

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH-V**

**COMPANY SCHEME PETITION NO. 155 (MAH) OF 2023  
CONNECTED WITH  
CA (C.A.A) 27 (MB) OF 2023**

In the matter of the Companies Act, 2013

AND

In the matter of Petition under Sections  
230 to 232 of the Companies Act, 2013  
and other applicable provisions of the  
Companies Act, 2013

AND

In the matter of Focus Softek Private  
Limited, a company incorporated under  
the provisions of the Companies Act, 1956

AND

In the matter of Mathea Multitrading  
Private Limited, a Company incorporated  
under the provisions of the Companies  
Act, 1956

AND

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In the matter of Eyecare Electronics Private Limited, a company incorporated under the provisions of the Companies Act, 1956

AND

In the matter of Andy Properties Private Limited, a Company incorporated under the provisions of the Companies Act, 1956

AND

In the matter of Scheme of Amalgamation of Focus Softek Private Limited ('the First Transferor Company') and Mathea Multitrading Private Limited ('the Second Transferor Company') and Eyecare Electronics Private Limited ('the Third Transferor Company') with Andy Properties Private Limited ('the Transferee Company') and their respective shareholders and creditors

Focus Softek Private Limited

CIN:- U72200MH2004PTC376908

..the Petitioner No.

1 / First

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Transferor  
Company

Mathea Multitrading Private Limited,  
CIN:- U51109MH2011PTC214766

..the Petitioner No.  
2 / Second  
Transferor  
Company

Eyecare Electronics Private Limited  
CIN:- U32200MH1987PTC042754

..the Petitioner No.  
3 / Third  
Transferor  
Company

Andy Properties Private Limited,  
CIN:- U51900MH1996PTC095911

..the Petitioner No.  
4 / Transferee  
Company

***The First Petitioner Company, Second Petitioner Company, Third  
Petitioner Company and Fourth Petitioner Company are  
collectively referred as the Petitioner Companies.***

**Order delivered on: 24.04.2024**

**Coram:**

Hon'ble Member (Judicial)

: Ms. Reeta Kohli

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Hon'ble Member (Technical) : Ms. Madhu Sinha

**Appearances (Physical):**

For the Petitioner(s): Adv. Shruti Kelji i/b PRS  
Associates,

Authorized Representative

For the Regional Director: Mr. Altap Shaikh  
Assistant Director

**ORDER**

1. Heard the Authorized Representative for the Petitioner Companies and the representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of this Tribunal is sought under section 230-232 and other applicable provisions of the Companies Act, 2013 ('Act') read with the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, to the Scheme of Merger by Absorption of FOCUS SOFTEK PRIVATE LIMITED (FSPL) the First Transferor Company and MATHEA MULTITRADING PRIVATE LIMITED (MMPL) the Second Transferor Company and EYECARE ELECTRONICS PRIVATE LIMITED (EEPL) the Third Transferor Company with ANDY PROPERTIES

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PRIVATE LIMITED (APPL) the Transferee Company and their respective shareholders (“the Scheme” or “this Scheme”).

3. The Appointed Date for the Scheme is 1<sup>st</sup> April, 2022.
4. The Authorized Representative for the Petitioner Companies submits that the First Petitioner / Transferor Company (FSPL) was engaged in the business of providing all types of Software Development (onsite and/or off-site), Information Technology (IT) enabled services, including, but not restricted to data (including graphics) transmission & processing and deal in all types of computer software, applications, modules, and e-commerce and/or information technology / networking / security/ telecom products of all kinds and description and/or training and/or consulting for any or all of the above areas/ services. The First Petitioner Company does not have much of business operation as of valuation date. FSPL has reported Other Income (i.e. interest income) for the year ended 31 March 2022. The Second Petitioner / Transferor Company (MMPL) was engaged in the business in India and abroad as traders, Distributors, Dealers, Wholesaler, Retailers, Exporter, Importer, Brokers, Stockiest & Commission agent of various products. The Second Transferor Company (MMPL) is a trading Company and the company does not have much of business operation as of valuation date. MMPL has reported Other Income (i.e. interest income, car hiring charges) for the year ended 31<sup>st</sup> March 2022 and 31<sup>st</sup> March, 2021. The Third Petitioner / Transferor Company (EEPL) was engaged in the business of manufacturing, buying, selling, reselling, exchanging, altering, importing, exporting, improving, assembling, distributing and dealing

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in radios of all types, packages of component parts, radio gramophones, television equipment, video cassette recorders, video cassette players, electrical equipments, instruments, appliances, apparatus, accessories and components thereof and other electronic goods and services and other related activities. EEPL has reported Other Income (i.e. Guarantee Commission and dividend) for the year ended 31<sup>st</sup> March 2022 and 31<sup>st</sup> March, 2021. The Fourth Petitioner / Transferee Company (APPL) is engaged in the business of exporters, importers, sellers, dealers, brokers, commission agents and otherwise to deal in, prepare, pack, mix all types of merchandises products, substances, commodities, such as paper and paper products, textile, textile garments, hosiery products, electrical goods, electronic goods, engineering goods, hardware building materials, agricultural produce, automobiles, vessels, plastic, rubber, chemicals, pharmaceuticals, and non-ferrous metals, iron, steel furniture, wood, plywood, laminates, spices, jewellery, ornaments, grocery's, yams, threads, carpets, silk, art-silk, cotton- wool, jute, sanitary goods, packing material and to act as exporters, broker, commission agents, general merchants, and traders in goods and commodities on ready or forward basis. APPL is not carrying on any business related to real estate activity. APPL has reported revenue from operation (rent Income) and Other Income for the year ended 31<sup>st</sup> March 2022 and 31<sup>st</sup> March, 2021.

5. The Authorized Representative for the Petitioner Companies submits that the Board of Directors of the Petitioner Companies had approved the Scheme of Amalgamation of Focus Softek Private Limited (FSPL) the First Transferor Company and Mathea

Multitrading Private Limited (MMPL) the Second Transferor Company and Eyecare Electronics Private Limited (EEPL) the Third Transferor Company with Andy Properties Private Limited (APPL) the Transferee Company vide Board Resolution dated 14<sup>th</sup> October, 2022.

6. **The rationale for the Amalgamation is as under.**

With a view to consolidate business of the Transferor Companies (FSPL and MMPL and EEPL) into Transferee Company (APPL), to rationalize and streamline the ownership structure of the Transferor Companies (FSPL and MMPL and EEPL); the amalgamation of the Transferor Companies (FSPL and MMPL and EEPL) into Transferee Company (APPL) is being envisaged. The amalgamation when approved would enable achievement of various objectives, including the following;

- The consolidation of legal entities would result in reduced number of entities within the group. This would minimize cost and administrative hassle of maintaining multiple legal entities;
- Simplified group and business structure;
- Greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder value and will improve the competitive position of the combined entity.

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- The existence of independent companies at times result in duplication of efforts and the integration and combination of such businesses will lead to greater and optimal utilization of resources.
- Reducing time and efforts for consolidation of financials at group level.
- The aforesaid synergistic benefits accruing from the consolidation would ultimately contribute to the future business and profitability of the merged entity. The amalgamation of Transferor Companies and Transferee Company is, therefore, beneficial in the long-term interests of the shareholders and all stake holders of these companies.

Thus, as a whole, amalgamation of the Transferor Companies with the Transferee Company in terms of the Scheme will be beneficial for all the companies, their shareholders, their creditors, employees, customers and all others concerned with all the companies.

The Board of Directors of the respective Companies is of the opinion that it would, therefore, be advantageous to combine the activities and business operations of the Transferor Companies (FSPL and MMPL and EEPL) into Transferee Company (APPL). Accordingly, with the aforesaid objectives, it is proposed to amalgamate the Transferor Companies (FSPL and MMPL and EEPL) into Transferee Company (APPL).

7. The Authorized Representative for the Petitioner Companies submits that the Company Scheme Petition has been filed in consonance



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with the order dated 8<sup>th</sup> February, 2023 passed by this Hon'ble Tribunal in C.A. (CAA) / 27 / MAH / 2023. Further the meetings of the shareholders and creditors of the Petitioner Companies were dispensed with by the Hon'ble Tribunal vide order dated 8<sup>th</sup> February, 2023 in C.A. (CAA)/ 27 / MAH/2023.

8. The Authorized Representative for the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per directions of the Hon'ble Tribunal and have filed necessary affidavits of Service with this Tribunal. The Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.
9. The Authorized Representative for the Petitioner Companies submits that Upon the Scheme becoming effective, in consideration of the transfer and vesting of the undertaking of the Transferor Companies in the Transferee Company in terms of this Scheme, the Transferee Company subject to the provisions of this Scheme shall issue and allot to the equity shareholders of the Transferor Companies, whose name appears in the Register of Members as on the Record Date, his/her heirs, executors, administrators or the successors-in-title, as the case may be,:

i) **First Transferor Company (FSPL): -**

The Second Transferor Company (MMPL) and the Third Transferor Company (EEPL) holds 24,00,000 Equity shares and 50,00,000

Equity Shares in the share capital of the First Transferor Company (FSPL.) All the three i.e. FSPL and MMPL and EEPL are simultaneously proposing to merge into APPL and therefore upon the coming into effect of the Scheme, and in consideration for the transfer of and vesting of the properties, assets and liabilities of the Undertaking of FSPL and MMPL and EEPL into APPL in terms of the Scheme, APPL shall not be required to issue any shares to MMPL and EEPL (**i.e. “Excluded Shareholders”**) collectively hold 74,00,000 equity shares in the share capital of FSPL. As such, the equity share capital of FSPL comprising of 74,00,000 equity shares jointly held by MMPL and EEPL shall, without any further act, deed or instrument be deemed to have been automatically cancelled and be of no effect, as an integral part of the Scheme.

APPL shall issue and allot 168 (One Hundred And Sixty Eight) equity Shares of the face value of Rs. 10/- (Rupees Ten each) of the Transferee Company (APPL) credited as fully paid-up, for every 1,00,000 (one lakh) equity shares of the face value of Rs. 10/- (Rupees Ten each) held in the share capital of FSPL or the First Transferor Company.

ii) **Second Transferor Company (MMPL): -**

The Third Transferor Company (EEPL) holds 7500 Equity shares in the share capital of the Second Transferor Company (MMPL.) Both the i.e. MMPL and EEPL are simultaneously proposing to merge into APPL and therefore

upon the coming into effect of the Scheme, and in consideration for the transfer of and vesting of the properties, assets and liabilities of the Undertaking of MMPL and EEPL into APPL in terms of the Scheme, APPL shall not be required to issue any shares to EEPL (**i.e. “Excluded Shareholders”**) collectively hold 7500 equity shares in the share capital of MMPL. As such, the equity share capital of MMPL comprising of 7500 equity shares held by EEPL shall, without any further act, deed or instrument be deemed to have been automatically cancelled and be of no effect, as an integral part of the Scheme.

APPL shall issue and allot 28,454 (Twenty-Eight Thousand Four Hundred Fifty-Four) equity Shares of the face value of Rs. 10/- (Rupees Ten each) of the Transferee Company (APPL) credited as fully paid-up, for every 1,00,000 (one lakh) equity shares of the face value of Rs. 10/- (Rupees Ten each) held in the share capital of MMPL or the Second Transferor Company.

**iii) Third Transferor Company (EEPL)**

2330 (Two Three Hundred Thirty) equity shares of the face value of Rs. 10/- (Rupees Ten each) of the Transferee Company (APPL) credited as fully paid-up, for every 100 (one Hundred) equity shares of the face value of Rs. 100/- (Rupees One Hundred each) held in the share capital of EEPL or the

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Third Transferor Company.

10. The Regional Director, Western Region on behalf of the Central Government has filed its Report dated 26<sup>th</sup> July, 2023 ('Report') praying that this Tribunal may pass such orders as it thinks fit and proper in the facts and merits of the case. The observations of the Central Government on the Scheme are submitted as paragraph 2 (a) to (j) of the Report. In response to the observation made by the Central Government, the Petitioner Companies have also given necessary undertakings and clarification vide their rejoinder affidavit dated 14<sup>th</sup> August, 2023. The observations made by the Central Government and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Sr. No.	Observations of the Regional Director, Western Region, Mumbai	Reply of the Petitioner Companies
a)	That on examination of the report of the Registrar of Companies, Mumbai dated 13.06.2023 for Petitioner Companies (Annexed as Annexure A-1) that the Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no representation regarding the proposed scheme of Arrangement has been received in the	So far as the objection of the Regional Director as stated in paragraph 2 (a) of his Affidavit is concerned,  i) the contents being statements of fact does not require any

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<p>matter of Petitioner Company. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2022.</p> <p>The ROC has further submitted that in his report dated 13.06.2023 which are as under: -</p> <p>i. That the ROC Mumbai in his report dated 13.06.2023 has also stated that No Inquiry, Inspection, Investigations, Prosecutions, Technical Scrutiny, Complaints under CA, 2013 have been pending against the Petitioner Companies.</p> <p>ii. <b>Further ROC has mentioned as follows: -</b></p> <p>1. There are no Secured Creditor in 1<sup>st</sup> Transferor/ Applicant Company. There is 1 (one) Secured Creditor in 2<sup>nd</sup> Transferor/Applicant Company as on 30<sup>th</sup> September, 2022. There are no Secured Creditor in 3<sup>rd</sup> Transferor/ Applicant Company. There are no Secured Creditor in Transferee/ 4<sup>th</sup> Applicant Company.</p> <p>Further, there are three (3) Unsecured</p>	<p>comments.</p> <p>ii)</p> <p>1. the contents being statements of fact does not require any comments.</p> <p>2. the Petitioner Companies undertake to comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013 and the fee and stamp duty paid by the Transferor Companies on their Authorized Share Capital shall be set-off against any fees and stamp duty payable by the Transferee Company on its Authorized Share Capital subsequent to the amalgamation and the same shall be in</p>
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<p>Creditors of value of INR 1,65,041/- as on 30<sup>th</sup> September,2022 in the 1<sup>st</sup> Transferor Company/1<sup>st</sup> Applicant Company. There are three (3) Unsecured Creditors of value of INR 1,61,38,100/ as on 30<sup>th</sup> September,2022 in the 2<sup>nd</sup> Transferor Company/2<sup>nd</sup> Applicant Company. There are Four (4) Unsecured Creditors of value of INR 6,61,23,797/ - as on 30<sup>th</sup> September,2022 in the 3<sup>rd</sup> Transferor Company/ 3<sup>rd</sup> Applicant Company. There are Five (5) Unsecured Creditors of value of INR 39,69,33,750/- as on 30<sup>th</sup> September,2022 in the Transferee Company /4<sup>th</sup> Applicant Company.</p> <p>2.As per provisions of section 232(3)(i) of CA, 2013 where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting off the fees already paid by</p>	<p>accordance with the provisions of Section 232(3) (i) of the Companies Act, 2013. The Transferee Company will pay the balance / difference amount of the fees and stamp duty on its increased Authorized share capital, if any.</p> <p>3. the Petitioner Companies undertakes to protect the interest of the creditors.</p>
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	<p>the transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to amalgamation.</p> <p>3. Interest of the Creditors should be protected.</p> <p>Hence, the Petitioner Companies shall undertake to submit detail reply against observations mentioned above.</p>	
b)	<p>Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.</p>	<p>So far as the objection of the Regional Director as stated in paragraph 2 (b) of his Affidavit is concerned the Petitioner Companies undertake to comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013 and the fee and stamp duty paid by the Transferor Companies on their Authorized Share Capital shall be set-off against any fees</p>

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		and stamp duty payable by the Transferee Company on its Authorized Share Capital subsequent to the amalgamation and the same shall be in accordance with the provisions of Section 232(3) (i) of the Companies Act, 2013. The Transferee Company will pay the balance / difference amount of the fees and stamp duty on its increasing Authorised share capital, if any.
c)	In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resultant company shall pass such accounting entries which are necessary in connection with the scheme to comply with Other applicable Accounting Standards including AS-5 or IND AS-8 etc.	So far as the objection of the Regional Director as stated in paragraph 2 (c) of his Affidavit is concerned, the Petitioner Companies in addition to compliance of Accounting Standard



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		AS-14 (IND AS - 103) undertake to 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.
d)	The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.	So far as the objection of the Regional Director as stated in paragraph 2 (d) of his Affidavit is concerned, the Petitioner Companies, undertake and confirm that the Scheme enclosed to the Company Application and Company Petition is one and same and there is no discrepancy / deviation /and no change or changes are made to the Scheme. Further the Petitioner

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		<p>Companies have made the said averment in para 41 of Company Scheme Petitions of Focus Softek Private Limited and Mathea Multitrading Private Limited and Eyecare Electronics Private Limited with Andy Properties Private Limited filed with the said National Company Law Tribunal.</p>
e)	<p>The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.</p>	<p>So far as the objection of the Regional Director as stated in paragraph 2 (e) of his Affidavit is concerned, the Petitioner Companies confirm that the Petitioner Companies have complied with the provisions of Section 230(5) Companies Act, 2013 and as directed by Hon'ble National</p>

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		<p>Company Law Tribunal in its order dated 8<sup>th</sup> February, 2023 served notices to concerned authorities which are likely to be affected by the Amalgamation. The copy of the Joint Affidavit of Service dated 28<sup>th</sup> April, 2023, have been filed by the Petitioner Companies with NCLT for proving dispatch of individual notices on 10<sup>th</sup> May, 2023.</p> <p>Further the Petitioner Companies confirms that the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such</p>
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		Authorities is binding on the Petitioner Companies.
f)	<p>As per Definition of the Scheme, <b>"Appointed Date"</b> means 1st April, 2022 or such other date as may be approved by the Tribunal;</p> <p>"Effective Date" means the date on which certified copies of the order of the National Company Law Tribunal is filed with the relevant Registrar of Companies, Maharashtra, Mumbai pursuant to section 232(5) after the last of the approvals as specified under Clause 4.8 of the Scheme are obtained.</p> <p>"Operative Date" means the Scheme set out herein in its present form or with any modification(s) approved or imposed or directed by the National Company Law Tribunal (NCLT) shall take effect from the Appointed Date but shall be operative from the Effective Date.</p> <p>"Record Date" means the date to be fixed by the Board of Directors of the Transferee Company in consultation with the Board of Directors of the Transferor Companies</p>	<p>So far as the objection of the Regional Director as stated in paragraph 2 (f) of his Affidavit is concerned, the Petitioner Companies undertake that the Appointed date under Clause 2.1 of Part II of the Scheme shall be 1<sup>st</sup> April, 2022 and in terms of the provisions of Section 232(6) of the Companies Act 2013, the scheme will be given effect from 1<sup>st</sup> April, 2022 accordingly.</p> <p>So far as the objection of the Regional Director as stated in paragraph 2 (f) of his Affidavit is concerned, as per Clause – 2.1 of Part – II</p>

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<p>for the purpose of reckoning names of the equity shareholders of the Transferor Companies, who shall be entitled to receive share of the Transferee Company, upon coming into effect of this Scheme.</p> <p>It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/ CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>	<p>of the Scheme, effective date is the date on which certified copies of the order of the National Company Law Tribunal is filed with the relevant Registrar of Companies, Maharashtra, Mumbai pursuant to section 232(5) after the last of the approvals as specified under Clause 4.8 of the Scheme are obtained. The Petitioner Companies further confirm and undertakes that the scheme shall only be effective with effect from 1<sup>st</sup> April, 2022 being the Appointed Date and not from any date subsequent to 1<sup>st</sup> April, 2022 as per circular dated 21.08.2019 of MCA.</p>
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		<p>So far as the objection of the Regional Director as stated in paragraph 2 (f) of his Affidavit is concerned, the Petitioner Companies submits that, though the Scheme will become operational from the effective date but take effect from the Appointed Date i.e. 1<sup>st</sup> April, 2022, which is in compliance with the provision of Section 232(6) of the Companies Act, 2013.</p> <p>So far as the objection of the Regional Director as stated in paragraph 2 (f) of his Affidavit is concerned, the Petitioner Companies submits that the Record Date is only for the purpose of reckoning</p>
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		<p>names of the equity shareholders of the Transferor Companies, who shall be entitled to receive shares of the Transferee Company, upon coming into effect of this Scheme.</p> <p>The Petitioner Companies undertake to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21<sup>st</sup> August, 2019 issued by the Ministry of Corporate Affairs.</p>
g)	<p>Petitioner Companies shall undertake to comply with the directions of the Income tax department, if any.</p>	<p>So far as the objection of the Regional Director as stated in paragraph 2 (g) of his Affidavit is concerned, the Petitioner Companies undertakes to comply with the directions of the Income Tax</p>

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		Department.
h)	Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.	So far as the objection of the Regional Director as stated in paragraph 2 (h) of his Affidavit is concerned, the Petitioner Companies submits that the Petitioner Companies are engaged in the business of trading activities. The Petitioner Companies does not have much of business operations. No specific Regulatory or Sectoral approval is required. The companies are not governed by the Competition Commission of India (CCI) or any other Regulatory Authority.
i)	It is observed from financial statements as on 31.03.2022 of Petitioner Companies has issued shares at Security Premium	So far as the objection of the Regional Director as stated in paragraph



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and collected total premium as follows: -			2 (i) of his Affidavit is
Sr. No .	Name of the Company	Total Amount of Securities Premium Collected	concerned, it is submitted <i>that</i> The Company has
1.	FOCUS SOFTEK PRIVATE LIMITED	Rs.23,05,72,800/-	received total premium of Rs. 34,40,23,950/- on two allotments. The total consideration
<p>but Form 2 or PAS 3 is not appearing in MCA-21 Portal. Therefore, the company may clarify the status of filling of return of allotment. Further, the Petitioner Companies shall also satisfy the Hon'ble Bench about assessment of share capital u/s. 68 of the Income Tax Act, 1961, for issue of shares at fair value in order to confirm the compliance of the Income Tax Act or ask comments of Nodal Officer of Income Tax Department on this issue.</p>			<p>received was Rs. 36,63,41,000/- (Share Capital Rs. 2,23,17,050/- and Securities Premium of Rs. 34,40,23,950). Focus Softek Private Limited the 1<sup>st</sup> Transferor Company has filed (Form 2 / Form PAS 3) vide SRN No. A 38968436 dated 5<sup>th</sup> June, 2008 and SRN No. H 22217079 dated 19<sup>th</sup> October, 2018 respectively for issue and allotment of shares at Securities Premium.</p>

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COMPANY SCHEME PETITION NO. 155 (MAH) OF 2023  
CONNECTED WITH  
CA (C.A.A) 27 (MB) OF 2023

		<p>Copies of the respective payment receipt challan is annexed to this Affidavit and marked as Annexure A1 and A2.</p> <p>Out of the total Securities Premium account, the Company has utilized an amount of Rs. 11,34,51,150/- for issue of bonus shares. Bonus shares were allotted on 04-12-2018.</p> <p>The balance amount of Rs. 23,05,72,800/- is outstanding in the Balance sheet.</p> <p>The Petitioner Companies hereby submits that the Petitioner First Transferor Company has duly uploaded the</p>
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		<p>Return of Allotment (Form PAS 3) on MCA website and the corresponding paid up share capital reflecting on the MCA website is only as a consequence of filing of said E – forms and the amount is tallying with the Balance Sheet.</p> <p>The said e-forms may not be reflecting on the MCA website only due to general issues faced by the industry pursuant to shift of MCA website from Version 2 (V2) to Version 3 (V3).</p> <p>We hereby confirm that as far as assessment of share capital U/S 68 of the Income Tax Act, 1961 is concerned, the Petitioner Companies</p>
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		<p>submits that the share allotments at premium were made in the year 2008 and 2018 i.e. around 15 years and 5 years have elapsed ever since first and second allotments were made. Also, the said Securities Premium has been appropriately considered and disclosed in the Audited Financial Statements and Income Tax Returns of the relevant assessment years as required under the Income Tax Act, 1961 and Rules made thereunder and also in compliance with all the relevant laws.</p> <p>The First Transferor Company has not received any notice from the Income Tax</p>
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		<p>Department under section 68 of the Income Tax Act, 1961. No copy of Assessment order u/s. 68 read with other applicable provisions of the Income-tax Act, 1961 was received for the financial year in which shares were issued at premium.</p> <p>Legitimate amount of tax has been paid by the Shareholders and Company from time to time. The shares have been allotted as per the price determined by the valuer and in compliance with all the provisions of the Companies Act, 1956 / 2013 and Income Tax Act, 1961 from time to time.</p> <p>The Petitioner</p>
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		<p>Companies undertakes that the approval of the Scheme by the NCLT will not deter the rights of the Income Tax Department to deal with any of the issues arising after giving effect to the Scheme and the Transferee Company shall deal in the proceedings appropriately in the course of applicable Law.</p>										
j)	<p>As per shareholding pattern as on 31.03.2022 submitted by the Petitioner company, details of shareholding is as follows: -</p> <table border="1" data-bbox="316 1534 1027 2027"> <thead> <tr> <th data-bbox="316 1534 384 1883">Sr. No.</th> <th data-bbox="384 1534 555 1883">Petitioner Company</th> <th data-bbox="555 1534 746 1883">Name of Shareholder</th> <th data-bbox="746 1534 858 1883">% of shares Held</th> <th data-bbox="858 1534 1027 1883">Remark</th> </tr> </thead> <tbody> <tr> <td data-bbox="316 1883 384 2027">1.</td> <td data-bbox="384 1883 555 2027">FOCUS SOFTEK</td> <td data-bbox="555 1883 746 2027">EYECAR E</td> <td data-bbox="746 1883 858 2027">33.05 %</td> <td data-bbox="858 1883 1027 2027">No form BEN-2</td> </tr> </tbody> </table>	Sr. No.	Petitioner Company	Name of Shareholder	% of shares Held	Remark	1.	FOCUS SOFTEK	EYECAR E	33.05 %	No form BEN-2	<p>So far as the objection of the Regional Director as stated in paragraph 2 (j) of his Affidavit is concerned, it is submitted, in the case of Mathea Multitrading Private Limited and Focus Softek Private Limited, no individual member holds any indirect holding in the</p>
Sr. No.	Petitioner Company	Name of Shareholder	% of shares Held	Remark								
1.	FOCUS SOFTEK	EYECAR E	33.05 %	No form BEN-2								

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		PRIVAT E LIMITE D	ELECTR ONICS PRIVATE LIMITED		has been filed by any of the Petitioner	Companies hence he shall not be considered to be a significant beneficial owner pursuant to Explanation 1 of Companies (Significant Beneficial Owners) Amendment Rules, 2019.
	2.		MATHEA MULTITR ADING PRIVATE LIMIED	15.87 %	Compani es as per records available at MCA21 Portal	As regards body corporates members of these Companies is concerned, no individual holds any majority stake in those body corporates and no individual holds majority stake in the ultimate holding company of the body corporate members as per Explanation III of Rule 2(h) of Companies (Significant Beneficial Owners) Amendment Rules, 2019.
	3.	MATHE A MULTIT RADIN G PRIVAT	EYECAR E ELECTR ONICS PRIVATE LIMITED	75%		
	4.	E LIMIED	BUOYAN T FINANCIA L ADVISO RS PRIVATE LIMITED	10%		
No Form BEN-2 has been filed by any of the						

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<p>Petitioner Company as per records available at MCA21 Portal, hence Petitioner Companies shall undertake to comply with the provisions of section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and to file Form BEN-2 for declaring name of the significant beneficial owner with concerned ROC.</p>	<p>The Petitioner Companies further filed additional rejoinder dated 19<sup>th</sup> January, 2024 to the Regional Director Report which give more clarification about the BEN-2 and the same be considered.</p> <p>However, the Petitioner Companies undertake to comply with the provisions of Section 90 of Companies Act, 2013 r/w Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder if any.</p>
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11. The observations made by the Regional Director, Western Region on behalf of the Central Government are enlisted herein in Para 10 above along with response of the Petitioner Companies on the observations of the Regional Director, Western Region filed vide affidavit of the Petitioner Companies dated 14<sup>th</sup> August, 2023. The Representative of the



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Regional Director during the course of final hearing has submitted that the explanations and clarifications given by the petitioner companies are found satisfactory and that they have no objection to the Scheme. The clarifications and undertakings given by the Petitioner Companies in Para 10 above are accepted by this Tribunal.

12. The Official Liquidator has filed his report dated 14<sup>th</sup> September, 2023 in the consolidated Company Scheme Petition No. C.P.(CAA)/155/MAH/2023, inter alia, stating therein that on perusal of the Chartered Accountant's report and specifically the questionnaire relating to the same and the Petition, it is noticed that the affairs of the Transferor Companies have been conducted in a proper manner. Therefore, the representation of the Official Liquidator may be taken on record by this Hon'ble National Company Law Tribunal Mumbai Bench, Mumbai.
13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, C.P. (CAA) / 155 / MAH / 2023 connected with C.A. (CAA) / 27 / MB / 2023 filed by the Petitioner Companies is made absolute in terms of prayer clauses of the said Company Scheme Petition.
15. The Scheme annexed to the Company Scheme Petition is hereby sanctioned, and the Appointed Date of the scheme is 1st April, 2022. It shall be binding on the Petitioner Companies involved in the Scheme

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and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors, Employees and/or any other stakeholders concerned.

16. The Petitioner Companies are directed to file a certified copy of this Order along with the copy of Scheme with the concerned Registrar of Companies, electronically in e-form INC-28 within 30 days from the date of receipt of the Order duly certified by the designated Registrar of this Tribunal. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.
17. The Petitioner Companies shall lodge a copy of this Order along with the Scheme duly certified by designated Registrar of this Tribunal, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within a period of 60 working days from the date of the receipt of the certified copy of the Order from the Registry of this Tribunal.
18. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the designated Registrar of this Tribunal.
19. Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
20. Any concerned authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
21. Ordered accordingly. Thus, the Company Scheme Petition with C.P.

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(CAA) /155/MAH/2023 in C.A. (CAA)/27/MB/2023 shall stand disposed-off.

**Sd/-**

**MS. MADHU SINHA**

**Member (Technical)**

//VLM//

**Sd/-**

**MS. REETA KOHLI**

**Member(Judicial)**