PART XXXV

MERGER AND AMALGAMATION

1. Meaning of 'merger'

A merger has been defined as an arrangement whereby the assets of two or more companies become vested in, or under the control of one company, which may or may not be one of the original two companies. The merger may also involve more than two companies. In the above instance after merger the transferor company(ies) will cease to exist and the transferee company will takes over and absorbs the assets, liabilities and business of the transferor company(ies) within itself.

2. Meaning of 'amalgamation'

The term amalgamation has not been defined under the Companies Act. Amalgamation is an arrangement or reconstruction by a legal process by which two or more companies joined together to form a new company and as a consequence the amalgamating companies loses their existence and their shareholders becomes the shareholders of the new company or the amalgamated company. In the case of an amalgamation, a new company may come into existence or an old company may survive while amalgamated company may lose its existence.

As per the Accounting Standard 14, issued by the ICAI, 'amalgamation' means an amalgamation pursuant to the provisions of the Companies Act or any other statute, which may be applicable to companies.

Section 2(1B) of the Income-tax Act has defined the term 'amalgamation' and has stipulated three conditions:—

(*a*) all the property of the amalgamating company(ies) should vest with the amalgamated company;

(*b*) all the liabilities of the amalgamating company(ies) should become the liabilities of the amalgamated company; and

(*c*) the shareholders holding not less than 75% in value or voting power in the amalgamating company (other than the shares hold by the amalgamated company or its subsidiary) should become shareholders of the amalgamated company.

There is no bar to a company amalgamating even with a fifteen days old company, having no assets or business activities. [*Apco Industrial Ltd., In re* (1996) 86 Comp Cas 457 (Guj)].

3. Meaning of 'compromise'

The term 'compromise' signifies a dispute between a company and its creditors and others. Section 391 provides a method by which a compromise agreed to by the creditors or any of them and the company may be placed before the Court/Tribunal for sanction.

4. Meaning of 'arrangement'

The term 'arrangement' is of wide importance and includes reorganisation of share capital and may also mean modification of the rights. Where a rearrangement includes a reduction of capital, the procedure for reduction of capital has also to be followed unless the High Court/Tribunal orders otherwise.

Mostly a compromise or arrangement may be internal to a company. But this may also concern other companies when a scheme of compromise or arrangement in one company may precede the amalgamation process with another company or in an arrangement some property and/or rights may be transferred by one company to another for valuable consideration.

5. The word 'arrangement' has wider scope than 'compromise'

The meaning of words 'arrangement' and 'compromise' under section 390(*b*) of the Act are different. While 'compromise' presupposes the existence of a dispute, nothing like that is implied in the word 'arrangement'. The word 'arrangement' is of wider importance than 'compromise'. 'Compromise' implies the existence of a dispute, which it seeks to settle. Reorganisation of share capital by consolidation of different classes of shares or division of shares into different classes of shares amounts to an arrangement [*Hindustan Commercial Bank Limited* v *General Electric Corporation* AIR 1960 Cal 637]. The Supreme Court has stated that "Generally, where only one company is involved in a change and the rights of the shareholders and creditors are varied, it amounts to reconstruction or reorganisation or scheme of arrangement." [*Saraswati Industrial Syndicate Limited* v *CIT* (1991) 70 Comp Cas 184 (SC)].

6. Buy-back of small lots of shares through a scheme of arrangement is not in violation of section 77A

In the case of *TCI Industries Ltd*., *In re* (2004) 118 Comp Cas 373 (AP) it was held that section 391 and section 77A of the Companies Act, 1956 are independent of each other. Section 77A was not given any overriding effect over the provisions of section 391 and 394. The legislative intention behind the introduction of section 77A is to provide an alternative method by which a company may buy back its own shares upto a certain percentage. Section 77A is merely an enabling provision and the Court's powers under sections 100 to 104 and section 391 are not in any way affected.

7. Divestment by holding company of its investment in subsidiary under scheme of arrangement is permissible

It was held in the case of *Nicholas Piramal* (*India*) *Ltd*., *In Re* (2004) 58 CLA 165 (Bom) that a scheme of arrangement u/s 391 need not necessarily involve an amalgamation or merger and may not, therefore always call for a valuation of the shares of the transferor company or the company seeking reconstruction for determination of a swap or share exchange ratio. Where overwhelmingly large body of the shareholders of a transferor pharmaceutical company has voted for a certain scheme, sharing the perception of that company that the transfer of its existing investment in a bottling company will yield substantial benefits by enabling it to focus on its core pharmaceutical business and by improving its financial position, the Court (Tribunal) cannot sit in judgment on those reasons.

8. In a scheme of amalgamation where the transferor company is100% subsidiary of Transferee Company. Whether there is a need to file a separate petition by the transferee company?

In *Sanathanalaxmii Investments* (P.) *Ltd in re* (2006) 65 SCL 406 the Regional Director among other things, pointed out that only one application by the transferor company had filed, the Court held that in the judgment of Andhra Pradesh High Court *in re* Andhra Bank Housing Finance Lid., the application of the scheme of amalgamation can even be permitted at the instance of the transferor company, which is 100% subsidiary of the transferee company and that there is no need lo file a separate petition by the transferee company. The court allowed the proposed scheme of amalgamation under Sections 391 lo 394 of the Companies Act, 1956 although only the transferor company had made the application as it was a wholly owned subsidiary of the transferee company.

9. Implications of the term 'unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors'

Under section 390(*c*) of the Act the term 'unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors' is quite important. Obtaining decrees or filing suits by an unsecured creditor does not make him a secured creditor. Unsecured creditors who have obtained decrees will be treated at par with those who are yet to obtain decree. If an award does not indicate that any specific liability has been created against any one of the assets of a company, it can be taken as one in the nature of a mere money decree, in which case the creditor can only be taken as an unsecured one [*Syndicate Bank* v *Official Liquidator* AIR 1985 Del 256 and *B. Suresh* v *Andhra Mahesh Cooperative Urban Bank Ltd*. (2002) 46 CLA 109 (AP)]. However, where the decree has already been executed, the unsecured creditors will not be clubbed with those who are yet to obtain decrees [*Seksaria Cotton Mills Limited* v *A.E. Naik* (1967) 37 Comp Cas 656 (Bom)].

10. Whether debenture holder could raise abjections, claiming position different from that of other secured creditors?

In Simbholi Sugar Mills Ltd., in re - 5CLJ 113 the Court held that so long the procedure has been followed and the scheme approved by the majority is bonafide, just and fair, and violative of any provision of law and neither unconscionable nor contrary to public polity, the court shall pierce the veil if apparent corporate purpose underlying the Scheme. Debenture holders do not enjoy different position other than the secured creditor. All the secured creditors enjoy the same status and rights and constitute one class. The scheme does not require unanimity or any debenture holder in favor, of any debenture holder and applies equal to all secured creditors including the debenture holders,

MERGER OR AMALGAMATION UNDER THE COMPANIES ACT

The Scheme of compromise and arrangement under section 391 of the Companies Act, 1956 is a complete code in itself. The section provides for all matters which the High Court [*Powers vested with the Tribunal vide the Companies* (*Second Amendment*) *Act, 2002. However, notification in respect of it is yet to be issued by the Department*] has or has not to consider and the types and conditions under which it has to exercise its powers. The scheme can be approved and implemented under section 391 without recourse to other provisions of the Act.

The object of section 391 of the Act is to enable financially weak companies, which are liable to be wound up under the Act, to reach compromise and arrangement between the creditors and members, to revive business and become financially viable.

The amended sections 390 to 394 provide set of provisions, which specially deals with the amalgamation of companies and provide procedures through which the proposals of amalgamation, merger, reconstruction, compromise and arrangement may be placed before the Tribunal for sanction.

11. Salient features

Meaning of expression 'company liable to be wound up under this Act', provisions u/s 390(*a*) of the Act is wider than "company" and includes even unregistered company u/s 582 of the Act. [*Malayalam Plantations India Limited & Harrison & Crossfields India Limited* (1985) 2 Comp LJ 409 (Ker)] For example, it includes companies incorporated outside India, having business operations in India under section 591 of the Act. Simply stated, the words 'liable to be wound up' means a company, which on appropriate grounds, may be wound up [*Khandelwal Udyog Ltd. and Acme Manufacturing Limited* (1977) 47 Comp Cas 503 (Bom)].

The provisions in section 391 can be availed of even to revive a company, which is already in the process of winding-up. [*Rajdhani Grains and Jaggery Exchange Ltd.* (1983) 54 Comp Cas. 166 (Del)]

The salient features of sections 391 and 394 are:—

(*a*) There should be a scheme of compromise or arrangement for restructuring or amalgamation.

(*b*) An application must be made to the High Court/Tribunal for direction to hold meetings of shareholders/creditors.

(*c*) The High Court/Tribunal may order a meeting of shareholders/creditors.

(*d*) Holding of meeting of shareholders/creditors as per the High Court/Tribunal's order.

(*e*) Scheme of compromise or arrangement must be approved by 3/4th in value of creditors, class of creditors, members, class of members.

(*f*) Another application must be made to the High Court/Tribunal sanctioning the scheme of compromise or arrangement.

(*g*) An approved scheme duly sanctioned by the High Court/Tribunal is binding on all the shareholders/creditors/company(ies).

(*h*) The High Court/Tribunal may stay the commencement or continuation of any suit or proceeding against the company after application have been moved in the Court/Tribunal.

(*i*) The Court/Tribunal's order is appealable to the Court/Appellate Tribunal empowered to hear appeals from the decision of that Court/Tribunal.

Therefore, amalgamation can be effected by any one of the following ways:—

(*a*) Transfer of undertaking by the order of the Court/Tribunal. [Section 394]

(*b*) Purchasing of shares of one company by another company — section 395 of the Companies Act, Compliance of section 372A and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997.

(*c*) Amalgamation of companies in the national interest. [Section 396]

(*d*) Amalgamation of companies under section 494.

12. Widest discretion to the Tribunal

A National Company Law Tribunal has been set up by the Companies (Second Amendment) Act, 2002. The powers and jurisdiction presently being exercised by various bodies *viz*, CLB or BIFR or High Courts will now be consolidated and entrusted to the Tribunal. Thus, multiplicity of litigation before various courts or quasi-judicial bodies or forums regarding revival or rehabilitation or merger or amalgamation or winding up will be avoided as all these matters will be heard and decided by the Tribunal. The Tribunal shall work through Benches. There shall be ten special Benches, which will deal with the matters relating to revival or reconstruction or rehabilitation or winding up of companies.

All the parties will be bound by the Tribunal's orders and in case of non-availability of a workable proposal for revival or rehabilitation, etc., the Tribunal can decide the matter on merits including introduction of its own scheme. This will reduce the entire process, which is presently taking several years in winding up of the companies. As a result of this enactment everyone including workers, creditors, investors and the economy as a whole will stand to benefit.

Sections 391 to 394 intended to be in the nature of a system of single window clearance so that the parties are not put to avoidable, unnecessary and cumbersome procedure of making separate applications to the Tribunal for various other alterations or changes which might be needed effectively to implement the sanctioned scheme whose overall fairness and feasibility has been judged by the Tribunal.

However, the rules governing the procedure by the Tribunal has not been issued. Further, the present jurisdiction of the High Court will continue for the time being.

13. Jurisdiction of the High Court/Tribunal

The High Court/Tribunal having jurisdiction of the place at which the registered offices of each of the companies are situated is the appropriate Court/Bench of the Tribunal for hearing a petition under section 391. Where two companies are parties for amalgamation and they are situated in two different States, each company should move a petition before the respective High Court/Tribunal.

14. Sanction of a scheme of amalgamation of the transferor company, a subsidiary of the transferee company, a body corporate under the Banking Companies Acquisition Act, is permissible u/s 391 to 394

In the case of sanction of a scheme of amalgamation between the companies, what is essential is a transferor company and transferee company. Section 394(4)(*b*) defines transferee company, as not to include any company other than a company under the Act while the transferor company to include any body corporate, whether company within the meaning of the Act or not. A careful examination of the definition of a body corporate under sub-section (7) of section 2, reveals that, it is a wider term than the term 'company' which takes into fold any foreign company, a corporate constituted under any special law of India and the body corporate, a company defined under the Act, while excluding a corporation or a co-operative society. [*Vibank Housing Finance Ltd*., *In re* (2006) 72 CLA 341 (Kar)].

15. Section 42 of the Companies Act cannot be read in context of amalgamation of companies

Section 42 of the Companies Act provides that a subsidiary company cannot hold shares or be a member of its holding company. Section 42(3) provides an exception to the general rule and permits a subsidiary company to continue as member of the holding company. Existing shareholding of the subsidiary company in the holding company will be protected u/s 42(3) of the Act but the subsidiary company will not have any voting rights. It was held in the case of *Ashim Investment Co. Ltd*., *In re* (2006) 73 CLA 37 (Del) that power of the court u/s 391 to 394 is not curtailed and is not subject to section 42 of the Act.

16. Acceptance of combined petition

Where both the companies are situated in the same State, a joint application may be made by the transferor and the transferee company. [*Mohan Exports India Ltd.* v *Tarun Overseas* (*P*) *Ltd*. (1994) 3 Comp LJ 193]. But it may also be stated here that the Karnataka High Court is reported to have stated the opposite view that even where two companies are situated in the same State, each company should file a separate petition. [*Electro Carbonium* (*P*) *Ltd*. v *Electric Materials Co*. (*P*) *Ltd*. (1979) 49 Comp Cas 825 (Kar)]

It was held in the case of *Larsen & Toubro Ltd*., *In re* (2004) 60 CLA 555 (Bom) that there could be a combined petition for demerger of one of the undertakings of the transferor company, for the transfer of the demerged undertaking of a subsidiary and for the reduction in the capital of the transferor company.

17. Public interest

Section 394 casts an obligation on the Court/Tribunal to be satisfied that the scheme for amalgamation or merger is not contrary to public interest. In amalgamation of companies, the Court/Tribunal have evolved the principle of "prudent business management test" or that the scheme should not be a device to evade law. Where the merger is with a subsidiary of a foreign company, then the economic interest of the country may have to be given precedence. The jurisdiction of the Court/Tribunal in this regard is comprehensive. [*Hindustan Lever Employees Union* v *Hindustan Lever Ltd*. (1995) 83 Comp Cas 30 (SC)].

In *Mysore Electro Chemical Works Ltd.* v *G.K. Parmashiv* (1993) (Kar), it was held that section 392(1)(*b*) provides for solving of any difficulty that may arise in the working of scheme, be resorting to the Court (now Tribunal) under this section. In the instant case the company did not make payments as provided for in the scheme and this had affected the rights of creditors. The scheme was silent as to how the payments could be enforced. In such a situation it could not be held that the Court was without any competence to grant any equitable relief to the creditors who are earlier denied an immediate payment from the company.

18. Protection of employees under amalgamation

While sanctioning the scheme of amalgamation, the Court/Tribunal will see that the scheme causes as little hardship as possible to employees and the transferee company assures that the interest of workers would be protected after amalgamation. [*Hindustan Lever Employees Union* v *Hindustan Lever Ltd*. (1995) 83 Comp Cas 30 (SC)].

19. Registration of FIR against the transferee-company is not a fact required to be disclosed in scheme of amalgamation

In the case of *Motorola India (P) Ltd.* (2006) 73 CLA 1 (P&H) 30.03.2006, it was held that the registration of FIR against the transferee-company was by itself not such a fact, which is required to be disclosed in scheme of amalgamation, as it was not a material fact to be disclosed. Since the investigation was going on and it was on completion of investigation only and if something went wrong against the company, the same needed to be disclosed and not before that stage.

PROCEDURAL FORMALITIES OF MERGER OR AMALGAMATION

Merger or amalgamation under a scheme of arrangement as provided under sections 391 to 394 of the Companies Act, 1956 is the most convenient and common for obtaining a complete merger or amalgamation between two companies. There shall be active involvement of the Court/Tribunal and an amalgamation shall be complete only after the sanction of the Court/Tribunal under section 394(2) and takes effect when such order of the Court/Tribunal is filed with the Registrar.

20. Object clause in the Memorandum of Association for amalgamation

Section gives power to the Court/Tribunal to sanction an arrangement even though there may be no specific clause in the object clause of the Memorandum of Association. (*EITA India Ltd.* AIR 1997 Cal 208) The Court/Tribunal may sanction a scheme even if the scheme proposes alteration of the object clause afterwards.

In *Sir Mathur Das Vissanji Foundation* (1996) Comp (Bom) it was held that the proposed scheme could not be refused merely because there was absence of power to amalgamate in the object clause of the MOA of Transferee Company. Power of amalgamation need not be a matter arising only out of the object clause and company could always know the Court (now Tribunal) for sanction of scheme and subject to other provision and that on the Court being satisfied of the reasonable of the scheme, such schema can be sanctioned.

21. Single application u/s 391 to 394 is enough for all the alterations in the Memorandum and Articles

Amalgamation u/s 391to 394 does not required number of application under the Companies Act 1956 for various alteration in the Memorandum and Articles of Association because section 391 to 394 it self a complete code and can be incorporated in the Scheme itself, therefore company not required to make separate application under Companies Act 1956 for each alteration. [*J.P.Greens Ltd.* Comp Cas 542 (ALL) dated 8th Aug., 2006]

22. Sanction of Court u/s 391 to 394 constitutes single window clearance for alteration in the Object Clause

In the case of *Motorola India (P) Ltd.* (2006) 73 CLA 1 (P&H) 30.03.2006, it was pointed out that the provisions of the sections 391 to 394 of the Act is a complete code in itself and the sanction therein constitutes single window clearance under the Act. In view thereof, since the scheme had been approved by the shareholders in the general meeting, the requirements of a special resolution in terms of Section 17 of the Act was a matter of procedure alone, which procedure stood followed with the approval of scheme by shareholders in a meeting convened and presided over by a nominee of this court.

23. Approval of shares exchange ratio by the Board of directors of both the companies

In case of an amalgamation, the scheme of amalgamation provides for the allotment of equity shares by the transferee company to the shareholders of the transferor company on the basis of the valuation of the shares of the two companies carried out by a chartered accountant appointed by the companies and approved by the Boards of the respective companies.

24. Valuation of shares and determination of share exchange ratio

Valuation of shares and the exchange ratio in the case of mergers/amalgamations/de-mergers/spin-offs would be sanctioned by the Court/Tribunal if the following conditions are fulfilled:

(*i*) The material on the basis of which the valuation is worked out should be placed on record of the Court/Tribunal and also brought to the notice of the shareholders.

(*ii*) The methodology adopted for carrying out the valuation should not be arbitrary. [*Duncans Industries Ltd.* v *State of U.P.* (2000) 1 SCC 633].

(*iii*) The valuation shall be carried out by independent professional valuers, even if one of them is a director of the concerned company and is affirmed by the other valuers. [*Kusum Products Ltd.,* (1998) 98 Com. Cases 10 (Cal)].

(*iv*) Majority of the shareholders have accepted the valuation and/or approved the merger.

(*v*) The scheme should be just and fair and not detrimental to public/shareholders'/creditors' interest and doesn't violate any law.

In case of amalgamation, different methods of valuation can be adopted for valuing shares of two companies. In absence of frauds or malafides, mere fact that determination of exchange ratio of shares of two companies can be done by a slightly different method which might have given a different exchange ratio, could not justify interference of Court (now Tribunal) unless it is found to be unfair. [*Ratan Housing Development Ltd.* In re (2005) 58 SCL 274 (ALL)].

25. Whether different methods of valuation can be adopted for valuing the shares of the companies under amalgamation?

In Graceful Properties *Ltd. and, etc., in re 5 CLC* 1573 - the objection raised by the Regional Director that the valuers had valued the share of the transferee company on the basis of the book value nil the shares of the said company, whereas in the case of transferor company the shares had been valued on the basis of the average quoted price per share (or the last three years as quoted by the Kolkata Stock Exchange. It was contended that type different methods of the valuation should not be adopted for during the shares of the respective companies and the shares of the transferor company should he taken as the fair value and on that basis the ratio of exchange should be made in the scheme of amalgamation.

The Allahabad High Court held that different methods of valuation could be adopted for valuing the shares of the respective companies the valuer found that the realizable value of assets of the company was not ascertainable fairly and therefore the next asset value further found that the transferor company was running in losses or very little profit in the last three year and therefore, the earning capitalization method would also not give a fair value of the shares. In such circumstances, the valuer took the average quoted price of the shares of the company. The Court further held that the Regional Director in his objection had not contended that the valuer had played a fraud, he only contended that one method of valuation should have been adopted. Thus, in the absence of fraud or melafides, the mere fact that the determination of the exchange ratio of the shares of the two companies could be done by a slighter different method which might have given a different exchange ratio could not justify interference unless it was Found to be unfair.

26. Acceptance of the share exchange ratio by the Court/Tribunal

The basis of the valuation made by the chartered accountant will be placed on record of the Court/Tribunal and also brought to the notice of the shareholders. The Court/Tribunal will generally accept such valuation done by qualified persons unless any valid mistake is pointed out in the valuation. [*Brooke Bond Lipton India Ltd.* (1998) 15 SCL 81 (Cal)].

In *Hindustan Lever Employees' Union* v *Hindustan Lever Ltd.* (1995) 83 Comp Cas 30 (SC): AIR 1995 SC 470 it was mentioned that if any illegality/fraud perpetrated upon the shareholders of the amalgamating companies is not observed, and the exchange ratio arrived at by Chartered Accountants has been approved by the requisite authorities, the Court would not interfere with the scheme.

In *NEO Savan Sugar and gur Refining Ca. Ltd., and often,, in re.* - (2005) 6CLC 12»1 it was held that generally, the court would not interfere with the valuation and swaps ratio approved by all the shareholders. However when it feels *prima-facei* that valuation is without proper basis, it questions the valuation. Or on the ground of not proper valuation can reject the scheme. In this case rejection of the scheme is not due to valuation but because it is not possible for the Honorable Court to come to the conclusion whether this scheme is in public interest.

27. Is the action of the Chairman in refusing to accept the amendment proposed by shareholder to amend the swap ratio correct?

In the case of *Dinesh Vrajilal Lakhani* v *Parke Davis* (*India*) *Ltd.* (2003) 57 CLA 3 (Bom), it was held that the swap ratio is determined by valuers who are chartered accountant of repute and is an important element. It is for the members to decide it in the meeting convened by the Court (now Tribunal). Any change in the share swap ratio at the meeting would undo the basis of scheme of amalgamation. Hence, the Chairman of the meeting could rule that the proposed amendment is not in order.

28. Appointed date

The scheme of amalgamation agreed to by the parties' states that as on a date, called the appointed date, the assets and liabilities of the transferor company, subject to the approval of the Court/Tribunal, would be transferred to the transferee company.

The said appointed date would be as close as possible to the date of presentation of application to the Tribunal and the audited financial position of the companies as on the appointed date would form the basis for arriving at the said date. The said appointed date will become the effective date if the Court/Tribunal sanctions the scheme. [*Marshall Sons and Co.* (*India*) *Ltd.* v *ITO* (1997) 88 Comp Cas 528 (SC)].

Every scheme of amalgamation has to be necessarily provided a date with effect from which the amalgamation/transfer shall take place. The Income Tax Officer has no authority to call upon the transferor company to file a return for any period subject thereto. [*Marshall Sons & Co.* (*India*) *Ltd.* v *ITO* (SC) Comp LJ 1 1996 (8) 564].

29. Board of Directors of the transferor company in their board meeting can extended the date of the proposed scheme of amalgamation, no fresh approval from shareholder is required

In Rohts Soaps and Deterged (P) Lid, in re (2005) 56 CC 124, all the companies stated that their Boards of Directors had reached a unanimous decision to extend the date on which the scheme would stand revoked/cancelled and hence, it would not be necessary for them to take the consent of shareholders once again, because of the inherent power given to them through the clause of the scheme. The Allahabad High Court held that a meeting of the company's shareholders to reconsider the scheme of amalgamation was not required if the provisions of the scheme gave the Board of Directors power to extend the implementation of the scheme or accept or any other changes suggested by the Government or the High Court.

30. Meeting of the Board of directors of transferor and transferee companies

The first step in carrying out amalgamation is approval of scheme of amalgamation by the Boards of both the companies.

The Board of directors of the transferor company will take on record the discussions that have taken place with the transferee company and submit to the Board of the transferee company, the transferor company's desire, subject to the Court/Tribunal's sanction, to amalgamate itself with the transferee company. The Board of the transferee company will be requested to take necessary action on this matter.

Assuming that in many cases the transferee company gives the lead and takes the initiative, its Board would take on record the discussions held between the two companies on the proposal of the transferor company to merge itself with the company. The Board of the transferee company would take the following steps:—

(*a*) Subject to the approval of the Court/Tribunal, the Board will agree to the transferor company's proposal to merge with the company.

(*b*) Subject to the approval of the Board of the transferor company, the auditors of both the companies will be asked to value the shares of their companies and suggest a fair and reasonable ratio for the exchange of shares in the transferee company to the shareholders of the transferor company in respect of the shares held by them in the latter company.

(*c*) The Managing Director and the Company Secretary will be asked to prepare a draft scheme in consultation with the company's legal consultant.

(*d*) The Board of directors of the transferor company will be requested to take on record that consequent on the discussions with the two companies, the transferee company has agreed with the company's request to amalgamate itself with the transferee company. The transferor company will be asked to confirm the appointment of auditors for the valuation of the shares of the two companies.

(*e*) Board resolution should, besides approving the scheme, authorise a director/secretary/other officer to make an application to the Court/Tribunal, to sign it and other documents and to do all and every necessary thing in connection therewith, including changes in the scheme.

31. Further action by the Board of transferee company

The Board of directors of transferee company will further:—

(*i*) consider the recommendation of the auditors on the fair ratio of exchange of shares in the transferee company for the shares of the transferor company and will approve the same;

(*ii*) approve the draft scheme of amalgamation;

(*iii*) accord approval, after receiving the approval of the Board of the transferor company, to move a joint application to the Court/Tribunal if both the transferor and transferee companies are situated in the jurisdiction of the same Bench of the High Court/Tribunal;

(*iv*) request the Board of the transferor company to approve the exchange of shares recommended by the auditors and also the draft scheme of amalgamation, referred to above and submit a petition to the Court/Tribunal having jurisdiction over the transferor company under section 391 of the Act and praying for a direction to convene a meeting of its shareholders to consider the draft scheme of amalgamation. The transferor company will also be requested to:—

  (*a*) accord their approval in writing to the auditors' recommendation on valuation and the draft scheme of amalgamation;

  (*b*) forward to the transferee company certified copy of the petition moved in the Court/Tribunal by the transferor company;

(*v*) the Board will also authorise the managing director and/or the company secretary severally to move, on receipt of the certified copy of the petition from the transferor company, before the Court/Tribunal having jurisdiction over the transferee company.

32. Basic contents of a scheme of amalgamation

The Companies Act or the Rules made there under do not prescribe any form or contents of a scheme of amalgamation. Conventionally, however, certain standard clauses are included in a scheme of amalgamation. These are as follows:—

1. Appointed Date (or Transfer Date) of amalgamation.
2. Effective Date of amalgamation.
3. Capital structure of the transferor company and the transferee company
4. Share Exchange Ratio.
5. Transfer of undertaking and liabilities of transferor company to the transferee company from the appointed date.
6. Continuance of legal proceedings of the transferor company by transferee company after the effective date.
7. Transferor company to carry on business on behalf of the transferee company between appointed date

and effective date.

8. Effect of amalgamation on contracts of the transferor company after the effective date.
9. Services of the transferor company's employees, their service conditions, effect of amalgamation thereon, retirement benefits, etc.
10. Allotment of the transferee company's shares to the transferor company's shareholders in exchange of their shares in the transferor-company as per the share exchange ratio, treatment as to fractions, rights of the shareholders.
11. Dissolution of the transferor company (without winding up) on the effective date.
12. Main objects of the transferor company to become one of the main objects of the transferee company.
13. Conditions subject to which the scheme is to take effect.

33. Requirements for listed company under the Listing Agreement

As per the Clause 24 of the Listing Agreement every listed company is required to comply with the following requirements:—

(*a*) Any scheme/petition proposed to be filed before any Court/Tribunal under sections 391, 394 and 101 of the Companies Act, 1956, shall be filed with the stock exchange, for approval, at least a month before it is presented to the Court or Tribunal.

(*b*) Any scheme of arrangement/amalgamation/merger/reconstruction/reduction of capital, etc., to be presented to any Court/Tribunal shall not in any way violate, override or circumscribe the provisions of securities laws or the stock exchange requirements.

(*c*) Explanatory statement forwarded to the shareholders u/s 393 or accompanying a proposed resolution to be passed u/s 100 of the Companies Act, shall disclose the pre and post-arrangement or amalgamation (expected) capital structure and shareholding pattern.

Clause 31(*c*) of the Listing Agreement provides that three copies of all the notices, call letters or any other circulars including notices of meetings convened u/s 391 or section 394 read with section 391 of the Companies Act, 1956, together with Annexures thereto, shall be sent to the stock exchange where the securities of the company are listed at the same time as they are sent to the shareholders, debenture holders or creditors or any class of them or advertised in the Press.

33.1 Disclosures to be made by listed company to the shareholders for mergers and amalgamations

SEBI has issued a Press Release in June, 2004 suggesting various disclosures that shall be made mandatory by listed companies to shareholders. The text of the Press release is quoted below:—

1. Sections 391 to 394 of the Companies Act, 1956 deal with mergers and amalgamations through schemes of arrangement approved by the High Courts. A resolution to approve the scheme of arrangement has to be passed by the shareholders in the general meetings. The shareholders have to vote on the resolutions on the schemes of arrangement on the basis of the disclosures in the notice/explanatory statement. Section 393 of the Companies Act, 1956 specifies the broad parameters of the disclosures, which should be given to the shareholders/creditors, for approving a scheme of arrangement.
2. It has been noted that the companies undergoing restructuring under sections 391 to 394 of the Companies Act, 1956 have not been providing sufficient information in the notice/explanatory statement calling for shareholders' meeting for approving the same. It is therefore felt that certain minimum disclosures need to be mandated in notices for such schemes. SEBI has proposed a minimum set of disclosures within the broad parameters specified under section 393 of the Companies Act, 1956, which would be enforced through the provisions of listing agreement.
3. It is proposed to make it mandatory for companies which enter into a scheme of arrangement to make the disclosures to shareholders in the notice/explanatory statement accompanying the notice for calling shareholders' meeting for considering and approving scheme under sections 391 to 394 of the Companies Act, 1956. It is felt that this would give a broad picture to investors and eventually facilitate them in arriving at a decision.
4. The proposed disclosures by the issuing company in the notice to the shareholder for the meeting are:

In the ensuring paragraphs:—

1. The terms "company/companies" mean the companies, which are parties to the terms of arrangement of merger/demerger/amalgamation specified under sections 391 to 394 of the Companies Act, 1956.
2. The term "resultant company" shall mean the company, which comes into existence as a result of the scheme of arrangement for merger/demerger/amalgamation.
3. The term "issuing company" shall mean the listed company, which is seeking approval of shareholders for the scheme of arrangement for merger/demerger/amalgamation.

Details about the companies:—

1. Name and registered office of the companies.
2. The extent to/manner in which the companies are related to each other.
3. Capital structure of the companies.
4. Shareholding pattern clearly indicating the shares held by the promoters and by persons other than promoters.
5. Line of business.
6. Dates of agreement, if any, with the other companies, which are parties to the scheme of arrangement.
7. Name and profile of the promoters and directors, *viz.* age, educational qualifications/experience/ personal addresses etc. of the companies.
8. Names of subsidiary/group companies and companies with which the promoters of the resultant company are associated.
9. Indicate whether there would be a change in control in the resultant company *vis-a-vis* the issuing company.
10. Capital structure and shareholding pattern, before (of issuing company) and after (of resultant company) the proposed scheme of arrangement, and the management's views on the change in the public holding on how it won the shareholders at large.
11. Audited financial statements of the companies for the last 3 years including the latest audited financial statement (not more than 6 months old) and material development after balance sheet date (as per the format given in clause 49 of the Listing Agreement)

Details about the scheme:—

1. Basis of valuation.
2. Nature of consideration if any, payable/receivable under the scheme.
3. Mode of payment/receipt.
4. Manner of surrender/receipt of shares or securities.
5. The time schedule within which the shares/securities are to be surrendered/received and payments to be made/received.
6. Tentative date by which the scheme would become effective under the provisions of the Companies Act.
7. Details of approvals obtained/to be obtained/sought from creditors, authorities like stock exchanges/authorities under Companies Act, etc.
8. Date of Board meeting when the proposal was considered/approved.
9. Any other details which deemed necessary for information to the shareholders enabling them to make an informed decision about the proposed scheme, including those required under section 393 of the Companies.

34. Meaning of expression 'Latest Auditor's Report'

The company must disclose all material facts, including latest financial position and the latest auditor's report. The expression latest auditor's report connotes latest report available. It would not be necessary that the company must get the accounts audited time and again till the petition would come up for hearing. It was not an obligatory requirement that unless dues of objecting creditors were paid the scheme should not be sanctioned. It must be remembered that a scheme under section 391 was not a tool in the hands of a creditors to recover money or force the company to pay it. The objecting creditors must show that the scheme was *mala fide* or fraudulent or was likely to adversely affect them or interests of the creditors.

35. Direction by the Court/Tribunal to hold meeting of members and/or creditors

The Court/Tribunal will consider the petition, whether the scheme is fair and is not illegal under the Companies Act. [*Krishna Kumar Mills Co. Ltd*. (1975) 45 Comp Cas 248 (Guj)] Where satisfied, the Court/Tribunal will direct for holding separate meetings of members and creditors as have been proposed in the petition and the day, date, time and place will be fixed by the Court/Tribunal. The Court/Tribunal will also appoint a chairman and/or alternate to the chairman for each of the meeting.

The expression 'may' used in section 391 has to be construed in the sense that the Court/Tribunal has the full discretion to call for the meeting of the shareholders or refuse to call for a meeting it is only in that sense that the expression 'may' has been employed in the section. A collective decision of the shareholders would be far different from their individual decisions from their houses or offices. Meeting of the shareholders cannot be regarded as an empty formality. [*Neplus Technologies* (*P*) *Ltd.* (2003) 52 CLA 13 (Mad].

36. Notices to members and/or creditors for the meeting

A company shall send notices to members, creditors and each class of members or creditors as approved by the and the business of the meeting shall be to consider and approve the scheme of amalgamation or the scheme of compromise/arrangement, as may be applicable. The members and/or creditors will be asked to give their decision by poll (Rule 77). In terms of section 391, the scheme shall be deemed to be approved, if at least a majority of members, present in person or by proxy and voting representing three-fourths in value, agree to the proposal.

The Court/Tribunal has no jurisdiction to sanction a scheme if it is not approved by three-fourths majority of the creditors or class of creditors. Considering the question of sanctioning the scheme by the court would arise only if the scheme has been approved by the statutory majority provided for under section 391(2) of the Act. However, where 100 percent of the secured creditors are opposing the scheme, it would be an idle formality to direct the convening of the meeting of the unsecured members to consider the scheme. In such a case application filed is liable to be rejected and the direction as sought by the applicant for convening the meeting cannot be issued.

In *Kaveri Entertainment Ltd., In re* (2003) 117 Comp Cas 245 (Bom), it was held that sub-section (2) of section 391 of the Act requires that the resolution approving the scheme of arrangement should be passed by majority in number representing 3/4ths in value of the creditors or class of creditors and/or members or class of members as the case may be. If the resolution granting approval to the scheme of arrangement is passed by more than 3/4ths in value of the creditors but, is not carried by the majority in number of the creditors the scheme would not be approved by the Court (now Tribunal). The majority in number of the creditors is provided in the section for safeguarding the interests of the large number of small creditors whose voice is often lost amongst small number of big creditors. The conditions of approval by majority in number and 3/4ths in value of credit are cumulative.

The language of section 391(2) clearly shows that the requirement of three-fourth majority relates to the value of shares/credit represented by the shareholders or creditors who are present and voting and not of the total value of shares/credit of the company. [*Hind Lever Chemicals Ltd., In re* (2004) 1 CLA 32 (P&H)] [*Swift Formulations (P) Ltd., In re* (2004) 53 SCL 433 (P&H) (FB)].

37. Whether in a scheme of arrangement the meeting of shareholders to approve the scheme could be dispensed with?

In Shyam Telecom Ltd., in re {2006) 64 SLC 622 the court held that a meeting of shareholders and creditors to approve a scheme or arrangement could be dispensed with, if the company was a wholly owned subsidiary of the applicant company and if its entire share capital was held by the applicant company.

38. Objection by the creditors

There is no provision in the Act to enable the creditors to present their objection, if any, to the Court/ Tribunal. Normally in the case of an amalgamation the meeting of creditors does not arise. The creditors will have an opportunity to file their objections to the Court/Tribunal and it is for the Tribunal to decide, whether such objection should be considered.

In a scheme of arrangement or amalgamation under section 391 of the Companies Act, 1956, an objecting creditor who has a debt due from the transferor company would be required to look not to the transferor company for the repayment of his dues but to the transferee company with whom he has had no dealings in the past and with whom he has no privities of contract, in substitution of the transferor company. Whether the creditor would be adversely affected by being required to deal with the transferee company in substitution of the transferor company is a matter of perception of the creditor. Therefore, it cannot be said that a creditor of the transferor company would have no right to object to the scheme of arrangement.

If the court has the power to reject the scheme on the ground that it is unjust and unfair, it certainly has the power to sanction the scheme subject to such conditions as would remove the grounds of unjustness and unfairness, such as directing the company to pay or secure the debt of the creditor before sanctioning the scheme.

Scheme under section 391 of the Act was not a tool in the hands of the creditor to recover money or to coerce the company to pay, especially when the debt was not admitted. The objecting creditor must show to the court that the scheme was mala fide or fraudulent and was likely to adversely affect him or the creditors or the class of creditors to whom he belongs. [*Mayfair Ltd., in re. Zodiac Clothing Co. Ltd., in re* 26 June, 2003].

39. Non-disclosure in the petition about unsecured creditors or investigation u/s 235 to 251 is not tantamount to non disclosure of material facts

In the case of *Pharmaceutical Products of India Ltd.* (2006) 131 Comp Cas 747 (Bom) 13.02.2006, the Bombay High Court held that the non-disclosure in the petition about unsecured creditors did not tantamount to non-disclosure of material facts relating to the company such as latest position of the company, last auditors report on the accounts of the company, pendency of any investigation proceedings in relation to the company under sections 235 to 251 within the meaning of proviso to section 391(2) of the Companies Act, 1956. If it was so, non-disclosure of that fact could not be a ground for dismissing the petition. In as much as, all the material facts required by section 391 were already notified in the petition and complied with.

40. Report of the Chairman of the meeting to the Court/Tribunal

Immediately on conclusion of the meeting, the chairman of the meeting will submit a report to the Court/Tribunal, which will indicate the names of persons who attended the meeting, the number of persons who have voted in favour and those against with the respective quantum of votes. (*See* rule 78 and Form 39).

41. Petition to the Court/Tribunal having jurisdiction on the company

Within seven days of filing of the report by the chairman, the company shall present a petition before the Court/Tribunal in Form 40 for sanctioning the scheme alongwith an affidavit in Form 3. Where the transferor and transferee companies come under the jurisdiction of two Courts/Benches of the Tribunal, the Court/Bench of the Tribunal, where the transferor company has moved the petition, would consider the scheme and order amalgamation of the transferor company.

42. Forwarding a copy of the application and petition to the Registrar

Pursuant to section 394A of the Act, a copy of the company's petition moved to the Court/Tribunal for direction u/s 391 and a copy of the petition for sanction of the scheme shall be served electronically to the concerned Registrar of Companies along with the e-Form 62 as prescribed by the Notification No. GSR 56(E) dated 10^{th} Feb., 2006 (previously no form was prescribed for that purpose). (Appendix 1)

43. Hearing of the petition and order of the Court/Tribunal

On receipt of the petition, the Court/Tribunal shall fix a date for the hearing and shall also order that notice of the hearing shall be advertised in the same newspaper in which the notice for the meeting was advertised or in such other papers as the Court/Tribunal may direct. At this stage on the directions of the Court/Tribunal the official liquidator shall, after a scrutiny of the books and papers of the company, make a report to the Court/Tribunal that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest and after hearing the petition, the Court/Tribunal may make such order as it deems fit.

44. Dissolution of transferor company is compulsory in case of amalgamation

The scheme of amalgamation is bound to provide for merger of the transferor company with the transferee company being dissolved. An amalgamation would not be possible without dissolution of the transferor company. [*Webb's Farm Mechanization* (*P*) *Ltd.* v *Official Liquidator* (1996) 20 CLA 242 (Kar)].

Once amalgamation takes place u/s 391 to 394 of the Companies Act, the existence of transferor company is lost by virtue of Court/Tribunal order.

45. Report of Official Liquidator

Amalgamation gives rise to dissolution of the transferor company without winding up, by virtue of an order of the High Court/Tribunal under section 391/394. No order for the dissolution of a transferor company can be made by the Court/Tribunal unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Court/Tribunal that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest.

The Official Liquidator's report can be obtained after the order sanctioning amalgamation is passed. It is, however, desirable to secure this report well in advance before an order is passed by the Court/Tribunal. This report is required in respect of the transferor company, which is dissolved without winding up and loses entity on amalgamation.

46. Report of the Registrar of Companies

If a scheme is for the amalgamation of a company, which is being wound up, with any other company or companies, before passing an order sanctioning the scheme a report from the CLB/Tribunal or the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest is required to be obtained [section 394(1), first proviso]. This report is not required unless the company, which is proposed to be amalgamated with another company, is under winding up.

In *Shriniwas Fertilisers Ltd v Khaitan Chemicals Ltd.* M.P. High Court has held that, the Legislature has given a specific direction to Registrar u/s 394(1) to examine as to whether affairs of company had not been conducted in a manner prejudicial to interest of its members or public interest; therefore, his report must in categorical terms indicate same or otherwise, as case may be, and that obligation could not be dispensed with by Registrar while submitting report. In this case, the Registrar had submitted to the Court (now Tribunal) a letter saying that the Directorate had examined the amalgamation scheme und noted that the one shareholder had objected to the proposed amalgamation/scheme, and hence, the Court (now Tribunal) might be pleased to pass appropriate orders. In order to enable the Court (now Tribunal) to pass final order on the compromise/amalgamation/merger application in exercise of power u/s 391, read with section 394 of the Companies Act, it is necessary for the Registrar of Companies to give his report as contemplated u/s 394(1), proviso, to the effect that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or to public interest.

47. Consideration by Court/Tribunal while approving the scheme

Section 392 which dealt with the supervisory jurisdiction of the Court/Tribunal clearly earmarked the field in which the sanction of the Court/Tribunal would operate. In *Miheer H. Mafatlal* v *Mafatlal Industries Ltd.*, (1996) 87 Comp Cas 792: AIR 1997 SC 506, it was observed that the Court (now Tribunal) is not merely to go by the ipse dixit (an assertion without proof) of the majority of shareholders/creditors or their respective classes, who might have voted in favour of the scheme by requisite majority, but has to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reason-able and isn't contrary to any provisions of law and doesn't violate any public policy. The propriety and merits of the compromise or arrangement had to be judged by the parties and the Court/Tribunal would not undertake the exercise of scrutinizing the scheme with a view to find out whether a better scheme could have been adopted by the parties.

Section 393(1) showed that the special interest of the director which was required to be brought home to the voters must satisfy three requirements before it could be treated to be special interest of the directors — (*a*) the director's interest must be a special interest different from the interest of other members who were the voters at the meeting; (*b*) the compromise or an arrangement which was put to vote must have an effect on such special interest of the director; and (*c*) such effect must be different from the effect of compromise and arrangement or similar interest of other persons who were called upon to vote at the meeting. [*Miheer H. Mafatlal* v *Mafatlal Industries Ltd.* (960 (SC)].

48. Principle for sanctioning scheme of arrangement, the RBI Act or other laws do not prohibits the Court for its approval

In the case of *CRB Capital Markets Ltd. v. Reserve Bank of India* [2006] 72SCL 256 (Delhi), the High Court took recourse to proviso to section 391(2) of Companies Act, 1956 wherein it is stated that before the court can accord sanction to a compromise or arrangement four conditions have to be fulfilled namely;

(a) The company should disclose to the court by an affidavit or otherwise all material facts relating to the company.

(b) The company should produce the latest financial condition of the company showing its financial position.

(c) The company should furnish the latest auditors report on the accounts of the company.

(d) It should disclose the pendency or otherwise of any investigation proceedings in relation to the company u/s 235 and 251.

The court further observed that there is no specific provision which prohibits the court from according sanction if the terms of the scheme are contrary to any of the statutory provisions contained in the Companies Act or the Reserve Bank of India Act, 1934 or any other law which is applicable.

The court held that once the majority of shareholders accorded their consent to a scheme of amalgamation, the court had no jurisdiction to go into the merits of amalgamation. RBI's permission was not required for amalgamation *of* a non banking financial company with banking company. Indusind enterprises with Indusind Bank –120 Comp. Cas457

49. In case of report of the Registrar or the Regional Director, Court can prevented sanctioning scheme of arrangement or winding up

The only two circumstances under which the court is prevented from according sanction are contained in proviso to sections 391 & 394 where the Official Liquidator or the Registrar of Companies files a report stating that the affairs of the company are conducted in a manner prejudicial to the members of the company or the company. *[CRB Capital Markets Ltd. v. Reserve Bank of India* [2006] 72SCL 256 (Delhi)]

50. Filing a copy of the order of the Court/Tribunal with the Registrar of Companies

Pursuant to section 391(3) and section 394(3) a certified copy of the Court/Tribunal's order shall be filed electronically with the Registrar of Companies within 30 days of the receipt of the order in e-form 21 of Companies (Central Government's) General Rules and Forms, 1956 and the Court/Tribunal's shall have no effect until the certified copy is so filed with the Registrar of Companies.

51. No separate notice to be filed before Registrar of Companies for enhancement of share capital

When the certified copy of the order sanctioning the scheme of amalgamation by the Court/Tribunal is required to be filed before the Registrar of Companies under section 394(3), no separate notice need to be given to the Registrar for enhancement of share capital as envisaged under section 95/97 in as much as the object being the same, recording of necessary changes that is required to be made in the concerned register by the Registrar of Companies can be affected after receiving the certified copy of the order of the Court/ Tribunal sanctioning the same. [*RKS Motors Pvt. Ltd*., *In re* (2004) 60 CLA 309 (AP)].

52. Notice of amalgamation need not be given to Income tax Department

There is no necessity to give any separate notice to the tax department. The law does not require issue of a separate notice to the Income Tax Department. [*Vinay Metal Printers Pvt. Ltd., In re and Anand Crown & Seal Pvt. Ltd., In re* (1997) 24 CLA 129 (AP)].

53. Change of name of the company pursuant to scheme of amalgamation

Under section 21 the Company is required to pass a special resolution and obtain approval of the Central Government (powers delegated to the Registrar of Companies) for change of its name. The change in the name of the company cannot be effected merely on the scheme becoming effective the transferee company has to adopt proceedings for change of name after complying with the provisions of section 21 of the Companies Act, 1956. [*Govind Rubber Ltd. in re*. (1995) 83 Comp Cas 556 (Bom)].

In *Sherno Investment & Finance Limited* v. Registrar *of Companies* - (2006) 70 CLA 21 (Guj) the Court held that when the proposed scheme was approved on the basis of the resolution of the company, the same can be the basis for change of name also, together with the sanction passed by this High Court in the event of such meeting is dispensed with by the High Court, while sanctioning the scheme under Section 394, mere reference to the order of the court will be sufficient. It is not open to the Registrar of Companies to raise objection for change of name, which forms part of the scheme of amalgamation dulv sanctioned by the High Court on the ground that separate procedure under Section 21 of the Act is not followed or is required to be followed. It is for the opponent Registrar of Companies to issue necessary certificate by implementing the order already passed by this court.

54. Amalgamation of companies if they are in different States

Where the Court/Tribunal having jurisdiction over the transferor company has sanctioned the amalgamation, the transferor company shall after the sanction of the scheme, file a certified copy of the order alongwith the order of the Court/Tribunal with the Registrar of Companies and shall also send a copy to the transferee company. As soon as the scheme of amalgamation has been sanctioned, the transferee company will also file a certified copies of the orders with the Registrar of Companies alongwith a copy received from the transferor company. The Registrar of Companies having jurisdiction over the transferor company will cancel the name of the company from his Register. On the other hand, the Registrar having jurisdiction over the transferee company shall register the Court/Tribunal's order and issue a certificate to the transferee company.

55. Appeal against the order in case of amalgamation if the matter not raised before the judge at the time of hearing is not acceptable

In case of *Konark Investments Ltd.* v *Union of India* (1998) (6) Scale SP, the Supreme Court held that on the basis of order issued by Company Judge under section 391/393 the shareholders of transferor company had been allotted shares of the appellant and that they would have sold those share to third parties who would eventually be the sufferer. The amalgamation had taken effect long ago and third party rights had been created. The applicant should have pressed the case it made out in the affidavit before the Company Judge, and that was the appropriate time to do so.

56. Issuance of shares by the transferee company

Issuance of shares to the shareholders of the transferor company by the transferee company will require compliance with the provisions of section 81(1A) of the Companies Act, 1956 in case of a limited company.

The process of the exchange of shares will be commenced after the copies of the orders of the High Court/Tribunal sanctioning the scheme of amalgamation have been filed with the Registrar/s of Companies by the transferor company and the transferee company.

For the purpose of drawing-up list of shareholders of the transferor company who will be entitled to get the shares of the transferee company as per the share exchange ratio:—

(*a*) Register of members of the transferor company will be closed if the transferor company is an unlisted company;

(*b*) A record date will be fixed to ascertain the names of shareholders and their shareholdings in the transferor company if the transferor company is a listed company.

If the transferor company is a listed company, a notice of the proposed record date will be given to the Stock Exchanges on which the company's shares are listed stating the record date, and specifying the purpose for which the record date is fixed. Copies of such notice will be sent to other recognised Stock Exchanges in India simultaneously. A public notice regarding the record date will be given in the newspapers.

Where the Register of members is proposed to be closed and/or record date is declared, a public notice shall be given in newspapers in accordance with the requirement under section 154 of the Companies Act.

A statement of allotment will be prepared based on the list of members of the transferor company as on the last date of the closure of the Register of members or the record date. This statement will specify in respect of each member:—

(*a*) the name;

(*b*) the number of shares held in the transferor company; and (*c*) the number of shares to be exchanged and allotted in the transferee company.

A meeting of the Board of directors will be convened for allotment of the shares to the shareholders of the transferor company. The Board will allot the shares according to the Statement of Allotment. The transferor company will inform the Stock Exchange/s on which the shares of the transferor company and the transferee company are listed regarding the allotment of shares.

Return of allotment in e-Form 2 will be filed electronically with the Registrar of Companies within 30 days of allotment.

In case if the transferee company is listed at any stock exchange it will submit information for corporate action to the CDSL and NSDL for admission of the securities for D-mat purposes.

57. Exchange of share certificates

The shareholders of the transferor company will be intimated about the sanctioning of the scheme of amalgamation and advise them to exchange of shares with the shares of the transferee company. Alternatively it may cancel the existing share certificate of the transferor company and issue fresh certificate to the holders.

New share certificates will be prepared according to the Statement of Allotment. The transferee company will dispatch the new share certificate to the shareholders by registered post. The transferor company will inform the Stock Exchange of the allotment of the shares.

In case of a listed company, the company may give option to get the shares in the D-mat Form and may require the details of the DP ID and Client ID for crediting the shares in the D-mat account directly.

58. Listing or delisting of shares

If the transferee company is a listed company, the shares allotted to the shareholders of the transferor company will seek in principle approval from the stock exchanges and then submit a final application to all the Stock Exchanges for listing of shares on which the transferee company's shares are listed, regardless of whether the transferor company's share are listed or not.

If the transferor company is a listed company, its shares will be delisted for which an application will be made to the concerned Stock Exchanges in a letter form enclosing a certified true copy of the High Court/Tribunal order sanctioning the Scheme of Amalgamation. If the transferor company is a listed company but the transferee company is not a listed company, consequent to the amalgamation, the amalgamated company will become an unlisted company. In a case like this, it is advisable to include a suitable clause in the Scheme Amalgamation to provide for the delisting automatically on the Scheme becoming effective.

59. Sick company and amalgamation

It is possible for a sound company to merge with a sick industrial company so as to revive the latter, called a reverse merger. Section 391(6) provides that the Court/Tribunal may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceedings against the company on such terms as it thinks fit, until the application is finally disposed of. It may be noted that the provisions of section 391(6) are different from section 22 of the Sick Industrial Companies (Special Provisions) Act, 1958 (SICA). In case of section 391(6) of the Act, any proceeding against the company can be stayed only after the order and approval of the Court/Tribunal, whereas under section 22 of the SICA all recovery proceedings against the company are barred, unless specifically approved by the BIFR/AAIFR. Moreover, there is no bar for the criminal proceedings to be initiated against the company.

In case of section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, which is analogous to section 391(6) of the Act, it has been held that where the guarantee agreement is not in respect of any loan or advance taken by the company, but only for payment of lease money under the lease agreement by the sick company, a suit against the guarantor in relation to payment of lease money is not barred under section 22 [*Garden Finance Limited* v *Prakash Industries Limited* (2001) 45 CLA (Snr.) (Bom)].

The ambit of the term 'proceeding' in section 391(6) does not include within its scope criminal proceedings against the company and its directors. Directors and the guarantors of the company were not entitled to the benefit of the provisions of section 391(6). The obligation created u/s 391 under a composition between the company and its creditors does not affect the liability of the surety, unless the contract of suretyship otherwise provides. Even if a winding-up petition is stayed for any reason, so long as it is not finally disposed of, a company is bound to give notice of hearing of application for stay under rule 71 of 1959 Rule to petitioner of such petition, or an application, it proposes to make u/s 391(6). [*G.E. Capital Services India* v *Sharp Industries Ltd.* (2005) 57 SCL 247 (Bom)].

60. If the scheme of rehabilitation/amalgamation is pending before BIFR, No Objection Certificate of BIFR is not required far the proposed scheme?

In *Phlox Pharmaceuticals Ltd-, in re* - (2005) 63 SCL 237 the RoC raised the contention that No Objection Certificate may be required for the proposed scheme. However, the transferor company was registered before BIFR, no order has been passed to declare it as sick company. The Court has ample jurisdiction and power to sanction the scheme under Sections 391 to 394 of the Act. The said bar of jurisdiction applies only in case of appeals and does not apply to the present proceedings under Sections 391 to 394 of the

Companies Act. It was also contended that Section 32 of the Act, which has been given an overriding effect, applies only to the situation where the provisions of the two statutes are inconsistent with each other and overriding effect is only given to those provisions, which are inconsistent with the provisions of SICA. The Court held that the objection raised by the Regional Director, there is no much substance in the objection. The said objection does not survive and the scheme of amalgamation proposed by the petitioner companies would be in the interest of the company, members and the creditors and hence sanctioned.

REMEDIAL MEASURES FOR CREDITORS

The Creditors, in order to protect their interest can effectively challenge the petitions under section 391 of the Act. Creditors may obtain a copy of the petition and the complete record of proceedings to frame the grounds of challenging the petitions and relief sought. The creditor has to check the following aspects:—

1. What is the stage of the petitions?
2. Has the petitioner complied with the legal and procedural requirements in filing the petition before the Court/Tribunal?
3. Are the meeting of the creditors/members duly called, held and conducted as per the directions of the Court/Tribunal;
4. Are the resolutions for the scheme duly passed by the requisite majority?
5. Has the Chairman complied with the directions of the Court/Tribunal in letter and spirit?

The Creditor has to exert maximum pressure on the debtor to recover its dues. The legal approach can be three-fold:—

(1) Making applications for dismissing the cases on grounds of non-compliance of procedure, technicalities, violation of principles of natural justice, concealment of material facts and committing fraud, etc., whichever are applicable.

(2) Filing of new and reviving the old criminal and civil cases.

(3) Pleading for stay of all further proceedings by Court/Tribunal filed by the debtor.

The Creditor can take following course of legal action:—

(*i*) Opposing the petition filed by the debtor for compromise and arrangement under section 391 of the Act.

(*ii*) Opposing the petition filed by the creditors for the winding up of the company under section 433(*e*) of the Act.

(*iii*) Continuing the present cases at various criminal and civil courts and reversing the waiver of the overdue/penal interest.

(*iv*) Filing of the Agreement at the Court.

(*v*) Filing new criminal cases in respect of bouncing of cheques under section 138 of the Negotiable Instruments Act, 1881.

(*vi*) Enforcement of personal guarantees against the promoter directors.

(*vii*) Initiating arbitration proceedings.

STAMP DUTY ON MERGER OR AMALGAMATION

Indian Stamp Act, 1899 provides for the law governing the levy of stamp duty. The rate at which duty is payable is prescribed in the Schedule which is a part of the Act. Different rates are prescribed for the different instruments. Most of the States have adopted the Indian Stamp Act, 1899 with suitable amendments, for levy and collection of stamp duty in their respective States. However, few States have adopted separate rate schedules for their respective States while the few States have made amendments in the Schedule of rates of Indian Stamp Act, where found necessary. States of Maharashtra, Gujarat, Karnataka and Kerela have their separate legislations including schedules for rates.

61. Stamp duty on instruments

Section 3 of the Indian Stamp Act creates a charge for levy of stamp duty on execution of an instrument. The liability to pay stamp duty arises only on execution of an instrument. Thus, as long as the instrument is not executed, no liability to pay duty would arise. The statute taxes instruments and not transactions. Further that the duty is payable in a State where the instrument is executed.

62. Meaning of 'instrument'

An instrument is inclusively defined to mean every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded. Further, the instrument should be such, which is specified in the Schedule and in respect of which the rate of duty is prescribed. Thus, in order for creating a valid charge three ingredients must exist:—

(*i*) there should be an instrument;

(*ii*) such instrument should have been executed in the State; and

(*iii*) such instrument should have been specified in the Schedule for which rate of duty is prescribed therein.

A document or a writing, which does not create a right or liability, is not an instrument.

63. Meaning of 'conveyance'

The term 'conveyance' under the Stamp Act includes:—

(*i*) a conveyance on sale, and

(*ii*) every instrument by which property whether movable or immovable or interest therein is transferred *inter vivae*.

By the amendment in the Bombay Stamp Act, as applicable to the State of Maharashtra has enlarged the scope of the term "conveyance". Therefore, 'a decree or final order of any Civil Court' will also be treated as conveyance for the purpose of levy of stamp duty. By another amendment made effective from 1-5-1993, every order made by the High Court (now the Tribunal) under section 394 of the Companies Act, 1956 in respect of amalgamation of companies was included in the definition of 'conveyance'. Identical amendments are carried out in the Bombay Stamp Act as applicable to the Sate of Gujarat.

It may be noted that the definition of the term 'conveyance' in the Indian Stamp Act adopted by most of the States for levy of the stamp duty but does not expressly cover: (*i*) every decree or final order of any Civil Court and (*ii*) every order made by the High Court (now the Tribunal) under section 394 of the Companies Act, 1956 in respect of amalgamation of companies.

64. Stamp duty and the true nature of the order of amalgamation

The charge for levy of stamp duty is attracted:—

(*a*) on execution of an instrument,

(*b*) which instrument is stipulated in the Schedule to the Stamp Act for which the Schedule prescribes the rate of duty, and

(*c*) such instrument is executed in the State.

Thus the stamp duty will be attracted only if the order of the Court/Tribunal approving the transfer of an undertaking under the scheme of amalgamation satisfies all the above three conditions for levy of the stamp duty.

As regards the States of Maharashtra and Gujarat, because of the specific inclusion of an order of amalgamation of companies in the definition of the term "conveyance", the case for levy of stamp duty in those States is stronger and valid. As regards the other States of India it is to be seen whether the existing definition of the term "conveyance" is sufficient to rope in the order of amalgamation for levy of a valid stamp duty. It is therefore necessary to determine, whether in the absence of express inclusion of a decree of a court or of an order of amalgamation, possible for the stamp authorities to levy stamp duty in case of an order passed in those States.

The question is, whether the order of the Court (now the Tribunal) can be considered as: (*i*) conveyance on sale or (*ii*) an instrument. This very question was considered by the Bombay High Court in the case of *Li Laka Pharmaceuticals* v *State of Maharashtra*, wherein the Court after considering the definition of the term "instrument" contained in section 2(1) of the Bombay Stamp Act held that an order of a court sanctioning the scheme of amalgamation was an instrument within meaning of the term of section 2(1) and that such instrument was based on agreement between the companies by which the properties were transferred.

The definition of the term "instrument" as contained in section 2(1) of the Bombay Stamp Act is identical to the one contained in section 2(14) of the Indian Stamp Act adopted by the other States. In view of the decision of the Bombay High Court in *Li Laka Pharmaceutical's* case, holding an order of Court (now Tribunal) passed under section 394 in relation to amalgamation of companies to be an instrument, it may be held that the order of amalgamation of companies will be an instrument and therefore "a conveyance" even in the rest of India. The term conveyance, as contained in any of the Stamp Acts applicable all over India specifically includes "instrument", it would therefore, be proper to hold that an order of amalgamation of companies is a conveyance.

It was held in the case of [*Madhu Intra Ltd & ORS* v *Registrar of Companies & ORS* (2006) 130 Comp Cas 510 (CAL-DB); *Altamas Kabir & Alok Kumar Basu* (Decided on 22.02.2004)] that the transfer of assets and liabilities from the transferor company to the transferee company takes place by virtue of section 394(2) without any further act or deed.

The concept of transfer cannot be applied to the case of amalgamation and/or compromise governed simply by section 394 of the Companies Act, 1956.The transfer of assets and liabilities of the transferor company to the transferee company takes place on an order made u/s 394(1) by operation of sub-section (2) and is not liable to stamp duty.

64.1. Whether stamp duty is payable on the increased authorized capital of the amalgamated company and whether holding company could merge with its subsidiary?

In the case of *Jaypee Cement Ltd.* v *Jayprakash Industries Ltd.* (2004) Comp LJ 105 (All), it was held that the requisite fee/stamp duty having already been paid on the authorized capital of JPL, merely because of its merger with JCL, there is no reason why the same fee should be paid again by JCL on the same authorized capital. Further, there cannot be an objection to the scheme on the ground that it involves merger of the holding company JPL into the subsidiary company JCL, as there are many precedents for such mergers.

64.2 No liability to pay stamp duty for authorized share capital on amalgamation of companies in certain cases

If combined authorised capital does not exceed the authorized capital of two companies stamped duty is not required to be paid. [*J.P. Greens Ltd*. Comp Cas 542 (ALL) dated 8th Aug., 2006*]*

64.3 If the authorized share capital of the transferor companies was to be authorized capital of the transferee company in a merger. Whether there is any liability towards the Registrar of Companies and the stamp duty payable to State Government?

In Hotline HL Celding (P) Ltd., in re (2005) 57 SCL 367 (Del) the High Court of Delhi held that in the case of merger where in it is provided that the share capital of the transferor companies become the authorized share capital of the transferee company, then in that case no fees in the Registrar of Companies is payable nor any stamp duty is payable to the State Government

65. Emerging propositions

From the above decisions and analysis of the provisions, the following propositions emerge:—

(*a*) An order of the Court/Tribunal passed under section 394 of the Companies Act in respect of amalgamation of companies is an instrument within the meaning of term conveyance under the Stamp Acts as applicable to the whole of India. Accordingly, an order under section 394 of amalgamation of companies wherever passed in India will operate as conveyance of properties from one company to another.

(*b*) In view of the decision of the Bombay High Court and that of Supreme Court, an order of amalgamation was always a conveyance, whether passed before 10-12-1985 or 11-5-1993 before the amendments in the Bombay Stamp Act in the definition of the term "conveyance" specifically including order of civil court and order of the Court/Tribunal under section 394 of the Companies Act, sanctioning the scheme of amalgamation of companies.

(*c*) In view of the above position though in other States the amendment in the Stamp Act is not made, the order of Court/Tribunal under section 394 of the Companies Act, 1956 in respect of the amalgamation can be treated as conveyance for levy of the stamp duty.

(*d*) In the case of *Hotline Hol Celdings Pvt. Ltd. and others, in re* (2005) 127 Comp Cas 165 (Del), it was held that in the case of merger where it was provided that the share capital of the transferor companies became the authorized capital of the transferee company, no fee to the Registrar of Companies or stamp duty to the State Government was payable.

Under section 394(2) of the Companies Act, 1956, the transfer or vesting of assets and liabilities takes place by virtue of the order passed by the Court/Tribunal without any further act or deed by the companies.

66. Meaning of 'Demerger'

De-merger is an opposite of merger a statutory disintegration or separation of two or more companies by the transfer of the properties to one surviving company. The expression 'demerger' is defined in section 2(19AA) of the Income-tax Act. It is a process of reorganizing a corporate structure whereby the capital stock of a division or subsidiary of a corporation or of a newly affiliated company is transferred to the stockholders of the parent corporation without an exchange of any part of the stock of the latter.

However this term is used also to describe the act or process of 'spin-off' of a unit or division or a business out of two or more of them by sale without any change in the shareholding of the selling company or issue by it of new shares to the buyer company or its shareholders. This is described in section 293(1)(*a*) of the Act as "sell, lease or otherwise disposing of the whole, or substantially the whole, of the undertaking of the company, or where the company owns more than one undertaking, of the whole, or substantially the whole, of any such undertaking."

The Companies Act does not contain the concept of 'de-merger' as such, but it does indirectly recognise it in:—

(*a*) section 391/394 as a scheme of compromise, arrangement or reconstruction; and

(*b*) section 293(l)(*a*) as a sale, lease or otherwise dispose of the whole of the undertaking of the company; or substantially the whole of the undertaking of the company; or if the company owns more than one undertaking, of the whole, or substantially the whole, of any such undertaking.

The concept of de-merger under the Income-tax Act is identical to that under section 293(l)(*a*), but it must satisfy the requirements of section 2(19AA) of the Income-tax Act and sections 391 and 394 of the Companies Act.

67. Formalities to be complied with in case of Demerger

67.1. Approval of shareholders

(*a*) Obtain shareholders approval under section 293(l)(*a*) after finalizing terms and conditions with the buyer;

(*b*) File resolution alongwith certified copy of the explanatory statement and copies of the agreement executed with the Registrar of Companies with Form 23 within 30 days of the general meeting;

(*c*) Give a certified copy of resolution to the buyer so that he can begin due diligence.

67.2. Buyers legal due diligence

This mainly comprises verification of:—

(*i*) Documents relating to title in respect of immovable properties;

(*ii*) Charges on assets and documents, register of charges;

(*iii*) Obtain search report from practicing company secretary regarding the registration of charges and verify the same with the documents and bank charges;

(*iv*) Copies of mortgages, deeds, pertaining the properties;

(*v*) Minutes book of the Board and general meetings of the Company and its subsidiary if any;

(*vi*) Copies of Insurance policies;

(*vii*) Copies of the registered Trade Marks, if any;

(*viii*) Copies of material contracts;

(*ix*) Contracts with key managerial personnel;

(*x*) Licences, certificates for environmental and pollution agencies;

(*xi*) Licences under Central Excise Act, Shops and Establishments Act, Factories Act and various other Acts applicable;

(*xii*) Detailed documents relating to the pending litigation, if any, concerning the properties;

(*xiii*) General Power of Attorneys executed by the Company in favour of any person;

(*xiv*) Declaration from the Architect stating that all the structures and building have been constructed as per plans approved by the Municipal Corporation and/or other concerned authority and no excess FSI has been used or no unauthorised construction has been done;

(*xv*) Details of last wage settlements;

(*xvi*) Details of labour disputes;

(*xvii*) List of outstanding in PF, ESIC and statutory dues;

(*xviii*) List of the civil and/or criminal cases filed by or against the Company and present status thereto;

(*xix*) Books of accounts of the Company;

(*xx*) List of debtors, creditors, bank guarantee in currency, letter of credit given, loans and advances given or taken and there terms and conditions;

(*xxi*) Verification of plant and machinery, tools, stores, spares, inventory; etc;

(*xxii*) Status report from the bank regarding operation of the Bank account.

67.3. Buyer's financial due diligence

This comprises verification of:—

(*i*) Internal Audit reports, Tax Audit Report; Cost Audit Report, etc. for past years;

(*ii*) Past Balance Sheets;

(*iii*) Provisional balance sheet and profit and loss account till the cut-off date of the demerger.

67.4. Agreement for sale of business

(*i*) Agreement for the sale of undertaking is signed;

(*ii*) Business Sale Agreement, Business Assignment Agreement or Agreement for Sale of Business/ Undertaking;

(*iii*) The Agreement *inter alia* covers the following issues/points—

(1) Assignment of business and consideration to be paid;

(2) Further assurances in respect of other documentation, assets and liabilities, etc.

(3) Representations and warranties to be given by the seller with regard to:—

(*a*) The organisation and its standing;

(*b*) The authority which sanctioned the sale;

(*c*) Validity of the assignment;

(*d*) Material changes;

(*e*) The subject matter has not been otherwise disposed;
(*f*) Employees - terms and conditions;
(*g*) Labour matters, Wage Agreement;
(*h*) Liability of the seller's residuary business;
(*i*) Legal proceedings against the seller;
(*j*) Status of tax liabilities in respect of the undertaking being sold.

(4) Representations and warranties to be given by the buyer with regard to:—
(*a*) About the organisation and its standing;
(*b*) The authority, which sanctioned the sale;
(*c*) Validity of the assignment

(5) Assignment of Trade Marks and Patents, if any, to the acquirer;
(6) Survival and enforcement of representations and warranties, indemnification;
(7) Non-assignment;
(8) Arbitration.

67.5. Sale/conveyance deed

(1) Conveyance or Sale Deed for transfer of immovable property of the undertaking;
(2) The Sale Deed is to be submitted to the Registrar for adjudication of Stamp Duty payable under the Stamp Act. It should be noted that the Stamp duty payable on conveyance differs from State to State;
(3) Valuation of movable property should be made. It should be noted that the Stamp duty on immovable property payable on the true market value of the property or consideration payable, which ever is higher.

67.6. Transfer of undertaking to a new company

(1) The new company to approve Transfer of Business Agreement;
(2) After the agreement is executed:—
(*a*) intimate the change to Income Tax Department, Sales Tax Department, Excise Department and obtain new DGFT and Customs registration numbers;
(*b*) obtain new registration under the Factories Act;
(*c*) appoint 'occupier' and 'manager' under the Factories Act;
(*d*) obtain fresh PF and ESIC No.;
(*e*) obtain fresh importer-exporter code no.

68. Activities to be followed for demerger

68.1 Activities from board meeting for approval of demerger scheme to court order

1. Intimation in stock exchange of board meeting date for considering demerger.
2. Board approval for scheme.
3. Informing stock exchange of board’s decision.
4. Consent from shareholders to the Scheme for Resulting Companies (in case of Closely held unlisted Companies)
5. Filling scheme with the Stock Exchanges.
6. NOC/ Approval from Stock Exchanges (BSE/NSE).
7. Filing of Application under section 391(1) with High Court (along with Judge's summons, affidavit in support of summons, and draft minutes of order)
8. Finalizing the notice/Explanatory Statement for Meeting of the Shareholders Secured and unsecured Creditors
9. Hearing of company's application.
10. Hearing of Resulting, Companies application
11. Receiving authenticated copy of order for holding/dispensing with the Meeting of Shareholders/Secured and unsecured Creditors
12. Obtaining certified copy of order of High court for court Convened Meeting.

13. Commencement of Printing of Notice for court convened meeting.
14. Completion of dispatch of notices for meeting under UCP.
15. Advertisement of notice of meetings-
16. Filing of Notice - Advertisement of meeting with stock exchange (s).
17. Filing of advertisement of meeting with court.
18. Filing of Affidavit signed by Chairman of the meeting or other person directed by the court verifying that the directions regarding the issue of notices and the advertisements have been duly complied with.
19. Meeting of Creditors and Members.
20. Reporting the decision of the poll to the High Court.
21. Filing of petition with the Court along with relevant documents.
22. Admission of the petition.
23. Minutes of order by judge fixing the date of hearing of petition and advertisement of notice of hearing;
24. Advertising the notice of hearing in newspaper.
25. Obtaining certified copy of order on admission of petition.
26. Filing of copy of petition with annexures with RD / ROC ' through e-Form 61
27. Filing of affidavit confirming service of notice of petition and publication in newspaper.
28. Follow up with RD/ ROC.
29. Receipt of letter, queries etc from RD and ROC.
30. Follow - up with RD/ROC/ Legal Counsel to resolve issues, if any.
31. Initial date of hearing of petition.
32. Adjoined hearing if any.
33. Filing of amended petition if any.
34. Final date of hearing of petition.
35. Obtaining certified copy of order on petition.
36. Payment of Stamp duty, if required.
37. Filing of certified order with RD/ROC along with Form.

68.2 Activities from court order till Record Date

1. Acknowledgement of receipt from RoC and certified true copy of (Court order to be filed with the stock Exchange.
2. Notice to Stock Exchange for Record Date to determine eligibility to receive shares of the Resulting Companies and voluntarily give advertisement of the Record Date in National Dailies; (21day notice).
3. Enter into and agreement with CDSL and NSDL (if not having connectivity)
4. Printing of stationery-Allotment Advice, Share Certificate, Envelopes.
5. Application seeking exemption for relaxation of Rule 19(2){b) from SEB1 through the designated Stock Exchange.
6. Application lo Stock exchange for in - principle approval for Listing of shares.
7. Designated Stock exchange to forward the application to SEB1 for approval under Rule 19(2)(b) of SCRA Rules.

8. Prepare Information Memorandum (IM).
9. Compliance with clause 49- pre-requisite for Listing.
10. File Information Memorandum with BSE and NSE.
11. Stock Exchange to receive SEBI approval and give in-principal approval for listing of shares of the resulting companies.
12. Keep shares certificates, covering letter, envelop of resulting companies ready for over printing.
13. Keep text and stationery ready for intimation of corporate actions for the Resulting Companies.
14. Letter relating to cost of acquisition to be sent, to shareholders.
15. Ex-date for Stock Exchange for F & O
16. Record Date.

68.3 Activities from record date till listing

1. Procure details of Register of Members from R&T agent as on Record Date.
2. Prepare list of eligible shareholders of the resulting companies, including details of the shareholdin
3. Hold Board Meeting of Resulting Companies for allotment of shares.
4. File e-Form 2 with RoC.
5. Resulting Companies to submit the Corporate Action Forms to CDL and NSDL and pay fee for the sa
6. Over Printing of share certificates, cover letter, envelops and Dispatch of Sharp certificates or demat cre companies.
7. Dispatching share certificate.
8. Send intimation to the shareholders of each of the resulting companies regarding the corporate Action.
9. Application to Stock exchange, attaching dispatch certificate/demat credit certificate and c permission.
10. Publication of the Advertisement (as per Schedule 28 of SEBI DIP Guidelines,) in one English, Hindi a Daily.
11. Trading of shares at Stock Exchange

68.4 Documents to be filed along with company application with the High Court

Application is to be filed with the High Court where the registered Office is situated for directions to convene a meeting for considering the draft Scheme of Demerger or for dispensing with the meeting. The following documents are necessary at this stage:

a) Judge's Summons under Order XIV read with Rule 67{or Rule9, 11(b)& 19} read with Sections 391 to 393 and 394 of the Companies Act (to be filed in Form No.33 of the Companies [Court] Rules, 1959).
b) An affidavit in support of summons in form No. 34 of the Companies (Court) Rules, 1959.
c) Memorandum and Articles of Association of the company.
d) Latest Audited Balance Sheet.
e) List of Shareholders. (if meetings are to be dispensed with)
f) List of Secured Creditors.
g) Scheme of Amalgamation/Demerger.
h) Consent affidavits from all shareholders. (if meetings are to be dispensed with)
i) Consent letters from secured creditors.

j) If the company does not have any secured creditor, a certificate In that effect from the statutory auditor must be obtained.

k) Valuation Report regarding share exchange ratio.

l) Vakalat Nama

m) Extract of the Board Resolution approving the draft Scheme of Demerger.

n) Draft notice of meeting, Explanatory Statement pursuant to section 393 of the Companies Act, form of proxy. (in case meetings are convened)

68.5 Court procedure time frame

Submission of application under section 391 along with affidavit (F-34) in terms of. Companies (Court) Rules, 1959:

1. Notice and the explanatory statement under section 393.
2. Obtain summon for direction in F-35 in terms of Companies (Court) Rules, 1959.
3. Settlement of notice convening share holders meeting.
4. Dispatch of notice to the share holders.
5. Publication of notice convening shareholders meeting.
6. Submission of 3 copies of the published notice to stock exchange.
7. Filing of affidavit of service regarding dispatch of individual notice with Court.
8. Appointment of scrutinizers at the meeting.
9. Requisite resolution to be passed at shareholders meeting.
10. Publication of result of the poll.
11. Intimation to stock exchange regarding approval of Scheme.
12. Filing of report along with affidavit.
13. Forward minutes of the meeting of the shareholders to the stock exchange.
14. Filing of petition for conformation of the scheme in F-40 with Court.
15. Servicing of notice of hearing of petition on Central Government.
16. Filing of Affidavit with Court regarding service of notice of hearing of petition on Central Government
17. Filing of f-Form-23 with RoC.
18. Publication o! Notice of hearing of petition.
19. Filing of affidavit with Court regarding servicing of notice to Central Government and publication.
20. Hearing of petition, in case of objections; if any.
21. Obtaining no objection of Central Govt.
22. Obtaining sanction of the respective courts to the scheme.
23. Obtaining certified copies of court order approving demerger scheme.
24. Court Order Copies to be filed with Stock exchanges.
25. Court Order Copies to be filed with Registrar of Companies.

69. Sale to effect a demerger via section 293(1)(*a*) of the Act not preferred

Where a demerger is attempted through section 293(1)(*a*), the company which is hiving of its unit(s) could be treated as the transferor company and which gets the assets on the transfer could be treated as transferee company. If, however, the managements decide to route a demerger through section 293(1)(a) of the Act, the approval by way of an ordinary resolution must be taken from shareholders at a general meeting. In such a case there is a transfer/sale of undertaking including the assets less liabilities of the to the transferee company. This would entail payment of statutory duties on the value of assets less liabilities taken over by the transferee company. It is for this reason companies do not make use of section 293(1)(a) of the Act for effecting demergers.

70. Whether in demerger valuation of shares is a vital issue?

Valuation of shares, which is mandatory in a scheme of amalgamation may not be necessary in cases of demerger where the shareholders continue to hold shares in the transferor company and are also issued shares in the transferee company in proportion to their holdings in the transferor company. In a way no exchange ratio is required in a demerger scheme where the shareholders of the transferor company continue to remain as the shareholders of the transferee company also. [*Larsen & Toubro Ltd., In Re* (2004) 60 CLA 555 (Bom)].

Appendix 1

Specimen of e-Form 61 for Amalgamation of Company

Form for filing an application with Registrar of Companies

[Pursuant to sections 166, 210, 394, 560, 621A of the Companies Act, 1956]

Note.—All fields marked in * are to be mandatorily filled.

1.	(*a*)	*Corporate identity number (CIN) of company	xxxxxxxxxxxxxxxxxx
	(*b*)	Global location number (GLN) of company	
2.	(*a*)	Name of the company	ABC INDUSTRIES LIMITED
	(*b*)	Address of the registered office of the company	4TH FLOOR, SILVER ARK PLAZA, 20A, NEW PALASIYA INDORE (M.P.) 452001

3. *Application filed for

☐ Compounding of offences

☐ Extension of period of annual general meeting by three months under section 166(1)

☐ Exemption from holding annual general meeting at the registered office under section 166(2)

☐ Extending the period of annual accounts up to eighteen months under section 210(4)

☐ Declaring a defunct company under section 560

☑ Amalgamation

☐ Others

4. If others, then specify

5. Whether application for compounding offence is filed by

○ Company ○ Director ○ Manager or secretary ○ Other

6 Director identification number (DIN) or income-tax permanent account number (PAN)

7. Name of the applicant

8. (*a*) Service request number of Form 23

(*b*) Date of passing special or ordinary resolution (DD/MM/YYYY)

(*c*) Date of filing Form 23 (DD/MM/YYYY)

9. *Details of application

Submission of Scheme of Amalgamation with a copy of the petition for amalgamation of company.

Attachments

1.	Board resolution.	Attach	
2.	Scheme of amalgamation	Attach	
3.	Detailed application.	Attach	
4.	Certified copy of the Memorandum and Articles of Association.		
5.	Certified copy of the Balance Sheet and Profit and Loss Account.	Attach	
6.	Optional attachment(s), if any.		

Declaration

To the best of my knowledge and belief, the information given in this application and its attachments is correct and complete. I have been authorised by the Board of directors' resolution dated 28/02/2006 (DD/MM/YYYY) to sign and submit this application.

To be digitally signed by

Managing director or director or manager or secretary of the company ISHAN JAIN

For office use only

Digital signature of the authorising officer

This e-Form is hereby approved

This e-Form is hereby rejected

Appendix 2

Specimen of notice to members regarding an Amalgamation of Two Companies

IN THE HON'BLE HIGH COURT/NATIONAL COMPANY LAW TRIBUNAL
JUDICATURE AT ....
COMPANY APPLICATION NO. .... OF 2007
In the matter of the Companies Act, 1956 (1 of 1956)
And
In the matter of sections 391 to 394 of the Companies Act, 1956
And
In the matter of XYZ LTD. an existing company under the Companies Act, 1956 having its registered office at 4th Floor, Silver Ark, 20/A, New Palasiya, Indore (M.P.)
And
In the matter of scheme of amalgamation of ABC Ltd. an existing company under the Companies Act, 1956 and having its registered office at 4th Floor, Silver Ark, 20/A, New Palasiya, Indore (M.P.)

Applicant

To

The Equity Shareholders of
ABC Ltd.

TAKE NOTICE that by an order made on the XX.XX.XXXX, the Hon'ble High Court/National Company Law Tribunal of Judicature at Indore (M.P.) has directed that a meeting of the equity shareholders of ABC Limited, the applicant company, be held at 4th Floor, Silver Ark, 20/A, New Palasiya, Indore (M.P.) on XX.XX.XXXX at 10.30 a.m. for the purpose of considering and if thought fit, approving, with or without modification the arrangement embodied in the scheme of amalgamation proposed to be made between ABC Ltd., the applicant company and XYZ Ltd., the transferor company.

TAKE FURTHER NOTICE that in pursuance of the said order, a meeting of the equity shareholders of the applicant company will be held at 4th Floor, Silver Ark 20/A, New Palasiya,, Indore (M.P.) on XX.XX.XXXX at 10.30 a.m. when you are requested to attend.

TAKE FURTHER NOTICE that you may attend and vote at the said meeting in person or by proxy, provided that a proxy in the prescribed form, duly signed by you, is deposited at the registered office of the applicant company at 4th Floor, Silver Ark New Palasiya, Indore (M.P.) not later than 48 hours before the meeting.

The Tribunal has appointed Shri D.K. JAIN failing him Shri V.K. LADHA and failing both Shri A.K. MANTRI to be the Chairman of the said meeting. A copy each of the scheme of amalgamation, statement under section 393 of the Companies Act, 1956 and form of proxy is enclosed.

(D.K. JAIN)
Chairman appointed for the meeting

Place: Indore

Date: XX.XX.XXXX

Note.—All alterations made in the form of proxy should be initialed.

FORM OF PROXY

IN THE HON'BLE HIGH COURT/NATIONAL COMPANY LAW TRIBUNAL
JUDICATURE AT ....
COMPANY APPLICATION NO....OF 2007
In the matter of the Companies Act, 1956 (1 of 1956)
And

In the matter of scheme of amalgamation of XYZ Ltd. with the applicant company.

ABC Limited an existing company under the Companies Act, 1956 and having its Registered Office at 4th Floor, Silver Ark, 20/A, New Palasiya,, Indore (M.P.), Applicant.

I/We ABC the undersigned, (equity shareholders) of the above company, hereby appoint DEF of Indore and failing him GHI of Indore as my/our proxy, to act for me/us at the meeting of the equity shareholders of ABC Limited, the applicant company above named, to be held at 4th Floor, Silver Ark, 20/A, New Palasiya, Indore (M.P.) on XX.XX.XXXX at 10.30 a.m. for the purpose of considering and, if thought fit, approving with or without modification, the arrangement embodied in the scheme of amalgamation proposed to be made between ABC Limited, the applicant company above named, and XYZ Limited and at such meeting and any adjournment thereof to vote, for me/us and in my/our name either with or without modification as my proxy may approve.

Dated this the .... day of .... 2005.
Signature ....……….. ....…..........
Name ..…………........... Folio No. ....
Address ....

Note.—All alterations made in the form of proxy should be initialed.

Appendix 3

Specimen of the Scheme of Amalgamation

OF

ABC LIMITED

WITH

XYZ LIMITED

1. With effect from 1st July, 2005 (hereinafter called "the appointed day") the entire undertaking of ABC Limited, a company registered under the Companies Act, 1956, and having its registered office at 4th Floor, Silver Ark 20/A, New Palasiya, Indore (M.P.) (hereinafter called "the transferor company") including all its reserves, properties, movables and immovable, and assets such as leases, tenancy rights, licences, permits, quotas, trade marks, patents, Cenvat credit available under Central Excise Act, 1944 and the notifications thereunder, various exemptions/incentives granted under different schemes of State/Central Governments, benefits of all agreements and all other interests, rights and powers of every kind, nature and description whatsoever, all which undertakings, properties, assets, interests, rights and powers are hereinafter for brevity's sake referred to as "the said undertaking", shall without any further act or deed, be and stand transferred to and vested in or be deemed to have been transferred to and vested in XYZ Limited, an existing company under the Companies Act, 1956, and having its registered office at 4th Floor, Silver Ark, 20/A, New Palasiya, Indore (M.P.) (hereinafter called "the transferee company") pursuant to section 394 of the Companies Act, 1956.

2. With effect from the appointed day, all debts, liabilities, duties and obligations of the transferor company shall be and stand transferred, without further act of deed, to be transferee company, pursuant to the said section 394 of the Companies Act, 1956, so as to become as from that day, the debts, liabilities, duties and obligations of the transferee company.

3. This scheme, although effective from the appointed day, shall become operative from the last of the following dates namely:—

(*a*) the dates on which the last of the hereinafter referred consents, approvals, permissions, resolutions, sanctions and orders shall be obtained or passed; and

(*b*) the dates on which certified copies of the High Court/Tribunal's orders under sections 391, 392 and 394 of the said Act shall be filed with the Registrar of Companies.

4. With effect from the appointed day and up to the date on which this scheme finally takes effect, the transferor company shall be deemed to carry on all the business and activities and stand possessed of the

properties so to be transferred for and on account of and in trust for the transferee company and that the profits accruing to the transferor company or losses arising or incurred by it shall for all purposes be treated as the profits or losses of the transferee company as the case may be and that the transferor company shall not alienate, charge or otherwise deal with the said undertaking or any part thereof except in the ordinary course of its business, without the consent of the transferee company and that the transferor company shall not vary the terms and conditions of the employment of its employees except in the ordinary course of business.

5. All legal proceedings by or against the transferor company pending at the date on which this scheme shall finally take effect, shall be continued and be enforced by or against the transferee company as the case may be.

6. Subject to the other provisions of this scheme all contracts, deeds, bonds, agreements and other instruments of whatsoever nature to which the transferor company is a party, subsisting or having effect immediately before this scheme becomes finally effective, shall be 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 effectually as if, instead of the transferor company, the transferee company had been a party thereto.

7. The authorised share capital of the transferor company is Rs. 5,00,00,000 (Rs. Five Crores only) divided into 50,00,000 (Fifty Lacs) Equity Shares of Rs. 10 (Rs. Ten) each. The subscribed and paid-up capital of the transferor company is Rs. 5,00,00,000 (Rs. Five Crores only) divided into 50,00,000 (Fifty Lacs) Equity Shares of Rs. 10 (Rs. Ten) each fully paid.

8. The authorised share capital of the transferee company is Rs. 10,00,00,000 (Rs. Ten Crores only) divided into 1,00,00,000 (One Crore) Equity Shares of Rs. 10 (Rs. Ten) each. Subscribed share capital of the transferee company is Rs. 10,00,00,000 (Rs. Ten Crores only) divided into 1,00,00,000 (One Crore) Equity Shares of Rs. 10 (Rs. Ten) each fully paid-up.

9. The transferor company is a wholly owned subsidiary of the transferee company and the transferee company holds all the shares issued by the transferor company. On amalgamation of the transferor company with the transferee company no shares of the transferee company shall be allotted in respect of the holding of the transferee company in the transferor company and the share capital of the transferor company shall stand cancelled.

10. The transferee company will, on such transfer, take over all such employees, if any, of the transferor company as are willing to join the transferee company, as far as possible, on the same terms on which they are employed by the transferor company. The employees of the transferor company shall be entitled only to those benefits and perquisites to which they were entitled as employees of the transferor company even after the scheme becoming finally effective. Their services with the transferor company, prior to such taking over, will not be treated as having been broken for the purposes of the provident fund, gratuity and other benefits but will be reckoned for all such purposes from the date of their respective appointments with the transferor company.

11. The transferor company shall, with all reasonable dispatch, make applications under sections 391 and 394 of the Companies Act, 1956 to the High Court/Tribunal of Judicature at Indore (M.P.) for sanctioning this scheme of amalgamation and for dissolution of the transferor company without winding up. The transferee company shall also make applications to the Hon'ble High Court/Tribunal of Judicature at Indore (M.P.) for sanctioning the scheme of amalgamation of the transferor company with the transferee company under the said provisions of law.

12. The transferor company by its directors and the transferee company by its directors may assent on behalf of all persons concerned to any modifications or amendments of this scheme or of any conditions which the Hon'ble High Court/Tribunal and/or any other authority under law may deem fit to approve of or impose and solve all difficulties that may arise for carrying out the scheme and do all acts, deeds and things necessary for putting the scheme into effect.

13. For the purpose of giving effect to this scheme of amalgamation or to any modification thereof the directors of the transferee company may give and are authorised to give such directions including directions for setting any question of doubt or difficulty that may arise.

14. This scheme is conditional on and subject to:—

(*a*) the sanction or approval of the authorities concerned being obtained and granted in respect of any of the matters in respect of which such sanction or approval be required;

(*b*) The approval of and agreement to the scheme by the requisite majorities as may be directed by the Hon'ble High Court/Tribunal of Judicature at Indore (M.P.) on the applications made for directions for calling meetings and necessary resolution are passed under the Companies Act, 1956 for the purpose.

(*c*) The sanctions of the Hon'ble High Court/Tribunal of Judicature at Indore (M.P.) under sections 391 and 394 of the Companies Act, 1956, on behalf of the transferor company and the transferee company being obtained.

15. In the event of any of the said sanctions and approvals not being obtained and/or the scheme not being sanctioned by the Hon'ble High Court/Tribunal and/or the order or orders not being passed as aforesaid before XX.XX.XXXX or within such further period or periods as may be agreed upon between the transferor company by its directors and the transferee company by its directors, this scheme shall become null and void, and each party shall bear their respective costs, charges and expenses in connection with the scheme of amalgamation.

16. All costs, charges and expenses of the transferor company and transferee company respectively in relation to or in connection with this scheme and of carrying out and completing the terms and provisions of this scheme and incidental to the completion of amalgamation of the said undertaking of transferor company in pursuance of this scheme shall be borne and paid on an attorney and client basis by the transferee company alone.

Appendix 4

Specimen Scheme of Demerger of a Listed Company with another Unlisted Resultant Companies

ABC Ltd

Demerged Company (Transferor Company)

AND

MNO Limited

Coal Based Energy Resulting Company (1st Transferee Company)

AND

MCV Limited

Telecommunication Resulting Company (2nd Transferee Company)

AND

their respective shareholders and creditors

PREAMBLE

Description of Companies:

(*a*) ....
....

(*b*) ....
....

(*c*) ....
....

Parts of the Scheme:

This Scheme of Arrangement is divided into the following parts:

(*a*) PART I, which deals with the definitions and share capital of the Demerged Company and each of the Resulting Companies;

(*b*) PART II, which deals with the demerger of each of the Demerged Undertakings (as defined hereinafter) to the respective Resulting Companies;

(*c*) PART III which deals with the Remaining Undertaking (as defined hereinafter) of the Demerged Company;

(*d*) PART IV, which deals with the re-organisation of capital of the Demerged Company and each of the Resulting Companies;

(*e*) PART V, which deals with accounting treatment for the demerger in the books of the Demerged Company and each of the Resulting Companies;

(*f*) PART VI, which deals with general terms and conditions applicable to this Scheme of Arrangement.

PART I

DEFINITIONS AND SHARE CAPITAL

1. Definitions

In this Scheme, unless repugnant to the meaning or context thereof, the following expressions shall have the following meaning:

1.1. "Act" means the Companies Act, 1956 and includes any statutory re-enactment or modification thereof, or amendment thereto, from time to time;

1.2. "Appointed Date" means 1st September, 2005 or such other date as may be approved by the High Court;

1.3. "Coal Based Energy Resulting Company" means MEVL, having its registered office at 401, Raj Towers, Raj Road, Delhi;

1.4. "Coal Based Energy Undertaking" .... means the Demerged Company's undertaking, business, activities and operations pertaining to coal based power comprising all the assets (moveable and immoveable) and liabilities, which relate thereto or are necessary therefor.

1.5. "Court" or "High Court" means the High Court of Judicature at Delhi, and shall include the National Company Law Tribunal, if applicable;

1.6. "Demerged Undertakings" means collectively, the Coal Based Energy Undertaking, and the Telecommunication Undertaking and the term "Demerged Undertaking" means any of the Demerged Undertakings, as the context may require.

1.7. "Demerged Company" or "ABC" means ABC Ltd having its registered office at 301, Raj Towers, Raj Road, Delhi.

1.8. "Effective Date" means the last of the dates on which the conditions and matters referred to in Clause ….. of this Scheme occur or have been fulfilled or waived and the Order of the High Court sanctioning the Scheme of Arrangement is filed with the Registrar of Companies by the Demerged Company and each of the Resulting Companies. References in this Scheme to the date of "coming into effect of this Scheme" or "effectiveness of this Scheme" shall mean the Effective Date.

1.9. "Financial Services Undertaking" means the Demerged Company's undertaking, business, activities and operations pertaining to financial services business (including insurance) comprising all the assets (moveable and immoveable) and liabilities, which relate thereto or are necessary therefor.

1.10. "GDRs" means global depository receipts issued by a bank or a depository outside India representing underlying equity shares of an Indian company, pursuant to the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and other applicable laws;

1.11. "Governmental Authority" means any applicable central, state or local government, legislative body, regulatory or administrative authority, agency or commission or any court, tribunal, board, bureau, instrumentality, judicial or arbitral body having jurisdiction over the territory of India;

1.12. "Record Date" means the date to be fixed by the Board of Directors of the Demerged Company in consultation with the respective Resulting Companies for the purpose of reckoning names of the equity shareholders of the Demerged Company, who shall be entitled to receive shares of each of the Resulting Companies upon coming into effect of this Scheme as specified in Clause 12.1 of this Scheme;

1.13. "Resulting Companies" means collectively, the Coal Based Energy Resulting Company, and the Telecommunication Resulting Company and the term "Resulting Company" means any of the Resulting Companies, as the context may require;

1.14. "Schedules" shall mean the schedules to this Scheme.

1.15. "Scheme" or "Scheme of Arrangement" means this composite Scheme of Arrangement including any modification or amendment hereto.

1.16. "Specified Shareholders" shall mean collectively (*i*) the Trustees of the Petroleum Trust, a private trust constituted under the Trust Deed dated 2nd May 2002, whose sole beneficiary is MIIHL, (*ii*) MAPL (*iii*) MEPDL (*iv*) MCL and (*v*) MPL;

1.17. "Telecommunication Resulting Company" means XYZ, having its registered office at 501, Raj Towers, Raj Road, Delhi;

1.18. "Telecommunication Undertaking" means the Demerged Company's undertaking, business, activities and operations pertaining to telecommunications comprising all the assets (moveable and immoveable) and liabilities which relate thereto or are necessary and operations pertaining to telecommunications as described in Part 'A' of Schedule IV hereto.

2. Share Capital

2.1 Demerged Company:

The share capital structure of the Demerged Company as on August 31, 2005 is as under:

Authorised Capital	**Rupees**
Comprising of 250 crore equity shares of Rs.10 each aggregating Rs. 2500 crores and 50 crore preference shares of Rs.10 each aggregating Rs. 500 crores	3000.00 crores
Issued, Subscribed and Paid-up Comprising of 139,35,08,041equity shares of Rs.10 each*	1393.51crores
Less: Calls in arrears	0.35 crores

* Includes 9,23,71,131 equity shares represented by GDRs. And 17,03,77,615 equity shares held by Specified Shareholders. The equity shares of the Demerged Company are listed on Bombay Stock Exchange Limited, The National Stock Exchange of India Limited. The GDRs representing the underlying equity shares of the Demerged Company are listed on Luxembourg Stock Exchange.

2.2 Resulting Companies

(*a*) The share capital structure of the Coal Based Energy Resulting Company as on August 31, 2005 is as under:

Authorised Capital	**Rupees**
Comprising of 50,000 equity shares of Rs. 10 each	5,00,000
Issued, Subscribed and Paid-up Comprising of 50,000 equity shares of Rs. 10 each	5,00,000

The equity shares of the Coal Based Energy Resulting Company are, at present, not listed on any Stock Exchanges.

(*b*) The share capital structure of the Telecommunication Resulting Company as on August 31, 2005 is as under:

Authorised Capital	**Rupees**
Comprising of 1,00,000 equity shares of Rs. 5 each	5,00,000
Issued, Subscribed and Paid-up Comprising of 1,00,000 equity shares of Rs. 10 each	5,00,000

The equity shares of the Telecommunication Resulting Company are, at present, not listed on any Stock Exchanges.

2.3 Status of Resulting Companies Each of the Resulting Companies is presently a wholly owned subsidiary of ABC. After issue of shares by each Resulting Company in terms of Clause 12.1 of this Scheme, the Resulting Companies would cease to be subsidiaries of ABC.

3. Date when the Scheme comes into Operation Though this Scheme shall become effective from the Effective Date, the provisions of this Scheme shall be applicable and come into operation from the Appointed Date.

PART II

DEMERGED UNDERTAKINGS

4. Transfer of Demerged Undertakings

4.1 Transfer of assets

(*a*) Upon the coming into effect of this Scheme and with effect from the Appointed Date, each of the Demerged Undertakings (including all the estate, assets, rights, claims, title, interest and authorities including accretions and appurtenances of the Demerged Undertakings) shall, pursuant to the provisions of Sections 391 to 394 of the Act, without any further act, deed, matter or thing be and stand transferred to and vested in and shall be deemed to be transferred to and vested in the respective Resulting Companies on a going concern basis, in the following manner:

(*i*) the Coal Based Energy Undertaking (including all the rights, claims, title, interest and authorities including accretions and appurtenances thereto such as dividends, or other benefits received including in particular any securities acquired or received by the Demerged Company in any of the companies comprised in the Coal Based Energy Undertaking) shall, without any further act, deed, matter or thing be demerged from the Demerged Company and be and stand transferred to and vested in or shall be deemed to be transferred to and vested in the Coal Based Energy Resulting Company on a going concern basis such that all the properties, assets, rights, claims, title, interest, authorities and liabilities comprised in the Coal Based Energy Undertaking immediately before the demerger shall become the properties, assets, rights, claims, title, interest, authorities and liabilities of the Coal Based Energy Resulting Company by virtue of and in the manner provided in this Scheme.

(*ii*) the Telecommunication Undertaking (including all the rights, claims, title, interest and authorities including accretions and appurtenances thereto such as dividends, or other benefits received including in particular any securities acquired or received by the Demerged Company in any of the companies comprised in the Telecommunication Undertaking) shall, without any further act, deed, matter or thing be demerged from the Demerged Company and be and stand transferred to and vested in or shall be deemed to be transferred to and vested in the Telecommunication Resulting Company on a going concern basis such that all the properties, assets, rights, claims, title, interest, authorities and liabilities comprised in the Telecommunication Undertaking immediately before the demerger shall become the properties, assets, rights, claims, title, interest, authorities and liabilities of the Telecommunication Resulting Company by virtue of and in the manner provided in this Scheme.

(*b*) All assets or investments, right, title or interest acquired by the Demerged Company after the Appointed Date but prior to the Effective Date in relation to the Demerged Undertakings shall also, without any further act, instrument or deed, be and stand transferred to and vested in and be deemed to have been transferred to and vested in the relevant Resulting Company upon the coming into effect of this Scheme pursuant to the provisions of Sections 391 to 394 of the Act, provided however that no onerous asset shall have been acquired by the Demerged Company in relation to any Demerged Undertaking after the Appointed Date without the prior written consent of the relevant Resulting Company.

4.2 Contracts, deeds, etc.

(*a*) Upon the coming into effect of this Scheme and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements, schemes, arrangements and other instruments of whatsoever nature in relation to the Demerged Undertakings to which the Demerged Company is a party or to the benefit of which the Demerged Company may be eligible, and which are subsisting or have effect immediately before the Effective Date, shall continue in full force and effect on or against or in favour of, as the case may be, the relevant Resulting Company in which the respective Demerged Undertaking vests by way of the demerger hereunder and may be enforced as fully and effectually as if, instead of the Demerged Company, such Resulting Company had been a party or beneficiary or obligee thereto or thereunder.

(*b*) Without prejudice to the other provisions of this Scheme and notwithstanding the fact that vesting of the Demerged Undertakings occurs by virtue of this Scheme itself, each of the Resulting Companies may, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required under any law or otherwise, take such actions and execute such deeds (including deeds of adherence), confirmations or other writings or tripartite arrangements with any party to any contract or arrangement to which the Demerged Company is a party or any writings as may be necessary in order to give formal effect to the provisions of this Scheme. Each of the Resulting Companies shall, under the provisions of Part II of this Scheme, be deemed to be authorised to execute any such writings on behalf of the Demerged Company and to carry out or perform all such formalities or compliances referred to above on the part of the Demerged Company to be carried out or performed.

(*c*) For the avoidance of doubt and without prejudice to the generality of the foregoing, it is clarified that upon the coming into effect of this Scheme, all consents, permissions, licences, certificates, clearances, authorities, powers of attorney given by, issued to or executed in favour of the Demerged Company in relation to each of the Demerged Undertakings shall stand transferred to the relevant Resulting Company in which the respective Demerged Undertaking shall vest by way of the demerger hereunder, as if the same were originally given by, issued to or executed in favour of such Resulting Company, and such Resulting Company shall be bound by the terms thereof, the obligations and duties thereunder, and the rights and benefits under the same shall be available to such Resulting Company. The Resulting Companies shall make applications to and obtain relevant approvals from the concerned Governmental Authorities as may be necessary in this behalf.

(*d*) It is clarified that if any assets (estate, claims, rights, title, interest in or authorities relating to such assets) or any contract, deeds, bonds, agreements, schemes, arrangements or other instruments of whatsoever nature in relation to any of the Demerged Undertakings which the Demerged Company owns or to which the Demerged Company is a party and which cannot be transferred to the relevant Resulting Company for any reason whatsoever, the Demerged Company shall hold such asset or contract, deeds, bon s, agreements, schemes, arrangements or other instruments of whatsoever nature in trust for the benefit of the relevant Resulting Company to which the respective Demerged Undertaking is being transferred in terms of this Scheme, insofar as it is permissible so to do, till such time as the transfer is effected.

4.3 Transfer of liabilities

4.3.1

(*a*) Upon the coming into effect of this Scheme, all debts, liabilities, loans raised and used, liabilities and obligations incurred, duties or obligations of any kind, nature or description (including contingent liabilities) of the Demerged Company (as on the Appointed Date) and relating to the Demerged Undertakings specified in Part B of Schedules I, II, III and IV, shall, without any further act or deed, be demerged from the Demerged Company and be and stand transferred to and be deemed to be transferred to the relevant Resulting Company to the extent that they are outstanding as on the Effective Date and on the same terms and conditions as applicable to the

Demerged Company, and shall become the debts, liabilities, duties and obligations of the relevant Resulting Company which shall meet, discharge and satisfy the same.

(*b*) Where any of the debts, liabilities, loans raised and used, liabilities and obligations incurred, duties and obligations of the Demerged Company as on the Appointed Date deemed to be transferred to any of the Resulting Companies have been discharged by the Demerged Company after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to have been for and on account of the relevant Resulting Company.

(*c*) All loans raised and used and all liabilities and obligations incurred by the Demerged Company for the operations of any Demerged Undertaking after the Appointed Date and prior to the Effective Date, shall, subject to the terms of this Scheme, be deemed to have been raised, used or incurred for and on behalf of the relevant Resulting Company in which the respective Demerged Undertaking shall vest in terms of this Scheme and to the extent they are outstanding on the Effective Date, shall also without any further act or deed be and stand transferred to and be deemed to be transferred to the relevant Resulting Company and shall become the debts, liabilities, duties and obligations of the said Resulting Company which shall meet discharge and satisfy the same. Provided however that no debts, liabilities, loans raised and used, liabilities and obligations incurred, dues and obligations shall have been assumed by the Demerged Company in relation to any Demerged Undertaking after the Appointed Date without the prior written consent of the relevant Resulting Company.

4.3.2 Without prejudice to Clause 4.3.1, all debentures, bonds or other debt securities, if any, of the Demerged Company relating to the liabilities comprised in the Demerged Undertakings, whether convertible into equity or otherwise (hereinafter referred to as the "Debt Securities") shall, pursuant to the provisions of Sections 391 to 394 and other relevant provisions of the Act, without any further act, instrument or deed, become the Debt Securities of the relevant Resulting Company on the same terms and conditions except to the extent modified under the provisions of this Scheme and all rights, powers, duties and obligations in relation thereto shall be and stand transferred to and vested in or be deemed to have been transferred to and vested in and shall be exercised by or against the relevant Resulting Company to the same extent as if it were the Demerged Company in respect of the Debt Securities so transferred.

4.3.3

(*a*) The demerger and the transfer and vesting of the assets comprised in the Demerged Undertakings to and in each of the relevant Resulting Companies under Clause 4.1 of this Scheme shall be subject to the mortgages and charges, if any, affecting the same as hereinafter provided.

(*b*) The existing securities, mortgages, charges, encumbrances or liens (the "Encumbrances") or those, if any created by the Demerged Company after the Appointed Date, in terms of this Scheme, over the assets comprised in any of Demerged Undertakings or any part thereof transferred to the respective Resulting Companies by virtue of this Scheme, shall, after the Effective Date, continue to relate and attach to such assets or any part thereof to which they related or attached prior to the Effective Date and as are transferred to the relevant Resulting Company, and such Encumbrances shall not relate or attach to any of the other assets of that Resulting Company or the assets forming part of any other Demerged Undertaking transferred to the other Resulting Companies. Provided however that no Encumbrances shall have been created by the Demerged Company in relation to any of the Demerged Undertakings after the Appointed Date without prior written consent of the relevant Resulting Company.

(*c*) In so far as any Encumbrances over the assets comprised in the Demerged Undertakings are security for liabilities of the Remaining Undertaking retained with the Demerged Company, the same shall, on the Effective Date, without any further act, instrument or deed be modified to the extent that all such assets shall stand released and discharged from the obligations and security relating to the same and the Encumbrances shall only extend to and continue to operate against the assets retained with the Demerged Company and shall cease to operate against any of the assets transferred to the Resulting Companies in terms of this Scheme. The absence of any formal amendment which may be required by a lender or third party shall not affect the operation of the above.

(*d*) Without prejudice to the provisions of the foregoing clauses and upon the effectiveness of this Scheme, the Demerged Company and each of the Resulting Companies shall execute any instruments or documents or do all the acts and deeds as may be required, including the filing of necessary particulars and/or modification(s) of charge, with the Registrar of Companies, Delhi to give formal effect to the above provisions, if required.

(*e*) Upon the coming into effect of this Scheme, the Resulting Companies alone shall be liable to perform all obligations in respect of the liabilities, which have been transferred to them respectively in terms of the Scheme, and the Demerged Company shall not have any obligations in respect of such liabilities, and each of the Resulting Companies shall indemnify the emerged Company in relation to any claim, at any time, against the Demerged Company in respect of the liabilities which have been transferred to the Resulting Companies.

(*f*) It is expressly provided that, save as mentioned in this Clause 4.3.3, no other term or condition of the liabilities transferred to the Resulting Companies is modified by virtue of this Scheme except to the extent that such amendment is required by necessary implication.

(*g*) Subject to the necessary consents being obtained in accordance with the terms of this Scheme, the provisions of this Clause 4.3.3 shall operate, notwithstanding anything to the contrary contained in any instrument, deed or writing or the terms of sanction or issue or any security document; all of which instruments, deeds or writings shall stand modified and/or superseded by the foregoing provisions.

5. Transfer at Book Values All the assets, properties and liabilities of the Demerged Undertakings shall be transferred to the Resulting Companies at the values appearing in the books of the Demerged Company (at historical cost less depreciation) on the close of business on August 31, 2005.

6. Conduct of Business

6.1 The Demerged Company, with effect from the Appointed Date and up to and including the Effective Date:

(*a*) shall be deemed to have been carrying on and to be carrying on all business and activities relating to each of the Demerged Undertakings and shall hold and stand possessed of and shall be deemed to hold and stand possessed of all the estates, assets, rights, title, interest, authorities, contracts, investments and strategic decisions of each of the Demerged Undertakings for and on account of, and in trust for, the respective Resulting Companies;

(*b*) all profits and income accruing or arising to the Demerged Company from the Demerged Undertakings, and losses and expenditure arising or incurred by it (including taxes, if any, accruing or paid in relation to any profits or income) relating to the Demerged Undertakings based on the audited accounts of the Demerged Company shall, for all purposes, be treated as and be deemed to be the profits, income, losses or expenditure, as the case may be, of the respective Resulting Companies; and

(*c*) any of the rights, powers, authorities, privileges, attached, related or pertaining to the Demerged Undertakings exercised by the Demerged Company shall be deemed to have been exercised by the Demerged Company for and on behalf of, and in trust for and as an agent of the respective Resulting Companies. Similarly, any of the obligations, duties and commitments attached, related or pertaining to the Demerged Undertakings that have been undertaken or discharged by the Demerged Company shall be deemed to have been undertaken for and on behalf of and as an agent for the respective Resulting Companies.

6.2 With effect from the Appointed Date and until the Effective Date, the Demerged Company undertakes that it will preserve and carry on the business of each of the Demerged Undertakings with reasonable diligence and business prudence and shall not undertake financial commitments or sell, transfer, lienate, charge, mortgage, or encumber any of the Demerged Undertakings or any part thereof save and except in each case:

(*a*) if the same is in its ordinary course of business as carried on by it as on the date of filing this Scheme with the High Court(s); or

(*b*) if the same is expressly permitted by this Scheme; or

(*c*) if the prior written consent of the Board of Directors of the

(*d*) relevant Resulting Company has been obtained.

6.3 As and from the Appointed Date and till the Effective Date:

(*a*) All debts, liabilities, loans raised and used, liabilities and obligations incurred, duties and obligations as on the close of business on August 31, 2005, whether or not provided in the books of the Demerged Company in respect of any of the Demerged Undertakings as specified in Part B of Schedules I, II, III and IV, and all debts, liabilities, loans raised and used, liabilities and obligations incurred, duties and obligations relating thereto which arise or accrue to the Demerged Company on or after the Appointed Date in accordance with this Scheme, shall be deemed to be the debts, liabilities, loans raised and used, liabilities and obligations incurred, duties and obligations of the relevant Resulting Company to which that Demerged Undertaking is transferred.

(*b*) All assets and properties comprised in any of the Demerged Undertakings as on the date immediately preceding the Appointed Date, whether or not included in the books of the Demerged Company, and all assets and properties relating thereto, which are acquired by the Demerged Company in relation to any of the Demerged Undertakings, on or after the Appointed Date, in accordance with this Scheme, shall be deemed to be the assets and properties of the relevant Resulting Company to which that Demerged Undertaking is transferred.

7. Employees

(*a*) Upon the coming into effect of this Scheme, all employees, consultants and advisors other than those specifically referred to in sub-clause (d) below, of the Demerged Company engaged in or in relation to the respective Demerged Undertakings and who are in such employment as on the Effective Date shall become the employees, consultants or advisors, as the case may be, of the respective Resulting Company, and, subject to the provisions of this Scheme, on terms and conditions not less favourable than those on which they are engaged by the Demerged Company and without any interruption of or break in service as a result of the transfer of the Demerged Undertakings.

(*b*) In so far as the existing provident fund, gratuity fund and pension and/or superannuation fund, trusts, retirement fund or benefits and any other funds or benefits created by the Demerged Company for the employees of each of the Demerged Undertakings are concerned (collectively referred to as the "Funds"), the Funds and such of the investments made by the Funds which are referable to the employees of each Demerged Undertaking being transferred to the respective Resulting Companies in terms of sub clause (*a*) above shall be transferred to the relevant Resulting Company and shall be held for their benefit pursuant to this Scheme in the manner provided hereinafter. The Funds shall, subject to the necessary approvals and permissions and at the discretion of the relevant Resulting Company, either be continued as separate funds of the Resulting Company for the benefit of the employees of the respective Demerged Undertaking or be transferred to and merged with other similar funds of the relevant Resulting Company. In the event that any Resulting Company does not have its own funds in respect of any of the above, such Resulting Company may, subject to necessary approvals and permissions, continue to contribute to the relevant Funds of the Demerged Company, until such time that the Resulting Company creates its own fund, at which time the Funds and the investments and contributions pertaining to the employees of the Demerged Undertaking shall be transferred to the funds created by that Resulting Company.

(*c*) In so far as the existing provident fund, gratuity fund and pension and/or superannuation fund, trusts created by the Demerged Company for the employees of the Remaining Undertaking are concerned, the same shall continue and the Demerged Company shall continue to contribute to such funds and trusts in accordance with the provisions thereof, and such funds and trusts, if any, shall be held for the benefit of the employees of the Remaining Business.

(*d*) All employees, consultants and advisors employed or engaged on part time basis by the Demerged Company in relation to the businesses of the Demerged Undertakings shall, at the option of the Resulting Companies, be made available to the relevant Resulting Companies in relation to the respective Demerged Undertakings, at no additional cost for a period of 12 (twelve) months from the Effective Date or such earlier date as the Resulting Companies may deem proper or necessary, to provide the same services and advice as they were rendering to the Demerged Company.

8. Saving of Concluded Transactions The transfer and vesting of the assets, liabilities and obligations of the Demerged Undertakings under Clause 4 hereof shall not affect any transactions or proceedings already completed by the Demerged Company on or before the Appointed Date to the end and intent that, each of the Resulting Companies accepts all acts, deeds and things done and executed by and/or on behalf of the Demerged Company in relation to the Demerged Undertaking which shall vest in that Resulting Company in terms of this Scheme of Arrangement as acts, deeds and things made, done and executed by and on behalf of that Resulting Company.

PART III

REMAINING UNDERTAKING

9. Remaining Undertaking to continue with Demerged Company

9.1 The Remaining Undertaking and all the assets, liabilities and obligations pertaining thereto shall continue to belong to and be vested in and be managed by the Demerged Company, subject only to Clause 4.3.3 of this Scheme in relation to Encumbrances in favour of banks, financial institutions and trustees for the debenture-holders.

9.2

(*a*) All legal, taxation or other proceedings whether civil or criminal (including before any statutory or quasi-judicial authority or tribunal) by or against the Demerged Company under any statute, whether pending on the Appointed Date or which may be instituted at any time thereafter, and in each case relating to the Remaining Undertaking (including those relating to any property, right, power, liability, obligation or duties of the Demerged Company in respect of the Remaining Undertaking) shall be continued and enforced by or against the Demerged Company after the Effective Date. None of the Resulting Companies shall in any event be responsible or liable in relation to any such legal, taxation or other proceeding against the Demerged Company, which relate to the Remaining Undertaking.

(*b*) If proceedings are taken against any of the Resulting Companies in respect of the matters referred to in subclause (*a*) above, it shall defend the same in accordance with the advice of the Demerged Company and at the cost of the Demerged Company, and the latter shall reimburse and indemnify the relevant Resulting Company against all liabilities and obligations incurred by the Resulting Company in respect thereof.

9.3. With effect from the Appointed Date and up to and including the Effective Date:

(*a*) the Demerged Company shall carry on and shall be deemed to have been carrying on all business and activities relating to the Remaining Undertaking for and on its own behalf;

(*b*) all profits accruing to the Demerged Company thereon or losses arising or incurred by it (including the effect of taxes, if any, thereon) relating to the Remaining Undertaking shall, for all purposes, be treated as the profits or losses, as the case may be, of the Demerged Company; and

(*c*) All assets and properties acquired by the Demerged Company in relation to the Remaining Undertaking on and after the Appointed Date shall belong to and continue to remain vested in the Demerged Company.

PART IV
REORGANISATION OF CAPITAL

10. Provisions to prevail

The provisions of this Part IV shall operate notwithstanding anything to the contrary in this Scheme.

11. Reorganisation of share capital In consideration of the transfer and vesting of the Demerged Undertakings in each of the Resulting Companies in accordance with the provisions of Part II of this Scheme and as an integral part of this Scheme, the share capital of the Resulting Companies shall be increased in the manner set out in Clauses 12 to 15 below.

12. Issue of shares by each Resulting Company

12.1 After the Scheme takes effect, in consideration of the demerger including the transfer and vesting of each of the Demerged Undertakings in the relevant Resulting Companies pursuant to Part II of this Scheme, each of the Resulting Companies shall, without any further act or deed, issue and allot to each member of the Demerged Company (except the Specified Shareholders) whose name is recorded in the register of members of the Demerged Company on the Record Date equity shares in the respective Resulting Company in the following ratios:

(*a*) In the case of the Coal Based Energy Resulting Company, in the ratio of 1 (one) equity share in the Resulting Company of the face value of Rs. 10 (Rupees ten) each credited as fully paid-up for every 1 (one) equity share of Rs. 10 each fully paid-up held by such member or his/her/its heirs, executors, administrators or successors in the Demerged Company (the "Coal Based Energy Share Entitlement Ratio");

(*b*) In the case of the Telecommunication Resulting Company, in the ratio of 1 (one) equity share in the Resulting Company of the face value of Rs. 5 (Rupees five) each credited as fully paid-up for every 1 (one) equity share of Rs. 10 each fully paid-up held by such member or his/her/its heirs, executors, administrators or successors in the Demerged Company (the "Telecommunication Share Entitlement Ratio");

12.2 (*a*) Pursuant to the provisions of clause 12.1 above, each of the Resulting Companies shall issue to the Depository representing the holders of GDRs of the Demerged Company, shares of the Resulting Companies in accordance with the relevant Share Entitlement Ratio. Subject to clause (*b*) below, the Depository of the Demerged Company shall hold such shares of the Resulting Companies on behalf of the holders of GDRs of the Demerged Company;

(*b*)(*i*) Each of the Resulting Companies may, on or before expiry of 150 (One hundred and fifty) days from the Record Date, in consultation with the Depository for the GDR holders of the Demerged Company and by entering into appropriate agreements with the said Depository or any other Depository (appointed by the Resulting Companies) for the issuance of GDRs, (whether listed or otherwise), instruct such Depository to issue GDRs of the Resulting Companies, or any of them, to the holders of GDRs of the Demerged Company and any such issue of GDRs shall be irrevocably put in motion within the said period. Subject to sub-clause (*ii*) below, if the Resulting Companies have not had such GDRs issued as aforesaid, the Bank of New York as the Depository for the Demerged Company shall, without reference to the Resulting Companies, sell the shares of the Resulting Companies in the open domestic market and distribute the net sale proceeds to such GDR holders on a proportionate basis. (*ii*) Notwithstanding anything contained in sub-clause (*i*) above, any holder of GDRs of the Demerged Company may at anytime after the Record Date, but prior to the issuance of GDRs by a Resulting Company, instruct the Depository to transfer the underlying shares of such Resulting Company to such GDR holder. In such case, the relevant Resulting Company shall obtain such permissions as may be necessary. (*c*) The holders of GDRs of the Demerged Company who wish to directly receive shares of the Resulting Companies may surrender the GDRs of the Demerged Company held by them before the Record Date in exchange for shares of the Demerged Company. Such GDR holders holding shares of the Demerged Company on the Record Date shall then be entitled to receive shares of Resulting Companies in accordance with the Share Entitlement Ratio under Clause 12.1 above.

13. Specified Shareholders

13.1 ....
....
13.2 ....
....

14. Other terms applicable to issue of shares

14.1 The equity shares to be issued by each of the Resulting Companies pursuant to clause 12.1 above shall be issued in dematerialized form by each of the Resulting Companies, unless otherwise notified in writing by the shareholders of the Demerged Company to the relevant Resulting Company on or before such date as may be determined by the Board of Directors of the Demerged Company or a committee thereof. In the event that such notice has not been received by any of the Resulting Companies in respect of any of the members of the Demerged Company, the equity shares shall be issued to such members in dematerialised form provided that the members of the Resulting Companies shall be required to have an account with a depository participant and shall be required to provide details thereof and such other confirmations as may be required. In the event that a Resulting Company has received notice from any member that equity shares are to be issued in physical form or if any member has not provided the requisite details relating to his/her/its account with a depository participant or other confirmations as may be required or if the details furnished by any member do not permit electronic credit of the shares of the Resulting Companies, then the Resulting Companies shall issue equity shares in physical form to such member or members.

14.2 In the event of there being any pending share transfers, whether lodged or outstanding, of any shareholder of the Demerged Company, the Board of Directors or any committee thereof of the Demerged Company shall be empowered in appropriate cases, prior to or even subsequent to the Record Date, to effectuate such a transfer in the Demerged Company as if such changes in the registered holder were operative as on the Record Date, in order to remove any difficulties arising to the transferor or transferee of equity shares in the Resulting Companies issued by the Resulting Companies after the effectiveness of this Scheme.

14.3 The new equity shares issued and allotted by the Resulting Companies in terms of this Scheme shall be subject to the provisions of the Memorandum and Articles of Association of the Resulting Companies and shall inter-se rank *pari passu* in all respects.

14.4 Equity shares of the Resulting Companies issued in terms of Clause 12.1 of this Scheme will be listed and/or admitted to trading on the National Stock Exchange and the Bombay Stock Exchange where the shares of the Demerged Company are listed and/or admitted to trading in terms of the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000. The Resulting Companies shall enter into such arrangements and give such confirmations and/or undertakings as may be necessary in accordance with the applicable laws or regulations for complying with the formalities of the said Stock Exchanges. On such formalities being fulfilled the said Stock exchanges shall list and/or admit such equity shares also for the purpose of trading.

14.5 For the purpose of issue of equity shares to the shareholders of the Demerged Company, the Resulting Companies shall, if and to the extent required, apply for and obtain the required statutory approvals including approval of Reserve Bank of India and other concerned regulatory authorities for the issue and allotment by the Resulting Companies of such equity shares.

14.6 The equity shares to be issued by the Resulting Companies pursuant to this Scheme in respect of any equity shares of the Demerged Company which are held in abeyance under the provisions of Section 206A of the Act or otherwise shall pending allotment or settlement of dispute by order of Court or otherwise, be held in abeyance by the Resulting Companies.

14.7 The equity shares to be issued by the Resulting Companies pursuant to this Scheme in respect of shares of the Demerged Company, which are not fully paid up shall also be kept in abeyance and dealt with by the Resulting Companies based on information periodically provided by the Demerged Company to the Resulting Companies.

14.8 Unless otherwise determined by the Board of Directors or any committee thereof of the Demerged Company and the Board of Directors or any committee thereof of the relevant Resulting Company, issuance of equity shares in terms of Clause 12.1 above shall be done within 45 days from the Effective Date.

14.9 (*a*) The cost of acquisition of the shares of each of the Resulting Companies in the hands of the shareholders of the Demerged Company shall be the amount which bears to the cost of acquisition of shares held by the shareholder in the Demerged Company the same proportion as the net book value of the assets transferred in the demerger to the relevant Resulting Company bears to the net worth of the Demerged Company immediately before the demerger hereunder. (*b*) The period for which the share(s) in Demerged Company were held by the shareholders shall be included in determining the period for which the shares in the Resulting Companies have been held by the respective shareholder.

15. Increase in share capital

15.1 Upon the coming into effect of this Scheme, the authorised share capital of each of the Resulting Companies shall stand increased and the existing capital clause contained in the respective Memorandum of Association of each of the Resulting Companies shall, upon the coming into effect of this Scheme, be altered and substituted as follows:

(*a*) The authorised capital of the Coal Based Energy Resulting Company shall be increased from Rs. 5,00,000 (Rupees Five Lakhs only) divided into 50,000 (Fifty Thousand) Equity Shares of Rs. 10 each to Rs. 1250 crores (Rupees One thousand two hundred and fifty crores only) and Clause V of the Memorandum of Association of the Coal Based Energy Resulting Company shall, upon coming into effect of this Scheme, be substituted by the following new Clause:

> "V The Authorised Share Capital of the Company is Rs. 1250 crores (Rupees One thousand two hundred and fifty crores only) divided into 125 crore (One hundred and twenty five crore) Equity Shares of Rs. 10 each."

(*b*) The authorised capital of the Telecommunication Resulting Company shall be increased from Rs. 5,00,000 (Rupees Five Lakhs only) divided into 1,00,000 (One lakh) Equity Shares of Rs. 5 each to Rs. 650 crores (Rupees Six hundred and fifty crores only) and Clause V of the Memorandum of Association of the Telecommunication Resulting Company shall, upon coming into effect of this Scheme, be substituted by the following new Clause:

> "V (*a*) The Authorised Share Capital of the Company is Rs. 650 Crores (Rupees Six hundred and fifty crores only) divided into 130 Crore (One hundred and thirty crore) Equity Shares of Rs. 5 each."

15.2 Upon this Scheme becoming effective and after the allotment of the new equity shares by the Resulting Companies, the issued, subscribed and paid-up capital of each Resulting Company shall, assuming full allotment of shares including shares referred to in Clauses 14.6 to 14.7 (both inclusive), stand increased as follows: (*a*) the issued, subscribed and paid-up capital of the Coal Based Energy Resulting Company shall stand increased to Rs. 12,23,13,04,220 (Rupees One thousand two hundred and twenty three crores, thirteen lakhs, four thousand, two hundred and twenty only) divided into 122,31,30,422 (One hundred and twenty two crores, thirty one lakhs, thirty thousand, four hundred and twenty two) Equity Shares of Rs. 10 (Rupees Ten only) each fully paid-up; and (*b*) the issued, subscribed and paid-up capital of the Telecommunication Resulting Company shall stand increased to Rs. 611,56,52,110 (Rupees Six hundred and eleven crores, fifty six lakhs, fifty two thousand, one hundred and ten only) divided into 122,31,30,422 (One hundred and twenty two crores, thirty one lakhs, thirty thousand, four hundred and twenty two) Equity Shares of Rs. 5 (Rupees Five only) each fully paid-up.

PART V

ACCOUNTING TREATMENT

16. Accounting by the Demerged Company and the Resulting Companies in respect of assets and liabilities

***16.1 Accounting treatment in the books of the Demerged Company*:**

(*a*) The assets and the liabilities of the Demerged Company being transferred to the respective Resulting Companies shall be at values appearing in the books of accounts of the Demerged Company on the close of business on August 31, 2005;

(*b*) The difference between the value of assets and value of liabilities transferred pursuant to the Scheme shall be appropriated against the revaluation reserve and balance, if any, after appropriation, will be further appropriated against the securities premium account of the Demerged Company. The balances of the revaluation reserve and the securities premium account, as the case may be, shall stand reduced to that extent;

(*c*) The reduction, if any, in the securities premium account of the Demerged Company shall be effected as an integral part of the Scheme in accordance with the provisions of section 78 and sections 100 to 103 of the Act and the Order of the High Court sanctioning the Scheme shall be deemed to be also the Order under section 102 of the Act for the purpose of confirming the reduction. The reduction would not involve either a diminution of liability in respect of unpaid share capital or payment of paid-up share capital, and the provisions of section 101 of the Act will not be applicable.

16.2 In the Books of the Resulting Companies

(*a*) Upon coming into effect of this Scheme and upon the arrangement becoming operative, the respective Resulting Companies shall record the assets and liabilities comprised in the respective Demerged Undertakings transferred to and vested in them pursuant to this Scheme, at the same value appearing in the books of Demerged Company on the close of business on August 31, 2005.

(*b*) The respective Resulting Companies shall credit their respective Share Capital Accounts in their books of account with the aggregate face value of the new equity shares issued to the shareholders of Demerged Company pursuant to Clause 12.1 of this Scheme.

(*c*) The excess or deficit, if any, remaining after recording the aforesaid entries shall be credited by the respective Resulting Companies to their respective General Reserve Account or debited to goodwill, as the case may be.

(*d*) On allotment of shares by the Resulting Companies in terms of Clause 12.1 above, the existing shareholding of ABC, the Demerged Company, in each of the Resulting Companies shall be cancelled as an integral part of this Scheme in accordance with provisions of Sections 100 to 103 of the Act and the Order of the High Court sanctioning the Scheme shall be deemed to be also the Order under section 102 of the Act for the purpose of confirming the reduction. The reduction would not involve either a diminution of liability in respect of unpaid share capital or payment of paid-up share capital, and the provisions of section 101 of the Act will not be applicable.

PART VI

GENERAL TERMS AND CONDITIONS

17. Board Reconstitution

At any time after the Record Date, ABC shall cause the Board of Directors of each of the Resulting Companies to be reconstituted in such manner as is agreed between each Resulting Company and AA and thereupon each of the Resulting Companies shall be controlled and managed by Shri AA. The Demerged Company constituting the Remaining Undertaking shall continue to be controlled and managed by Shri MA.

18. Dividends

(*a*) The Demerged Company and each Resulting Company shall be entitled to declare and pay dividends, whether interim or final, to their respective shareholders in respect of the accounting period after the Appointed Date and prior to the Effective Date, Provided that the shareholders of the Demerged Company shall not be entitled to dividend, if any, declared and paid by a esulting Company to its shareholders for the accounting period prior to the Appointed Date.

(*b*) The holders of the shares of the Demerged Company and the Resulting Companies 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.

(*c*) It is clarified that the aforesaid provisions in respect of declaration of dividends are enabling provisions only and shall not be deemed to confer any right on any member of the Demerged

Company and/or the Resulting Companies to demand or claim any dividends which, subject to the provisions of the said Act, shall be entirely at the discretion of the respective Boards of Directors of the Demerged Company and the Resulting Companies and subject to the approval of the shareholders of the Demerged Company and the Resulting Companies respectively.

19. Agreements

The Resulting Companies will have the right to use the "xxxxxx" brand and logo and suitable agreements will be entered into in this regard. Further, suitable arrangements would also be entered into in relation to non-competition in relation to the businesses of the Demerged Undertakings and the Remaining Undertaking.

20. Approvals

Each of the Resulting Companies shall be entitled, pending the sanction of the Scheme, to apply to the Central Government or any State Government and all other agencies, departments and authorities concerned as may be necessary under any law for such consents, approvals and sanctions which the Resulting Companies may require to own the Demerged Undertakings and carry on power (coal based and gas based), financial services (including insurance) and telecommunications.

21. Filing of Applications

The Demerged Company and each Resulting Company shall, with all reasonable dispatch, make and file all necessary applications and petitions before the High Court for the sanction of this Scheme of Arrangement under Sections 391 and 394 of the Act and each of them shall apply for all necessary approvals as may be required under law.

22. Modification of Scheme

(*a*) The Demerged Company and each of the Resulting Companies by their respective Boards of Directors or any committee thereof or any Director authorised in that behalf (hereinafter referred to as the "Delegate") may assent to, or make, from time to time, any modifications or amendments or additions to this Scheme which the High Court(s) or any authorities under law may deem fit to approve of or impose and which the Demerged Company and each of the Resulting Companies may in their discretion accept such modifications or amendments or additions as the Demerged Company and each of the Resulting companies or as the case may be, their respective Delegate may deem fit, or required for the purpose of resolving any doubts or difficulties that may arise for carrying out this Scheme, and the Demerged Company and each of the Resulting Companies by their respective Boards of Directors or Delegate are hereby authorised to do, perform and execute all acts, deeds, matters and things necessary for bringing this Scheme into effect, or review the position relating to the satisfaction of the conditions of this Scheme and if necessary, waive any of such conditions (to the extent permissible under law) for bringing this Scheme into effect. In the event that any conditions may be imposed by the High Court or any authorities, which the Demerged Company or any of the Resulting Companies find unacceptable for any reason, then Demerged Company and the Resulting Companies shall be at liberty to withdraw the Scheme. The aforesaid powers of the Demerged Company and the Resulting Companies may be exercised by the Delegate of the respective Companies.

(*b*) For the purpose of giving effect to this Scheme or to any modifications or amendments thereof or additions thereto, the Delegates (acting jointly) of the Demerged Company and the Resulting Companies may give such directions as they may consider necessary to settle any question or difficulty arising under this Scheme or in regard to and of the meaning or interpretation of this Scheme or implementation thereof or in any matter whatsoever connected therewith (including any question or difficulty arising in connection with any deceased or insolvent shareholders, depositors or debenture holders of the respective Companies), or to review the position relating to the satisfaction of various conditions of this Scheme and if necessary, to waive any of those conditions (to the extent permissible under law).

23. Scheme Conditional Upon

23.1 This Scheme is conditional upon and subject to:

(*a*) This Scheme being agreed to by the respective requisite majorities of the various classes of members and creditors (where applicable) of the Demerged Company and the Resulting Companies as required under the Act and the requisite orders of the High Court referred to in Clause 21 being obtained;

(*b*) The requisite sanctions and approvals including but not limited to in-principle approvals, sanctions of any Governmental Authority, as may be required by law in respect of this Scheme being obtained; and

(*c*) The certified copies of the orders of the High Court sanctioning this Scheme being filed with the Registrar of Companies, Maharashtra.

23.2 In the event of this Scheme failing to take effect within 12 months of first filing in High Court or such later date as may be agreed by the respective Boards of Directors of the Demerged Company and the Resulting Companies, this Scheme shall stand revoked, cancelled and be of no effect and become 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 such case, each Company shall bear its own costs, charges and expenses or shall bear costs, charges and expenses as may be mutually agreed.

24. Indemnity

In the event of non fulfillment of any or all obligations under this Scheme by any party towards any other party, inter-se or to third parties, the non performance of which will place any other party under any obligation, then the defaulting party will indemnify all costs and interest to such other affected party.

25. Costs, Charges, etc.

All costs, charges, levies and expenses (including stamp duty) in relation to or in connection with or incidental to this Scheme or the implementation thereof shall be borne and paid for by the Demerged Company.

Appendix 5

Specimen of Explanatory Statement u/s 393 for Amalgamation of Company

The statement under section 393(1)(*a*) of the Companies Act, 1956 is sent herewith with the notices calling separate meetings of equity shareholders and unsecured creditors as per the order dated XX.XX.XXXX passed by the Hon'ble High Court/Tribunal of Judicature at Indore (M.P.) for the purpose of considering, and if thought fit, approving, with or without modifications, the arrangement embodied in the scheme of amalgamation proposed to be made between ABC Limited (hereinafter referred to as "the transferor company") and XYZ Limited (hereinafter referred to as "the transferee) whereby ABC Limited will be amalgamated with XYZ Limited, a copy of the proposed scheme of amalgamation between ABC Limited and XYZ Limited is sent herewith.

XYZ Limited is an existing company under the Companies Act, 1956 and was incorporated in the year 1990 is a multi product company and is a leading company in India having plants situate at Pithampur, District Dhar (M.P.), operations cover a wide spectrum of industries, manufactures plant and equipment for various industries. It has sufficient financial resources and well qualified, trained and experienced professionals and technicians. It has accumulated reserves of Rs. .... as on XX.XX.XXXX.

ABC Limited was incorporated in the year 1994 and commenced its business in 1995, is a wholly owned subsidiary company of XYZ Limited, manufactures plant and equipments in collaboration with XYZ Limited. The manufacturing facilities of ABC Limited are situated at Industrial Area, Pithampur, District Dhar (M.P.). The manufacturing activities of ABC Limited can be profitably and advantageously combined with the XYZ Limited.

The main object of the proposed amalgamation is to combine the resources of ABC Limited and XYZ Limited with a view to optimise their utilisation, effect internal economies and improve efficiency. This is expected to be achieved by carrying on the business of ABC Limited as part of XYZ Limited business and making available for the same the extensive resources and credit worthiness. The proposed amalgamation will also reduce administrative expenses. The manufacturing of plant and equipments business carried on by ABC Limited and XYZ Limited are of similar nature and can be conveniently carried on by XYZ Limited.

The salient features of the scheme are as under:

……………………………………………..……………………………………………..

The scheme is conditional on and subject to the sanction of the authorities concerned, approval by the requisite majorities of the shareholders and sanctions of the National Company Law Tribunal as may be required.

The following directors of ..……..... hold Equity Shares of ……..... either jointly or singly as under:—

Names of Directors	Shares held in ....……	
	Singly	Jointly
1.		
2.		

.... has only the following directors who are also directors of ...... and hold Equity Shares of .... as under:

Name of Directors	Shares held in ..……...	
	Singly	Jointly
1.		
2.		
3.		

Save as aforesaid, the directors of ..... and ..... have no other interest in the proposed scheme of amalgamation.

Place ....…

Dated ....…

Chairman appointed for the meeting

Note.—The following documents are open for inspection by the members at the registered office of ..... at .... on any working day between 11.00 a.m. and 1.00 p.m. till the date of the meeting:—

1. Memorandum and Articles of Association of ABC Limited.
2. Memorandum and Articles of Association of XYZ Limited.
3. Balance Sheet and Profit and Loss Account of ABC Limited for the year ended 31st March, 2005.
4. Balance Sheet and Profit and Loss Account of XYZ Limited for the year ended 31st March, 2005.
5. A certified copy of the order dated XX.XX.XXXX passed by the Hon'ble High Court/Tribunal of Judicature at Indore (M.P.).

Appendix 6

Specimen of Explanatory Statement u/s 393 for Demerger of Company

1. Pursuant to the Order dated 16th September, 2005 passed by the Hon'ble High Court of Judicature at Delhi, in the Company Application referred to above, meetings of the Equity Shareholders, Secured Creditors (including debenture holders) and Unsecured Creditors of the Applicant Company are being convened for the purpose of considering and, if thought fit, approving with or without modification(s), the arrangement embodied in the Scheme of Arrangement between the (*i*) Applicant Company, and (*ii*) MNO

Limited, a company incorporated under the Companies Act, 1956 (hereinafter "the Act") having its registered office at 401, Raj Towers, Raj Road, Delhi, and (*iii*) MCV Limited a company incorporated under the Act having its registered office at 501, Raj Towers, Raj Road, Delhi and their respective shareholders and creditors ("the Scheme"). A copy of the Scheme is attached to this Explanatory Statement.

2. The Applicant Company was incorporated as RTC Limited on the 8th day of May 1973 in the State of Karnataka under the provisions of the Act. The name of the Applicant Company was subsequently changed to TCK Limited on the 11th day of March 1977. The place of the registered office of the Applicant Company was subsequently changed from the State of Karnataka to the State of Delhi on the 2nd day of July, 1977. The name of the Applicant Company was again changed to ABC Ltd on the 27th day of June 1985. The Applicant Company has its registered office at 301, Raj Towers, Raj Road, Delhi.

3. The objects for which the Applicant Company has been established are set out in its Memorandum of Association. The main objects, are set out hereunder:

1. To carry on the business of manufacturers, dealers, agents, factors, importers, exporters, merchants and financiers of all kinds of man made fibres and man made fibre yarns of all kinds, man made fibre cords of all kinds and man made fibre fabrics of all kinds, mixed with or without mixing, materials like woolen, cotton, metallic or any other fibres of vegetable, mineral or animal origin, manufacturing such man made fibres and man made fibre products of all description and kinds with or without mixing fibres of other origin as described above, by any process using petrochemicals of all description or by using vegetable or mineral oils or products of all description required to produce such man made fibres.

4. The Applicant Company is engaged in several businesses directly and through its various subsidiaries and affiliates including undertakings/businesses pertaining to—

i. coal based power business (the "Coal Based Energy Undertaking"), and

ii. telecommunication business (the "Telecommunication Undertaking").

5. The share capital structure of the Applicant Company as on August 31, 2005 is as under:

Authorised Capital	**Rupees**
Comprising of 250 crore equity shares of Rs.10 each aggregating Rs. 2500 crores and 50 crore preference shares of Rs.10 each aggregating Rs. 500 crores	3000.00 crores
Issued, Subscribed and Paid-up Comprising of 139,35,08,041equity shares of Rs.10 each*	1393.51crores
Less: Calls in arrears	0.35 crores

* Includes 9,23,71,131 equity shares represented by GDRs and 17,03,77,615 equity shares held by Specified Shareholders (described in clause …below).

The equity shares of the Applicant Company are listed on The Bombay Stock Exchange Limited, The National Stock Exchange of India Limited. The GDRs representing the underlying equity shares of the Demerged Company are listed on Luxembourg Stock Exchange.

6. MNO Limited (the "Coal Based Energy Resulting Company") was originally incorporated on the 3rd of July 2000, under the Act as SKO Private Limited. The name has since been changed to its present name viz. MNO Limited under Fresh Certificate of Incorporation consequent on change of name dated 4th of August 2005.

7. The objects for which the Coal Based Energy Resulting Company has been established are set out in its Memorandum of Association. The main objects are set out hereunder:

1. To carry on and undertake the business of coal bases energy, productions, distribution, transmission of all types of powers for the domestic and industrial uses.

8. The share capital structure of the MNO Limited Resulting Company as on August 31, 2005 is as under:

Authorised Capital	**Rupees**
Comprising of 50,000 equity shares of Rs. 10 each	5,00,000
Issued, Subscribed and Paid-up Comprising of 50,000 equity shares of Rs. 10 each	5,00,000

The equity shares of the Coal Based Energy Resulting Company are, at present, not listed on any Stock Exchanges.

9. MCV Limited (the "Telecommunication Resulting Company") was originally incorporated on the 15th of July 2004 under the Act as ATQ Private Limited. The name has since been changed to its present name viz. MCV Limited under fresh Certificate of Incorporation consequent on change of name dated 3rd August 2005.

10. The objects for which the MCV Limited has been established are set out in its Memorandum of Association. The main objects are set out hereunder:

1. To carry on business activities related to telecommunication, net work for cellphone, WLL, Broad base net work provider as may be permitted by the TRAI.

11. The share capital structure of the MCV Limited as on August 31, 2005 is as under:

Authorised Capital	**Rupees**
Comprising of 1,00,000 equity shares of Rs. 5 each	5,00,000
Issued, Subscribed and Paid-up Comprising of 1,00,000 equity shares of Rs. 10 each	5,00,000

The equity shares of the MCV Limited, Resulting Company are, at present, not listed on any Stock Exchanges.

12. Each of the Resulting Companies is, presently, a wholly owned subsidiary of the Applicant Company. After issue of shares by each Resulting Company in terms of Clause … of the Scheme of Arrangement, the Resulting Companies would cease to be subsidiaries of the Applicant Company.

13. Each of the several businesses carried on by the Applicant Company by itself and through its subsidiaries and affiliate companies and through strategic investments in other companies including Coal Based Energy Undertaking, and Telecommunication Undertaking have tremendous growth and profitability potential and are at a stage where they require focused leadership and management attention. The nature of risk and competition involved in each of these businesses is distinct from others and consequently each business or undertaking is capable of attracting a different set of investors, strategic partners, lenders and other stakeholders. There are also differences in the manner in which each of these businesses are required to be managed. In order to enable distinct focus of investors to invest in some of the key businesses and to lend greater focus to the operation of each of its diverse businesses, the Applicant Company proposes to re-organize and segregate by way of a demerger, its business and undertakings engaged in:

(*i*) Coal based power generation, distribution and transmission which comprises the Coal Based Energy Undertaking, and includes specifically all investments of the Applicant Company in MEL, HPL, RTEL, JPL, MPL and other assets through which the Demerged Company carries on its business, activities and operations pertaining to coal based power, as described in Part 'A' of Schedule I to the Scheme of Arrangement.

(*ii*) Wireless & Wireline telecommunication services which comprises the Telecommunication Undertaking, and includes specifically all investments of the Applicant Company in ABC, MCIL, MTL and WTHL through which the Applicant Company carries on its business, activities and operations pertaining telecommunications, as described in Part 'A' of Schedule IV to the Scheme of Arrangement.

14. With a view to achieve greater management focus and keeping in mind the paramount and overall interest of the shareholders of the Applicant Company, the Board of Directors of the Applicant Company believe that Shri AA, the erstwhile Vice Chairman and Managing Director of the Applicant Company, will provide such focussed management attention and leadership to the financial services, power and telecom

businesses of the Applicant Company comprising the Demerged Undertakings, and Shri MA, the Chairman and Managing Director of the Applicant Company, will continue to lead the other businesses, including petrochemicals, oil and gas exploration and production, refining and textiles and other businesses comprising the Remaining Undertaking. Consistent with the above, the Board of Directors of the Applicant Company considered that a Scheme of Demerger would be the most appropriate methodology, as it is transparent and no shareholder suffers any detriment. Besides such a structure, unlocks value for the shareholders. Accordingly, pursuant to the proposed reorganisation and segregation by the Applicant Company in terms of the Scheme of Arrangement, the Applicant Company shall continue to be controlled and managed by Shri MA and each of the Resulting Companies shall be controlled and managed by Shri AA. Further, as an integral part of the demerger under the Scheme of Arrangement, the Applicant Company shall cause the Boards of Directors of each of the Resulting Companies to be reconstituted in such manner as is agreed between each Resulting Company and Shri AA.

15. The demerger will also provide scope for independent collaboration and expansion without committing the existing organization in its entirety.

16. The Board of Directors of the Applicant Company are of the opinion that the demerger would benefit the shareholders, employees and other stakeholders of the Applicant Company.

17. It is therefore proposed that each of the Applicant Company's undertakings comprising its interests and strategic investments in (*i*) coal based power business; and (*ii*) telecommunication business be segregated and demerged, pursuant to Scheme of Arrangement under Sections 391 to 394 of the Act, and transferred to separate companies for achieving independent focus in these areas. The Applicant Company will continue its interests in the businesses of petrochemicals, refining, oil and gas exploration & production and textiles and other businesses and develop new areas in the economic development of the country.

18. With the aforesaid objective, each of the Resulting Companies is intended to give effect to the terms of the Scheme of Arrangement.

19. The demerger of the Coal Based Energy Undertaking, and Telecommunication Undertaking of the Applicant Company under the Scheme of Arrangement will be affected under the provisions of sections 391 to 394 of the Act. The demerger complies with the provisions of section 2(19AA) of the Income Tax Act, 1961, such that: (*i*) All the properties of the Demerged Undertakings being transferred by the Applicant Company immediately before the demerger become the properties of the respective Resulting Companies by virtue of the demerger; (*ii*) All the liabilities relatable to the Demerged Undertakings being transferred by the Applicant Company, immediately before the demerger become the liabilities of the respective Resulting Companies by virtue of the demerger; (*iii*) The properties and the liabilities, if any, relatable to the Demerged Undertakings being transferred by the Applicant Company are transferred to the respective Resulting Companies at the values appearing in the books of account of the Applicant Company immediately before the demerger; (*iv*) Each of the Resulting Companies issues shares to the shareholders of the Applicant Company (except certain Specified Shareholders, as defined hereinafter) in consideration of the demerger on a proportionate basis; (*v*) All shareholders of the Applicant Company (except certain Specified Shareholders, as defined hereinafter) shall become the shareholders of each of the Resulting Companies by virtue of the demerger; and (*vi*) The transfer of the Demerged Undertakings will be on a going concern basis.

20. Both the Applicant Company and its wholly owned subsidiary, MIIH had held shares in the erstwhile MPL. Upon the amalgamation of MPL with the Applicant Company, the shares of the Applicant Company to be issued against the shares held by MIIHL in MPL were allotted to the Trustees of the Petroleum Trust (a private trust, whose sole beneficiary is MIIHL, which is a wholly owned subsidiary of the Applicant Company) and they hold approximately 7.5% of the paid up capital of the Applicant Company. Likewise MPP Limited, MAP Private Limited, MEPD, and MCP were issued shares of the Applicant Company against their shareholding in MPL which was funded by the Applicant Company for the economic benefit of the shareholders of the Applicant Company and they hold approximately 4.7% of the paid up capital of the Applicant Company. The Trustees of the Petroleum Trust and the aforesaid four

companies (*viz*. MPL MAPL, MEPDL and MCPL are collectively defined as the "Specified Shareholders" in the Scheme of Arrangement. The economic benefits of shares of the Applicant Company held by the Petroleum Trust and by the aforesaid four companies have been for the benefit of the Applicant Company's shareholders. The intent of the said Trustees and the Board of Directors of the said four Companies is to enable the Applicant Company's shareholders to directly benefit from the shares of the Applicant Company held by the said Specified Shareholders. In furtherance of such intent and in order to ensure that the demerger of the four undertakings of the Applicant Company is effectively achieved, the Specified Shareholders have communicated to the Applicant Company that no shares of the Resulting Companies be issued to them. Consequently, the Scheme of Arrangement provides that the shares of the Resulting Companies would not be issued to the Specified Shareholders. Though no additional shares of the Resulting Companies would be required to be issued to the shareholders of the Applicant Company as a result of the decision by the Specified Shareholders not to take up their entitlement, the proportionate value of the Shares of each Resulting Company issued and allotted to each shareholder of the Applicant Company (other than the Specified Shareholders) would have an enhanced value.

21. The salient features of the Scheme of Arrangement are:—

(*i*) "Effective Date" has been defined in the Scheme of Arrangement to mean the last of the dates on which the conditions and matters referred to in Clause --- of the Scheme of Arrangement occur or have been fulfilled or waived and the Order of the High Court sanctioning the Scheme of Arrangement is filed with the Registrar of Companies by the Demerged Company and each of the Resulting Companies.

(*ii*) "Demerged Undertakings" has been defined in the Scheme of Arrangement to mean collectively, the Coal Based Energy Undertaking, and the Telecommunication Undertaking as more particularly described in Schedules I to IV of the Scheme of Arrangement, and the term "Demerged Undertaking" means any of the Demerged Undertakings, as the context may require.

(*iii*) The Scheme of Arrangement provides that the Appointed Date shall be 1st September 2005 or such other date as may be approved by the High Court.

(*iv*) "Remaining Undertaking" has been defined in the Scheme of Arrangement to mean all the undertakings, businesses, activities and operations of the Demerged Company other than those comprised in the Demerged Undertakings; (v) "Resulting Companies" has been defined in the Scheme of Arrangement to mean collectively, the Coal Based Energy Resulting Company and the Telecommunication Resulting Company and the term "Resulting Company" means any of the Resulting Companies, as the context may require;

(*v*) "Specified Shareholders" has been defined in the Scheme of Arrangement to mean collectively (*i*) the Trustees of the Petroleum Trust, a private trust constituted under the Trust Deed dated 2nd May 2002, whose sole beneficiary is MIIHL, (ii) MAPL (iii) MEPDL (iv) MCL and (*v*) MPL.

(*vi*) The Scheme of Arrangement provides that though it shall become effective from the Effective Date, the provisions of the Scheme of Arrangement shall be applicable and come into operation from the Appointed Date.

(*vii*) Part II of the Scheme of Arrangement sets out provisions in relation to the Demerger and envisages that:

(*a*) Upon the coming into effect of the Scheme and with effect from the Appointed Date and subject to the provisions of the Scheme, each of the Demerged Undertakings shall, pursuant to the provisions of Sections 391 to 394 of the Act, without any further act, deed matter or thing, be and stand transferred to and vested in and shall be deemed to be transferred to and vested in the respective Resulting Companies on a going concern basis such that all the properties, assets, rights, claims, title, interest, authorities and liabilities comprised in the concerned Demerged Undertaking immediately before the demerger shall become that of the relevant Resulting Company by virtue of and in the manner provided in the Scheme.

(*b*) All assets or investments, right, title or interest acquired by the Demerged Company after the Appointed Date but prior to the Effective Date in relation to the Demerged Undertakings shall also, without any further act, instrument or deed, be and stand transferred to and vested in and be deemed to have been transferred to and vested in the relevant Resulting Company upon the coming into effect of the Scheme pursuant to the provisions of Sections 391 to 394 of the Act, provided however that no onerous asset shall have been acquired by the Demerged Company in relation to any Demerged Undertaking after the Appointed Date without the prior written consent of the relevant Resulting Company.

(*c*) Upon the coming into effect of the Scheme, all contracts, deeds, bonds, agreements, schemes, arrangements and other instruments of whatsoever nature in relation to the Demerged Undertaking to which the Demerged Company is a party or to the benefit of which it may be eligible, and which are subsisting or have effect immediately before the Effective Date, shall continue in full force and effect on or against or in favour of, as the case may be, the relevant Resulting Company.

(*d*) Upon the coming into effect of the Scheme, all consents, permissions, licenses, certificates, clearances, authorities, powers of attorney given by, issued to or executed in favour of the Demerged Company in relation to the Demerged Undertaking shall stand transferred to the relevant Resulting Company and such Resulting Company shall be bound by the terms thereof.

(*e*) In relation to any assets or instruments of any of the Demerged Undertakings which the Demerged Company owns or to which the Demerged Company is a party and which cannot be transferred to the relevant Resulting Company for any reason whatsoever, the same shall be held in trust by the Demerged Company for the benefit of the relevant Resulting Company till such transfer, insofar as it is permissible so to do, till such time as the transfer is effected.

(*f*) Upon the coming into effect of the Scheme, all debts, liabilities, loans raised and used, liabilities and obligations incurred, duties or obligations of any kind, nature or description (including contingent liabilities) of the Demerged Company (as on the Appointed Date) and relating to the Demerged Undertakings specified in Part B of Schedules I, II, III and IV of the Scheme shall, without any further act or deed, be demerged from the Demerged Company and be transferred to and be deemed to be transferred to the relevant Resulting Company to the extent that they are outstanding as on the Effective Date and on the same terms and conditions as applicable to the Demerged Company.

(*g*) The Scheme provides that if any of the debts, liabilities, loans raised and used, liabilities and obligations incurred, duties and obligations of the Demerged Company as on the Appointed Date deemed to be transferred to any of the Resulting Companies have been discharged by the Demerged Company after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to have been for and on account of the relevant Resulting Company.

(*h*) All loans raised and used and all liabilities and obligations incurred by the Demerged Company along with any charge, encumbrance, lien or security thereon, for the operations of any Demerged Undertaking after the Appointed Date and prior to the Effective Date, shall be deemed to have been raised, used or incurred for and on behalf of the relevant Resulting Company in which such Demerged Undertaking shall vest in terms of the Scheme and to the extent they are outstanding on the Effective Date, shall be transferred to the relevant Resulting Company. This is subject to the condition that no debts, liabilities, loans raised and used, liabilities and obligations incurred, dues and obligations shall have been assumed by the Demerged Company in relation to any Demerged Undertaking after the Appointed Date without the prior written consent of the relevant Resulting Company.

(*i*) The Scheme also makes provision for the transfer of all debentures, bonds or other debt securities, if any, of the Demerged Company relating to the liabilities comprised in the Demerged Undertakings, whether convertible into equity or otherwise, to the relevant Resulting Company.

(*j*) In so far as any Encumbrances over the assets comprised in the Demerged Undertakings are security for liabilities of the Remaining Undertaking retained with the Demerged Company, the same shall, on the Effective Date, without any further act, instrument or deed be modified to the extent that they shall stand released and discharged from the obligations and security relating to the same and the Encumbrances shall only extend to and continue to operate against the assets retained with the Demerged Company.

(*k*) Upon the coming into effect of the Scheme, each of the Resulting Companies shall indemnify the Demerged Company in relation to any claim, at any time, against the Demerged Company in respect of the liabilities, which have been transferred to it.

(*l*) The Scheme requires that, with effect from the Appointed Date and up to and including the Effective Date subject to the provisions of the Scheme, the Demerged Company shall be deemed to have been carrying on and to be carrying on all business and activities relating to the Demerged Undertaking for and on account of, and in trust for, the relevant Resulting Company.

(*m*) All profits and income accruing or arising to the Demerged Company, or losses and expenditure arising or incurred by it (including the effect of taxes if any thereon), relating to the Demerged Undertaking based on the audited accounts of the Demerged Company shall for all purposes, be treated as the profits or income or losses or expenditure, as the case may be, of the respective Resulting Company.

(*n*) The Scheme also requires that any of the rights, powers, authorities, privileges, obligations, duties and commitments attached, related or pertaining to the Demerged Undertakings exercised or undertaken by the Demerged Company shall be deemed to have been exercised or undertaken by the Demerged Company for and on behalf of, and in trust for and as an agent of the respective Resulting Companies.

(*o*) The Scheme provides that with effect from the Appointed Date and until the Effective Date, the Demerged Company will preserve and carry on the business of each of the Demerged Undertakings with reasonable diligence and business prudence and shall not undertake financial commitments or sell, transfer, alienate, charge, mortgage, or encumber any of the Demerged Undertakings or any part thereof save and except if the same is in its ordinary course of business as carried on by it as on the date of filing the Scheme with the High Court; or if the same is expressly permitted by the Scheme; or if the prior written consent of the Board of Directors of the relevant Resulting Company has been obtained.

(*p*) Provisions have also been made in the Scheme for transfer of all employees, consultants and advisors other than those specifically mentioned in clause

(*q*) below, of the Demerged Company engaged in or in relation to the Demerged Undertaking as on the Effective Date to the Resulting Company on terms and conditions not less favourable than those on which they are engaged in the Demerged Undertaking and without any interruption of service. The Scheme also provides for the transfer of pension funds, gratuity funds, superannuation funds, provident funds and such other funds in relation to such employees to the relevant Resulting Company.

(*r*) All employees, consultants and advisors employed r engaged on part time basis by the Demerged Company in relation to the businesses of the Demerged Undertakings shall, at the option of the Resulting Companies, be made available to the relevant Resulting Companies in relation to the Demerged Undertakings, at no additional cost for a period of 12 (twelve) months from the Effective Date or such earlier date as the Resulting Companies may deem proper or necessary, to provide the same services and advice as they were rendering to the Demerged Company.

(*viii*) The Scheme also makes provisions in relation to the Remaining Undertaking, and provides that the all the assets, liabilities and obligations pertaining thereto shall continue to belong to and be vested in and be managed by the Demerged Company, subject only to Clause 4.3.3 of the proposed Scheme which is in relation to Encumbrances in favour of banks, financial institutions and trustees or the debenture-holders. The Scheme also provides for the continuance of legal, taxation and other proceedings by or against the Demerged Company in relation to the Remaining Undertaking.

(*ix*) After the Scheme takes effect, in consideration of the demerger including the transfer and vesting of each of the Demerged Undertakings in the Resulting Companies pursuant to Part II of the Scheme, each of the Resulting Companies shall, without any further act or deed, issue and allot to each eligible member of the Demerged Company (except the Specified Shareholders) whose name is recorded in the register of members of the Demerged Company on the Record Date equity shares in the respective Resulting Company in the following ratios: 1. In the case of the Coal Based Energy Resulting Company, in the ratio of 1 (one) equity share in the Resulting Company of Rs. 10 (Rupees ten) each credited as fully paid-up for every 1 (one) equity share of Rs. 10 each fully paid-up held by such member or his/her/its heirs, executors, administrators or successors in the Demerged. 2. In the case of the Telecommunication Resulting Company, in the ratio of 1 (one) equity share in the Resulting Company of Rs. 5 (Rupees five) each credited as fully paid-up for every 1 (one) equity share of Rs. 10 each fully paid-up held by such member or his/her/its heirs, executors, administrators or successors in the Demerged Company.

(*x*) The Scheme of Arrangement provides that each of the Resulting Companies may, on or before expiry of 150 (One hundred and fifty) days from the Record Date, in consultation with the Depository for the GDR holders of the Demerged Company and by entering into appropriate agreements with the said Depository or any other Depository (appointed by the Resulting Companies) for the issuance of GDRs, (whether listed or otherwise), instruct such Depository to issue GDRs of the Resulting Companies, or any of them, to the holders of GDRs of the Demerged Company which shall be irrevocably put in motion within the said period. In the event that the Resulting Companies have not had such GDRs issued as aforesaid, the Bank of New York as the Depository for the Demerged Company shall, without reference to the Resulting Companies, sell the shares of the Resulting Companies in the open domestic market and distribute the net sale proceeds to such GDR holders on a proportionate basis. Notwithstanding anything contained above, any holder of GDRs of the Demerged Company may at anytime after the Record Date, but prior to the issuance of GDRs by a Resulting Company, instruct the Depository to transfer the underlying shares of such Resulting Company to such GDR holder. In such case, the relevant Resulting Company shall obtain such permissions as may be necessary.

(*xi*) The Scheme also provides that the holders of GDRs of the Demerged Company who wish to directly receive shares of the Resulting Companies may surrender the GDRs of the Demerged Company held by them before the Record Date in exchange for shares of the Demerged Company. Such GDR holders holding shares of the Demerged Company on the Record Date shall then be entitled to receive shares of Resulting Companies in accordance with the Share Entitlement Ratio specified in the Scheme of Arrangement.

(*xii*) The Scheme also provides certain other provisions applicable to issue of shares which include issue of shares by each of the Resulting Companies in dematerialized form, pending share transfers, listing of the shares, obtaining approval for issue of shares from relevant authorities, shares kept in abeyance and cost of acquisition of the shares of the Resulting Companies in the hands of shareholders of the Demerged Company. The Scheme also provides for the increase of share capital of the Resulting Companies, and provides for revised capital clauses in the Memorandum and Articles of Association of the Resulting Companies.

(*xiii*) The new equity shares issued and allotted by the Resulting Companies in terms of the Scheme shall be subject to the provisions of the Memorandum and Articles of Association of the Resulting Companies and shall inter se rank pari passu in all respects.

(*xiv*) Unless otherwise determined by the Board of Directors or any committee thereof of the Demerged Company and the Board of Directors or any committee thereof of the relevant Resulting

Company, issuance of equity shares in terms of Clause … of the Scheme shall be done to the eligible members of the Demerged Company within 45 days from the Effective Date.

(*xv*) The Scheme also contains provisions regarding accounting treatment in the books of the Demerged Company as also the Resulting Companies.

(xvi*)* The Scheme provides that at any time after the Record Date, the Applicant Company shall cause the Board of Directors of each of the Resulting Companies to be reconstituted in such manner as is agreed between each Resulting Company and Shri AA and thereupon each of the Resulting Companies shall be controlled and managed by Shri AA. The Demerged Company constituting the Remaining Undertaking shall continue to be controlled and managed by Shri MA.

(*xvii*) The Scheme also clarifies that the Demerged Company and each Resulting Company shall be entitled to declare and pay dividends, whether interim or final, to their respective shareholders in respect of the accounting period after the Appointed Date and prior to the Effective Date, provided that the shareholders of the Demerged Company shall not be entitled to dividend, if any, declared and paid by a Resulting Company to its shareholders for the accounting period prior to the Appointed Date.

(*xviii*) The holders of the shares of the Demerged Company and the Resulting Companies shall, save as expressly provided otherwise in the Scheme, continue to enjoy their existing rights under their respective Articles of Association including the right to receive dividends.

(*xix*) The Scheme provides that the Resulting Companies will have the right to use the "XXXXX" brand and logo and suitable agreements will be entered into in this regard. Further, suitable arrangements would also be entered into in relation to (*i*) non-competition in relation to the businesses of the Demerged Undertakings and the Remaining Undertaking; (*ii*) supply of gas for power projects of MPPL and MEL with the Gas Based Energy Resulting Company; and (*iii*) Transfer of leasehold rights of the Applicant Company to the relevant Resulting Company with respect to the relevant Demerged Undertaking.

(*xx*) The Scheme provides certain powers to the Demerged Company (by its Board of Directors) and each of the Resulting Companies (by its Board of Directors) to assent to any or modification or amendments or additions to the Scheme which the Court approves or imposes and which they may in their discretion accept. The Scheme further empowers the Demerged Company (by its Board of Directors) and each of the Resulting Companies (by its Board of Directors), to settle any question or difficulty arising under the Scheme to review the position relating to the satisfaction of various conditions of the Scheme and if necessary, to waive any of those conditions.

(*xxi*) The Scheme is conditional upon and subject to:

1. The Scheme being agreed to by the respective requisite majorities of the various classes of members and creditors (where applicable) of the Demerged Company and the Resulting Companies as required under the Act and the requisite orders of the High Court referred to in Clause 21 of the Scheme being obtained;
2. The requisite sanctions and approvals including but not limited to in-principle approvals, sanctions of any Governmental Authority, as may be required by law in respect of the Scheme being obtained; and
3. The certified copies of the orders of the High Court sanctioning the Scheme being filed with the Registrar of Companies, Maharashtra.

(*xxii*) The Scheme further provides that in the event of the Scheme failing to take effect within 12 months of first filing in High Court or such later date as may be agreed by the respective Boards of Directors of the Demerged Company and the Resulting Companies, the Scheme shall stand revoked, cancelled and be of no effect and become 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 such case, each Company shall bear its own costs, charges and expenses or shall bear costs, charges and expenses as may be mutually agreed.

(*xxiii*) The Scheme also provides that in the event of non-fulfillment of any or all obligations under the Scheme by any party towards any other party, *inter-se* or to third parties, the non performance of which will place any other party under any obligation, then the defaulting party will indemnify all costs and interest to such other affected party.

(*xxiv*) As regards costs, the Scheme provides that all costs, charges, levies and expenses (including stamp duty) in relation to or in connection with or incidental to the Scheme or the implementation thereof shall be borne and paid for by the Demerged Company. Members are requested to read the entire text of the Scheme of Arrangement to get fully acquainted with the provisions thereof.

22. The financial position of the Applicant Company will not be adversely affected by the Scheme of Arrangement. The financial position of the Applicant Company will continue to remain strong and it will be able to meet and pay its debts as and when they arise.

23. The rights and interests of the members and the creditors of the Applicant Company and the Resulting Companies will not be prejudicially affected by the Scheme.

24. The Scheme of Arrangement was approved by the Board of Directors of both the Applicant Company and the Resulting Companies on 5th of August 2005 and on 11th of August 2005 respectively.

25. The Applicant Company has received no objection letters from the Bombay Stock Exchange, the National Stock Exchange for filing the Scheme with the Delhi High Court.

26. No investigation proceedings have been instituted or are pending in relation to the Applicant Company under sections 235 and 250A of the Act.

27. On the Scheme of Arrangement being approved as per the requirements of section 391 of the Act, the Applicant Company and the Resulting Companies will seek the sanction of the Hon'ble Delhi High Court to the Scheme.

28. The directors of each of the Applicant Company and the Resulting Companies may be deemed to be concerned and/or interested in the Scheme only to the extent of their shareholding in the Companies, or to the extent the said directors are common directors in the Companies, or to the extent the said directors are the partners, directors, members of the companies, firms, association of persons, bodies corporate and/or beneficiary of trust that hold shares in any of the companies or to the extent they may be allotted shares in the Resulting Companies as a result of the Scheme of Arrangement. Shri MA and Shri AA may be regarded as interested in the Scheme to the extent set out therein, including specifically their interest in the control and management of the Demerged Company and the Resulting Companies respectively.

29. (*a*) The respective shareholding (singly or jointly) of Directors of the Applicant Company in the Applicant Company is as under:—

Sr. No.	*Name of Director*	*Number of Shares of the Applicant held in the Applicant Company as on 14th September 2005*
1.	MA	18,57,923
2.	NRM	1,21,174
3.	HRM	87,930
4.	HSK	1,155
5.	RHA	2,06,523
6.	MLB	1,40,000
7.	YPT	11,500
8.	DVK	6,772
9.	MPM	562
10.	SV	—
11.	AM	174
12.	DCJ	—

Note: None of the directors of the Applicant Company holds any shares in any of the Resulting Companies.

(*b*) The respective shareholding (singly or jointly) of Directors of the Resulting Companies in the Applicant Company is as under:

Sr. No.	*Name of Director of the Resulting Companies*	*Number of Shares held in the Applicant Company as on 14th September 2005*
1.	ST	36,009
2.	LVM	90
3.	SS	—
4.	AJ	—
5.	GD	366
6.	JPC	—

(*c*) Shri LVM, Director of the Resulting Companies, jointly with the Applicant Company, holds 1 (one) equity share in each of the Resulting Companies. None of the other Directors of the Resulting Companies holds any shares in any of the Resulting Companies.

30. The following documents will be open for inspection by the shareholders of Applicant Company up to one day prior to the date of the Meeting at its Registered Office between 11:00 a.m. and 1:00 p.m. on all working days, except Saturday:

(*a*) Certified copy of the Order of the Hon'ble Delhi High Court dated 16th day of September, 2005, in the above Company Application directing the convening of the meeting;

(*b*) Copies of the Memorandum and Articles of Association of the Applicant Company and the Resulting Companies;

(*c*) Audited Balance Sheet and Profit and Loss Account of the Applicant Company and the Resulting Companies for the financial year ended 31st March, 2005;

(*d*) Copies of the no objection letters dated 9th September, 2005, 9th September, 2005 and 12th September, 2005 received respectively from the Bombay Stock Exchange Limited, the National Stock Exchange of India Limited.

(*e*) Copy of the Annual Report of the Applicant Company for the financial year ended March 31, 2005

Appendix 7

Specimen of Summons for directions to convene a meeting under section 391

HEADING AS PER APPENDIX 2

SUMMONS FOR DIRECTIONS TO CONVENE A MEETING UNDER SECTION 391

LET ALL PARTIES CONCERNED attend the members of the Bench, in the Chambers on XX.XX.XXXX on the hearing of an application of the above named company (or of the applicant(s) above named) for an order that a meeting (or separate meetings) be held at 4th Floor, Silver Ark, 20/A, New Palasiya,, Indore (M.P.) of the creditors/or class of creditors, *e.g.*, debentureholders, other secured creditors, unsecured creditors, etc., or the members or class of members, *e.g.*, preference shareholders, equity shareholders, etc. of which class or classes (as the case may be) of the above company, for the purpose of considering, and if thought fit, approving, with or without modification, a scheme of compromise or arrangement proposed to be made between the company and the said [here mention the creditors or class of creditors or members, or the class of members] of the said company.

AND that directions may be given as to the method of convening, holding and conducting the said meeting(s) and as to the notices and advertisements to be issued.

AND that a chairman (or chairmen) may be appointed of the said meeting(s), who shall report the result thereof to the Hon'ble High Court/Tribunal.

Advocate for the applicant(s) Registrar

The affidavit of .... will be used in support of the summons.

Note.—Where the company is not the applicant, the summons should be served on the company, or, where it is being wound up, on its liquidator.

Appendix 8

Specimen of Affidavit in support of Summons

HEADING AS PER APPENDIX-2

I. XYZ solemnly affirm and say as follows:—

1. I, the managing director of XYZ Limited of the said company, authorised by the directors to make this affidavit.
2. The company was incorporated on 2nd day of April, 1990. The document now produced and shown to me is a printed copy of the memorandum and articles of association of the said company, and also contains copies of all the special resolutions, which have been passed and are now in force.
3. The registered office of the company is situated at 4th Floor, Silver Ark, 20/A, New Palasiya, Indore (M.P.).
4. The authorised share capital of the transferee company is Rs. 10,00,00,000 (Rs. Ten Crores only) divided into 1,00,00,000 (One Crore) Equity Shares of Rs. 10 (Rs. Ten) each. Subscribed share capital of the transferee company is Rs. 10,00,00,000 (Rs. Ten Crores only) divided into 1,00,00,000 (One Crore) Equity Shares of Rs. 10 (Rs. Ten) each fully paid-up.
5. The objects of the company are set out in the Memorandum of Association annexed hereto. They have briefly set out the main objects.
6. The company commenced the business of machinery and equipments, etc. and has been carrying on the same since 1st July, 1990.
7. It is necessary that a meeting (or meetings) of the members should be called to consider and approve the proposed scheme of amalgamation.
8. It is suggested that the meeting (or meetings) may be held at the premises of the registered office of the company or at such other place as may be determined by the court, and on such date(s) and at such time(s) as this Hon'ble High Court/Tribunal may direct; and that a chairman may be appointed for the meeting (or for each of the meetings) to be held.
9. It is suggested that notice of the proposed amalgamation and of the meeting may be published once in Naidunia and Free Press Journal and in such other manner as the Hon'ble High Court/Tribunal may direct.
10. It is prayed that necessary directions may be given as to the issue and publication of notices and the convening, holding and conducting of the meeting(s) proposed above.

Solemnly affirmed, etc.

XYZ
Before me
Commissioner for Oaths

Appendix 9

Specimen of the High Court/Tribunal's order on summon for Directions

HEADING AS PER APPENDIX 2

Dated XX.XX.XXXX

Upon the application of the above named company or, the applicant(s) above named by summons dated the XX day of XX.XXXX upon hearing Shri UKC, Advocate for the company and upon reading the affidavit of XYZ filed on XX.XX.XXXX and the exhibits therein referred to the scheme of amalgamation being a copy of the proposed amalgamation.

IT IS ORDERED

That a meeting or meetings of the members have to be held, of the above company, and shall be convened and held at 4th Floor, Silver Ark 20/A, New Palasiya, Plaza, Indore (M.P.) on XX.XX.XXXX at 1.30 p.m. in the afternoon for the purpose of considering, and if thought fit, approving, with or without modifications, the scheme of amalgamation to be made between the said companies.

That the advocate for the company above named do, within three days of this date file in the Hon'ble High Court/Tribunal the form of the advertisement, the notice and the statement to accompany the notice and the same shall be settled by the Bench Officer of this Hon'ble High Court/Tribunal.

That Shri D.K. Jain and failing him Shri V.K. Ladha shall be the Chairman of the meeting to be held on XX.XX.XXXX as aforesaid.

That the Chairman appointed for the meeting do issue the advertisement and send out the notices of the meeting(s) referred to above.

That at least 21 clear days before the day fixed for the meeting, an advertisement for convening the same and stating that copies of the said scheme of amalgamation and of the statement required to be furnished pursuant to section 393 and forms of proxy can be obtained free of charge at the registered office of the company or at the office of its advocate, be inserted once in the Official Gazette and once in each of the Naidunia and Free Press Journal newspapers.

That, in addition, at least 21 clear days before the meeting to be held as aforesaid, a notice for convening the said meeting at the place and time aforesaid, together with a copy of the said scheme of amalgamation, a copy of the statement required to be sent under section 393, and the prescribed form of proxy, shall be sent by pre-paid letter post under certificate of posting addressed to each of at their respective registered or last known addresses.

That the quorum for the said meeting(s) shall be Five.

That voting by proxy be permitted, provided that a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting, is filed with the company at its registered office at 4th Floor, Silver Ark, 20/A, New Palasiya, Indore (M.P) not later than 48 hours before the meeting.

That the value of each member shall be in accordance with the books of the company and, where the entries in the books are disputed, the chairman shall determine the value for purposes of the meeting.

And it is further ordered that the chairman do report to this Hon'ble High Court/Tribunal the result of the said meeting within 7 days of the conclusion of the meeting, and the said report shall be verified by his affidavit.

Dated this .... day of XXXX

(By the High Court/Tribunal)
BENCH OFFICER

Where the application is by a liquidator of the company, substitute the words 'liquidator' of the above company in liquidation' for the word 'company' wherever necessary.

Notes.—

(1) Where separate meetings are to be held, the provisions should be repeated in respect of each such meetings.

(2) Where the Hon'ble High Court/Tribunal directs the company or its liquidator or any other person to issue the advertisement and notices, suitable alteration should be made.

(3) If separate meeting of different classes of creditors and/or members are to be held, state the date, time and place of each of such meetings as fixed by the Judge, in separate paragraphs.

Appendix 10

Specimen of report by Chairman

HEADING AS PER APPENDIX 2

I, D.K. Jain, the person appointed by this Hon'ble High Court/Tribunal to act as Chairman of the meeting of equity shareholders of the above named company, summoned by notice served individually upon them and by advertisement dated the XX.XX.XXXX and held on the XX.XX.XXXX at 4th Floor, Silver Ark, 20/A, New Palasiya, Indore (M.P.) do hereby reported to this Hon'ble High Court/Tribunal as follows:—

1. The said meeting was attended either personally or by proxy by the 7 number of members of the said company entitled together to 50,00,000 shares the total number of shares holding aggregate of Rs. 5,00,00,000.
2. The Scheme of amalgamation was read out and explained by me to the meetings and the question submitted to the said meeting was approved by the members of the said company submitted to the meeting and agreed thereto.
3. The said meeting was unanimously of the opinion that the scheme of amalgamation should be approved and agreed who attended the meeting and voted in favour of the proposed amalgamation being adopted and carried into effect.

Dated this XX.XX.XXXX

(Sd.) D.K. JAIN
Chairman.

Appendix 11

Specimen of Order under section 394

HEADING AS PER APPENDIX-2

Dated ....

Upon the above petition and application made before the Hon'ble High Court/Tribunal on dated XX.XX.XXXX coming on for further hearing on XX.XX.XXXX upon reading, etc., and upon hearing, etc.

THIS HIGH COURT/TRIBUNAL ORDER

(1) That all the property, rights and powers of the transferor company specified in the first, second and third parts of the Schedule 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 for all the estate and interest of the transferor company therein but subject nevertheless to all charges now affecting the same (other than here set out any charges which by virtue of the compromise or arrangement are to cease to have effect); 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 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 clause .... of the scheme of amalgamation, herein the shares in the transferee company to which they are entitled under the said compromise or arrangement; and

(5) That the transferor company do within 14 days after the date of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the transferor 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 interested shall be at liberty to apply to the Hon'ble High Court/Tribunal in the above matter for any directions that may be necessary.

SCHEDULE

PART I

(Insert a short description of the freehold property of the transferor company)

PART II

(Insert a short description of leasehold property of the transferor company)

PART III

(Insert a short description of all stocks, shares, debentures and other charges in action of the transferor company)

Dated this the .... day of 2005

(By the Hon'ble High Court/Tribunal) Bench Officer

Appendix 12

Specimen of various Affidavits

I. Affidavit verifying dispatch and publication of notice of meetings

I, D.K. Jain S/o P.C. Jain, aged about 44 years R/o 204, Bijali Nagar, Bicholi Hapsi Road, Indore 452001, do solemnly affirm and say as under:

1. I am the Chairman appointed by the Hon'ble Bench of High Court/Tribunal of Madhya Pradesh, Bench at Indore (M.P.) for conducting the meeting of the members, secured creditors and unsecured creditors of the applicant company and authorised to make this affidavit.
2. I say that pursuant to the order dated xxxxxxx, passed by the Hon'ble Bench of High Court/Tribunal of Madhya Pradesh, Bench at Indore (M.P.) notice of the meeting of the members, secured creditors and unsecured creditors was published in the daily newspaper Free Press in English on xxxx and in the daily Danik Bhasker of Hindi language on xxxx. Hereto annexed and marked Annexure 'A-1' and 'A-2' are the original newspaper cuttings containing the notices so published.
3. I say that pursuant to the aforesaid order dated xxxxx, notices of the meeting of members, secured creditors and unsecured creditors were also sent from Indore (M.P.) alongwith the Scheme of Amalgamation and Explanatory Statement pursuant to the provisions of section 393 of the Companies Act, 1956 under the prepaid letter post under certificate of posting on xxxxxxx to all the members, secured creditors and unsecured creditors of the applicant company as on xxxxxx and hereto annexed and marked Annexure 'A-3' for the list of members, secured creditors and unsecured creditors to whom the notices were posted. I crave leave to refer to and rely upon the receipt/acknowledgement received from the postal department evidencing service of notice upon them.

Solemnly affirmed at Indore (M.P.)
This dated, xxxxxx
(D.K. JAIN)
Chairman appointed by the Hon'ble High Court/Tribunal for the meeting

II. Affidavit verifying the publication of notice in the official gazette

I, D.K. Jain S/o P.C. Jain, aged about 44 years R/o 204, Bijali Nagar, Bicholi Hapsi Road, Indore 452001, do solemnly affirm and say as under:

1. I am the Chairman appointed by the Hon'ble Bench of High Court/Tribunal of Madhya Pradesh, Bench at Indore (M.P.) for conducting the meeting of the members, secured creditors and unsecured creditors of the applicant company and authorised to make this affidavit.
2. I say that pursuant to the order dated xxxxxxx, passed by the Hon'ble Bench of High Court/Tribunal of Madhya Pradesh, Bench at Indore (M.P.) 2. Notice of the meeting of the members, secured creditors and unsecured creditors was published in the Official Gazette of the Government of Madhya Pradesh on xxxxxxx Hereto annexed and marked Annexure 'A-1' are the original copy of the said notices so published.

Solemnly affirmed at Indore (M.P.)
This dated, xxxxxx
(D.K. JAIN)
Chairman appointed by the Hon'ble High Court/Tribunal for the meeting

III. Affidavit verifying the report of chairman

I, D.K. Jain S/o P.C. Jain, aged about 44 years R/o 204, Bijali Nagar, Bicholi Hapsi Road, Indore 452001, do solemnly affirm and say as under:

1. That I have presided over the meetings of the shareholders, secured creditors and unsecured creditors of the transferor company XYZ Ltd. held on xxxxxxxxx at its Registered Office at 4th Floor, Silver ArK, 20/A, New Palasiya, Indore (M.P.) held in accordance with the Order of the Hon'ble High Court/Tribunal, Bench at Indore (M.P.) passed on dated xxxxxxxxx as under:

(1)	Meeting of the shareholders	at 11.30 A.M.
(2)	Meeting of the secured creditors	at 12.30 P.M.
(3)	Meeting of the unsecured creditors	at 01.30 P.M.

and the Scheme of Amalgamation of the Transferor Company M/s XYZ Ltd. was approved by the shareholders, secured creditors and the unsecured creditors under section 391 to 394 of the Companies Act, 1956 by poll.

2. That the Report of the Chairman as required under the rule 78 of the Companies (Court) Rules, 1959 and the facts stated in the accompanying Chairman Report containing Para No. 1 to 3 are true form my personal knowledge and nothing has been concealed.

Solemnly affirmed at Indore (M.P.)

This dated, xxxxxx

(D.K. JAIN)

Chairman appointed by the Hon'ble High Court/Tribunal for the meeting

Verification

I, the deponent D.K. Jain verify and signed that the contents of this affidavit are true and correct to my knowledge, nothing stated therein is falls and no material facts has been withheld there from.

Verified and signed on this day of xxxxxxx at Indore.

DEPONENT
Identified by me Advocate

IV. Affidavit verifying petition

I, XYZ S/o Shri PQR aged about 39 years of Indian inhabitant residing at xxxxxxxx do hereby solemnly affirm and says as follows:—

I am the Managing Director of XYZ Ltd., the transferor company, conversant with the facts of the case and able to depose to the same on my personal knowledge and authorise to make this affidavit.

The Statements contained in all the paragraphs 1 to 15 of the petition herein now shown to me and annexed with the affidavit are true to my knowledge as per the records of the petitioner company, nothing stated therein is false and no material facts has been with held therefrom.

Sworn by me today on xxxxxxxxx at xxxxx.

DEPONENT

Verification

I the deponent do solemnly verify the contents of the above affidavit to be true to my knowledge. Nothing stated herein above is false and nothing material has been with held there from.

Sworn and verified by me today on xxxxxx at xxxxx.

DEPONENT
Dated:
Identified by me
Advocate

Appendix 13

Specimen of Board resolution for approving a Scheme of Amalgamation

RESOLVED THAT pursuant to the provisions of sections 391 to 395 and other applicable provisions, if any, of the Companies Act, 1956 and sub clause 36 of Clause IIIB of the Objects Clause of the Memorandum of Association of the Company and subject to requisite approval of the members, financial institutions, banks and other Creditors to the Company and approval of the Hon'ble High Court/Tribunal, the Company be amalgamated with ABC Limited w.e.f. from the appointed date i.e. xxxxxxx.

RESOLVED THAT the draft Scheme of Amalgamation submitted to this meeting duly initialed by the Chairman for purposes of identification be and is hereby approved.

RESOLVED THAT Shri XYZ, the Managing Director and/or Shri PR, the Director of the Company be and are hereby authorised severally to make such alterations and changes therein as may be expedient or necessary for satisfying the requirement or conditions imposed by the Hon'ble High Court of M.P./Tribunal, provided that prior approval of the Board shall be obtained for making any material changes in the said Scheme of Amalgamation as approved in this meeting.

RESOLVED THAT the Fair Exchange Ratio for exchange of the equity shares of XYZ Limited with the Equity Shares of ABC Limited as per the Report dated xxxxxx of M/s R.S.Bansal & Co., Chartered Accountants as placed before the Board be and is hereby considered and accepted by the Board and that in the opinion of the Board, the said Scheme of Amalgamation of XYZ Limited with ABC Limited will be of advantage and beneficial to the shareholders of this Company and the terms thereof are fair and reasonable and the proposed proportion of allotment of shares of 10 (Ten) equity shares of Rs. 10 each of ABC Limited for every 3 (Three) equity shares of Rs. 100 each held by the shareholders of XYZ Ltd. is fair and reasonable.

RESOLVED THAT Shri XYZ, the Managing Director, Shri PR, the Director, Shri NJ, the Authorised Signatory, Shri Dilip Kumar Jain, Company Secretary in Practice and Shri U.K.Chouwkse, the Advocate of the Company be and are hereby severally authorised to take all steps necessary, in connection with the filing of:—

(*a*) application to the Hon'ble High Court of Madhya Pradesh/Tribunal for directions for holding meetings of the shareholders/creditors of the Company;

(*b*) petitions for confirmation of the Scheme by the Hon'ble High Court of Madhya Pradesh/Tribunal; and

(*c*) to do all acts and things as may be considered necessary and expedient in relation thereto and for that purpose to engage any counsel.

Appendix 14

Specimen of Board resolution to be pass by Transferee Company

I. Appointment of Advisor for Merger activities

The Board considered that looking into the proposed plan for amalgamation/merger of XYZ Limited into the ABC Limited u/s 391-394 of the Companies Act, 1956, it would be appropriate to appoint an advisor for proper and smooth completion of all the formalities related to the said merger. The Board considered to give the said assignment to M/s DKJ & Co., Company Secretaries and after due discussion passed the following resolution unanimously:

RESOLVED THAT DKJ & Company, Company Secretaries, be and is hereby appointed as an Advisor for the matters relating to the amalgamation/merger of XYZ Limited into the ABC Limited u/s 391-394 of the Companies Act, 1956 and Shri XYZ, the Managing Director of the Company be and is hereby authorised to finalise the terms and conditions and remuneration with DKJ & Co., Company Secretaries as may be agreeable to him.

FURTHER RESOLVED THAT D.K.Jain & Co., Company Secretaries, be and is hereby authorised to prepare draft Scheme of amalgamation in consultation with Shri U.K.Chouwkse, the Advocate, Shri Anil Bhaskaran, the Company Secretary and Shri PR, the Director of the Company.

II. Appointment of Advocate

The Board considered that looking into the proposed plan for amalgamation/merger of XYZ Limited into the ABC Limited u/s 391-394 of the Companies Act, 1956, it would be required to appoint an advocate to file application for merger and subsequent petition before the Hon'ble High Court Madhya Pradesh/Tribunal and to appear before the Court/Tribunal for and on behalf of the Company. The Board considered to give the said assignment to M/s U.K.Chowkse, Advocate and after due discussion passed the following resolution unanimously:

RESOLVED THAT Shri UKC, Advocate, be and is appointed as the Solicitor of the Company for the matter relating to the amalgamation/merger of XYZ Limited into the ABC Limited under section 391-394 of the Companies Act, 1956 and he is further authorised to appear before the Hon' M.P. High Court/Tribunal and to submit any application, declaration, affidavit, confirmation, statements and to receive summons, notices, orders or directions from the Court/Tribunal for and on behalf of the Company and Shri XYZ, the Managing Director of the Company be and is hereby authorised to give *Vakalatnama*/Power of Attorney in favour of Shri U.K.Chowkse for and on behalf of the Company and to finalise the terms and conditions and remuneration with Shri U.K.Chowkse, Advocate.

III. Assignment to the Auditors for certification of Share Exchange Ratio

The Board considered that looking into the proposed plan for amalgamation/merger of XYZ Limited into the ABC Limited under section 391-394 of the Companies Act, 1956, it would be required to determine and obtain a certificate from the Auditors for the fair Share Exchange Ratio between the Equity Share Capital of XYZ Limited and ABC Limited in relation of the said merger. The Board considered and passed the following resolution unanimously:

RESOLVED THAT M/s R.S.Bansal & Company, Chartered Accountants, the Auditors of the Company be and is hereby requested to determine and certify the fair Equity Share Exchange ratio between the XYZ Limited and ABC Limited pursuant to the provisions of section 391-394 of the Companies Act, 1956 in relation to the amalgamation/merger of XYZ Limited into the ABC Limited under section 391-394 of the Companies Act, 1956 and Shri PR, the Director be and is hereby authorised to give any information, statement and record as may be required by the Auditors for the purpose of issuance of the said certificate.

IV. Consideration and acceptance of share exchange ratio

The Chairman placed before the Board a copy of the certificate dated xxxxx received from M/s R.S. Bansal & Co., Chartered Accountants, for their certification for Equity Share Ratio between the XYZ Limited and ABC Limited for the purpose of the exchange of shares of XYZ Limited with the Shares of ABC Limited.

The Board considered and after due discussion passed the following:

RESOLVED THAT the Certificate dated xxxxxx for the Equity Share Exchange Ratio between the shares of XYZ Limited and ABC Limited obtained from M/s R.S.Bansal & Co., Chartered Accountants, the Auditors of the Company and as placed before the Board be and is hereby considered, and approved by the Board of directors of the Company and subject to the approval of the Hon'ble High Court of Madhya Pradesh/Tribunal, as required u/s 391-394 of the Companies Act, 1956 the 3 Fully paid-up Equity Shares of Rs. 100 each of XYZ Limited be exchanged with the 10 Fully paid up Equity Shares of Rs. 10 each of ABC Limited on the record date as may be determined by the Board.

FURTHER RESOLVED THAT the above said share exchange ratio be included in the Scheme of Amalgamation and in the notice of the Extra Ordinary General Meeting of the Company.

V. Approval of the scheme of amalgamation

RESOLVED THAT the pursuant to the provisions of section 391-394 of the Companies Act, 1956, the Scheme of Amalgamation as submitted to this meeting and initialed by the Chairman for purposes of identification be and is hereby approved and Shri SSB, the Managing Director and/or Shri PR, the Director of the Company be and are hereby authorised severally to make any such alterations and changes therein as may be expedient or necessary for satisfying the requirement or conditions imposed by the High Court of M.P./Tribunal provided that prior approval of the Board shall be obtained for making any material changes in the said Draft Scheme of Amalgamation as approved in this meeting.

RESOLVED THAT in the opinion of the Board, the said Scheme of Amalgamation of XYZ Limited with ABC Limited will be of advantage and beneficial to the shareholders of this Company and the terms thereof are fair and reasonable and the proposed proportion of allotment of shares of 10 (Ten) equity shares of Rs. 100 each of ABC Limited for every 3 (Three) equity shares of Rs. 10 each held by the shareholders of XYZ Limited is also fair and reasonable.

RESOLVED THAT Shri SSB, the Managing Director and/or Shri PR, the Director of the Company be and are hereby severally authorised to take all steps necessary, in connection with the filing of:—

(*a*) application to the High Court/Tribunal for seeking directions for holding meetings of the shareholders/creditors of the Company and to give *Vakalatnama*, Power of Attorney, in favour of Shri UKC, Advocate and to give any statement, declarations, affidavit, confirmation to the High Court of Madhya Pradesh/Tribunal.

(*b*) petitions for confirmation of the Scheme by the Hon'ble High Court of Madhya Pradesh/Tribunal; and

(*c*) to do all acts and things as may be considered necessary and expedient in relation thereto and for that purpose to engage any counsel.

RESOLVED FURTHER THAT subject to the directions as may be issued by the High Court of Madhya Pradesh/Tribunal, pursuant to the provisions of section 391-394 of the Companies Act, 1956 an Extra Ordinary General Meeting of the members of the company be convened on xxxxxxxxx at the registered office of the Company and that the Hon'ble High Court/Tribunal be request to appoint any one from the following persons to call, hold and conduct the meeting as may be directed by the Court:

(1) ....

(2) ....

(3) ....

VI. For allotment of shares

RESOLVED THAT .... equity shares in the company be and are hereby allotted to the shareholders of XYZ Limited, being the transferor company in the Scheme of Amalgamation with this company, as sanctioned by the Hon'ble Madhya Pradesh High Court/Tribunal by its order dated xxxx according to the share exchange ratio as shown in the statement of allotment placed on the table.

FURTHER RESOLVED THAT the names of the allottees as shown in the statement of allotment, which is placed on the table, be entered in the Register of members of the company as the members of the company.

FURTHER RESOLVED THAT Mr. Anil Bhaskaran, the Company Secretary, be and is hereby directed to file with the Registrar of Companies, the return of allotment pertaining to the aforesaid allotment in the prescribed form pursuant to section 75 of the Companies Act, 1956 within the prescribed time limit of 30 days from this date.

Appendix 15

Specimen of notice for Record Date

Notice is hereby given pursuant to section 154 of the Companies Act, 1956 that the Board of directors of the Company have decided the Record date of XYZ Ltd. ("the Transferor Company") on xxxxx, in amalgamation with ABC Limited, ("the Transferee Company"), to ascertain the members of the Company for the purpose of exchange of its every three fully paid up equity shares of Rs. 100 each with ten fully paid up equity shares of Rs. 10 each of the Transferee Company, according to the Clause No. 10(*a*) of the Scheme of Amalgamation as approved by the Hon'ble High Court Bench/Tribunal at Indore, under the provisions of section 391 to 394 of the Companies Act, 1956 by virtue of the order issuance on dated xxxxxxxx.

Further notice is hereby given that all the members who have not paid their balance amount of call money should deposit the same with the Transferee Company and submit their fully paid-up equity shares for exchange of their shares with the shares of the Transferee Company.

Further notice is hereby given that no share in the fractional entitlement shall be issued by the transferee company and the Board of directors will issue the same to a director in consolidated manner as may be required, who will sell them and the realised value as the case may be shall be distributed among the concerned shareholder of the Transferor Company.

For, XYZ Ltd.

Place: Indore (................)

Date: xxxxxx Director

Appendix 16

Specimen of Public notice

By an order dated xxxxxxxx, passed in the Company Application No. 1 of xxxx by the Hon'ble High Court of Madhya Pradesh/Tribunal, Bench at Indore directed convening meetings of shareholders, secured creditors and unsecured creditors of the transferor and transferee companies for the purpose of considering and if thought fit approving, with or without modification, the Scheme of Amalgamation of XYZ Limited with ABC Limited.

The meetings so ordered were convened and both the transferor and transferee companies have presented the petition before the Hon'ble High Court/Tribunal of Madhya Pradesh, Bench at Indore for approval of the said Scheme of amalgamation.

Notice is hereby given that the said petition under section 391 and 394 of the Companies Act 1956, for sanction of the Scheme of Amalgamation of XYZ Limited with ABC Limited will be heard in the Hon'ble High Court/Tribunal on xxxxxxx.

Any creditor or contributory or other persons desirous of supporting or opposing the making of an order on the said petition should send notice to the petitioner or its advocate, notice of his intention signed by him or his advocates with his name and address so as to reach the petitioner or its advocate not later than five days before the date fixed for hearing of the petition and appear at the hearing for the purpose in person or by his advocate. A copy of the petition will be furnished by the undersigned to any creditor or contributory or persons requiring the same on payment of the prescribed charges for the same.

Any affidavit intended to be used in opposition to the petition should be filed in the Hon'ble High Court/Tribunal and a copy served on the petitioner or its advocate not less than 5 days before the date fixed for hearing.

U.K.Chowkse SCV

Advocates for Petitioner REGISTRAR

6/7, New Palasia HIGH COURT OF M.P./TRIBUNAL, BENCH AT INDORE (M.P.)