

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

CP (CAA) 4648 /230-232/NCLT/MB/MAH/2018

Bharat Financial Inclusion Limited	...Petitioner Company 1/ Amalgamating Company
IndusInd Bank Limited	...Petitioner Company 2/ Amalgamated Company
IndusInd Financial Inclusion Limited	... Petitioner Company 3/ Transferee Company

In the matter of:

Petition under Sections 230 -232 and
other relevant provisions of the
Companies Act, 2013;

And

Composite Scheme of Arrangement
among Bharat Financial Inclusion
Limited (**Amalgamating Company**),
IndusInd Bank Limited
(**Amalgamated Company**) and
IndusInd Financial Inclusion Limited
(**Transferee Company**) and their
respective shareholders and creditors.

Order Date: 10.06.2019

Coram:

Hon'ble Member (Judicial): Mr. V. P. Singh,
Hon'ble Member (Technical): Mr. Ravikumar Duraisamy

For the Petitioner Companies: Mr. Gaurav Joshi, Senior Advocate
Mr. Ashish Kamat, Advocate
Mr. Tapan Deshpande, Advocate
Ms. Priya Patwa, Advocate

For Regional Director: Mr. S. Ramakantha, Joint Director and
Ms. RupaSutar, Assistant Director.

PerseRavikumar Duraisamy, Member

ORDER

1. Heard Learned Senior Advocate appearing for the Petitioner Companies, and Officers of the Regional Director, Western Region, Mumbai. No shareholder or creditor of any of the Petitioner Companies, has appeared before this Tribunal to oppose the present Company Scheme Petition.
2. The Senior Advocate for the Petitioner Companies states that the Company Scheme Petition has been filed to seek sanction to the Composite Scheme of Arrangement among Bharat Financial Inclusion Limited (“**Amalgamating Company**”/ “**Petitioner Company 1**”), IndusInd Bank Limited (“**Amalgamated Company**”/ “**Petitioner Company 2**”) and IndusInd Financial Inclusion Limited (“**Transferee Company**”/ “**Petitioner Company 3**”) and their respective shareholders and creditors (“**Scheme**” or “**Scheme of Arrangement**”).
3. Petitioner Company 1 is engaged primarily in the businesses of providing small value loans and certain other basic financial services to women in rural areas in India, for use in small businesses or for other income-generating activities and certain non-financial, non-lending activities which comprise origination, servicing and collection of loans as a business

correspondent for Petitioner Company 2 as well as provision of other products and services. Petitioner Company 2 is primarily engaged in the business of, *inter alia*, banking and financial services including retail, commercial, corporate and investment banking and wealth management services catering to both consumer and corporate customers. Petitioner Company 3 is a wholly owned subsidiary of Petitioner Company 2, was incorporated to carry on the business of business correspondent/ business facilitator or authorized agent/sub-agent to customers, for various clients from time to time including banks, financial institutions, central government, state governments, quasi-government agencies or any person (whether incorporated or not) in India or elsewhere and to provide various services in connection with the same. Petitioner Company 3 was incorporated on 6th August, 2018 and is not carrying on any business presently.

4. The shares of Petitioner Company 1 and Petitioner Company 2 are listed on BSE Limited (“BSE”) and National Stock Exchange of India Limited (“NSE”). The BSE *vide* its letters both dated 1st June, 2018 and the NSE *vide* its letters both dated 4th June, 2018 have respectively given their no objections to Petitioner Company 1 and Petitioner Company 2, to file the Scheme with this Tribunal. The Global Depository Receipts (GDR) of Petitioner Company 2 are listed on Luxembourg Stock Exchange. The shares of Petitioner Company 3 are not

listed on any of the Stock Exchanges. The Scheme of Arrangement, provides *inter alia* for: (i) the amalgamation of Petitioner Company 1 with Petitioner Company 2 by way of merger by absorption and dissolution of Petitioner Company 1 without winding up and the consequent issuance of IBL Shares (*as defined in the Scheme*) by Petitioner Company 2 to the shareholders of Petitioner Company 1 in accordance with the Share Exchange Ratio (*as defined in the Scheme*) (“**Amalgamation**”); (ii) the Preferential Allotment (*as defined in the Scheme*) by Petitioner Company 2 of the Warrants (*as defined in the Scheme*) to the IBL Promoters (*as defined in the Scheme*); (iii) pursuant to the Amalgamation, the transfer of the Transferred Undertaking (*as defined in the Scheme*), as a going concern, on a slump sale basis, from Petitioner Company 2 to Petitioner Company 3 in exchange for the Slump Exchange Shares (*as defined in the Scheme*) to be issued by Petitioner Company 3 to Petitioner Company 2 (“**Slump Exchange**”); (iii) the grant of Special Incentive IBL Options (*as defined in the Scheme*) to specified BFIL Employees (*as defined in the Scheme*) transferred to Petitioner Company 2 or Petitioner Company 3 pursuant to the Scheme; and (iv) various other matters incidental, consequential or otherwise integrally connected therewith, including the reorganization of the share capital by Petitioner Company 2, pursuant to Sections 230 - 232 and other relevant provisions of the Companies Act, 2013

(“Act”) in the manner provided for in this Scheme and in compliance with the provisions of the Income Tax Act, 1961. The Amalgamation shall precede the Preferential Allotment and the Slump Exchange. Further, as a part of the Scheme and upon its effectiveness, the name of the Petitioner Company 3 shall be changed to “Bharat Financial Inclusion Limited”, being the name of the Petitioner Company 1.

5. The background, rationale and benefits of the Scheme are that Petitioner Company 1 and Petitioner Company 2 have entered into an Implementation Agreement dated 14th October, 2017, pursuant to which the parties thereto have agreed, *inter alia*, to the amalgamation of Petitioner Company 1 into Petitioner Company 2 in accordance with the RBI Amalgamation Directions (*defined in the Scheme*) and the Act, the issuance and allotment of the Warrants (*as defined in the Scheme*) to the IBL Promoters (*as defined in the Scheme*) and the subsequent transfer and vesting of the Transferred Undertaking (*as defined in the Scheme*) from Petitioner Company 2 to Petitioner Company 3, as a ‘going concern’ on a slump sale basis, by way of a Composite Scheme of Arrangement under Sections 230 - 232 of the Act. The Amalgamation, Preferential Allotment and the Slump Exchange pursuant to the Scheme would, *inter alia*, have the following benefits: (i) the Amalgamation would create meaningful value to various stakeholders including respective shareholders, customers, employees, as the combined business

would benefit from increased scale, wider product diversification, stronger balance sheet and the ability to drive synergies across revenue opportunities, operating efficiencies and underwriting efficiencies, amongst others; (ii) the Amalgamation will result in material realizable synergies for the benefit of both sets of shareholders, a large common shareholder base and stable market perception in relation to the Amalgamation; (iii) Petitioner Company 1 has a commercially established model in the microfinance segment; (iv) The Amalgamation pursuant to the Scheme shall provide Petitioner Company 2 access to Petitioner Company 1's growing customer base and outlets which would help in building a strong liability book resulting in reduction in cost of funds and increase cross-sell opportunities of various main-stream banking products to financially underserved customers in rural India; (iv) the Amalgamation would offer Petitioner Company 2 a deeper reach in the low income segment and also increase the access of Petitioner Company 1's customer base to Petitioner Company 2's wide array of products and services; (v) Petitioner Company 2 can, pursuant to the Amalgamation, leverage Petitioner Company 1's loan book in furtherance of its focus on financial inclusion and priority sector lending and for alignment of the mission objectives of both Petitioner Company 1 and Petitioner Company 2; (vi) the Preferential Allotment shall result in bolstering the capital base and balance

sheet of Petitioner Company 2 and shall provide growth capital for the future growth of Petitioner Company 2; and (vii) the Slump Exchange of the Transferred Undertaking pursuant to the Scheme would provide Petitioner Company 2 with access to dedicated business correspondent services through Petitioner Company 3 which will help deepen the reach and widen the delivery mechanism of banking services by improving last-mile connectivity and help Petitioner Company 2 in fulfilling its commitment towards financial inclusion in a commercially viable manner. At the same time, this would enable Petitioner Company 2, after the Amalgamation, to comply with the RBI's circular on Financial Inclusion by Extension of Banking Services – Use of Business Correspondents dated June 24, 2014 read with the RBI Master Circular on Branch Authorization dated July 1, 2014, which, *inter alia*, prohibit a banking company from carrying on the business correspondent business directly and accordingly, following the Amalgamation, the said business would be carried on by Petitioner Company 3, which is a wholly owned subsidiary of Petitioner Company 2.

6. The Petitioner Companies have complied with all the requirements as per the directions of this Tribunal and have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as required under the

Act and the Rules made thereunder. The said undertaking given by the Petitioner Companies, is accepted.

7. The Regional Director (“RD”) has filed his Representation dated 28th March, 2019 (“Report”) before this Tribunal *inter alia* raising certain observations to the Scheme in paragraph IV therein. The paragraph IV of the RD’s Report is, for sake of ready reference, reproduced hereunder:

“IV. The observation of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:

- (i) In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-(IND AS-8) etc.;*
- (ii) As per Part-I, General Clause - A(2) of the scheme, it is stated that “the equity shares of the amalgamated company (IndusInd Bank Limited) are listed in the Stock Exchanges and its Global Depository Receipts (GDR) are listed (GDR) are listed on Luxembourg Stock Exchange” in this regard it is submitted that the petitioner to produce NOC from the above said stock Exchange;*
- (iii) As per Part-1, General Clause - B (4) of the scheme, it is stated that “BFIL and IBL have entered into implementation agreement dated 14th October 2017 pursuant to which the parties thereto have agree inter alia to the amalgamation of BFIL in to IBL in accordance with the RBI Amalgamation Directions and*

the Act” in this regard it is submitted that the petitioner to produce NOC from RBI. Further, it is submitted that the petitioners be directed to file the said agreement in a sealed envelope to the Central Government and this Tribunal for perusal and to offer any comments and to form a considered opinion;

*(iv) As per Part-I, Definitions Clause - 10(H) of the scheme, it is stated that Appointed Date shall mean the opening of business on January 01, 2018. In this regard it is submitted that the petitioner companies have already filed financial statements for the financial year 2017-18. Duly audited, authenticated and adopted balance sheet as at 31.03,2018 is on public dominion. Since the financial figures given as at 31.12.2017 has no relevancy under the Companies Act 2013. The Balance Sheet should be duly audited by the Statutory Auditor, **authenticated** by the Board of Directors of the Company in pursuance to **section 134** and laid before Shareholders in Annual General Meeting held in compliance of the provisions of **section 96** of the Companies Act, 2013 and **approved/adopted** by the shareholders of the Company **in the said Annual General Meeting** is must. The Annual Accounts without going through process is of no value in the Act. In this regard Hon'ble Tribunal may pass appropriate orders as deem fit;*

(v) As per Part-I, Definitions Clause - (Q) of the scheme, “Effective Date” means the last of the dates on which the conditions and matters referred to in Clause 72 hereof occur or have been fulfilled or waived; In this regard it is submitted that the “Effective Date” shall be 1st January, 2018 as per provisions of section 232(6) of the

Companies Act, 2013 and not as specified in the above said clauses of the scheme;

- (vi) *As per Part-I, Definitions Clause - (Y) of the scheme, “Exclusivity Agreement Date” shall mean September 11, 2017 i.e. the date of execution of the confidentiality, exclusivity and standstill agreement between IBL and BFIL. In this regard it is submitted that the petitioners be directed to file the said agreement in a sealed envelope to this Tribunal for perusal form a considered opinion;*
- (vii) *As per Part-I, Definitions Clause - (BB) of the scheme, “Implementation Agreement Execution Date” shall mean October 14, 2017, in this regard it is submitted that the petitioners be directed to file an affidavit regarding the relevancy of the said date to the appointed date;*
- (viii) *As per Part-I, Definitions Clause - (OO) of the scheme, “Regulatory Authority” means any applicable regulatory, competition or supervisory body or, banking authority, quasi- regulatory agency or body, tax authorities or tribunal, including but not limited to the CCI, the RBI, the Stock Exchanges and the SEBI along with the authorities before which appeals against the decisions made by any of the foregoing may be brought. In this regard it is submitted the petitioners be directed to submit NOC from CCI, the RBI, the Stock Exchanges and the SEBI along with the authorities before which appeals against the decisions made by any of the foregoing may be brought;*
- (ix) *As per Part - II Section -1- Clause - (18) - (v) - of the Scheme - Transfer of Existing BFIL Options it is stated that “The exercise price payable for each IBL Share*

issued pursuant to the exercise of the Amalgamated Company Options by the Eligible Employees shall be equal to the quotient of the exercise price payable for each Amalgamating Company share under the respective BFIL ESOP Plans divided by the Share Exchange Ratio (rounded up to the nearest integer)”. In this regard it is submitted that the petitioners be directed to file an affidavit quantifying the price and equation enunciated in the scheme with an illustration;

- (x) ***As per Part - II Section - 4 Clause - (28) - of the Scheme - Issue of Shares for Amalgamation. It is stated that*** “If any member becomes entitled to any fractional shares, entitlements or credit on the issue and allotment of equity shares by the Amalgamated Company in accordance with Clause 27 of this Scheme; the Board of the Amalgamated Company shall consolidate all such fractional entitlements and shall, without any further application, act, instrument or deed, issue and allot such consolidated equity shares directly to an individual trust or a board of trustees or a corporate trustee nominated by the Amalgamated Company (the “Trustee”), who shall hold such equity shares with all additions or accretions thereto in trust for the benefit of the respective shareholders, to whom they belong and their respective heirs, executors, administrators or successors for the specific purpose of selling such equity shares in the market at such price or prices and on such time or times within 60 (sixty) days from the date of allotment, as the Trustee may in its sole discretion decide and on such sale, pay to the Amalgamated Company, the net sale proceeds (after deduction of applicable taxes and costs incurred) thereof and any additions and accretions, whereupon the Amalgamated Company shall, subject to

withholding tax, if any, distribute such sale proceeds to the concerned shareholders of the Amalgamating Company in proportion to their respective fractional entitlements'. In this regard it is submitted that as per section 2(5) of the Act the definition of member does not encompass trust as a member. Hence, the said clause of the scheme needs to be deleted;

(xi) As per regard, Part-II-Section-5-Clause-37 of the Scheme "Increase of the Authorized Share Capital" In this regard it is submitted that the fee payable by the Transferee Company shall be in accordance with the provisions of Section 232(3) (i) of the Companies Act, 2013;

(xii) As per regard, Part-III-Section - 5- of the Scheme - Change to the share capital of the Amalgamated Company. In this regard it is submitted that the fee payable by the Transferee Company shall be in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013;

(xiii) As per regard, Part-III-Section - 1- of the Scheme - Preferential Allotment (issue and allotment of Warrants by the Amalgamated company on Preferential Basis) it is stated that "Subject to the effectiveness of the Scheme and upon the allotment of the IBL Shares pursuant to the Amalgamation in accordance with Clause 27 of this Scheme, the Amalgamated Company shall, pursuant to this Scheme and as an integral part hereof, issue and allot to the IBL Promoters on a preferential basis, subject to applicable law, up to 1,57,70,985 (One Crore Fifty Seven Lakhs Seventy Thousand Nine Hundred and Eighty Five) share warrants ("Warrants"), each convertible into 1 (one) IBL Share, such that upon

*exercise of all the Warrants, and together with the IBL Shares already held by them, the IBL Promoters shall hold in the aggregate up to 15 % (fifteen percent) of the total expanded issued and paid up equity share capital of the Amalgamated Company on a fully diluted basis (such allotment, the “**Preferential Allotment**”). The “relevant date” for the Preferential Allotment is October 14, 2017, which is in accordance with the SEBI Preferential Allotment Circular and the price at which the Warrants shall be issued has been determined in accordance with the SEBI ICDR Regulations and the SEBI Preferential Allotment Circular (“**Warrant Price**”), and is Rs. 1,709 (Rupees One Thousand Seven Hundred and Nine) per Warrant. In this regard it is submitted that the further issue of Share Capital should be in accordance with the provisions of section 62 of the Companies Act, 2013 and it cannot be a past or future date. The petitioner under the scheme is contemplating “**Preferential Allotment**”w.e.f. 14.10.2017 which is not permissible. Hence, the said clause of the Scheme needs to be deleted;*

*(xiv) As per **Part-IV-Section-7- Clause 65 of the Scheme- Change of Name by the Transferee Company.** In this regard it is submitted that the same is subject to compliance with the provisions of section 4(2) & (3) of the Companies Act, 2013 r/w rule 8(8) of the Company (Incorporation) Rules, 2014;*

*(xv) As per **Part-V-Section-7- Clause 68 of the Scheme- Grant of Special Incentives IBL Employees-** clause 68(i) it is stated that “Upon Part II of this Scheme becoming effective, the Amalgamated Company shall, in order to ensure continuity and retention of the BFIL Employees with IBL, create a New IBL ESOP Scheme in*

terms of which IBL shall grant to specified BFIL Employees (“Special Incentive Eligible Employees”), stock options of the Amalgamated Company as a special incentive (collectively referred to as “Special Incentive IBL Options”). In this regard it submitted the petitioner be directed to file an affidavit containing the names of “Specified BFIL Employees”

(xvi) In view of the observation raised by the RoC Mumbai, and ROC Pune mentioned at para 7 above, Hon'ble NCLT may kindly direct both the RoCs to file further report and offer further comments on the Scheme to facilitate thipray Hon'ble Tribunal to pass appropriate orders/orders as deem fit.

(xvii) Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy/any change/changes are made, for changes if any, liberty be given to Central Government to file further report if any required;”

8. The observations made by the RD have been dealt with by the Petitioner Companies in their respective Affidavits and copies of the said Affidavits were served upon the RD on 2nd April, 2019. Petitioner Company 2 in its Affidavit dated 1st April, 2019 (“**IBL Affidavit**”), has dealt with the observations of the RD. Petitioner Company 1 vide its Affidavit dated 2nd April, 2019 while adopting the contents of the Affidavit filed by Petitioner Company 2, has also dealt with the observations specifically related to Petitioner Company 1, made in paragraphs IV (xv) and (xvi) of the Report. Similarly, Petitioner Company 3 vide its Affidavit dated 1st April,

2019, has dealt with the RD Report while adopting the contents of the IBL Affidavit, deal also with the observations specifically related to Petitioner Company 3, made in paragraphs IV (i), (xii) and (xvi) of the Report. The responses of the Petitioner Companies to the observations made in the RD's Report in the said Affidavits are as under:

9. As regards observation in paragraph IV (i) of the said Report, Petitioner Company 2 in paragraph 6 of the IBL Affidavit dated 1st April, 2019 has provided an undertaking that in addition to the compliance of AS-14 (IND AS-103), Petitioner Company 2 shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS- 5 (IND AS-8) etc., to the extent applicable. Further, in its Affidavit dated 1st April, 2019, Petitioner Company 3 has also provided an undertaking in paragraph 5 thereof that in addition to the compliance of AS-14 (IND AS-103), it would pass such accounting entries which were necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS- 5 (IND AS-8) etc., to the extent applicable. The said undertakings given by Petitioner Company 2 paragraph 6 of the IBL Affidavit dated 1st April, 2019 and Petitioner Company 3 in paragraph 5 of its Affidavit dated 1st April, 2019 are accepted.

10. As regards observation in paragraph IV (ii) of the said Report, Petitioner Company 2 has, in paragraph 7 of the IBL Affidavit dated 1st April, 2019, stated that Regulation 37 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**SEBI LODR Regulations**”) read with the SEBI Circular dated 10th March, 2017, bearing reference number CFD/DIL3/CIR/2017/21 (“**SEBI Scheme Circular**”) require listed companies to obtain approval only from the stock exchanges in India, where the securities of the parties to a scheme are listed. Accordingly, Petitioner Company 1 as well as Petitioner Company 2 have obtained requisite approvals from the BSE and NSE. Petitioner Company 2 in its IBL Affidavit stated that the proposed Scheme does not require prior approval/ NOC from the Luxembourg Stock Exchange, to seek approval of this Tribunal to the Scheme. In any event, in accordance with the Deposit Agreement dated 28th May, 2008 entered into between Petitioner Company 2 and The Bank of New York (the “**Depository**”), Petitioner Company 2 had provided notice of the Tribunal Convened Meeting to the Depository, and that the Depository on behalf of the GDR holders, had voted in favour of the Scheme. Petitioner Company 2 further stated that once the Scheme is approved by this Hon'ble Tribunal and prior to declaring its effectiveness, Petitioner Company 2 shall give notice to the Luxembourg Stock Exchange of the Scheme

simultaneously with the intimation to the NSE and the BSE in India.

11. As regards observation in paragraph IV (iii) of the said Report, the Petitioner Company 2 has, in paragraph 8 of the IBL Affidavit dated 1st April, 2019, stated that the Reserve Bank of India has *vide* its letter dated 13th March, 2018 issued to Petitioner Company 2, conveyed its “No objection” to the proposed Scheme, which is annexed as Exhibit “M” to the Company Scheme Petition filed by the Petitioner Companies, and for the sake of ready reference, also annexed as Exhibit “A” to its Affidavit dealing with the RD’ s observations. As regards the Implementation Agreement dated 14th October, 2017 (“**Implementation Agreement**”), Petitioner Company 2 stated that the Implementation Agreement is a commercial document, entered into between Petitioner Company 2 and Petitioner Company 1 only for the purposes of capturing the understanding of the parties in relation to the amalgamation, preferential allotment and slump exchange, which forms part of the Scheme. Petitioner Company 2 further stated that the Implementation Agreement, being a commercial document, the Petitioner Companies are under an obligation to maintain confidentiality and not to disclose the Implementation Agreement. Petitioner Company 2 therefore stated that the Implementation Agreement, which only provides for *modus operandi* for the parties, has no relevance for this Hon’ble

Tribunal to consider the sanction of this Scheme, being the principal document, which envisages the terms of the arrangement between the parties. The Senior Advocate for the Petitioner Companies states that, as required by the office of the RD, the Petitioner Company *vide* their Advocate's letter dated 2nd April, 2019 have furnished a copy of the Implementation Agreement in a sealed envelope to Central Government (Regional Director, Western Region, Mumbai) and claim privilege and requested RD to keep it confidential.

12. As regards observation in paragraph IV (iv) of the said Report, Petitioner Company 2, in paragraph 9 of the IBL Affidavit dated 1st April, 2019, stated that being a listed company, Petitioner Company 2 is required to prepare quarterly financial results in accordance with SEBI LODR Regulations and annual financial statements in accordance with Section 134 of the Companies Act, 2013. Such financial results are also required to be published on the website of the Stock Exchanges where the securities of the concerned company are listed. Petitioner Company 2 stated that in compliance with the aforementioned laws, Petitioner Company 2 prepares and publishes its quarterly financial results and annual financial statements. Petitioner Company 2 has given an undertaking to this Tribunal that once the proposed Scheme is sanctioned by this Hon'ble Tribunal and same is implemented in accordance with the terms thereof, Petitioner Company 2 will prepare consolidated financial

statements of Petitioner Company 2, including its balance sheet with effect from the Date, i.e. 1st January, 2018 in accordance with the applicable law, including the applicable accounting standards. Further, such consolidated financial statements shall be audited by the Statutory Auditors of Petitioner Company 2, authenticated by the Board of Directors of Petitioner Company 2 pursuant to Section 134 of the Companies Act, 2013 and shall be presented before its Shareholders in Annual General Meeting to be held in compliance of the provisions of Section 96 of the Companies Act, 2013 for approval/adoption by the shareholders of Petitioner Company 2. The said undertaking given by Petitioner Company 2 in paragraph 9 of the IBL Affidavit dated 1st April, 2019 is accepted.

13. As regards observation in paragraph IV (v) of the said Report, Petitioner Company 2 has, in paragraph 10 of the IBL Affidavit dated 1st April, 2019, stated that in accordance with Section 232(6) of the Companies Act, 2013, the Scheme specifies that the Appointed Date for the purposes of the amalgamation of Petitioner Company 1 with Petitioner Company 2 and the slump exchange of the Transferred Undertaking (*as defined in the Scheme*) from Petitioner Company 2 to Petitioner Company 3 shall be 1st January, 2018. Clause 72 of the Scheme contains certain conditions to the Scheme, which, *inter alia*, include the certified copy of the order of this Tribunal approving the Scheme being filed with the Registrar of Companies,

Maharashtra. Petitioner Company 2 further stated that once the said conditions are fulfilled, the Scheme will be given effect to in accordance with the terms thereof and the Scheme shall be deemed to be effective from 1st January, 2018, being the Appointed Date in accordance with Section 232(6) of the Companies Act, 2013.

14. As regards observation in paragraph IV (vi) of the said Report, Petitioner Company 2, in paragraph 11 of the IBL Affidavit dated 1st April, 2019, stated that the Exclusivity Agreement dated 11th September, 2017 (“**Exclusivity Agreement**”) was entered into between Petitioner Company 2 and Petitioner Company 1 in accordance with the SEBI Regulations and Petitioner Company 2 and Petitioner Company 1 made requisite disclosures to the NSE and the BSE in relation to the same. The Petitioner Company 2 further stated that being a commercial document, the Petitioner Companies are under an obligation to maintain confidentiality and not to disclose the said Exclusivity Agreement. The Senior Advocate for the Petitioner Companies states that, as required by the office of the RD, the Petitioner Company *vide* their Advocate’s letter dated 2nd April, 2019 have furnished a copy of the Exclusivity Agreement in a sealed envelope to Central Government (Regional Director, Western Region, Mumbai), by claiming privilege and request RD to keep it confidential.

15. As regards observation in paragraph IV (vii) of the said Report, Petitioner Company 2 has, in paragraph 12 of the IBL Affidavit dated 1st April, 2019, stated that the Implementation Agreement Execution Date i.e. 14th October, 2017 has no relevance to the Appointed Date, and therefore a separate affidavit regarding the relevance of the said date to the Appointed Date was not required to be filed with this Tribunal.
16. As regards observation in paragraph IV (viii) of the said Report, Petitioner Company 2 has, in paragraph 13 of the IBL Affidavit dated 1st April, 2019, stated that the letters issued by the Competition Commission of India, the Reserve Bank of India, the BSE and the NSE to Petitioner Company 1 and Petitioner Company 2 respectively, conveying their “No objections” to the proposed Scheme, are annexed to the Company Scheme Petition, as Exhibit “L-Colly”, “ M”, “E”, “F”, “J” and “K” respectively. Copies of the letters are also annexed to the IBL Affidavit dealing with the Report. The Scheme has been approved by the aforesaid regulators and such their decisions are binding on the Petitioner Companies. The said approvals are not the subject matter of any appeals.
17. As regards observation in paragraph IV (ix) of the said Report, Petitioner Company 2 has, in paragraph 14 of the IBL Affidavit dated 1st April, 2019, stated that the equation for determining the exercise price payable for each IBL Share (*as defined in the*

Scheme) is provided in the IBL Affidavits, with an illustration.

For the sake of ready reference the same is reproduced hereunder:

$$\begin{array}{l} \text{“Exercise price payable for} \\ \text{each IBL Share =} \end{array} \begin{array}{l} \text{Exercise price for the} \\ \text{Amalgamating Company} \\ \text{Share} \\ \hline 0.639 \end{array}$$

Illustration:

- (a) Amalgamated Company Options held by an Eligible Employee = 1000
- (b) Exercise Price at which the Amalgamating Company Options have been issued to the Eligible Employee = Rs. 500

Exercise price payable for each IBL Share as per the above formula = $500 / 0.639$, i.e. Rs.782.”

Petitioner Company 2 stated that since the stock options of Petitioner Company 1 were issued to the Eligible Employees at different points in time with different exercise price in accordance with the BFIL ESOP Plans (*as defined under the Scheme*), the exercise price to be paid by the Eligible Employee for each IBL Share shall also vary.

18. As regards observation in paragraph IV (x) of the said Report, Petitioner Company 2, in paragraph 15 of the IBL Affidavit dated 1st April, 2019, stated that Section 2(55) of the Act defines a ‘member’. There is no restriction on a trustee holding shares of a company. Petitioner Company 2 further submitted that in accordance with Clause 28 of the Scheme, and in line with the approach adopted by listed companies in schemes of

arrangement, the Petitioner Companies are in the process of appointing Catalyst Trusteeship Limited, a company incorporated under the Companies Act, 1956, to act as corporate trustee for the purposes of holding fractional shares for the benefit of the respective shareholders of Petitioner Company 1, which shall sell such shares within 60 days from the date of allotment of the fractional shares. The Petitioner Companies submitted that the shares shall be held for such period by the corporate trustee for the purposes of facilitating the sale. Therefore, the fractional shares will not be held by a trust, but by a corporate trustee, namely - Catalyst Trusteeship Limited during the prescribed period, which is permitted under the Companies Act, 2013.

19. As regards observation in paragraph IV (xi) of the said Report, Petitioner Company 2 has, in paragraph 16 of the IBL Affidavit dated 1st April, 2019, given an undertaking to this Tribunal to comply with the provisions of Section 232(3) (i) of the Act. The said undertaking given by the Petitioner Company 2 in paragraph 16 of the IBL Affidavit dated 1st April, 2019 is accepted.
20. As regards observation in paragraph IV (xii) of the said Report, the Petitioner Company 2 has, in paragraph 17 of the IBL Affidavit dated 1st April, 2019, given an undertaking to this Tribunal that the fee, if any, payable by Petitioner Company 2

shall be in accordance with the provisions of Section 232 (3) (i) of the Act, as applicable. The said undertaking has also been given by Petitioner Company 3 in paragraph 6 of its Affidavit dated 1st April, 2019. The undertakings given by Petitioner Company 2 in paragraph 17 of the IBL Affidavit dated 1st April, 2019 and Petitioner Company 3 in paragraph 6 of its Affidavit dated 1st April, 2019 are accepted.

21. As regards observation in paragraph IV (xiii) of the said Report, Petitioner Company 2, in paragraph 18 of the IBL Affidavit dated 1st April, 2019, stated that the preferential allotment to the promoters of Petitioner Company 2 is being made as an integral part of the Scheme, and the provisions of the Companies Act, 2013 in relation to the preferential allotment have been complied with, to the extent applicable. Petitioner Company 2 in the IBL Affidavit stated that by virtue of Section 24 of the Companies Act, 2013, SEBI has the power to administer *inter alia* the issue of securities by listed companies. Further, being a listed company, Petitioner Company 2 is issuing warrants to the promoters of Petitioner Company 2, as an integral part of the Scheme, in accordance with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, read with the SEBI Circular dated March 23, 2017, bearing reference number CFD/DIL3/CIR/2017/26 (“**SEBI Preferential Allotment Circular**”), which permit and specify the manner in which a preferential allotment may be made by listed companies to a

select group of shareholders as part of a scheme of arrangement. Petitioner Company 2 further stated that the preferential allotment would be made pursuant to its effectiveness, once the Scheme receives approval of this Hon'ble Tribunal. In the IBL Affidavit, Petitioner Company 2 further stated that the date of 14th October, 2017 was relevant only for the purposes of determining the price at which the warrants shall be allotted to the promoters of Petitioner Company 2, being the date on which the Board of Petitioner Company 2 approved the Scheme, which is in accordance with the Preferential Allotment Circular. Petitioner Company 2 further stated that the preferential allotment as a part of the Scheme has received requisite approval of (i) Audit Committees and the Board of Directors of the Petitioner Companies; (ii) no-objection from the Reserve Bank of India *vide* its letter dated 13th March, 2018, (iii) NSE *vide* its observation letter dated 1st June, 2018 and the BSE *vide* its observation letter dated 4th June, 2018, on the basis of the comments received from SEBI, (iv) the shareholders of Petitioner Companies in their respective NCLT convened meeting with 99.90%, 99.99% and 100% respectively. The preferential allotment has also been approved by 99.86%, being a significant majority, of the public shareholders of Petitioner Company 2, as required in terms of paragraph (I)(A)(9)(b)(i) of Annexure I of the SEBI Scheme Circular. Petitioner Company

2 stated that in light of the aforementioned, the preferential allotment of the warrants as part of the Scheme and the pricing thereof, as specified in Clause 27 thereof, has received all the relevant corporate approvals (from the Audit Committees, Board of Directors and Shareholders of the Petitioner Company 2) as well as relevant regulatory approvals/ no-objections (from the RBI, and the Stock Exchanges and SEBI) in accordance with the provisions of applicable laws including the Companies Act, the RBI Regulations and the SEBI regulations and is permitted in terms thereof.

22. As regards observation in paragraph IV (xiv) of the said Report, Petitioner Company 2 has, in paragraph 19 of the IBL Affidavit dated 1st April, 2019, stated that the name of Petitioner Company 3 shall be changed pursuant to the Scheme. Further, Petitioner Company 3 in paragraph 7 of its Affidavit dated 1st April, 2019, has also given an undertaking to this Tribunal to comply with the provisions of Section 4 (2) and (3) of the Companies Act, 2013 read with Rule 8 (8) of the Company (incorporation) Rules, 2014, as applicable to Petitioner Company 3. The undertaking given by Petitioner Company 2 in paragraph 19 of the IBL Affidavit dated 1st April, 2019 is accepted.

23. As regards observation in paragraph IV (xv) of the said Report, Petitioner Company 2 has, in paragraph 20 of the IBL

Affidavit dated 1st April, 2019, stated that Petitioner Company 2, as stated in the Scheme is proposing to grant “Special Incentive IBL Options” to certain employees of Petitioner Company 1, in accordance with Clause 68 the Scheme. The Specified BFIL Employees, who shall be entitled to Special Incentive IBL Options, shall be identified by the management of Petitioner Company 1 prior to the effectiveness of the proposed Scheme and the Special Incentive IBL Options shall be granted by the Nomination and Remuneration Committee of Petitioner Company 2 at its meeting to be held post effectiveness of the proposed Scheme, based on such recommendation. Petitioner Company 2 further stated that the total number of options to be granted by Petitioner Company 2 under the Scheme: (i) in lieu of the options held by the employees of Petitioner Company 1 under the existing ESOP plans of Petitioner Company 1; and (ii) as Special Incentive IBL Options to Specified BFIL Employees, shall, in any event, not exceed 57,50,000 which was also mentioned in the notice given to the shareholders of Petitioner Company 2 for the Tribunal Convened Meeting. Petitioner Company 1 in paragraph 5 of its Affidavit dated 2nd April, 2019, has also confirmed the same to this Tribunal.

24. As regards observation in paragraph IV (xvi) of the said Report, in relation to Petitioner Company 1, Petitioner Company 2, in paragraph 21 of the IBL Affidavit dated 1st April, 2019, stated

that the RD has given reference of the Report, submitted by the Registrar of Companies, (the “**ROC Mumbai**”) to the RD. Petitioner Company 2 further stated that from the said reference it is observed that the ROC Mumbai had stated therein that no investigation and inspection were pending against Petitioner Company 1 and that there was no complaint against Petitioner Company 1. With regards to one pending inquiry against Petitioner Company 1 is concerned, Petitioner Company 2 stated that Petitioner Company 1 has already responded to the enquiries made by the ROC Mumbai and thereafter there was no response from the ROC Mumbai, and no follow up queries have been raised by the ROC Mumbai till date. Petitioner Company 2 submitted that in any event, post sanction to the Scheme by this Tribunal, Petitioner Company 1 will be merged with Petitioner Company 2 and in terms of Clause 50 of the Scheme, all the legal proceedings, which includes the said Complaint, will get transferred to in Petitioner Company 2 and Petitioner Company 2 will pursue the said Complaint. Petitioner Company 1 has also specifically confirmed its response in its Affidavit dated 2nd April, 2019, in paragraph 6 thereof.

25. As regards observation in paragraph IV (xvi) of the said Report, in relation to Petitioner Company 2, Petitioner Company 2, in paragraph 22 of the IBL Affidavit dated 1st April, 2019, states that the RD has given reference of the Report submitted by the

Registrar of Companies, Pune (**ROC Pune**) to the RD. Petitioner Company 2 submitted that from the said reference it is observed that ROCPune had stated therein that no investigation, inspection, are pending and there is no complaint against Petitioner Company 2. Petitioner Company 2 further submitted that in any event, Petitioner Company 2 would survive post sanction and effectiveness of the Scheme, and the inquiries in relation to Petitioner Company 2, if any, would continue even after the sanction of the Scheme by this Tribunal.

26. As regards observation in paragraph IV (xvii) of the said Report, Petitioner Company 2, in paragraph 23 of the IBL Affidavit dated 1st April, 2019, stated that the Scheme enclosed to the Company Scheme Application and to the Company Scheme Petition, are one and same and there is no discrepancy for changemade therein.
27. Learned Senior Advocate states that the office of the RD has filed a Supplementary Report dated 4th April, 2019 with this Tribunal, dealing with Affidavits filed by the Petitioner Companies dealing with the Report. In the said Supplementary Report, the RD has found the responses given by the Petitioner Companies in relation to most of the observations, satisfactory. In relation to the observations made in paragraphs IV (ii), (iii), (vi), (ix), (xiii)and (xv) of the Report, the RD in its Supplementary Report has stated that “this Tribunal to pass

appropriate orders, as it may deem fit". The submissions made by the Learned Senior Advocate for the Petitioner Companies in relation to the observations made in the Supplementary Report are summarized as under:

Requirement of NOC from Luxembourg Stock Exchange
(Para IV (ii) of the Report):

28. Senior Advocate for the Petitioner Companies reiterated the submissions of the Petitioner Companies recorded in their respective Affidavits and submitted that though there is no requirement to obtain an NOC or any approval from the Luxembourg Stock Exchange. Learned Senior Advocate placed reliance upon Regulation 37 of the SEBI (LODR) read with SEBI Scheme Circular which requires a listed company to obtain a prior approval only from the Stock Exchanges in India, and not from an off-shore Stock Exchange. Further, The Petitioner Company 2 has vide its Affidavit dated 10th April, 2019 placed on record a letter dated 9th April, 2019 issued by the Luxembourg Stock Exchange to Petitioner Company 2 whereby the Luxembourg Stock Exchange has confirmed that no NOC, clearance, approval or consent from Luxembourg Stock Exchange is required for or in relation to the execution and fulfilment of the Scheme. Petitioner Company 2 has undertaken in paragraph 7 of the IBL Affidavit dated 1st April, 2019 to intimate to the Luxembourg Stock Exchange after the sanction

of the Scheme by this Tribunal prior to the effectiveness of the Scheme, in accordance with law. The said undertaking given by Petitioner Company 2 in paragraph 7 of the IBL Affidavit dated 1st April, 2019 is accepted by this Tribunal.

Exercise price of IBL shares for converting IBL options granted to BFIL Employees (“Eligible Employee”) in lieu of BFIL options held by them (Paragraph IV (ix) of the Report)

29. Senior Advocate for Petitioner Companies stated that the exercise price payable for each IBL Share issued pursuant to IndusInd Bank stock options held by the Eligible Employees shall in be in terms of Clause 18 (iv) of the Scheme, and reiterated the submissions recorded in paragraph 17 hereinabove.

Compliance with Section 62 of the Companies Act, 2013 in relation to Preferential Allotment(Paragraph IV (xiii) of the Report):

30. Senior Advocate for Petitioner Companies reiterated the submissions recorded in paragraph 21 hereinabove, and also submitted that paragraph 44 of the Scheme provides that the consent of the shareholders to the Scheme shall be deemed to be sufficient for the issuance and allotment of Warrants of the Petitioner Company 2 to the IBL Promoters and no further

resolutions/ approval/ authorizations under Section 42 and Section 62 (1) (c) of the Act, would be separately required.

Implementation Agreement and Exclusivity Agreement

(paragraph VI (iii) and (iv) of the Report)

31. (a) As regards the Implementation Agreement, Senior Advocate for the Petitioner Companies reiterated the submissions recorded in paragraph 11 hereinabove, and further submitted that the Implementation Agreement is a private commercial document, entered for the purposes of capturing broad understanding and responsibilities of the parties in relation to the manner in which the parties will undertake the amalgamation, preferential allotment and slump exchange, by way of and pursuant to the Scheme. Senior Advocate further submitted that it merely sets out the process agreed between the parties for implementation. The substantive provisions in relation to the same are elaborately provided in the Scheme, being the single principal document which governs the amalgamation, preferential allotment and slump exchange and the manner in which they would be given effect to.

(b) As regards the Exclusivity Agreement, Senior Advocate for the Petitioner Companies reiterated the submissions recorded in paragraph 14 hereinabove and further submitted that it was entered into in compliance with the provisions of the applicable SEBI regulations, and the parties made requisite disclosures to

the NSE and the BSE in relation to the same. The agreement has lapsed and does not have any relevance to the Scheme.

In view thereof, this Tribunal is of the view that there is no relevance to examine the Implementation Agreement and Exclusivity Agreement while considering sanction to the Scheme. As such the Petitioner Companies have provided copies of the same in sealed envelope to RD and the RD has not given any further comments on the said Agreements.

Specified BFIL Employees eligible for Special Incentive IBL Options (Paragraph (xv) of the Report)

32. Senior Advocate for the Petitioner Companies reiterated the submissions recorded in paragraph 23 hereinabove, and in view thereof, the filing of an Affidavit containing the names of the “Special BFIL Employees” is not warranted. Senior Advocate for the Petitioner Companies drew the attention of this Hon’ble Tribunal to Regulation 5(2) of the SEBI (Share Based Employee Benefits) Regulations, 2014, wherein it is mentioned that the compensation committee shall be a committee of such members of the board of directors of the company as provided under Section 178 of the Companies Act, 2013, as amended or modified from time to time. Section 178 of the Companies Act, 2013 deals, *inter alia*, with Nomination and Remuneration Committee of a listed company.

33. The clarifications and undertakings given by the Petitioner Companies are accepted.
34. The Official Liquidator has filed his Report dated 11th December, 2018 stating that the affairs of Petitioner Company 1 have been conducted in a proper manner and that Petitioner Company 1 may be ordered to be dissolved without winding up.
35. Affidavit dated 04.06.2019 submitted on behalf of the Petitioner Company 1 and the affidavits dated 03.05.2019 submitted on behalf of the Petitioner Company 2 and 3 have been taken on record.
36. With regard to Regional Director's observation in para- IV (ix), (xiii), (xv) petitioner companies are directed to ensure strict compliance with applicable provisions of SEBI Act, Rules, Regulations, Circulars etc. and in case of any violation/non-compliance SEBI is free to take appropriate action as deemed fit.
37. From the material on record and after perusing the clarifications and submissions of the Petitioner Companies to the Reports of the RD, the Scheme appears to be fair and reasonable and *prima-facie* is not violative of any provisions of law and is not contrary to public policy.

38. All Petitioner Companies are liable to pay applicable Income Tax/Capital Gains Tax etc. pursuant to this composite scheme of arrangement.
39. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 4648 of 2018 filed by the Petitioner Companies is made absolute in terms of prayer clauses (a) and (b) fixed appointed date as 01.01.2018.
40. The Petitioner Company 2 to lodge a certified copy of this order along with the sanctioned Scheme attached thereto with the concerned Collector of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified copy of this order.
41. The Petitioner Companies are directed to file certified copy of this order alongwith a copy of the sanctioned Scheme attached thereto with the concerned Registrar of Companies, electronically, along with e-form INC 28 in addition to physical copy within 30 days of receipt of certified copy of this order along with the sanctioned Scheme.
42. The Petitioner Companies1 and 2 to pay cost of the Company Scheme Petition of INR 1,00,000/-each and Petitioner Company 3 to pay cost of INR 25,000/- to the Regional Director, Western Region, Mumbai.The Petitioner Company 1 to pay cost of the Company Scheme Petition of INR 25,000/- to

the Official Liquidator, High Court, Bombay as well. Costs to be paid within four weeks from the date of receipt of the certified copy of the order.

43. All concerned authorities to act on a copy of this order along with the sanctioned Scheme, duly certified by the Deputy/Assistant Registrar of National Company Law Tribunal, Mumbai Bench.

SD/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

SD/-
V.P. SINGH
MEMBER (JUDICIAL)

Date: 10.06.2019