the money due upon the shares held by him beyond the sums actually called for and upon the money so paid or satisfied in advance, or so much thereof as, from time to time, exceeds the amount of calls then made upon the share in respect of which such advance has been made, the Company may pay interest at such rate not exceeding, unless the Company in general meeting shall otherwise direct, 6 (Six) percent per annum as the member paying such sum as advance and the Board agree upon. Money so paid in excess of the amount of call shall not rank for dividends or confer a right to participate in profits. The Board may at any time repay the amount so advanced upon giving such member not less than three months notice in writing. | <i>Payment of calls in advance</i> |

FORFEITURE AND LIEN

- Notice may be given for calls or installment not paid* 21. If any member fails to pay any call or installment on or before the day appointed for the payment of the same, the Directors may at any time thereafter, during such time as the call or installment remains unpaid, serve notice on such member requiring him to pay the same together with any interest that may have accrued and expenses, they may have been incurred by the Company by reasons of such non-payment.
- Form of notice* 22. The notice shall name a day (not being less than 30 days from the date of the notice) and a place or places on and at which such call or installment and such interest and expenses as aforesaid are to be paid. The notice shall also state that in the event of non-payment at or before the time and at the place or places appointed, the shares in respect of which such call was made or installment is payable will be liable to be forfeited.
- If notice not complied with shares may be forfeited* 23. If the requirement of any such notice as aforesaid be not complied with, any shares in respect which such notice has been given may at any time thereafter before payment of all calls or installments, interest and expenses due in respect thereof, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited share not actually paid before the forfeiture. Subject to 205A of the Act, Neither the receipt by the Company of a portion of any money which shall, from time to time, be due from any member of the Company in respect of his shares, either by way of principal or interest, nor any indulgency granted by the Company in respect of the payment of any such money shall preclude the Company from thereafter proceeding to enforce a forfeiture of such share as herein provided.
- Notice after forfeiture* 24. When any shares shall have been so forfeited, notice of the forfeiture shall be given to the member in whose name it stood immediately prior to the forfeiture and an entry of the forfeiture with the date thereof, shall forthwith be made in the Register but no forfeiture shall be in any manner invalidated by any omission or neglect to give such notice or to make such entry as aforesaid.
- Forfeited share to become property of the Company* 25. Any share so forfeited shall be deemed to be the property of the Company and the Directors may sell, re-allot or otherwise dispose off, the same in such manner as they think fit.
- Power to annul forfeiture* 26. The Directors may, at any time before any share so forfeited are not sold, re-allotted or otherwise disposed off, annul the forfeiture thereof upon such conditions as they think fit.
- Arrears to be paid notwithstanding forfeiture* 27. Any member whose shares, have been forfeited shall notwithstanding such forfeiture, be liable to pay and shall forthwith pay to the Company all calls, installments, interest and the expenses, owing upon or in respect of such shares at the time of all installments, interest and the forfeited together with interest thereupon, from the time of the forfeiture until payment at 21 (Twenty One) percent per annum or such other rate as the Directors may determine and the Directors may enforce the payment thereof without any deduction of allowances for the value of shares at the time of forfeiture but shall not be under any obligation to do so.
- Effect of forfeiture* 28. The forfeiture of a share shall involve the extinction of all interest in and also of all claims and demands against the Company in respect of the share and all other rights incidental to the share except only such of those rights as by these Articles are expressly saved.
- Evidence of forfeiture* 29. A duly verified declaration in writing that the declarant is a Director of the company and that certain shares in the Company have been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the shares and the receipt of the Company for the consideration, if any given for the shares on the sale or disposition thereof, shall constitute a written title to such shares.
- Company's lien on shares* 30. The Company shall have a first and paramount lien upon all the shares (not fully paid up) registered in the name of each member (whether solely or jointly with others) and upon the proceeds of sale thereof for all moneys (whether presently payable or not) called or payable at a fixed time in respect of such shares and no equitable interest in any share shall be created except upon the footing and condition that Article 9 hereof is to have full effect.

Unless otherwise agreed, the registration of a transfer of shares shall operate as a waiver of the Company's lien, if any, on such shares.

31. For the purposing of enforcing such lien, the Directors may sell the shares subject thereto in such manner as they think fit, but no sale shall be made until such period as aforesaid shall have elapsed and until notice in writing of the intention to sell shall have been served on such member, his committee, curator bonus or other person recognized by the Company as entitled to present such member and default shall have been made by him or them in the payment of the sum payable as aforesaid for thirty days after such notice. The net proceeds of any such sale shall be applied in or towards satisfaction of such part of the amount in respect of which the lien exists as is presently payable by such member, and the residue (if any) paid to such member, his executors, administrators, or other representatives or persons so recognized as aforesaid. *Intention as to enforcing lien*
Applications of proceeds of sale
32. Upon any sale after forfeiture or for enforcing a lien in purported exercise of the powers by these presents given, the Directors may appoint some person to execute an instrument of transfer of the shares sold and cause the purchaser's name to be entered in the register in respect of the shares sold and after his name has been entered in the Register in respect of such shares his title to such shares shall not be affected by any irregularity or invalidity in the proceedings in reference to such forfeiture, sale or disposition, nor impeached by any person and the remedy of any person aggrieved by the sale be in damages only and against the Company exclusively. *Validity of Shares*
33. Where any shares under the power in that behalf herein contained are sold by the Directors and the certificate thereof has not been delivered to the Company by the former holders of the said shares the directors may issue new certificate in lieu of certificate not so delivered. *Power to issue new certificate*

TRANSFER AND TRANSMISSION OF SHARES

34. Subject to the provisions of the Act, no transfer of shares shall be registered unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor or transferee has been, delivered to the Company together with the certificate or certificates of the shares, or if no such certificate is in existence along with the letter of allotment of shares. The instrument of transfer of any shares shall be signed both by or on behalf of the transferor and by or on behalf of transferees and the transferor shall deemed to remain the holder of such share until the name of the transferee is entered in the Register in respect thereof. *Execution of transfer etc.*
35. Application for the registration of the transfer of a share may be made either by the transferor or the transferee provided that, where such application is made by the transferor, no registration shall in the case of partly paid shares be effected unless the Company gives notice of the application to the transferee in the manners prescribed by the Act and subject to the provisions of Articles hereof, the company shall unless objection is made by the transferee within two weeks from the date of receipt of the notice, enter in the Register the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee. *Application for transfer*
36. Before registering any transfer tendered for registration the Company may, if it so thinks fit, give notice by letter posted in the ordinary course to the registered holder that such transfer deed has been lodged and that, unless objection is taken, the transfer will be registered and if such registered holder fails to lodge an objection in writing at the office of the Company within two weeks from the posting of such notice to him he shall be deemed to have admitted the validity of the said transfer. *Notice of Transfer to registered holder*
37. The Company shall keep a "Register of Transfers" and therein shall be fairly and distinctly entered particular of every transfer of any share. *Register of Transfer*
38. Subject to the provisions of Section 111 of the Act, the Board without assigning any reason for such refusal, may within one month from the date on which the instrument of transfer was delivered to the Company, refuse to register any transfer of a share upon which the Company has a lien and, in the case of a share not fully paid up, may refuse to register a transfer to a transferee of whom the Board does not approve. *In what case to decline to register transfer of shares*

- Provided that the registration of a transfer of share shall not be refused on the ground of the transferor being either alone or jointly with any other person or persons indebted to the Company on any account whatsoever.
- No transfer to a person of unsound mind*
- No fee for registration of instrument for transfer etc.*
- When instrument of transfer to be retained/ returned*
- Notice of refusal to register transfer*
- Power to close transfer books and register*
- Transmission of registered shares*
- As to transfer of shares of deceased or insolvent members*
- Transmission Article*
- Notice of election to be registered*
- All rights of executors and trustees*
39. (1) No transfer shall be made to a person of unsound mind
- (2) No fee shall be charged for registration of instrument, probate, letter of administration, certificate of death or marriage, Power of Attorney or similar other instruments of transfer.
40. All instruments of transfer duly approved shall be retained by the Company and in case of refusal, instruments of transfer shall be returned to the person who lodges the transfer deeds.
41. If the Directors refuse to register the transfer of any shares, the Company shall within one month from the date on which the instrument of transfer was lodged with the company or intimation given, send to the transferor and the transferee or the person giving intimation of such transfer notice of such refusal.
42. On giving seven day's notice by advertisement in a newspaper circulating in the district in which the office of the Company is situated the Register of members may be closed during such time as the Directors think fit not exceeding in the whole forty five days in each year but not exceeding thirty days at a time.
43. The executors or administrators or the holder of a succession certificate in respect of shares of a deceased member (not being one of several joint holders) shall be the only person whom the Company shall recognize as having any title to the shares registered in the name of such member and, in case of the death of any one or more of the joint-holders of any registered shares the survivors shall be only persons recognized by the Company as having any title to or interest in such share but nothing herein contained shall be taken to release the estate of a deceased jointholder from any liability on shares held by him jointly with any other person. Before recognizing any legal representative or heir or a person otherwise claiming title to the shares the Company may require him to obtain a grant of probate or letters of administration or succession certificate, or other legal representation, as the case may be from a competent Court, provided nevertheless that in any case where the Board, in its absolute discretion think fit it shall be lawful for the Board to dispense with production of probate or letters of administration or a succession certificate or such other legal representation upon such terms as to indemnity or otherwise as the Board may consider desirable.
44. Any person becoming entitled to or to transfer of shares in consequence of that death or insolvency of any member, upon producing such evidence that he sustains the character in respect of which he propose to act under this article, or of his title as the Directors think sufficient, may with the consent of the Directors (which they shall not be under any obligation to give), be registered as a member in respect of such shares or may, subject to the regulations as to transfer hereinbefore contained transfer such shares. This article is hereinafter referred to as 'The Transmission Article'. Subject to any other provisions of these Articles if the person so becoming entitled to shares under this or the last preceding Article shall elect to be registered as a member in respect of the share himself he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he shall elect to transfer to some other person he shall execute an instrument of transfer in accordance with the provisions of these articles relating to transfer of shares. All the limitations, restrictions and provisions of these articles relating to the rights to transfer and the registration of transfer of share shall be applicable to any such notice of transfer as aforesaid.
45. Subject to any other provisions of these articles if the Directors in their sole discretion are satisfied in regard thereof, a person becoming entitled to a share in consequences of the death or insolvency of a member may receive and give a discharge for any dividends or other money payable in respect of the share.

46. The instrument of transfer shall be in writing and all the provision of Section 108 of the Companies Act, 1956 and of any statutory modification thereof for the time being shall be duly complied with in respect of all transferees of shares and the registration thereof. *Provisions of articles relating to transfer applicable*

46A A holder or joint holders of shares in or debentures (including fixed deposit holder under section 58A of the Companies Act, 1956) of the Company may nominate, in accordance with the provisions of Section 109A of the Companies Act, 1956 (including any statutory modification (s) or re-enactment thereof for the time being in force and/ or as may be re-enacted from time to time and in the manner prescribed thereunder) any person to whom all the rights in the shares in or debentures of the Company shall vest in the event of death of such holder(s). Any nomination so made shall be dealt with by the Company in accordance with and in manner prescribed under the provisions of Section 109B of the Companies Act, 1956 or any other statutory modification or re-enactment thereof for the time being in force. *Nomination by Share holders/Debenture holders/fixed deposit holders*

(Inserted vide special resolution passed at the Annual General Meeting held on 30th June,2000)

46B A nominee, upon production of such evidence as may be required by the Board and subject as hereinafter provided : *Transmission Securities by Nominees*

(Inserted vide special resolution passed at the Annual General Meeting held on 30th June,2000)

(i) Elect, either to be registered himself/ herself as holder of the shares or debenture or fixed deposit holder or to make such transfer of the shares or debenture or fixed deposit as the deceased shareholder or debenture holder (including fixed deposit holder), as the case may be, could have made;

(ii) if the nominee elects to be registered as holder of the shares or debenture or fixed deposit, himself/ herself, as the case may be, he/ she shall deliver or send to the Company a notice in writing signed by him/ her stating that he/ she so elects and such notice shall be accompanied with the death certificate of the deceased shareholder or debenture holder or fixed deposit holder, as the case may be:

(iii) a nominee, upon becoming entitled to a share or debenture or fixed deposit by reason of death of the holder, shall be entitled to the same dividends and other advantages to which he/ she would be entitled to, if he/ she were the registered holder of the share or debenture or fixed deposit except that he/ she shall not, before being registered a member in respect of his / her share or debenture or fixed deposit, to entitled in respect of it to exercise any right conferred by membership in relation to meeting of the Company.

Provided that the Board may, at any time give notice requiring any such person to elect either to be registered himself/ herself or to transfer the share or debenture or fixed deposit and if the notice in not complied with within ninety days, the Board may thereafter withhold payment of all dividend, bonuses or other moneys payable in respect of the share or debenture or fixed deposit, until the requirements of the notice have been complied with.

SHARE WARRANTS

47. Subject to the provisions of Section 114 and 115 of the Act and subject to any directions which may be given by the Company in General Meeting, the Board, may issue share-warrants in such manner and on such terms and conditions as the board may deem fit. In case of such issue Regulations 40 to 43 of table 'A' in Schedule 1 to the Act, shall apply. *Power to issue share warrants*

STOCKS

48. The Company may exercise the power of conversion of its shares into stock and in that case Regulations 37 to 39 to table "A" in Schedule 1 to the Act, shall apply. *Stocks*

ALTERATION OF CAPITAL

Power to subdivide and consolidate

49. The Company may by ordinary resolution, from time to time, alter the condition of Memorandum of Association as follows :-
- (a) Increase the Share Capital by such amount to be divided into shares of such amount as may be specified in the resolution.
 - (b) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares.
 - (c) Sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the Memorandum of Association, however, that in the sub-division the proportion between the amount paid and the amount, if any unpaid on each reduced share shall be the same as it was in the share from which the reduced share is derived and
 - (d) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the share so cancelled.

Surrender

50. Subject to the provisions of Sections 100 to 104 of the Act, the Board of Directors may accept from any member the surrender of all or any of his shares on such terms and conditions as shall agreed.

MODIFICATION OF RIGHTS

Power to modify rights

51. If at any time the share capital is divided into different classes of shares the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may whether or not the Company is being wound up, be carried with consent in writing of the holders of three-fourth of the issued shares of that class or with the sanction of a Special Resolution passed at a Separate Meeting of the holders of the shares of that class. To every such Separate Meeting the provisions of these Articles. relating to general meeting shall apply, but so that the necessary quorum shall be two persons atleast holding or representing by proxy one-tenth of the issued shares of the class but so if at any adjourned meeting of such holders a quorum as above defined is not present, those members who are present shall be a quorum and that any holder of shares of the class present in person or by proxy may demand a poll and, on a poll, shall have one vote for each shares of the class of which he is the holder. The Company shall comply with the provisions of Section 192 of the Act as to forwarding a copy of any such agreement or resolution to the Registrar if Companies.

BORROWING POWERS

Power to borrow

52. The Board may from time to time and at its discretion, subject to the provisions of Section 58A, 292, and 293 of the Act and Regulations, made there under and Directions issued by the R.B.I. raise or borrow, either from the Directors or from elsewhere and secure the payment of any sum or sums of money for the purposes of the Company.

Condition on which money may be borrowed

53. The Board may, raise or secure the repayment of such sums in such manner and upon terms and conditions in all respects as it thinks fit and in particular, by the issue of bonds, perpetual or redeemable debenture or debenture-stock, or any mortgage, or other security on the undertaking of the whole or of the property of the Company (both present and future), including its uncalled capital for the time being, provided that debentures with the rights to allotment of or conversion into shares shall not be issued except with the sanction of the Company in general meeting and subject to the provisions of the Act.

Issue at discount etc. or with special privileges

54. Any debenture, debenture-stock, bonds or other securities may be issued at a discount, premium or otherwise and with any special privileges, as to redemption, surrender, drawings allotment of shares appointment of Directors and otherwise, Debenture, debenture-stock, bonds and other securities may be made assignable free from any equities between the Company and the person to whom the same may be issued.

55. Save as provided in Section 108 of the Act, no transfer of debenture shall be registered unless a proper instrument of transfer duly stamped and executed by the transferor and transferee has been delivered to the Company together with the certificate or certificates of debentures. *Instrument of transfer*
56. If the Board refuses to register the transfer of any debentures, the Company shall, within one month from the date on which the instrument of transfer was lodged with the Company, send to the transferee and to the transferor notice of the refusal.

RESERVES

57. Subject to the provisions of the Act, the Board shall in accordance with Section 205 (2A) of the Act, before recommending any dividend, set aside out of the profits of the Company such sums as it thinks proper as reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the Company may be properly applied and pending such application may at the like discretion, either be employed in the business of the Company or be invested in such investments (other than shares of the Company as the Board may, from time to time, think fit). The Board may also carry forward any profit, which it may think prudent not to divide without setting them aside as a reserve. *Reserves*
58. Any General Meeting may resolve that the whole or any part of the undivided profits of the Company (which expression shall include any premiums received on the issue of shares and any profits or other sums which have been set aside as a reserve or reserves or have been carried forward without being divided) be capitalized and distributed amongst such of the members as would be entitled to receive the same if distributed by way of dividend and in the same proportions on the footing that they become entitled thereto as capital and that all or any part of such capitalized amount be applied on behalf of such members in paying up in full any unissued shares of the Company which shall be distributed accordingly or in or towards payment of the uncalled liability on any by such member in full satisfaction of their interest in the said capitalized amount. Provided that any sum standing to the credit of a share premium account or a capital redemption reserve account may, for the purposes of this Article only be applied in the paying up of unissued shares to be issued to members of the company as fully-paid bonus shares. *Capitalization*
59. For the purpose of giving effect to any resolution under two last preceding Articles the Directors may settle any difficulty which may arise in regard to the distribution as they think expedient and in particular may issue fractional certificate. *Fractional Certificates*

GENERAL MEETINGS

60. The Directors may, whenever think fit, call an Extra Ordinary General Meeting provided however if at any time there are not in India Directors capable of acting who are sufficient in number to form a quorum any Directors present in India may call an Extra Ordinary General Meeting in the same manner as nearly as possible as that in which such a meeting may be called by the Board of Directors. *Extra Ordinary General Meeting*
61. The Board of Directors of the Company shall on the requisition of such member or members of the company as is specified in Sub-Section (4) of Section 169 of the Act, forthwith proceed to call an extra ordinary general meeting of the Company and in respect of any such requisition and of any meeting to be called pursuant thereto, all the other provisions of Section 169 of the Act and of any statutory modification thereof for the time being shall apply. *Calling of Extra Ordinary General Meeting on requisition*
62. The quorum for a General Meeting shall be five members present in person. *Quorum*
63. At every General Meeting, the Chairman of the Board of Directors shall take the Chair. If at any meeting the Chairman of the Board of Directors is not present within fifteen minutes after the time appointed for holding the meeting or, though present is unwilling to act as Chairman, the members present shall choose one of the Directors present to be Chairman or if no Director shall be present willing to take the Chair then the members present shall choose one of them being a member entitled to vote, to be Chairman. *Chairman*

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| <i>Sufficiency of ordinary resolution</i> | 64. Any act or resolution, which, under the provision of this Article or of the Act, is permitted shall be sufficiently so done or passed if effected by an ordinary resolution unless either the act or the articles specifically require such act to be done or resolution passed as a special resolution. |
| <i>When if quorum be not present, meeting to be dissolved and when adjourned</i> | 65. If within half an hour from the time appointed for the meeting a quorum be not present, the meeting, if convened upon a requisition of share holders shall be dissolved but in any other case it shall stand adjourned to the same day in the next week at same time and place, unless the same shall public holiday at the same time and place, unless the same shall public holiday when the meeting shall stand adjourned to the next day not being a public holiday at the same time and place and if at such adjourned meeting a quorum be not present within half an hour from the time appointed for the meeting; those members who are present and not being less than two persons shall be a quorum and may transact the business for which the meeting was called. |
| <i>How question of resolutions to be decided at Meeting</i> | 66. In the case of an equality of votes the Chairman shall both on a show of hands and a poll have a casting vote in addition to the vote or votes to which he be entitled as a member. |
| <i>Power to adjourn General Meeting</i> | 67. The Chairman of a General Meeting may adjourn the same, from time to time, and from place to place, but no business shall transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. It shall not be necessary to give notice to the members of such adjournment or of the time, date and place appointed for the holding of the adjourned meeting. |
| <i>Business may proceed notwithstanding demand of poll</i> | 68. If a poll be demanded, the demand of a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. |

VOTES OF MEMBERS

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| <i>Vote of members</i> | 69. (1) On a show of hands every member present in person and being a holder of Equity Shares shall have one vote and every person present either as a proxy on behalf of a holder of Equity Shares or as a duly authorized representative of a body corporate being a holder of Equity Shares, if he is not entitled to vote in his own rights, shall have one vote.

(2) On a poll the voting rights of a holder of Equity Shares shall be as specified in Section 87 of the Act.

(3) The voting rights of the holders of the Preference Shares including the Redeemable Cumulative Preference Shares shall be in accordance with the provisions of Section 87 of the Act.

(4) No Company or body corporate shall vote by proxy so long as a resolution of its Board of Directors under Section 187 of the Act is in force and the representative named in such resolution is present at the General Meeting at which the vote by proxy is tendered. |
| <i>Votes in respect of deceased, insolvent and insane members</i> | 70. A person becoming entitled to a share shall not before being registered as member in respect of the share entitled to exercise in respect thereof any right conferred by membership in relation to meeting of the Company. If any member be a lunatic or idiot, he may vote whether on a show of hands or at a poll by his committee or other legal curator and such last mentioned persons may give their votes by proxy provided that twenty four hours at least before the time of holding the meeting or adjourned meeting, as the case may, be at which any such person purposes to vote he shall satisfy the Board of his rights under this Article unless the Board shall have previously admitted his rights to vote at such meeting in respect thereof. |
| <i>Joint holders</i> | 71. Where there are joint holders of any shares any one of such persons may vote at any meeting either personally or by proxy in respect of such shares as if he were solely entitled thereto and if more than one of such joint-holders be present at any meeting either personally |

or by proxy then that one of the said persons so present whose name stands prior in order on the register in respect of such share shall alone be entitled to vote in respect thereof. Several executors or administrators of deceased member in whose name any share stands shall for the purpose of this Article be deemed joint holders thereof.

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| 72. | The instrument appointing a proxy shall be in writing under the hand of the appointer or of his Attorney duly authorized in writing or if such appointer is a corporation under its common seal or the hand of its Attorney. | <i>Instrument appointing proxy too in writing</i> |
| 73. | The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed or a notarially certified copy of that power of authority shall be deposited at the office not less than forty eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote in default the instrument of proxy shall not be treated as valid. | <i>Instrument appointing proxy to be deposited at the office</i> |
| 74. | A vote given in accordance with the terms of an instrument appointing a proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the instrument of transfer of the share in respect of which the vote is given. Provided no intimation in writing of the death, insanity, revocation or transfer of the share shall have been received at the office or by the Chairman of the Meeting before the vote is given. Provided nevertheless that the Chairman of any meeting shall be entitled to require such evidence as he may in his discretion think fit of the due execution of an instrument of proxy and that the same has not been revoked. | <i>When vote by proxy valid through authority revoked</i> |
| 75. | Every instrument appointing a proxy shall, as nearly as circumstances will admit, be in the form set out in Schedule IX to the Act. | <i>Form of instrument appointing proxy</i> |
| 76. | No objection shall be taken to the validity of any vote except at the meeting or poll at which such vote shall be tendered and every vote not disallowed at such meeting or poll and whether given personally or by proxy or otherwise shall be deemed valid for all purposes. | <i>Validity of vote</i> |
| 77. | No member shall be entitled to exercise any voting rights either personally or by proxy at any meeting of the Company in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid or in regard to which the Company has exercised any right or lien. | <i>Restrictions on voting</i> |
| 78A | (1) Notwithstanding anything contained in the Articles of Association of the Company and subject to the provision of Section 192A of the Companies Act, 1956, or any statutory modification(s) or re-enactment (s) there of the Company does adopt the mode of passing a resolution by the Members of the Company by means of a postal ballot and / or other ways as may be prescribed by the Central Government in this behalf instead of transacting such business in a General Meeting ; and particularly relating to such business as the Central Government, may by notification, declare to be conducted only by postal ballot.

(2) The Company shall comply with the procedure for such ballot and /or other ways prescribed by the Central Government in this regard." | <i>Passing of Resolution by Postal Ballot</i> |
| 77B | The Company may issue shares with differential voting rights in terms of the provisions of the Companies Act, 1956, the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001, or its amendments or any such other related rules and regulations, as may be applicable from time to time. | <i>Differential Voting Rights</i> |

(inserted vide special resolution passed at the Annual General Meeting held on 4th June, 2002)

DIRECTORS

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| 78. | The number of Directors shall not be less than three and not more than twelve. | <i>Number of Directors</i> |
| 78A. | The Board may elect a Chairman of its meeting and determine the period for which he is to hold office. | <i>Chairman</i> |

If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the Meeting.

- First Directors* 79. On the date of adoption of these Articles following are the Directors of the Company.
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| 1. Mr. Bharat S. Choudhari | 2. Mr. Kamal H. Navani |
| 3. Mr. Kailash S. Choudhari | 4. Mr. Sanjeev Navani |
- Power of Directors to add to its number* 80. The Directors shall have power, at any time and from time to time, to appoint any person as additional Directors as an addition to the Directors but so that the total number of Directors shall not at any time exceed the maximum number fixed by the Articles, any director so appointed shall hold office only until the next Annual General Meeting of the Company and shall be eligible for re-election.
- Share qualification of Directors* 81. A Director shall not be required to hold any share qualification.
- Remuneration of Directors* 82. Each Director shall be entitled to be paid out of the funds of the company by way of remuneration for his services not exceeding the sum prescribed under the Act for every meeting of the Board of Directors or Committee thereof attended by him. Subject to the provisions of the Companies Act, 1956 the Directors shall also be entitled to receive in each year a Commission @ 1% (one percent) of the net profits of the Company, Such commission to be calculated on the net profits of the Company to be computed in accordance with the provisions of the Companies Act, 1956 and such commission shall be divided among the Directors in such proportion and manner as may determined by them. The Director may allow and pay to any Director who for the time being is resident out of the place at which any Meeting of the Directors may be held and who shall come to that place for the purpose of attending such meeting such sum as the Directors may consider fair and reasonable for his expenses in connection with his attending at the meeting in addition to his remuneration as above specified. If any Director being willing is appointed to an executive office either whole time or part time or be called upon to perform extra services or to make any special exertions for any of the purposes of the Company then subject to Section 198, 309, 310 and 314 of the Act the Board may remunerate such Director either by a fixed sum or by a percentage of profits or otherwise and such remuneration may be either in addition to or in substitution for any other remuneration to which he may be entitled to.
- Continuing Directors may act* 83. The continuing Directors may act notwithstanding any vacancy in their body but so that if the number falls below the minimum number above fixed, the Directors shall not except for the purpose of filling vacancies or of summoning a General Meeting act so long as the number is below the minimum.
- Directors may contract with Company* 84. Subject to the provisions of Section 297, 299, 300 and 314 of the Act, the Directors (including Managing Director) shall not be disqualified by reason of his or their office as such, from holding office under the Company or from contracting with the Company either as vendor, purchaser lender, agent, broker, lessor or otherwise nor shall any such contract or any contract or arrangement entered into by or on behalf of the Company with a relative of such Directors or the Managing Director or with any firm in which any Director or a relative shall be partner or with any other partner or with a private company in which such Directors is a member or director interested be avoided, nor shall any Director or otherwise so contracting or being such member or so interested be liable to account to the company for any profit realized by such contract or arrangement by reason only of such Director holding that office or of the fiduciary relation thereby established.

APPOINTMENT OF DIRECTORS

- Appointment of Directors* 85. The Company in General Meeting may, subject to the provision of these Articles and the Act, at any time elect any person to be a Director and may from time to time increase or reduce the number of directors.

86. If any Director appointed by the Company in general meeting vacates office as a Director before his term of office will expire in the normal course the resulting casual vacancy may be filled up by the Board at a meeting of the Board, but any person so appointed shall retain his office so long as the vacating Director would have retained the same if no vacancy had occurred. Provided that the Board may not fill such a vacancy by appointing thereto any person who has been removed from the office of Director under Section 284 of the Act.

*Board may fill up Casual
Vacancies*

87. The Company shall subject to the provisions of the Act, be entitled to agree with any person, firm or corporation that he or it shall have the right to appoint his or its nominee on the Board of Directors of the Company upon such terms and conditions as the Company may deem fit. The Corporation, firm or person shall be entitled, from time to time remove any such Director or Directors and appoint another or others in his or their places. He shall be entitled to the same right and privileges and be subject to the same obligation as any other Director of the company.

Nominee Directors

87A. Notwithstanding anything to the contrary contained in these Articles, so long as any moneys remain owing by the Company to the Industrial Finance Corporation of India (IFCI), Industrial Development Bank of India (IDBI), the Industrial Credit & Investment Corporation of India (ICICI), Gujarat State Industrial Development Corp., Gujarat Financial Corporation Limited, Life Insurance Corporation of India (LIC), Unit Trust of India (UTI), Industrial Reconstruction Bank of India (RBI) General Insurance Corporation of India (GIC), New India Insurance Company Limited (NIA), Oriental Insurance Company Limited (OIC), United India Insurance Company Limited (UI), National Insurance Company Limited (NIC) or to any other Finance Corporation or Credit Corporation or to any other Financing Company or Body out of any loans granted by them to the Company or so long as IDBI, IFCI, ICICI, LIC, UTI, IRBI, GIC, NIA, OIC, UI, NIC or any other Financing Corporation or Credit Corporation or any other Financing Company or Body is hereinafter in this Article referred to as ("the Corporation") continue to hold debentures in the Company by direct subscription or private placement, or so long as the Corporation holds shares in the Company as a result of underwriting or direct subscription or so long as any liability of the Company arising out of any guarantee furnished by the Corporation on behalf of the Company remains outstanding the Corporation shall have a right to appoint from time to time, any person or persons as a Directors, whole time or non-whole time, (which Director or Directors is/are hereinafter referred to as Nominee Director/s on the Board of the Company to remove from such office any person or persons so appointed and to appoint any person or persons in his or their place/s.

The Board of Directors of the Company shall have no power to remove from office the nominee Director/s. At the option of the Corporation such Nominee Directors shall not be required to hold any share qualification in the Company.

Also at the option of the Corporation such Nominee Director/s shall not be liable to retirement by rotation of Directors. Subject as aforesaid, the Nominee Director/s shall be entitled to the same rights and privileges and be subject to the same obligations as any other Director of Company.

The Nominee Director/s so appointed shall hold the said office only so long any moneys remain owing by the Company of the Corporation or so long as the Corporation holds Debentures in the Company as a result of direct subscription or private placement or so long as the Corporation holds shares in the Company as a result of underwriting or direct subscription or the liability of the Company arising out of the Guarantee is outstanding and the Nominee Director/s so appointed in exercise of the said power shall ipso facto vacate such office immediately the moneys owing by the Company to Corporation are paid off or on the Corporation ceasing to hold Debentures/shares in the Company or on the satisfaction of the liability of the Company arising out of the Guarantee furnished by the Corporation

the Nominee Director/s appointed under this Article shall be entitled to receive all notices of and attend all General Meetings, Board Meetings and of the Meetings of the Committee

of which the Nominee Director/s is/are/member/s as also the minutes of such meetings. The Corporation shall also be entitled to receive all such notices and minutes.

The Company shall pay to the Nominee Director/s sitting fees and expenses to which the other Directors of the Company are entitled, but if any other fees, commission, monies or remuneration in any form is payable to the Directors of the Company, the fees, commission monies and remuneration in relation to such Nominee Director/s shall accrue to the Corporation and the same shall accordingly be paid by the Company directly to the Corporation. Any expenses that may be incurred by the Corporation or such Nominee Director/s in connection with their appointment or Directorship shall also be paid or reimbursed by the Company to the Corporation or, as the case may be, to such Nominee Director/s.

Provided that if any such Nominee Director/s is an officer of the Corporation the sitting fees, in relation to such Nominee Director/s shall also accrue to the Corporation and the same shall accordingly be paid by the Company directly to the Corporation.

Director/s such Nominee Director/s shall exercise such powers and have such rights as are usually exercised or available to a whole time Director in the management of the affairs of the Company. Such whole time Director/s shall be entitled to receive such remuneration, fees, commission and monies as may be approved by the Corporation.

Alternate Directors

88. Subject to the provisions of Section 313 of the Act, the Board may appoint any person to act as an alternate director for a director during the latter's absence for a period of not less than three months from time the state in which meetings of the Board are ordinarily held and such appointment shall have effect and such appointee, whilst he holds as an alternate director; shall be entitled to notice of meeting of the Board and to attend and vote thereat accordingly, but he shall ipso facto vacate office if and/when the absent director returns to state in which meetings of the Board are ordinarily held or the absent Director vacates office as a Director.

ROTATION OF DIRECTORS

Rotation of Directors

89. (1) Not less than two-third of the total number of Directors shall be persons whose period of office is liable to determination by retirement of Directors by rotation.
- (2) At each Annual General Meeting of the Company one third of such of the Directors for the time being as are liable to retire by rotation or if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.
- (3) The Directors to retire by rotation at every Annual General Meeting shall be those who have been longest in office since their last appointment, but as between persons who become Directors on the same day those to retire shall in default of and subject to any agreement among themselves be determined by lot.
- (4) If at Annual General Meeting all the Directors appointed under Article 87 and 108 hereby are not exempt from retirement by rotation under Section 255 of the Act, then to the extent permitted by the said Section, the exemption shall extend to the Director appointed under Article 87.

Subject to the foregoing provisions as between Directors appointed under any of the Articles referred to above, the Director or Directors who shall not be liable to retire by rotation shall be determined by and in accordance with their respective seniorities as may be determined by the Board.

Retiring Director eligible for reelection

90. A retiring Director shall be eligible for re-election and shall act as a Director throughout the meeting at which he retires.
91. Subject to any resolution for reducing the number of Directors, if at any meeting at which an election of Directors ought to take place, the places of the retiring Directors not filled up, the meeting shall stand adjourned till the next succeeding day which is not a public holiday at the same time and place and if at the adjourned meeting, the places of the

retiring Directors are not filled up, the retiring Directors or such of them as have not had their places filled up shall (it will to continue in office) be deemed to have been re-elected at the adjourned meeting.

PROCEEDING OF DIRECTORS

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| 92. | The Directors may meet together for the dispatch of business, adjourned and otherwise regulate their meetings and proceedings as they think fit. Notice in writing of every meeting of the Director shall ordinarily be given by a Director or such other officers of the company duly authorized in this behalf to every Director for the time being in India and at his usual address in India. | <i>Meeting of Directors</i> |
| 93. | The quorum for a meeting of the Directors shall be determined, from time to time, in accordance with the provisions of Section 287 of the Act. If a quorum shall not be present within fifteen minutes from the time appointed for holding a meeting of the Directors, it shall be adjourned until such date and time as the Directors present shall appoint. | <i>Quorum</i> |
| 94. | The Secretary may at any time and upon request of any two Directors shall summon a meeting of the Directors. | <i>Summoning a meeting of Director's</i> |
| 95. | Subject to the provisions of Section 316, 372 (5) and 386 of the Act, questions arising at any meeting shall be decided by a majority of votes, each director having one vote and in case of an equality of votes, the Chairman shall have a second or casting vote. | <i>Voting at Meeting</i> |
| 96. | The Chairman of the Board of Directors shall be the Chairman of the meetings of Directors, Provided that if the Chairman of the Board of Directors is not present within five minutes after the appointed time for holding the same, the Directors present shall choose one of their number to be Chairman of such meeting. | <i>Chairman of Meeting</i> |
| 97. | A meeting of Directors for the time being at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under the Articles of the Company and the Act for the time being vested in or exercisable by the Directors generally. | <i>Act of Meeting</i> |
| 98. | The Directors may subject to compliance of the provisions of the Act from time to To appoint time, delegate any of their powers to Committees consisting of such member or members of their body and /or officials/employees of the Company as they think fit, and may from time to time revoke such delegation. Any Committee so formed shall in the exercise of the powers so delegated confirm to any regulations that may, from time to time, be imposed on it by the Director(s). The meeting and proceedings of any such Committee(s), if consisting of two or more member(s)/official(s)/employee(s) shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Directors so far as the same are applicable thereto and are not superseded by any regulation made by the Directors under this Article. | <i>Committee and to delegate power and revoke it</i> |
| | (Substitute vide special resolution passed at the Extra- Ordinary General Meeting held on 6th March , 2000.) | |
| 99. | All acts done at any meeting of Directors or of a Committee of the Directors or by any person acting as a Director shall be valid notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director, Committee or person acting as aforesaid or that they or any of them were disqualified. | <i>Validity of acts</i> |
| 100. | Except resolution, which the Companies Act, 1956, requires in, specifically to be passed in a board meeting, the Directors or Committee may pass a resolution thereof by circulation in accordance with the provisions of Section 289 of the Act. | <i>Resolution by circulation</i> |

And any such minutes of any meeting of Directors or of any Committee or of the Company if purporting to be signed by the Chairman of such meeting or by the Chairman of next succeeding meeting shall be receivable as prima facie evidence of the matters in such minutes.

POWERS OF DIRECTORS

General power of the Company vested in the Directors

101. Subject to the provisions of the Act, the control of the Company shall be vested in the Directors who shall be entitled to exercise all such powers and do all such acts and things as may be exercised or done by the Company and are not hereby or by law expressly required or directed to be exercised or done by the Company in General Meeting but subject nevertheless to the provisions of any law and of these presents, from time to time, made by the Company in General Meeting, provided that no regulation so made shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made.

Special power of the Board

101A. Without prejudice to the general powers conferred by preceding article and the other powers conferred by these presents and so as not in any way to limit any or all these powers it is hereby expressly declared that subject as aforesaid, the Directors shall have the following powers :

- (1) to pay and charge to the capital account of the Company any interest lawfully payable there out under the provisions of the Act,
- (2) to purchase or otherwise acquire for the Company any property, rights or privileges which the Company is authorized to acquire at such price and generally on such terms and conditions as they think fit,
- (3) to acquire by purchase, lease or in exchange or otherwise, lands, buildings, hereditaments, machinery, rights, privileges, movable or immovable;
- (4) to erect, construct, enlarge, improve, alter, maintain, pull down, rebuild or reconstruct any buildings, factories, offices, workshops or other structures necessary or convenient for the purpose of the Company and to acquire lands for the purpose of the Company;
- (5) to let, mortgage, charge, sell or otherwise dispose of subject to the provisions of Section 293 of the Act, any property of the Company either absolutely or conditionally and in such manner and upon such terms and conditions in all respects as they think fit and to accept payment or satisfaction for the same in cash or otherwise as they may think fit.
- (6) at their discretion to pay for any property rights or privileges acquired by or services rendered to the Company, either wholly or partially in cash or in shares, bonds, debentures, debenture-stock or other securities of the Company, and any such shares may be issued either as fully paid up or with such amount credited as paid up thereon as may be agreed upon and any such bonds, debentures, debenture-stock or other securities may either specifically charged upon all or any part of the property of the Company and its uncalled capital or not so charged.
- (7) to insure and keep insured against loss or damage by fire or otherwise for such period and to such extent as they may think proper all or any part of the buildings, machinery, goods, stores, produce and other movable property of the Company either separately or co-jointly also to insure all or any portion of the goods, produce, machinery and other articles imported or exported by the Company and to sell, assign, surrender or discontinue any policies of assurance affected in pursuance of this power;
- (8) Subject to Section 292 of the Act, to open accounts with any bank or bankers or with any Company, firm or individual and to pay money into and draw money from any account from time to time as the Directors may think fit;
- (9) to secure the fulfillment of any contracts or arrangements entered into by the Company by mortgage or charge of all or any of the properties of the Company and its unpaid capital for the time being or in such other manner as they may think fit;
- (10) to attach to any shares to be issued as the consideration or part of the consideration for any contract with or property acquired by the Company or in payment for service

rendered to the Company, such conditions subject to the provisions of the Act as to the transfer thereof as they think fit;

- (11) to accept from any member on such terms and conditions as shall be agreed, a surrender of his shares or stock or any part thereof subject to provisions of the Act;
- (12) to appoint any person or persons (whether incorporated or not) to accept and hold in trust for the Company any property belonging to the Company or in which is interested or for any other purposes and to execute and do all such deeds and things as may be requisite in relation to any such trust and to provide for the remuneration of such trustee or trustees;
- (13) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Company or its officers or otherwise concerning the affairs of the Company and also subject to the provisions of Section 293 of the Act to compound and allow time for payment or satisfaction of any debts due, or any claims or demands by or against the company;
- (14) to refer, subject to the provisions of Section 293 of the Act, any claims or demands by or against the Company to arbitration and observe and perform the awards;
- (15) to act on behalf of the Company in all matters relating to bankrupts and insolvents;
- (16) to make and give receipts, release and other discharge for moneys payable to the Company and for the claims and demands of the Company subject to the provisions of Section 293 of the Act;
- (17) to determine from time to time who shall be entitled to sign on the Company's behalf, bills notes, receipts, acceptances, endorsements, cheque, dividend warrants, releases, contracts and documents;
- (18) Subject to the provisions of sections 292, 293, 370 and 372A of the Act, to invest and deal with any of the money of the Company not immediately required for the purposes thereof, upon such shares, securities or investments (not being shares in this Company) and in such manner as they may think fit and from time to time to vary or realize such investments;
- (19) to execute in the name and on behalf of the Company in favor of any Director or other person who may incur or be about to incur any personal liability for the benefit of the Company such mortgages of the Company's property (present and future) as they think fit and any such mortgage may contain a power of sale and such other powers, covenants and provisions as shall be agreed on;
- (20) subject to such sanction as may be necessary under the Act or the Articles to give to any Director, officer, or other person employed by the Company and interest in any particular business or transactions their by way of commission on the gross expenditure thereon or otherwise or a share in the general profits of the Company; and such interests, commission or share of profits shall be treated as part of the working expenses of the Company.
- (21) to provide for the welfare of employees or ex-employees of the Company and their wives, widows, families, dependants by contributing to the building of houses, dwellings or chawls, or by grants of money, pensions, allowances, gratuities, bonus or payments or by creating and from time to time subscribing or contributing to provident and other funds institutions or trusts and by providing or subscribing or contributing towards places of amusement and recreation, hospitals and dispensaries, medical and other attendances and other assistance as the Directors shall think fit;
- (22) to subscribe or contribute or otherwise to assist or guarantee money to charitable, benevolent, religious, scientific, national, public, or any other useful institutions, objects or purposes or for any exhibition;

- (23) to establish and maintain or procure the establishment and maintenance of any contributory or non-contributory pension or Superannuation funds for the benefit of, and give or procure the giving of donations, gratuities, pensions, allowances or emoluments, to any persons who are or were at any time in the employment or service of the Company, or of any Company which is a subsidiary of the Company or is allied to or associated with the Company or with any such subsidiary Company or who are or were at any time Directors or officers of the Company or of any such other Company as aforesaid, and the wives, widows, families and dependants of any such persons, and also establish and subsidize and subscribe to any institutions, associations, clubs or funds calculated to be for the benefit of or to advance the interests and well-being of the Company or of any such other Company as aforesaid, and make payments to or towards the insurance of any such person as aforesaid, and do any of the matters aforesaid, either along or in conjunction with any such other Company as aforesaid;
- (24) Before recommending any dividend, to set aside out of the profits of the Company such sums as they may think proper for depreciation or to Depreciation Fund or Reserve Fund or Sinking Fund or any other Special Fund to meet Contingencies or to repay redeemable preference shares, debentures or debenture stock or for special dividends or for equalizing dividends or for repairing, improving, extending and maintaining any part of the property of the Company, and for such other purpose as the Directors may, in their absolute discretion, think conducive to the interests of the Company and to invest the several sums to set aside or so much thereof as required to be invested upon such investments (subject to the restrictions imposed by section 292 and 293 and other provisions of the Act) as the Directors may think fit, and from time to time, to deal with and vary such investments and dispose of and apply and expend all or any part thereof for the benefit of the Company in such manner and for such purposes as the Directors (subject to such restrictions as aforesaid) in their absolute discretion think conducive to the interests of the Company, notwithstanding that the matters to which the Directors apply or upon which they may expend the same or any part thereof may be matters to or upon which the capital moneys of the Company might rightly be applied or expended; and to divide the Reserve Fund into such special funds as the Directors think fit, and to employ the assets constituting all or any of the above funds, including the Depreciation Fund, in the business of the Company or in repayment or redemption of redeemable preference shares, debentures or debenture-stock and that without being bound to keep the same separate from the other assets or to pay interest on the same, with power, however to the Directors at their discretion, to pay or allow to the credit of such funds, interest at such rate as the Directors may think proper;
- (25) to appoint and at their discretion to remove or suspend such managers, secretaries, officers, clerks, agents, and servants for permanent, temporary or special service as they may from time to time think fit, and to determine their powers and duties, and fix their salaries or emoluments and require security in such instances and to such amounts as they may think fit and from time to time to provide for the management and transactions of the affairs of the Company in any specified locality in India in such manner as they think fit and the provisions contained in Clause (27) following shall be without prejudice to the general powers conferred by this clause;
- (26) to comply with the requirements of any local law which in their opinion, it shall be in the interest of the Company necessary or expedient to comply with;
- (27) at any time and from time to time by power of attorney to appoint any person or persons to be the Attorney or Attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these presents) and for such period and subject to such conditions as the Directors may from time to time think fit and any such appointment (if the Directors think fit) be made in favor of any Company or the members, directors, nominees or manager of any Company or firm or otherwise in favor of any fluctuating

body of persons whether nominated, directly or indirectly by the Director and any such power of attorney may contain any such power for the protection or convenience of persons dealing with such Attorneys as the Directors may think fit, and may contain powers enabling any such delegates or Attorney as aforesaid to sub-delegate all or any of the powers authorities and discretions for the time being vested in them;

- (28) Subject to the provisions of the Act, generally and from time to time and at any time to authorise, empower or delegate to (with or without powers of sub-delegation) any Director, officer or officers or employee for the time being of the Company all or any of the powers, authorities and discretions for the time being vested in the Directors by these presents subject to such restrictions and conditions, if any, as the Directors may think proper. Provided that the above delegation(s) shall stand withdrawn forthwith on cessation of services of delegate by whatsoever reasons.

(Amended vide special resolution passed at Annual General Meeting held on 2nd June, 2001.)

- (29) to enter into all such negotiations and contracts and rescind and vary all such contracts and to execute and do all such acts, deeds and things in the name and on behalf of the Company they may consider expedient for or in relations to any of the matters aforesaid or otherwise for the purpose of the Company;
- (30) from time to time make, vary and repeal by-laws for the regulation of the business of the Company, its officers and servants;
- (31) to redeem redeemable preference shares.

102. Without prejudice to the general powers conferred by the preceding article the Director may, from time to time, and at any time subject to the restrictions contained in the Act, delegate to managers, secretaries, officers, assistants, and other employees or other persons (including any firm or body corporate) any of the powers authorized and discretions for the time being vested in the Directors.

Power to delegate

103. The Directors may authorize any such delegate or attorney as aforesaid to subdelegate all or any of the powers, authorities and discretion for the time being vested in them.

Power to authorize sub-delegation

104. All deeds, agreements and documents and all cheque, promissory notes, drafts, hundies, bills of exchange and other negotiable instruments and all receipts for moneys paid to the Company, shall be signed, drawn, accepted or endorsed or otherwise executed as the case may be by such persons (including any firm or body corporate) whether in the employment to the Company or not and in such manner as the Directors shall, from time to time, by resolution determine.

Signing of Documents

105. The Directors may make such arrangement as may be thought fit for the management of the Company, affairs abroad, and may for this purpose (without prejudice to the generally of their powers) appoint local bodies, and agents and fix their remuneration, and delegate to them such powers as may be deemed requisite or expedient. The foreign seal shall be affixed by the authority and in the presence of and such persons shall sign instruments sealed therein as the directors shall from time to time by writing under the common seal appoint. The company may also exercise the powers of keeping Foreign Registers. Such regulations not being inconsistent with the provisions of Section 157 and 158 of the Act, the board may, from time to time, make such provisions as it may think fit relating thereto and may comply with the requirements of any local law.

Management abroad

106. Subject to Section 197A, 388 and 383A of the Act, a manager or secretary may be appointed by the Directors on such terms, at such remuneration and upon such conditions as they may think fit, and any Manager or Secretary appointed may be removed by the Directors.

Manager or Secretary

A Director may be appointed as Manager or Secretary, subject to Section 314, 197A, 383A, 387 and 388 of the Act.

Act of Director, Manager or Secretary 107. A provision of the Act or these regulations required or authorizing a thing to be done by a director, manager or secretary shall not be satisfied by its being done by the same person acting both as director and as or in place of the manager or secretary.

MANAGING DIRECTORS

Power to appoint Managing Director/ Executive Director 108. Subject to the provisions of Sections 197A, 269, 314, 316 and 317 of the Act, the Board may, from time to time, appoint one or more Directors to be Managing Director/ Executive Director or Managing Directors/Executive Directors of the Company and may, from time to time, (subject to the provisions of any contract between him or them and the Company), remove or dismiss him or them from office, appoint another or others in his place or their places.

To what provisions he shall be subjected 109. Subject to the provisions of Section 255 of the Act and Article 89 (4) hereof, a Managing Director/Executive Director shall not, while he continues to hold that office, be subject to retirement by rotation, but (Subject to the provisions of any contract between him and the Company) he shall be subject to the same provisions as to resignation and removal as the other Directors and he shall, ipso facto and immediately cease for any cause. However, he shall be counted in determining the number of retiring directors.

Remuneration of Managing Director/ Executive Director 110. Subject to the provisions of Sections 198, 309, 310 and 311 of the Act, a Managing Director/ Executive Director shall, in addition to the remuneration payable to him as a Director of the Company under the Articles, receive such additional remunerations as may, from time to time be sanctioned by the Company.

Power to Managing Director/Executive Director 111. Subject to the provisions of the Act, in particular to the prohibitions and restrictions contained in Section 292 and 293 thereof, the Board may, from time to time, entrust to and confer upon a Managing Director/Executive Director for the time being such of the powers exercisable under these presents by the Board as it may think fit and may confer such powers for such time and be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as it thinks fit and the Board may confer such powers, either collaterally, with, or to the exclusion of and in substitution for any of the powers of the Board in that behalf and may, from time to time, revoke, withdraw, alter or vary all or any of such powers.

COMMENCEMENT OF BUSINESS

Compliance before commencement of new business 112. The Company shall not at any time commence any business out of other objects of its Memorandum of Association unless the provisions of sub-section 2(B) of Section 149 of the Act have been duly complied with by it.

COMMON SEAL

Custody of seal 113. The Directors shall provide a Common Seal for the purpose of the Company and shall have power from time to time to destroy the same and substitute a new Seal in lieu thereof and the Directors shall provide for the safe custody of the Seal for the time being and the Seal shall never be used except by or under the authority of the Directors or a Committee of Directors previously given and every deed or other instrument to which the Seal of the Company is required to be affixed, shall be affixed in the presence of atleast one Director or the President/Vice President/Asstt. Vice President or the Manager or the Secretary or such other person as the Board/Committee of the Board may appoint for the purpose, who shall sign every instrument to which the Seal is so affixed in his presence provided that the Certificate of Shares or Debentures shall be sealed in the manner and in conformity with the provisions of the Companies (Issue of Shares Certificates) Rules, 1960 or any Statutory modification thereof for the time being in force.

(Amended vide special resolution passed at the Annual General Meeting held on 29th June, 1996.)

DIVIDENDS

114. Subject to rights of members entitled to shares (if any) with preferential or special rights attached to them, the profits of the Company, from time to time, determined to be distributed as dividend in respect of any year or other period shall be applied for payment of dividend on the shares in proportion to the amount of capital paid up on the Shares provided that unless the Board otherwise determines all dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid up on the shares during any portion or portions of the period in respect of which dividend is paid. Provided always that subjects as aforesaid any capital paid up on a share during the period in respect of which a dividend is declared shall (unless the Board otherwise determines or the terms of issue otherwise provide, as the case may be), only entitle the holder of such share to an apportioned amount of such dividend as from the date of payment but so that where capital is paid up in advance of calls such capital shall not confer a right to participate in profits. *How-profits shall be divisible*
115. The Company in Annual General Meeting may declare a dividend to be paid to the members according to their rights and interest in the profits and may, subject to the provisions of Section 207 of the Act, fix the time for payment. *Declaration of Dividends*
116. No larger dividend shall be declared than is recommended by the Directors, but the Company in Annual General Meeting may declare a smaller dividend. *Restrictions on amount of dividends*
117. Subject to Section 205 of the Act, no dividend shall be payable except out of the profits of the Company of the year or any other undistributed profits and no dividend shall carry interests as against the Company. *Dividend out of Profit only*
118. The declaration of the Directors as to the amount of the net profits in the audited annual accounts of the Company for any year shall be conclusive. *What to be deemed net profits*
119. The Directors may, from time to time, pay to the members such interim dividends as in their judgment the position of the Company justifies. *Interim dividends*
120. The Director may retain any dividends on which the Company has a lien and may apply the same in or towards satisfaction of the debts, liabilities engagements in respect of which the lien exists, subject to Section 205A of the Act. *Debts may be deducted*
121. Subject to Section 205A of the Act, any Annual General Meeting declaring a dividend may make a call on the members of such amount as the meeting fixes but so that the call on each member shall not exceed the dividend payable to him and so that the call be made payable at the same time as the dividend and the dividend may, if so arranged between the company and the member, be set off against the call. *Dividend and call together*
122. A transfer of shares shall not pass the rights to any dividend declared thereon before the registration of the transfer.
123. Subject to Section 205A of the Act, the Directors may retain the dividends, payable upon shares in respect of which any person is under the transmission Article entitled to become a member or which any person under the Article is entitled to become a member or which any person under the Article entitled to transfer until such person shall duly become a member in respect thereof or shall transfer the same, to the same. *Retention in certain cases*
124. Any one of the several persons who are registered as joint-holders of any share may give effectual receipts of all dividends and payments on account of dividends in respect of such shares. *Dividend to joint holders*
125. Unless otherwise directed, any dividend may be paid cheque or warrant sent through the post to the registered address of the member or person entitled thereto, or in the case of joint-holders to the registered address of that one whose name stands first on the Register in respect of the joint holding or to such person and such address and the member or person entitled or such joint holders as the case may be, may direct and every cheque or warrant so sent shall be, made payable at par to the person or to the order of the person *Payment by post*

to whom it is sent or to the order of such other person as the member or person entitled or such joint-holders, as the case may be, may direct.

When payment a good discharge

126. The payment of every cheque or warrant sent under the provisions of the last preceding Article shall, if such cheque or warrant purports to be duly endorsed, be a good discharge to the Company in respect thereof, provided nevertheless that the Company shall not be responsible for the loss of any cheque, dividend warrant or postal money order which shall be sent by post to any member or by his order to any other person in respect of any dividend.
- 126A. Any dividend remaining unpaid or unclaimed after having been declared shall be dealt with in accordance with the provision of Section 205A and 205B of the Companies Act, 1956 and rules made thereunder.
- 126B. No unclaimed or unpaid dividend shall be forfeited by the Board and the Company shall comply with the provisions of Section 205A of the Companies Act, 1956 and rules made thereunder in respect of such dividend.

BOOKS AND DOCUMENTS

Where to be kept

127. The Books of Account shall be kept at the registered office or at such other place as the Directors think fit and shall be open to inspection by the Directors during business hours.

Inspection by Members

128. The Directors shall, from time to time, determine whether and to what extent, at what times and places and under what conditions or regulations the accounts or books or documents of the Company or any of them shall be open for inspection to members not being Directors and no member (not being a Director) shall have any right of inspection to any books of account or documents of the Company except as conferred by law or authorized by the Directors or by the Company in General Meeting.

Balance Sheet and Profit and Loss Account

129. Balance Sheet and Profit and Loss Account will be audited once in a year by a qualified auditor for correctness as per the provisions of the Act.

Audit

130. The Board of Directors shall appoint the first auditors of the company within one month after its incorporation who shall hold office till the conclusion of first annual general meeting.
131. The directors may fill up any casual vacancy in the office of the auditors.
132. The remuneration of the auditors shall be fixed by the company in Annual General Meeting except as otherwise decided and that remuneration of the first or any auditors appointed by the directors may be fixed by the directors.

NOTICES

How notices served on members

133. The Company shall comply with the provisions of Section 53, 171, 172 and 190 of the Act as to the serving of notices.

Transferee etc. bound by prior notices

134. Every person who, by operation of law, or by transfer or by other means whatsoever, shall become entitled to any share shall be bound by every notice in respect of such share which previously to his name and address being entered on the register shall be duly given to the person from whom he derives his title to such share.

Notice valid through member deceased

135. Any notice or document delivered or sent by post to or left at the registered address of any member in pursuance of these presents shall notwithstanding such member be then deceased and whether or not the Company has notice of his demise, be deemed to have been duly served in respect of any registered shares whether held solely or jointly with other persons by such member, until some other person be registered in his stead as the holder or joint-holders thereof and such service shall for all purposes of these presents be deemed a sufficient service of such notice or document on his or her heirs, executors or administrators and all persons, if any, jointly interested with him or her in any such share.

How notice to be signed

136. The signature to any notice to be given by the Company may be written or printed.

RECONSTRUCTION

137. On any sale of the undertaking of the Company, the Directors or the Liquidators on a winding up may, if authorized by a special resolution, accept fully paid or partly paid up shares, debentures or securities; of any other Company whether incorporated in India or not other than existing or to be formed for the purchase in whose or in part of the property of the Company, and the Directors (if the profits of the Company permit), or the Liquidators (in a winding-up) may distribute such shares or securities or any other property of the Company amongst the members without realization or vest the same in trustees for them and any special resolution may provide for the distribution or appropriations of the cash, shares or other securities, benefits or property, otherwise than in accordance with the strict legal rights of the members or contributories of the Company and for the valuation of any such securities or property at such price and in such manner as the meeting may approve and all holders of shares shall be bound to accept and shall be bound by any valuation or distribution so authorized and waive all rights in relation thereto, save only in case the Company is proposed to be or is in the course of being wound up, such statutory rights, if any, under Section 494 of the Act as are incapable of being varied or excluded by these presents.

Reconstruction

SECRECY

138. Subject to the provisions of law of land and the Act, no member holding less than 26% of the Paid up capital or other person (not being a Director) shall be entitled to enter upon the property of the company or to inspect or examine the Company's premises or properties of the Company without the permission of the Directors, or subject to article 129 to require discovery or any information respecting any detail of the Company's trading or any matter which is or may be in the nature of a trade secret, mystery of trade, or secret process or of any matter whatsoever which may relate to the conduct of the business of the Company and which in the opinion of the Directors it will be inexpedient in the interest of the members of the Company to communicate.

No shareholder to enter the premises of the Company without permission

WINDING UP

139. If the Company shall be wound up and the assets available for distribution among the members as such shall be insufficient to repay the whole of the paid up capital such assets shall be distributed so that as nearly as may be the losses shall be borne by the members in proportion to the capital paid up or which ought to have been paid-up at the commencement of the winding-up on the shares held by them respectively. And if in a winding-up the assets available for distribution among the members shall be more than sufficient to repay the whole of the capital paid-up at the commencement of the winding-up, the excess shall be distributed amongst the members in proportion to the capital at the commencement of the winding-up, paid up or which ought to have been paid up on the shares held by them respectively. But this Article is to be without prejudice to the rights of the holders of shares issued upon special terms and conditions.
140. In the event of Company being wound up, whether voluntarily or otherwise, the liquidators may with sanction of a Special Resolution divide among the contributories, in specie or in kind any part of the assets of the Company and may with the like sanction vest any part of the assets of the Company in Trustees upon such trusts for the benefit of the contributories or any of them, as the liquidators, with like sanction, shall think fit.

Distribution of assets

Distribution of assets in specie

INDEMNITY

141. Subject to the provisions of Section 201 of the Act, every Director, Manager, Secretary and other officer or employee of the Company shall be indemnified against and it shall be the duty of the Directors to pay out of the funds of the Company all bonafide costs, losses and expenses (including traveling expenses) which any such Directors, Manager or Secretary or other officer or employee may incur or become liable to by reason of any contract entered into or any way in the discharge of his or their duties and in particular and so as not to limit the generality of the foregoing provisions, against all liabilities incurred by him

Indemnity

or by them as such Director, Manager, Officer or employee in defending any preceding whether civil or criminal in which judgment is given in his or their favor or he or they is or are acquitted, or in connection with any application under Section 633 of the Act in which relief is granted by the Court and the amount for which such indemnity is provided shall immediately attach as a lien on the property of the Company and have priority as between the members over all other claims.

*Individual responsibility
of Directors*

142. Subject to the provisions of the Act and so far as such provisions permits, no Director, Auditor or other Officer of the Company shall be liable for acts, receipts, neglects or defaults of any other Director or Officer, or for joining in any receipt or act for conformity, or for any loss or expenses happening to the Company through the insufficiency or deficiency or title to any property acquired by order of the Director for or on behalf of the Company or for the insufficiency or deficiency of any securities in or upon which any of the moneys of the Company shall be invested or for any loss occurred by any error of judgment, omission, default, or oversight on his part, or for any loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto, unless the same happens through his own dishonesty.

Names, description, occupation and of each addresses subscribers.	Signature of Subscribers	Name, address, description, occupation and signatures of witness or witnesses.
<p>SUSHILA B. CHAUDHARI W/O Shri Bharat S. Chaudhari E-15, Geetanjali, New Delhi Business</p> <p>Kamal H. Navani W/o Shri H.V. Navani C-35, New Fair Garden, Service</p>	<p>Sd/-</p> <p>Sd/-</p>	<p>I hereby witness the signatures of both the subscribers.</p> <p>Sd/- D.C. Jain S/o Late Shri Phool Chand Jain A-14/3, Jamna Bhawan, Asaf Ali Road, New Delhi - 2 Chartered Accountant M. No. 5123</p>

Place : New Delhi
Date : 2nd February, 1986

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

**Company Petition No. 47/2000
Connected with
Company Application No. 94/2000**

In the matter of :

Aksh Optifibre Limited
Having Its Registered
Office At, F-1080,
RIICO Industrial Area,
Phase – III,
Bhiwadi- 301 019(Rajasthan)

.....Petitioner / The Transferee

AND

**Company Petition No. 47/2000
Connected with
Company Application No.95/2000**

In the Matter of:

Telecord (India) Private
Limited having Its
Registered Office At
F-141, RIICO Industrial Area,
Jaitpura, Jaipur (Rajasthan)

..... Petitioner / The Transferee

Date of Order : 25.10.2000

PRESENT

Hon'ble Mr. Justice P.P.Naolekar

ORDER ON PETITION

The above joint petition has come up for hearing on 23/10/2000. Upon reading the said joint petition, the orders dated 31.05.2000, whereby the above said petitioner companies were ordered to convene the Meetings of their Shareholders, Unsecured creditors, Secured Creditors for the purpose of considering and if, thought fit , approving with or without modification, the scheme of compromise/ arrangement proposed to be made between Telecords (India) Pvt. Ltd. (hereinafter referred to as the "Transferor Company") and Aksh optifibre Limited (herein after referred to as the "transferee company") and annexed to the affidavits of Mr. Chetan Choudhari, Whole Time Director in CA 95/2000 & Smt. Shobha Adlakha, Company Secretary in CA 94/2000 respectively filed on the 23rd day of May, 2000 and published in the "HINDUSTAN TIMES", "DAINIK NAVJYOTI" and "DAINIK BHASKAR", all dated 10/06/2000 and in the EXTRAORDINARY GAZETTE on 12/06/2000 in reference to CA 95/2000 and CA 94/2000, respectively, each containing the advertisement of said notices for convening the said meetings directed to be held by the said orders dated 31/05/2000, the affidavits of chairperson s in CA 94/2000 & 95/2000 showing the publication and dispatch of notices convening the said meeting. The report of the chairperson s in CA 94/2000 & CA 95/2000 as to result of said meetings and upon hearing Shri Anant Kasliwal, Advocate for the Petitioners, Shri O.P. Tiwari, Official Liquidator, it appears from the Report of the chairpersons that the proposed Scheme of Compromise/ Arrangement has been approved unanimously by the Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company and the Transferee Company present, and voting in person or by proxy. The affidavit dated 20th September, 2000 of Regional Director, Northern Region, Department of Company Affairs, Kanpur on behalf of the Central Govt., interalia, stating that the affairs of the Companies do not appear to have been conducted in a manner prejudicial to the interest of their members or public interest. The Official Liquidator also having filed the Report on 21st September, 2000 stating therein that the affairs of the Transferor company have not been conducted in the manner prejudicial to the interest of the shareholders or creditors or public interest and that the Transferor Company could be dissolved without following the process of winding up, and there being no proceedings pending against the petitioner Companies U/S 235-251 of the Companies Act, 1956.

THE COURT DOTH HEREBY SANCTION THE SCHEME OF COMPROMISE/ ARRANGEMENT as set forth in Schedule I hereto and DOTH HEREBY DECLARE the same to be binding on all the Shareholders, Secured and Unsecured Creditors of the Transferor Company and their all concerned and doth approve the said Scheme of Compromise/ Arrangement from the "Transfer Date", i.e. 01/04/2000 (as mentioned in the Scheme).

THIS COURT DOTH FURTHER ORDER:

1. That the property, rights and powers of the transferor Company specified in the first part of the Schedule I hereto and all other property, rights and powers of the Transferor company be transferred without further act or deed to the Transferee Company AND ACCORDINGLY THE SAME SHALL PURSUANT TO Section 394(2) of the Companies Act, 1956 be transferred to and vest in the Transferee Company therein but subject nevertheless to all charges now affecting the same ; and
2. That all Liabilities and Duties of the Transferor Company be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the Transferee company; and
3. That all the proceedings now pending against the Transferor Company be continued by or against the Transferee Company; and
4. That the Transferee Company do without further application allot to such members of The Transferor company as have not given such notice of dissent as is required by clause given in the Scheme of compromise/ arrangement herein the shares in the Transferee Company to which they are entitled under the said Compromise/arrangement ; and
5. That the Transferee Company do within 14 days after the 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 to the Transferor Company shall be dissolved , and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said two Companies shall be consolidated accordingly; and
6. That any person shall be at liberty to apply to the Court for any direction that may be necessary.

Sd/
(PP NAOLEKAR)J.

SCHEDULE-1
SCHEME OF MERGER
TELECORDS (INDIA) PRIVATE LIMITED
WITH
AKSHOPTIFIBRE LIMITED (FORMERLY AKSH INDIA LIMITED)

1. In this Scheme, unless inconsistent with the subject or context, the following expressions shall be deemed to mean:
- (i) "Transferor Company" means Telecords (India) Private Limited, a Companies Act, 1956 and having its Registered Office at F-141 , RIICO Industrial Area, Jaitpura, Jaipur(Rajasthan).
 - (ii) "Transferee Company" means AKSH OPTIFIBRE LIMITED (FORMERLY AKSH INDIA LIMITED), a Company incorporated under the Companies Act, 1956 and having its Registered Office at F-1080, RIICO Industrial Area, Phase III, Bhiwadi (Rajasthan).
 - (iii) "The Act" means the Companies Act, 1956 and any amendment and modification thereto.
 - (iv) "Transfer Date" means 1st April,2000.
 - (v) "Effective Date " means the day on which the last of the sanctions/ permissions Specified in the Scheme shall have obtained and a certified copy of the order of the Hon'ble Rajasthan High Court made under section 391(2) of the Companies Act, 1956 has been filed with the Registrar of Companies, Jaipur.
 - (vi) "The Scheme" means this Scheme as approved by the Board of Directors subject to such modification as the Hon'ble Rajasthan High Court may impose or the Transferor Company and Transferee Company may prefer and the hon'ble Rajasthan High Court may approve.
2. (i) The Authorised Share Capital of Telecords (India) Private Limited is Rs.10,00,000/- divided into 10,000 shares of Rs.100 (Rupees hundred) each of which the subscribed and paid up Share capital is Rs.9,92,200 divided into 9,922 shares of Rs.100 each.
- (ii) The Authorised Share Capital of AKSH OPTIFIBRE LIMITED (FORMERLY AKSH INDIA LIMITED) as on the Transfer date was Rs.15,00,00,000 (Rupees Fifteen Crores Only) divided into 2,80,00,000 (Two Crore Eighty lakhs only) Equity Shares of Rs.5/-(Rupees Five) each and 1,00,000 (One Lakh) Preference Shares of Rs.100 / - (Rupees One hundred) each of which subscribed and paid up share capital was Rs.7,02,15,000/-(Rupees Seven Crores Two lakhs and Fifteen Thousand Only) divided into 1,22,15,000 Equity Shares of Rs.5/- each and 91,400 Redeemable Preference Shares of Rs. 100/- each.

After the Scheme of Merger was approved by the Board of Directors in their Meeting held on 30th March, 2000, of the Transferee company , the following changes have been effected in the issued , subscribed and paid-up capital :

- (a) On 7th April, 2000, The Transferee Company allotted 3,65,000 Equity Shares of Rs.5/- each to the Aksh Employees Welfare Trust.
- (b) On 22nd April, 2000, the above said 91,400 Redeemable Preference Shares were converted into Equity Shares of Rs.5/- each, as each redeemable preference share was attached with the warrant entitling the holders to subscribe to twenty Equity Shares of Rs.5/- each.
- (c) The Transferee company came out with the Public Issue of 59,60,000 Equity Shares of Rs.5/- each for cash at premium of Rs.55/- per share (i.e. price of Rs.60/- per Equity Share) aggregating to Rs.3576 Lacs (The Issue included the Book Built Portion of 44,70,000 Equity Shares and Fixed Price Portion of 14,90,000 Equity Shares). The Book Built Portion was opened on 28th June, 2000 and closed on 4th July , 2000 and fixed price Portion was opened on 18th July, 2000 and closed on 20th July ,2000. Accordingly, the Transferee Company made allotment of 59,68,950 (including 8950 Equity Shares accepted due to over subscription of Fixed Price Portion) Equity Shares of Rs.5/- each for cash at a premium of Rs.55/- per share on 1st August, 2000.

As such as on 1st August, 2000, The subscribed, issued and paid up capital of the Transferee Company is Rs.10,18,84,750/-(Ten Crores Eighteen Lacs Eighty Four Thousand Seven Hundred & Fifty only) Equity Shares of Rs.5/- each.

3. The Merger shall take effect as and from 1st day of April, 2000.

4. **OBJECTS OF THE SCHEME**

AKSH OPTIFIBRE LIMITED (FORMERLY AKSH INDIA LIMITED) is engaged in the business of manufacturing of Optical Fibre Cables and Optical Fibre.

Telecords (India) Private Limited is engaged in the business of manufacturing, trading, processing, Finishing and making of Fibre Reinforced Plastic Rods (hereinafter collectively referred to as FRP Rods) and other plastics Rods. The new design of DoT requires additional strength in the cable which has been successfully developed by Telecords (India) Private Limited.

Fibre reinforced Plastic (FRP) Rods is an important part of raw material which provides the necessary tensile strength for the production and laying of Optical Fibre Cables. It consumes about 25% of the cable cost.

At present, the FRP is in scarcity and is manufactured in India only by two Companies i.e. Telecords India Private Limited and Indore Composite which has created a duopoly position in the market and the manufacturers of the OFC are required to import FRP due to this scarcity for meeting the supply commitment to DoT.

The new FRP shall constitute 27% of the cable cost. Merger of Telecords (India) Private Limited with AKSH OPTIFIBRE LIMITED (FORMERLY AKSH INDIA LIMITED). Rods produced by the Telecords (India) Private Limited are highly cost competitive and can be exported.

Further, Telecords (India) Private Limited has its own strong Research and Development facility.

5. All properties , rights and claims whatsoever of the Transferor Company and its entire undertaking trade marks , patents , authorities, privileges, licenses and rights in respect of property (movable and immovable), tenancies, fittings and fixtures , cash balances , stocks, investments of all kinds, licenses, contracts, agreements, benefit of any security arrangements, reversions, powers, authorities, allotments, approvals, consents, registrations, engagements of all kinds, rights, title, interest, benefits and advantages of whatsoever nature and wheresoever situate belonging to or in possession and in the control of or vested in or granted in favour of or enjoyed by the Transferor Company, including but without being limited to trade names and other intellectual property rights, of any nature whatsoever, permits, approvals, authorization, rights to use and avail of telephones, telexes, facsimile connections and other installations, utilities, electricity and other services, reserves, provisions, funds, benefits of all agreements and other interests and other rights and interest of all description in or arising out of such properties as may belong to or be in possession of the Transferor Company and all Books of Accounts and Documents and records relating thereto , all of which is here after called "the said Undertaking" shall, without further act or deed, be transferred to and vest in the Transferee Company pursuant to Sec.394 of the act with effect from the transfer date, so as to become the Assets and Properties of the Transferee Company which shall be subject to the approval of Scheme by the Hon'ble Rajasthan High Court.

Provided always that any reference in any security document/arrangement to which the Transferor Company is a party, to any assets of the Transferor Company offered as security for any financial obligation or assistance shall be construed as a reference to only the assets of the Transferor Company as are vested in the Transferee Company under this Scheme and the Scheme shall not operate to enlarge the security for any loan, deposit or facility created by or available to the Transferor Company which shall vest in the Transferee Company by virtue of the Compromise/ arrangement and the Transferee Company shall not be obliged to create any further or additional security therefore after the compromise/ arrangement has been effective or otherwise.

6. In respect of such of the said assets as are moveable in nature or are otherwise capable of transfer by mutual delivery or by endorsement and delivery, the same may be so transferred by the Transferor Company and shall become the property of the Transferee Company in pursuance of the provisions of section 394 of the said Act as an integral part of the undertaking.

7. In respect of the said assets other than those referred to in clause 6 above, the Same shall, as more particularly provided in clause 5 above without any further act , instrument or deed, be transferred to and vested in and/ or be deemed to be transferred to and vested in the Transferee Company on the Transfer Date pursuant to the provision of section 394 of the said Act.

8. The Transferee Company may, at any time after the coming into effect of this Scheme in accordance with the provision hereof, if so required, under any law or otherwise, execute Deeds of confirmation, in favour of any party to any contract or arrangement to which the Transferee Company is a party or any writing as may be necessary to be executed in order to give formal effect to the above provision. The Transferee Company shall, under the provision of this Scheme, be

deemed to be authorised to execute any such writings on behalf of the Transferor Company to carry out or perform all such formalities or compliance referred to above on the part of the Transferor Company to be carried out or performed.

9. All the Liabilities of the said undertaking of the Transferor Company shall also stand transferred to the Transferee Company with effect from the Transfer Date without further act or deed pursuant to section 394 of the Act so as to become liabilities of the Transferee Company.
10. The difference in the value of the net assets of the Transferor Company as on 31st March, 2000 over the paid up capital of the Transferor Company as on that date shall be accounted for in the books of the Transferee Company as on the Transfer Date, to the extent to which reserves of the Transferor Company are of a corresponding nature, as Investment Allowance Reserve, Share Premium reserve, Debenture Redemption Reserve, Capital Reserve and the balance difference shall be adjusted to the General reserves in the Balance Sheet of the Transferee Company.
11. Upon the Scheme becoming effective, if any suit, appeal or other proceedings of whatever nature (hereinafter called "proceeding") by or against the Transferor Company be pending, the same shall not abate or discontinue or be in any way prejudicially effected on the merger of the Transferor Company under the Scheme and the same will be continued, prosecuted or enforced by or against the Transferee Company in the same manner and to the same extent as if the Schedule has not been made. Any proceedings taken after the Effective Date shall also be taken by or against the Transferee Company.
 - (a) On the Scheme becoming effective, all the Transferor Company as on the Effective Date shall become the employees of the Transferee Company on terms not less favorable than the terms of employment which the said employees enjoyed as at that date and on the basis that their service shall have been interrupted by reason of such transfer.
 - (b) It is expressly provided that as far as the Provident Fund, Gratuity Fund, Superannuation Fund, or any other Special Fund created or existing for the benefit of the staff, workmen and employees of the Transferor Company are concerned, upon the Scheme becoming effective, the Transferee Company shall stand substituted for the Transferor Company for all purposes whatsoever related to administration or operation of such Schemes or Funds or in relation to the obligations to make contributions to the said Funds in accordance with the provisions of such Schemes or Funds according to the said respective Trust Deeds. It is the aim and intent that all rights, duties powers, and obligations of the Transferor Company in relation to such Schemes or funds shall become those of the Transferee Company. It is clarified that the services of the employees of the Transferor Company will be treated as having been continued for the purpose of the aforesaid Schemes or Funds.
13. On and from the Transfer Date, the Transferor Company shall carry and be deemed to carry on all its business and activities on behalf of the Transferee Company until such times as the merger becomes effective in terms of the Scheme. From the Transfer Date, the Transferor Company shall carry on its business with proper prudence and shall not without the concurrence of the Transferee Company vary the terms and conditions of Employment of its employees and alienate charge or otherwise deal with the undertaking or any part thereof except in the ordinary course of business. Income or Profit accruing to the Transferor Company or Losses incurred by it on and from the Transfer Date shall for all purposes of the income, profit or losses, as the case may be of the Transferee Company and the Transferor Company shall account to and be entitled to be indemnified by the Transferee Company.
 - (a) Subject to the provision of the Scheme becoming effective, the Profit/ Losses of the Transferor Company for the period beginning from 1st April, 2000 shall belong to and the Profits/ Losses of the Transferee Company and will be available to the Transferee Company for being disposed of in any manner as it thinks fit including the declaration of dividend by the Transferee Company in respect of its year ending 31st March, 2001 or any year thereafter.
 - (b) The Transferor Company shall not issue or allot any Right Shares or Bonus Shares out of its Authorised or Unissued Capital without the approval of the Transferee Company.
14. The Transfer and vesting of the said undertaking and the continuance of the proceedings mentioned above shall not effect transactions or proceedings already concluded by the Transferor Company on or after the Transfer Date at the end and intent that the Transferee Company accepts on behalf of itself all acts, deeds, bonds, agreements and other instruments of whatsoever nature done and executed by the transferor Company.
15. Subject to the other provisions contained in the Scheme, all contracts, deeds, bonds, agreements and other instruments of whatsoever nature subsisting or having effect immediately before merger to which the Transferor Company is a party, shall be and remain 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 thereto.

16. (a) In consideration of the transfers in favour of the Transferee Company, every member of the Transferor Company holding Equity Shares in that Company, on such date as the Board of Directors of the Transferee Company may determine, shall in respect of every 1 (One) share of face value of Rs.100/- each held by him be entitled as of right to claim and receive from the Transferee Company, an allotment of 167.40 Equity Shares of Rs.5/- each credited as fully paid up.
- (b) No fractional certificates shall be issued in favour of any member of the Transferor Company holding Equity Shares, but the total no. of fractions shall be consolidated into equity Shares of Rs.5/- each of the Transferee Company and the Board of Directors of the Transferee Company shall make an allotment of such shares as fully paid up to such person or persons (including one or more of themselves or one or more of the officers of the Transferee Company) as such Board of Directors may in their absolute discretion select for the purpose of holding and selling the shares so allotted, provided that such Board of directors may without making an allotment of all or some of the said Equity Shares resulting from such consolidation as aforesaid direct the sale of any or all such Equity Shares. Every sale under this clause shall be at such price or prices and at such time or times as may be approved by Board of Directors approve of the purchaser or his nominee, the Board of Directors shall allot the Equity Shares covered by such sale to the approved Purchaser or nominee. The aggregate proceeds of all such shares, after deducting therefrom all costs, charges and expenses of and incidental to such sale, shall be distributed among members of the Transferor Company holding Equity Shares as would otherwise have been entitled to such fractions respectively in proportion to their respective entitlement in such fractions.

Upon coming into effect of this Scheme, the shareholders of the Transferor Company shall surrender their Share Certificates for cancellation thereof to the Transferee Company. Notwithstanding anything to the contrary, upon the new Shares in the Transferee Company being issued and allotted by it to the eligible shareholders of the Transferor company whose names shall appear on the Register of Members of the Transferor Company on the Record Date fixed as aforesaid, the shares Certificate in relation to the shares held by them by the Transferor Company shall be deemed to have been cancelled and be of no effect, on and from such Record Date. The Transferor Company and the Transferee Company shall be entitled to declare and pay dividends, whether interim or final, to their respective shareholders in respect of the accounting period prior to the Effective Date. The dividend shall be declared by both the Transferor Company and the Transferee Company only by mutual Agreement between the Board of Directors of both the Transferor Company and the transferee Company.

17. (a) The Equity Shares of the Transferee Company to be issued and allotted to the shareholder of the Transferor Company shall rank pari passu in all respects with the Equity Shares of the Transferee Company including entitlements to dividends declared after the Effective Date. The holders of the Shares of the Transferor Company and the Transferee Company shall, save as expressly provided otherwise in this Scheme, continue to enjoy their existing rights under their respective Articles of Association including the right to receive Dividends from the respective Companies of which they are members till the Effective Date.
- (b) Notwithstanding anything to the contrary in the Articles of Association of the Transferee Company, members of the Transferee Company upon becoming members of the Transferee Company shall be entitled to dividend for the full year for the period commencing the day succeeding the last date (which shall in no event be prior to the Transfer Date) upto which the dividend had been declared by the Transferor Company till the Effective Date in addition to such dividend, if any, that may be declared after the Effective Date provided above. In case the Transferor Company has not declared dividend for the year ended 31st March, 2000, the Shares of the Transferee Company shall also carry the eligibility to dividend for the period commencing from the Transfer Date such dividend shall become due and payable simultaneously with the dividend declared after the effective date, as stated in clause (b) above.
18. This scheme is subject to such modifications as the Hon'ble Rajasthan High Court may impose or the Transferor Company may prefer and the Hon'ble Rajasthan High Court approve and the Board of Directors of the Transferor Company and the Transferee Company may consent on behalf of all concerned to any modification or addition to the Scheme and to agree to any condition which the Hon'ble Rajasthan High Court may think fit to impose.
19. The Scheme shall not in any manner affect the rights of any of the Creditors of the Transferor Company, in particular the Secured Creditors shall continue to enjoy to hold charge upon their respective securities.
20. The implementation of the Scheme is conditional upon and subject to:
- (a) Approval by the requisite majority of the members of both the Transferor and Transferee Company
- (b) Sanction of the Scheme by the Hon'ble Rajasthan High Court under section 391 of the Act and the appropriate

orders being made by the said Hon'ble Rajasthan High Court pursuant to Section 394 of the Act for effecting the merger under the Scheme and the implementation of the Scheme.

- (c) The approval of the Financial Institutions, wherever necessary under any agreement with them by the Transferor Company and the Transferee Company.
 - (d) The approval and consent of any authorities / Banks concerned and Debenture Trustees in respect of Debentures issued by the Transferor Company and the Transferee Company as may be required under any contract or statute being obtained and granted in respect of any of the matters in respect of which such approval and consent be required.
 - (e) The certified copies of the Order of the Hon'ble Rajasthan High Court being filed with the Registrar of Companies, Jaipur by both Transferor Company and the Transferee Company.
21. The Scheme although operative from the Transfer Date shall take effect final and from the date on which any of the aforesaid sanctions or approvals or orders shall be last obtained, which shall be the Effective Date for the purpose of the Scheme.
22. All cost, charges and expenses of the Transferor Company and the Transferee Company respectively in relation to or in connection with negotiations leading upto the Scheme and or carrying out and completing the terms and provisions of the Scheme and of and incidental to the completion of merger of the Transferor Company in pursuance of the Scheme shall be borne and paid by the Transferee Company.
23. Upon the Scheme becoming effective as aforesaid to an order being made by the Hon'ble Rajasthan High Court under section 394 of the Act, the Transferor Company shall stand dissolved without winding up as and from the Effective Date or such date as the said Hon'ble Rajasthan High Court may direct.
24. In case the Scheme is not sanctioned by the jurisdictional High Court for any reason whatsoever, the Scheme will become null and void and of no effect. In such an eventuality, no rights and /or liability shall accrue or be incurred by the Transferee and the Transferor Company who shall bear their respective costs and expenses incurred in relation to or in connection with Scheme.

SCHEDULE II
SCHEDULE OF PROPERTIES

PART I
SHORT DESCRIPTION OF THE LEASEHOLD PROPERTY OF THE TRANSFEROR COMPANY
(TELECORDS (INDIA) PVT.LTD.)

Industrial Plot No. F-141, measuring 1801 Sq. Mtrs. Bounded on the North by Plot No. 140, on the South by Plot No. F-142, on the East by Plot No. G-130 and on the West by Road situated at the RIICO Industrial Area, Jaitpura, Distt. Jaipur, along with the construction standing thereon as also together with the pathways, passages, Trees, Boundary walls together with all Sanitary, Electrical and Water Fittings as also along with all easement, latent or patent, enjoyed as also rights appurtenant to the said property .

PART II
SHORT DESCRIPTION OF ALL STOCKS, SHARES AND OTHER CHARGES IN ACTION OF
THE TRANSFEROR COMPANY

Investment of Rs.9045 in NSC pledged with the Sales Tax Authorities.

Sd/-
Registrar

**IN THE HIGH COURT OF RAJASTHAN AT JAIPUR
ORIGINAL COMPANY JURISDICTION
COMPANY PETITION NO. 24 OF 2006
CONNECTED WITH
COMPANY APPLICATION NO. 51 OF 2006**

IN THE MATTER OF:

The Companies Act, 1956

AND

IN THE MATTER OF:

Sections 391 to 394 of the Companies Act, 1956

AND

IN THE MATTER OF:

Scheme of Amalgamation between Aksh Broadband Limited

(Transferor Company) and Aksh Optifibre Limited (Transferee Company)

AND IN THE MATTER OF:

Aksh Optifibre Limited, a Public Limited Company incorporated under the Companies Act, 1956 and having its Registered Office at F - 1080 RIICO Industrial Area, Phase III, Bhiwadi - 301 019 (Rajasthan)

.... Petitioner/ Transferee Company

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH JAIPUR.**

ORDER

In

S.B. Company Petition No. 24 of 2006

IN THE MATTER OF THE COMPANIES

ACT 1956

AND

**IN THE MATTER OF SECTION 391 OF THE
COMPANIES ACT 1956**

AND

**IN THE MATTER OF SCHEME OF SCHEME
OF AMALGAMATION BETWEEN AKSH
BROADBAND LIMITED (TRANSFEROR
COMPANY) AND AKSH OPT1FIBRE LIMITED
(TRANSFEREE COMPANY)**

Date of Order :

February 23, 2007

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Anant Kasliwal)
Mr. Vaibhav Kasliwal) tor the petitioner.
M.R.C.Meena, Official Liquidator

BY THE COURT

1. The petitioner company Aksh Optifibre Limited, filed this petition under sections 391 to 394 of the Companies Act, 1956 (hereinafter shall be referred to as the Act of 1956) for sanctioning the Scheme of Amalgamation between petitioner Company (Transferee Company and Aksh Broadband Limited (Transferor company)
2. That the petitioner company was incorporated on March 19, 1986 under the name and style of Aksh India Private Limited with the Registrar of Companies, NCT of Delhi and Haryana and was converted into a Public Limited Company on March 13, 1994 vide Special Resolution passed on March 13, 1994. Thereafter w.e.f. 7th Feb., 2000 the transferee company shifted its registered office from the NCT of Delhi to the State of Rajasthan.
3. The position authorized issued, subscribed and paid up capital of the petitioner company as on date is detailed out in para No. 5 of the petition.
4. The main objects of the petitioner company as set out in the object clause of its Memorandum of Association, have been detailed out in para No-4 of the petition. The copy of the latest audited annual accounts of the petitioner company has been submitted as Annexure C to the petition.
5. The petitioner company in the meeting of the Board of Directors approved the scheme of amalgamation in the resolution marked as Annexure D with the petition.
6. The petitioner Company Filed company application No. 51 of 2006 and this court vide its order dated September 22, 2006 allowed the application and issued direction for holding separate meetings of the equity shareholders, unsecured creditors and the secured creditors of the petitioner company for the purpose of considering the proposed scheme of amalgamation between Aksh Broadband Limited (transferor Company and Aksh Optifibre Limited (Transferee Company) at Bhiwadi and Gurgaon. At the meeting of the secured creditors held at Gurgaon, out of 3 secured creditors, 2 secured creditors representing Rs. 10 crores secured debt voted in favour of the resolution of scheme of amalgamation. In the meeting of the 46 equity shareholders, 43 equity shareholders representing rupees one crore eleven lacs seventy two thousand ninty six voted in favour of the scheme of amalgamation. In the meeting of the 15 unsecured creditors representing Rs. 11,45,24,650 (rupees eleven crores forty five lacs twenty four thousand six hundred and fifty only voted in favour of the scheme of amalgamation. The petitioner company submitted in the petition that the transferor company will file the requisite petition before the Delhi High Court for sanctioning the scheme of amalgamation and prayer has been made for sanctioning the above scheme in relation to the petitioner company.
8. On filing the above petition, this court on December 15, 2006 issued notice to the Regional Director, and Registrar Companies. The notices were also directed to be published in two News papers, one in English in Finance Express (Delhi Edition) and Hindi News paper Dainik Nav Jyoti (Jaipur Edition). The petitioner company filed Newspapers dated January 15, 2007 of the notices published in the respective news papers.
9. In response to the notice served, the Regional Director Northern Region. Ministry of Company Affairs, Noida, filed affidavit and submitted that as per clause 3(a) of Part III of the Scheme of Amalgamation all the employees of the Transferor company shall become the employees of the Transferee company without any break or interruption in their services upon sanctioning of the scheme of amalgamation by this court. As per para 2(b) of Part V of the scheme, the share capital of a company can be increased only after following the procedures prescribed under the relevant provisions of the Companies Act and payment of requisite fees to the Registrar of Companies and stamp duty to the State Government. It was prayed for considering this aspect of the matter. It was further submitted that certain creditors have filed winding up petitions (Company Petition Nos 60, 359 and 360 of 2005) against the Transferor company Aksh Broadband Ltd. before the Delhi High Court. Upon Scheme of Amalgamation becoming effective the transferor company shall vest with the transferee company and the transferor company shall stand liquidated without being wound up, and they shall not be able to challenge any of the legal proceedings of the transferor company on the grounds of the territorial jurisdiction only and the transferee company shall have all legal rights and remedies as are available in due course of law to defend such proceedings. The Bombay Stock Exchange vide its letter dated September 13, 2006 given approval subject to certain conditions and the transferee company may be directed to comply with the said conditions on approving the scheme.
10. The learned counsel for the petitioner company filed photostat copies of the orders passed by the Delhi High Court disposing the company petitions Nos. 359 and 360 of 2005 filed against the transferor company at Delhi High Court.
11. I have heard learned counsel for the parties and weighed contents of the petition, and affidavit filed by the Regional Director.
12. In *Miheer H. Mafatlal (1997) 1 SCC 579* following broad contents of the jurisdiction of the Company Court have been laid down for sanctioning the scheme :

- (1) The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by section 391 (a) have been held.
- (2) The scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391 sub-section (2).
- (3) The meetings concerned of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.
- (4) All necessary material indicated by Section 393(1)(a) is placed before the voters at the meetings concerned as contemplated by Section 391 sub-section (1).
- (5) All the requisite material contemplated by the provision of subsection (2) of Section 391 of the Act is placed before the Court by the applicant concerned seeking sanction for such a scheme and the Court gets satisfied about the same.
- (6) The proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not unconscionable, nor contrary to public policy. For ascertaining the real purpose underlying the scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray, the same.
- (7) The Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter compromising the same class whom they purported to represent.
- (8) The scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.
- (9) Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction. It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the scheme by the requisite majority. Consequently the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate. The Court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire. The supervisory jurisdiction of the Company Court can also be culled out from the provisions of Section 392. Of course this section deals with post-sanction supervision. But the said provision itself clearly earmarks the field in which the sanction of the Court operate. The supervisor cannot ever be treated as the author or a policy-maker. Consequently the propriety and the merits of the compromise or arrangement have to be judged by the parties who as sui juris with their open eye and fully informed about the pros and cons of the scheme arrive at their own reasoned judgment and agree to be bound by such compromise or arrangement.

13. In *Hindustan Lever vs. State of Maharashtra* (2004) 9 SCC 438, the Apex Court indicated that the jurisdiction of the Company Court while sanctioning the scheme is supervisory only. While exercising its power in sanctioning the scheme of amalgamation the court is to satisfy itself that the provisions of statute have been complied with, that the class was fairly represented by those who attended the meeting, that the statutory majority was acting bona fide and not in an oppressive manner and that the arrangement is such as which a prudent, intelligent or honest man or a member of the class concerned and acting in respect of the interest might reasonably take. While examining as to whether the majority was acting bona fide, the court would satisfy itself to the effect that the affairs of the company were not being conducted in a manner prejudicial to the interest of its members or to public intent. The basic principle underlying such a situation is none other than the broad and general principle inherent in any compromise or settlement entered into between the parties, the same

being that it should not be unfair, contrary to public policy and unconscionable or against the law-once these things are satisfied the scheme has to be sanctioned as per the compromise arrived at between the parties. The court would have no further jurisdiction to sit in appeal over the commercial wisdom of the class of persons who with their eye open give their approval, even if, in the view of the court a better scheme could have been framed.

14. Bearing the above principles in mind I proceed to weigh the scheme as well as the objections raised by the Regional Director in his affidavit regarding pendency of company petition for winding up of transferor company. Out of the three company petitions for winding up of the transferor company two petitions have already been disposed by the Delhi High Court as per the photostat copies of the orders produced by the learned counsel for the petitioner company. As per the law laid down by the Apex Court that while exercising its power in sanctioning the scheme of amalgamation the court is to satisfy itself that the provisions of statute have been complied with, that the class was fairly represented by those who attended the meeting, that the statutory majority was acting bonafide and not in an oppressive manner and that the arrangement is such as which a prudent, intelligent or honest man or a member of the class concerned and acting in respect of the interest might reasonably take. While examining as to whether the majority was acting bonafide, the court would satisfy itself to the effect that the affairs of the company were not being conducted in a manner prejudicial to the interest of its' members or to public intent. The basic principle underlying such a situation is none other than the broad and general principle inherent in any compromise or settlement entered into between the parties, the same being that it should not be unfair, contrary to public policy and unconscionable or against the law-once these things are satisfied scheme has to be sanctioned as per the compromise arrived at between the parties. In the instant matter in the separate meetings of the equity share holders, unsecured creditors and secured creditors voted in favour of the scheme of amalgamation and this court does not have jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme.
15. Having closely scrutinised the Scheme of Amalgamation, I find that it is not unjust and unfair to the creditors or any class of creditors. The scheme appears to be reasonable, according to law and in the interest of the shareholders.
16. For these reasons the petition stands allowed and the scheme of Amalgamation is sanctioned in terms of prayer clauses (i) to (iii). Costs of Rs. 2500/- (Two Thousand Five Hundred Only) to the Official Liquidator to be paid by the petitioner within two weeks from today. The copy of the order be sent to the Registrar Companies as per Rules.

Sd/-
(Shiv Kumar Sharma) J.

IN THE HIGH COURT OF DELHI AT NEW DELHI

(ORIGINAL JURISDICTION)

IN THE MATTER OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

OF

COMPANY PETITION NO 296/2006

CONNECTED WITH

COMPANY APPLICATION (IN) NO 163/2006

IN THE MATTER OF Aksh Broadband Ltd.,
having its Regd. Office at 101,
Sita Rain Mansion, 718/21,
Joshi Road, Karol Bagh,
New Delhi-110005

Petitioner/Transferor Company
(Within the jurisdiction of this Court)

WITH

IN THE MATTER OF Aksh Optifibre Ltd.,
having its Regd Office at
F-1080, RIICO Industrial Area, Phase-III,
Bhiwadi-301019 (Rajasthan)

Transferee Company
(Outside the jurisdiction of this Court)

**BEFORE HON'BLE MR. JUSTICE ANIL KUMAR
DATED THIS THE 29TH DAY OF MAY, 2007**

ORDER UNDER SECTION 394 OF THE COMPANIES ACT, 1956

The above petition coming up for hearing on 29/5/2007 for sanction of scheme of amalgamation proposed to be made of Aksh Broadband Ltd. (hereinafter referred to as the Transferor Company) (Within the jurisdiction of this Court) with Aksh Optifibre Ltd. (hereinafter referred to as the Transferee Company) (Outside the jurisdiction of this Court), upon reading the said petition, the order dt. 29/9/2006 whereby the meetings of the shareholders, secured and unsecured creditors of the Transferor Company was ordered to be convened for the purpose of considering, and if thought fit, approving, with or without modification, the Scheme of amalgamation, annexed to the affidavit of Sh. Yogendra Dwivedi, authorized representative of the Transferor Company filed on the 28 day of September, 2006 and the publication in the newspapers namely (1) Statesman (English) and (2) Jansatta (Hindi) both dt. 2/11/2006 each containing the advertisement of the said notice convening the said meetings directed to be held by the said order dt 29/9/2006, the affidavit of Sh Chandra Sbekhar Yadav, Chairperson filed on 15/11/2006 showing the publication and despatch of the notices convening the said meetings, the report of the Chairperson of the said meetings as to the result of the said meetings and upon hearing Sh Sandeep Sethi, Sr Advocate with Mr Ashish. Midha, Advocate for the petitioner, Ms. Manisha Tyagi, Advocate for the Official Liquidator and Mr. R. D. Kashyap, Dy Registrar of Companies in person and it appearing from the reports that the proposed scheme of amalgamation has been approved unanimously without any modification by the said shareholders, secured and unsecured creditors of the Transferor Company present and voting either in person or by proxy and upon reading the affidavit dated 21/2/2007 of Sh. Rakesh Chandra, Regional Director, Northern Region, Ministry of Company Affairs, Noida on behalf of Central Government stating that the authorized share capital of the company can be increased only after following the procedure prescribed under the relevant provisions of the Companies Act, 1956 and after payment of requisite fee to the Registrar of Companies and the stamp duty to the State Government It has been stated by the Regional Director that three winding up company petitions [CP Nos. 60/2005, 359/2005 and 360/2005] filed against the Transferor Company are pending awaiting final order in this Court and that under the scheme of amalgamation it has been provided that the Transferee Company shall not challenge any of the legal proceedings of the Transferor Company on the grounds of territorial jurisdiction and that the transferee Company shall have all the legal rights and the remedies as are available in due course of law to defend such proceedings The Regional Director has further stated that the shares of Transferee

Company are listed with the National Stock Exchange and Bombay Stock Exchange It has also been pointed out by the Regional Director that letter dt. 13/9/2006 granting approval was issued by the Bombay Stock Exchange subject to certain conditions The Regional Director has sought a compliance of those conditions by the Transferee Company The Regional Director has referred to the Chairman's report of the meeting of the unsecured creditors for the Transferor Company and contended that out of 24 unsecured creditors who participated in the meeting 6 unsecured creditors representing 25% in number and 0.13% in value however, not appearing in the books of accounts of the company as per the certificate of the statutory auditors were allowed to participate and vote at the meeting and all of them voted against the scheme The objections of the Regional Director have been opposed by the Transferor Company and an affidavit has been filed in reply to the objections taken on behalf of Regional Director the Transferor Company has also filed an undertaking in reply to the objections taken on behalf of the Regional Director The objection of the Regional Director is that the authorized share capital can be increased only after following the procedure prescribed and payment of requisite fees to the Registrar of Companies and stamp duty to the State Government It is inferable that combined authorized capital of the amalgamated company does not exceed the authorized capital of the two companies calling for any further fees or stamp duty or to follow separate procedure for such merger of authorized share capital Consequently, the objection of the Regional Director cannot be sustained and the Transferee Company shall be entitled for increase of its authorized share capital on the amalgamation without following the procedure as contemplated under the Companies Act Regarding certain winding up petitions lying pending against the Transferor Company, it has been submitted that the disclosure regarding pendency of litigations against the Transferor Company was made in the explanatory statement and that the scheme has been approved by shareholders of both the companies after considering the same It has been further pointed out that the two Company Petitions i. e. CP No 359 and 360 of 2005 were disposed of by order dt.6/12/2006 in terms of which the company petitions were referred to arbitration and the Transferor Company agreed to furnish an unconditional bank guarantee of Rs. 34,76,500/- in favour of the Registrar General, High Court of Delhi which bank guarantee was submitted by the Transferor Companies on 2/1/2007 and that the same is valid for a period of six months However, pursuant to amalgamation since all the undertakings, assets and liabilities of the Transferor Company shall vest with the Transferee Company and that the Transferor Company would stand liquidated without being wound up thus the bank guarantee furnished by the transferor Company may not stand and therefore, the petitioner/ transferee Company has undertaken to substitute and furnish a fresh unconditional bank guarantee of Union Bank of India, Industrial Finance branch, M-11, M Block, Middle Circle, Connaught Place, New Delhi for Rs 34,76,500, in favour of the Registrar General, High Court of Delhi on or before and latest by 2 July, 2007 Regarding the CP No. 60/ 2005 the Transferor Company has stated that the reconciliation talks are going on between the petitioner and the Transferor Company An affidavit has been filed undertaking that upon amalgamation the Transferee Company would continue the process to resolve and compromise the dispute with the petitioner in CP No 60/2005 and that if the compromise talks could not be concluded successfully than in such a case the Transferee Company would abide by the orders of the Court in CP 60/2005 and would not dispute its liability, if any, imposed by the Court on the ground of not being a party to the proceedings, it has been further pointed out that a similar objection raised by the Regional Director in CP No 24/ 2006 filed by the transferee Company at the High Court of Judicature for Rajasthan at Jaipur Bench which was allowed by the Court by order dt. 23/2/2007 approving the scheme Therefore, in view of the undertaking and order dt. 23/2/2007 of the High Court of Judicature for Rajasthan at Jaipur Bench the objection raised by the Regional Director does not survive. Regarding the compliance of the conditions imposed by the Bombay Stock Exchange on the Transferee Company in its approval, it was asserted that the objections relates to the Transferee Company and that by order dt. 23/2/2007 the High Court of Judicature for Rajasthan at Jaipur in CP No 24/2006 filed by the Transferee Company has granted sanction to the scheme It has been further pointed out that the conditions imposed by the Bombay Stock Exchange relates to lock in period on the shares to be issued to the shareholders of the Transferor Company pursuant to the scheme becoming effective It has been stated on behalf of the Transferee Company and has undertaken to lock in 100% of the new issue of shares i.e. 2,02,10,400 equity shares of Rs 5/- each for a period of one year from the date of listing at the Bombay Stock Exchange and 25% of such capital i. e. 50,52,600 equity shares of Rs. 5/- each for a period of 3 years from the date of listing of BSE which undertaking has been acknowledged by the BSE in its approval letter dt.13/9/2006. In view of the undertaking given by the Transferee company and the sanction to the scheme granted by the High Court of Rajasthan, the objection raised by the Regional Director is rejected Regarding the objection of the meeting of the unsecured creditors where six creditors voted against the scheme it has been stated on behalf of the petitioners that the six persons who voted against the scheme were not appearing as unsecured creditors in the books of the Transferor Company and that even after considering the negative votes of the six persons who represent only 0.13% in the terms of value the scheme stands passed by the requisite statutory majority The Court did not find any merit in this objection and rejected the same, and considering the affidavit of Sh. A. K. Chaturvedi, Official liquidator filed on 9/5/2007 stating therein that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its shareholders or creditors or to public interest, and there being no investigation proceedings pending in relation to the petitioner companies under Section 235 to 251 of the Companies Act, 1956 The scheme of amalgamation in respect of the Transferee Company has been sanctioned by High Court of Rajasthan at Jaipur vide order dt 23/2/2007.

THIS COURT DOTH HEREBY SANCTION THE SCHEME OF AMALGAMATION setforth in Schedule-I annexed hereto subject to undertaking given regarding bank guarantee and DOTH HEREBY DECLARE the same to be binding on all the shareholders and creditors of the Transferor and Transferee Companies and all concerned and doth approve the said scheme of amalgamation with effect from the appointed date i.e.1.4.2006.

AND THIS COURT DOTH FURTHER ORDER:

1. That all the property, rights and powers of the Transferor Company specified in the First, Second and Third parts of the Schedule-U hereto and all other property, rights and powers of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 394 (2) of the Companies Ad, 1956 be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and
2. That all the liabilities and duties of the transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 394 (2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the Transferee Company; and
3. That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and
4. That the Transferee Company do without further application allot to such members of the Transferor Company as have not given such notice of dissent as is required by Part-TV given m the scheme of amalgamation herein the shares in the Transferee Company to which they are entitled under the said amalgamation; and
5. That the Transferor Company do within five weeks after the date of this order cause a certified copy of this order alongwith the copy of order of Rajasthan High Court at Jaipur in respect of the Transferee Company to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the transferor Company shall be dissolved without the process of winding up and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said 'transferor and Transferee Companies shall be consolidated accordingly; and
6. That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary.
7. That the scheme of amalgamation has been sanctioned and it has been ordered that the cost of Rs. 20,000/- has to be paid by the petitioner to the Official Liquidator, which will be deposited in the Common Pool Fund of the Official Liquidator.

SCHEME OF AMALGAMATION

BETWEEN

Aksh Broadband Limited

Transferor Company

AND

Aksh Optifibre Limited

Transferee Company

AND

THEIR RESPECTIVE SHAREHOLDERS

PART-I

A Definitions

In this Scheme unless repugnant to the meaning or context thereof, the following expressions shall have the meaning as given to them below:-

- (i) **“Act”** means the Companies Act, 1956 and any amendments and/ or re-enactment or modifications thereof for the time being in force.
- (ii) **“The Appointed Date”** means 1.4.2006
- (iii) **“The Effective Date”** means the date on which the last of the approvals/ events specified in Clause 5 of Part V of the Scheme are obtained/ have occurred.
- (iv) **Transferor Company** or ABL means “Aksh Broadband Limited”, a Company incorporated under the Act and presently having its Registered Office at 101, Sita Ram Mansion, 718/21, Joshi Road, Karol Bagh, New Delhi 110 005.
- (v) **Transferee Company** or AOL means “Aksh Optifibre Limited”, a Company incorporated under the Act and having its Registered Office at F -1080, RIICO Indl. Area, Phase III, Bhiwadi - 301 019, Rajasthan.
- (vi) **“Transferred Undertaking of Transferor Company”** means and include all of the undertakings of Transferor Company as illustratively listed out and marked in **Part A of Schedule -1** hereto and shall mean and include: -
 - (a) all the present and future assets including freehold and/ or leasehold 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 the present and future 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;
 - (e) All present and future immovable assets including all freehold, leasehold and any other title, interest or right in such immovable assets, of the Transferor Company including those comprised in the Transferred Undertaking of the Transferor Company as per the Records of the Transferor Company including those illustratively listed out and marked in Part B of Schedule - II;
 - (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 including those illustratively listed out and marked in **Part B of Schedule -I**;
- (xiii) **“Scheme”** means this Scheme of Amalgamation as set out herein and approved by the Board of Directors subject to such modifications as the Hon’ble High Court of Delhi, at New Delhi and the Hon’ble High Court of Rajasthan at Jaipur may impose or the Transferor Company and Transferee Company may prefer and the Hon’ble High Court of Delhi at New Delhi and the Hon’ble High Court of Rajasthan at Jaipur may approve.

B. THE SCHEME

Transferee Company - Aksh Optifibre Limited

Aksh Optifibre Limited (the Transferee Company herein) was incorporated as a Private Limited Company on March 19, 1986 under the name and style of "Aksh India Private Limited" with the Registrar of Companies, NCT of Delhi & Haryana and was converted into a Public Limited Company on March 13, 1994 vide special resolution passed on March 8, 1994.

Thereafter, w.e.f 7th February, 2000, the Transferee Company shifted its Registered Office from the NCT of Delhi to the State of Rajasthan after seeking confirmation of the Hon'ble Company Law Board (Northern Region Bench). At present the Registered Office of Transferee Company is situated at F-1080, RIICO Industrial Area Phase - III, Bhiwadi, in the State of Rajasthan, with in the jurisdiction of Hon'ble High Court of Rajasthan, at Jaipur.

Subsequently, the Company changed its name from "Aksh India Limited" to "Aksh Optifibre Limited" w.e.f 17th April, 2000 to properly reflect the then core activities of the Company i.e. drawing of optical fibre and manufacturing of optical fibre cable.

The Transferee Company came out with its maiden IPO (Initial Public offering) in July, 2000 and thereafter its Shares were listed on Jaipur as well as Bombay & National Stock Exchange Limited

Pursuant to SEBI (Delisting of Securities) Guidelines 2003, Company has got its Equity Shares delisted from Jaipur Stock Exchange Limited on 15.05.2004. The Shares of the Transferee Company are presently listed at The Stock Exchange, Bombay and The National Stock Exchange Limited.

Transferor Company - Aksh Broadband Limited

Aksh Broadband Limited (hereinafter referred to as "the Transferor Company") was incorporated on 4.12.2001, under the name and style of "Aksh Broadband Limited" with the Registrar of Companies, NCT of Delhi & Haryana and received Certificate of Commencement of Business on 08.01.2002.

Thereafter, the Transferor Company had twice vide special resolution(s) passed at the Extra ordinary General Meeting of its Shareholders altered the Object Clause of its Memorandum of Association and received Certificate of registration of special resolution(s) confirming alteration of object clause(s) from Registrar of Companies, NCT of Delhi & Haryana on 09.04.2003 and 16.02.2006.

The Registered Office of the Transferor Company is situated at 101, Sita Ram Mansion, 718/21, Joshi Road, Karol Bagh, New Delhi -110 005, which is with in the jurisdiction of Hon'ble High Court of Delhi at New Delhi.

Amalgamation of all undertakings of Transferor Company with Transferee Company

Transferee Company is presently engaged in the manufacturing of Optical Fibre Cables and is one of the few manufacturers who have integrated their operations backwards into production of fibre as well as FRP Rods and the Transferor Company is in the business of providing /operating voice and Broadband Networks to deliver a whole range of services in the field of telecommunications & information.

The Transferor Company is setting up an optical fiber network for providing various broadband-based services in the State of Andhra Pradesh.

The entire network rolled out by Transferor Company is based on optical fiber cables, which are manufactured by the Transferee Company. There is a total synergy in the business of Transferor as well as Transferee Company.

Upon this Scheme becoming effective and on subsequent transfer of Transferred Undertaking of Transferor Company into Transferee Company, the Transferee Company will move into forward integration and shall become an integrated telecom service provider in addition to being a Optical Fibre Manufacturer.

The Transferee Company will be able to provide single window integrated networking/telecom solutions as well as acquire the existing subscribers base of Transferor Company.

The amalgamation of all Undertakings of Transferor Company into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations.

The amalgamation would create economies in administrative and managerial costs by consolidating operations and will substantially reduce duplication of administrative responsibility and multiplicity of records and legal and regulatory compliances.

The amalgamation will also improve the financial structure and cash flow management of the merged entity.

PART-II
SHARE CAPITAL

The present capital structure of the Transferor Company and the Transferee Company is as under: -

The present capital structure of the Transferor Company as at 31.3.2006 is as follows:

Share Capital	As at 31.3.2006 (Amount in Rs.)
Authorized Capital	
1,00,00,000 Equity Shares of Rs. 5/- each	5,00,00,000
Issued Subscribed and Paid Up Capital	
79,78,400 Equity Shares of Rs.5/- each, fully paid up	3,98,92,000

The present capital structure of the Transferee Company as at 31.3.2006 is as follows:

Share Capital	As at 31.3.2006 (Amount in Rs.)
Authorized Capital	
3,00,00,000 Equity Shares of Rs. 5/-each	15,00,00,000
Issued Subscribed and Paid Up Capital	
22,037,892 Equity Shares of Rs.5/- each, fully paid up	11,01,89,460

IN CONSIDERATION OF THE RECIPROCAL PROMISES AND AMALGAMATION, THE TRANSFEROR COMPANY **AND** ITS SHAREHOLDERS AND THE TRANSFEE COMPANY AND ITS SHAREHOLDERS HAVE PROPOSED THE SCHEME OF AMALAGAMATION AS SET OUT IN PARTS III TO V BELOW.

PART - III

TRANSFER OF TRANSFERRED UNDERTAKINGS OF TRANSFEROR COMPANY

1. (a) With effect from the Appointed Date the Transferor Company shall dissolve without winding-up and merge with the Transferee Company and all of the assets, investments, licenses, rights, title and interests comprised in the Transferred Undertaking of Transferor Company shall pursuant to Section 394(2) of the Act and without any further act or deed be transferred to and vested in or deemed to have been transferred to and vested in the Transferee Company so as to become as and from the Appointed Date, the estate; assets, license, "rights, title and iriteresrbf the Trans^feree Company subject to Clause 5, Part V of the Scheme.
- (b) In respect of such of the assets of the Transferred Undertaking as are movable in nature or incorporeal property or are otherwise capable of transfer by manual delivery or by endorsement and delivery, or transfer by vesting and recordal pursuant to this Scheme the same shall stand transferred and vested with effect from the Appointed Date and shall become the property of the Transferee Company.
2. (a) Upon the coming into effect of this Scheme all permits, registrations, approvals, consents, statutory licences, licences to set-up and operate any business including providing any kind of telecom and other services and quotas, rights, entitlements, any other licenses including those relating to Trademarks, Designs, Drawings, Tenancies, Patents, Copy Rights, Privileges, Powers, facilities of every kind and description of whatsoever nature in relation to the Transferred Company including those illustratively listed out in **Schedule - II, Part A** hereto, to which the Transferor Company is a party or to the benefit of which the Transferor Company may be eligible and which are subsisting or having effect immediately before the Effective Date, shall be & remain in full force and effect in favour of or against the Transferee Company, as the case may be and may be enforced as fully and effectually as if, instead of the Transferor Company the Transferee Company had been a party or beneficiary or obligee thereto.
- (b) Upon the coming into effect of this Scheme and subject to the provisions of this Scheme, all contracts, agreements, arrangements and other instruments of whatsoever nature in relation to the Transferred Company to which the Transferor

Company is a party or to the benefit of which the Transferor Company may be eligible and which are subsisting or have effect immediately before 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 effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obligee thereto.

- (c) Any inter se contracts between the Transferor Company and the Transferee Company shall stand merged and vest in the Transferee Company upon the sanction of the Scheme and upon the Scheme becoming effective. Any statutory licenses, authorizations, statutory rights, permissions, approvals, Sales Tax, Service Tax, Excise, Provident Fund, ESI, DGFT, DoT Reserve Bank of India, Importer-Exporter Code, local municipal permissions, right of way permissions, etc. or other registrations, no-objection certificates or consents to carry on the operations in the Transferred Undertakings of Transferor Company shall stand transferred and vested in the Transferee Company without any further act or deed and shall be appropriately mutated by the statutory authorities concerned therewith in favour of the Transferee Company upon the vesting and transfer of the Transferred Undertakings of Transferor Company pursuant to this Scheme so as to empower and facilitate the continuation of operations of the Transferred Undertakings of Transferor Company in the Transferee Company without any hindrance or let from the Appointed Date.
3.
 - (a) Upon the coming into effect of this Scheme, the debts, advances, liabilities and obligations of the Transferor Company shall, without any further act or deed be and stand transferred to the Transferee Company and shall become the debts, liabilities and obligations of the Transferee Company which it undertakes to meet, discharge and satisfy.
 - (b) All liabilities and obligations including those arising out of any guarantees executed by Transferor Company will stand transferred and vested in the Transferee Company as part of the continuing contractual obligations vested in the Transferee Company.
 - (c) With effect from the Appointed Date and upto and including the Effective Date, All legal or other proceedings by or against Transferor Company under any statute, or otherwise whether pending on the Appointed Date or which may be instituted in future in respect of any matter arising before the Effective Date shall be continued and enforced by or against Transferee Company after the Effective Date. Further, upon the Scheme becoming effective the Transferee Company shall not challenge any proceedings initiated against the Transferor Company on account of territorial jurisdiction only and the Transferee Company shall have all legal rights and remedies as are available in due course of law to defend such proceedings. If proceedings are taken against Transferor Company after the Appointed Date but before the Effective Date, the Transferor Company shall defend the same in accordance with the advice of Transferee Company in respect thereof.
4. With effect from the Appointed Date and upto and including the Effective Date:
 - (i) Transferor Company shall be deemed to have been carrying on all operations and activities relating to the Transferred Undertakings of Transferor Company on behalf of Transferee Company and stand possessed of the properties so to be transferred for and on account of and in trust for Transferee Company; and
 - (ii) all profits accruing to Transferor Company (including taxes, if any, thereon) or losses arising or incurred by it relating to the Transferred Undertakings of Transferor Company shall for all purposes, be treated as the profits, taxes or losses as the case may be of Transferee Company, provided that the Board of Directors of Transferor Company may declare final dividend for the shareholders of Transferor Company for the financial year 2005-06 only after seeking approval of the Board of Directors of Transferee Company and such dividend shall be paid only to shareholders of Transferor Company other than Transferee Company itself.
 - (iii) The Transferee Company, being a listed Company, if it so desires, shall be allowed to consolidate and declare its periodical financial results including quarterly, half yearly, yearly results after taking into consideration the financial results of Transferor Company for the respective period, provided that the Transferee Company shall also separately declare its financial results without consolidation for the said period as per the format prescribed by the Stock Exchanges in terms of the Listing Agreement.
5. The transfer and vesting of the Assets/ Investments and liabilities of the Transferred Undertakings of Transferor Company to the Transferee Company and the continuance of any proceedings by or against the Transferee Company hereof shall not affect any transaction or proceedings already completed by the Transferor Company on and from the Appointed Date to the end and intent that the Transferee Company accepts all acts, deeds and things done and executed by and/or on behalf of the Transferor Company as acts, deeds and things done and executed by and on behalf of the Transferee Company. For the consolidation of the accounts of Transferor Company with the Transferee Company after the Scheme becoming effective the

opening balances under various head of the Transferor Company, as on Appointed Date shall be considered by the Transferee Company.

6. (a) All employees of the Transferor Company as on the Effective Date, shall as from such date, become employees of the Transferee Company with the benefit of continuity of service on same terms and conditions being not unfavorable with the terms and conditions applicable to such employees and without any breach or interruption of service. In regard to Provident Fund, Gratuity Fund, Superannuation fund or any other special fund created or existing for the benefit of such employees of the Transferor Company upon the Scheme becoming effective, the Transferee Company shall stand substituted for the Transferor Company for all purposes whatsoever relating to the obligation to make contributions to the said funds in accordance with the provisions of such schemes or funds, and applicable acts in the respective Trust Deeds or other documents.

It is the aim and intent of the Scheme that all the rights, duties, powers and obligations of the Transferor Company in relation to such schemes or funds shall become those of the Transferee Company. It is clarified that the services of the employees of the Transferor Company will be treated as having been continuous for the purpose of the aforesaid schemes, fund, Trusts etc.

- (b) In the event that the Trustees are constituted as holders of any securities, Trust funds or Trust monies, in relation to any Provident Fund Trust, Gratuity Trust or Superannuation Trust of the Transferor Company, such funds shall be transferred by such Trustees of the Trusts of the Transferor Company to Trusts managed by the Trustees of the Transferee Company set up for the same purpose and object and shall be deemed to be a transfer of trust property from one set of Trustees to another set of Trustees in accordance with the provisions of the relevant labour laws, Indian Trust Act, and the Indian Income Tax Act 1961 and relevant Stamp Legislations as applicable. Appropriate Deeds of Trusts and/or documents for transfer of Trust properties shall be simultaneously executed upon the sanction of the Scheme in accordance with the terms hereof by the Trustees of such Trusts in favour of the Trusts of the Transferee Company so as to continue the benefits of the employees. The Provident Fund Trust, Gratuity Trust or Superannuation Trusts of the Transferor Company shall continue to hold such securities, Trust Funds and/or Trust monies as hitherto fore, till such time as the transfer to the Trustees of the Transferee Company Employee's Trusts is made.
- (c) The Transferee Company undertakes to continue to abide by any agreement(s)/settlement(s) entered into by the Transferor Company with any Labour union(s)/employees of the Undertakings of the Transferor Company. The Transferee Company agrees that for the purpose of payment of any retrenchment, compensation, gratuity and other terminal benefits, the past services of such employees with the Transferor Company shall also be taken into account, and agrees and undertakes to pay the same as and when payable.
7. Upon the coming into effect of the Scheme, all Motor Vehicles of any nature whatsoever comprised in or relating to the Transferred Undertakings of Transferor Company shall vest in the Transferee Company and the appropriate Governmental and Registration Authorities shall mutate and register the said vehicles in the name of the Transferee Company as if the vehicles had originally been registered in the name of the Transferee Company without levying or imposing any fees, charges, taxes or levy whatsoever.
8. In accordance with the Modvat/Cenvat/VAT Rules framed under the Central Excise Act, 1944, or the Service Tax Credit Rules framed under the Finance Act, 1994 as are prevalent at the time of the sanction of the Scheme, the unutilised credits relating to Excise duties paid on inputs/capital goods lying to the account of the Transferred Undertakings of Transferor Company in the RG23A and RG23C Registers as well as the unutilised credits relating to Service Tax paid on input services consumed by the Transferor Company shall be permitted to be transferred to the Credit of the Transferee Company, as if, all such Modvat/Cenvat/VAT Service Tax Credits were lying in the RG 23A and RG 23C Registers of the Transferee Company. The Transferee Company shall be entitled to set off all such unutilised Modvat/ Cenvat/ Service Tax Credits, as aforesaid, against the Excise duty / Service Tax payable by it.
9. The Transferee Company shall be entitled to use all packaging material relating to the Transferred Undertakings of Transferor Company lying unused and which Transferor Company is entitled to use under any statutes/ Regulations as on the Appointed Date and implemented from the Effective Date till such time as all of such packaging material are exhausted. The Transferee Company is authorised to advise the statutory authorities of the sanction of the Scheme, even prior to its becoming effective for enabling the change to be made/ noted with effect from the Effective Date.
10. The Transferor Company is entitled to various benefits under Incentive Schemes and Policies relating to the Transferred Undertakings of Transferor Company and pursuant to this Scheme it is declared that the benefits under all of such Incentive Schemes and Policies shall be transferred to and vested in the Transferee Company.

11. The Transferor Company is entitled to various benefits under Vendor Approvals from various clients enabling the Transferor Company to do business with such clients pursuant to such Vendor Approvals and pursuant to this Scheme it is declared that the benefits under Vendor Approvals from various clients enabling the Transferor Company to do business with such clients pursuant to such Vendor Approvals stand and be transferred to and vested in the Transferee Company as if all such Vendor Approvals were in fact issued/given to the Transferee Company instead of the Transferor Company by such clients.
12. The Transferor Company formulated a consortium and thereafter bid for Development, Implementation, Operation & Maintenance of Andhra Pradesh (AP) Broadband Network for and in collaboration with Government of Andhra Pradesh. The Transferor Company won the bid and thereafter has entered into a formal agreement with AP Technology Services Limited on behalf of Information Technology & Communications Department, Government of Andhra Pradesh for implementing the above project. Upon the Scheme of Amalgamation becoming effective all the rights and obligations arising out of the said Agreement shall flow to the Transferee Company without any further act or deed and it shall have the effect as if Transferee Company had originally entered into the said Agreement instead of Transferor Company.

PART IV

PAYMENT OF CONSIDERATION / ISSUE & CANCELLATION OF EQUITY SHARES

Upon coming into effect of the Scheme and upon the vesting and transfer of the Transferred Undertaking of the Transferor Company into the Transferee Company herein, the Transferee Company shall fix a record date for completion of allotment to the Shareholders of the Transferor Company with effect from the Effective Date, as may be applicable, existing as on the record date as provided herein and without any further act or deed, issue and allot 7 (Seven) Equity Shares of the face value of Rupees 5/- each at par credited as fully paid up as on the Effective Date for every 2 (Two) fully paid Equity Shares of the face value of Rs.5/- each held by the Shareholders of Transferor Company;

The total paid up capital of Transferor Company as on 31st March 2006 is Rs,3,98,92,000/- comprising of 79,78,400 Equity Shares of Rs.5/- each.

Out of the above stated total Paid up Capital of Transferor Company, the Transferee Company is holding 22,04,000 Equity Shares of Rs.5/- each aggregating to Rs.1,10,20,000/- amounting to 27.62% of the total paid up capital of Transferor Company as on 31st March, 2006.

Since the provisions of the Act do not permit a Company to hold its own Shares, upon dissolution of the Transferor Company under the terms of this Scheme, all the afore-stated 22,04,000 Equity Shares of the face value of Rs.5/- each aggregating to Rs.110.20 Lacs held by the Transferee Company in the Transferor Company shall stand cancelled upon this Scheme becoming effective without any further act or deed.

The new Equity Shares of the Transferee Company to be issued and allotted in lieu of the Equity Shares of the Transferor Companies, shall rank pari-pasu and in all respects with the existing Equity Shares of the Transferee Company including entitlement for dividend for the complete financial year 2006-07 with effect from the Appointed Date.

Upon this Scheme becoming effective and subject to the above provisions, the Transferee Company shall fix a record date for determining the Shareholders of Transferor Company who shall get Shares of Transferee Company in lieu of their holding in Transferor Company. The Transferee Company shall give option to the Shareholders of Transferor Company to get new Equity Shares of Transferee Company either in physical form or in electronic form and according to the option as exercised and notified by the Shareholders of Transferor Company, along with the details of their respective D-mat Account, the Transferee Company shall issue new Equity Shares either in physical form or in electronic form to the Shareholders of Transferor Company.

In case of Shareholders opting for getting the Equity Shares in electronic form, their respective Demat accounts will be credited with new Equity Shares of Transferee Company as per the exchange ratio mentioned above.

At present the existing Equity Shares of Transferor Company are held in physical form and upon the scheme becoming effective all the existing Share Certificates issued by the Transferor Company shall stand cancelled and be of no effect, on and from such record date fixed by Transferee Company.

Upon the Scheme becoming effective and after the issue and allotment of new Equity Shares by the Transferee Company to the Shareholders of Transferor Company, the Transferee Company shall make an application for listing of these new Equity Shares with The Stock Exchange, Bombay as well as the National Stock Exchange Limited, in due compliance of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 and both these Stock Exchanges shall list the new Equity Shares issued by Transferee Company after due compliance of the Listing Agreement.

PART V

GENERAL TERMS AND CONDITIONS

- 1 (a) The amalgamated Transferee Company shall draw up and finalise a consolidated Balance Sheet post-amalgamation as on the Appointed Date (hereinafter the "Consolidated Balance Sheet") which shall be the opening Balance Sheet of the amalgamated Transferee Company as on the Appointed Date.
- (b) The Transferee Company shall, upon this Scheme becoming effective, record the assets including reserves and liabilities comprised in the Transferor Company at the respective book values thereof as appearing in the books of the Transferor Company at the close of the business of the day immediately preceding the Appointed Date. Similarly any Balance in the Profit and Loss Account of the Transferor Company shall be aggregated with such balance in Profit and Loss Account of the Transferee Company. Any Balance shown as Miscellaneous Expenditure to the extent not written off or adjusted, if any, in the books of Transferor Company shall be similarly aggregated with such balance in the books of the Transferee Company.
- (c) Upon this Scheme becoming effective, the Transferee Company shall credit to Share Capital account in its books of account, the aggregate face value of the new shares issued by it to the members of the Transferor Company pursuant to this Scheme.
- (d) The excess, if any, of the value of the assets over the value of the liabilities of the Transferred Undertakings of Transferor Company vested in the Transferee Company upon this Scheme becoming effective as recorded in the books of accounts of the Transferee Company shall, after adjusting the aggregated face value of the new shares issued by the Transferee Company to the members of the Transferor Company (pursuant to this Scheme) be credited to the Reserve Account in the books of the Transferee Company. However, if there is any deficit in the value of the assets over the value of liabilities, the same shall be debited to the Reserve Account in the books of the Transferee Company.
- (e) Notwithstanding the above, the Transferee Company, in consultation with their Statutory Auditors, is authorised to account any of these balances in any manner whatsoever as may be deemed fit by them.
- (f) The accounts of the Transferee Company as on the Appointed Date, as reconstructed in accordance with the terms of the Scheme shall be finalized on the basis of the Consolidated Balance Sheet as on the Appointed Date pursuant to this Scheme.
- (g) The Transferee Company is expressly permitted to revise its Income Tax & loss returns and related TDS certificates and to claim refunds, advance tax credits etc., on the basis of the combined accounts of the companies as reflected in the Consolidated Balance Sheet as on the Appointed Date pursuant to the terms of this Scheme and its right to make such revisions in the Income Tax & loss returns and related Tax Deducted at Source (TDS) certificates and the right to claim refunds, adjustments, credits, set-offs, advance tax credits pursuant to the sanction of this Scheme and the Scheme becoming effective is expressly reserved.
- 2 (a) Upon coming into effect of the Scheme, all permissions, licenses including service provider licenses, approvals, incentives, remissions, tax-incentives, licence fee, incentives, licences, consents, sanctions and other authorizations to which the Transferor Company is entitled to and also which are comprised in the Transferred Undertaking (s), shall stand vested and permitted or continued by the order of sanction of the Hon'ble High Court of Delhi at New Delhi as well as Hon'ble High Court of Rajasthan at Jaipur in the Transferee Company, therefore the Transferee Company shall file the Scheme, for the record of the statutory authorities who shall take it on file, pursuant to the sanction orders of the Hon'ble High Court of Delhi at New Delhi as well as Hon'ble High Court of Rajasthan at Jaipur.
- (b) Upon the Scheme becoming effective the Authorised Share Capital of Transferor Company comprising of 1,00,00,000 (One Crore) Equity Shares of Rs.5/- each aggregating to Rs.5,00,00,000/- (Rupees Five Crores) shall stand carried forward and merged with the Authorized Share Capital of Transferee Company without any further act or deed and without any levy of fees, duty or charge. Accordingly, upon the Scheme becoming effective the Authorized Share Capital of the Transferee Company shall stand enhanced/ increased from Rs. 15,00,00,000 (Fifteen Crores) divided into 3,00,00,000 (Three Crores only) Equity Shares of Rs.5/- to Rs.20,00,00,000 (Twenty Crores) divided into 4,00,00,000 (Four Crores only) Equity Shares of Rs.5/-. Upon the Scheme becoming effective, the office of Registrar of Companies, Rajasthan at Jaipur shall immediately take effect of consolidation of Authorised Share Capital of Rs.5 Crores of Transferor Company into the books of Transferee Company and enhance the Authorized Share Capital of Transferee Company from Rs.15 crores to Rs. 20 Crores in it's records and software as per the detailed break up mentioned hereinabove. The Transferee Company shall make suitable amendments to its Memorandum and Articles of Association to reflect the increase of the Authorised Share Capital. Upon the Scheme becoming effective the Transferee Company

shall file the requisite applications/forms with the Registrar of Companies, Rajasthan, Jaipur for the increase of its Authorised Capital from Rs.15 Crores to Rs.20 Crores and the Registrar of Companies shall permit the Transferee Company to take credit of the entire fees already paid by the Transferor Company in this regard.

- (c) At present the existing name of Transferee Company purely reflects it's existing manufacturing activities, the name of Transferor Company reflects the manufacturing activities of Transferee Company as well as the services provided by the Transferor Company. Further the Transferee Company being an optical fibre cable manufacturer has to deals with limited number of clients and the Transferor Company being a service provider deals with a large no. of service utilizers and has got a lot of brand and goodwill attached to its name.

Therefore upon the Scheme becoming effective and to enable the Transferee Company to conveniently and effectively carry on it's business as well as carry on the business of Transferred Undertaking of Transferor Company and also to benefit from the branding and goodwill attached to the name of Transferor Company and the existing name of the Transferee Company i.e. Aksh Optifibre Limited shall be changed to the name of Transferor Company's name, which is Aksh Broadband Limited. The change of name will be in the interest of Transferee Company as well as all it's stakeholders and will also allow the Transferee Company to conveniently carry on it's existing business of Optical Fibre Cable as well as to carry on the business of providing various broadband services based on optical fibre network.

- (d) The Transferee Company is authorised to take all such steps and do all such acts and deeds for and on behalf of the Transferor Company or on it's own behalf, as may be necessary to give effect to the provisions contained in sub-clause (a) to (c) above.
3. The Transferor Company and the Transferee Company shall file the necessary applications/ petitions before the Hon'ble High Court of Delhi at New Delhi as well as before the Hon'ble High Court of Rajasthan, at Jaipur, respectively for sanction of this Scheme under the provisions of Sections 391 and 394 of the Act. All disputes and differences arising out of this Scheme shall be subject to the jurisdiction of the Hon'ble High Court of Delhi at New Delhi with respect to Transferor Company and Hon'ble High Court of Rajasthan at Jaipur with respect to Transferee Company only.
4. Upon the Scheme being sanctioned Transferor Company shall stand dissolved without being wound up as on the Appointed Date and all their Undertakings shall vests with Transferee Company.
5. This Scheme shall be deemed to be effective upon the occurrence of the last of the following events: -
- (a) The approval of the Scheme by the requisite majority of the members and creditors of the Transferor Company and the Transferee Company, as the case may be, as required under Sections 391-394 of the Act.
- (b) The sanction of the Scheme by the Hon'ble High Court of Delhi at New Delhi under Sections 391 to 394 of the Act and other applicable provisions of the Act, Rules and Regulations, as the case may be.
- (c) The sanction of the Scheme by the Hon'ble High Court of Rajasthan at Jaipur under Sections 391 to 394 of the Act and other applicable provisions of the Act, Rules and Regulations, as the case may be.
- (d) Certified copies of the orders being filed with the Registrar of Companies, NCT of Delhi and Haryana for registration thereof.
- (e) Certified copies of the orders being filed with the Registrar of Companies, Rajasthan for registration thereof.

SCHEDULE I

Part-A

Illustrative (and not exhaustive) descriptive list of the Transferred Undertaking(s) of the Transferor Company

A All of the business and undertakings of the Transferor Company including and relating to the Telecommunication and IT industry, Internet, Network, Technology Provider, EPC Contractor, Cable TV, On Demand TV, E-governance, along with all rights, title and interest in all immovable, movable and incorporeal assets, whether free-hold, leasehold or licensed and also all rights and entitlements comprised in the businesses of the Transferor Company including all statutory licenses, approvals and registrations (as may be necessary to operate the businesses or otherwise) and all rights in any licences/permissions issued by any Governmental authority/regulatory bodies including the Department of Telecommunication (DoT) to set up and operate any of the businesses of the Transferor Company either directly or indirectly through its subsidiary or group companies or through any other person or entity and also all rights of ownership, whether owned or licensed in relation to any tradename, trading style and any other intellectual property of any nature whatsoever.

SCHEDULE I
PART B

Illustrative (and not exhaustive) list of all investments comprised in the Transferor Company

Investments

Rupees (as on 31.3.2006)

- | | | |
|----|---|---------------|
| >- | Government Securities - National Saving Certificate
(lodged with Government Department as Security) | 25,000 |
| > | Investment in Subsidiary Company
#22,59,50,000 Equity Shares of Rs.5/- each partly paid | #33,89,25,000 |
| # | The Transferor Company has also paid Rs.54.25 Crores as call money in advance on the above Equity Shares. | |

SCHEDULE II
Part A

Illustrative (and not exhaustive) descriptive list of licenses, approvals, permissions, consents, registrations, and certifications, rights, entitlements, agreements etc. of the Transferor Company

1. Registration Certificate No. 48/2002 for Infrastructure Provider Category - I (IP-I) dated 12.02.2002 issued by Ministry of Communication, Government of India.
2. Certificate of Importer Exporter Code issued by Ministry of Commerce, Government of India date of Issue 27* May 2002 IEC Code 0502013737.
3. Order No.JPD/CE(C)/C.II/F.4(138)/Pt.II/D.291 dated 20th February 2003 issued by Jaipur Vidyut Vitran Nigam Limited; Office of the Chief Engineer (Commercial) for laying of coaxial T.V. cables/Optical Fibre Cables on Discom's electric poles & also erection of separate poles.
4. ISP License No.820-612/2002-LR dt. 14.02.2002 issued by Ministry of Communication, Department of Telecommunication, Government of India.
5. All permissions and approvals received from statutory and municipal bodies in respect of the carrying on of the business of providing Internet, IT industry, Network, Technology Provider, EPC Contractor, Cable TV., on demand TV, E-governance, Telecommunication Services in terms of the aforesaid licenses or any other services as may be provided by the Transferor Company.
6. All registrations, permissions, recognitions received from statutory and regulatory authorities including from the Trade Mark Registry, Sales Tax Department, Income Tax Department, VAT, Entry Tax, Excise and Service Tax Departments, The Labour Departments, Shop and Commercial Establishment Department of various States and any registration/ recognition under any local sales tax act of Andhra Pradesh, Rajasthan or any other state of India or any other local By-Laws, Orders, Rules, Regulations, Stipulations or Acts.

SCHEDULE II
Part - B

Illustrative (and not exhaustive) descriptive list of all immovable assets including any other title, interest or right in such immovable assets, of the Transferor Company

DETAILS OF LEASEHOLD PROPERTIES

Sr. No.	Place	Property Address	Area Sqm
1.	Jaipur	Plot No. E-1007, Sitapura Industrial Area Phase - III, Jaipur allotted by Rajasthan State Industrial Development & Investment Corporation Limited vide their Letter No.U(25)-3(2-1007)/2002/3759 dated 31st March 2002	3990

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH JAIPUR

ORIGINAL JURISDICTION

COMPANY PETITION No. 11 OF 2012

IN THE MATTER OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF SECTIONS 391 AND 394

OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF SCHEME OF AMALGAMATION OF

AKSH TECHNOLOGIES LIMITED, F-1080, RIICO INDUSTRIAL AREA, PHASE-III, BHIWADI -301019, RAJASTHAN,
THROUGH COMPANY SECRETARY, GAURAV MEHTA

..... TRANSFEROR/PETITIONER COMPANY-I

WITH

AKSH OPTIFIBRE LIMITED, F-1080, RIICO INDUSTRIAL AREA, PHASE-III, BHIWADI -301019, RAJASTHAN, THROUGH
COMPANY SECRETARY, GAURAV MEHTA

..... TRANSFEE/PETITIONER COMPANY-II

(Collectively referred to as the Petitioner Companies)

PETITION UNDER SECTION 391 AND 394 OF THE COMPANIES ACT, 1956

In the High Court of Judicature for Rajasthan

Jaipur Bench

**

Company Petition No. 11/2012

For sanction (2nd Motion) of amalgamation of
Aksh Technologies Ltd (**Transferor Company**)
With Aksh Optifibre Ltd (**Transferee Company**)

/Reportable/

Date of Order::: 08/11/2012

Hon'ble Mr. Justice Ajay Rastogi

Mr. Sudhir Gupta Sr. Advocate with Mr. Sachin Mehta)

Mr. Sunil Nath, Mr. Parikshit Singh &

Mr. Vikas Goyal, for petitioners – (Transferor & Transferee- Cos.)

Mr. Amod Kasliwal, for OL

Mr. Amol Vyas, for respondents

Mr. Rajendra Salecha, for Objector (M. Gupta & Sons)

Instant Company petition has been jointly filed by Transferor & Transferee Cos. U/s 391 to 394 of Companies Act, 1956 (" Co. Act") praying for sanction to be accorded to the Scheme of Amalgamation of Aksh Technologies Ltd (Transferor Co.) with Aksh Optifibre Ltd (Transferee Co.) on the terms contained in the Scheme (Ann. P-1).

Registered Office of both Transferor & Transferee Companies are situated in Rajasthan within territorial jurisdiction of this Court. As alleged, the Scheme of amalgamation is to amalgamate Aksh Technologies Ltd (Transferor Co.) with Aksh Optifibre

Ltd (Transferee Co.) . Salient features alongwith object of the Scheme besides circumstances necessitating amalgamation of the Companies are explained in details in SB Company Application No. 24/2012 at paras 16 & 17 and this Court finds no reason to disagree with the expectations of Petitioner –Cos. As alleged, balance sheets of both the Transferor & Transferee Cos., are placed on record alongwith resolutions of their respective Board of Directors approving the Scheme of Amalgamation.

Vide order dt. 12/04/2012 in Company Appl. No. 24/2012, it has come on record that the Transferor Co., is having seven equity share holders who have given their unconditional consent to the proposed Scheme vide letters (Ann. A) while there are no secured creditors of Transferee Co., as is evident from document (Ann. E). Thus, meetings of equity share holders of Transferor Co., and of secured creditors of Transferee Co., were dispensed with and accordingly meetings of secured & unsecured creditors of Transferor Co., and equity shareholders & unsecured creditors of Transferee Co., were directed to be convened and which were duly convened on 18/05/2012. The reports as regards result of afore-directed meetings were submitted by Chairpersons duly verified by their affidavits annexed thereto (Ann. 12, 14, 16 & 18). Counsel for the petitioner – cos., submits that all the equity share holders, secured & unsecured creditors of both the Transferor & Transferee Cos., as the case may be, present at the meetings have unanimously approved the scheme of amalgamation . Hence instant company petition has been filed.

It has come on record that authorized share capital of Transferor Company as on 29/03/2012 was of One Crore & One lakh fully paid up equity shares each of Rs. 5/- having net worth of Rs. Five Crores & Five lakh which was the issued, subscribed & paid up capital; whereas authorized share capital of Transferee company was 16,00,00,000/- (sixteen Crore) fully paid up equity shares each of Rs. 5/- having net worth of Rs. 80,00,000,000/- Eighty Crores while its issued , subscribed & paid up capital was of 14,29,24,871 (Fourteen Crore Twenty Nine Lacs Twenty Four Thousand & Eight Hundred Seventy One) fully paid up equity shares each of Rs. 5/- having net worth of Rs. 71,46,24,355/- (Seventy One Crore Forty Six lacs Twenty four thousand three hundred & fifty five only).

It has also come on record that pursuant to the proposed Scheme having become effective & consequent upon amalgamation of Transferor Co., into Transferee Company, the authorized share capital of Transferee Company as on 31/03/2011 will be of 17,01,00,000/- equity shares each of Rs.5/- having net worth of Rs. 85,05,00,000/- .

Vide order dt.31/05/2012, in addition to the issuance of notices to the Official Liquidator and Regional Director (Northern west Region) Ministry of Corporate Affairs, Ahmedabad this Court also directed for publication of the notices in Rajasthan Patrika (Rajasthan Edn.) & Financial Express (English / N.Delhi Edn). These have been duly carried out. Despite public notice of the company petition in the news papers, no one has filed any objection to the grant of sanction to the proposed scheme and there has also been no appearance before this Court with the exception of Mr. M. Gupta & Sons (HUF) to oppose the prayers contained in the instant petition or to the proposed scheme.

In response to the notice issued vide order dt. 31/05/2012, the Regional Director has filed an affidavit inter-alia averring in para 2 (c) that there appears no objection to the proposed scheme of amalgamation between the petitioner- companies and the scheme does not prima facie appear to be prejudicial to the interest of the share holders and and public at large. At the same time, the Official Liquidator has also filed an affidavit along with report of Chartered Accountant, who examined the accounts Books for Three Financial years & other records of Transferor Co. and in the reports, the CA finally concluded that the affairs of the Transferor Co. and in the reports, the CA finally concluded that the affairs of the Transferor Company has not been conducted in a manner prejudicial to the interest of its members & creditors. Similarly, the OL has no objection, if , upon sanction of scheme of Amalgamation , Transferor Co. is ordered to be dissolved without winding up U/s 394(1)(iv) of Co. Act; however , nobody else raised any objection for the Scheme of Amalgamation. Rejoinder to the affidavit of the Official Liquidator has been filed clarifying about the observations made in the report of Chartered Accountant.

Before dealing with objections raised by M. Gupta & Sons (HUF), claiming to be one of unsecured creditor of Transferee Co., it would be relevant to record that the objector earlier filed company petition No. 60/2005 before the High Court of Delhi seeking winding up of Transferee Co., U/s. 439 read with 433(e) & 434 of the Co. Act and in para 9 of the petition, it was averred ad infra:

“9. That, as on 31/01/2005, the respondent company (Aksh Broadband Ltd) is indebted & indebted to the petitioner HUF, the creditor of respondent company in the total aggregate sum of Rs.14,41,898/- comprising of an outstanding principal balance amount of Rs. 11,89,400/- besides the costs and interest accrued thereon upto 31/01/2005 in the sum of Rs. 2,52,498/-.”

However, from the reply filed in Company petition before the High Court of Delhi, the Transferee Co. denied its alleged indebtedness to the objector (HUF) which ultimately withdrew winding up petition -60/2005 with the liberty to file recovery proceedings in appropriate forum in accordance with law and accordingly winding up petition No. 60/2005 came to be dismissed as withdrawn with the liberty as prayed for vide order dt. 06/03/2012 (Ann.0.6) of the Delhi High Court.

Thereafter, the objector (HUF) served statutory legal notice dt. 20/07/2012 (Ann.0.7) invoking arbitration clause obviously for settlement of their dispute, which at one stage was agitated for settlement in winding up petition No. 60/2005 before High Court of Delhi. However, this Court has been apprised of the proceedings thereafter having been initiated.

Counsel for the Objector submits that there was complete defiance of mandatory directions given by this court vide order dt. 12/04/2012 in Co-Appl. - 24/2012 for holding of the meetings of unsecured creditors and that apart, meeting of 19270 unsecured creditors holding debts of Rs. 117.17 lacs as on 29/02/2012 as is evident from list of unsecured creditors (Ann. E) was required to be held; whereas in respect of Seven Creditors, a sum of Rs. 88.59 Crores have been shown while against 19025 security deposit holders, no balance is shown but total sum shown is of 94.22 Crores as against total taken note of by the court as of 117.17 Crores and that apart, the list does not relate to 19270 unsecured creditors and thus it cannot be considered to be exhaustive list of unsecured creditors.

Further objection raised by Objector was that the notice was to be served by ordinary post to the unsecured creditors under the supervision of the Chairperson of the meetings; however, it does not reveal from the record or from the affidavit of Chairpersons of the directed meetings that notices have been sent under their supervision and in absence of proper service of notices in compliance of directions vide order dt. 12/04/2012 it defeats the very purpose of holding of the directed meetings particularly of the unsecured creditors to which the Objector is also one of the members.

Next objection raised by Objector is that as per order of the Court, meeting was called upon of unsecured creditors but it did not provide for participation of the proxy in course of holding the directed meetings; and according to the objector, there has been non compliance of stock exchange requirement and that apart, pendency of the winding up petition (No. 13/2011) before the High Court of Rajasthan was suppressed from this Court and that was in violation of S. 391 of Co. Act.

Counsel for Objector has tried to convince that reports of the Official Liquidator are not in conformity with S. 391 & 394 of Co. Act. Counsel also submits that cardinal contours for considering sanction of the scheme based on anvil of public interest being made subjective with relation to the specific aspects of procedural compliance as has been enlightened by Apex court in *Miheer H. Mafatlal V/s. Mafatlal Industries Ltd (AIR 1997 SC 506)*, have been completely given go-bye and a procedural requirement could not have been conducted in such a manner; and it prima facie defeats the public interest.

All the objections pointed out by the Objector have meted out by petitioner- Cos. Counsel for petitioner Cos. Submits that apart from going into technicalities having been pointed out by the objector, it is suffice to say that after statutory notice being served for initiation of objector that Transferee Co. is indebted to the objector, he has no *locus standi* to question the scheme and that apart from the material on record, the financial status of Transferee Co. after proposed Scheme being effective is much strengthened and the indebtedness of Transferee Co., as being claimed by Objector, even after judicial determination, can always be meted out and according to the petitioner- Cos., the Objector is using instant proceedings as money recovery mechanism which is not permissible under the law and as regards alleged recovery pursuant to statutory notice served, the Objector has a legal remedy & liberty to claim before Arbitral Tribunal; and moreover, the Objector has failed to show in nay manner that the proposed scheme is against the interest of stake holders or public at large.

Counsel for Petitioner- Cos. Further submits that meetings of Transferee Co., were held of unsecured creditors of the value of Rs. 117.17 Crores as on 29/02/2012 and its list was placed on record as Ann.E which gives out complete details of unsecured creditors of Transferee Co., except subscribers having made small deposits towards refundable security for accessing Internet protocol television service which is the basic business of Transferee Co, and details of unsecured creditors were made available on record and there was no error committed in holding the meetings of unsecured creditors of Transferee Co.

As regards objection in respect of service of the notices through ordinary post to the unsecured creditors under supervision of Chairperson, Counsel for petitioner- Cos., submits that apart from the name of objector being included in the category of unsecured creditors, mere absence of the address against Objector's name cannot be considered to be fatal more so when the Objector had dragged the Transferee Co. into litigation in one forum or the other; and the Transferee Co, did not owe any amount to the objector while basic reason for misconception on the part of Objector was due to non-encashment of a cheque of Rs. 85,50/- by the Objector – as a consequence whereof, reverse entry was required to be made in the books of Transferee Co., which being the position, the Transferee Co., always denied any liability towards the objector. That apart, notice was sent to the objector on its last known address having been taken note of by the Chairpersons in their report and merely because expression “under my supervisions” having not been mentioned by Chairpersons in their reports, it is wholly inconsequential and it does not affect the validity either of the report or of the notices being sent and meetings being convened.

As regards objection of the Objector in respect of participation of proxy in the directed meetings of unsecured creditors, Counsel for petitioner Cos, submits that the court's order nowhere restricted or prohibited that the meeting cannot be participated through proxy; however, attendance of meeting by stake holders through proxy is well recognized under the Co. Act and Rules made there under. That apart, the disclosure was made without prejudice to all rights & contentions of the petitioner qua the merit of any claim of the objector if raised before a forum of competent jurisdiction and such objection regarding falsification of documents is wholly misconceived.

As regards non compliance of stock exchange requirement, Counsel submits that the petitioner Cos. Have obtained approval of the proposed Scheme from National Stock Exchange & Bombay Stock Exchange, which was duly mentioned in the notices

served to all the stake holders including unsecured creditors as is evident from copy of approval given by both, NSE & BSE prior to filing of Co. Appl. 24/2012 vide document dt. 26/03/2012 filed along with additional affidavit dt. 25/09/2012.

As regards objection in respect to suppression of the fact of pendency of winding up petition (No. 13/2011); Counsel submits that requirements provided U/s. 391 of Co. Act were duly complied with by petitioner- Cos., and that apart, winding up proceedings have been amicably settled after being resolved through process of mediation and are likely to be closed shortly based on the amicable settlement.

Counsel for petitioner –Cos. further submits that as a result of amalgamation, financial status of Transferee Co. would certainly strengthen increasing its net worth as on 30/06/2012 to the extent Rs. 33,515.66 lacs and its revenue would increase by 6,021.22 lacs, and net worth by Rs. 1,519.91 lacs.

This court has considered the submissions made by Counsel for petitioner – Cos., Regional Director, Ministry of Corporate Affairs & Official Liquidator; Counsel for the Objector and with their assistance, examined the material placed on record.

The Apex Court in *Miheer H. Mafatlal Vs. Mafatlal Industries Ltd* (supra) has examined scheme of compromise & arrangement U/s 391 & 394 of co. Act; and observed that the Company Court is not holding jurisdiction like an appellate authority to minutely scrutinize the Scheme and arrive at an independent conclusion whether the Scheme should be permitted to go through or not when majority of creditors or members or their respective classes have approved the Scheme as required by S. 391(2) of co. Act and this court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties obviously because the Court has neither expertise nor the jurisdiction to delve deep in to the commercial wisdom exercised by creditors and members of the company who have ratified the Scheme by the requisite majority. However, jurisdiction of Company Court is peripheral and supervisory and not appellate.

Taking note of the scheme of s. 391 & 394 of Co. Act, the Apex Court laid down certain broad contours for being kept in mind as infra:

“In view of the aforesaid settled legal position, therefore, the scope and ambit of jurisdiction of the company court has certainly got ear- marked. The following broad contours of such jurisdiction have emerged:

1. The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meeting as contemplated by Section 391(1)(a) have been held.
2. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391 sub-section (2).
3. That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving scheme in question. That the majority decision of the concerned class of voters is just fair to the class as a whole so as to legitimately blind even the dissenting members of that class.
4. That all the necessary material indicated by Section 393(1)(a) is placed before the voters at the concerned meetings as contemplated by Section 391 sub-section (1).
5. That all the requisite material contemplated by the provision of sub-section (2) of Section 391 of the Act is placed before the Court by the concerned applicant seeking sanction for such a scheme and the Court gets satisfied about the same.
6. That the Proposed Scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.
7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors as the case may be, were acting bona fide and in good faith & were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent.
8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.
9. Once aforesaid broad parameters about requirements of a scheme for getting sanction of the Court are found to have been met, court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if the view of the Court would be a better scheme for the company and its members or creditors for whom the scheme is framed. The court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the court exercising appellate jurisdiction over scheme rather than its supervisory jurisdiction.”

The aforesaid parameters of the scope and ambit of the jurisdiction of the Company Court which is called upon to sanction a Scheme of Compromise and Arrangement are not exhaustive but only broadly illustrative of the contours of court's jurisdiction."

On a bare reading of relevant scheme of the compromise or to make arrangement with creditors & members as referred to in s. 391 of Co. Act and from contours laid down by Apex Court (supra) it clearly envisaged that if a compromise or arrangement is proposed between a company and its creditors, the Court may, on an application of the company or of any creditor or its member, order a meeting of the creditors or class of members, as the case may be, to be called and conduct in such manner as the court directs and it is thereafter that the Company shall send a notice calling the meeting to a creditor or member, duly accompanied by a statement setting forth the terms of the compromise or arrangement explaining its effect. Such a notice should also mention the place at which & manner in which creditors or members entitle to attend the meeting on obtaining copies of the aforesaid statement. Such notice is also issued through publication in a newspaper as ordered by the Court. It is only thereafter, if in the meeting convened for the purpose, the said scheme is approved by requisite statutory majority of the share holders and creditors of the Company; the question of according sanction for such a scheme by the court arises.

However, merely because if notice has not been issued to one of the creditors U/s 391 of Co. Act, it would not be fatal to the resolution passed in such meeting convened. In the instant case, material has been placed on record that notice came to be issued and that apart objecting member of the Company has always been vigilant as is evident from the fact brought on record that Objector (M.Gupta & Sons) earlier initiated winding up proceedings and issued statutory legal notice raising dispute invoking arbitration clause for recovery of its dues.

The whole object behind statutory requirement of issuing notice to the share holder and creditor of the Company is to hear all the affected persons as the proposed scheme if accepted by Court would affect their rights. Therefore, before sanctioning of the scheme sought from the Court such a scheme is to be placed before creditors & share holders so as to afford an opportunity to have their say in the matter. Further safeguard is made under law by insisting that such a scheme has to be approved by 3/4th majority so that interest of class of share holders and class of creditors is sought to be protected. In order to find out whether non-issuance of a notice to a particular member/ creditor of the company is fatal or not, what is to be seen is what is the value of debt the company owes to him and whether if he was present in such a meeting and voted against the resolution, would it have made any difference or having adverse effect? If such meeting notice in advance is given as required under law, not only he has a right to object to the passing of resolution but can also mobilize requisite support among a class of creditors. Therefore, the law required not only personal service of notice to the creditors & shareholders but there should also be a publication of notice in newspaper. But s. 391 does not make it obligatory either upon the Court or Company to serve a notice of the creditor's meeting on each & very creditor of the company, failure whereof the law does not declare such a meeting invalid and any resolution passed in such a meeting as void.

In the event of such a shareholder or creditor not served with personal notice, he can appear in such a meeting by virtue of the meeting having been made known to him through news paper publication of notice.

However, in the instant case, if a creditor is not issued with a notice, as alleged for the meeting convened to consider the scheme, overwhelming majority of the creditors approve the proposed scheme then it cannot be said that the meeting itself is invalid and the resolution approving the scheme becomes void. It is not the case herein complaining that large number of creditors/ share holders were not given notice of the meeting with a malafide intention and by such exclusion in the meeting held, 3/4th majority is obtained out of creditors present and voting; and if such creditors may request the Court to take note of the fact of requirement of notice being not served. But this is not the case before this Court.

From the material having come on record, it is not possible to hold that a meeting conducted pursuant to permission granted by the court when there is substantial compliance of s. 391(2) of Co. Act is invalid or void merely on the ground that one of the creditors (Objector) has not been served with a notice. The Court has to take note of all the attendant circumstances, the intention and conduct of the Company, the intention of the creditors, terms of the scheme and then come to the conclusion whether to grant the sanction sought for or not.

In the instant case, debt as alleged by Objector has not been admitted by Transferee Co. and the claim of objecting creditor being disputed and is subject matter of arbitral proceedings. However, no hard & fast rule can be laid down in a case whether the person complaining for lack of notice is a creditor in the strict sense or not. But if a debt is disputed and is the subject matter of litigation and if total value of such debt makes no significant difference to the total amount of debt due by the company and at the same time, if a substantial/ overwhelming majority of creditors approve a scheme, non-issuance of notice to a salutary creditor would not affect the meeting held or resolutions approved in such meeting.

However, in order to get relief, the objecting creditor must show that there is debt due to him and the debt is either admitted by the Company or the court prima facie comes to the conclusion that the debt is due or that the scheme is unjust & unfair to the creditors or any class of creditors to whom the objecting creditor belongs or that the scheme is either malafide or fraudulent and is likely to adversely affect him or the interest of creditors or any class of them is likely to be adversely affected if the

scheme being sanctioned without securing him or any or all the creditors. Thus, what came to be examined by Bombay High Court in Mayfair Ltd in Re. Zodiac Clothing Co. Ltd (2004 (Vol.122)) Co. Cases 748) indicates that for sanctioning the scheme , S. 391 of Co. Act is not a tool in the hands of the creditor to pay, especially when the debt was not admitted.

Nothing has been pointed out by the Objector regarding the scheme being fraudulent or mala fide or in any manner adversely affecting him or any member of Transferee Co. or their debt has to be secured. Nothing has been shown, how proposed scheme is unjust & unfair to the objecting creditor or class of creditors either of the Transferor or Transferee Company.

It has always to be kept in mind that provision of S.391 & 394 of Co. Act is not a tool in the hands of a creditor to recover money or coerce the company to pay money as the objecting creditor can seek remedy to recover the dues if any, which in the instant case, has already been restored to by objecting creditor through statutory legal notice invoking arbitration clause in terms of the agreement. However, it cannot be a condition precedent for sanctioning of the proposed scheme. Therefore, in the opinion of this Court, there appears to be no locus at least for the present objecting creditor to oppose the sanction of the proposed Scheme of amalgamation on any of the grounds in the attending circumstances (supra).

All that to be seen for sanctioning of the Scheme, is whether the interest of creditor is protected and the Scheme provides for any reasonable mode made for discharge of that liability and in case of amalgamation whether Transferee Co. is acknowledging and able to discharge the said liability . when a Statutory majority of creditors cannot be permitted to veto the majority view and block the approval of the proposed scheme, that being precisely the reason that the petition is filed before court for sanction; and once sanction is granted the majority view is respected, and by the order of sanction; the minority is bound by such scheme. Therefore non-issuance of a notice to a creditor would not vitiate a meeting convened with the permission of the Court U/s 391(2) of Co. Act.

In view of settled legal position as taken note of (supra), from the material placed on record before this Court for sanction of proposed Scheme of amalgamation, it clearly depicts that the Company has complied with all statutory requirements as envisaged in S. 391 of Co. Act; and from the appointed day, petitioner-Cos., without any further act or deed together with all its properties, assets , rights, benefits or interest therein transfers to and vest in the transferee company all debts, liabilities, duties & obligations, secured & unsecured, and whether or not provided in the books of account, whether or not provided in the books of account, whether disclosed or undisclosed in the balance sheet shall be the debts, liabilities, duties & obligations of the Transferee Company which acknowledges all those liabilities. The proposed Scheme of amalgamation of Transferor Company into Transferee Company is in line with the global trends to achieve, size, scale, integration & greater financial strength, flexibility, in the interest of maximizing share value. Resultant entity is likely to achieve higher long –term financial returns than what could be achieved by both the Companies individually. Restructuring would enable focused business approach for the maximization of benefits to all stakeholders & opportunity for future consolidation There is no legal impediment for sanctioning the proposed scheme. None of the provisions Scheme offends any law and it is snot against public interest. Taking note of what has been considered (supra) this Court is satisfied that the Scheme of amalgamation/ arrangement proposed by petitioner cos., is in the interest of share holders, creditors, workmen & public at large and considers appropriate to accord sanction the Scheme of Amalgamation with the observations that the Transferee Co. will comply with requirement of AS- 14 & maintain their Accounts Books as per Accounting Standards notified by Central Govt. u/s 211(3A) of Co. Act.

Consequently, instant company petition is allowed. This Court do hereby approve/ sanction Scheme of Amalgamation (Ann. P-1) appended to the Company petition, as a result whereof, Transferor Co., is ordered to be dissolved without winding up u/s. 394(1) (iv) of the Co. Act and do hereby declare the same to be binding on creditors & share holders of the petitioner-Transferor/ amalgamating Co. w.e.f. 01/04/2011 appointed day.

The parties to this arrangement or other persons interested shall be at liberty to apply to this court for any directions that may be necessary regarding the working of compromise / arrangement. The order in prescribed Dorm no. 42 be issued separately by the Registrar as per R. 84 of Companies (Court) Rules,. 1959.

The said Companies may file with the Registrar of Companies a certified copy of this order within 30 days. Official Liquidator shall be entitled to Rs. 5,000/- (Rupees Five Thousand) each from the Transferor ad Transferee Companies towards misc. expense.

Sd/-
(Ajay Rastogi), J

SCHEME OF ARRANGEMENT
BETWEEN
AKSH TECHNOLOGIES LIMITED – Transferor Company
AND
AKSH OPTIFIBRE LIMITED – Transferee Company
AND
THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

This Scheme of Arrangement (“**Scheme**”) is proposed for Amalgamation of Aksh Technologies Limited (“**the Transferor Company**”) with Aksh Optifibre Limited (“**the Transferee Company**”), pursuant to Sections 391 to 394 and other applicable provisions of the Companies Act, 1956.

PREAMBLE

(A) Background and Description of the Transferor Company and the Transferee Company

1. Aksh Technologies Limited, the Transferor Company, is a Public Unlisted Company incorporated on March 13, 2008, under the Companies Act, 1956. The registered office of the Transferor Company is situated at F- 1080, RIICO Industrial Area, Phase – III, Bhiwadi – 301 019, Rajasthan. The Transferor Company is a wholly owned subsidiary of Aksh Optifibre Limited, the Transferee Company. The main objects of the Transferor Company, as per Main Objects Clause of its Memorandum of Association is to:
 - a. manufacture, refine, roll, re-roll, draw, melt, import-export and to deal in all kinds of rods including FRP (Fibre Re-enforced Plastic) Rods, strips, wires, circles, tubes, squares, cables, alloys, iron and steel ferrous and non-ferrous metals, machinery, machine parts, tools and implements of all kinds based on various technologies.
 - b. To carry on manufacture, trade, sale import and export of all types of optical fibres such as step index, graded index and mono mode and other types of Fibres required for use in fibre optic systems and cables, for use in industrials applications, medical use, instrumentation, in defence systems, signaling, telecommunication, multi channel video communication, data communication and other communication and electronic applications.
 - c. To carry on the manufacture, trade, sale, import and export of equipment used for Fibre Optic Network such as Line Terminal, Equipment, Multi Plexers, Opto-Electronic Instruments, Line Repeaters, Jointing and Terminating Equipment, Materials and Accessories, Laser Device, Light Emitting Device, Testing and Measuring Equipments.
2. Aksh Optifibre Limited, the Transferee Company, is a Public Listed Company incorporated on March 19, 1986 under the Companies Act, 1956. The registered office of the Transferee Company is situated at F- 1080, RIICO Industrial Area, Phase – III, Bhiwadi – 301 019, Rajasthan. The shares of the Transferee Company are listed on the Bombay Stock Exchange Limited and the National Stock Exchange Limited. The main objects of the Transferee Company, as per Object clause of its Memorandum of Association amongst others, is:
 - a. to design, develop, install erect, seek right of way, lay, write software, deploy, operate, maintain and provide consultancy and management services or undertake turnkey projects for manufacturing, installing, laying, commissioning, operating of all or any type of networking and communication systems based on either Fibre Optic, Wireless, Satellite, Non-Fibre Optic systems or hybrid of any of these systems/solutions providing bandwidth in various forms, in India or elsewhere.
 - b. to carry on the business of content provider (including video, audio and gaming based contents) through voice or broadband network or otherwise in India or abroad.

(B) Purpose of the Scheme

1. This Scheme of Amalgamation is presented under Section 391 to Section 394 of the Companies Act, 1956 for the Amalgamation of Transferor Company with the Transferee Company.
2. This Scheme also provides for various other matters consequential or otherwise integrally connected therewith.

(C) Rationale of the Scheme

The circumstances that have necessitated the Scheme are as under:

The Transferor Company is engaged in the manufacture and sale of business of all types of Optical Fibres, Optical Fibre Cables, and all kinds of rods, including FRP (Fibre Re-enforced Plastic) Rods and the Transferee Company is engaged in the

business of providing Internet Protocol Television (IPTV), Voice over Internet Protocol (VoIP) and Fibre To Home solution (FTH), using the products manufactured by the Transferor Company.

In order to derive further operational benefits, there is a need to consolidate the operations of the Transferor Company with the Transferee Company so as to derive optimal administrative, management and synergy benefits and consequently achieve cost savings, pooling of managerial skills and utilization of valuable resources by carrying out the operations in the Transferee Company.

The Amalgamation of the Transferor Company with the Transferee Company would, *inter alia*, have the following benefits:

- a. The Transferee Company will be able to provide single window integrated networking/telecom solutions as well as acquire the existing business of the Transferor Company.
- b. The Amalgamation will enable creation of larger entity and derive optimal management and synergy benefits. The proposed Scheme is expected to result in business synergies besides economies in cost by combining all the functions, related activities and operations resulting in higher profitability and benefits in the form of financial resources, managerial and technical expertise. The Scheme is to enable the business of the Transferee Company to be carried out more conveniently and advantageously in a manner that will enhance its shareholder value.
- c. The Amalgamation would create economies in administrative and managerial costs by consolidating operations and will substantially reduce duplication of administrative responsibility and multiplicity of records and legal and regulatory compliances.
- d. The Amalgamation will also improve the financial structure and cash flow management of the Transferee Company.
- e. Greater efficiency in cash management of the Transferee Company and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholders' value of the Transferee Company.
- f. Improved organizational capability and leadership arising from the pooling of human capital, which have diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.
- g. Benefit of operational synergies to the Transferee Company which will translate into better rewards to its stakeholders.
- h. Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, productivity improvements, improved procurement, and the elimination of duplication, and rationalization of administrative expenses.
- i. Strengthened leadership in the industry, in terms of the asset base, revenues, product range, production volumes. The Transferee Company will have the ability to leverage on its large asset base, diverse range of products and services, and vast pool of intellectual capital, to enhance shareholder's value.

In view of the aforesaid, the Board of Directors of the Transferor Company as well as the Board of Directors of the Transferee Company have considered and proposed the amalgamation of the entire undertaking and business of the Transferor Company with the Transferee Company in order to benefit the stakeholders of the Transferee Company. Accordingly, the Board of Directors of both the companies have formulated this Scheme of Amalgamation for the transfer and vesting of the entire undertaking and business of the Transferor Company with and into the Transferee Company pursuant to the provisions of Section 391 to Section 394 and other relevant provisions of the Act.

(D) Parts of the Scheme

The Scheme is divided into the following parts:

- (a) **PART I deals with the Definitions and Share Capital;**
- (b) **PART II deals with the Amalgamation;**
- (c) **PART III deals with the Accounting Treatment; and**
- (d) **PART IV deals with Other Terms.**

PART I - GENERAL

1. GENERAL:

This Scheme of Arrangement provides for the amalgamation of AKSH TECHNOLOGIES LIMITED with AKSH OPTIFIBRE LIMITED.

2. DEFINITIONS:

2.1 In this Scheme, unless inconsistent with the context or subject, the following expressions shall have the meanings assigned to them respectively below:

“**Act**” means the Companies Act, 1956 and any statutory modification or re-enactment thereof for the time being in force;

“**Appointed Date**” means 1 April 2011;

“**Effective Date**” shall mean the date on which certified copies of the orders of the High Court under Section 394 of the Act are filed with the Registrar of Companies. References in this Scheme to the date of “coming into effect of this Scheme” or “effectiveness of the Scheme” shall mean the Effective Date;

“**Scheme**” means this Scheme of Arrangement in its present form or as may be modified in accordance with the order of the Hon’ble High Court of Jaipur;

“**Transferee Company**” means Aksh Optifibre Limited, a company incorporated under the Act and having its registered office at F-1080, Phase III, RIICO Industrial area, Bhiwadi, Rajasthan-301019;

“**Transferor Company**” means Aksh Technologies Limited, a Company incorporated under the Act and having its registered office at F-1080, Phase III, RIICO Industrial area, Bhiwadi, Rajasthan-301019;

“**Undertaking**” shall mean and include:

- (i) All the assets and property, tangible or intangible of the Transferor Company, as at the Appointed Date (hereinafter referred to as the “**Assets**”); and
- (ii) All the secured and unsecured debts, liabilities, duties, contingent liabilities and obligations of the Transferor Company, as at the Appointed Date (hereinafter referred to as the “**Liabilities**”).

Without prejudice to the generality of Clause (i) and (ii) above, the Undertaking of the Transferor Company shall include all the Transferor Company’s reserves, movable and immovable properties, assets including leasehold rights and tenancy rights, the manufacturing facility along with all its assets, plant and machinery, furniture and fixtures, vehicles, industrial and other licenses, permits, authorization, unutilized tax credits, quota, claims, current assets, bank balances, investments, powers, authorities, allotments, approvals, consents, registrations, contracts, insurance policies, engagements, arrangements, rights, titles, interests, benefits, advantages, trademarks, rights to trade name and corporate name, patents and other industrial and intellectual properties, import quotas, rights and benefits of all agreements and all other interests, rights and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages, benefits and approvals of whatsoever nature and wherever situate, belonging to or in the ownership, power or possession or control of the Transferor Company as at the Appointed Date.

2.2. Expressions not defined in this Scheme:

The expressions which are used in this Scheme and not defined in this Scheme, shall, unless repugnant or contrary to the context or meaning hereof, have the same meaning ascribed to them under the Act, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 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 particular, wherever reference is made to the High Court in the Scheme, the reference would include, if appropriate, reference to the National Company Law Tribunal (“**NCLT**”) or such other forum or authority as may be vested with the powers of the Hon’ble High Court under the Act.

3. SHARE CAPITAL:

3.1 The Authorized, Issued, Subscribed and Paid-up capital of Transferor Company as on March 31, 2011 is as under:

Authorised

1,01,00,000 Equity Shares of Rs.5/- each	Rs.5,05,00,000
--	----------------

Issued

1,01,00,000 Equity Shares of Rs.5/- each	Rs. 5,05,00,000
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Subscribed and Paid-up

1,01,00,000 Equity Shares of Rs.5/- each	
Fully Paid-up	Rs. 5,05,00,000
Total Paid-up share capital	Rs. 5,05,00,000

3.2 The Authorized, Issued, Subscribed and Paid-up capital of Transferee Company as on March 31, 2011 is as under:

Authorized

16,00,00,000 Equity Shares of Rs.5/- each	Rs. 80,00,00,000
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Issued, Subscribed and Paid-up

14, 29,24,871 Equity Shares of Rs.5/- each	Rs. 71,46,24,355
Total paid-up share capital	Rs. 71,46,24,355

PART II - AMALGAMATION

4. TRANSFER OF UNDERTAKING

Subject to the occurrence of the Effective Date, the Undertaking of the Transferor Company shall be transferred to the Transferee Company in the following manner:

- 4.1 With effect from the opening of business as on the Appointed Date, the entire Undertaking of the Transferor Company shall, pursuant to Sections 391-394 and other applicable provisions of the Act, and without any further act, instrument or deed, be and stand transferred to and vested in and/or be deemed to have been and stand transferred to and vested in the Transferee Company as a going concern, so as to become as and from the Appointed Date, the estate, assets, right, title, interests, authorities, liabilities or obligations, as the case may be, of the Transferee Company. As regards transfer of specified movable assets, the same shall be effected in the manner set forth in Clauses 4.2 and 4.3 below.
- 4.2 It is expressly provided that in respect of such of the assets of the Undertaking as are moveable in nature or are otherwise capable of transfer by physical delivery or by endorsement and delivery, the same shall be so transferred or deemed to be transferred by the Transferor Company, and shall become the property of the Transferee Company pursuant to the provisions of Sections 391-394 and other applicable provisions of the Act, as an integral part of the Undertaking.
- 4.3 In respect of moveable assets other than those specified in Clause 4.2 above, including sundry debtors, outstanding loans, advances recoverable in cash or in kind or for value to be received and deposits with Government, Semi-Government, local and other authorities and bodies the following procedure shall be followed:
- (i) The Transferee Company may give notice wherever required, in such form as it may deem fit and proper that pursuant to the Hon'ble High Court of Jaipur having sanctioned this Scheme under Sections 391-394 and other applicable provisions of the Act, the said debt, loan, advances etc. be paid to or made good to or held on account of the Transferee Company as the person entitled thereto to the end and intent that the right of the Transferor Company to recover or realise the same stands extinguished and that appropriate entry should be passed in their respective books to record the aforesaid change; and
 - (ii) The Transferor Company may give notice in such form as it may deem fit and proper, that pursuant to the Hon'ble High Court of Jaipur having sanctioned this Scheme under Sections 391-394 and other applicable provisions of the Act, the said person, debtor, or deposit shall pay the debt, loan or advance or make good the same on account of the Transferee Company and the right of the Transferor Company to recover or realize the same stands extinguished.
- 4.4 With effect from the Appointed Date, and subject to the provisions of this Scheme, the Liabilities shall be and stand transferred or deemed to have been transferred, without any further act, instrument or deed, to the Transferee Company, pursuant to the provisions of Sections 391-394 and other applicable provisions of the Act, so as to become as and from the Appointed Date, the debts, liabilities, duties and obligations of the Transferee Company and further 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 the Liabilities have arisen, in order to give effect to the provisions of this Clause.
- 4.5 The transfer and vesting of the Undertaking of the Transferor Company as aforesaid, shall be subject to the existing securities, charges and mortgages, if any, subsisting over or in respect of the property and assets or any part thereof of the Transferor Company.
- Provided however that reference in any security documents or arrangements (to which the Transferor Company is a party) to the assets of the Transferor Company offered or agreed to be offered as security for any financial assistance or obligations, shall be construed as reference only to the assets pertaining to the Undertaking of the Transferor Company as are transferred and vested in the Transferee Company by virtue of the aforesaid Clauses, to the end and intent that such securities, charges and mortgages shall not extend or be deemed to extend, unless agreed otherwise by the Transferee Company, to any of the other assets of the Transferee Company.
- Provided further that the securities, charges and mortgages (if any subsisting) over and in respect of the assets or any part thereof of the Transferee Company shall continue with respect to such assets or part thereof and this Scheme shall not operate to enlarge such securities, charges or mortgages to the end and intent that such securities, charges and mortgages shall not extend or be deemed to extend, unless agreed otherwise by the Transferee Company, to any of the assets of the Transferor Company vested in the Transferee Company.
- 4.6 Insofar as the various rights, quality certifications, licences, registrations, incentive schemes including those under Duty Entitlement Pass Book Scheme, licenses and customs duty drawback benefits, unutilized tax credits, subsidies, rehabilitation schemes, special status and other benefits or privileges (granted by any Government body, local authority or by any other person) enjoyed or availed by the Transferor Company are concerned (whether as on the Appointed Date or subsequently, till the Effective Date), the same shall vest with and be available to the Transferee Company on the same terms and conditions as were applicable to the Transferor Company.

- 4.7 Loans or other obligations, if any, due between the Transferor Company and the Transferee Company shall stand discharged or extinguished and there shall be no further liability in that behalf.
- 4.8 The Transferor Company shall have taken all steps as may be necessary to ensure that vacant, lawful, peaceful and unencumbered possession, right, title and interest of its immovable property, if any, is given to the Transferee Company.
5. OPERATION OF THE SCHEME
- 5.1 The Scheme, though operative from the Appointed Date, shall become effective only on the occurrence of the Effective Date, as provided in the Scheme. On the Scheme becoming effective, the Transferor Company shall stand dissolved without winding up, pursuant to the provisions contained in Section 394 of the Act.
- 5.2 The transfer of the Undertaking of the Transferor Company to the Transferee Company and the continuance of proceedings by or against the Transferee Company, as envisaged in the Scheme, shall not affect any contract or proceedings already concluded by the Transferor Company on or after the Appointed Date to the end and intent that the Transferee Company accepts and adopts all acts, matters and things done and/or executed by the Transferor Company in respect thereto as having been done or executed on behalf of the Transferee Company.
- 5.3 Subject to the occurrence of the Effective Date, on and from Appointed Date and up to the Effective Date:
- 5.3.1 The Transferor Company shall carry on and shall be deemed to have carried on all its business and activities and shall hold and stand possessed of and shall be deemed to have held and stood possessed of the Undertaking on account of, and for the benefit of and in trust for the Transferee Company;
- 5.3.2 All the profits or income accruing or arising to the Transferor Company, or expenditure or losses or unabsorbed depreciation or MAT Credit Entitlement, arising or incurred (including the effect of taxes, if any, thereon) by the Transferor Company shall, for all purposes, be treated and be deemed to be the profits or incomes or expenditure or losses or unabsorbed depreciation or MAT Credit Entitlement of the Transferee Company and the Transferee Company can utilize such MAT Credit Entitlement for the payment of Income Tax on its Profits.
6. CONDUCT OF BUSINESS OF THE TRANSFEROR COMPANY FROM THE APPOINTED DATE AND UPTO AND INCLUDING THE OCCURRENCE OF THE EFFECTIVE DATE
- 6.1 The Transferor Company shall carry on its business with proper prudence and shall not (without prior written consent of the Transferee Company, which consent may be given by the Board of Directors of the Transferee Company or any person authorised by the Board of Directors of the Transferee Company) alienate, charge or otherwise deal with or dispose of its assets or any part thereof (except in the ordinary course of business, or pursuant to any pre-existing obligation undertaken by the Transferor Company prior to the Appointed Date).
- 6.2 The Transferor Company shall not take any decision for utilization of its profits or reserves or such other amounts, if any, for the purposes of (i) declaring or paying any dividend on its equity share capital, (ii) declaring any bonus shares; (iii) distributing the same in any other manner to its shareholders, unless prior written consent of the Transferee Company (which consent may be given by the Board of Directors of the Transferee Company or any person authorised by the Board of Directors of the Transferee Company) is obtained.
- 6.3 Save and except as may be otherwise permitted or required under the provisions of the Scheme the Transferor Company shall not make any change in its capital structure, (i) by issue of new equity or preference shares or bonus shares; or (ii) by issue of any other instrument convertible into equity shares; or (iii) otherwise by sub-division, reduction, reclassification, consolidation, buy-back, or in any other manner, except with the prior written authorisation of the Board of Directors of the Transferor Company and the Board of Directors of the Transferee Company.
7. CONTRACTS, DEEDS AND OTHER INSTRUMENTS
- 7.1 Subject to the provisions of this Scheme, all contracts, licenses, arrangements, deeds, bonds, agreements, insurance policies and other instruments of whatsoever nature, to which the Transferor Company is a party, or to the benefits of which the Transferor Company may be eligible, and which are subsisting or operative or having effect immediately before the Effective Date shall be in full force and effect in favour of or against 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 thereto or beneficiary thereto.
- 7.2 All agreements entered into by the Transferor Company with its bankers, distributors, stockists, agents, canalizing agencies, etc. if any, shall, unless terminated by the Transferor Company in the ordinary course of business or with the consent of the Transferee Company, and which are subsisting or operative or having effect immediately before the Effective Date shall be in full force and effect and may be enforced by or against the Transferee Company.
- 7.3 All subsisting agreements/arrangements of the Transferor Company relating to the use of patents, patent applications, designs, trade-marks (including logos), trade names, brands, copyrights and/or technology and all other intellectual property and rights shall accrue same as above to and for the benefit of the Transferee Company.

7.4 Subject to the other provisions contained in the Scheme, all contracts, deeds, bonds, agreements and other instruments of whatever nature to which the Transferor Company is a party subsisting or having effect immediately before the Effective Date shall remain in full force and effect against or in favour of the Transferee Company, as the case may be, and may be enforced as fully and as effectually as if, instead of the Transferor Company, the Transferee Company had been a party thereto.

8. ISSUE OF SHARES BY THE TRANSFEREE COMPANY

The Transferor Company is a wholly owned (100%) subsidiary of the Transferee Company and on amalgamation no separate consideration shall be paid by the Transferee Company to the Shareholders of the Transferor Company and no shares shall be issued by the Transferee Company to any person in consideration of or consequent upon the amalgamation and the paid up share capital of the Transferor Company shall be extinguished upon the Scheme becoming effective.

9. COMBINATION OF AUTHORISED CAPITAL

9.1 Upon this Scheme becoming effective, the authorized 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 the Registrar of Companies, by the authorized share capital of the Transferor Company amounting to Rs. 5,05,00,000 (Rupees Five Crore Five Lac) and the Memorandum of Association (relating to the Authorized Share Capital) shall, without any further act, instrument or deed, be and stand altered, modified and amended, and no further resolution(s) under Sections 16, 94 and 394 and other applicable provisions of the Act would be required to be separately passed, as the case may be and for this purpose the stamp duties and fees paid on the authorized share capital of the Transferor Company shall be utilized and applied to the increased Authorized Share Capital of the Transferee Company and there would be no requirement for any further payment of stamp duty and/or fee by the Transferee Company for increase in the Authorized Share Capital to that extent.

9.2 Pursuant to the Scheme becoming effective and consequent Amalgamation of the Transferor Company into the Transferee Company, the Authorized Share Capital of the Transferee Company will be as under (based on the Authorized Share Capital of the Transferee Company as on March 31, 2011):

Particulars	Amount (Rs.)
Authorized Share Capital	
17,01,00,000 Equity Shares of Re.5/- each	85,05,00,000
TOTAL	85,05,00,000

Clause V of the Memorandum of Association of the Transferee Company shall stand substituted by virtue of the Scheme to read as follows:

“The Authorised Share Capital of the Company is Rs. 85,05,00,000 (Rupees Eighty Five Core Five Lac) divided into 17,01,00,000 (Seventeen Crore One Lac) Equity Shares of Re. 5/- each.”

9.3 During the pendency of the Scheme and up to the Effective Date, in case the Authorised Share Capital of the Transferee Company has been enhanced, then, provisions of Clause 9.1 above shall be applied to the Authorized Share Capital so enhanced, and the quantum of shares and share capital stated in Clause 9.2 above shall stand modified accordingly.

10. LEGAL PROCEEDINGS

Upon the Scheme coming into effect, any suit, appeal, arbitration and other legal proceeding (together the “**Proceedings**”) by or against the Transferor Company (i) pending at the Appointed Date, or (ii) initiated thereafter until the Effective Date, shall not abate, be discontinued or be in anyway prejudicially, affected by reason of the transfer of the Undertaking of the Transferor Company or of anything contained in the Scheme, but such Proceedings shall be continued, prosecuted or 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 or enforced by or against the Transferor Company if the Scheme had not been made.

11. Staff, Workmen and Other Employees

Upon the coming into effect of this Scheme:

11.1 All the staff, workmen and other employees (together the “**Employees**”) of the Transferor Company, who are in service on the Effective Date, shall, become the staff, workmen and employees of the Transferee Company on such date, without any break or interruption in service and on terms and conditions as to remuneration not less favourable than those subsisting with reference to the Transferor Company on the said date.

From the Appointed Date till the Effective Date, the Transferor Company shall continue to pay the remuneration to its Employees as per the terms/conditions/rules/regulations between the Transferor Company and such Employees and the

Transferee Company shall not be required to take any permission/approval from any Statutory Authority(ies) towards the remuneration paid by the Transferor Company to its Employees till the Effective Date.

- 11.2 In so far as the Provident Fund, Gratuity Fund, Superannuation Fund, Pension Fund or any other Special Scheme(s), fund(s) created or existing for the benefit of the Employees of the Transferor Company are concerned (together "**Funds**"), on and from the Effective Date, the Transferee Company shall stand substituted for the Transferor Company for all purposes whatsoever related to the administration or operation of such Funds or in relation to the obligation to make contributions to such Funds in accordance with the provisions of such Funds as per the terms provided in the applicable law, rule, regulation or respective trust deeds. It is clarified that the services of the Employees of the Transferor Company will be treated as having been continuous for the purpose of the aforesaid Funds and other employee benefits and entitlements.
12. GENERAL TERMS
- 12.1 Upon the Scheme coming into effect, the Transferee Company shall be entitled to use all packaging, labels, point of sale material, signboard, samples, closures, other publicity material, etc. lying unused and which the Transferor Company is entitled to use under any statutes/regulations, till such time as all of such packaging, labels, closures, etc. are exhausted.
- 12.2 It is clarified that, subject to the occurrence of the Effective Date, all (i) taxes, cess, fees and other charges payable by the Transferor Company (hereinafter referred to as the statutory liabilities); (ii) claims or refunds of taxes, unutilized tax credits (including cenvat credit balances and input tax credit balances), cess, fees and other charges, that may be available with or due to the Transferor Company (hereinafter referred to as the statutory assets), shall for all purposes, be merged with the respective statutory liabilities and statutory assets, as the case may be, of the Transferee company. Further, post merger of the said statutory liabilities and statutory assets, wherever the statutory liability is capable of being set off or adjusted against any of the available statutory asset, the same shall be set off.. Accordingly, upon the Scheme becoming effective, the Transferee Company shall be expressly permitted to take the steps as required to reflect and record the merged statutory liabilities and statutory assets, as the case may be, and if required to revise all or any of its direct tax (including income tax) returns and indirect tax (including sales tax, excise, service tax and MODVAT/ CENVAT) returns, as may be appropriate, and to claim refunds/credits, or pay the taxes due, as the case may be, pursuant to the provisions of this Scheme.

PART III - ACCOUNTING TREATMENT

13. ACCOUNTING TREATMENT

- 13.1 The Transferee Company shall, upon the Scheme coming into effect, record the Assets and Liabilities of the Transferor Company, vested in it pursuant to this Scheme, at the respective book values thereof as appearing in the books of the Transferor Company at the close of business of the day immediately preceding the Appointed Date. Investments by the Transferee Company in the equity share capital (including share premium) of the Transferor Company as appearing in its books of accounts shall stand cancelled.
- 13.2 Upon the Scheme coming into effect, the balances in the Profit and Loss Account of the Transferor Company shall be similarly aggregated with the balance in the Profit and Loss Account of the Transferee Company.
- 13.3 Upon the Scheme coming into effect, the unabsorbed Losses and General Reserve of the Transferor Company shall be adjusted against the unabsorbed Losses, and General Reserve of the Transferee Company.
- 13.4 In case of any differences in accounting policy between the Companies, the impact of the same till the Appointed Date will be quantified and adjusted in the Reserves of the Transferee Company to ensure that the financial statements of the Transferee Company reflect the financial position on the basis of its consistent accounting policies.
- 13.5 Upon the Scheme coming into effect, to the extent that there are inter-corporate loans or balances between the Transferor Company and the Transferee Company, the obligations in respect thereof shall come to an end and corresponding effect shall be given in the books of account and records of the Transferee Company for the reduction of any assets or liabilities, as the case may be.
- 13.6 For the removal of doubts, it is hereby clarified that there would be no accrual of interest or other charges in respect of any inter-company loans or balances between the Transferor Company and Transferee Company during the period between the Appointed Date and the Effective Date. It is also clarified that there would be no accrual of income or expense on account of any other transactions, including, inter alia any transactions in the nature of sale or transfer of any goods or services between the Transferor Company and Transferee Company, during the period between the Appointed Date and the Effective Date.
- 13.7 Notwithstanding the above, the Board of Directors of the Transferee Company is authorized to account any of these balances in any other manner, if such accounting treatment is considered more appropriate.

PART IV – OTHER TERMS

14. CONDITIONALITY OF THE SCHEME

14.1. This Scheme is conditional upon and subject to:

- (i) The approval of the Scheme, with or without any modifications, by the requisite majority of the shareholders and creditors of the Transferor Company and the Transferee Company;
- (ii) The sanction of the Scheme being obtained from the Hon'ble High Court of Jaipur, as may be required, under Sections 391 to 394 of the Act;
- (iii) Filing of certified or authenticated copy of the Order of the Hon'ble High Court of Jaipur sanctioning this Scheme, with the Registrar of Companies, Rajasthan at Jaipur;
- (iv) The sanctions or approvals of appropriate Government and other authorities that may be required for giving effect to any of the provisions of the Scheme having been obtained.

If the conditions referred to in Clause 14.1 above are not fulfilled or waived, and the Scheme has not become effective then the same shall cease to have any effect and the provisions of Clause 18 shall be applicable.

15. APPLICATION TO THE HIGH COURT

15.1 The Transferee Company and the Transferor Company shall, with all reasonable dispatch, make applications to the High Court of Jaipur, under Section 391 of the Act, seeking orders for dispensing with or convening, holding and conducting of the meetings of the members and/or creditors of each of the Transferor Company and the Transferee Company as may be directed by the High Court of Jaipur.

15.2 Upon complying with the Orders of the High Court of Jaipur on the applications mentioned in Clause 15.1, the Transferor Company and the Transferee Company shall, with all reasonable dispatch, after the Scheme is duly approved by the requisite statutory majority of their respective shareholders and creditors, apply to the Hon'ble High Courts of Jaipur under Sections 391-394 and other applicable provisions, of the Act for sanctioning this Scheme and for an Order dissolving the Transferor Company without winding up.

16. MODIFICATIONS TO AND IMPLEMENTATION OF THE SCHEME

16.1 The Transferor Company and the Transferee Company by their respective Board of Directors may consent (which consent may be given by a Committee of the respective Boards of Directors, or any other person authorized by the respective Boards or Committee, as the case may be) to any modification or amendment of the Scheme or agree to any terms or conditions, which the Hon'ble High Court of Jaipur and/or any other Authority under any law may deem fit to direct, or impose or which may otherwise be considered necessary, desirable or appropriate by the Board of the Directors. The Transferor Company and the Transferee Company by their respective Board of Directors shall be entitled to give such directions or take such steps (which directions may be given or steps may be taken by a Committee of the respective Boards of Directors, or any other person authorized by the respective Boards or Committee, as the case may be) as may be necessary, desirable or proper to resolve any doubts, difficulties or questions, whether by reason of any order of the Court or of any directive or order of any other authorities or otherwise howsoever arising out of or under or by virtue of this Scheme and/or any matter concerned therewith.

16.2 The expression "any other Authority" in the preceding Clause 16.1 shall include Securities and Exchange Board of India (SEBI) and the stock exchanges with which the shares of the Transferee Company are listed and with which the Transferee Company has filed a copy of this Scheme in terms of the Listing Agreement.

16.3 Notwithstanding any other provisions in the Scheme, if at any time after the Scheme has become effective, it is found that some action that was required to be taken by the Transferor Company before such date, was either not taken or not given full effect to, then the Board of Directors of the Transferee Company shall have the powers to take such further action as may be required to be taken and any such action or decision taken by the Board of Directors of the Transferee Company shall be considered valid and effectual, as if it were taken at the appropriate time by the Transferor Company.

16.4 If any part of the Scheme is found to be unworkable for any reason whatsoever, at any point of time, whether before or after receiving the consent of shareholders, creditors, Hon'ble High Court of Jaipur or any other applicable authority, the same shall not, subject to the decision of the Board of Directors of the Transferee Company or a Committee thereof, effect the adoption or implementation or validity or interpretation of the order, parts and/or provisions of this Scheme, and the approval of this Scheme by shareholders, creditors and Hon'ble High Court of Jaipur shall be deemed to include the aforesaid authority to the Board of Directors of the Transferee Company. It is hereby clarified that the Board of Directors of the Transferee Company or a Committee thereof may in its absolute discretion, adopt any part of this Scheme or declare any part of the Scheme to be null and void and in that event, no rights and liabilities whatsoever shall accrue to

or be incurred inter se by the parties or their shareholders or creditors or employees or any other person, in respect of that part of the Scheme, which has been so declared by the Board of Directors.

17. COMPLIANCE WITH TAX LAW

This Scheme has been drawn up to comply with the conditions relating to "Amalgamation" as specified under the tax laws, including Section 2(1B) and other relevant sections of the Income Tax Act, 1961. If any terms or provisions of the Scheme are found to be or interpreted to be inconsistent with any of the said provisions at a later date, whether as a result of any amendment of law or any judicial or executive interpretation or for any other reason whatsoever, the aforesaid provisions of the tax laws shall prevail. The Scheme shall then stand modified to the extent determined necessary to comply with the said provisions. Such modification will, however, not affect other parts of the Scheme.

18. EFFECT OF NON-RECEIPT OF APPROVAL/SANCTION

In case, the Scheme is not sanctioned by the High Court of Jaipur, or in the event any of the approvals or conditions enumerated in Clause 14 is not received or for any other reason, the Scheme cannot be implemented, the Scheme shall become null and void, revoked and cancelled, 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 hereto, as is specifically provided in the Scheme or as may otherwise arise in law and each party shall bear and pay its respective costs, charges and expenses in connection with the Scheme.

19. COSTS AND EXPENSES

Subject to the provisions of Clause 18, all the costs, charges and expenses, including any taxes and duties of the Transferor Company and the Transferee Company respectively, in relation to or in connection with this Scheme and incidental to the implementation of this Scheme shall be borne and paid by the Transferee Company, which shall be treated as expenses of amalgamation.

20. SANCTION OF THE SCHEME

The sanction of this Scheme by the Hon'ble High Court of Jaipur will be considered as intimation to Shareholders, Creditors, Debtors, Employees and other concerned about the provisions of the Scheme to the extent they relate to such person/body/authority.

Dated this 4th day of December, 2012

**Sd/-
Registrar(Admn.)
Rajasthan High Court Bench,
Jaipur**