

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, MUMBAI

COMPANY SCHEME PETITION NO. 125 OF 2017

CONNECTED WITH  
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 991 OF 2016

**Gammon India Limited** ...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 124 OF 2017

CONNECTED WITH  
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 992 OF 2016

**Gammon Engineers and Contractors Pvt. Ltd.** ...Petitioner Company

In the matter of the Companies Act, 1956 (I of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 AND Sections 230 to 232 of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between Gammon India Limited (the Transferor Company) AND Gammon Engineers and Contractors Private Limited (the Transferee Company) AND their respective shareholders and creditors

**CALLED FOR HEARING:**

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner Company.

Mr. Ramakatha, Joint Director in the office of Regional Director

Coram: **B.S.V. Prakash Kumar, Member (Judicial)**

**V. Nallasenapathy, Member (Technical)**

Date: 22<sup>nd</sup> March, 2017

**MINUTES OF THE ORDER**

Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.

2. The present Scheme of Arrangement pertains to transfer of the Civil EPC Undertaking of Gammon India Limited and engaged in, *inter alia*, the business of civil engineering, design and construction of power transmission and



distribution limited into Gammon Engineers and Contractors Private Limited, which is 100% legally and beneficially held by GIL through its wholly owned subsidiary "Gammon Retail Infrastructure Private Limited". Transfer of the Civil EPC Undertaking by GIL to GECPL would help in achieving the desired operating structure and shall *inter alia* have the following benefits (i) To create a sector focused company, (ii) To enable investment by a strategic investor, (iii) Ring-fence businesses from each other, and (iv) Deleverage the balance sheet of GIL.

3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. By order dated 2<sup>nd</sup> December, 2016 passed by the Hon'ble Bombay High Court in Company Summons for Direction Number 991 of 2016, meetings of equity shareholders and unsecured creditors of GIL were convened and held on January 6, 2017. The meeting of the secured creditors of GIL was dispensed with in view of the undertaking given by GIL that they would issue individual notice of hearing of the petition to all its secured creditors.
5. By the order dated 2<sup>nd</sup> December, 2016, passed by the Hon'ble Bombay High Court in Company Summons for Direction Number 992 of 2016 convening of meetings of equity shareholders of GECPL was dispensed with in view of consents given by all the equity shareholders of GECPL. Also, convening of meetings of unsecured creditors of GECPL was dispensed with in view of the undertaking given by GECPL that they would issue individual notice of hearing of the petition to all its unsecured creditors.
6. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in Company Summons for Direction Nos. 991 of 2016 and 992 of 2016.
7. By order dated 1<sup>st</sup> February, 2017 passed by the National Company Law Tribunal, Mumbai Bench. Petitions filed by both the Petitioners were admitted and fixed for final hearing on 22<sup>nd</sup> March, 2017. By the said order, the Petitioners were also directed to issue notices etc.
8. The Learned Advocate appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements as per directions of



the Hon'ble Bombay High Court and they have filed necessary Affidavits of compliance in the Hon'ble Bombay High Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.

9. The Regional Director has filed his Report on March 21, 2017 stating therein that save and except as stated in paragraph IV(a) to IV (c) of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Paragraph IV, of the said Report reads as follows:

- a. *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
- b. *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It is observed that the Company vide letter dated 02.02.2017 has served a copy of the Company Scheme Petition No. 124 and 125 of 2017 along with relevant order etc. However, as on date there is no response from Income Tax Department. Further, the Regional Director has also issued a reminder on 21.03.2017 to respective IT Department. The tax implication if any arising out of the Scheme is subject to the final decision of the Income Tax Authorities. The approval of the Scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the Transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
- c. *Petitioner in the Clause No. 5.3 inter alia has mentioned that GECPL shall, if necessary and to the extent required, increase its authorized share capital to facilitate the issue of equity shares under this Scheme. Therefore, Deponent prays that the Hon'ble Tribunal may pass orders to comply with the sec 61, r/w sec 13, sec 64 and other applicable sections of the Companies Act, 2013*

10. As far as observation of the Regional Director, as stated in paragraph IV(a) of his Report is concerned, the Petitioner Companies submit that in addition to compliance of AS -14 (IND AS -103), the Petitioner Companies shall pass such



accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.

11. As far as observation of the Regional Director, as stated in paragraph IV(b) of his Report is concerned, the Petitioner Companies submit that they are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

12. As far as observation of the Regional Director, as stated in paragraph IV(c) of his Report is concerned, the Petitioner Company in CSP 124 states that it shall increase its authorized share capital to facilitate the issue of equity shares pursuant to the Scheme and it shall comply with the applicable provisions of the Companies Act, 2013.

13. From the material on record, the Scheme appears to be fair, reasonable and is not violative of any provisions of law nor is not contrary to public policy.


14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 124 of 2017 and 125 of 2017 are made absolute in terms of prayer clause (a) of the respective petitions.

15. Petitioners are directed to lodge a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013.

16. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.

17. All concerned regulatory authorities to act on a copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai.

Certified True Copy  
Date of Application 27-3-17  
Number of Pages 4  
Fee Paid Rs. 201-  
Applicant called for collection copy on 31-3-17  
Copy prepared on 31-3-17  
Copy issued on 31-3-17

  
B.S.V. Prakash Kulkarni Member (Judicial)

  
V. Nallasenapathy Member (Technical)

**SCHEME OF ARRANGEMENT**

**BETWEEN**

**GAMMON INDIA LIMITED ('GIL' or 'Transferor Company')**

**AND**

**GAMMON ENGINEERS AND CONTRACTORS PRIVATE LIMITED ('GECPL'  
or 'Transferee Company')**

**AND**

**THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS**

**(Under Sections 391 to 394 of the Companies Act, 1956 or any re-enactment thereof)  
("the Scheme")**

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**(A) PREAMBLE**

This Scheme of Arrangement is presented under Sections 391 to 394 and other applicable provisions of the Companies Act, 1956 / Companies Act, 2013 for the transfer of the Civil EPC Undertaking (*defined hereinafter*) of Gammon India Limited ('GIL' or 'Transferor Company'), a company incorporated under the Act (hereinafter defined) with registered office at Gammon House, Veer Savarkar Marg, Prabhadevi, Mumbai 400 025 and engaged in, *inter alia*, the business of civil engineering, design and construction of power transmission and distribution limited into Gammon Engineers And Contractors Private Limited ('GECPL'), a company



incorporated under the Act and which is 100% legally and beneficially held by GIL through its wholly owned subsidiary "Gammon Retail Infrastructure Private Limited" with registered office at Gammon House, Veer Savarkar Marg, Prabhadevi, Mumbai 400 025.

The Company vide a business transfer agreement dated July 21, 2016 (the 'BTA'), has agreed to transfer one of the undertakings relating to Civil EPC business, defined therein as the Identified Business ("BTA Undertaking") to GECPL. Pursuant to this Scheme the Company proposes to transfer the Transferred Undertaking to GECPL as part of the effort to consolidate the entire Civil EPC business in GECPL.

This Scheme also provides for various other matters consequential or otherwise integrally connected therewith.

#### (B) DESCRIPTION OF THE SCHEME

In furtherance of the understanding between the Transferor Company and the Transferee Company, this Scheme, *inter alia*, deals with the Transfer of the Civil EPC Undertaking from the Transferor Company to the Transferee Company (more particularly described in Part II of this Scheme) and various other matters consequential to or otherwise integrally connected with the above, pursuant to the provisions of Sections 391 to 394 and other applicable provisions of the Companies Act, 1956 in the manner provided for in this Scheme.

#### (C) RATIONALE FOR THE SCHEME

1. Transfer of the Civil EPC Undertaking by GIL to GECPL would help in achieving the desired operating structure and shall *inter alia* have the following benefits:

1. To create sector focused company;



- ii. To enable investment by strategic investor;
- iii. Ring-fence businesses from each other; and
- iv. Deleverage the balance sheet of GIL.

(D) **Parts of the Scheme:**

This Scheme is divided into the following parts:

- (i) **PART I** deals with the definitions and share capital;
- (ii) **PART II** deals with Slump Exchange of Civil EPC Undertaking into GECPL;
- (iii) **PART III** deals with general terms and conditions and other miscellaneous provisions applicable to this Scheme.

**PART I**

**DEFINITIONS AND SHARE CAPITAL**

**1. DEFINITIONS**

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

- 1.1 "Act" or "the Act" means the Companies Act, 1956 and/or the Companies Act, 2013 (as the case may be and to the extent applicable) as in force from time to time; it being clarified that as on the date of approval of this Scheme by the Board of Directors of GIL and GECPL, Sections 391 to 394 of the Companies Act, 1956 continue to be in force with the corresponding provisions of the Companies Act, 2013 not having been notified. Accordingly, references in this Scheme to particular provisions of the Act are references to particular provisions of the Companies Act, 1956 / Companies Act, 2013 as may be in force;



- 1.2 **“Applicable Law”** means (a) all applicable statutes, enactments, acts of legislature or parliament, laws, ordinances, rules, bye-laws, regulations, listing agreements, notifications, guidelines or policies of any applicable country and/or jurisdiction, (b) administrative interpretation, writ, injunction, directions, directives, judgment, arbitral award, decree, orders or governmental approvals of, or agreements with, any governmental authority or recognized stock exchange, and (c) international treaties, conventions and protocols, as may be in force from time to time;
- 1.3 **“Appointed Date”** means the closing of the business hours on 1<sup>st</sup> day of July, 2016 or such other date as may be fixed or approved by the High Court;
- 1.4 **“Civil EPC Business”** means Civil Engineering, Procurement and Construction business carried on by the Transferor Company in roads, hydro-power, nuclear power, tunnels, bridges but excluding other contracts as listed in Schedule I..
- 1.5 **“Civil EPC Undertaking”** means the Transferred Undertaking as a going concern, with all properties, pre-qualifications, rights and powers and all debts, liabilities, duties and obligations comprised in and/ or pertaining to the Transferred Undertaking as on the Appointed Date, including:
- (i) all properties and assets, movable and freehold and leasehold immovable, including the immovable properties relating to BTA undertaking allowed to be used by the buyer therein, including right to use the premises called ‘Gammon House’ without payment of any license fee for a period of 2 (two) years from the Appointed Date, real and personal, tangible and intangible, corporeal and incorporeal, in possession, or in reversion, present and contingent of whatsoever nature, wheresoever situated; as on the Appointed Date relating to the Transferred Undertaking , leases, tenancies and agencies of the Transferor Company relating to the Transferred Undertaking, plant and machineries, electrical installations, vehicles, equipments, furnitures, investments, sundry debtors, inventories, other



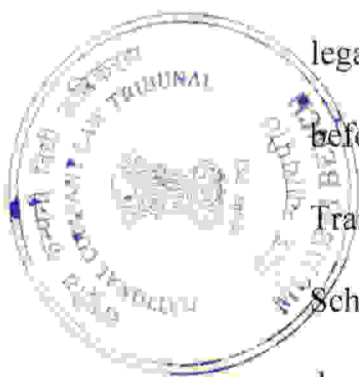
current assets, cash and bank balances, bills of exchange, deposits, loans and advances (including recoverable from identified subsidiaries), and other assets as appearing in the books of account of the Transferor Company in relation to the Transferred Undertaking;

- (ii) all other interests or rights (including claims, arbitration awards, etc.) or accumulated experience and performance qualifications, including financial, technical and other qualifications, in or arising out of or relating to the Civil EPC Business together with all respective powers, interests, charges, privileges, benefits, entitlements, building plans, drawings (including approvals obtained for such drawings or any pending applications made for approvals), industrial and other registrations, licenses, quotas, brands and trademarks, including trademark "Gammon" (subject to the right of GIL and its Group Companies to use the trademark "Gammon" without payment of any fees or royalty to GECPL for a period of two years from the Effective Date, subsequent to which the trademark may be used by GIL and its Group Companies based on mutual discussions with the Parties and also GIL changing its name within six months of the Effective Date of the Scheme), patents, copyrights, other intellectual property rights, liberties, easements and advantages, subsidies, grants, taxes, tax credits/ incentives (including but not limited to credits/ incentives in respect of sales tax, value added tax, turnover tax, excise duty, service tax etc.), tax holiday benefits and other benefits appertaining to the Transferred Undertaking and/or to which the Transferor Company is entitled to in respect of the Transferred Undertaking of whatsoever kind, nature or description held, applied for or as may be obtained thereafter together with the benefit of all respective contracts, sub-contracting agreements entered into with the GECPL and engagements relating to the Transferred Undertaking;



- (iii) powers and facilities of every kind, nature and description whatsoever, rights to use and avail of telephones, facsimile connections and installations, utilities, electricity, water and other services, and all other interests in connection with or relating to the Transferred Undertaking;
- (iv) all debts, liabilities, duties, funded and non-funded facilities, bank guarantees, letters of credit and obligations of the Transferor Company in relation to the Transferred Undertaking including loans / borrowings secured on investment in identified subsidiaries being transferred and further including liabilities (including those arising in future) on account of loans, sundry creditors, sales tax, bonus, gratuity and other taxation and contingent liabilities of the Transferor Company pertaining to or relatable to the Transferred Undertaking;
- (v) all employees of the Transferor Company engaged in or in relation to the Transferred Undertaking, on the date immediately preceding the Effective Date; and
- (vi) all books, records, files, papers, computer software alongwith their licenses, manuals and backup copies, drawings, data catalogues, and other data and records, whether in physical or electronic form, directly or indirectly in connection with or relating to the Transferred Undertaking.

Provided that the Transferor Company will have the right to access the books, records, files, papers, computer software alongwith their licenses, manuals and backup copies, drawings, data catalogues, and other data and records pertaining to the Civil EPC Undertaking in case required in any legal, taxation and other proceedings whether civil or criminal (including before any statutory or quasi-judicial authority or tribunal) by or against the Transferor Company under any statute, even after coming into effect of the Scheme and the Trasferee Company shall be obliged to provide such documents and other records to the Transferor Company.



- 1.6 **"Effective Date"** means the last of the dates on which all the conditions and matters referred to in Clause 16 of this Scheme occur or have been fulfilled or waived in accordance with this Scheme. Any references in the Scheme to "upon the Scheme becoming effective" or "effectiveness of the Scheme" shall mean the "Effective Date";
- 1.7 **"High Court"** means the High Court of Judicature at Bombay or such other authority having jurisdiction in the matter and shall include the National Company Law Tribunal, if and when applicable;
- 1.8 **"Remaining Business of GIL" or "Remaining Undertaking of GIL"** means all the undertakings, businesses, activities and operations of GIL, including the premises called 'The Gammon House' but excluding the Civil EPC Undertaking (as defined in Clause 1.5 above)
- 1.9 **"Scheme" or "the Scheme" or "this Scheme"** means this Scheme of Arrangement in its present form as submitted to the Honorable High Court or this Scheme with such modification(s), if any made, as per Clause 15 of the Scheme;
- 1.10 **"Stock Exchanges"** means BSE Limited and The National Stock Exchange of India Limited;
- 1.11 **"Transferred Undertaking"** means the Civil EPC Business excluding the BTA Undertaking and other contracts as per Schedule I

## 1A Construction

- 1A.1 Any question that may arise as to whether a specified asset or liability pertains or does not pertain to the Civil EPC Undertaking or whether it arises out of the activities or operations of the Civil EPC Undertaking shall be decided by mutual agreement between the Board of Directors of GIL and GECPL.



1A.2 All terms and words not defined in this Scheme shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning ascribed to them under the Act, the Securities Contract Regulation Act, 1956, Securities and Exchange Board of India Act, 1992 (including the Regulations made thereunder), the Depositories Act, 1996, other applicable laws, rules, regulations, bye-laws, as the case may be or any statutory modification or re-enactment thereof from time to time.

## 2. SHARE CAPITAL

2.1 The authorized, issued, subscribed and paid-up share capital of GIL as on March 31, 2016 is as under:

Share Capital	Amount in Rs. Crores
<b>Authorized Share Capital</b>	
74,710,000,000 Equity Shares of Rs. 2 each	14,942.00
3,000,000 6% Optionally Convertible Preference Shares of Rs. 350/- each	105.00
<b>Total</b>	<b>15,047.00</b>
<b>Issued Share Capital</b>	
366,303,349 Equity Shares of Rs. 2 each, fully paid up	73.26
<b>Total</b>	<b>73.26</b>
<b>Subscribed and Fully Paid up Capital</b>	
364,722,809 Equity Shares of Rs. 2 each, fully paid up	72.94
<b>Share Forfeiture Account</b>	



Share Capital	Amount in Rs. Crores
Money received in respect of Right Shares of Rs.10/- each forfeited	0.34
<b>Total</b>	<b>73.28</b>

The shares of GIL are listed on Stock Exchanges.

- 2.2 The authorized, issued, subscribed and paid-up share capital of GECPL as on March 31, 2016 is as under:

Share Capital	Amount in Rs.
<b>Authorized Share Capital</b>	
1,00,000 Equity Shares of Rs.10/- each	10,00,000
<b>Total</b>	<b>10,00,000</b>
<b>Issued, Subscribed and Paid-up Share Capital</b>	
1,00,000 Equity Shares of Rs.10/- each, fully paid-up	10,00,000
<b>Total</b>	<b>10,00,000</b>

Subsequent to the above date, the Board of Directors of the Company have approved the increase of authorized share capital of the Company from Rs. 10,00,000/- to Rs. 250,00,000/-. As on the date of approval of the Scheme by the Board of Directors of the Companies, the entire share capital of GECPL is 100% legally and beneficially held by GIL through its wholly owned

subsidiary "Gammon Retail Infrastructure Private Limited.



**DATE OF TAKING EFFECT AND OPERATIVE DATE**

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

## PART II

### SLUMP EXCHANGE OF CIVIL EPC UNDERTAKING INTO GECPL

#### 4. SLUMP EXCHANGE

4.1 On and from the Effective Date the Civil EPC Undertaking shall be transferred to and vested in GECPL as a going concern from the Appointed Date, as detailed in Clause 4.2 below, against issue of shares specified in Clause 5 hereinafter.

#### 4.2 TRANSFER AND VESTING OF CIVIL EPC UNDERTAKING

Upon the Scheme becoming effective, with effect from the Appointed Date, the Civil EPC Undertaking shall, in accordance with Sections 391 to 394 of the Act and all other applicable laws, if any, stand transferred to and vested in or be deemed to be transferred to and vested in GECPL on a going concern basis and in the following manner:

4.2.1. all the assets of Civil EPC Undertaking, except for the portions specified in Clauses 4.2.2 and 4.2.3 below, of whatsoever nature and where so ever situated and incapable of passing by manual delivery and/or endorsement or otherwise, shall, under the applicable provisions of Sections 391 and 394 and all other provisions, if any, of the Act, without any further act or deed be transferred to and vested in and/or deemed to be transferred to and vested in GECPL.

All the moveable assets including cash in hand, if any, of Civil EPC Undertaking, capable of passing by manual delivery or by endorsement and delivery shall be so delivered or endorsed as the case may be to GECPL.

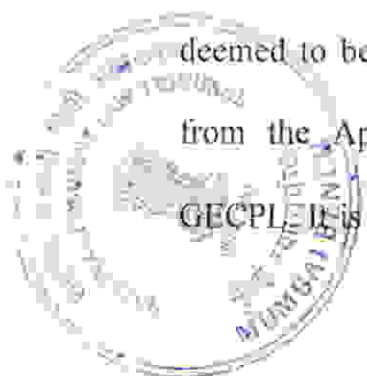
On such delivery or endorsement and delivery, the same shall become the



property of GECPL to the end and intent that the ownership and property therein passes to GECPL on such handing over in pursuance of the provisions of Section 394 of the Act.

4.2.3. in respect of the moveable properties of Civil EPC Undertaking other than specified in Clause 4.2.2 above and any intangible assets, including sundry debtors, loans receivable, advances, if any, recoverable in cash or kind or for value to be received, bank balances and deposits, if any, with the government, semi-government, local and other authorities and bodies, companies, firm, individuals, trusts, etc., GECPL may itself or require GIL and GIL shall upon such requisition from GECPL, at any time after coming into effect of this Scheme in accordance with the provisions hereof, if so required under any law or otherwise, give notices in such form as it may deem fit and proper, to each person, debtors or depositors, as the case may be, that pursuant to the High Court having sanctioned the Scheme, the said debt, loan receivable, advance or deposit be paid or made good or held on account of GECPL as the person entitled thereto to the end and intent that the right of GIL to recover or realize all such debts (including the debts payable by such persons or depositors to GIL) stands transferred to and vested in GECPL and that appropriate entries should be passed in their respective books to record the aforesaid change.

4.2.4. all debts, liabilities, duties, obligations of every kind, nature and description including all excise duty, custom duty, sales tax, value added tax, service tax and other government and semi government liabilities of Civil EPC Undertaking shall also, under the provisions of Sections 391 and 394 of the Act without any further act or deed be transferred to and assumed by or deemed to be transferred to and assumed by GECPL so as to become as from the Appointed Date the debts, liabilities, duties, obligations of GECPL. It is hereby confirmed that the debts, liabilities and obligations of



GIL pertaining to the BTA Undertaking, have been transferred to GECPL pursuant to the BTA.

4.2.5. The transfer and vesting of the Civil EPC Undertaking as aforesaid of GIL, shall be subject to the existing securities, charges and mortgages, if any, subsisting over or in respect of the property and assets or any part thereof.

Provided that in so far as the assets comprised in the Civil EPC Undertaking are concerned, the security and charge over such assets relating to any loans or liabilities pertaining to the Remaining Undertaking of GIL shall, without any further act or deed, be released from such encumbrance and shall no longer be available as security in relation to such loans or liabilities.

Provided further that in so far as the assets comprised in the Remaining Undertaking of GIL are concerned, the security over such assets relating to the loans, borrowings, debts and financial assistance pertaining to the Civil EPC Undertaking shall, without further act, instrument or deed, along with any guarantees, indemnities, or undertakings provided by GIL in relation to the Civil EPC Undertaking, be released and discharged from the obligations and security relating to the same. With effect from the Appointed Date and upon the Scheme becoming effective, GECPL undertakes to meet, discharge and satisfy the loans, borrowings, debts and financial assistance pertaining to the Civil EPC Undertaking.

Provided also that the transfer and vesting of loans / liabilities shall continue to have encumbrances confined only to the relevant assets of the Civil EPC Undertaking or part thereof and no such encumbrances shall extend over or apply to any asset(s) of GECPL. Similarly, GECPL shall not be required to create any additional security over assets vested under this Scheme for any loans, debentures, deposits or other financial assistance already availed of /to be availed of by it, and the encumbrances in respect



of such indebtedness of GECPL shall not extend or be deemed to extend or apply to the assets so vested.

4.2.6. Without prejudice to the generality of the forgoing, it is clarified that upon the coming into effect of this Scheme, all permits, authorizations, licenses, consents, registrations, approvals, municipal permissions, industrial licenses, registrations, privileges, easements and advantages, facilities, rights, powers and interest (whether vested or contingent), of every kind and description of whatsoever nature in relation to the Civil EPC Undertaking, to which GIL is a party to or to the benefit of which GIL may be eligible and which are subsisting or having effect immediately before the Appointed Date shall stand transferred to and vested in or shall be deemed to be transferred to and vested in GECPL as if the same were originally given or issued to or executed in favour of GECPL, and the rights and benefits under the same shall be available to GECPL. Further, GIL shall execute such further deeds or documents as may be required to give effect to this Clause.

4.2.7. The work experience, qualifications, capabilities, logistics, turnover record and track record with National & International Companies, Central and State Government / Non-Government agencies / bodies, contracts with clients and with vendors (including technical parameters, past performance, track record, financials, etc.) of the Transferor Company acquired by reason of completion of various projects and works pertaining to the Civil EPC Undertaking and certificates of completion of projects and works pertaining to Civil EPC Undertaking issued by clients of the Transferor Company shall be deemed to be part of and belonging to GECPL and shall for all purposes be regarded as the work experience, qualifications, capabilities, logistics, turnover record and track record (including technical parameters,



past performance, track record, financials, etc.) and certificates of completion of GECPL.

4.2.8. All cheques and other negotiable instruments, payment order, electronic fund transfers (like NEFT, RTGS, etc.) received or presented for encashment which are in the name of GIL (in relation to Civil EPC Undertaking) after the Effective Date shall be accepted by the banker(s) of GECPL and credited to the account of GECPL, if presented by GECPL or received through electronic transfers. Similarly, the banker(s) of GECPL shall honour all cheques / electronic fund transfer instructions issued by GIL (in relation to Civil EPC Undertaking) for payment after the Effective Date. If required, the bankers of GIL and GIL shall allow maintaining and operating of the bank accounts (including banking transactions carried out electronically) in the name of GIL by GECPL in relation to the Civil EPC Undertaking for such time as may be determined to be necessary by GECPL for presentation and deposition of cheques, pay order and electronic transfers that have been issued/made in the name of GECPL.

4.2.9. Upon the Scheme becoming effective, GIL and GECPL are expressly permitted to revise their respective financial statements and returns along with prescribed forms, filings and annexures under the Income Tax Act, 1961, central sales tax, applicable state value added tax, service tax laws, excise duty laws and other tax laws, and to claim refunds and/or credit for taxes paid (including, tax deducted at source, wealth tax, etc.) and for matters incidental thereto, if required, to give effect to the provisions of the Scheme.

4.2.10. Any tax liabilities under the service tax laws, excise duty laws, central sales tax, applicable state value added tax laws or other applicable laws/regulations dealing with taxes/duties/levies of Civil EPC Undertaking whether provided for or covered by tax provision in the accounts made as



on the date immediately preceding the Appointed Date or not shall be transferred to GECPL.

4.2.11. Any refund / credit, under the service tax laws, excise duty laws, central sales tax, applicable state value added tax laws or other applicable laws/regulations in relation to the Civil EPC Undertaking arising consequent to the assessment made on GIL whether recorded in the accounts as on the date immediately preceding the Appointed Date or not shall belong to GECPL upon this Scheme becoming effective.

4.2.12. Without prejudice to the generality of the above, all benefits, incentives, losses, credits (including, without limitation service tax, excise duty, central sales tax, applicable state value added tax etc.) to which Civil EPC Undertaking is entitled to in terms of applicable laws, shall be available to and vest in GECPL, upon this Scheme coming into effect.

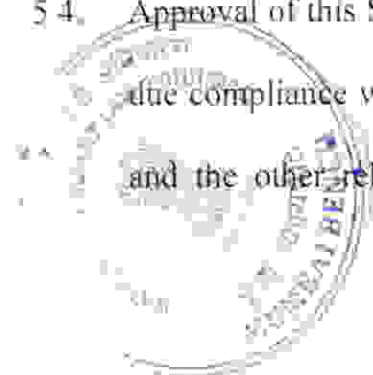
## 5. ISSUE OF SHARES

5.1. Upon coming into effect of the Scheme, GECPL shall issue and allot 1,18,85,714 (One crore Eighteen Lakh Eighty Five Thousand Seven Hundred and Fourteen) fully paid up equity shares of Rs.10/- each to the Transferor Company.

5.2. Equity shares to be issued by GECPL to the Transferor Company as above shall be subject to the Memorandum and Articles of Association of GECPL and shall rank *pari passu* with the existing equity shares of GECPL in all respects including dividends.

5.3. GECPL shall, if necessary and to the extent required, increase its authorized share capital to facilitate the issue of equity shares under this Scheme.

5.4. Approval of this Scheme by the shareholders of GECPL shall be deemed to be the due compliance with the provisions of Section 42/62 of the Companies Act, 2013 and the other relevant and applicable provisions of the Act for the issue and



allotment of equity shares by GECPL to the Transferor Company, as provided in this Scheme.

5.5. The approval of this Scheme by the shareholders of both the companies under Sections 391 and 394 of the Act shall be deemed to have the approval under Sections 13, 14, 180 and 186 of Companies Act, 2013 and other applicable provisions of the Act and any other consents and approvals required in this regard.

## **6. ACCOUNTING TREATMENT IN THE BOOKS OF THE TRANSFEROR COMPANY AND GECPL**

### **6.1. IN THE BOOKS OF THE TRANSFEROR COMPANY**

Upon the Scheme becoming effective, the Transferor Company

6.1.1. shall reduce the book value of assets and liabilities pertaining to the Civil EPC Undertaking as on the Appointed Date from its books of accounts;

6.1.2. shall record all the Equity Shares received pursuant to this Scheme at cost;

6.1.3. the difference between the aggregate of the Equity Shares recorded as per 6.1.2 and the book value of liabilities of the Civil EPC Undertaking as per 6.1.1 as reduced by the book value of assets of the Civil EPC Undertaking as per 6.1.1, shall be debited/ credited to the Profit & Loss Account.

### **6.2. IN THE BOOKS OF GECPL**

Upon the Scheme becoming effective,

6.2.1. GECPL shall record the Equity Shares issued by it to the Transferor Company pursuant to this Scheme at fair value;

6.2.2. GECPL shall record all the assets and liabilities pertaining to the Civil EPC Undertaking being transferred and vested pursuant to the Scheme at fair values.



6.2.3. The difference, being the excess of value of the assets and liabilities pertaining to the Civil EPC Undertaking in terms of paragraph 6.2.2 above and the amount credited as per Clause 6.2.1, shall be credited to Capital Reserve of GECPL. The shortfall, if any, shall be debited to Goodwill Account of GECPL.

## **7. FUND RAISING BY ISSUE OF SHARES / OTHER INSTRUMENTS BY TRANSFEREE COMPANY**

7.1 For the avoidance of doubt it is hereby clarified that nothing in this Scheme shall prevent the Transferee Company from raising funds by issue of new equity shares and / or preference shares and / or any convertible / non-convertible instruments.

## **PART III**

### **GENERAL TERMS AND CONDITIONS**

## **8. TRANSACTIONS UPTO THE EFFECTIVE DATE**

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

(a) The Transferor Company shall carry on and be deemed to have carried on the business and activities in relation to the Civil EPC Undertaking and shall stand possessed of their properties and assets relating to the Civil EPC Undertaking for and in trust for the Transferee company and all the profits / losses accruing on account of the Civil EPC Undertaking shall for all purposes be treated as profits / losses of the Transferee company.

(b) All the debts, liabilities, duties, obligations, taxes etc. as aforesaid of the Civil EPC Undertaking incurred/contracted during the period commencing from the Appointed Date till the Effective Date shall be deemed to have been



incurred/contracted by the Transferee company and shall be deemed to be the debts, liabilities and obligations of the Transferee company and further that it shall not be necessary to obtain consent of any person in order to give effect to the provisions of this clause.

(c) The Transferor Company shall not without the prior written consent of the Board of Directors of the Transferee company or pursuant to any pre-existing obligation, sell, transfer or otherwise alienate, charge, mortgage or encumber or otherwise deal with or dispose of the undertaking relating to the Civil EPC Undertaking any part thereof except in the ordinary course of its business.

(d) The Transferor Company shall not vary the terms and conditions of service of its permanent employees relating to the Civil EPC Undertaking except in the ordinary course of its business.

(e) The Transferee company shall be entitled, pending sanction of the Scheme, to apply to the Central Government, State Government, Union Territories and all other concerned agencies, departments and authorities (statutory or otherwise) as are necessary under any law for such consents, approvals and sanctions, which they may require to carry on the business of the respective Civil EPC Undertaking. Further, the Transferor Company shall extend all assistance to the Transferee company, if requested by the Transferee company, in obtaining the said consents, approvals and sanctions.

(f) Any payments made or benefits received by GIL in respect of the Civil EPC Undertaking shall be deemed to have been made or received, as the case may be, for and on behalf of GECPL and GIL shall be entitled to recover such expenses from GECPL or obligated to pass on the benefits to GECPL.

Similarly, any payments made or benefits received by GECPL in respect of the Remaining Undertaking of GIL shall be deemed to have been made or received, as the case may be, for and on behalf of GIL and GECPL shall be



entitled to recover such expenses from GIL or obligated to pass on the benefits to GIL.

8.2 With effect from the date of approval to the Scheme by Board of Directors of the Transferor Company and the Transferee company until the Effective Date, the Transferor Company shall preserve and carry on the business and activities of Civil EPC Undertaking with reasonable diligence and business prudence and the Transferor Company shall not, without the prior consultation with the Transferee company, alienate, charge or otherwise deal with or dispose of the Civil EPC Undertaking or any part thereof or recruit any new employee (in each case except in the ordinary course of business) or employees; further, the Transferor Company shall not engage in any corporate restructuring exercise including any merger and/or demerger or substantial expansion of the Civil EPC Undertaking without prior written consent of the Transferee company.

## 9. EMPLOYEES

9.1 On the Scheme becoming effective, all employees of the Civil EPC Undertaking in service on the Effective Date, shall be deemed to have become employees of the Transferee company respectively with effect from the Appointed Date or their respective joining date, whichever is later, without any break in their service and on the basis of continuity of service, and the terms and conditions of their employment with the Transferee company shall not be less favorable than those applicable to them with reference to the Civil EPC Undertaking on the Effective Date. Any question that may arise as to whether any employee belongs to or does not belong to the Civil EPC Undertaking shall be decided by Board of Directors of Transferor Company.

9.2 It is expressly provided that, on the Scheme becoming effective, the provident fund, gratuity fund, superannuation fund or any other special fund or trusts created or existing for the benefit of the employees of the Civil EPC Undertaking



shall be deemed to have been created by the Transferee company in place of Transferor Company for all purposes whatsoever in relation to the administration or operation of such fund or funds or in relation to the obligation to make contributions to the said fund or funds in accordance with the provisions thereof as per the terms provided in the respective trust deeds, if any, to the end and intent that all rights, duties, powers and obligations of Transferor Company in relation to such fund or funds shall become those of the Transferee company. It is clarified that the services of the employees of the Civil EPC Undertaking will be treated as having been continuous and not interrupted for the purpose of the said fund or funds.

## 10. LEGAL PROCEEDINGS

10.1 All legal proceedings of whatsoever nature by or against Transferor Company pending and/or arising before the Effective Date and relating to the Civil EPC Undertaking, shall not abate or be discontinued or be in any way prejudicially affected by reason of the Scheme or by anything contained in this Scheme but shall be continued and enforced by or against the Transferee company, as the case may be in the same manner and to the same extent as would or might have been continued and enforced by or against Transferor Company.

10.2 After the Appointed Date, if any proceedings are taken against Transferor Company in respect of the matters referred to in the sub-clause 10.1 above, Transferor Company shall defend the same in accordance with advise and instructions of the Transferee company at the cost of the Transferee company, and the Transferee company shall reimburse and indemnify Transferor Company against all liabilities and obligations incurred by Transferor Company in respect thereof.

The Transferee company undertake to have all legal or other proceedings initiated or against Transferor Company referred to in Clause 10.1 above transferred



into its name and to have the same continued, prosecuted and enforced by or against the Transferee company as the case may be, to the exclusion of Transferor Company and Transferor Company shall extend all assistance in such transfer into the Transferee company' name, if required by the Transferee company.

## 11. CONTRACTS, DEEDS, ETC.

11.1 Notwithstanding anything to the contrary contained in any contract, deed, bond, agreement or any other instrument, but subject to the other provisions of this Scheme, all contracts, deeds, bonds, agreements and other instruments, if any, of whatsoever nature and subsisting or having effect on the Effective Date and relating to the Civil EPC Undertaking of the Transferor Company to which Transferor Company is a party or to the benefit of which Transferor Company may be eligible, shall continue in full force and effect against or in favour of the Transferee company, and may be enforced effectively by or against the Transferee company as fully and effectually as if, instead of Transferor Company, the Transferee company had been a party thereto from inception.

11.2 The Transferee company 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, enter into, or issue or execute deeds, writings, confirmations, novations, declarations, or other documents with, or in favour of any party to any contract or arrangement to which Transferor Company is a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Transferee company shall be deemed to be authorised to execute any such writings on behalf of Transferor Company and to carry out or perform all such formalities or compliances required for the purposes referred to above on the part of Transferor Company.

11.3 It is hereby clarified that (i) if any contract, deeds, bonds, agreements, schemes, arrangements or other instruments of whatsoever nature in relation to the Civil EPC Undertaking, to which Transferor Company is a party to, cannot be



transferred to the Transferee company for any reason whatsoever, Transferor Company shall hold such contract, deeds, bonds, agreements, schemes, arrangements or other instruments of whatsoever nature in trust for the benefit of the Transferee company; and (ii) if any contract, deeds, bonds, agreements, schemes, arrangements or other instruments of whatsoever nature relate to the Civil EPC Undertaking as well as Transferor Company (pursuant to the transfer of the Civil EPC Undertaking), Transferor Company and the Transferee company shall both be entitled to all rights and benefits and be liable for all obligations under the said arrangements, each to the extent of its respective undertaking only.

## 12. REMAINING UNDERTAKING

- 12.1 The Remaining Undertaking and all the assets, properties, rights, liabilities and obligations thereto shall continue to belong to and be vested in and be managed by Transferor Company and the Transferee company shall have no right, claim or obligation in relation to the Remaining Undertaking. From the Appointed Date, Transferor Company shall carry on the activities and operations of the Remaining Undertaking distinctly and as a separate business from the Civil EPC Undertaking.
- 12.2 All legal, taxation and other proceedings whether civil or criminal (including before any statutory or quasi-judicial authority or tribunal) by or against Transferor Company under any statute, whether pending on the Appointed Date or which may be instituted at any time thereafter, and in each case pertaining to the Remaining Undertaking shall be continued and enforced by or against Transferor Company after the Effective Date. The Transferee company shall in no event be responsible or liable in relation to any such legal or other proceeding against Transferor Company.

The Transferor Company will have the right to access the books, records, files, papers, computer software alongwith their licenses, manuals and backup copies, drawings, data catalogues, and other data and records pertaining to the Civil EPC

