

Company Petition No. _____ of _____

Company Application No. _____ of _____

In the _____

Original Jurisdiction

In the Matter of:

The Companies Act, 1956;

-And-

In the Matter of:

An application Under Sections 391(2) and 394 of
the said Act;

-And-

In the Matter of:

_____, a Company incorporated under the
provisions of the Companies Act, 1956, having its
registered office at _____ within the aforesaid
jurisdiction.

-And-

_____, a Company incorporated under the provisions
of the Companies Act, 1956, having its registered
office at _____ within the aforesaid jurisdiction.

1. _____,

2. _____

Petitioners.

To

The Hon'ble Chief Justice _____ and his Companion Justices of the said Hon'ble Court.

The humble petition of the petitioners above named
most respectfully -

SHEWETH:

1. The object of this petition is to obtain sanction of this Hon'ble Court to a Scheme of Arrangement proposed to be made between _____ and _____ and their respective shareholder under the Scheme of Arrangement. It is proposed to reorganize and reconstruct _____ by transferring the _____ including the proposed _____ as defined in the said Scheme, to _____ together with the assets and liabilities relating thereto on a going concern basis. The rest of the business, assets and liabilities of _____ shall continue to remain with _____. The terms and conditions of the reconstruction are fully stated in the said Scheme of arrangement, a copy whereof is annexed hereto and marked with the letter _____. The copy of the order dated _____ referred to in paragraph _____ and the Report of Chair person mentioned in paragraph _____ are annexed hereto and marked _____ respectively.
2. _____ was incorporated on the _____ as a public company limited by shares under the provisions of the Companies Act, 1956. A copy of the latest Memorandum and Articles of Association of _____ now in force is annexed hereto and marked with the letter _____.
 - a) The registered office of _____ is situated _____, within the aforesaid jurisdiction.
 - b) _____ has an authorised Share Capital of _____ divided into _____ Equity Shares of Rs. 10.00 each. _____ has an issued, subscribed and paid up Share Capital of Rs. _____ divided into _____ Equity Shares of Rs. 10.00 each fully paid up. A copy of the latest audited Annual Accounts and Reports of Director and Auditors for the financial year ended on 31st March _____ are annexed hereto collectively and marked with the letter _____

- c) The objects of _____ are set out in its Memorandum and Articles of Association, a copy whereof is included in Annexure _____ hereto.
- d) Shortly after incorporation, _____ commenced its business. At present _____ is engaged in the businesses of running and operating _____ including providing various intra-structural facilities for industries within and outside India.
- e) The accounts of _____ have been audited as at 31st March _____. A copy of the audited Balance sheet of _____ as on the said date including the related Profit & Loss Account, the Auditors’ Report and the Directors’ Report thereon are already included in Annexure _____ hereto. As is clear, inter alia, from the said Auditors’ Report, _____ has maintained proper books of account as required by law. The following summary extracted from the said accounts of _____ as at 31st March, _____ indicates the financial position of _____ as follows:
- i) _____ has neither issued nor agreed to issue any debentures.
- ii) Apart from the Current Liabilities and Provisions which are incurred and disposed of in the normal course of business, _____ had the following liabilities:

	<u>As at</u>	<u>As at</u>
	<u> </u>	<u> </u>
i) Secured Loans		
ii) Unsecured Loans		
Total		
iii) Paid-up Share Capital.		
Add Reserves & Surplus		
Less Debit balance in Profit & Loss Account.	NIL	NIL
Net Shareholders’ Funds.		
Assets (including Current Assets)		
Liabilities (including Current Liabilities and Provisions)		
Excess of Assets over Liabilities.		

(Amount in rupees)

f) Subsequent to the aforesaid accounts of _____, there has been no substantial change in the financial position of _____ excepting those arising or resulting from the usual course of business.

3. _____, a Company formerly known as _____ was originally incorporated on the _____. The name of _____ was changed to _____ on the _____. This is evident from the letter from the Registrar of Companies, bearing number _____ dated _____. I crave leave to refer to this letter at the time of hearing if necessary. _____ is a public company limited by shares under the provisions of the Companies Act, 1956. A copy of the latest Memorandum and Articles of Association of _____ now in force is annexed hereto and marked with the letter _____

a) The registered office of _____ is situated at _____, within the aforesaid jurisdiction.

b) _____ has an authorised Share Capital of _____ Equity Shares of _____ each. _____ has an issued, subscribed and paid up Share Capital of Rs. _____ divided into _____ Equity Shares of Rs. 10/- each fully paid up. A copy of the latest audited Annual Accounts and Reports of Directors and Auditors of _____ for the financial year ended on 31st March _____ are annexed hereto collectively and marked with the letter _____.

c) The objects of _____ are set out in its Memorandum and Articles of Association, a copy whereof is included in Annexure _____ hereto.

d) At present, _____ is not doing any business, but has identified to carry on the business of _____ activities

e) The accounts of _____ have been audited as at 31st March, ____-. A copy of the audited Balance sheet of _____ as on the said date including the related Profit & Loss Account, the Auditors' Report and the Directors' Report thereon are included in Annexure _____ hereto. As is clear, inter alia, from the said Auditors' Report, _____ has maintained proper books of account as required by law. The following summary extracted from the said accounts of _____ as at 31st March, _____ indicates the financial position of _____ as follows:

- i) _____ has neither issued nor agreed to issue any debentures.
- ii) Apart from the Current Liabilities and Provisions which are incurred and disposed of in the normal course of business _____ had the following liabilities:

	As at	As at
Paid-up Share Capital.		
Less Misc. Expenditure (not written off or adjusted)		
Debit balance in Profit & Loss Account.		
Total		
Net Shareholders' Funds.		
Assets (including Current Assets)		
Liabilities (including Current Liabilities and Provisions)		
Excess of Assets over Liabilities.	(_____)	(_____)

(amount in rupees)

- f) Subsequent to the aforesaid accounts of _____, there has been no substantial change in the financial position of _____ excepting those arising or resulting from the usual course.
4. The circumstances which justify and/or necessitate the said Scheme of Arrangement are, inter alia, as follows:
- a) _____ is engaged in following business activities:
- i) Running of a _____ and production of _____ suitable for various trades and industries in India and in particular for the integrated _____ in and outside India.
- ii) As manufacturers, producers, rollers, re-rollers, founders, meters, smelters, refiners, makers, repairers, converters, agents, brokers, readers, dealers, stockiest, distributors, importers and exporters of all types of _____ and all kind of engineering goods, including machine tools, mechanicals, electrical and electronic goods and raw materials, intermediates, bye products, scraps, alloys, castings, forgins, semi finished, finished, products, and allied products of the things mentioned above.

- iii) Establishing, operating and running _____ including inter alia the proposed _____ allotted to _____ for which all necessary approvals from the requisite departments had been obtained and lease dated _____ has been executed by the Deputy Commissioner of _____ on behalf of Governor of _____ in favour of _____ pursuant thereto.
- b) The considerations and factors involved in running of the aforesaid business are different and divergent in nature.
- c) For the independent and optimum growth and development of the said businesses of _____, it is considered desirable and expedient to reorganise and reconstruct _____ by transferring the proposed _____ together with all benefits, privileges and advantages to the application made, approval and allotment obtained relating to the said project to _____ and rationalizing and adjusting the capital structure of _____ in the manner and on the terms and conditions stated in the said Scheme of Arrangement.
- d) The arrangement will enable the _____ of _____ to be controlled, managed and run more conveniently and advantageously through separate company with independent management set up and greater focus and attention, which cannot be conveniently carried out by _____ as a single concern having several activities and units.
- e) The Scheme will allow _____ and _____ to rationalise and streamline the existing administrative and management set up in respect of the said businesses and undertakings of _____ eliminate bottlenecks; enable the said companies to take quick and timely decisions concerning the running of the respective businesses and responding to changes taking place in the nature and method of carrying on such businesses; ensure proper budgetary, financial and administrative control over and in respect of the activities of the said undertakings with greater accountability; and result in better planning and monitoring of operations.
- f) The Scheme will lead to better and more effective management of the businesses and undertakings of _____ and assist in the exploitation of the potential of proposed _____ together with all benefits, privileges and advantages to the application

made, approval and allotment obtained relating to the said project of _____ as independent profit centres to the fullest extent.

- g) The Scheme will enable _____ and _____ to undertake their businesses with already established divisions.
- h) There would be no reduction of the Share Capital of _____. The Scheme, would rationalise and adjust suitably and appropriately, the relationship between capital and assets of _____ consequent to the reconstruction.
- i) In general the aforesaid business will be carried on more profitably after the implementation of the Scheme and the Scheme will contribute in furthering and fulfilling the objects of the Companies concerned.
- j) The Scheme will have beneficial results for the said Companies, their shareholders and all concerned.

5. The Board of Directors of the applicant Companies have at their respective Board Meetings by a Resolution passed unanimously approved the said scheme of arrangement.

6. By an order made in Company Application _____ on the _____ this Hon'ble Court was pleased to direct that separate meetings of the Equity Shareholders of _____ and _____ be convened and held for the purpose of considering and, if thought, fit, approving with or without modification the said Scheme of Arrangement. The said order further directed that:

A copy of the said order dated _____ is already annexed hereto and marked with letter _____.

7. Notice of the said meetings was served individually, under certificate of posting on each of the said Equity Shareholders of _____ and _____. As required by the said order together with a copy of the said Scheme of Arrangement and a copy of the statement required Under Section 393 of the Companies Act, 1956 and a form of Proxy, Notice convening meeting of the Equity Shareholders were also published once each in _____ and _____ as directed by the said order in their respective

issues both dated _____. Copies of the two advertisements are annexed hereto and marked with the letter _____ and the applicants crave leave to refer to the proof of services to individual shareholders at the time of hearing if necessary.

8. On the _____ the said meeting of the Equity Shareholders of _____ AND _____ duly convened in accordance with the said order were held at _____.
9. _____ acted as the Chairperson of the said meeting of the Equity Shareholders of both _____ AND _____ respectively.
10. The said meeting of _____, it was attended by Proxy by _____ Equity Shareholders of _____ entitled collectively to _____ Equity Shareholders of Rs. _____ each fully paid up. The said scheme was taken to be read out and explained by the said Chairperson to the meeting and the said Shareholders attending and voting at the said meeting unanimously approved the said Scheme without any modification.
11. The said meeting of _____, it was attended by Proxy by _____ Equity Shareholders of _____ entitled collectively to _____ Equity Shareholders of Rs. _____ each fully paid up. The said scheme was taken to be read out and explained by the said Chairperson to the meeting and the said Shareholders attending and voting at the said meeting unanimously approved the said Scheme without any modification.
12. The said Chairperson has reported the result of their respective meetings to this Hon'ble Court. True copy of the said reports are already annexed hereto and marked with letter _____.
13. The assets of the petitioner Companies are sufficient to meet all their liabilities and the said scheme will not adversely effect the rights of any of the creditors of any of the petitioners Companies in any manner whatsoever. The petitioner Companies have made due provisions for payment of all liabilities as and when the same will fall due. In this connection we crave leave to refer to the accounts book and records of the petitioner Companies at the time of hearing, if necessary.

14. The said scheme provided inter alia, that _____ would continue to pursue all applications for grant of lease for _____ and for obtaining all permissions, approval, consent, required for obtaining of _____ and if necessary to obtain all leases, approvals, consents, licences etc. in the name of _____ for an on account of and in trust of _____. In accordance with the terms of the Scheme, _____ continued to take all necessary steps for grant of the lease. Finally, subsequent to the meetings of the shareholders of _____ and _____ in terms of the order dated _____, a lease dated _____ has been executed in favour of _____ in respect of the said _____. Pursuant thereto all necessary work is being undertaken to get the said _____ operational at an early date.
15. In accordance with the Order dated _____, the Chairpersons of the respective meetings had been given five weeks from the date of the order respective meetings to file their reports. Such reports were filed on _____.
16. _____ was given to understand that the lease deed would be executed and forwarded to _____ at an early date. Accordingly, the Applicants in their bonafide belief that the receipt of the duly executed lease deed was a pre requisite of the filing of the application, did not file the necessary application which had already been made ready.
17. However, due to administrative delays, the duly executed copy of the lease deed was not made available to _____ until _____. The instant application is being made immediately after receipt of the said executed deed of lease.
18. The Applicants have been advised that the said application was required to be made within seven (7) days from the date of filing of the reports by the Chairpersons i.e. _____, the same was not possible due to the circumstances mentioned hereinabove. In particular, the signing and execution of the lease was an important event subsequent to the holding of the meetings of the applicant companies, necessary to be brought on record. The delay in receiving the said lease was caused due to circumstances, wholly beyond the control of the applicants and as such the applicants pray that the delay in making such an application be condoned.

19. Condonation of such delay would endure to the benefit of the applicant companies and their respective shareholders and would also prevent any multiplicity of proceedings.
20. There are no proceedings pending under Sections 235 to 252 of the Companies Act, 1956 against any of the petitioner Companies.
21. This petition is made bonafide and in the interest of justice.
22. No one will be prejudiced if the proposed Scheme of Arrangement is sanctioned and the sanction of the said Scheme will benefit and is in the interest of the said Companies, their Shareholders and all concerned.
23. The petitioners will suffer irreparable loss and prejudice unless an order is made as prayed for.
24. It is just and equitable that this Hon'ble Court be pleased to confirm the said Scheme of Arrangement.
25. Your petitioner state and submit that pursuant to Section 394A of the Companies Act, 1956 the notice of this petition be served on the Central Government, through the Regional Director, Department of Company Affairs, _____.

Your petitioners therefore, humbly prays Your Lordships for an order that:

- a) Delay in making of the instant application be condoned.
- b) The Scheme of Arrangement mentioned in paragraph 1 of this petition being Annexure ____ hereto be sanctioned by this Hon'ble Court to be binding with effect from the _____ or from such other date as this Hon'ble Court may fix on the Applicants

Nos. 1 and 2 herein and their respective shareholders and all concerned.

- c) All the properties, rights and interest of _____ as described in the Schedule of Assets herein be transferred without further act or deed to _____ the Applicant No. 2 and accordingly the same shall pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and vest in _____ for all the estate and interest of _____ subject nevertheless to all charges now affecting the same.
- d) All the debts liabilities, obligations and duties of _____ including those as described in the Schedule of Assets be transferred without further act or deed to _____ and accordingly, the same shall pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and become the debts, liabilities obligation and duties of _____.
- e) All proceedings and/or suits and/or appeals now pending by or against the _____ be continued by or against _____.
- f) _____ do issue and allot to the shareholder of the _____ the

shares in _____ to their entitled
under clause _____ of Scheme.

- g) Leave to be granted to the petitioners to file the
Schedule of assets of _____
relating to _____ as stated in
paragraph _____ of the petition within six
weeks from the date of the order to be made
herein.
- h) _____ be directed to file
the certified copies of the order within 30 days
from the date of issue of such certified copies
with the Registrar of Companies, _____ for
registration.
- i) Any person interested shall be at liberty to
apply to this Hon'ble Court in the above matter
for such directions as may be necessary.
- j) Such further or other order or orders be made
and/or directions be given as to this Hon'ble
Court may deem fit and proper.

And your petitioners as in duty bound shall ever pray.