

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH-V, NEW DELHI

(ORIGINAL JURISDICTION)

COMPANY APPLICATION NO. CA (CAA) 15 (ND) OF 2020

IN THE MATTER OF THE COMPANIES ACT, 2013 (18 OF 2013)

SECTIONS 230, 232 & 66

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT

AND

IN THE MATTER OF

ECE INDUSTRIES LTD

APPLICANT/TRANSFeree COMPANY

AND

KUMAR METALS PVT LTD

NON-APPLICANT/TRANSFEROR COMPANY

### **Explanatory Statement**

[Under sections 230, 232 & 66 of the Companies Act, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions, if any]

- 1.** A joint Application being CA (CAA) 15 (ND) of 2020, was filed before the Hon'ble National Company Law Tribunal, New Delhi Bench, New Delhi (hereinafter referred to as "the Tribunal/NCLT") under the provisions of section 230, 232 & 66 of the Companies Act, 2013, and other applicable provisions, if any, in connection with the proposed Scheme of Arrangement of Kumar Metals Pvt Ltd and ECE Industries Ltd (hereinafter referred to as "the Composite Scheme of Arrangement" or "the Scheme of Arrangement" or "this Scheme or "the Scheme") and other connected matters, if any.
- 2.** Pursuant to the Order dated 24<sup>th</sup> February, 2020 (date of pronouncement), passed by the Hon'ble Tribunal, in the above referred Company Application, separate meetings of Equity Shareholders, Secured Creditors and Un-secured Creditors of the ECE Industries Ltd (Transferor Company) were scheduled to be convened on 18<sup>th</sup> April, 2020, under the supervision of the Hon'ble National Company Law

Tribunal, for the purpose of considering and, if thought fit, approving, with or without modifications, the proposed Scheme of Arrangement.

3. However, due to locked down imposed by the Government in view of the COVID-19 pandemic, all the aforesaid meetings had to be postponed/cancelled.
4. In view of the on-going COVID-19 pandemic and to avoid large gatherings, all these meetings are now proposed to be convened through Video Conferencing. Facility of remote e-voting will be available during the prescribed time period before the meetings and e-voting system will be available during the respective meetings.
5. **Accordingly, in pursuance of the Order dated 1<sup>st</sup> June, 2020 (date of pronouncement), passed by the Hon'ble National Company Law Tribunal, Special Bench, New Delhi read with Order dated 24<sup>th</sup> February, 2020 (date of pronouncement) passed by New Delhi Bench-V, New Delhi, separate meetings of Equity Shareholders, Secured Creditors and Un-secured Creditors of ECE Industries Ltd will be held through Video Conferencing on Monday, 20<sup>th</sup> July, 2020, as per the following schedule, at which time the said stakeholders are requested to attend:**

<b>Sl. No.</b>	<b>Meetings of ECE Industries Ltd</b>	<b>Time</b>
<b>1.</b>	Secured Creditors	11:30 A.M.
<b>2.</b>	Un-secured Creditors	12:30 Noon
<b>3.</b>	Equity Shareholders	3:30 P.M.

6. The Scheme of Arrangement, inter alia, provides for the following:
  - i. Amalgamation of Kumar Metals Pvt Ltd with ECE Industries Ltd;
  - ii. Re-organisation of Capital of ECE Industries Ltd, on voluntary basis; and
  - iii. Other matters connected with the aforesaid amalgamation and Re-organisation of Capital.

A copy of the Scheme of Arrangement setting out the terms and conditions of the proposed amalgamation/Re-organisation of Capital and other connected matters, is enclosed with this Explanatory Statement.

## **7. Companies to the Scheme and their Background**

### **7.1 The Applicant No. 1/the Transferor Company-ECE Industries Ltd**

- i. The Applicant Transferee Company-ECE Industries Ltd [Corporate Identification No. (CIN): U 31500 DL 1945 PLC 008279; Income Tax Permanent Account No. (PAN): AAA CE 1936 C] (hereinafter referred to as "the Transferee Company/the Company") was originally incorporated under the provisions of the Companies Act, 1913, as a public limited company with the name and style as 'Electric Construction and Equipment Ltd' vide Certificate of Incorporation dated 13<sup>th</sup> June, 1945, issued by the Assistant Registrar of Joint Stock Companies, Bengal, Calcutta. The Company was issued Certificate for Commencement of Business dated 30<sup>th</sup> July, 1945 by the Registrar of Joint Stock Companies, Bengal, Calcutta. Registered Office of the Company was shifted from the State of West Bengal to the NCT of Delhi as approved by the Hon'ble Company Law Board, Eastern Region Bench, Calcutta, vide Order dated 17<sup>th</sup> May, 1976. The Registrar of Companies, New Delhi, registered the aforesaid order and allotted a new CIN to the Company. Name of the Company was changed to its present name 'ECE Industries Ltd' vide Fresh Certificate of Incorporation dated 5<sup>th</sup> June, 1987, issued by the Registrar of Companies, Delhi and Haryana, New Delhi.
- ii. Presently, the Registered Office of the Transferee Company is situated at ECE House, 28-A, Kasturba Gandhi Marg, New Delhi- 110 001; e-mail: [ecehodelhi@gmail.com](mailto:ecehodelhi@gmail.com).
- iii. The detailed objects of the Transferee Company are set out in the Memorandum of Association and are briefly stated as below:

**A. Main Objects:**

1. *To carry on in India and/or elsewhere the business of iron and steel founders and manufacturers; mechanical, electrical and general engineers and contractors; manufacturers of and dealers in electric, magnetic, galvanic, and other apparatus; iron and street converters, tool-makers, brass founders, plate-makers, metal workers, boiler-makers, manufacturers of steel-casting and manufacturers of all kinds of electrical and electronic goods such as transformers, refrigerators, motors, fans, measuring instruments, insulations, domestic and industrial equipments including elevators, elevator components, escalators, pathways, switchgears and power plants.*
- iv. Presently, the Transferee Company is engaged in manufacturing of electric power transformers, elevators and other related activities.

v. Present Authorised Share Capital of the Transferee Company is ₹15,00,00,000 divided into 1,45,00,000 Equity Shares of ₹10 each aggregating to ₹14,50,00,000; and 50,000 Preference Shares of ₹100 each aggregating to ₹50,00,000. The present Issued and Subscribed Capital of the Company is ₹7,33,39,000 divided into 73,33,875 Equity Shares of ₹10 each. The present Paid-up Share Capital of the Company is ₹7,29,03,100 divided into 72,88,645 Equity Shares of ₹10 each aggregating ₹7,28,86,450 and ₹16,650 being amount paid on the forfeited shares.

vi. Detail of the present Board of Directors of the Transferee Company is given below:

Sl. No.	Name & Address	DIN	Designation
1	<b>Mr Prakash Kumar Mohta</b> 7, Ronaldshay Road, Alipore, Kolkata-700 027	00191299	Managing Director
2	<b>Mr Sakate Khaitan</b> 5, Queens Park, Kolkata-700 019	01248200	Director
3	<b>Mr Mahendra Kumar Jajoo</b> W-10/14, Western Avenue, Sainik Farm, New Delh-110 062	00006504	Director
4	<b>Mrs Maulashree Gani</b> 7, Ronaldshay Road, Alipore, Kolkata-700 027	02496033	Director
5	<b>Mr Shibhan Ganju</b> A-10, Greater Kailash-I, New Delhi-110 048	03434994	Director
6	<b>Mr Yogesh Dahyalal Korani</b> Opp. Aradhana Jain Temple, 187-B/201, Yashodhan Bldg., R.B. Mehta Marg, Mumbai- 400 077	00041923	Director

## 7.2 The Non-Applicant Transferor Company-Kumar Metals Pvt Ltd:

i. The Transferor Company-Kumar Metals Pvt Ltd [Corporate Identification No. (CIN): U 36911 WB 1973 PTC 028719; Income Tax Permanent Account No. (PAN): AAB CK 3026 C] (hereinafter referred to as "the Transferor Company/the Company") was originally incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 5<sup>th</sup> March, 1973, issued by the Registrar of Companies, West Bengal, Kolkata.

- ii. Presently, the Registered Office of the Transferor Company is situated at 15, India Exchange Place, 3<sup>rd</sup> Floor, Kolkata-700 001, West Bengal; e-mail: [kumarmetal35@gmail.com](mailto:kumarmetal35@gmail.com).
- iii. The detailed objects of the Transferor Company are set out in the Memorandum of Association and are briefly stated as below:

**A. Main Objects:**

- 1. To buy, sell, import, export and deal both wholesale and retail in commodities, substances, apparatus, articles and things of all kinds including but, not limited to cotton, rags, wastes, bronze, copper, brass, strips, pipes, tubes etc. and manufacture and deal in and with all kinds of metals and to carry on the business of labour contractors, polishing contract or s, material contractors, merchants and dealers in all sorts of mot a is and hardware goods and automobile parts.*
  - 2. To carry on the business of Automobile Engineers, mechanical Engineers, iron founders, manufacturers of and/or dealers in tyres, tubes, motors, motor parts, motor accessories, agricultural implements and other machinery, filters, tool makers, brass founders, metal makers, structural fabricators, boiler makers, mill wrights, machinists, iron & steel converters smiths, wire drawers, steel rollers, tube makers, metallurgists, saddlers, galvanisers, annealers.*
  - 3. To buy, sell, manufacture, repair, convert, alter, let on hire and deal in machinery, apparatus, implements, rolling stock and hardware of all kinds.*
  - 4. To carry on the said business as principals and/or agents and/or distribution and/or stockiest.*
- iv. Presently, the Transferor Company is engaged in manufacturing of gum powder, yellow and white dextrin, white paste used for pasting of flaps and labels, etc., and other related activities.
  - v. Present Authorised Share Capital of the Transferor Company is ₹5,00,000 divided into 5,000 Equity Shares of ₹100 each. The present Issued, Subscribed and Paid-up Share Capital of the Company is ₹1,00,000 divided into 1,000 Equity Shares of ₹100 each.
  - vi. Detail of the present Board of Directors of the Company is given below:

<b>Sl. No.</b>	<b>Name &amp; Address</b>	<b>DIN</b>	<b>Designation</b>
<b>1.</b>	<b>Mr Basant Kumar Daga</b> 70D, Hindustan Park Kolkata – 700029	00922769	Director
<b>2.</b>	<b>Mr Gokul Chand Damani</b> 28/T/1, Ramkrishna Samnadhi Road, 3 <sup>rd</sup> Floor, Kolkata - 700054	00191101	Director

- 8. Detail of the Promoters:** The Transferor Company is a Wholly Owned Subsidiary of the Transferee Company. Entire Share Capital of the Transferor Company is held by the Transferee Company and its nominee shareholders. The Transferee Company is an un-listed public limited company. Both the Companies are under common management and control.

Mr Prakash Kumar Mohta along with his family members are the Promoters of both the Transferor Company and the Transferee Company. Detail of the Core Promoter is given below:

<b>Sl. No.</b>	<b>Name, Address</b>	<b>DIN</b>
<b>1.</b>	<b>Mr Prakash Kumar Mohta</b> 7, Ronaldshay Road, Alipore, Kolkata- 700 027	00191299

- 9.** The proposed Amalgamation of Kumar Metals Pvt Ltd with ECE Industries Ltd; Re-organisation of Capital of ECE Industries Ltd, on voluntary basis; and other connected matters, will be affected by the arrangement embodied in the Scheme of Arrangement framed under sections 230, 232 & 66 of the Companies Act, 2013, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, the National Company Law Tribunal Rules, 2016, and other applicable provisions, if any.

**10. Rationale and Benefits of the Scheme:**

The circumstances which justify and/or necessitate the proposed Scheme of Arrangement of Kumar Metals Pvt Ltd and ECE Industries Ltd are, inter alia, as follows:

**10.1 Amalgamation of Kumar Metals Pvt Ltd with ECE Industries Ltd**

- a.** The Transferor Company is a Wholly Owned Subsidiary of the Transferee Company. The proposed Amalgamation would result in consolidation of the Wholly Owned Subsidiary with its Parent/Holding Company.
- b.** Both the Transferor and Transferee Companies are under same management and it would be advantageous to us to

combine the activities and operations in a single Company and building strong capability to effectively meet future challenges in competitive business environment;

- c. The proposed Amalgamation would result in business synergy, pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the combined entity.
- d. The proposed Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of financial, human and other resource and enhancement of overall business efficiency. The proposed Scheme will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth.
- e. The amalgamation will result in significant reduction in multiplicity of legal and regulatory compliances which at present is required to be made separately by the Transferee Company as well as by the Transferor Company.
- f. The proposed amalgamation would enhance the shareholders' value of the Transferor and the Transferee Companies.
- g. The proposed Amalgamation will have beneficial impact on the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.

#### **10.2 Re-organisation of Capital of ECE Industries Ltd, on voluntary basis**

- i. Initially, the Transferee Company-ECE Industries Ltd was listed on the BSE Ltd (Bombay Stock Exchange/BSE) and the National Stock Exchange of India Ltd (National Stock Exchange/NSE). It was delisted from BSE in the year 2015. However, it remained listed on NSE. Subsequently, the Promoters of the Transferee Company had proposed for complete delisting of the Company and accordingly had provided an exit opportunity ("Delisting Offer") to the Public Shareholders of the Company in terms of the provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 ("the Delisting Regulations") and other applicable provisions, if any.

The Final Exit Price, in respect of the Delisting Offer of the Company was finalized at ₹233.66 per Equity Share. Accordingly, all the Public Shareholders of the Company who

had successfully tendered their Equity Shares during the Bid Period, were paid the consideration at the Exit Price. After the acquisition of the Equity Shares pursuant to the Delisting Offer, the Promoters and Promoters' Group holding in the Company increased beyond 90% of the total paid-up Equity Share Capital of the Transferee Company.

The Company had thereafter applied for delisting of its Equity Shares from the NSE, the only stock exchange where its Equity Shares were listed. Consequent to the same, the Transferee Company got delisted from NSE with effect from 17<sup>th</sup> May, 2019. Presently, the Transferee Company is an unlisted public limited company.

In terms of the provisions of the Delisting Regulations, the Public Shareholders of the Transferee Company who have not tendered their shares for purchase by the Promoters, are entitled to do so at any time during the period of one year from the date of delisting of Equity Shares of the Company from NSE, i.e., from 17<sup>th</sup> May, 2019 to 16<sup>th</sup> May, 2020 ("the Exit Period") at the Exit Price of ₹233.66 per Equity Share.

- ii.** Post delisting, the Transferee Company-ECE Industries Ltd has a large number of public shareholders. However, there has not been much liquidity in the shares held by the Public Shareholders of the Transferee Company. After the expiry of the statutory one year of extended exit window available the Public Shareholders, there will not be much opportunity for the public shareholders to sell/transfer their shares in the Company.
- iii.** In order to provide further opportunity to the Public Shareholders of the Transferee Company, it is proposed to re-organise the equity share capital of the Transferee Company, by cancelling up to 6,13,872 Equity Shares of ₹10 each held by the Public Shareholders, on voluntary basis; and to issue equivalent number of 9% non-cumulative Compulsorily Redeemable Preference Shares in place of the such cancelled Equity Shares.

It is clarified that a Public Shareholder is entitled to retain his/her/its equity shareholding in the Transferee Company by giving a notice of such intention to the Transferee Company any time up to the Record Date to be fixed for such purpose. In all the cases where the Transferee Company receives intimation from the Public Shareholders to retain their equity shareholding in the Transferee Company, equity shares with respect to all such shareholders will not be cancelled and will not be replaced with 9% non-cumulative Compulsorily Redeemable Preference Shares.



- iv.** The proposed re-organisation will provide a permanent liquidity option for illiquid shares of the Company. It will help the non-promoter shareholders in realising the true potential of their investments in the Transferee Company which can be gainfully deployed elsewhere.
- v.** It is clarified that the aforesaid re-organisation of Share Capital would not involve either the diminution of any liability in respect of un-paid share capital or payment to any shareholder of any paid-up share capital. The Company is not proposing any buy-back of shares from its shareholders.
- vi.** It is further clarified that no creditor of the Transferee Company will be adversely affected by the proposed re-organisation of share capital. Compulsorily Redeemable Preference Shares to be issued in terms of this Scheme, shall be redeemed in accordance with the provisions of the Companies Act, 2013, relating to the redemption of preference shares. Hence, such redemption of Preference Shares will not be deemed to be a reduction of capital of the Transferee Company.
- vii.** The proposed Scheme would enhance the shareholders' value of the Transferor Company and the Transferee Company.

**10.3** The Scheme of Arrangement is proposed for the aforesaid reasons. The Board of Directors and Management of the Transferor Company and the Transferee Company is of the opinion that the proposed Scheme is in the best interest of these Companies, their Shareholders and other stakeholders.

## **11. Salient features of the Scheme of Arrangement**

- i.** All assets and liabilities including Income Tax and all other statutory liabilities, if any, of the Transferor Company will be transferred to and vest in the Transferee Company.
- ii.** All the employees of the Transferor Company in service on the Effective Date, if any, shall become the employees of the Transferee Company on and from such date without any break or interruption in service and upon terms and conditions not less favorable than those subsisting in the Transferor Company on the said date.
- iii.** Appointed Date for the Scheme will be 1<sup>st</sup> January, 2020, or such other date, as the Hon'ble National Company Law Tribunal or any other competent authority may approve.
- iv.** Since the Transferor Company is a wholly owned subsidiary of the Transferee Company, no new share will be issued by the Transferee Company pursuant to the Amalgamation.

- v. On Re-organisation of Share Capital, up to 6,13,872 Equity Shares of ₹10 each of the Transferee Company-ECE Industries Ltd which are held by the Public Shareholders will be cancelled and equal number of 9% non-cumulative Compulsorily Redeemable Preference Shares of ₹10 each, credited as fully paid-up, will be issued by the Transferee Company to all such Public Shareholders, on voluntary basis. 9% non-cumulative Compulsorily Redeemable Preference Shares to be issued in terms of the above, will be redeemed in terms of the provisions of the Companies Act, 2013, at price of ₹233.66 per Equity Share [face value of ₹10 each and redemption premium of ₹223.66 per Equity Share] within a maximum period of 20 years from the date of issue of such Redeemable Preference Shares with a put and call option available to the Preference Shareholders and the Issuer Company for early redemption.

It is, however, clarified that a Public Shareholder is entitled to retain his/her/its equity shareholding in the Transferee Company by giving a notice of such intention to the Transferee Company any time up to the Record Date to be fixed for such purpose. In all the cases where the Transferee Company receives intimation from the Public Shareholders to retain their equity shareholding in the Transferee Company, equity shares with respect to all such shareholders will not be cancelled and will not be replaced with 9% non-cumulative Compulsorily Redeemable Preference Shares.

**12. Extracts of the Scheme:** Extracts of the selected clauses of the Scheme are reproduced below in italics (*points/clauses referred to in this part are of the Scheme of Arrangement*):

### **1.1 DEFINITIONS**

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

- i. "Act" means the Companies Act, 2013 (18 of 2013), the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, the National Company Law Tribunal Rules, 2016, and other applicable Rules made there under and includes any amendments, statutory re-enactments and modifications thereof for the time being in force; and the Companies Act, 1956 (1 of 1956), to the extent applicable, if any.*
- ii. "Amalgamation" means amalgamation of the Transferor Company with and into the Transferee Company in terms of the Scheme in its present form or with any modification(s) as approved by the Hon'ble National Company Law Tribunal or any other competent authority, as the case may be.*

- iii. "Applicable Law(s)"** means any relevant statute, notification, by-laws, rules, regulations, guidelines, rule of common law, policy, code, directives, ordinance, schemes, notices, treaties, judgement, decree, approvals, orders or instructions enacted or issued or sanctioned by any Governmental and Registration Authority, having the force of law and as applicable to Companies;
- iv. "Appointed Date"** for the purpose of this Scheme means commencement of business on 1<sup>st</sup> January, 2020, or such other date as the Hon'ble National Company Law Tribunal or any other competent authority may approve.
- v. "Board" or "Board of Directors"** means the Board of Directors of the respective Transferor and Transferee Companies, as the case may be, and shall, unless it is repugnant to the context or otherwise, include Committee(s) so authorised by the Board of Directors, or any person authorised by the Board of Directors or such Committee(s).
- vi. "Effective Date"** means last of the dates on which the certified copies of the Order(s) passed by the Hon'ble National Company Law Tribunal, sanctioning the Scheme of Arrangement, are filed with the concerned Registrar of Companies, Ministry of Corporate Affairs.
- vii. "Encumbrance"** means (a) any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, deed of trust, title retention, security interest or other encumbrance of any kind securing, or conferring any priority of payment in respect of, any obligation of any person, including any right granted by a transaction which in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security under Applicable Laws; (b) any proxy, power of attorney, voting trust agreement, interest, option, right of first offer, refusal or transfer restriction in favour of any person; and (iii) any adverse claim as to title, possession or use.
- viii. "FEMA"** means the Foreign Exchange Management Act, 1999 along with the rules and regulations made there under and shall include any statutory modification(s), amendment(s) or re-enactment(s) thereof for the time being in force.
- ix. "Intellectual Property Rights"** means, whether registered or not, in the name of or recognized under Applicable Laws as being intellectual property of the Transferor Company, or in the nature of common law rights of the Transferor Company, all domestic and foreign (a) trademarks, service marks, brand names, internet domain names, websites, online web portals, trade names, logos, uniforms and all applications and registration for the foregoing and all goodwill associated with the foregoing and symbolized by the foregoing; (b) confidential and proprietary information and

trade secrets; (c) published and unpublished works of authorship and copyrights therein, and registrations and applications therefor, and all renewals, extensions, restorations and reversions thereof; (d) computer software, programs (including source code, object code, firmware, operating systems and specifications) and processes; (e) designs, drawings, sketches; (f) tools, databases, frameworks, customer data, proprietary information, knowledge, any other technology or know-how, licenses, software licenses and formulas; (g) ideas and all other intellectual property or proprietary rights; and (h) all rights in all of the foregoing provided by Applicable Laws.

- x. **"IT Act"** means the Income Tax Act, 1961, and the rules made there under and shall include any statutory modification(s), amendment(s) or re-enactment(s) thereof for the time being in force.
- xi. **National Company Law Tribunal** means appropriate Bench/Benches of the Hon'ble National Company Law Tribunal constituted under the Companies Act, 2013, or such other court, tribunal, forum or authority having jurisdiction to sanction the present Scheme and other connected matters. The National Company Law Tribunal has been referred to as the Tribunal/NCLT.
- xii. **"Record Date"** means the date to be fixed by the Board of Directors of the Transferee Company, with reference to which status of the shareholders of the Transferee Company shall be determined for re-organisation of share capital of the Transferee Company in terms of this Scheme; and other connected matters, if any.
- xiii. **"Registrar of Companies"** means concerned Registrar(s) of Companies, Ministry of Corporate Affairs having jurisdiction under the Companies Act, 2013, and other applicable provisions, if any, on the respective Companies.
- xiv. **"Scheme"** means the present Scheme of Arrangement framed under the provisions of sections 230, 232 & 66 of the Companies Act, 2013, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, the Income Tax Act, 1961, and other applicable provisions, if any, where under (a) Kumar Metals Pvt Ltd is proposed to be amalgamated with ECE Industries Ltd; and (b) Share Capital of ECE Industries Ltd is proposed to be re-organised (on voluntary basis), in the present form or with any modification(s) approved or imposed or directed by Members/Creditors of these Companies and/or by any competent authority and/or by the Hon'ble National Company Law Tribunal or that may otherwise be deemed fit by these Companies.

## **2. TRANSFER AND VESTING OF UNDERTAKING**

- a.** *With effect from the commencement of business on 1<sup>st</sup> January, 2020, i.e., the Appointed Date, subject to the provisions of the Scheme in relation to the modalities of transfer and vesting, the undertaking and entire business and all immovable properties (including agricultural land, industrial land, residential land and all other land and plots) where so ever situated and incapable of passing by physical delivery as also all other assets, capital work-in-progress, current assets, investments, deposits, bookings and advances against residential and commercial plots and buildings, powers, authorities, awards, allotments, approvals and consents, licenses, registrations, contracts, agreements, engagements, arrangement, rights, intellectual property rights, titles, interests, benefits and advantages of whatsoever nature belonging to or in the ownership, power, possession, control of or vested in or granted in favour of or enjoyed by the Transferor Company, including but without being limited to, benefit of all agreements and all other interests arising to the Transferor Company (hereinafter collectively referred to as "the said assets") shall, without any further act or deed or without payment of any duty or other charges, be transferred to and vested in the Transferee Company pursuant to the provisions of Section 232 of the Act, for all the estate, right, title and interest of the Transferor Company therein so as to become the property of the Transferee Company but, subject to mortgages, charges and encumbrances, if any, then affecting the undertaking of the Transferor Company without such charges in any way extending to the undertaking of the Transferee Company.*
- b.** *Notwithstanding what is provided herein above, it is expressly provided that in respect to such of the said assets as are movable in nature or are otherwise capable of being transferred by physical delivery or by endorsement and delivery, the same shall be so transferred, with effect from the appointed date, by the Transferor Company to the Transferee Company after the Scheme is duly sanctioned and given effect to without requiring any order of the Tribunal or any deed or instrument of conveyance for the same or without the payment of any duty or other charges and shall become the property of the Transferee Company accordingly.*
- c.** *On and from the Appointed Date, all liabilities, provisions, duties and obligations including Income Tax and other statutory liabilities, if any, of every kind, nature and description of the Transferor Company whether provided for in the books of accounts of the Transferor Company or not, shall devolve and shall stand transferred or be deemed to be transferred without any further act or deed, to the Transferee Company with effect from the Appointed Date and shall be the liabilities, provisions, duties and obligations of the Transferee Company.*
- d.** *Similarly, on and from the Appointed Date, all the taxes and duties including advance tax, tax deducted at source, tax collected at source, minimum alternative tax (MAT), self-assessment tax,*

*Goods and Services Tax (GST), etc., paid by or on behalf of the Transferor Company immediately before the amalgamation, shall become or be deemed to be the property of the Transferee Company by virtue of the amalgamation. Upon the Scheme becoming effective, all the taxes and duties paid (including TDS, MAT and GST, etc.) by or on behalf of the Transferor Company from the Appointed Date, regardless of the period to which these payments relate, shall be deemed to have been paid for and on behalf of and to the credit of the Transferee Company as effectively as if the Transferee Company had paid the same.*

- e.** *Upon the Scheme becoming effective, all un-availed credits and exemptions, statutory benefits, including in respect of Income Tax (including MAT credit), CENVAT, Customs, VAT, Sales Tax, Service Tax, Goods and Services Tax, etc., of the Transferor Company, shall be available to and vest in the Transferee Company, without any further act or deed.*
- f.** *Without prejudice to the generality of the provisions contained in aforesaid clauses, upon the Scheme becoming effective, requisite form(s) will be filed with the Registrar of Companies for creation, modification and/or satisfaction of charge(s), to the extent required, to give effect to the provisions of this Scheme.*
- g.** *On the Scheme becoming effective, the Transferee Company shall be entitled to file/revise income tax returns, TDS returns, GST returns, and other statutory filings and returns, filed by it or by the Transferor Company, if required, and to take all such steps that may be required to give effect to the provisions of this Scheme and/or required to claim refunds, depreciation benefits, advance tax credits, un-availed credits and exemptions, statutory benefits, etc., if any.*
- h.** *With effect from the Effective Date and until such time names of the bank accounts of the Transferor Company are replaced with that of the Transferee Company, the Transferee Company shall be entitled to operate the existing bank accounts of the Transferor Company, in so far, as may be necessary. The banks shall also honor cheques or other bills issued in the name of the Transferor Company on and from the Effective Date. Further, the Transferee Company, if so required, shall also be entitled to maintain one Bank Account in the name of the Transferor Company to enable it to deposit/encash any refund or other payment received in the name of the Transferor Company. All such deposits will, then, be transferred to the bank account of the Transferee Company. It may, however, be clarified that such bank account (in the name of the Transferor Company) will be used only for the limited purpose of depositing/encashing any refund or other payments received in the name/in favour of the Transferor Company. Such bank account will not be used for normal banking transactions.*

- i. All other assets & liabilities of the Transferor Company, which may not be specifically covered in the aforesaid clauses, shall also stand transferred to the Transferee Company with effect from the Appointed Date.*

#### **4. LEGAL PROCEEDINGS**

*All legal proceedings of whatever nature by or against the Transferor Company pending on the Effective Date, shall not be abated, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the Transferor Company or of anything contained in this Scheme but the proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Company as if the Scheme had not been made.*

#### **5. OPERATIVE DATE OF THE SCHEME**

- a. This Scheme shall be effective from the last of the dates on which certified copies of order of the Tribunal under Sections 230 and 232 of the Companies Act, 2013, are filed in the office(s) of the concerned Registrar of Companies. Such date is called as the Effective Date.*
- b. 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.*

#### **9. ISSUE OF SHARES BY TRANSFEREE COMPANY**

*Since the Transferor Company is a wholly owned subsidiary of the Transferee Company, no new share will be issued by the Transferee Company pursuant to the amalgamation of the Transferor Company with the Transferee Company.*

#### **11. RE-ORGANISATION OF CAPITAL OF ECE INDUSTRIES LTD, ON VOLUNTARY BASIS**

- i. Post delisting, the Transferee Company-ECE Industries Ltd has a large number of public shareholders. However, there has not been much liquidity in the shares held by the Public Shareholders of the Transferee Company. After the expiry of the statutory one year of extended exit window available the Public Shareholders, there will not be much opportunity for the public shareholders to sell/transfer their shares in the Company.*
- ii. In order to provide further opportunity to the Public Shareholders of the Transferee Company, it is proposed to re-organise the equity share capital of the Transferee Company, by cancelling up to 6,13,872 Equity Shares of ₹10 each held by the*

*Public Shareholders, on voluntary basis; and to issue equivalent number of 9% non-cumulative Compulsorily Redeemable Preference Shares in place of the such cancelled Equity Shares. The proposed re-organisation will provide a permanent liquidity option for illiquid shares of the Company. It will help the non-promoter shareholders in realising the true potential of their investments in the Transferee Company which can be gainfully deployed elsewhere.*

- iii.** *Accordingly, up to 6,13,872 Equity Shares of ₹10 each of the Transferee Company which are held by the Public Shareholders will, without any further act or application, be cancelled and equal number of 9% non-cumulative Compulsorily Redeemable Preference Shares of ₹10 each, credited as fully paid-up, will be issued by the Transferee Company to all such Public Shareholders.*

*It is, however, clarified that a Public Shareholder is entitled to retain his/her/its equity shareholding in the Transferee Company by giving a notice of such intention to the Transferee Company any time up to the Record Date to be fixed for such purpose. In all the cases where the Transferee Company receives intimation from the Public Shareholders to retain their equity shareholding in the Transferee Company, equity shares with respect to all such shareholders will not be cancelled and will not be replaced with 9% non-cumulative Compulsorily Redeemable Preference Shares.*

- iv.** *9% non-cumulative Compulsorily Redeemable Preference Shares to be issued in terms of the above, will be redeemed in terms of the provisions of the Companies Act, 2013, at price of ₹233.66 per Equity Share [face value of ₹10 each and redemption premium of ₹223.66 per Equity Share] within a maximum period of 20 years from the date of issue of such Redeemable Preference Shares with a put and call option available to the Preference Shareholders and the Issuer Company for early redemption.*
- v.** *Relevant equity share certificates issued by the Transferee Company with respect to all such Public Shareholders (who have not given intimation of their intention to retain their equity shareholding in the Transferee Company) shall automatically stand cancelled and new preference share certificate(s) will be issued without surrender of the original equity share certificates to give effect to aforesaid re-organisation and other provisions of this Scheme.*
- vi.** *Re-organization/reduction of the paid-up share capital, reserves & surplus, etc., as the case may be, of the Transferee Company shall be affected as an integral part of the Scheme only. Approval of this Scheme by the Shareholders and/or Creditors of the Transferor Company and the Transferee Company, as the*



*case may be, and sanction by the Hon'ble National Company Law Tribunal shall be sufficient compliance with the provisions of sections 230, 232 and 66 of the Companies Act, 2013, and other applicable provisions, if any, relating to the aforesaid re-organisation/reduction of share capital. Such re-organisation/reduction of share capital would not involve either the diminution of any liability in respect of un-paid share capital or the payment to any shareholder of any paid-up share capital. The Transferee Company is not proposing any buy-back of shares from its shareholders.*

- vii. It is clarified that no creditor of the Transferee Company will be adversely affected by the proposed re-organisation of share capital. Compulsorily Redeemable Preference Shares to be issued in terms of this Scheme, shall be redeemed in accordance with the provisions of the Companies Act, 2013, relating to the redemption of preference shares. Hence, such redemption of Preference Shares will not be deemed to be a reduction of capital of the Transferee Company.*

**The aforesaid are the salient features/selected extracts of the Scheme of Arrangement. Please read the entire text of the Scheme of Arrangement to get acquainted with the complete provisions of the Scheme.**

- 13.** The proposed Scheme of Arrangement is for the benefit of both the Companies, their Shareholders and other stakeholders. It is fair and reasonable and is not detrimental to the interest of the public. It is not prejudicial to any person.
- 14.** Valuation exercise has been carried out for the proposed Scheme of Arrangement. Mr Gautam Maurya, a Chartered Accountant and the Registered Valuer in respect of Securities or Financial Assets, registered with the Insolvency and Bankruptcy Board of India (IBBI) vide registration No. IBBI/RV/05/2019/10980 has prepared the Report on Valuation of Shares.

The Report on Valuation of Shares of Mr Gautam Maurya, Chartered Accountant and the IBBI Registered Valuer in respect of Securities or Financial Assets, has been unanimously received, considered and taken on record by the respective Board of Directors of the Transferor Company and the Transferee Company.

The Board of Directors of the Transferor Company and the Transferee Company, based on the Report on Valuation of Shares and on the basis of their independent evaluation and judgment, approved ₹233.66 per Equity Share, being the higher of the price calculated by the Registered Valuer, i.e., ₹231.00 per Equity Share and the Final Exit Price calculated for the purpose of the Delisting of ECE Industries Ltd, i.e., ₹233.66 per Equity Share, as the Final Price for the purpose of the proposed Re-organisation of Capital of ECE Industries Ltd.

A copy of the Report on Valuation of Shares of Mr Gautam Maurya, Chartered Accountant and the IBBI Registered Valuer in respect of Securities or Financial Assets, giving basis of valuation, valuation methodology and calculations, etc., is enclosed herewith.

- 15.** The proposed Scheme of Arrangement has been unanimously approved by the Board of Directors of the Transferor Company and the Transferee Company in the respective meetings held on 10<sup>th</sup> January, 2020. None of the Directors voted against or abstained from voting on the resolution for approving the Scheme of Arrangement in the aforesaid meetings.

Notice of the physical meetings which were initially scheduled to be convened and held under the supervisions of the Hon'ble National Company Law Tribunal, the Explanatory Statement and other papers of these meetings have also been approved unanimously, by the respective Board of Directors of the Transferor Company and the Transferee Company in their respective meetings held on 5<sup>th</sup> March, 2020. None of the Directors voted against or abstained from voting on the resolution for approving the notices and other papers of these meetings.

Notice of the meetings which are now scheduled to be convened and held through Video Conferencing under the supervisions of the Hon'ble National Company Law Tribunal, the Explanatory Statement and other papers of the meetings have also been approved unanimously, by the respective Board of Directors of the Transferor Company and the Transferee Company in their respective meetings held on 10<sup>th</sup> June, 2020. None of the Directors voted against or abstained from voting on the resolution for approving the notice and other papers of the meetings.

- 16.** The present Scheme of Arrangement, if approved in the aforesaid meetings, will be subject to the subsequent approval of the Hon'ble National Company Law Tribunal. No specific approval is required to be obtained from any other government authority to the present Scheme of Arrangement.
- 17.** No proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013, or under the provisions of the Companies Act, 1956, are pending against the Transferor Company and the Transferee Company.
- 18. Effect of the Scheme on the Promoters, Directors, KMP, etc.:**
  - a.** Promoters and/or Directors of the Transferor Company and the Transferee Company are deemed to be interested in the proposed Scheme of Arrangement to the extent of their shareholding in, loan given to and remuneration drawn from, as the case may be, the respective Companies. Similarly, Key Managerial Personnel (KMP) of the Transferor Company and the Transferee Company may also be deemed to be interested in the proposed Scheme to

the extent of their shareholding in, loan given to and remuneration drawn from, as the case may be, the respective Companies.

- b. The proposed Scheme of Arrangement would not have any effect on the material interest of the Promoters, Directors and Key Managerial Personnel of the Transferor Company and the Transferee Company different from that of the interest of other shareholders, creditors and employees of these Companies.
  - c. The proposed Scheme of Arrangement does not envisage any corporate debt restructuring. There is no proposal to restructure or vary the debt obligation of the Transferor Company or the Transferee Company towards their respective creditors. The proposed Scheme of Arrangement will not adversely affect the rights of any of the creditors of the Transferor Company or the Transferee Company in any manner whatsoever.
  - d. The proposed Scheme of Arrangement will not have any adverse effect on the secured creditors, un-secured creditors, employees and other stakeholders, if any, of the Transferor Company or of the Transferee Company.
- 19.** As mentioned above, the Transferor Company is a Wholly Owned Subsidiary of the Transferee Company. Entire Share Capital of the Transferor Company is held by the Transferee Company and its nominee shareholders. Whereas the Transferee Company is an un-listed public limited company.

**20. Shareholding of the Directors and Key Managerial Personnel**

- A.** Detail of present Shareholding of the Directors and Key Managerial Personnel of the Transferor Company, in the Transferor Company and in the Transferee Company, either singly or jointly or as nominee, is as under:

Sl. No.	Name of Directors & KMP and their Designation	No. of Shares held (as on 28.2.2020)	
		Transferor Company	Transferee Company
1	Mr Basant Kumar Daga, Director	Nil	Nil
2	Mr Gokul Chand Damani, Director	Nil	Nil

- B.** Detail of present Shareholding of the Directors and Key Managerial Personnel of the Transferee Company, in the Transferee Company and in the Transferor Company, either singly or jointly or as nominee, is as under:

Sl. No.	Name of Directors & KMP and their Designation	No. of Shares held (as on 28.2.2020)	
		Transferee Company	Transferor Company
1	Mr Prakash Kumar Mohta, Managing Director	20,38,715	Nil

2	Mr Prakash Kumar Mohta, Nominee Shareholder	Nil	1
3	Mr Sakate Khaitan, Director	200	Nil
4	Ms Maulashree Gani, Director	3,43,638	Nil
5	Mr Mahendra Kumar Jajoo, Director	200	Nil
6	Mr Shibhan Ganju, Director	100	Nil
7	Mr Yogesh D. Korani, Director	Nil	Nil
8	Mr Rajat Sharma, CFO	250	Nil

- 21.** A copy of the Scheme of Arrangement is being filed with the concerned Registrar of Companies.
- 22.** Copies of the Audited Financial Statements of the Transferor Company and the Transferee Company for the year ended 31<sup>st</sup> March, 2019, along with the Auditors' Reports thereon, are enclosed herewith.
- 23.** Copies of the Un-audited Financial Statements (provisional) of the Transferor Company and the Transferee Company for the period ended 15<sup>th</sup> December, 2019, are also enclosed herewith.
- 24.** Total amount due to Secured Creditors, as on 15<sup>th</sup> December, 2019, is given below:

(As on 15.12.2019)

Sl. No.	Name of the Company	Amount ₹
1.	Kumar Metals Pvt Ltd	Nil
2.	ECE Industries Ltd	90,62,09,903

- 25.** Total amount due to Un-secured Creditors (excluding statutory and other dues), as on 15<sup>th</sup> December, 2019, is given below:

(As on 15.12.2019)

Sl. No.	Name of the Company	Amount ₹
1.	Kumar Metals Pvt Ltd	2,25,92,547
2.	ECE Industries Ltd	76,29,10,566

- 26.** The following documents will be available for inspection or for obtaining extracts from or for making or obtaining copies of, by the members and creditors at the registered office of the Transferor Company and the Transferee Company on any working day of the concerned Company from the date of this notice till the date of meeting between 11.00 A.M. to 4.00 P.M.:
- The Memorandum and Articles of Association of the Transferor Company and the Transferee Company.
  - The Audited Financial Statements of the Transferor Company and the Transferee Company for the last 3 years ended 31<sup>st</sup> March, 2019, 31<sup>st</sup> March, 2018 and 31<sup>st</sup> March, 2017.

- iii. The un-audited Financial Statements (provisional) of the Transferor Company and the Transferee Company for the period ended 15<sup>th</sup> December, 2019.
  - iv. Register of Particulars of Directors and KMP and their Shareholding, of the Transferor Company and the Transferee Company.
  - v. Order dated 1<sup>st</sup> June, 2020 (date of pronouncement) passed by the Hon'ble National Company Law Tribunal, Special Bench, New Delhi and Order dated 24<sup>th</sup> February, 2020 (date of pronouncement), passed by the Hon'ble National Company Law Tribunal, New Delhi Bench-V, New Delhi, in the Company Application No. CA (CAA) 15 of 2020 filed by the Transferee Company, in pursuance of which the aforesaid meetings are scheduled to be convened.
  - vi. Paper Books and proceedings of the Company Application No. CA (CAA) 15 of 2020, filed before the Hon'ble National Company Law Tribunal, New Delhi Bench, New Delhi.
  - vii. Copies of the Certificates issued by the Statutory Auditors of the Transferor Company and the Transferee Company to the effect that the accounting treatment proposed in the Scheme of Arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.
  - viii. Report on Valuation of Shares issued by Mr Gautam Maurya, Chartered Accountant and the IBBI Registered Valuer in respect of Securities or Financial Assets
  - ix. Copy of the proposed Scheme of Arrangement
- 27.** A copy of the Scheme of Arrangement, Explanatory Statement and other annexures may be obtained free of charge on any working day (except Saturday) prior to the date of meeting(s), from the registered office of Transferee Company or from the office of their Legal Counsel- Mr Rajeev K Goel, Advocate, M/s Rajeev Goel & Associates, Advocates and Solicitors, 785, Pocket-E, Mayur Vihar-II, Delhi Meerut Expressway/ NH-24, Delhi-110 091, India, Mobile: 093124 09354, e-mail: [rajeev391@gmail.com](mailto:rajeev391@gmail.com).
- 28.** Notice of the meetings, Explanatory Statement and other documents are also being placed on the following websites:

<b>Particulars</b>	<b>Website address</b>
ECE Industries Ltd	<a href="http://www.eceindustriesltd.com">www.eceindustriesltd.com</a>

- 29. Please take note that since all the meetings are proposed to be held through Video Conferencing, option of attending the meeting through proxy is not applicable/available.**
- 30.** Facility of remote e-voting will be available during the prescribed time period before the meeting and e-voting system will be available during the meeting. Instructions for voting through electronic means is being sent along with the notice of meetings.

Dated this 10<sup>th</sup> June, 2020

**For and on behalf of the Board  
of Directors  
For Kumar Metals Pvt Ltd**

**For and on behalf of the Board of  
Directors  
For ECE Industries Ltd**

**Sd/-  
Gokul Chand Damani  
Director  
DIN: 00191101**

**Sd/-  
Prakash Kumar Mohta  
Managing Director  
DIN: 00191299**