

**SCHEME OF ARRANGEMENT**

**BETWEEN**

**Simbhaoli Sugars Limited**

**Transferor Company**

**AND**

**Simbhaoli Spirits Limited**

**Transferee Company**

**AND**

**THEIR RESPECTIVE CREDITORS AND SHAREHOLDERS**

## PREAMBLE

Simbhaoli Sugars Limited ('Simbhaoli Sugars' or 'Transferor Company'), a Company incorporated under the provisions of the Indian Companies Act, 1913 having its Registered Office at Simbhaoli Distt. Ghaziabad, Uttar Pradesh - 245 207, India, is currently engaged in the business of manufacturing refined (sulpherless) sugar, specialty sugars, quality liquor, co-generated power, extra neutral alcohol (ENA), ethanol and bio-manure.

The Transferor Company has the following businesses:

- a) Sugar Manufacturing – engaged in manufacturing of Raw, Refined and Specialty Sugars from sugar cane. This has three divisions namely, Simbhaoli Sugar Division ('SSD'), Brijnathpur Sugar Division ('BSD') and Chilwaria Sugar Division ('CSD'), out of them SSD and BSD are sugar refineries capable to refine raw sugar in crop and off crop periods.
  
- b) Distillery Operations – engaged in manufacturing and processing of Ethanol, Extra Neutral Alcohol, Rectified Spirits, Country Liquor and Industrial Alcohol and Indian Made Foreign Liquor ('IMFL'). This has three divisions namely, Simbhaoli Distillery Division ('SDD') carrying on the Alcohol and Biotech Business, Brijnathpur Ethanol Division ('BED') and Chilwaria Ethanol Division ('CED'). The Potable Alcohol business is carried on in SDD. In addition SDD, has bottling arrangements in a large number of states with the contractual tie ups.
  
- c) Co-Generation/Power – engaged in bio mass based co-generation of power for captive consumption and for sale to the State utilities under respective Power Purchase Agreements. This has three divisions namely, Simbhaoli Co-Generation Division ('SCD'), Brijnathpur Co-Generation Division ('BCD') and Chilwaria Co-Generation Division ('CCD'). The power so generated categories in to the renewable energy. SCD is also registered with United Nations Framework Convention on Climate Change (UNFCCC) for Clean Development Mechanism (CDM) benefits.

Simbhaoli Spirits Limited ('Simbhaoli Spirits' or 'Transferee Company'), a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at Simbhaoli Distt. Ghaziabad, Uttar Pradesh - 245 207, India, is a subsidiary of Simbhaoli Sugars and is set up to be engaged in the business of

manufacturing, marketing and branding of Ethanol, Extra Neutral Alcohol, Ractified spirits, Potable alcohol including IMFL, Beer and other alcoholic and non alcoholic beverages and also processing of by-products for India as well as overseas markets. The Transferee Company was incorporated on April 4, 2011.

The Scheme of Arrangement (hereinafter referred to as “Scheme”) provides for transfer and vesting of the SDD Alcohol Undertaking as defined in clause 1.11 of this scheme of the Transferor Company to the Transferee Company on a going concern basis, pursuant to the provisions of Section 391 to 394 and other applicable provisions of the Companies Act, 1956 and/or Rules/Regulations made thereunder.

This Scheme also provides for various other matters consequential or otherwise integrally connected therewith.

**Objects and Rationale for the proposed Scheme:**

1. The Transferor Company is engaged in the businesses of manufacturing and refining of sugar, distillation of alcohol and generation of power. As part of an overall re-organization plan and in order to achieve greater efficiencies in its operations and with the intent of providing focus and greater attention to each of its businesses, it is considered necessary, desirable and expedient to transfer the SDD Alcohol Undertaking to the Transferee Company. The transfer therefore will enable focused management orientation to each of the businesses due to individual specialization and leadership vision;
2. The transfer will provide growth and geographical spread in the SDD Alcohol business by way of expansion, introducing new brands and new products domestically and in overseas market;
3. Opportunities for creating new manufacturing and production capacities including bottling facilities, not only in India but also outside India. Opportunities to have financial/management/technical/quality tie-ups, with obtaining/acquiring brands from others, so as to create a large market share;
4. Transfer will provide opportunities for creating tie up arrangements with new distribution channels, warehouses, channel partners and obtaining licenses, permissions etc, in the new geographical areas;

5. Opportunities for creating strategic partnership and flexibility of fund raising capability for future growth and expansion and to create a business structure, which is geared to take advantage of possible growth opportunities;
6. The Transferee Company post transfer and vesting of SDD Alcohol Undertaking will have better financial, business and operational prospects including but not limited to efficient management of costs, better maintenance of the manufacturing/bottling/warehousing facilities and improved administrative control of the SDD Alcohol Undertaking; and
7. The businesses and activities of the respective companies will be carried on more economically, conveniently and advantageously under the proposed Scheme and the same will have beneficial results for the said companies, their shareholders, stakeholders and all concerned.

The Scheme shall be beneficial and in the best interests of the shareholders, creditors and other stakeholders of both the Transferor Company and the Transferee Company. The Scheme shall not be in any manner being prejudicial to the interests of concerned members, creditors and other stakeholders.

In consideration of the above mentioned business rationale and related benefits, this Scheme between the Transferor Company and Transferee Company is being proposed in accordance with the terms set out hereunder.

**PART I**  
**DEFINITIONS AND SHARE CAPITAL**

**1 DEFINITIONS**

In this Scheme of Arrangement (as defined hereunder), unless inconsistent with the subject or context, the under mentioned expressions shall have the following meaning:

- 1.1 “Act” or “The Act”** means the Companies Act, 1956, or any statutory modification or re-enactment thereof for the time being in force.
- 1.2 “Appointed Date”** means the date from which the provisions of this Scheme shall become operational viz. October 1, 2010, or such other date as may be approved by the High Court of Judicature at Allahabad or any other appropriate authority.
- 1.3 “Board of Directors”** in relation to each of the Transferee Company and the Transferor Company, as the case may be, shall include the committee of directors.
- 1.4 “Consideration”** shall have the meaning assigned to in Clause 6 hereof.
- 1.5 “Court”** means the High Court of Judicature at Allahabad, as the case may be and shall include the National Company Law Tribunal, if applicable.
- 1.6 “Effective Date”** means the date on which the certified copies of the Orders of the High Court of Judicature at Allahabad or any other appropriate authority under Sections 391 to 394 of the Act sanctioning the Scheme are filed with the relevant Registrar of Companies by the Transferor Company and the Transferee Company.
- 1.7 “Encumbrance”** means:
- (i) any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, deed of trust, title retention, security interest or other encumbrance of any kind securing, or conferring any priority of payment in respect of, any obligation of any Person, including without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security under

Law;

- (ii) any proxy, power of attorney, voting trust agreement, interest or option in favour of any Person;
- (iii) any adverse claim as to title, possession or use; or
- (iv) any transfer restrictions.

**1.8** “**Law**” or “**Applicable Law**” includes all applicable statutes, enactments, acts of legislature or Parliament, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any government, statutory authority, tribunal, board, court or recognized stock exchange of India or any other country or jurisdiction as applicable.

**1.9** “**Person**” shall include any individual, joint venture, company, corporation, partnership (whether limited or unlimited), proprietorship, trust or other enterprise (whether incorporated or not), Hindu undivided family, union, association, government (central, state or otherwise), or any agency, department, authority or political subdivision thereof, and shall include their respective successors and in case of an individual shall include his/her legal representatives, administrators, executors and heirs and in case of a trust shall include the trustee or the trustees for the time being.

**1.10** “**Remaining Business**” means and includes all business of the Transferor Company other than that comprised in SDD Alcohol Undertaking.

**1.11** “**SDD Alcohol Undertaking**” means the Alcohol business carried on by the Transferor Company in SDD including all assets, liabilities, rights and obligations (whether movable or immovable, tangible or intangible) of whatsoever nature including the complete Alcohol Business of SDD and its brands as on the Appointed Date.

Without prejudice to the generality of the above, the SDD Alcohol Undertaking shall include:

- a) All assets (wherever situated), whether movable or immovable including land and building as defined in Schedule 1, capital work in progress, tangible or intangible, real or personal, corporeal and incorporeal, including furniture, fixtures, vehicles, stocks and inventory, office equipment, appliances, accessories, unquoted investments, leasehold assets,

easements and other properties, in possession or reversion, present and contingent assets (whether tangible or intangible) of whatsoever nature, together with all present and future liabilities (including contingent liabilities, if any) pertaining to the SDD Alcohol Undertaking.

- b) All rights, entitlements, approvals, licenses, consents, permissions, bottling tie-ups, brands, logos, engagements, arrangements, municipal permissions, cash balances, financial assets, funds belonging to or proposed to be utilized for the SDD Alcohol Undertaking; bank balances, balances with Government, excise department, tax authorities both state and central government bank accounts, security deposits, privileges, recoverable, receivables, advantages, all other rights and benefits, in connection with or relating to the SDD Alcohol Undertaking.
- c) All secured and unsecured debts, liabilities (including contingent liabilities), duties, undertakings and obligations pertaining to the SDD Alcohol Business of every kind, nature and description whatsoever and howsoever arising in connection with or relating to the SDD Alcohol Undertaking.
- d) All employees of the Transferor Company employed in the SDD Alcohol Undertaking as identified by the Board of Directors of the Transferor Company, as on the Effective Date.
- e) All records, files, papers, computer programs, manuals, data, catalogues, quotations, sales and advertising materials, labels lists of present and former customers and suppliers, customer credit information, customer pricing information, and other records, whether in physical form or electronic form in connection with or relating to the SDD Alcohol Undertaking.
- f) Any question that may arise as to whether a specified asset or liability pertains to or does not pertain to the SDD Alcohol Undertaking or whether it arises out of the activities or operations of the SDD Alcohol Undertaking shall be decided by mutual agreement between the Board of Directors of the Transferor Company and Transferee Company.

**1.12 “Scheme” or “the Scheme” or “this Scheme”** means this Scheme of Arrangement as set out herein and approved by the Board of Directors of the Transferor Company and the Transferee Company, subject to such modifications as the Court may impose or the Transferor Company and the Transferee Company may prefer and the Court may approve.

**1.13 “Slump Sale”** means the transfer of ‘SDD Alcohol Undertaking’ as a going concern whole for a lump sum consideration.

**1.14 “Transferred Employees”** shall have the meaning assigned to in Clause 13 thereof.

**1.15 “Transferee Company” or “Simbhaoli Spirits”** means Simbhaoli Spirits Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at Simbhaoli, Distt. Ghaziabad, Uttar Pradesh - 245 207, India.

**1.16 “Transferor Company” or “Simbhaoli Sugars ”** means Simbhaoli Sugars Limited, a Company incorporated under the provisions of Indian Companies Act, 1913 having its Registered Office at Simbhaoli Distt. Ghaziabad, Uttar Pradesh - 245 207, India.

All terms and words not defined in this Scheme shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning prescribed to them under the Act and other applicable laws, rules, regulations, bye-laws, as the case may be or any statutory modification or re-enactment thereof from time to time.

## **2 INTERPRETATION**

- a) Wherever reference is made to the Hon’ble High Court in this Scheme, the reference would include, if appropriate to the National Company Law Tribunal or such other forum or authority, as may be vested with any powers of a High Court under the Act;
- b) References to statutory provisions shall be construed as references to the statutory provisions of India unless otherwise specified, and in any event to those provisions as respectively amended, superseded or re-enacted or as their application is modified by any other provisions (whether made before or after the date of this Agreement) from time to time;
- c) References to Clauses and Schedules are to Clauses of or the Schedules to this Scheme and references to sub-clauses are to sub-clauses of the Clause in which the reference appears;
- d) The headings and sub-headings are for information only and shall not affect the construction of this Scheme;



- e) The singular shall include the plural and vice versa; and reference to one gender include all genders;
- f) Any phrase introduced by the terms “including”; “include” or any similar expression shall be construed as illustrative and shall not limit the sense of words preceding those terms.

### 3 DATE OF TAKING EFFECT AND OPERATIVE DATE

The Scheme set out herein in its present form or with any modification(s) approved or imposed or directed by the Court or any other appropriate authority shall be operative from the Appointed Date but shall be effective from the Effective Date.

### 4. SHARE CAPITAL

- 4.1 The authorized and paid-up share capital of Simbhaoli Sugars as on September 30, 2010 as per the last audited annual report, is as under:

<b>Particulars</b>	<b>Rupees (in Lacs)</b>
<b>Authorized Capital</b>	
3,80,00,000 Equity Shares of Rs 10 each	3800.00
2,00,000 Preference Shares of Rs 100 each	200.00
<b>Total</b>	<b>4000.00</b>
<b>Issued Capital</b>	
2,34,00,525 Equity Shares of Rs 10 each	2340.05
<b>Total</b>	<b>2340.05</b>
<b>Subscribed and Paid-up Capital</b>	
2,31,95,900 Equity Shares of Rs 10 each fully paid-up	2319.59
Add: 2,04,625 Forfeited Shares	13.00
<b>Total</b>	<b>2332.59</b>

Subsequent to the above Balance Sheet date and till the date of approval by the Board of Directors of the said Scheme, Simbhaoli Sugars has issued 30,00,000 equity shares of Rs 10/- each on a preferential basis. Further, the Company has issued 32,910 equity shares of Rs 10/- each on account of conversion of employee stock options.

4.2 The authorized and paid-up share capital of Simbhaoli Spirits as on incorporation date April 4, 2011, is as under:

<b>Particulars</b>	<b>Rupees (in Lacs)</b>
<b>Authorised Capital</b>	
Equity Shares of Rs 10 each	5.00
<b>Total</b>	<b>5.00</b>
<b>Issued, Subscribed and Paid-up</b>	
Equity Shares of Rs 10 each fully paid-up	5.00
<b>Total</b>	<b>5.00</b>

Post incorporation there has been no additions/changes to the Share Capital account.

## PART II

### TRANSFER AND VESTING OF SDD ALCOHOL UNDERTAKING

#### 5. TRANSFER AND VESTING OF SDD ALCOHOL UNDERTAKING IN THE TRANSFEREE COMPANY

**With effect from the appointed date or such other date as may be fixed or approved by the Hon'ble High Court and upon the Scheme becoming effective, the SDD Alcohol Undertaking shall be transferred and vested in the Transferee Company in the following manner:**

- 5.1 The whole of the SDD Alcohol Undertaking of the Transferor Company as defined in Clause 1.11, shall, under the provisions of Sections 391 to 394 and all other applicable provisions, if any, of the Act, and pursuant to the orders of the High Court or any other appropriate authority sanctioning the Scheme and without any further act or deed, be transferred to and vested in and/or deemed to be transferred to and vested in the Transferee Company as a going concern on a slump sale basis for a total consideration as defined in Clause 6.
- 5.2 All immovable properties, assets and rights in the immovable properties pertaining to the SDD Alcohol Undertaking of the Transferor Company as defined in Clause 1.11, whether freehold or leasehold or otherwise and in terms of such permitted usage are also mentioned therein and all documents of title, rights and easements in relation thereto shall pursuant to the provisions of Sections 391 to 394 and pursuant to the orders of the High Court or any other appropriate authority sanctioning the Scheme and without any further act or deed stand transferred to and vested and/or deemed to be transferred to and vested in the Transferee Company without any encumbrances, fixed and/or floating charges and/or rights given to the lenders of the other divisions of Transferor Company. The Transferee Company shall be entitled to and exercise all rights and privileges attached thereto and shall be liable to pay ground rent, taxes and to fulfill obligations in relation to or applicable to such immovable properties. The Transferee Company shall under the provisions of Scheme shall be deemed to be authorized to execute such instruments, deeds and writing on behalf of the Transferor Company to implement or carry out all such formalities or compliances on the part of the Transferor company and to be carried out or performed to give effect to the provisions of this Scheme. The Transferor Company will be required to replace the encumbrances, charge and/or right on the immovable properties of SDD Alcohol Undertaking with equitable

and corresponding encumbrance, charge and/or right over assets of Remaining Business as defined in Clause 1.10 above. The mutation of the title to the immovable properties shall be made and duly recorded by the appropriate authorities pursuant to the sanction of the Scheme and upon the Scheme becoming effective, in accordance with the terms hereof, in favour of the Transferee Company. Any inchoate title or possessory title of the Transferor Company in relation to the SDD Alcohol Undertaking shall be deemed to be the title of the Transferee Company.

- 5.3 In respect of all the movable assets of the SDD Alcohol Undertaking of the Transferor Company and the assets which are otherwise capable of transfer by physical delivery or endorsement and delivery, including cash in hand, shall be so transferred to the Transferee Company and deemed to have been physically handed over by physical delivery or by endorsement and delivery, as the case may be, to the Transferee Company to the end and intent that the property and benefit therein passes to the Transferee Company with effect from the Appointed Date.
- 5.4 All assets, estates, rights, title, interest and authorities acquired by the Transferor Company prior to, or as on the Effective date for operations of the SDD Alcohol Undertaking shall also stand transferred to, and vested in the Transferee Company upon the Scheme becoming effective.
- 5.5 Without prejudice to the generality of the foregoing, upon the coming into effect of this Scheme on the Appointed Date, all consents, permissions, licenses, approvals, certificates, clearances and authorities including the Licenses required for Production and Distribution of Spirits, bottling of potable liquor, warehousing of potable liquor and any other licenses, given by, issued to or executed in favour of the Transferor Company in relation to the SDD Alcohol Undertaking as on the Appointed Date, shall stand transferred to the Transferee Company as if the same were originally given by, issued to or executed in favour of the Transferee Company, and the rights and benefits under the same shall be available to the Transferee Company. Any registration fees, charges etc paid by the Transferor Company in relation to the aforementioned consents, permissions, licenses, approvals, certificates, clearances and authorities, shall deemed to have been paid by the Transferee Company.
- 5.6 Without prejudice to the generality of the foregoing, upon the coming into effect this scheme on the Appointed Date, all consents, permissions, licenses, approvals, certificates, clearances and authorities in respect to or under the provision(s) of the Factories Act, Industrial Disputes Act,

Industries (Development and Regulation) Act, Payment of Wages Act, Payment of Gratuity Act, Payment of Bonus Act, Industrial Employment Standing Orders Act, Employment Exchange Act, State Labour Welfare Fund Act, Motor Vehicle Act, Environment Protection Act & Pollution Control Act, Electricity Act, State Tax on Professions, Trades, Ceiling and Employment Act of the respective states, originally given by, issued to or executed in favour of the Transferor Company in relation to the SDD Alcohol Undertaking as on the Appointed Date shall stand transferred or deemed amended in favour of the Transferee Company as if the same were originally given by, issued or executed in favour of the Transferee Company, and the rights and benefits under the same shall be available to the Transferee Company.

5.7 Upon the coming into effect of this Scheme on the Appointed Date, the debts, liabilities and obligations pertaining to the SDD Alcohol Undertaking shall without any further act or deed be and stand transferred to the Transferee Company and shall thereupon become the debts, liabilities and obligations pertaining to the SDD Alcohol Undertaking of the Transferee Company which the Transferee Company undertakes to meet, discharge and satisfy to the exclusion of the Transferor Company.

5.8 All loans raised and used and all liabilities and obligations incurred by the Transferor Company pertaining to the SDD Alcohol Undertaking prior to the Appointed Date shall be deemed to have been raised, used or incurred for and on behalf of the Transferee Company and to the extent they are outstanding on the Effective Date, shall also without any further act or deed be and stand transferred to the Transferee Company and shall become the liabilities and obligations of the Transferee Company which shall meet, discharge and satisfy the same to the exclusion of the Transferor Company.

## **6 CONSIDERATION**

6.1 The total consideration for transfer and vesting of the SDD Alcohol Undertaking of Transferor Company in Transferee Company shall be Rs 1,360,000,000 (Rupees One Hundred and Thirty Six Crores).

## **7 MODE OF DISCHARGE OF CONSIDERATION**

7.1 Upon the Scheme becoming effective, the total consideration for transfer and vesting of the SDD Alcohol Undertaking as given under clause 6.1 shall be discharged by the Transferee Company without any further application or deed, issue and allotment of 17,000,000 (One Crores Seventy Lacs)

equity shares of the face value of Rs.10/- (Rupees Ten) at a premium of Rs. 70/- (Rupees Seventy) each credited as fully paid-up to the Transferor Company.

- 7.2 The equity shares to be issued and allotted in terms hereof will be subject to the Memorandum and Articles of Association of the Transferee Company and shall be deemed to be in compliance with the Companies Act, 1956, and other notifications/ guidelines issued by the statutory/regulatory authorities in India

## **8 ACCOUNTING TREATMENT**

### **8.1 In the books of the Transferee Company, on the Scheme becoming effective:**

- 8.1.1 The Transferee Company shall record the assets and liabilities of the SDD Alcohol Undertaking by allocating the Slump Sale consideration to the respective assets and liabilities based upon the values determined by an independent valuer and approved by its Board of Directors.

- 8.1.2 The Transferee Company shall credit the

(a) Aggregate face value of the new equity shares issued by it to Transferor Company pursuant to this Scheme to the 'Equity Share Capital Account' in its books of accounts.

(b) Aggregate premium on the new equity shares issued by it to Transferor Company pursuant to this Scheme to the 'Securities Premium Account' in its books of accounts.

### **8.2 In the books of the Transferor Company, on the Scheme becoming effective:**

- 8.2.1 The Transferor Company shall transfer the SDD Alcohol Undertaking on a going concern basis along with all its assets, liabilities, rights & obligations as defined in Clause 1.11 of this Scheme to Transferee Company as appearing in the books at the close of business of the day immediately preceding the Appointed Date.

- 8.2.2 The aggregate value of the Equity shares allotted under Clause 7.1 above shall be debited to the Investments Account.

8.2.3 The excess of aggregate value of the equity shares allotted under Clause 7.1 above, over the book value of SDD Alcohol Undertaking transferred shall be credited to the Profit and Loss Account.

### **PART III**

#### **9. UTILISATION OF SECURITIES PREMIUM OF THE TRANSFEROR COMPANY**

The amount, as on the Appointed Date, lying to the credit of Securities Premium Account will be utilized first to set-off deferred tax assets recognized in respect of brought forward business losses and the balance to set-off deferred tax assets recognized in respect of unabsorbed depreciation with no further act or deed on the part of Transferor Company.

The utilization of Securities Premium Account, as above, shall be effected as an integral part of the Scheme itself in accordance with the provisions of Section 78 and Section 100 to 103 of the Act.



## PART IV

### GENERAL TERMS AND CONDITIONS

#### 10 CONDUCT OF BUSINESS UNTIL THE EFFECTIVE DATE

With effect from the Appointed Date and up to and including the Effective Date:

- 10.1 The Transferor Company shall carry on and be deemed to have carried on its business and activities in relation to the SDD Alcohol Undertaking and shall be deemed to have held and stood possessed of and shall hold and stand possessed of the said undertaking belonging to it for and on account of and in trust for the Transferee Company.
- 10.2 Any income or profit accruing or arising to the Transferor Company in relation to the SDD Alcohol Undertaking and all costs, charges, expenses and losses incurred by the Transferor Company in relation to the SDD Alcohol Undertaking shall for all purposes be treated as the income, profits, costs, charges, expenses and losses, as the case may be, of the Transferee Company.
- 10.3 With effect from the Appointed Date, all debts, liabilities, duties and obligations of the SDD Alcohol Undertaking of the Transferor Company as on the close of business on the date preceding the Appointed Date whether or not provided in the books of the SDD Alcohol Undertaking and all other liabilities relating to the SDD Alcohol Undertaking which arises or accrues on or after the Appointed Date but which relates to the period on or upto the Appointed Date shall be deemed to be the debt, liabilities, duties and obligations of the Transferee Company.
- 10.4 With effect from the Appointed Date, The Transferor Company has carried on and hereafter undertakes to carry on its business with reasonable diligence and utmost business prudence.
- 10.5 Except in the ordinary course of business, the Transferor Company shall not, without the prior written consent of the Board of Directors of the Transferee Company or pursuant to any pre-existing obligation, sell, transfer or otherwise alienate, charge, mortgage or encumber or otherwise deal with or dispose of the SDD Alcohol Undertaking or any part thereof.

- 10.6 The Transferor Company shall not utilize the profits or income, if any, relating to the SDD Alcohol Undertaking for the purpose of declaring or paying any dividend or for any other purpose in respect of the period falling on and after the Appointed Date, without the prior written consent of the Transferee Company.
- 10.7 All proceedings of whatsoever nature (legal and other, including any suits, appeals, arbitration, execution proceedings, revisions, writ petitions, if any by or against the Transferor Company pertaining to the SDD Alcohol Undertaking shall not abate, be discontinued or be in any way prejudicially affected by reason of this Scheme, but the said proceedings, shall till the Effective Date be continued, prosecuted and enforced by or against the Transferor Company as if this Scheme had not been made and thereafter be continued, prosecuted and enforced by or against the Transferee Company. Transferee Company in the same manner and to the same extent as they would or might have been continued prosecuted and enforced by or against the Transferor Company if this Scheme had not been made. The Transferee Company shall take steps to have the abovementioned proceedings continued in its name.
- 10.8 Subject to the other provisions of this Scheme, all lawful agreements, arrangements, bonds, contracts, deeds and other instruments of whatsoever nature relating to the SDD Alcohol Undertaking and to which the Transferor Company is a party to or to the benefit of which it may be eligible and which are subsisting or operative or having effect, shall till the Effective Date, be in full force and effect and may be enforced as fully and effectual, as if the Scheme had not been made and thereafter, shall be in full force and effect against or in favor of the Transferee Company, as the case may be, and may be enforced as fully and effectual as if, instead of Transferor Company, the Transferee Company had been a party or beneficiary thereto, subject to such changes and variations in the terms, conditions and provisions thereof as may be mutually agreed between the Transferee Company and the other parties thereto. The Transferee Company shall enter and/or issue and /or execute deeds, writings or confirmations or enter into any arrangements, confirmations or novation in order to give formal effect to the provisions of this clause, if so required or if it becomes necessary.

## **11 LEGAL PROCEEDINGS**

- 11.1 All legal proceedings of whatsoever nature by or against the Transferor Company pending and/or arising before the Appointed Date and relating to

SDD Alcohol Undertaking, shall not abate or be discontinued or be in any way prejudicially affected by reason of the Scheme or by anything contained in this Scheme but shall be continued and enforced by or against the Transferee Company, as the case may be in the same manner and to the same extent as would or might have been continued and enforced by or against the Transferor Company.

11.2 After the Appointed Date, if any proceedings are taken against the Transferor Company in respect of the matters referred to in sub-clause 11.1, the Transferor Company shall defend the same at the cost of the Transferee Company, and the Transferee Company shall reimburse and indemnify the Transferor Company against all liabilities and obligations incurred by the Transferor Company in respect thereof.

11.3 The Transferee Company undertakes to have all legal or other proceedings initiated by or against the Transferor Company referred to in Clauses 11.1 or 11.2, transferred into its name and to have the same continued, prosecuted and enforced by or against the Transferee Company as the case may be, to the exclusion of the Transferor Company.

## **12 CONTRACTS, DEEDS, ETC.**

12.1 Upon the coming into effect the Scheme and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements and other instruments, if any, of whatsoever nature and relating to the SDD Alcohol Undertaking of the Transferor Company, shall continue in full force and effect against or in favour of the Transferee Company, and may be enforced effectively by or against the Transferee Company as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party thereto.

12.2 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, or issue or execute deeds, writings, confirmations, novation, declarations, or other documents with, or in favour of any party to any contract or arrangement 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 above provisions. The Transferee Company shall be deemed to be authorized to execute any such writings on behalf of the Transferor Company and to carry out or perform all such formalities or compliances required for the purposes referred to above on the part of the Transferor Company.

### **13 STAFF, WORKMEN & EMPLOYEES**

- 13.1 On the Scheme being effective, the Employees of the Transferor Company, who are employed in relation to the SDD Alcohol Undertaking ("Transferred Employees"), as on the Appointed date shall be deemed to have ceased to be employees of the Transferor Company, and the Transferee Company shall be deemed to have employed such Employees on the same terms and conditions on which they are engaged by the Transferor Company, (including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans, superannuation plans and any other retirement benefits) without any interruption in service as a result of transfer of such Employees to the Transferee Company.
- 13.2 In so far as the existing provident fund trusts, gratuity fund and pension and/or superannuation fund trusts ("Fund/s") created by the Transferor Company for its employees (including the Transferred Employees) are concerned, the part of the Funds referable to the Transferred Employees shall be continued for the benefit of the Transferred Employees pursuant to this Scheme in the manner provided hereinafter. In the event that the Transferee Company has set up its own Funds in respect of any of the Funds of the Transferor Company referred to above, the amounts in such Funds in respect of contributions pertaining to the Transferred Employees shall, subject to the necessary approvals and permissions, if any, be transferred to the relevant Funds of the Transferee Company. Until such time that the Transferee Company creates its own Fund, the Transferee Company may, subject to necessary approvals and permissions, if any, continue to contribute in respect of the Transferred Employees to the relevant Funds of the Transferor Company and at the time that the Transferee Company creates its own Fund, the contributions pertaining to the Transferred Employees shall be transferred to the Funds created by the Transferee Company. It is clarified that the services of the Transferred Employees will be treated as having been continuous for the purpose of the said Fund or Funds.
- 13.3 It is clarified that in relation to the period prior to the Effective Date, the Transferor Company shall pay or make adequate provisions for making payment of all amounts due and payable and/or accrued to the Transferred Employees for the period prior to the Effective Date including salaries, wages, remuneration, allowances, bonuses, ex-gratia, service benefits, and reimbursements and all other payments and benefits in terms of the

contract of employment and employee benefit schemes and Funds and in terms of agreements, settlements or awards entered into or reached with employee unions or associations, and shall pay all premium, contributions and other sums payable pursuant to any employee benefit schemes and Funds introduced by the Transferor Company.

13.4 The services of the Transferred Employees with the Transferor Company prior to the transfer, as aforesaid, shall be taken into account for the purposes of all benefits to which the Transferred Employees may be eligible, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans, superannuation plans and any other retirement benefits and accordingly, shall be reckoned therefore from the date of their respective appointment in the Transferor Company.

13.5 Upon the Scheme becoming effective, the Transferor Company shall communicate to the aforesaid Employees a written notice in a form to be mutually agreed between the Transferee Company and the Transferor Company.

## **14 REMAINING BUSINESS**

14.1 The Remaining Business and all the assets, liabilities and obligations pertaining thereto shall continue to belong to and be vested in and be managed by the Transferor Company.

## **15 APPLICATION TO COURT**

15.1 The Transferor Company and the Transferee Company shall as may be required make applications and/or petitions under Sections 391 to 394 and other applicable provisions of the Act to the Court for sanction of this Scheme and all matters ancillary or incidental thereto.

## **16 MODIFICATION OR AMENDMENTS TO THE SCHEME**

16.1 The Transferor Company and the Transferee Company, through their respective Boards (which shall include any committee authorized by the Board in this regard) may assent to any modifications/amendments to the Scheme or to any conditions or limitations that the Court and/or any other authority may deem fit to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them. The Transferor Company and the Transferee Company, acting through their respective

authorized representatives, be and are hereby authorized to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions 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.

## **17 CONDITIONALITY OF THE SCHEME**

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

- 17.1 The Scheme being approved by the requisite majorities in number and value of such classes of persons including the Members and / or Creditors of the Transferor Company and the Members and / or Creditors of the Transferee Company as may be directed by the Court or any other competent authority, as may be applicable.
- 17.2 The Scheme being sanctioned by the Court or any other authority under Sections 391 to 394 of the Act and to the necessary Order under Section 394 of the said Act being obtained.
- 17.3 Certified copies of the Orders of the Court sanctioning the Scheme being filed with the respective Registrar of Companies by the Transferor Company and the Transferee Company.
- 17.4 The requisite, consent, approval or permission of the Central Government, State Government(s), or any other statutory or regulatory authority, if any, which by law may be necessary for carrying on the business and for the implementation of this Scheme.

## **18 EFFECT OF NON-RECEIPT OF APPROVALS**

In the event of any of the said sanctions and approvals referred to in Clause 17 not being obtained and/ or the Scheme not being sanctioned by the High Court or such other appropriate authority, if any, 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 and agreed between the respective parties to this Scheme. Each party shall bear and pay its respective costs, charges and expenses for and or in connection with the Scheme unless otherwise mutually agreed.

**19 COSTS, CHARGES & EXPENSES**

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

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### SCHEDULE – 1

#### Details of Land and Building of SDD Alcohol Undertaking

<b>S.No</b>	<b>Details of Land</b>	<b>Area in Sq Mts</b>
1	Factory Land of SDD Alcohol Undertaking	72,000
2	Staff Housing Quarters for Employees of SDD Alcohol Undertaking	22,351
3	Lagoon Land of SDD Alcohol Undertaking	19,832
<b>TOTAL</b>		<b>114,183</b>