

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI**

CP (CAA) No. 05/KOB/2022

IN

CA (CAA) No. 01/KOB/2022

In the matter of the Companies Act, 2013 (18 of 2013);

-And-

Under sections 230 and 232 of the said Act;

- And--

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

-And-

In the matter of:

Scheme of Amalgamation of:

1. SABARI RUBBER PRIVATE LIMITED, (CIN: U25191KL1979PTC003085)
Midas Marketing, Building, Varisserry, Mariathuruthu P.O., Kottayam-686027

.... First Petitioner's/Transferor Company No. 1

2. PARAMPUZHA TREADS PRIVATE LIMITED, (CIN: U25191KL1984PTC003994) Midas Marketing, Building, Varisserry, Mariathuruthu P.O., Kottayam-686027

...Second Petitioner's/Transferor Company No. 2

3. KAVERI TREADS PRIVATE LIMITED, (CIN: U25199KL1984PTC004005)
Midas Marketing, Building, Varisserry, Mariathuruthu P.O., Kottayam-686027

...Third Petitioner's/Transferor Company No. 3

4. SONA RUBBER PRIVATE LIMITED, (CIN: U2519KL1979PTC003090)
Midas Marketing, Building, Varisserry, Mariathuruthu P.O., Kottayam-686027

...Fourth Petitioner's/Transferor Company No. 4

5. PEACOCK RUBBERS PRIVATE LIMITED, (CIN: U25191KL1980PTC003166) Midas Marketing, Building, Varisserry, Mariathuruthu P.O., Kottayam-686027

.... Fifth Petitioner's/Transferor Company No. 5

6. GUARDIAN RUBBER PRIVATE LIMITED, (CIN: U25191KL1980PTC003165) Midas Marketing, Building, Varisserry, Mariathuruthu P.O., Kottayam-686027

.... Sixth Petitioner's/Transferor Company No. 6

7. SOUTHERN AGRO TRADES AND SERVICES PVT LTD, (CIN: U51219KL1978PTC003009) Midas Marketing, Building, Varisserry, Mariathuruthu P.O., Kottayam-686027

...Seventh Petitioner's/Transferor Company No. 7

8. IDEAL RUBBER PRIVATE LIMITED, (CIN: U25191KL1979PTC003101) Midas Marketing, Building, Varisserry, Mariathuruthu P.O., Kottayam-686027

.... Eighth Petitioner's/Transferor Company No. 8

9. MIDLAND TREADS PRIVATE LIMITED, (CIN: U25119KL1980PTC003169) Midas Marketing, Building, Varisserry, Mariathuruthu P.O., Kottayam-686027

.... Ninth Petitioner's/Transferor Company No. 9

10. MIDAS RETREADS INDIA PRIVATE LIMITED, (CIN: U25119KL1990PTC05794) Midas Marketing, Building, Varisserry, Mariathuruthu P.O., Kottayam-686027

...Tenth Petitioner's/Transferor Company No. 10

11. ZEUS RUBBER PRIVATE LIMITED, (CIN: U25191KL1979PTC003086),
Midas Marketing, Building, Varisserry, Mariathuruthu P.O., Kottayam-686027

.... Eleventh Petitioner's/Transferor Company No.11

12. SUMERU RUBBER PRIVATE LIMITED, (CIN:
U25191KL1979PTC003087), Midas Marketing, Building, Varisserry,
Mariathuruthu P.O., Kottayam-686027

...Twelfth Petitioner's/Transferor Company No.12

13. STANDARD TREADS PRIVATE LIMITED, (CIN:
U25119KL1980PTC003167), Midas Marketing, Building, Varisserry,
Mariathuruthu P.O., Kottayam-686027

.... Thirteenth Petitioner's/Transferee Company

Coram:

Hon'ble Shri P. Mohan Raj : Member (Judicial)
Hon'ble Shri Satya Ranjan Prasad : Member (Technical)

Appearances (via video conference):

For the Petitioner's : Mr. Nebil Nizar, Advocate
For ROC : Mr. B Ramesh, AROC
For Official Liquidator : Ms. Ambili B

Order reserved on: 13.01.2023
Order pronounced on : 22.03.2023

ORDER

1. This is a joint petition filed under Sections 230 to 232 of the Companies Act, 2013 by Sabari Rubber Private Limited ("SABARI" or "Transferor Company 1") and Parampuzha Treads Private Limited ("PARAMPUZHA" or

"Transferor Company 2") and Kaveri Treads Private Limited ("KAVERI" or "Transferor Company 3") and Sona Rubber Private Limited ("SONA" or "Transferor Company 4") and Peacock Rubbers Private Limited ("PEACOCK" or "Transferor Company 5") and Guardian Rubber Private Limited ("GUARDIAN" or "Transferor Company 6") and Southern Agro Trades and Services Private Limited ("SOUTHERN" or "Transferor Company 7") and Ideal Rubber Private Limited ("IDEAL" or "Transferor Company 8") and Midland Treads Private Limited ("MIDLAND" or "Transferor Company 9") and Midas Retreads India Private Limited ("MIDAS RETREADS" or "Transferor Company 10") and Zeus Rubber Private Limited ("ZEUS" or "Transferor Company 11") and Sumeru Rubber Private Limited ("SUMERU" or "Transferor Company 12") and Standard Treads Private Limited ("STANDARD" or "Transferee Company"). The Transferor Companies and the Transferee Company (collectively referred to as the Petitioners) have sought relief to sanction the Scheme of Merger between them.

2. The brief facts are as follows:

- 2.1. Sabari Rubber Private Limited, the First Petitioner's/transferor company was incorporated as a Private Company on the 13th day of July 1979 having Corporate Identity Number 'U25191KL1979PTC003085'. There is no change in the status of the Company since its incorporation. The company has paid capital share capital of INR 90,000.00 divided into 9,000 shares of INR 10.00 each fully paid up.
- 2.2. Parampuzha Treads Private Limited, the Second Petitioner's/transferor company incorporated as a Private Company on the 18th day of June 1984 having Corporate Identity Number 'U25191KL1984PTC003994'. There is no change in the status of the Company since its incorporation. The company has paid capital share capital of INR 98,070.00 divided into 9,807 shares of INR 10.00 each fully paid up.

- 2.3. Kaveri Treads Private Limited, the Third Petitioner's/transferor company incorporated as a Private Company on the 6th day of July 1984 having Corporate Identity Number 'U25199KL1984PTC004005'. There is no change in the status of the Company since its incorporation. The company has paid capital share capital of INR 97,920.00 divided into 9,792 shares of INR 10.00 each fully paid up.
- 2.4. Sona Rubber Private Limited, the Fourth Petitioner's/transferor company incorporated as a Private Company on the 18th day of August 1979 having Corporate Identity Number 'U2519KL1979PTC003090'. There is no change in the status of the Company since its incorporation. The company has paid capital share capital of INR 2,50,000.00 divided into 25,000 shares of INR 10.00 each fully paid up.
- 2.5. Peacock Rubbers Private Limited, the Fifth Petitioner's/transferor company incorporated as a Private Company on the 14th day of March 1980 having Corporate Identity Number 'U25191KL1980PTC003166'. There is no change in the status of the Company since its incorporation. The company has paid capital share capital of INR 90,000.00 divided into 9,000 shares of INR 10.00 each fully paid up.
- 2.6. Guardian Rubber Private Limited, the Sixth Petitioner's/transferor company incorporated as a Private Company on the 14th day of March 1980 having Corporate Identity Number 'U25191KL1980PTC003165'. There is no change in the status of the Company since its incorporation. The company has paid capital share capital of INR 1,00,000.00 divided into 10,000 shares of INR 10.00 each fully paid up.
- 2.7. Southern Agro Trades and Services Pvt Ltd, the Seventh Petitioner's/transferor company incorporated as a Private Company on the 4th day of October 1978 having Corporate Identity Number

'U51219KL1978PTC003009'. There is no change in the status of the Company since its incorporation. The company has paid capital share capital of INR 1,00,000.00 divided into 10,000 shares of INR 10.00 each fully paid up.

- 2.8. Ideal Rubber Private Limited, the Eighth Petitioner's/transferor company incorporated as a Private Company on the 11th day of September 1979 having Corporate Identity Number 'U25191KL1979PTC003101'. There is no change in the status of the Company since its incorporation. The company has paid capital share capital of INR 2,50,000.00 divided into 25,000 shares of INR 10.00 each fully paid up.
- 2.9. Midland Treads Private Limited, the Ninth Petitioner's/transferor company incorporated as a Private Company on the 14th day of having Corporate Identity Number 'U25119KL1980PTC003169'. There is no change in the status of the Company since its incorporation. The company has paid capital share capital of INR 88,000.00 divided into 8,800 shares of INR 10.00 each fully paid up.
- 2.10. Midas Retreads India Private Limited, the Tenth Petitioner's/transferor company incorporated as a Private Company on the 5th day of September 1990 having Corporate Identity Number 'U25119KL1990PTC05794'. There is no change in the status of the Company since its incorporation. The company has paid capital share capital of INR 5,00,000.00 divided into 50,000 shares of INR 10.00 each fully paid up.
- 2.11. Zeus Rubber Private Limited, the Eleventh Petitioner's/transferor company incorporated as a Private Company on the 13th day of July 1979 having Corporate Identity Number 'U25191KL1979PTC003086'. There is no change in the status of the Company since its incorporation. The company

has paid capital share capital of INR 1,00,000.00 divided into 10,000 shares of INR 10.00 each fully paid up.

2.12. Sumeru Rubber Private Limited, the Twelfth Petitioner's/transferor company incorporated as a Private Company on the 13th day of July 1979 having Corporate Identity Number 'U25191KL1979PTC003087'. There is no change in the status of the Company since its incorporation. The company has paid capital share capital of INR 1,00,000.00 divided into 10,000 shares of INR 10.00 each fully paid up.

2.13. Standard Treads Private Limited, the Thirteenth Petitioner's/transferee company incorporated as a Private Company on the 14th day of March 1980 having Corporate Identity Number 'U25119KL1980PTC003167'. There is no change in the status of the Company since its incorporation. The company has paid capital share capital of Rs.1,00,000/- divided into 10,000 shares of INR 10/- each fully paid up.

3. The Transferee Companies is engaged in the business as manufacturers, dealers, agents, importers, exporters and merchants of all kinds of rubber and rubber products, tread rubber, tread gum, retreading materials, foam rubber. bushes, mouldings, sheets, kattai sheets, vulcanising solution, flaps, channels, industrial linings, V—belts, transmission belts, conveyers, industrial and automobile belts, tubes, tyres and other compounds, articles and appliances made with or from and involving the use of natural rubber and synthetic rubber.

4. The Accounts of the Transferee Company and Transferor Companies have been audited and adopted by the shareholders up to 31st March 2021 and the Audited Financial Statements as on 31st March, 2021 contains the Balance Sheet, Profit and Loss Account and the Auditors Report thereon. The Transferee Company and Transferor Companies have also prepared and submitted unaudited financial statements for the period up to 31st December

2021. Subsequent to the date of the aforesaid audited accounts and as on date, there has been no substantial change in the capital structure or the financial position of the Transferee Company and Transferor Company except those arising or resulting from the usual course of business.

5. The Transferee Company and the Transferor Companies are engaged in connected and similar businesses of manufacture and sale of rubber products and allied services and are operated within the same territory. The thirteen companies connected with this Scheme are closely held companies under the same management of the Panampunna Family, popularly known as 'Midas Group'. Recognising the importance and need for consolidating the group business according to the demands of the 21st century and for achieving the synergy by optimum utilisation of the resources and reduction of the various overhead costs and for lessening the compliance burden, the Panampunna family decided to rationalise and restructure its businesses. The Petitioner's Companies proposed a scheme of amalgamation with a view to synergise and consolidate the resources to achieve greater financial strength.
6. The merger proposal was considered and approved by the Transferee Company and the twelve Transferor Companies at their respective Board Meetings held on 14.09.2021.
7. The Board of Directors of the Transferor Company and the Transferee Company have considered and proposed the merger of the entire undertaking and business of the Transferor Company with the Transferee Company in order to benefit the stakeholders of all the companies. Accordingly, the Board of Directors of the twelve Transferor Companies and the Transferee Company have formulated the Scheme of Merger for the transfer and vesting of the entire Undertaking (as defined in the Scheme of Merger) and business of each of the twelve Transferor Companies with and into the Transferee Company pursuant

to the provisions of Section 230 to Section 232 and other relevant provisions of the Act.

8. The Merger proposed is in the following terms:

8.1. The Appointed Date as per the Scheme is 01.04.2021.

8.2. Amalgamation related provisions

8.2.1. Upon coming into effect of the Scheme and with effect from the Appointed Date and subject to the provisions of the Scheme, the Undertakings of the Transferor Companies shall, pursuant to the sanction of the Scheme by the Tribunals and pursuant to the provisions of Sections 230 to 232 and other applicable provisions of the Act, be and stand transferred to and vested in and/ or deemed to have been transferred to and vested in the Transferee Company, as a going concern, without any further act, deed, instrument, matter so as to become, as and from the Appointed Date, as the undertakings of the Transferee Company by virtue of and in the manner provided in this Scheme.

8.2.2. All the movable assets of the Transferor Companies and the assets which are otherwise capable of transfer by physical delivery or endorsement and delivery, 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, without the need to execute any separate instrument, 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. Such delivery shall be made on a date which shall be mutually agreed upon between the Transferor Companies and the Transferee Company on or prior to the Effective Date.

8.2.3. The transfer and vesting shall be subject to the existing charges/hypothecation/mortgages, if any, as may be subsisting and agreed to be created over or in respect of the said assets or any part thereof. Provided however, any reference in any security documents or arrangements to which the Transferor Companies are a party wherein the assets of the Transferor Companies have been or are offered or agreed to be offered as security for any financial assistance or obligations, shall be construed as reference only to the assets pertaining to the Transferor Companies and vested in the Transferee Company by virtue of this Scheme to the end, and intent that the charges shall not extend or deemed to be extended to any assets of the Transferee Company.

8.2.4. Upon the Scheme coming into effect and with effect from the Appointed Date, in respect of any assets of the Transferor Companies other than those mentioned in Clause 4.2 above, including actionable claims, sundry debtors, outstanding loans, advances recoverable in cash or kind or for value to be received and deposits with any Person including any Governmental Authority, semi-Government, local and other authorities and bodies and customers, the Transferor Companies shall issue notices, if so required by the Transferee Company, and in such form as the Transferee Company may deem fit and proper, stating that pursuant to the Tribunals having sanctioned this Scheme under Sections 230 to 232 of the Act, the relevant debt, loan, advance or other asset, be paid or made good or held on account of the Transferee Company, as the Person entitled thereto, to the end and intent that the right of the Transferor Companies to recover or realise the same stands transferred to the Transferee Company and that appropriate entries should be passed in their respective books to record the aforesaid changes. Notwithstanding anything contained in this clause, it being clarified

that the notices referred to hereinabove are for information purposes only and the same shall not affect the transfer of the assets pursuant to the Scheme

8.2.5. Upon the Scheme coming into effect and with effect from the Appointed Date, all immovable property of the Transferor Companies, whether freehold or leasehold, and any document of title, rights, interest and easements in relation thereto shall stand transferred to and be vested in the Transferee Company, as a successor of the Transferor Companies, without any act or deed to be done or executed by the Transferor Companies and/ or the Transferee Company. The Transferee Company shall be entitled to exercise all rights and privileges and be liable to pay appropriate rent, rates, taxes and charges and fulfil all obligations, in relation to or applicable to all such immovable properties. The mutation and/or substitution of the title to the immovable properties shall be made and duly recorded in the name of the Transferee Company by the appropriate Governmental Authorities and third parties pursuant to the sanction of the Scheme by the Tribunals and upon the Scheme becoming effective in accordance with the terms hereof without any further act or deed to be done or executed by the Transferor Companies and/ or the Transferee Company. It is clarified that the Transferee Company shall be entitled to engage in such correspondence and make such representations as may be necessary for the purposes of the aforesaid mutation and/or substitution pending sanction of the Scheme.

8.2.6. Upon coming into effect of the Scheme and with effect from the Appointed Date, all Liabilities, duties and obligations of the Transferor Companies, as on or after the Appointed Date whether provided for or not in the books of accounts of the Transferor Companies, and all other

Liabilities which may accrue or arise after the Appointed Date but which relate to the period on or up to the day of the Appointed Date shall, pursuant to the Tribunal Order(s) or such other Governmental Authority as may be applicable under the provisions of the Act, without any further act or deed, be transferred or deemed to be transferred to and vested in the Transferee Company, so as to become as from the Appointed Date the Liabilities, duties and obligations of the Transferee Company on the same terms and conditions as were applicable to the Transferor Companies.

8.2.7. Without prejudice to the above provisions, upon the Scheme coming into effect and with effect from the Appointed Date, all inter-party transactions between the Transferor Companies and the Transferee Company shall be considered as intra-party transactions for all purposes. For the avoidance of doubt, it is clarified that upon the Scheme coming into effect and with effect from the Appointed Date, to the extent there are inter-corporate loans, deposits, obligations, balances or other outstanding as between the Transferor Companies inter-se and/or the Transferee Company, the obligations in respect thereof shall come to an end and there shall be no liability in that behalf and corresponding effect shall be given in the books of account and records of the Transferee Company for the reduction of such assets or liabilities as the case may be.

8.2.8. Upon coming into effect of the Scheme, all taxes (including but not limited to income tax, sales tax, excise duty, service tax, Value Added Tax ('VAT'), goods and services tax etc.) paid or payable by the Transferor Companies in respect of their respective operations and/or the profits of businesses, on account of the Transferor Companies and, in so far as it relates to tax payment whether by way of deduction at

source, advance tax or otherwise howsoever, by the Transferor Companies in respect of the operations and/or the profits of the business after the Appointed Date shall be deemed to be the corresponding item paid by the Transferee Company, and shall, in all proceedings, be dealt with accordingly.

8.2.9. Upon coming into effect of the Scheme, all the profits or income, taxes (including any carry forward accumulated losses, unabsorbed depreciation, advance tax, tax deducted at source, foreign tax credit and MAT credit) or any costs, charges, expenditure accruing or arising to the Transferor Companies or expenditure or losses arising or incurred or suffered by the Transferor Companies shall for all purposes be treated and deemed to be and accrue from the Appointed Date as the profits or income, taxes (including any carry forward of accumulated tax losses, unabsorbed depreciation, advance tax, tax deducted at source, foreign tax credit, MAT credit), costs, charges, expenditure or losses of the Transferee Company, as the case may be.

8.2.10. For avoidance of doubt, it is clarified that upon coming into effect of this Scheme and with effect from the Appointed Date, in accordance with the provisions of relevant Laws, consents, approvals, permissions, licenses, registrations, certificates, grants, concessions, authorities (including for the operation of bank accounts and demat accounts, if any), powers of attorneys given by, issued to or executed in favour of the Transferor Companies, and the rights and benefits under the same shall, in so far as they relate to the Transferor Companies and all quality certifications and approvals, permits, quotas, rights, entitlements, tenancies, patents and domain names, copyrights, brands, trade secrets, product registrations and other intellectual and industrial property and all other interests relating to the goods or services being dealt with by

the Transferor Companies, shall without any further act or deed be transferred to and vested in the Transferee Company under the same terms and conditions as were applicable to the Transferor Companies immediately prior to the coming into effect of this Scheme. In so far as the various incentives, sales tax, deferral benefits, subsidies (including applications for subsidies), available tax credits (including MAT credit, if any), rehabilitation schemes, grants, permissions, approvals, sanctions, remissions, special reservations, tax holidays, concessions, special status and other benefits or privileges enjoyed, granted by any Person (including any Governmental Authority), or availed of or to be availed of by the Transferor Companies are concerned, the same shall, without any further act or deed, in so far as they relate to the Transferor Companies, vest with and be available to the Transferee Company on the same terms and conditions as were applicable immediately prior to the coming into effect of this Scheme. The Transferee Company shall file the relevant intimations, if any, for the record of the statutory authorities who shall take them on file, pursuant to the Scheme coming into effect.

8.2.11. For avoidance of doubt, it is clarified that in order to ensure (i) implementation of the provisions of the Scheme; (ii) uninterrupted transfer of the relevant consents, approvals, patents, permissions, licenses, registrations, certificates etc.; and (iii) continued vesting of the benefits, exemptions available to the Transferor Companies in favour of the Transferee Company, the Board of Directors of the respective Transferor Companies and the Transferee Company shall be deemed to be authorized to execute or enter into necessary documentations with any regulatory authorities or third parties, if applicable and the same shall be considered as giving effect to the Tribunal Order(s) and shall be considered as an integral part of this Scheme. Further, the Transferee

Company shall be deemed to be authorized to execute or enter into necessary documentations with any regulatory authorities or third parties, if applicable, on behalf of the Transferor Companies and to carry out or perform all such formalities or compliance required for the purpose of implementation of the provisions of the Scheme.

8.2.12. On and from the Effective Date, and thereafter, the Transferee Company shall be entitled to operate all bank accounts, demat accounts, if any, of the Transferor Companies and realize all monies and complete and enforce all pending contracts and transactions and to accept stock returns and issue credit notes in respect of the Transferor Companies in the name of the Transferee Company in so far as may be necessary until the transfer of rights and obligations of the Transferor Companies to the Transferee Company under this Scheme have been formally given effect to under such contracts and transactions.

8.2.13. For avoidance of doubt, it is clarified that with effect from the Effective Date and till such times the name of the bank accounts of the Transferor Companies would be replaced with that of the Transferee Company, the Transferee Company shall be entitled to operate the bank accounts of the Transferor Companies in the name of the Transferor Companies in so far as may be necessary. All cheques and other negotiable instruments, deposit slips, payment orders received or presented for encashment which are in the name of the Transferor Companies after the Effective Date shall be accepted by the bankers of the Transferee Company and credited to the account of the Transferee Company, if presented by the Transferee Company. The Transferee Company shall be allowed to maintain bank accounts in the name of Transferor Companies for such time as may be determined to be necessary by the Transferee Company for presentation and deposition of cheques and

pay orders that have been issued in the name of the Transferor Companies. It is hereby expressly clarified that any legal proceedings by or against the Transferor Companies in relation to cheques and other negotiable instruments, payment orders received or presented for encashment which are in the name of the Transferor Companies shall be instituted, or as the case may be, continued, by or against, the Transferee Company after the coming into effect of the Scheme.

8.3. Consideration

8.3.1. Pursuant to the Scheme coming into effect and without any further application, act or deed, the Transferee Company shall issue and allot to all the equity shareholders of the Transferor Companies, whose names appears in the register of members as on the record date, fully paid-up equity shares in the following share entitlement ratio:

<i>Name of the Transferor Company</i>	<i>No of shares of held in Transferor Company</i>	<i>No of shares entitled in Transferee Company</i>
<i>Sabari Rubber Private Limited</i>	<i>919</i>	<i>200</i>
<i>Parampuzha Treads Private Limited</i>	<i>34</i>	<i>3</i>
<i>Kaveri Treads Private Limited</i>	<i>300</i>	<i>35</i>
<i>Sona Rubber Private Limited</i>	<i>87</i>	<i>1</i>
<i>Peacock Rubber Private Limited</i>	<i>34</i>	<i>3</i>
<i>Guardian Rubber Private Limited</i>	<i>33</i>	<i>1</i>

<i>Southern Agro Trades and Services Private Limited</i>	96	19
<i>Ideal Rubber Private Limited</i>	501	11
<i>Midland Treads Private Limited</i>	47	6
<i>Midas Re-treads Private Limited</i>	206	3
<i>Zeus Rubber Private Limited</i>	25	1
<i>Sumeru Rubber Private Limited</i>	47	4

The share holding pattern of the Transferee Company after effecting the Scheme shall be in the following manner:

<i>S. No.</i>	<i>Name of shareholders</i>	<i>% of shareholding</i>
1	<i>Divya Varughese</i>	1.93
2	<i>George Varughese</i>	24.94
3	<i>Malini Mathew Varughese</i>	0.01
4	<i>Midas Butyl Products (I) Pvt. Ltd.</i>	0.55
5	<i>Midas Precured Treads Pvt. Ltd.</i>	3.13
6	<i>Midas Rubber Pvt. Ltd.</i>	8.83
7	<i>P.John Zachariah & Co.Pvt. Ltd.</i>	0.96
8	<i>Panampunna Estates Pvt. Ltd.</i>	11.87
9	<i>Paulose Varughese</i>	16.50
10	<i>Sarah Varughese</i>	15.22

11	<i>Thriveni Rubber Pvt.Ltd.</i>	1.52
12	<i>Varkey Varughese</i>	14.54
	<i>Total</i>	100.00

- 8.3.2. *The ratio in which the New Equity Shares are to be issued and allotted to the shareholders of the Transferor Companies is herein referred to as the "Share Entitlement Ratio".*
- 8.3.3. *In case any shareholder's holding in Transferor Companies is such that such shareholder becomes entitled to a fraction of a share of the Transferee Company, the Transferee Company shall not issue fractional share certificates to such shareholders. Any fraction equal to or more than 0.5 arising out of such allotment shall be rounded off to the next higher integer and fraction less than 0.5 shall be rounded off to the earlier lower integer.*
- 8.3.4. *Upon the Scheme becoming effective and upon the New Equity Shares being issued and allotted as provided in this Scheme, the equity shares of the Transferor Companies shall be deemed to have been automatically cancelled and be of no effect on and from the Record Date.*
- 8.3.5. *The New Equity Shares to be issued and allotted as provided in Clause 5.1 above shall be subject to the provisions of the memorandum and articles of association of the Transferee Company and shall rank pari-passu in all respects with the equity shares of the Transferee Company as on the Effective Date including in respect of dividend, if any, that may be declared by the Transferee Company on or after the Effective Date*

8.3.6. The issue and allotment of New Equity Shares to the respective shareholders of the Transferor Companies as provided in this Scheme is an integral part thereof and shall be deemed to have been carried out without requiring any further act on the part of the Transferee Company or its shareholders and as if the procedure laid down under Section 62 of the Act and any other applicable provisions of the Act, and such other statutes and regulations as may be applicable were duly complied with.

8.3.7. Upon the Scheme becoming effective and upon the New Equity Shares being issued and allotted as provided in this Scheme, the equity shares held by the Transferor Companies in the Transferee Company prior to the amalgamation shall be deemed to have been automatically cancelled.

8.4. Dissolution Of the Transferor Company

On the Scheme becoming effective, the Transferor Companies shall stand dissolved without being wound-up.

9. The petitioner stated that by order dated 05.05.2022, this Tribunal dispensed with the meeting of the Equity shareholders of all the Petitioner's companies. Further, the Tribunal also dispensed with the meeting of the secured creditors of all the Petitioner's companies as there were no secured creditors in any of the Petitioner's companies. Further, the Tribunal also dispensed with the meeting of the unsecured creditors of all the Petitioner's companies except save that of the Tenth Petitioner's and the Thirteenth Petitioner's based on the consent affidavits placed on record. The Tribunal directed the meeting of the unsecured creditors of the Tenth Petitioner's and the Thirteenth Petitioner's to be held on 16th June 2022 at 10:30 AM and 11:30 AM respectively to consider and, if thought fit, to approve, with or without modification(s), the Scheme of Amalgamation between the Petitioner's Companies and their respective Shareholders.

10. As per Tribunal's direction, a notice of the meeting of the unsecured creditors was published in "Business Standard" (English daily) and another in vernacular (Malayalam language) "Mathrubhoomi" on 17.05.2022. Further, notice was issued in Form No. CAA 2 to the 34 unsecured creditors of the Tenth Petitioner's and 59 unsecured creditors of the Thirteenth Petitioner's through speed post on 17.05.2022.
11. The said meeting of the unsecured creditors of the Tenth Petitioner's was held on 16.06.2022 at 10.30 a.m. through video conferencing and the Scheme of amalgamation was duly approved. Adv. Ameerul Millath, Advocate, the Chairman appointed by this Hon'ble Tribunal has submitted the Report of the Chairman in Form No. CAA 4 dated 17.06.2022 before this Tribunal.
12. The said meeting of the unsecured creditors of the Thirteenth Petitioner's was held on 16.06.2022 at 11.30 a.m. through video conferencing and the Scheme of amalgamation was duly approved. Adv. Ameerul Millath, Advocate, the Chairman appointed by this Hon'ble Tribunal has submitted the Report of the Chairman in Form No. CAA 4 dated 17.06.2022 before this Tribunal.
13. The Petitioner's has made a publication dated 25.06.2022 regarding issuance and dispatch of notices to creditors and equity shareholders of tenth and thirteenth Petitioner's companies as directed by this tribunal in vernacular and English dailies.
14. Notice of the proposed scheme along with relevant disclosure under rule 6 of Companies (Compromise and Arrangement) Rules, 2016 has been sent by email to regulatory authorities, i.e Regional Director, ROC, jurisdictional Income Tax officer, as directed by this Tribunal dated 03.08.2022. The petitioners further undertook by affidavit dated 26.09.2022 that Notice in Form No.CAA-3 was sent along with a copy of the notice with explanatory statement u/s 230(3), Scheme of merger and Valuation report through the registered post

to Regional Director, Official Liquidator, Registrar of Companies and Income Tax Department within whose jurisdiction the assessments of the Petitioner Companies. Petitioners further declared vide same affidavit that the present scheme does not come under the threshold limit of Competition Commission of India.

15. The Income Tax Department, through the Assistant Commissioner of Income-tax, Kottayam, had brought to the notice of the Tribunal the status of the tax demands pending as of 12.08.2022 against the 1st, 7th, 9th and 13th petitioner companies listed in the Scheme of Amalgamation. In compliance with the order of the Tribunal dated 15.09.2022 directing the Petitioners to file a reply to the letter of the Income Tax Department, the transferee company filed an affidavit dated 26.09.2022, undertaking to meet any claims, if any, of the Income Tax Department against the demands pending as provided in the letter dated 12.08.2022 issued by Income Tax Department as per clause 4.8 of the scheme of amalgamation.

16. The Registrar of Companies filed his report in the matter of Scheme of Amalgamation dated 10.01.2023 stating that the Regional Director, Ministry of Corporate Affairs (Southern Region), Chennai being the competent authority by virtue of powers delegated by him by the Central Government has examined the Scheme of Amalgamation with reference to the material papers made available to him and accordingly decided not to make any objection to the above scheme of Amalgamation except with the following observations:-
"Hon'ble Tribunal may be prayed to direct the Transferee Company to comply with the provisions of Section 232 (3) (1) of the Companies Act, 2013 for the merger of Authorized Share Capital of the Transferor Company with Transferee Company also to file the amended Memorandum of Association (MOA) and Articles of Association (AOA) with jurisdictional Registrar of Companies".

17. The Official Liquidator filed his report in the matter of Scheme of Amalgamation dated 12.01.2023 stating that subject to the observations and comments made by the Chartered Accountant in his scrutiny report, the Official Liquidator is of the opinion that the affairs of the transferor companies involved in the above scheme of amalgamation have not been conducted in a manner prejudicial to the interests of its members or the public interest, hence the scheme of amalgamation is in order.
18. The Petitioners filed a memo dated 06.02.2023 complying with the direction of Tribunal to reply to the observation made by the ROC/Regional Director, Southern region regarding the observation made above.
19. Petitioners have undertaken to publish the newspaper advertisements in 'Mangalam' in vernacular language and 'Indian Express' in English language *via* memo dated 14.01.2023 filed with this Tribunal.
20. From a perusal of the materials placed on record, it appears that the Scheme of Merger annexed to this petition is a fair and reasonable one and does not violate any provisions of law, and is not contrary to public policy. As per the Scheme, the entire undertaking, assets, business, and liabilities of the Transferor Companies proposed to be amalgamated and stand vested with the Transferee Company as a going concern.
21. Since, all the requisite statutory compliances prescribed under Sections 230 and 232 of the Companies Act, 2013 have been followed, this Tribunal finds that the Scheme of Merger & Amalgamation annexed to these Petitions can be sanctioned and made absolute in terms of the prayer in the said Company Petitions.
22. The scheme of Amalgamation mentions appointed date as 01.04.2021 which is more than two years back. Considering such a long gap this Tribunal does not concur with the same and we fix it to 01.04.2022.

ORDER

23. The Scheme of Amalgamation being “**Annexure-A28**” to the Petition is hereby sanctioned by this Tribunal so as to be binding with effect from the **1st day of April, 2022**, on Sabari Rubber Private Limited ("Transferor Company 1") and Parampuzha Treads Private Limited ("Transferor Company 2") and Kaveri Treads Private Limited ("Transferor Company 3") and Sona Rubber Private Limited ("Transferor Company 4") and Peacock Rubbers Private Limited ("Transferor Company 5") and Guardian Rubber Private Limited ("Transferor Company 6") and Southern Agro Trades and Services Private Limited ("Transferor Company 7") and Ideal Rubber Private Limited ("Transferor Company 8") and Midland Treads Private Limited ("Transferor Company 9") and Midas Retreads India Private Limited ("Transferor Company 10") and Zeus Rubber Private Limited ("Transferor Company 11") and Sumeru Rubber Private Limited ("Transferor Company 12") and Standard Treads Private Limited ("Transferee Company"), and their Members/ Shareholders, Secured Creditors, Unsecured Creditors, employees of the Petitioner Companies and all concerned;
24. All the properties, rights, interests and powers of the Petitioner Transferor Companies namely Sabari Rubber Private Limited ("Transferor Company 1") and Parampuzha Treads Private Limited ("Transferor Company 2") and Kaveri Treads Private Limited ("Transferor Company 3") and Sona Rubber Private Limited ("Transferor Company 4") and Peacock Rubbers Private Limited ("Transferor Company 5") and Guardian Rubber Private Limited ("Transferor Company 6") and Southern Agro Trades and Services Private Limited ("Transferor Company 7") and Ideal Rubber Private Limited ("Transferor Company 8") and Midland Treads Private Limited ("Transferor Company 9") and Midas Retreads India Private Limited ("Transferor Company 10") and Zeus Rubber Private Limited ("Transferor Company 11") and Sumeru Rubber Private Limited ("Transferor Company 12"), be transferred to and vest without

further act or deed in Standard Treads Private Limited ("Transferee Company"), and accordingly the same shall, pursuant to Section 230-232 of the Companies Act, 2013, be transferred to and vest in Standard Treads Private Limited ("Transferee Company"), for all the estates and interest of the Petitioner Transferor Companies, but subject nevertheless to all charges now affecting the same;

25. All the debts, liabilities, duties and obligations of the Petitioner Transferor Companies namely Sabari Rubber Private Limited ("Transferor Company 1") and Parampuzha Treads Private Limited ("Transferor Company 2") and Kaveri Treads Private Limited ("Transferor Company 3") and Sona Rubber Private Limited ("Transferor Company 4") and Peacock Rubbers Private Limited ("Transferor Company 5") and Guardian Rubber Private Limited ("Transferor Company 6") and Southern Agro Trades and Services Private Limited ("Transferor Company 7") and Ideal Rubber Private Limited ("Transferor Company 8") and Midland Treads Private Limited ("Transferor Company 9") and Midas Retreads India Private Limited ("Transferor Company 10") and Zeus Rubber Private Limited ("Transferor Company 11") and Sumeru Rubber Private Limited ("Transferor Company 12") be transferred without further act or deed to Standard Treads Private Limited ("Transferee Company"), and accordingly the same shall, pursuant to Section 230-232 of the Companies Act, 2013 be transferred to and become the debts, liabilities, duties and obligations of Standard Treads Private Limited ("Transferee Company");

26. All legal proceedings and/or suits and/or appeals now pending by or against the Petitioner Transferor Companies namely Sabari Rubber Private Limited ("Transferor Company 1") and Parampuzha Treads Private Limited ("Transferor Company 2") and Kaveri Treads Private Limited ("Transferor Company 3") and Sona Rubber Private Limited ("Transferor Company 4") and Peacock Rubbers Private Limited ("Transferor Company 5") and Guardian

Rubber Private Limited ("Transferor Company 6") and Southern Agro Trades and Services Private Limited ("Transferor Company 7") and Ideal Rubber Private Limited ("Transferor Company 8") and Midland Treads Private Limited ("Transferor Company 9") and Midas Retreads India Private Limited ("Transferor Company 10") and Zeus Rubber Private Limited ("Transferor Company 11") and Sumeru Rubber Private Limited ("Transferor Company 12") be continued by or against Standard Treads Private Limited ("Transferee Company");

27. All proceedings and/or suits and/ or appeals now pending by or against the Transferor Companies shall be continued by or against the Transferee Company; however, if any suit, writ petition, investigation appeal, criminal or other proceedings of whatsoever nature is pending against the petitioner Companies or entities associated with petitioner companies, their directors, shareholders, employees etc., the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer of business of the Transferor Company or because anything contained in the scheme, but the proceeding shall continue, prosecuted and enforced by or against the Transferee Company/Transferor Company entities etc. in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Companies and their associated entities, directors, shareholders, employees etc. as if the Scheme had not been made
28. All the employees of the Transferor Companies in Service, if any, on the date immediately preceding the date on which the scheme takes effect, i.e., the effective date, shall become the employees of the Transferee Company on such date without any break or interruption in service and upon terms and conditions not less favourable than those subsisting in concerned Transferor Company on the said date.

29. The Petitioner Companies are directed to file copy of this order along with a copy of the Scheme with the Registrar of Companies, Kerala, electronically in E-Form INC-28, in addition to producing a physical copy within 30 (thirty) days from the date of issue of the order by the Registry.
30. The Transferor Companies namely, Sabari Rubber Private Limited ("Transferor Company 1") and Parampuzha Treads Private Limited ("Transferor Company 2") and Kaveri Treads Private Limited ("Transferor Company 3") and Sona Rubber Private Limited ("Transferor Company 4") and Peacock Rubbers Private Limited ("Transferor Company 5") and Guardian Rubber Private Limited ("Transferor Company 6") and Southern Agro Trades and Services Private Limited ("Transferor Company 7") and Ideal Rubber Private Limited ("Transferor Company 8") and Midland Treads Private Limited ("Transferor Company 9") and Midas Retreads India Private Limited ("Transferor Company 10") and Zeus Rubber Private Limited ("Transferor Company 11") and Sumeru Rubber Private Limited ("Transferor Company 12") be dissolved without winding up from the date of filing of certified copies of this Order with the Registrar of Companies, Kerala;
31. Upon receiving the certified copy of this Order, the Registrar of Companies, Kerala, is directed to place all documents relating to the Transferor Companies with that of the Transferee Company and the files relating to the Transferor Companies shall be consolidated with the files and records of the Transferee Company.
32. Leave is granted to the Petitioner Companies to file the Schedule of Assets of Sabari Rubber Private Limited ("Transferor Company 1") and Parampuzha Treads Private Limited ("Transferor Company 2") and Kaveri Treads Private Limited ("Transferor Company 3") and Sona Rubber Private Limited ("Transferor Company 4") and Peacock Rubbers Private Limited ("Transferor Company 5") and Guardian Rubber Private Limited ("Transferor Company 6")

and Southern Agro Trades and Services Private Limited ("Transferor Company 7") and Ideal Rubber Private Limited ("Transferor Company 8") and Midland Treads Private Limited ("Transferor Company 9") and Midas Retreads India Private Limited ("Transferor Company 10") and Zeus Rubber Private Limited ("Transferor Company 11") and Sumeru Rubber Private Limited ("Transferor Company 12") within three weeks from the date of receipt of the order to be made herein;

33. Let the Deputy Registrar/ Assistant Registrar of this Tribunal draw up the necessary Order in Form No. CAA 7 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, with such necessary variations.
34. The Petitioner Companies have to lodge a copy of this order duly certified by the Deputy/Assistant Registrar of this Tribunal with the concerned Superintendent of Stamps, along with a copy of the Scheme for adjudication of stamp duty payable, if any, on the same within 60 (sixty) days from the date of receipt of the certified copy of the Order.
35. All concerned regulatory authorities shall act on receipt of the copy of this order along with the Scheme duly certified by the Deputy/Assistant Registrar of this Tribunal.
36. The Transferee Company is directed to file the amended Memorandum of Association (MoA) and Articles of Association (AoA) with the Registrar of Companies, Kerala, and also to strictly comply with the provisions of Section 232(3)(i) of the Companies Act, 2013.
37. The Petitioner Companies or other persons interested shall be at liberty to apply to this Tribunal in the above matters for any directions that may be necessary about the working of the Scheme.

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KOCHI BENCH

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IN
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38. Any concerned authorities shall also be at liberty to approach this Tribunal for any further clarification after the Sanction of the Scheme.
39. With the aforesaid Sanction, the CP(CAA)/05/KOB/2022 connected with C.A.(CAA)/01/KOB/2022 is hereby disposed of stands disposed of.
40. Urgent certified copies of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

Satya Ranjan Prasad
Member (Technical)

P. Mohan Raj
Member (Judicial)

Signed on this, 22nd day of March, 2023.

Rohit.