

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

C.A. (C.A.A.) No. 3221 / MB/ C-IV/2019

In the matter of Companies Act, 2013

And

In the Matter of Scheme of Merger by Absorption of Umicore Anandeya India Private Limited ('Umicore Anandeya') with Umicore Autocat India Private Limited ('Umicore Autocat') and their respective shareholders ('the Scheme')

And

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

Umicore Anandeya India Private Limited Transferor / First Applicant Company

Umicore Autocat India Private Limited Transferee / Second Applicant Company

NOTICE TO THE CREDITORS UNDER SECTION 230 OF THE COMPANIES ACT, 2013

Notice is hereby given in pursuance of sub-section (3) of section 230 of the Companies Act, 2013 (the 'Act'), that as directed by the Division Bench of the National Company Law Tribunal at Mumbai (the 'Tribunal') comprising of Hon'ble Rajasekhar V. K., Member (Judicial) and Hon'ble Ravikumar Duraisamy, Member (Technical) by an order dated 13 November 2019 under sub-section (1) of Section 230 of the Act, notice is being given to the creditors of both the Applicant Companies.

Creditors are hereby informed that representations, if any, in connection with the proposed Scheme may be made to the Tribunal within thirty (30) days from the date of publication of this notice on company's website. The address of the Tribunal is National Company Law Tribunal Mumbai Bench, 4th - 6th Floor, MTNL Building, Cuffe Parade Telephone Exchange, GD Somani Marg, Cuffe Parade, Mumbai, Maharashtra 400 005. A copy of the representation may simultaneously be sent to respective applicant company at its registered office.



In case no representation is received within the stated period of thirty days, it shall be presumed that you have no representation to make on the proposed Scheme.



ABhaha

Ms. Arpita Shaha

Authorized signatory



Dated this 07th day of January, 2020

Enclosures: i) Copy of order of the Tribunal; and
ii) Copy of Scheme of Merger by Absorption

Registered Office:

Umicore Anandeya India Private Limited

429, 4th Floor, Kanakia Zillion,
LBS Marg, Kurla (West),
Mumbai – 400 070, Maharashtra

Umicore Autocat India Private Limited

429, 4th Floor, Kanakia Zillion,
LBS Marg, Kurla (West),
Mumbai – 400 070, Maharashtra

SCHEME OF MERGER BY ABSORPTION
UNDER SECTION 230 TO 232 OF THE COMPANIES ACT, 2013
(read with other applicable provisions of the Companies Act, 2013
and rules made thereunder)

OF
UMICORE ANANDEYA INDIA PRIVATE LIMITED
(**'TRANSFEROR COMPANY'**)
WITH
UMICORE AUTOCAT INDIA PRIVATE LIMITED
(**'TRANSFeree COMPANY'**)

AND
THEIR RESPECTIVE SHAREHOLDERS

PART A - GENERAL

A. Description of the Parties

1. Umicore Anandeya India Private Limited (the **'Transferor Company'** or **'Umicore Anandeya'**) is a private limited company incorporated under the provisions of the Companies Act, 1956 under CIN 'U24130MH2005PTC320941' and having its registered office presently situated at 429, G-Wing, 4th Floor, Kanakia Zillion LBS Marg, Kurla (West) Mumbai, Maharashtra - 400 070. Umicore Anandeya was a manufacturer of Zinc Oxide and had its manufacturing plant located at Sancole Industrial Estate, Goa.
2. Umicore Autocat India Private Limited (the **'Transferee Company'** or **'Umicore Autocat'**) is a private limited company incorporated under the provisions of the Companies Act, 1956 under CIN 'U34101MH2008PTC188480' and having its registered office

For Umicore Autocat India Private Limited

ABhaha

Authorised Signatory

situated at 429, G-Wing, 4th Floor, Kanakia Zillion LBS Marg, Kurla (West) Mumbai, Maharashtra – 400070. Umicore Autocat is engaged in manufacturing of automotive catalyst and has its manufacturing plant located in Shirwal, Maharashtra.

3. Umicore Anandeya and Umicore Autocat are part of Umicore group engaged in materials technology and recycling industry with global presence. Further, Umicore International, Luxembourg holds 99.999% equity shares while Umicore, Belgium holds balance equity shares i.e. 0.001% in share capital of both Transferor and Transferee Company.

B. Description of the Scheme

4. This scheme of merger by absorption (the '**Scheme**') is made under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (to the extent notified and applicable) and provides for:

- (i) the merger by absorption of the Transferor Company (including all of its undertakings, properties, assets and liabilities) with the Transferee Company (the '**Merger by absorption**') and dissolution of the Transferor Company without winding-up and the consequent issuance of equity shares by the Transferee Company to the shareholders of the Transferor Company; and
- (ii) various other matters incidental, consequential or otherwise integrally connected therewith.

5. The Scheme is divided into the following parts:

- (i) **Part A** - deals with the description of the Transferor Company and Transferee Company, the description and the rationale of the Scheme;
- (ii) **Part B** - deals with definitions and share capital of the Transferor Company and Transferee Company;
- (iii) **Part C** - deals with the Merger by absorption; and
- (iv) **Part D** - deals with the general clauses, terms and conditions.

C. Rationale for the Merger by absorption

6. The Transferor and Transferee companies are part of the Umicore group. The manufacturing business and operations of the Umicore Group in India are now carried out through the Transferee Company (i.e. Umicore Autocat) whereas the Transferor Company (i.e. Umicore Anandeya) has ceased its operations and is non-operational for past 3 years.
7. The Merger by absorption will result in the consolidation of the above Group entities of Umicore Group in India and will have the following benefits:
- (i) simplification and streamlining of the management structure leading to better administration, reduction in costs from focused operational efforts, integration and optimization of various support functions, resources and the assets and

improved organizational capability arising from pooling of financial resources;

(ii) elimination of duplication and rationalization of administrative expenses, reduction in multiplicity of legal and regulatory compliances;

(iii) facilitation of inter-transfer of resources and costs and optimum utilization of assets; and

(iv) rationalization, standardization and simplification of business processes

PART B – DEFINITIONS AND SHARE CAPITAL

8. Definitions

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

- (a) **"Act" or "the Act"** means the Companies Act, 1956, to the extent applicable, and Companies Act, 2013 and shall include any statutory modifications, re-enactment or amendments thereof for the time being in force.
- (b) **"Appointed Date"** means April 1, 2019 or such other date as may be fixed or approved by the NCLT in relation to the Merger by absorption.
- (c) **"Board of Directors"** in relation to the Transferor Company and the Transferee Company, as the case may be, shall, unless it is repugnant to the context or otherwise, include a committee of directors or any person authorized by the board of directors or such committee of directors.
- (d) **"Effective Date"** means the last of the dates on which the conditions and matters referred to in Clause 24 hereof occur or have been fulfilled or waived;
- (e) **"Equity Share(s)"** means equity shares of the Transferor Company or Transferee Company, as the case may be.

- (f) **"IT Act"** means the Income Tax Act, 1961 and shall include any statutory modifications, re-enactment or amendments thereof for the time being in force.
- (g) **"Merger by absorption"** shall have the meaning ascribed to it in the recital to this Scheme.
- (h) **"NCLT"** means the National Company Law Tribunal, Mumbai, Maharashtra as constituted and authorized as per the provisions of the Act, for approving any scheme of merger by absorption under the relevant provisions of the Act.
- (i) **"New Equity Shares"** shall have the meaning as ascribed to it in Clause 12.1 below.
- (j) **"Umicore Group"** is a Brussels, Belgium based group of companies engaged in materials technology and recycling industry with global presence.
- (k) **"Umicore Autocat"** or **"Transferee Company"** means Umicore Autocat India Private Limited is company incorporated under the Companies Act, 1956 and having its registered office at 429, G-Wing, 4th Floor, Kanakia Zillion LBS Marg, Kurla (West) Mumbai Maharashtra 400 070
- (l) **"Umicore Anandeya"** or **"Transferor Company"** means Umicore Anandeya India Private Limited, a company incorporated under the Companies Act, 1956 and having its registered office presently situated at 429, G-Wing, 4th Floor,

Kanakia Zillion LBS Marg, Kurla (West) Mumbai, Maharashtra – 400 070. Further, notwithstanding anything to the contrary contained in this Scheme, the term 'Umicore Anandeya' or 'Transferor Company' means and includes:

- (i) all the assets and properties of the Umicore Anandeyaas on the Appointed Date i.e. the entire business, all the properties (*whether movable or immovable – freehold or leasehold, tangible or intangible*), plant and machinery, buildings and structures, furniture, fixtures, office equipment, appliances, accessories, deposits, stocks, assets, investments, cash balances with banks, loans, advances, contingent rights or benefits, receivables, financial assets, lending contracts, approvals, permissions, permits, quotas, rights, entitlements, guarantees, authorizations, approvals, agreements, contracts, leases, licenses, registrations, tenancies, benefits of all taxes including but not limited to Minimum Alternate Tax paid under Sections 115JA/115JB ("**MAT**") of the IT Act, advance taxes and tax deducted at source, right to carry forward and set off of unabsorbed tax losses, unutilized MAT credit under the provisions of the IT Act, right to claim deductions under the IT Act including its continuing benefits; all taxes paid or payable, tax benefits, un-availed/availed credits, set offs, claims for refunds under any State VAT Acts, CST Acts, Central Excise, Customs Act, Service Tax and Goods and Service Tax Act provisions or any other State or Central statutes (*regardless of the period to which they may relate*);

engagements, arrangements of all kinds, exemptions, benefits, incentives, privileges and rights under State tariff regulations and under various laws, intellectual property rights, reserves, provisions, funds, benefits of all agreements, all records, files, papers, computer programs, manuals, data, catalogues, lists and other details of present and former customers and suppliers, customer credit information, customer and supplier pricing information and other records, and all other interests of whatsoever nature belonging to or in the ownership, power, possession or the control of or vested in or granted in favor of or held for the benefit of or enjoyed by Umicore Anandeyaor which have accrued to Umicore Anandeyaas on the Appointed Date, whether in India or abroad, of whatsoever nature and wherever situated (*hereinafter referred to as the "Assets of Umicore Anandeya"*);

(ii) all the debts, liabilities, duties and obligations of Umicore Anandeyaas on the Appointed Date (*hereinafter referred to as the "Liabilities of Umicore Anandeya"*);

(iii) without prejudice to the generality of sub-clause (i) above, the term Umicore Anandeya/ 'Transferor Company' shall *inter-alia* include all the reserves, the movable and immovable properties, assets, including leases, lease-hold rights, licenses, permits, authorizations, quota rights, intellectual properties, import quotas, telephones, telex, facsimile and other

communication facilities, rights and benefits of all agreements, guarantees including guarantees given by the State Government(s), deeds, bonds, insurance policies and all other interests, rights and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages, benefits and approvals of whatsoever nature and wherever situated, belonging to or in the ownership, power or possession or control of Umicore Anandeya.

(iv) all earnest monies and/ or security deposits paid by Umicore Anandeya.

(v) all the employees of Umicore Anandeyawho will become the employees of the Transferee Company.

(m) **"RBI"** means the Reserve Bank of India.

(n) **"Record Date"** means the date to be fixed by the Board of Directors of the Transferor Company and the Transferee Company for the purpose of determining the shareholders of the Transferor Companyto whom the New Equity Shares of the Transferee Company shall be allotted pursuant to the Merger by absorption under this Scheme.

(o) **"Scheme"** or **"the Scheme"** or **"this Scheme"** means this Scheme of Merger by absorption in its present form as submitted to the NCLT or this Scheme with such modification(s), if any made, as per Clause 23of the Scheme.

(p) **"Share Exchange Ratio"** shall have the meaning ascribed to it in Clause 12.1 of this Scheme.

9. Interpretation

9.1. Any references in the Scheme to "upon the Scheme becoming effective" or "effectiveness of the Scheme" shall mean the Effective Date. Further, the Scheme set out herein in its present form or with any modification(s) as approved or imposed or directed by the Hon'ble NCLT shall be effective from the Appointed Date but shall become operative on the Effective Date.

9.2. Word(s) and expression(s) not defined hereinabove and elsewhere defined in the Scheme will have the meaning(s) ascribed therein.

9.3. All terms and words not defined in this Scheme shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning ascribed to them under the Act, the Companies Act, 2013, the General Clauses Act, 1897, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and other applicable laws, rules, regulations, bye laws, as the case may be, including any statutory modification or re-enactment thereof from time to time, as applicable.

10. Share Capital

10.1. The share capital structure of the Transferor Company as at March 31, 2018 is as under:

Particulars	Amount in Rupees
Authorized Capital	
39,500,000 Equity Shares of Rs. 10/- each	395,000,000
Total	395,000,000
Issued, Subscribed and Paid-up	
39,233,800 Equity Shares of Rs. 10/- each fully paid up	392,338,000
Total	392,338,000

There has been no change in the share capital of the Transferor Company post March 31, 2018. Umicore International, Luxembourg holds 99.99% share in the Transferor Company and balance 0.01% is held by Umicore, Belgium.

10.2. The share capital structure of the Transferee Company as at March 31, 2018 is as under:

Particulars	Amount in Rupees
Authorized Capital	
700,000 Equity Shares of Rs. 10/- each	7,000,000
Total	7,000,000
Issued, Subscribed and Paid-up	
685,675 Equity Shares of Rs. 10/- each fully paid up	6,856,750

Total	6,856,750
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As per Ordinary Resolution passed in Extra Ordinary General Meeting held on 21 May, 2018, authorized share capital of Umicore Autocat has been increased to Rs. 20,000,000/- (i.e. 2,000,000 equity share of Rs. 10 each).

Further, Umicore Autocat issued and allotted 115,589 and 110,839 new equity shares vide board resolutions dated 19 December 2018 and 31 May 2019 respectively, leading to increase in Paid up Share Capital of the Company. Share capital structure of Umicore Autocat as on date (i.e. 30 June 2019) is as follows:

Particulars	Amount in Rupees
Authorized Capital	
2,000,000 Equity Shares of Rs. 10/- each	20,000,000
Total	20,000,000
Issued, Subscribed and Paid-up	
912,103 Equity Shares of Rs. 10/- each fully paid up	9,121,030
Total	9,121,030

Umicore International, Luxembourg holds 99.99% share in the Transferor Company and balance 0.01% is held by Umicore, Belgium.

PART C – MERGER BY ABSORPTION

11. Transfer And Vesting

11.1. Upon the Scheme becoming effective and with effect from the Appointed Date, the entire business of Transferor Company, respectively, including all their properties and assets (*whether movable or immovable, tangible or intangible*) of whatsoever nature such as licenses, agreements of whatever nature including but not limited to shareholders' agreements, share subscription agreements or any right devolving pursuant to such agreements (*either entered into or vested in terms of any legal process*) etc. any agreement for commission, management fees, permits, quotas, approvals, development rights, lease, tenancy rights, permissions, incentives, if any, and all other rights, title, interest, contracts, consent, approvals or powers of every kind, nature and descriptions whatsoever shall, under the provisions of the Act and pursuant to the orders of the NCLT or any other appropriate authority sanctioning this Scheme and without further act, instrument or deed, but subject to the charges affecting the same as on the Effective Date, be transferred and/or deemed to be transferred to and vested in the Transferee Company, so as to become the properties and assets of the Transferee Company.

11.2. The transfer and vesting of the properties and assets as aforesaid shall be subject to the existing charges/ hypothecation/ mortgages, if any, as may be subsisting over or in respect of the said assets or any part thereof, without any further act, instrument or deed, and the absence of any formal amendment or approval which may be required by a lender or trustee or third party shall not affect the operation of the above. Provided however, any reference in any

security documents or arrangements to which Transferor Company are party, wherein specified assets of Transferor Company have been or are offered or agreed to be offered as security for any financial assistance or obligations shall be construed as reference only to such specified assets pertaining to Transferor Company and vested in Transferee Company by virtue of this Scheme to the end and intent that the charges shall not extend or be deemed to extend to any assets of the Transferor Company not so specifically encumbered, or to any assets of the Transferee Company. Provided that the Scheme shall not operate to enlarge the security for the said liabilities of the Transferor Company which shall vest in Transferee Company by virtue of the Scheme and Transferee Company shall not be obliged to create any further, or additional security thereof after the Merger by absorption or otherwise.

11.3. All the immovable properties of the Transferor Company, including land together with the buildings and structures standing thereon and rights and interests in the immovable properties of the Transferor Company, whether freehold or leasehold (*unless the lessor of the leasehold properties is the Transferee Company, in which case, the relevant lease shall become redundant and shall cease to have any effect*) or otherwise and all documents of title, right and easement in relation thereto shall stand transferred to and be vested in and transferred to and/ or be deemed to have been and stand transferred to and vested in the Transferee Company, without any further act or deed done or being required to be done by the Transferor Company and/ or the Transferee Company. The Transferee Company shall be entitled to exercise all rights and privileges attached to the aforesaid immovable

properties and shall be liable to pay the ground rent and taxes and fulfill all obligations in relation to or applicable to such immovable properties. The mutation or substitution of the title to the immovable properties shall, upon this Scheme being effective, be made and duly recorded in the name of the Transferee Company by the appropriate authorities pursuant to the sanction of this Scheme by the NCLT in accordance with the terms hereof.

11.4. All the movable assets of the Transferor Company or assets otherwise capable of transfer by manual delivery or by endorsement and delivery, including cash in hand, shall be - physically handed over by manual delivery or by endorsement and delivery, to the Transferee Company to the end and intent that the property therein passes to the Transferee Company on such manual delivery or endorsement and delivery, without requiring any deed or instrument of conveyance for the same and shall become the property of the Transferee Company with effect from the Appointed Date accordingly.

11.5. In respect of movable assets, other than those specified in Clause 11.4 above, the same shall, without further act, instrument or deed, be transferred and/or deemed to be transferred to and vested in the Transferee Company upon the coming into effect of the Scheme and with effect from the Appointed Date pursuant to the provisions of the Act, and the Transferor Company shall give notice in such form as each of them deems fit to such persons, that pursuant to the order of the NCLT, the said assets would be paid or made good to or held on account of the Transferee Company, and

to, the Transferee Company and shall become the loans, debts, liabilities, duties and obligations of the Transferee Company.

11.9. Where any of the loans raised and used, debts, liabilities, duties and obligations of any of the Transferor Company as on the Appointed Date as deemed to be transferred to the Transferee Company have been discharged by the respective Transferor Company, on or after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to have been for and on account of the Transferee Company.

11.10. Loans, advances and other obligations (including any guarantees, letters of credit, letters of comfort or any other instrument or arrangement which may give rise to a liability including a contingent liability in whatever form), if any, due on the Effective Date between the Transferor Company and the Transferee Company shall automatically stand discharged and come to an end and there shall be no liability in that behalf on either the Transferor Company or the Transferee Company and the appropriate effect shall be given in the books of account and records of the Transferee Company.

11.11. Without prejudice to the provisions of the foregoing clauses, the Transferee Company may at any time after the coming into effect of the Scheme in accordance with the provisions of the Scheme, if so required, under any law or otherwise, execute deeds of confirmation, in favor of the secured creditors of the Transferor Company or in favor of any other party to any contract or arrangement to which the Transferor Company are party, or any

writings as may be necessary to be executed in order to give formal effect to the above provisions. The Transferee Company shall, under the provisions of the Scheme, be deemed to be authorized to execute any such writings on behalf of the Transferor Company and to implement or carry out all such formalities or compliances as referred to above on the part of the Transferor Company to be carried out or performed.

11.12. Upon the coming into effect of the Scheme, benefits of all taxes paid including but not limited to MAT paid, advance taxes and tax deducted at source, right to carry forward and set off of unabsorbed tax losses, unutilized MAT credit under the provisions of the IT Act, right to claim deductions under the provisions of the IT Act, including its continuing benefits, all taxes paid or payable, tax benefits, un-availed credits, set offs, claims for refunds under any State VAT Acts, CST Acts, Central Excise, Customs Act, Service Tax and Goods and Service Tax Act provisions or any other State or Central statutes (*regardless of the period to which they may relate*) by the Transferor Company from the Appointed Date, regardless of the period to which they 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 and shall be deemed to be the rights/claims of the Transferee Company. All un-availed credits, set offs, claims for refunds under any State VAT Acts, CST Acts, Central Excise, Customs Act, Service Tax and Goods and Service Tax Act provisions or any other State or Central statutes regardless of the period to which they may relate, shall stand transferred to the

benefit of and shall be available in the hands of the Transferee Company without restrictions under the respective provisions.

11.13. With effect from the Appointed Date, properties including freehold & leasehold properties, leases, estates, assets, contracts, deeds, rights, titles, interests, benefits, licenses, consents, allotment letters, sanctions, approvals, permissions and authorizations etc. to carry on the operations and business of Transferor Company shall stand vested in or transferred to the Transferee Company without any further act or deed and shall be appropriately mutated by the statutory authorities concerned in favor of the Transferee Company. The benefit of all statutory and regulatory permissions, environmental approvals and consents, registrations or other licenses and consents shall vest in and become available to the Transferee Company pursuant to this Scheme. In so far as the various incentives, subsidies, rehabilitation schemes, special status and other benefits or privileges enjoyed, granted by any Government body, local authority or by any other person, or availed of by the Transferor Company, is concerned, the same shall vest with and be available to the Transferee Company on the same terms and conditions. In relation to such transfer and vesting, any procedural requirement required to be fulfilled solely by the Transferor Company (and not by any of its successors) shall be fulfilled by the Transferee Company as if it is the duly constituted attorney of that Transferor Company.

11.14. The Transferee Company shall, at any time after this Scheme becomes effective in accordance with the provisions hereof, and in

the capacity of the successor entity of the Transferor Company, if so required under any law or otherwise, do all such acts or things as may be necessary to transfer/ obtain the approvals, permissions, rights, titles, interests, benefits, licenses, consents, allotment letters, sanctions, and authorizations etc.

11.15. It is further clarified that, if the consent of any third party or authority is required to give effect to the aforementioned provisions of this Clause 11, the said third party or authority shall be obligated to, and shall make and duly record the necessary substitution/ endorsement in the name of the Transferee Company pursuant to sanction of this Scheme by the NCLT, and upon this Scheme being effective in accordance with the terms thereof. For this purpose, the Transferee Company shall file appropriate applications/ documents with relevant authorities concerned for information and record purpose.

12. Consideration

12.1. Upon the Scheme becoming effective and in consideration of the Merger by absorption, the Transferee Company shall, without any application or deed, issue and allot Equity Shares, credited as fully paid up, to the extent indicated below, to the members of each of the Transferor Company holding fully paid up Equity Shares of the Transferor Company and whose name appear in the register of members of the Transferor Company on the Record Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of the respective Transferor Company/ Transferee Company in the following proportion:

For the Transferor Company

"32 (Thirty-two) fully paid up Equity Shares of face value of Rs. 10/- each of Umicore Autocat shall be issued and allotted as fully paid up for every 10,000 (Ten thousand) Equity Shares of Rs. 10/-each fully paid up held in Umicore Anandeya." ("Share Exchange Ratio")

*(Equity shares to be issued by Umicore Autocat above are hereinafter collectively referred to as "**New Equity Shares**")*

12.2. The New Equity Shares to be issued to the members of the Transferor Company as per Clause 12.1 above shall be subject to the Memorandum of Association and Articles of Association of the Transferee Company. The New Equity Shares shall rank *pari-passu* in all respects, including dividend, with the existing Equity Shares of the Transferee Company.

12.3. In case, shareholders get fractional shares in the Transferee Company, such fractional shares shall be ignored.

12.4. Pursuant to the Scheme, the shares of the Transferor Company held by their Equity shareholders (both in physical and dematerialized form), shall, without any further application, act, instrument or deed, be deemed to have been automatically cancelled. The said Equity Shares of the Transferor Company held in physical form shall be deemed to have been automatically cancelled without any requirement to surrender the certificates for such Equity Shares as held by the shareholders of the Transferor Company, respectively.

12.5. The New Equity Shares to be issued by the Transferee Company shall be issued in physical form.

12.6. The Transferee Company shall, if and to the extent required, apply for and obtain any approvals from and make any filings with the concerned regulatory authorities (*including approvals required under the Foreign Exchange Management Act, 1999, if any*) for the issue and allotment by the Transferee Company of the New Equity Shares to the members of the Transferor Company, respectively, under the Scheme.

12.7. The approval of this Scheme by the members of the Transferee Company shall be deemed to be in due compliance with the applicable provisions of the Act including Section 62 thereof, for the issue and allotment of the New Equity Shares by the Transferee Company to the members of the Transferor Company, respectively, as provided in the Scheme.

13. Accounting Treatment in the Books of the Transferee Company

13.1. The Transferee Company shall account for the Amalgamation in accordance with the 'Purchase Method of Accounting' laid down by Accounting Standard 14 (Accounting for Amalgamation) prescribed by the Central Government under the Companies (Accounting Standard) Rules, 2006 as amended from time to time.

13.2. Upon the Scheme becoming effective, the Transferee Company shall account for the amalgamation in its books as under:

- a. All the assets and liabilities of the transferor company shall be incorporated at their existing carrying amounts. The reserves (whether capital or revenue or arising on revaluation) of the transferor company, other than the statutory reserves, shall not be included in the financial statements of the transferee company.
- b. Any excess of the amount of the consideration over the value of the net assets of the transferor company acquired by the transferee company shall be recognized in the transferee company's financial statements as goodwill arising on amalgamation. If the amount of the consideration is lower than the value of the net assets acquired, the difference shall be treated as Capital Reserve
- c. Inter-company balances, if any, shall stand cancelled

13.3. The goodwill, if any, arising on amalgamation shall be amortized on a systematic basis over its useful life. The amortization period shall not exceed five years unless a somewhat longer period can be justified by the management.

13.4. All costs and expenses incurred as per Clause 26 below as well as other costs incidental with the finalization of this Scheme and to put it into operation, and any other expenses or charges attributable to the implementation of this Scheme, shall be charged to Profit & Loss Account of the Transferee Company.

13.5. In case of any differences in accounting policy between Transferor Company and Transferee Company, the accounting policies followed by Transferee Company shall prevail and the difference till the Appointed Date will be quantified and adjusted in the Profit and Loss account, to ensure that the financial statements of Transferee Company reflects the financial position on the basis of consistent accounting policy.

14. Tax Treatment

14.1. The Merger by absorption shall take place with effect from the Appointed Date and shall be in accordance with the provisions of Section 2 (1B) and Section 47 of the IT Act. If any terms or provisions of the Scheme are found to be inconsistent with the provisions of the said Sections of the IT Act, at a later date, including resulting from an amendment of law or from any other reason whatsoever, the provisions of the said Sections of the IT Act shall prevail and the Scheme shall stand modified to the extent deemed necessary to comply with Section 2(1B) of the IT Act. Such modification will, however, not affect the other parts of the Scheme.

14.2. Any tax liability under the IT Act, Wealth-tax Act, 1957, Customs Act, 1962, Central Excise Act, 1944, Central Sales Tax Act, 1956 and any other State Sales Tax/ Value Added Tax laws, Service Tax, Goods and Service Tax Act, stamp laws or other applicable laws/ regulations (hereinafter in this clause referred to as the "Tax Laws") dealing with taxes/ duties/ levies allocable or related to the business of the Transferor Company to the extent not provided for or provided by tax provisions in the accounts made, as on the date

immediately preceding the Appointed Date, shall be transferred to the Transferee Company.

14.3. All taxes (including income tax, wealth tax, sales tax, excise duty, customs duty, service tax, VAT, Goods and Service Tax Act etc.) paid or payable by the Transferor Company in respect of the operations and/ or the profits of the business, on and from the Appointed Date shall be on account of Transferee Company and insofar as it relates to the tax payment (including without limitation to the income tax, wealth tax, sales tax, excise duty, customs duty, service tax, VAT, Goods and Service Tax Act etc.) whether by way of deduction at source, advance tax or otherwise howsoever, by the Transferor Company in respect of the profits or activities or operations of the business on and from the Appointed Date, the same shall be deemed to be the corresponding item paid by the Transferee Company and shall in all proceedings be dealt with accordingly.

14.4. Any refund under the Tax Laws received by/ due to the Transferor Company consequent to the assessment made on Transferor Company subsequent to the Appointed Date, pertaining to the business transferred and for which no credit is taken into account as on the date immediately preceding the Appointed Date, shall also belong to and be received by Transferee Company.

14.5. Without prejudice to the generality of the above, all benefits under the income tax including dividend tax, sales tax, MAT, excise duty, service tax, VAT, Goods and Service Tax Act etc., to which the Transferor Company are entitled to in terms of the applicable

Tax Laws of the Union and State governments, shall be available to vest in the Transferee Company.

15. Alterations/ Amendments to the Memorandum and Articles of Association of the Transferee Company

With respect to the Transferee Company, upon this Scheme being effective:

- (i) With effect from the Effective Date, without following any further procedure as laid in the applicable provisions of the Act, the Transferee Company shall be deemed to be authorized to commence such business as laid down in the objects clauses of the Memorandum of Association of Transferor Company.
- (ii) As an integral part of the Scheme and upon the Scheme coming into effect, the authorized share capital of the Transferee Company shall stand increased without any further act, instrument or deed on the part of the Transferee Company, including the payment of stamp duty and fees payable to the Registrar of Companies, by an amount equal to the authorized share capital of Umicore Anandeya , such that upon the effectiveness of the Scheme, the aggregate authorized share capital of the Transferee Company shall be as set out in sub-clause (iii) below and the Memorandum of Association and Articles of Association of the Transferee Company (*relating to the authorized share capital*) shall, without any further act, instrument or deed, be and stand altered, modified and amended, and the consent of the shareholders of the Transferee Company to the Scheme shall be deemed to be sufficient for the purposes of effecting this

amendment, and no further resolution(s) under the applicable provisions of the Act would be required to be separately passed, as the case may be, and for this purpose the stamp duty and fees already paid on the authorized capital of Umicore Anandeyashall be utilized and applied to the increased authorized share capital of the Transferee Company and there would be no requirement for any further payment of stamp duty and/or fee by the Transferee Company for increase in the authorized share capital to that extent upon the Merger by absorption.

- (iii) Consequent upon the Scheme becoming effective, the authorized share capital of the Transferee Company will be as under:

Particulars	Amount in Rupees
Authorized Capital	
41,500,000 Equity shares of Rs. 10/- each	415,000,000
Total	415,000,000

It is clarified that the approval of the members of the Transferee Company to the Scheme shall be deemed to be their consent/ approval also to the alteration of the Memorandum and Articles of Association of the Transferee Company as may be required under the Act for the purposes of giving effect to the change in authorized share capital or otherwise, as required hereunder.

The following clause in the memorandum of association of the Transferee Company shall stand amended to read as under:

Clause V (a)

*"The Authorized Share Capital of the Company is Rs. **415,000,000/-** (RupeesForty one crore fifty lakhs only) divided into 41,500,000 (Four crore fifteen lakhs only) Equity share of Rs. 10/- (Rupees Ten only) each, with rights, privileges and conditions attached thereto as are provided by the regulations of the Company for the time being with the power to increase and reduce the Capital of the Company and to divide the Shares in the Capital for the time being into several classes and to attach thereto respectively such preferential rights, privileges or conditions as may be determined by or in accordance with the regulations of the Company and to vary, modify or abrogate any such rights, privileges or conditions in such manner as may for the time being be provided by the regulations of theCompany."*

16. Dissolution of the Transferor Company

Upon the Scheme becoming effective, the Transferor Company shall stand dissolved without being wound-up and without any requirement of any further act or deed by the parties, in accordance with the Act. The name of the Transferor Company shall be struck off from its records by the concerned Registrar of Companies. The Transferee Company shall make the necessary filings in this regard.

PART D – GENERAL TERMS AND CONDITIONS

17. Conduct of business of Transferor Company till Effective Date

With effect from the Appointed Date and upto and including the Effective Date:

- (i) The Transferor Company shall be deemed to have been carrying on and shall carry on its business and activities and shall be deemed to have held and stood possessed of and shall hold and stand possessed of all its properties and assets pertaining to the business of the Transferor Company, for and on account of and in trust for the Transferee Company. The Transferor Company hereby undertakes to hold its said assets with utmost prudence until the Effective Date.
- (ii) The Transferor Company shall carry on its business and activities with reasonable diligence, business prudence and shall not, except in the ordinary course of business or without prior written consent of the Transferee Company alienate, charge, mortgage, encumber or otherwise deal with or dispose off the business or part thereof of the Transferor Company.
- (iii) All the profits or income accruing or arising to the Transferor Company or expenditure or losses arising or incurred or suffered by the Transferor Company pertaining to the business of such Transferor Company shall for all purposes be treated and be deemed to be and accrue as the income or profits or losses or expenditure as the case may be of the Transferee Company.
- (iv) The Transferor Company shall not vary the terms and conditions of employment of any of the employees except in the ordinary course of business or without the prior consent of the

Transferee Company or pursuant to any pre-existing obligation undertaken by such Transferor Company, as the case may be, prior to the Appointed Date.

- (v) Any of the rights, powers, authorities, privileges exercised by the Transferor Company shall be deemed to have been exercised by such Transferor Company for and on behalf of, and in trust for and as an agent of the Transferee Company. Similarly, any of the obligations, duties and commitments that have been undertaken or discharged by the Transferor Company shall be deemed to have been undertaken for and on behalf of and as an agent for the Transferee Company.
- (vi) All assets, rights, titles or interests acquired and all liabilities incurred by each of the Transferor Company after the Appointed Date but prior to the Effective Date shall also without any further act, instrument or deed stand transferred to and vested in, or to be deemed to have been transferred to or vested, in the Transferee Company upon the coming into effect of the Scheme pursuant to the provisions of Sections 230 to 232 of the Act.
- (vii) The Transferee Company shall have the right to claim refund of payment of the taxes arising on account of transactions entered into between the Transferor Company and the Transferee Company between the Appointed Date and the Effective date.
- (viii) The Transferee Company shall be entitled, pending the sanction of the Scheme, to apply to the Central/State Government, and all other agencies, departments and authorities concerned as are necessary under any law or rules, for such consents, approvals and sanctions, which the Transferee Company may require pursuant to this Scheme.

18. Transferor Company' Staff, Workmen and Employees

18.1. Upon the Scheme becoming effective, employees of the Transferor Company, if any shall become the employees of the Transferee Company, without any break or interruption in their services, on the same terms and conditions on which they are engaged as on the Effective Date. The Transferee Company further agrees that for the purpose of payment of any retirement benefit/ compensation, such immediate uninterrupted past services to the Transferor Company, shall also be taken into account.

18.2. The accounts/ funds of the employees whose services are transferred under Clause 18.1 above, relating to superannuation, provident fund, gratuity fund and/or other funds, and including any surplus in such funds created or existing for the benefit of the employees of the Transferor Company shall be identified, determined and transferred to the respective trusts/ funds of the Transferee Company and such employees shall be deemed to have become members of such trusts/ funds of the Transferee Company. It is the aim and intent of the Scheme that all the rights, duties, powers and obligations of the Transferor Company in relation to the said funds shall become those of the Transferee Company. The dues of the employees of the Transferor Company relating to the said trusts/ funds shall continue to be deposited therein accordingly.

19. Legal Proceedings

19.1. If any suit, appeal or other proceeding of whatever nature, by or against the Transferor Company, is pending on the Effective Date, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of or by anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against the Transferee Company, as the case may be, 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 this Scheme had not been made.

19.2. In case of any litigation, suits, recovery proceedings which are to be initiated or may be initiated against the Transferor Company, the Transferee Company shall be made party thereto, and any payment and expenses made thereto shall be the liability of the Transferee Company.

20. Contracts, Deeds, etc.

20.1. Subject to the other provisions of this Scheme, all contracts, deeds, bonds, insurance, letters of intent, undertakings, arrangements, policies, agreements of whatever nature including but not limited to shareholders' agreements, share subscription agreements or any right devolving pursuant to such agreements (*either entered into or vested in terms of any legal process*), etc., any agreement for commission, management fees, and other instruments, if any, of whatsoever nature pertaining to the Transferor Company, to which the Transferor Company are parties or to the benefit of which the Transferor Company may be eligible, or for the obligations of which the Transferor Company may be

liable, and which are subsisting or have effect immediately before the Effective Date, shall continue in full force and effect against or in favor of the Transferee Company, as the case may be, and may be enforced by or against the Transferee Company as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obligor, as the case may be, thereto.

20.2. Without prejudice to the other provisions of this Scheme and notwithstanding the fact that transfer of the assets, liabilities and contracts relating to the Transferor Company and their vesting in the Transferee Company occurs by virtue of this Scheme itself, the Transferee Company may at any time after the coming into effect of this Scheme, in accordance with the provisions hereof, if so required under any law or otherwise, enter into and/or issue and/or execute deeds, writings or confirmations or enter into any tripartite arrangements, confirmations or novations, with any party, to which the Transferor Company is a party, or any writings as may be necessary to be executed in order to give formal effect to the provisions of this Scheme. The Transferee Company shall be deemed to be authorized to execute any such deeds, writings or confirmations on behalf of the Transferor Company and to implement or carry out all formalities required on the part of the Transferor Company to give effect to the provisions of this Scheme.

20.3. On this Scheme finally taking effect as aforesaid, all the contracts, deeds, bonds, insurance, letters of intent, undertakings, arrangements, policies, agreements and such other instruments entered into with and/or given by, as the case may be, the various

Central/ State Governments, statutory or regulatory body or agencies or third parties with respect to the Transferor Company shall, without any further act, deed, matter or thing, stand transferred to and vested in the Transferee Company

21. Saving of Concluded Transactions

The transfer of properties and liabilities under Clause 11 above and the continuance of proceedings by or against the Transferor Company under Clause 19 above shall not affect any transaction or proceedings already concluded by the Transferor Company on and after the respective Appointed Date till the Effective Date, to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things done and executed by the Transferor Company in respect thereto, as done and executed on behalf of the Transferee Company.

22. Application to NCLT

On the Scheme being agreed to by the requisite majorities of the members and creditors of the Transferor Company and the Transferee Company, respectively, the Transferor Company and the Transferee Company shall respectively and/or jointly, with all reasonable dispatch, make all necessary applications under the Act to the NCLT for seeking approval of the Scheme.

23. Modification or Amendments to the Scheme

Subject to the approval of the NCLT, the Transferor Company and the Transferee Company by their respective Boards of Directors, may assent to/make and/or consent to any

modifications/amendments to the Scheme or to any conditions or limitations that the NCLT and/or any other authority under law may deem fit to direct or impose, or which may otherwise be considered necessary, desirable or appropriate as a result of subsequent events or otherwise by them (i.e. the Board of Directors). The Transferor Company and the Transferee Company by their respective Board of Directors are authorized to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions whatsoever for carrying the Scheme into effect, whether by reason of any directive or orders of any other authorities or otherwise, howsoever, arising out of or under or by virtue of the Scheme and/or any matter concerned or connected therewith.

24. Severability

If any part of the Scheme is found to be not practicable for any reason whatsoever, the same shall not, subject to the decision of the Transferor Company and the Transferee Company, affect the validity or implementation of the other parts/provisions of the Scheme.

25. Conditionality of the Scheme

This Scheme is and shall be conditional upon and subject to:

- (i) The requisite consent, approval or permission of the Central Government, State Government or any other statutory or regulatory authority, which by law may be necessary for the implementation of this Scheme;
- (ii) The Scheme being approved by the requisite majorities of such classes of persons including the respective members

and/or creditors of each of the Transferor Company and the Transferee Company, as may be directed by the NCLT;

- (iii) The Scheme being sanctioned by the NCLT under the provisions of the Act and obtaining the necessary order;
- (iv) Certified or authenticated copy of the order of the NCLT sanctioning the Scheme being filed with the Registrar of Companies, Maharashtra by each of the Transferor Company and the Transferee Company.

26. Costs, Charges and Expenses

All costs, charges, taxes including duties, levies and all other expenses, if any (*save as expressly otherwise agreed*) of the Transferor Company and the Transferee Company arising out of or incurred in connection with and implementing this Scheme and matters incidental thereto shall be borne by the Transferee Company.

27. Effect of Non-Receipt of Approvals

In the event of any of the said sanctions and approvals referred to in the preceding Clause not being obtained and/ or the Scheme not being sanctioned by the NCLT and / or the order not being passed as aforesaid within such period or periods as may be agreed upon between the Transferor Company and the Transferee Company by their Board of Directors (*and which the Board of Directors of the Transferor Company and Transferee Company are hereby empowered and authorized to agree upon and extend from time to time without any limitation*) failing which this Scheme shall stand revoked, cancelled and be of no effect, save and except in respect of any act or deed done prior thereto as is contemplated

hereunder, or as to any rights and/ or liabilities which might have arisen or accrued pursuant thereto, and which shall be governed and be preserved or worked out as is specifically provided in the Scheme or as may otherwise arise in law.

For Umicore Autocat India Private Limited

ABhaha

Authorised Signatory