

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR  
AND  
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.Nos.2333 & 2334 of 2018  
and  
WMP Nos.2863 to 2866 of 2018

1. Renault Nissan Automotive India Pvt. Ltd.,  
Plot No.1, SIPCOT Industrial Park,  
Mattur (Post), Oragadam,  
Sriperumbudur Taluk,  
Kancheepuram District,  
Tamil Nadu - 602 105.  
.... Petitioner in WP No.2333/18
  2. Nissan MotorIndia Pvt. Ltd.,  
Plot No.1A, SIPCOT Industrial Park,  
Mattur (Post), Oragadam,  
Sriperumbudur Taluk,  
Kancheepuram District,  
Tamil Nadu - 602 105.  
.... Petitioner in WP No.2334/18
- vs.
1. Union of India,  
Represented by the Secretary,  
Ministry of Corporate Affairs,  
'A' Wing, Shastri Bhawan,  
Rajendra Prasad Road,  
New Delhi - 110 001.
  2. National Company Law Tribunal (Chennai Bench),  
Represented by its Registrar,  
Corporate Bhavan, 3rd Floor,  
26, Rajaji Salai,  
Chennai - 600 001.
  3. Messrs. SRL Advisors LLP,  
Rep. by its Designated Partner,  
Shaily Lal.  
... Respondents in  
both WPs.

Prayer in both Writ Petitions:

WRIT Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a writ of declaration, declaring the impugned Rule 2(a) & Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 and Rule 5 of the Companies (Transfer of Pending Proceedings) Second Amendment Rules, 2017 amending the earlier Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 notified by the Central Government exercising its powers under Section 434 (1) and 470 (1) of the Companies Act, 2013 to the effect of directing the winding up petitions filed / pending under Section 433 / 434 of the Companies Act, 1956 before the Hon'ble High Court of Chennai to be treated as an application under Section 7, 8 or 9 of the Insolvency and Bankruptcy Code, 2016 to be adjudicated under the said provisions by the Ld. National Company Law Tribunal / National Company Law Appellate Tribunal as ultra vires the legislative competence of the parliament / repugnant to the existing provisions of the Section 433 / 434 of the Companies Act, 1956 as saved in terms of the saving provisions of Section 465 of the Companies Act, 2013 and ultra vires the provisions of Articles 14, 19(1) (g), 20, 21 and 323 B of the Constitution of India and for the grant of any other appropriate writ.

For Petitioner : Mr. Dehriman Bhattacharya  
in both WPs. for Mr. M. Velmurugan

For Respondents : Mr. Venkatasamy Babu (for R1 & R2)  
in both WPs. Sr. Central Govt. Standing Counsel

Mr. Robin David (for R3)

COMMON ORDER

(Order of the Court was made by S. MANIKUMAR, J)

W.P.Nos.2333 & 2334 of 2018, are filed praying for a writ of declaration, declaring the impugned Rule 2(a) & Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 and Rule 5 of the Companies (Transfer of Pending Proceedings) Second Amendment Rules, 2017 amending the earlier Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 notified by the Central Government exercising its powers under Section 434 (1) and 470 (1) of the Companies Act, 2013 to the effect of directing the winding up petitions filed / pending under Section 433 / 434 of the Companies Act, 1956 before the Hon'ble High Court of Chennai to be treated as an application under Section 7, 8 or 9 of the Insolvency and Bankruptcy Code, 2016 to be adjudicated under the said provisions by the Ld. National Company Law Tribunal / National Company Law Appellate Tribunal as ultra vires the legislative competence of the parliament /

repugnant to the existing provisions of the Section 433 / 434 of the Companies Act, 1956 as saved in terms of the saving provisions of Section 465 of the Companies Act, 2013 and ultra vires the provisions of Articles 14, 19(1) (g), 20, 21 and 323 B of the Constitution of India.

2. Statement of agreement dated 22.02.2019 signed by the parties, as well as their respective counsel insofar W.P.No.2333 of 2018, are as hereunder.

#### SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made on 22nd day of February, 2019 at New Delhi.

#### BETWEEN:

M/s Renault Nissan Automotive India Pvt. Ltd a company incorporated under the laws of India and having its registered office at Plot No.1, SIPCOT Industrial Park, Mattur (Post), Oragadam, Sriperumbudur Taluk, Kancheepuram District, Tamil Nadu - 602 105 through its Authorised Representative, Mr. Yogesh Wadhwa, hereinafter referred to as "RNAIPL";

#### AND

M/s SRL Advisors LLP, a limited liability partnership and having its registered office at Flat No.5 & 6, 2nd Floor, Ajit Arcade, Kailash Colony Lala Lajpat Rai Marg, New Delhi - 110 048 through its Authorised Representative, Mr. Rajesh Lal, hereinafter referred to as "SRL";

(Hereinafter wherever necessary RNAIPL and SRL are collectively referred to as Party/Parties)

WHEREAS,

(A) Pursuant to various agreements with respect to provision of services on on-going basis, such as (a) services of reconciliation & resolution of accounts payable related to its vendor (b) services of various finance support, (c) services for various tax support towards documentation for refund of input VAT / incentive from Govt. of Tamilnadu, reconciliation & resolution of accounts related to tax and support VAT / CST, Service Tax and Excise (Other than Advisory) and (d) services of manpower professional support, (collectively the "Agreements") were being provided by SRL to RNAIPL.

(B) All services of SRL were termination w.e.f. 30.06.2014 vide RNAIPL's letter dated 24.07.2014;

(C) In connection with the payments sought by SRL under the Agreements, a notice dated 17.03.2015 was issued by SRL to RNAIPL u/s 434(1)(a) of the Companies Act, 1956 which was duly replied by RNAIPL, however the same culminated in institution of winding up proceedings before the Hon'ble Madras High Court by SRL against RNAIPL u/s 433 (e) read with Sec. 434(1)(a) & Sec 439 (1)(b) of the Companies Act, 1956, which was registered as C.P.No.294 of 2015.

(D) Due to enactment of Companies Act, 2013 and Insolvency & Bankruptcy Code, 2016 the said C.P. No.294/2015 was transferred to the NCLT, Chennai pursuant to an Order of the Hon'ble High Court dated 11.01.2017 and the transferred petition was numbered as TCP No.411/ (IB)/2017 by the Ld. NCLT, Chennai.

(E) RNAIPL thereafter filed an appeal (OSA/479/2018) assailing the Order dated 11.01.2017 passed by the Hon'ble High Court transferring CP No.294/2015 to the NCLT, Chennai.

(F) RNAIPL also filed a writ petition (WP No. 2333/2018) challenging the vires of certain provisions of the Company (Transfer of Pending Proceedings) Rules, 2016 before the Hon'ble Madras High Court.

(G) During the course of the hearing of the aforesaid writ petition (WP No. 2333/2018), the Hon'ble Court was pleased to hear the appeal (OSA/479/2018) and both the matters have been reserved for Orders. Additionally, in the writ petition, the Hon'ble Court has been pleased to stay the proceedings pending before the NCLT in TCP No.411/ (IB)/2017. सत्यमेव जयते

(H) In connection with the amounts sought and services rendered by SRL, the Parties had also filed civil suits against each other bearing CS (OS) No.369 of 2017 (SRL Vs. RNAIPL) pending before the Hon'ble Madras High Court and OS/83/2017(RNAIPL Vs. SRL) is pending before the Additional District and Sessions Court, Kancheepuram.

"the litigation as mentioned in clause (C) to (H) hereinabove are collectively referred to as "Disputes")

(I)– Without any admission or concession of liability, the Parties hereto have agreed to settle fully and

finally the Disputes and withdraw all legal proceedings pending in connection therewith and waive all claims against the other whether past, present or future, of whatsoever nature arising out of or in connection with the Agreements or any business dealings between the Parties and release each other from all liability on the terms and conditions set forth in this Settlement Agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

#### Article 1 - Signing of Settlement Agreement

The parties have mutually agreed that Mr. Mohamed Iqbal Butt, Advocate, shall act as the Escrow Agent.

Simultaneously with the execution of the present Agreement, the parties have also entered into an Escrow Agreement. The terms and conditions contained in the Escrow Agreement are incorporated by reference.

Simultaneously with the signing of the present Agreement, RNAIPL has handed over total amount of Rs.2,10,00,000/- (Rupees Two Crore Ten Lakh Only) (less tax withheld under the Income Tax Act, 1961) vide 2 (two) Demand Drafts of Rs.94,50,000/- (Rupees Ninety Four Lakhs Fifty Thousand Only) each bearing nos. 793014 and 793015 dated 18.02.2019 drawn on SCB, STS-Pay Centre, Mumbai 400 001 ("Demand Drafts") drawn in favour of SRL /Advisors LLP payable at par across all branches in India to Mr. Mohamed Iqbal Butt, who shall hold the same in his capacity as 'Escrow Agent'. RNAIPL shall furnish the tax deduction certificate of the tax withheld amount of Rs. 21,00,000 (Rs. Twenty One Lakhs) from the aforesaid payment of Rs.2,10,00,000/- (Rupees Two Crore Ten Lakh Only) in accordance with the provisions of the Income Tax Act, 1961.

The Escrow Agent shall hold and retain the Demand Drafts amounting and shall release the amounts to SRL only as per the conditions stipulated in Article 2 hereinbelow.

RNAIPL and SRL shall on the date of the signing of the present Agreement, simultaneously sign/execute appropriate Applications/Affidavits and other documents required to be filed for withdrawal of the proceedings bearing nos. TCP No.411/ (IB)/2017, CS (OS) No. 369/2017 and O.S. No. 83 /2017 referred in the table in Article 2 hereinbelow.

The parties shall on the signing of the Settlement Agreement, approach the District Court, Kancheepuram, Hon'ble Madras High Court and the NCLT, as the case may be for withdrawal of the proceedings as per Article 4 hereinbelow.

Article 2 - Release of the amount by Escrow Agent to SRL

The Escrow Agent shall release to SRL the Demand Drafts in full and final settlement of the Disputes which has given rise to legal proceedings are summarised below ("Legal Proceedings"):

| Name of Court/Tribunal           | Case No.                                                                                  | Cause Title                |
|----------------------------------|-------------------------------------------------------------------------------------------|----------------------------|
| NCLT, Chennai                    | TCP No.411/ (IB)/2017<br>(C.P.No.294 of 2015 being transferred Hon'ble Madras High Court) | SRL Vs. RNAIPL             |
| Hon'ble Madras High Court        | OSA/479/2018                                                                              | RNAIPL Vs. SRL             |
| Hon'ble Madras High Court        | WP.No.2333/2018                                                                           | RNAIPL Vs. UoI (SRL is R3) |
| Hon'ble Madras High Court        | C.S.(OS) No.369/2017                                                                      | SRL Vs. RNAIPL             |
| Ld. District Court, Kancheepuram | OS/83/2017                                                                                | RNAIPL Vs. SRL             |

The release of the valid Demand Drafts held by the Escrow Agent to SRL shall be in the following manner:

a. One Demand Draft on passing of Order permitting withdrawal of CS (OS) No.369/2017 pending before Hon'ble Madras High Court. After passing of the Order permitting withdrawal, either SRL or RNAIPL shall by email intimate the Escrow Agent by email on his email address mohdiqbal@duaassociates.com marking a copy of the email to the other party, i.e. either on the email address dhirajphilip@duaassociates.com or dhritiman.bhattacharyya@unitylegal.com. The Escrow Agent shall on completion of 24 hours of the receipt of the email regarding the passing of Order by the Court

concerned permitting withdrawal release one Demand Draft to SRL.

(b). The remaining Demand Draft on passing of Order permitting withdrawal of TCP No.411/(IB)/2017 before the NCLT Chennai or CP No.294 of 2015 (or as may be renumbered) before the Hon'ble Madras High Court (should the same get transferred back), as the case may be. After passing of the Order permitting withdrawal, either SRL or RNAIPL shall by email intimate the Escrow Agent marking a copy of the email to the other party. The Escrow Agent shall on completion of 24 hours of the email regarding the passing of Order permitting withdrawal release the amount to SRL.

### Article 3 – Releases

Each Party, on behalf of itself, its subsidiaries, affiliates, parent entities, predecessors, successors, assigns, past, present, and future officers, directors, partners, employees and agents shall fully and unconditionally release, acquit and forever discharge the other Party, its subsidiaries, affiliates, parent companies, predecessors, successors, assigns, past, present, and future officers, directors, partners, employees and agents from any and all past, present and future claims, liabilities, costs, obligations, causes of action, attorney's fees and losses of any nature, whether liquidated or unliquidated, fixed or contingent, related to or arising out of or in connection with the Disputes which has given rise to Legal Proceedings or the Agreements or termination thereof or relating to any business dealings between them in connection with the services or otherwise, including without limitation all claims raised/referred in TCP No. 411/(IB)/2017, CS (OS) No.369/2017 and O.S. No. 83/2017.

In particular, the Parties irrevocably promise not to pursue any claim (whether in arbitration or in litigation) against each other or against each other's employee/(s), affiliates, directors or partners. SRL expressly acknowledges that the amount agreed to be paid by RNAIPL to SRL under Article 1 of this Settlement Agreement constitutes full and final settlement of any and all monies due to SRL under the Agreements or termination thereof or pursuant to any business dealings between the Parties in connection with the services or otherwise, and further

acknowledges that there are no other amounts due and payable in connection with the Agreements or termination thereof or pursuant to any business dealings between the Parties. Similarly, RNAIPL acknowledges that there are no amounts due and payable from SRL in connection with the agreements or pursuant to any business dealings between the Parties

Notwithstanding anything contained elsewhere for the avoidance of doubt, the Parties also expressly confirm and acknowledge that the rights and obligations of the Parties towards each other under the Agreements or pursuant to any business dealings between them in connection with the services or otherwise are subject to fulfillment of conditions stipulated in Article 2, including release to SRL of the total amount.

#### Article 4 - Discontinuation of Legal Proceedings

Each Party undertakes to take all necessary further steps as may be necessary to withdraw the Legal Proceedings and to execute such documents, affidavits, undertakings and do all such acts, matters and things as may be reasonably required to give effect to the import and intent of this Settlement Agreement.

(a) Without generality of the foregoing, each Party within 5 days of the signing of present Settlement Agreement in order to discontinue and withdraw the legal proceedings bearing no.CS (OS) NO. 369/2017 and OS/83/2017 shall make an irrevocable joint application before the respective Court which shall be filed along with a copy of the present Settlement Agreement.

(b) Simultaneously with the aforesaid, SRL, shall sign appropriate memo before the NCLT irrevocably undertaking to discontinue and withdraw TCP No.411/(IB)/2017. RNAIPL shall, if required, extend all necessary support in this regard.

(c) Within 5 days of the signing of the present Settlement Agreement, SRL shall file appropriate memo alongwith a copy of the present Settlement Agreement before the NCLT irrevocably undertaking to discontinue and withdraw TCP No. 411/ (IB)/2017. RNAIPL shall, if required, extend all necessary support in this regard. Within 5 days of the signing of the present Agreement, RNAIPL and/or SRL along with a copy of the present Settlement Agreement shall file a necessary application before the Hon'ble High Court seeking

modification/withdrawal the stay in WP No. 2333/2018. The other Party shall extend all necessary support in this regard. Once appropriate Orders are passed by the Hon'ble High Court modifying/vacating the stay in WP No. 2333/2018, SRL shall withdraw the said proceedings before the NCLT. In the event TCP No 411/ (IB)/2017 is transferred back to the Hon'ble High Court, SRL shall move appropriate application and withdraw the said proceedings at Hon'ble High Court,

#### Article 5 - Costs and Stamping

Each Party shall bear its own attorney fees and costs incurred in connection with the Disputes and the Legal proceedings.

The Parties hereby agree that each shall bear their own costs and expenses, including but not limited to their respective legal fees and expenses, incurred in connection with the negotiation, performance and fulfilment of the actions contemplated in this Settlement Agreement.

The Parties hereby agree and undertake to execute two sets of this Settlement Agreement on the required stamp paper in accordance with, the laws of India. Each set shall be deemed to be an original.

#### Article 6 - Confidentiality and Non-Disparagement

The parties hereby expressly agree that notwithstanding this Settlement Agreement and the termination of Agreements executed between the parties in connection with the services or otherwise, any confidential information of either party in possession of the other Party shall remain confidential and shall not be disclosed to any third Party. Either Party agrees not to make any derogatory or disparaging statement to anyone about the other Party relating to the business dealings between them.

#### Article 7 - Full and Final Settlement

The Parties agree that the execution and performance of this Settlement Agreement shall be effective as a full and final settlement of all claims arising between the Parties out of or relating to the Disputes which has given rise to Proceedings or the Agreements or termination thereof or relating to any business dealings between them in connection with the services

or otherwise. The Parties hereto covenant and agree that if they hereafter discover facts different from or in addition to the facts that they now know or believe to be true with respect to the subject matter of this Settlement Agreement, it is nevertheless their intention hereby to settle and release fully and finally all claims pursuant to the Disputes which has given rise to Legal Proceedings or the agreements or termination thereof or relating to any business dealings between them in connection with the services or otherwise, inter se between the Parties. In furtherance of such intention, the release herein shall be and will remain in effect as a release notwithstanding the discovery of any such different or additional fact or facts.

#### Article 8 - Representations and Warranties

By execution hereof, the undersigned individuals executing this Settlement Agreement represent and warrant on behalf of the Party for whom the individual is signing that: (1) the said individual is duly authorised to enter into and execute this Settlement Agreement on behalf of such Party, (2) that all appropriate corporate resolutions or other consents have been passed and/or obtained, and (3) that this Settlement Agreement shall be binding on that Party.

#### Article 9 - Entire Agreement

This Settlement Agreement constitutes and represents the entire agreement between RNAIPL and SRL with respect to the claims released and discharged by this Settlement Agreement, and supersedes all prior understandings, negotiations and agreements in connection therewith. RNAIPL and SRL each acknowledge and confirm that in entering into this Settlement Agreement they have carried out all necessary due diligence, including obtaining independent legal advice relating to the subject matter hereof and possess all necessary information and are not relying on any statement, undertaking or representation made by or on behalf of any Party to this Settlement Agreement, whether or not in writing or made at any time prior to the execution of this Settlement Agreement which is not set out herein.

#### Article 10 - Successors and Assigns

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their current and future subsidiaries, affiliates, parent companies, any subsequent successors in title and assigns.

#### Article 11 - Amendments

This Settlement Agreement shall only be altered or amended by a written agreement executed by the Parties hereto;

#### Article 12 - Severability

In the event that any of the provisions or portions of this Settlement Agreement are held to be illegal, unenforceable, or invalid, the legality, enforceability and validity of the remaining provisions or portions of this Settlement Agreement shall remain unaffected.

#### Article 13 - Waivers

No breach of any provision herein can be waived unless such waiver is made in writing by all the Parties. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or other provisions hereof.

#### Article 14 - Governing Law and Jurisdiction

This Settlement Agreement shall be governed by, and construed in accordance with the laws of India. Any dispute arising out of or in connection with this Settlement Agreement shall be subject to the exclusive jurisdiction of the Courts at Chennai.

#### Article 15 - Communications

All notices and communications given pursuant to this Settlement Agreement shall be sent by courier and / or registered post to the following addresses:

RNAIPL

Tel: + 91 9995403000

Email: praveen.viswambharan-karthayayani@rntbci.com

Attention: Mr.Praveen V.K.

SRL

Tel: +91 9971033977

Email: rajesh@srladvisors.com

Attention : Mr.Rajesh Lal

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement as of the date(s) set forth below

Renault Nissan Motor  
Advisors LLP  
India Pvt. Ltd.

M/s.SRL

sd/-  
YOGESH WADHWA

sd/-  
RAJESH LAL

3. Affidavit dated 22.02.2019 filed by the petitioner in W.P.No.2333 of 2018, is as hereunder.

"1. The Petitioner Company had filed an O.S.A.479/2018 assailing the Transfer of the Company Petition being C.P. No.295/2015 under the Rules 3 & 5 of the Company (Transfer of Pending Proceedings) Rules, 2016 and Rule 5 of Company (Transfer of Pending Proceedings) Second Amendment Rules, 2017 by reference Rule 26 of the Company (Court) Rules, 1959, along with an application seeking leave to file sue in as much as the Petitioner Company was not a party in those proceedings.

2. The Petitioner Company had also subsequently filed a writ Petition bearing numbers WP no. 2333/2018 challenging the vires / competence of the Central Government (Respondent No. 1) to have come out and notified the impugned Rules 3 & 5 of the Company (Transfer of Pending proceedings) Rules, 2016 and Rule 5 of Company (Transfer of Pending Proceedings) Second Amendment Rules, 2017 providing for treating, the winding up petition filed before the Hon'ble High Court under Section 433/434 and 439 of the Companies Act, 1956 to be an application under Sections 7, 8 and 9 of the Insolvency & Bankruptcy Code, 2016.

3. Both the O.S.A. 479/2018 and the writ petition bearing number WP No. 2333/2018 and other connected matters were heard together and the judgment has been reserved in the said matters.

4. It is submitted that after the said matters were reserved for judgment, the Parties have amicably and voluntarily of their volition settled all underlying disputes and have arrived at a settlement amongst themselves the terms and conditions whereof have been reduced in the Settlement Agreement dated 22nd February, 2019. The Copy of the Settlement Agreement dated 22nd February, 2019 is being annexed herewith as Annexure A.

5. The parties to the O.S.A. 479/2018 and the

writ petition bearing numbers WP no. 2333/2018 in terms of the above-mentioned Settlement Agreement have voluntarily out of their own free will and volition amicably resolved their differences and disputes in connection with the controversies pending before this Court and other courts and tribunals including any future litigations in this behalf, and have thought it fit to reduce the terms and conditions thereof in order to avoid any controversy henceforth in future. It is submitted the parties have no claim against each other and unconditionally state to have resolved their differences in terms herein above-mentioned and they have already initiated their part of the obligations mentioned therein save and except those that can be done only after seeking leave of this Hon'ble Court.

6. There are no subsisting disputes between the parties who have resolved all present and future differences in respect of all/any issues forming the subject matter of the O.S.A. 479/2018 and the writ petition requiring any adjudication by this Hon'ble Court, save and except the point of law being decided by this Hon'ble Court, and thus the Settlement Agreement executed amongst the parties may be taken on record and appropriate direction be issued in that regard.

7. The parties to the instant Application are filing their respective affidavits in support to the present application.

8. This Application is made bonafide and in interest of justice.

#### PRAYER

In the premises and circumstances set forth herein above, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

(i). Take on record the Settlement Agreement dated 22nd February, 2019 annexed as Annexure A;

(ii). Allow the present application and vacate the order dated 2nd February 2018 whereby this Hon'ble Court stayed proceedings bearing no.TCP No. 411/ (IB)/ 2017 pending before the Ld. NCLT, Chennai

(iii) Permit M/s SRL Advisors LLP to seek withdrawal of TCP No. 411/ (IB) /2017 pending before the Ld. NCLT, Chennai in terms of the Settlement Agreement dated 22nd February, 2019; and

(iv) Pass such other and further orders as may be deemed fit and proper in the premises and circumstances of the present case."

4. Statement of agreement dated 22.02.2019 signed by the parties, as well as their respective counsel insofar W.P.No.2334 of 2018, are as hereunder.

#### SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made on 22nd day of February, 2019 at New Delhi.

#### BETWEEN:

M/s Nissan Motor India Pvt. Ltd a company incorporated under the laws of India and having its registered office at Plot No.'1A' SIPCOT Industrial Park, Mattur (Post), Oragadam, Sriperumbudur Taluk, Kancheepuram District, Tamil Nadu - 602 105 through its Authorised Representative, Mr. Yogesh Wadhwa, hereinafter referred to as "NMIPL";

AND

M/s SRL Advisors LLP, a limited liability partnership and having its registered office at Flat No.5 & 6, 2nd Floor, Ajit Arcade, Kailash Colony Lala Lajpat Rai Marg, New Delhi - 110 048 through its Authorised Representative, Mr. Rajesh Lai, hereinafter referred to as "SRL"

(Hereinafter wherever necessary NMIPL and SRL are collectively referred to as Party/Parties)

WHEREAS,

(A) Pursuant to various agreements with respect to provision of services on on-going basis, such as (a) support towards maintenance of inventory records and invoicing for aftersales (b) reconciliation and resolution of accounts receivable related to Dealers, (c) services for various tax support of VAT / CST, Service Tax and Excise (Other than Advisory) and (d) support towards maintenance of stock register, generation of invoice and accounts payable for IPC, (collectively the "Agreements") were being provided by SRL to NMIPL.

(B) All services of SRL were termination w.e.f. 30.06.2014 vide NMIPL's letter dated 24.07.2014;

(C) In connection with the payments sought by SRL under the Agreements, a notice dated 17.03.2015 was issued by SRL to NMIPL u/s 434(1)(a) of the Companies Act, 1956 which was duly replied by NMIPL, however the same culminated in institution of winding up proceedings

before the Hon'ble Madras High Court by SRL against NMIPL u/s 433 (e) read with Sec. 434(1)(a) & Sec 439(1)(b) of the Companies Act, 1956, which was registered as C.P. No.295 of 2015.

(D) Due to enactment of Companies Act, 2013 and Insolvency & Bankruptcy Code, 2016 the said C.P. No.295/2015 was transferred to the NCLT, Chennai pursuant to an Order of the Hon'ble High Court dated 11.01.2017 and the transferred petition was numbered as TCP No.412/ (IB)/2017 by the Ld. NCLT, Chennai.

(E) NMIPL thereafter filed an appeal (OSA/477/2018) assailing the Order dated 11.01.2017 passed by the Hon'ble High Court transferring CP No.295/2015 to the NCLT, Chennai.

(F) NMIPL also filed a writ petition (WP No. 2334/2018) challenging the vires of certain provisions of the Company (Transfer of Pending Proceedings) Rules, 2016 before the Hon'ble Madras High Court.

(G) During the course of the hearing of the aforesaid writ petition (WP No. 2334/2018), the Hon'ble Court was pleased to hear the appeal (OSA/477/2018) and both the matters have been reserved for Orders. Additionally, in the writ petition, the Hon'ble Court has been pleased to stay the proceedings pending before the NCLT in TCP No.412/ (IB)/2017.

(H) In connection with the amounts sought and services rendered by SRL, the Parties had also filed civil suits against each other bearing CS (OS) No.359 of 2017 (SRL Vs. NMIPL) pending before the Hon'ble Madras High Court and OS/84/2017 (NMIPL Vs. SRL) is pending before the Additional District and Sessions Court, Kancheepuram.

("the litigation as mentioned in clause (C) to (H) hereinabove are collectively referred to as "Disputes")

(I)– Without any admission or concession of liability, the Parties hereto have agreed to settle fully and finally the Disputes and withdraw all legal proceedings pending in connection therewith and waive all claims against the other whether past, present or future, of whatsoever nature arising out of or in connection with the Agreements or any business dealings between the Parties and release each other from all liability on the terms and conditions set forth in this Settlement Agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

Article 1 - Signing of Settlement Agreement

The parties have mutually agreed that Mr. Mohamed Iqbal Butt, Advocate, shall act as the Escrow Agent.

Simultaneously with the execution of the present Agreement, the parties have also entered into an Escrow Agreement. The terms and conditions contained in the Escrow Agreement are incorporated by reference.

Simultaneously with the signing of the present Agreement, NMIPL has handed over total amount of Rs 90,00,000/- (Rupees Ninety Lakhs Only) (less tax withheld under the Income Tax Act, 1961) vide 2 (two) Demand Drafts of Rs. 40,50,000/- (Rupees Forty Lakh Fifty thousand Only) each bearing nos. 793340 and 793341 dated 19.02.2019 drawn on SCB, STS-Pay Centre, Mumbai 400 001 ("Demand Drafts") drawn in favour of SRL /Advisors LLP payable at New Delhi to Mr. Mohamed Iqbal Butt, who shall hold the same in his capacity as 'Escrow Agent'. NMIPL shall furnish the tax deduction certificate of the tax withheld amount of Rs. 9,00,000 (Rs. Nine lakhs Only) from the aforesaid payment of 90,00,000/- (Rupees Ninety Lakhs Only) in accordance with the provisions of the Income Tax Act, 1961.

The Escrow Agent shall hold and retain the Demand Drafts amounting and shall release the amounts to SRL only as per the conditions stipulated in Article 2 hereinbelow.

NMIPL and SRL shall on the date of the signing of the present Agreement, simultaneously sign/execute appropriate Applications/Affidavits and other documents required to be filed for withdrawal of the proceedings bearing nos. TCP No.412/(IB)/2017, CS (OS) No. 359/2017 and O.S. No. 84 /2017 referred in the table in Article 2 hereinbelow.

The parties shall on the signing of the Settlement Agreement, approach the District Court, Kancheepuram, Hon'ble Madras High Court and the NCLT, as the case may be for withdrawal of the proceedings as per Article 4 hereinbelow.

Article 2 - Release of the amount by Escrow Agent to SRL

The Escrow Agent shall release to SRL the Demand Drafts in full and final settlement of the Disputes which has given rise to legal proceedings are summarised below ("Legal Proceedings"):

| Name of Court/Tribunal           | Case No.                                                                                 | Cause Title   |
|----------------------------------|------------------------------------------------------------------------------------------|---------------|
| NCLT, Chennai                    | TCP No.412/(IB)/2017<br>(C.P.No.295 of 2015 being transferred Hon'ble Madras High Court) | SRL Vs. NMIPL |
| Hon'ble Madras High Court        | OSA/477/2018                                                                             | NMIPL Vs. SRL |
| Hon'ble Madras High Court        | WP.No.2334/2018                                                                          | NMIPL Vs. UoI |
| Hon'ble Madras High Court        | C.S.(OS) No.359/2017                                                                     | SRL Vs. NMIPL |
| Ld. District Court, Kancheepuram | OS/84/2017                                                                               | NMIPL Vs. SRL |

The release of the valid Demand Drafts held by the Escrow Agent to SRL shall be in the following manner:

a. One Demand Draft on passing of Order permitting withdrawal of CS (OS) No.359/2017 pending before Hon'ble Madras High Court. After passing of the Order permitting withdrawal, either SRL or NMIPL shall by email intimate the Escrow Agent by email on his email address mohdiqbal@duaassociates.com marking a copy of the email to the other party, i.e. either on the email address dhirajphilip@duaassociates.com or dhritiman.bhattacharyya@unitylegal.com. The Escrow Agent shall on completion of 24 hours of the receipt of the email regarding the passing of Order by the Court concerned permitting withdrawal release one Demand Draft to SRL.

(b). The remaining Demand Draft on passing of Order permitting withdrawal of TCP No.412/(IB)/2017 before the NCLT Chennai or CP No.295 of 2015 (or as may be renumbered) before the Hon'ble Madras High Court (should the same get transferred back), as the case may be. After passing of the Order permitting withdrawal,

either SRL or NMIPL shall by email intimate the Escrow Agent marking a copy of the email to the other party. The Escrow Agent shall on completion of 24 hours of the email regarding the passing of Order permitting withdrawal release the amount to SRL.

### Article 3 – Releases

Each Party, on behalf of itself, its subsidiaries, affiliates, parent entities, predecessors, successors, assigns, past, present, and future officers, directors, partners, employees and agents shall fully and unconditionally release, acquit and forever discharge the other Party, its subsidiaries, affiliates, parent companies, predecessors, successors, assigns, past, present, and future officers, directors, partners, employees and agents from any and all past, present and future claims, liabilities, costs, obligations, causes of action, attorney's fees and losses of any nature, whether liquidated or unliquidated, fixed or contingent, related to or arising out of or in connection with the Disputes which has given rise to Legal Proceedings or the Agreements or termination thereof or relating to any business dealings between them in connection with the services or otherwise, including without limitation all claims raised/referred in TCP No. 412/(IB)/2017, CS (OS) No.359/2017 and O.S. No. 84/2017.

In particular, the Parties irrevocably promise not to pursue any claim (whether in arbitration or in litigation) against each other or against each other's employee/(s), affiliates, directors or partners. SRL expressly acknowledges that the amount agreed to be paid by NMIPL to SRL under Article 1 of this Settlement Agreement constitutes full and final settlement of any and all monies due to SRL under the Agreements or termination thereof or pursuant to any business dealings between the Parties in connection with the services or otherwise, and further acknowledges that there are no other amounts due and payable in connection with the Agreements or termination thereof or pursuant to any business dealings between the Parties. Similarly, NMIPL acknowledges that there are no amounts due and payable from SRL in connection with the agreements or pursuant to any business dealings between the Parties

Notwithstanding anything contained elsewhere for the avoidance of doubt, the Parties also expressly confirm

and acknowledge that the rights and obligations of the Parties towards each other under the Agreements or pursuant to any business dealings between them in connection with the services or otherwise are subject to fulfillment of conditions stipulated in Article 2, including release to SRL of the total amount.

#### Article 4 - Discontinuation of Legal Proceedings

Each Party undertakes to take all necessary further steps as may be necessary to withdraw the Legal Proceedings and to execute such documents, affidavits, undertakings and do all such acts, matters and tilings as may be reasonably required to give effect to the import and intent of this Settlement Agreement.

(a) Without generality of the foregoing, each Party within 5 days of the signing of present Settlement Agreement in order to discontinue and withdraw the legal proceedings bearing no.CS (OS) NO. 359/2017and OS/84/2017 shall make an irrevocable joint application before the respective Court which shall be filed along with a copy of the present Settlement Agreement.

(b) Simultaneously with the aforesaid, SRL, shall sign appropriate memo before the NCLT irrevocably undertaking to discontinue and withdraw TCP No.412/(IB)/2017. NMIPL shall, if required, extend all necessary support in this regard.

(c) Within 5 days of the signing of the present Settlement Agreement, SRL shall file appropriate memo alongwith a copy of the present Settlement Agreement before the NCLT irrevocably undertaking to discontinue and withdraw TCP No. 412/ (IB)/2017. NMIPL shall, if required, extend all necessary support in this regard. Within 5 days of the signing of the present Agreement, NMIPL and/or SRL along with a copy of the present Settlement Agreement shall file a necessary application before the Hon'ble High Court seeking modification/withdrawal the stay in WP No. 2334/2018. The other Party shall extend all necessary support in this regard. Once appropriate Orders are passed by the Hon'ble High Court modifying/vacating the stay in WP No. 2334/2018, SRL shall withdraw the said proceedings before the NCLT. In the event TCP No 412/ (IB)/2017 is transferred back to the Hon'ble High Court, SRL shall move appropriate application and withdraw the said proceedings at Hon'ble High Court,

## Article 5 - Costs and Stamping

Each Party shall bear its own attorney fees and costs incurred in connection with the Disputes and the Legal proceedings.

The Parties hereby agree that each shall bear their own costs and expenses, including but not limited to their respective legal fees and expenses, incurred in connection with the negotiation, performance and fulfilment of the actions contemplated in this Settlement Agreement.

The Parties hereby agree and undertake to execute two sets of this Settlement Agreement on the required stamp paper in accordance with, the laws of India. Each set shall be deemed to be an original.

## Article 6 - Confidentiality and Non-Disparagement

The parties hereby expressly agree that notwithstanding this Settlement Agreement and the termination of Agreements executed between the parties in connection with the services or otherwise, any confidential information of either party in possession of the other Party shall remain confidential and shall not be disclosed to any third Party. Either Party agrees not to make any derogatory or disparaging statement to anyone about the other Party relating to the business dealings between them.

## Article 7 - Full and Final Settlement

The Parties agree that the execution and performance of this Settlement Agreement shall be effective as a full and final settlement of all claims arising between the Parties out of or relating to the Disputes which has given rise to Proceedings or the Agreements or termination thereof or relating to any business dealings between them in connection with the services or otherwise. The Parties hereto covenant and agree that if they hereafter discover facts different from or in addition to the facts that they now know or believe to be true with respect to the subject matter of this Settlement Agreement, it is nevertheless their intention hereby to settle and release fully and finally all claims pursuant to the Disputes which has given rise to Legal Proceedings or the agreements or termination thereof or relating to any business dealings between them in connection with the services

or otherwise, inter se between the Parties. In furtherance of such intention, the release herein shall be and will remain in effect as a release notwithstanding the discovery of any such different or additional fact or facts.

#### Article 8 - Representations and Warranties

By execution hereof, the undersigned individuals, executing this Settlement Agreement represent and warrant on behalf of the Party for whom the individual is signing that: (1) the said individual is duly authorised to enter into and execute this Settlement Agreement on behalf of such Party, (2) that all appropriate corporate resolutions or other consents have been passed and/or obtained, and (3) that this Settlement Agreement shall be binding on that Party.

#### Article 9 - Entire Agreement

This Settlement Agreement constitutes and represents the entire agreement between NMIPL and SRL with respect to the claims released and discharged by this Settlement Agreement, and supersedes all prior understandings, negotiations and agreements in connection therewith. NMIPL and SRL each acknowledge and confirm that in entering into this Settlement Agreement they have carried out all necessary due diligence, including obtaining independent legal advice relating to the subject matter hereof and possess all necessary information and are not relying on any statement, undertaking or representation made by or on behalf of any Party to this Settlement Agreement, whether or not in writing or made at any time prior to the execution of this Settlement Agreement which is not set out herein.

#### Article 10 - Successors and Assigns

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their current and future subsidiaries, affiliates, parent companies, any subsequent successors in title and assigns.

#### Article 11 - Amendments

This Settlement Agreement shall only be altered or amended by a written agreement executed by the Parties hereto;

#### Article 12 - Severability

In the event that any of the provisions or portions of this Settlement Agreement are held to be illegal, unenforceable, or invalid, the legality, enforceability and validity of the remaining provisions or portions of this Settlement Agreement shall remain unaffected.

#### Article 13 - Waivers

No breach of any provision herein can be waived unless such waiver is made in writing by all the Parties. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or other provisions hereof.

#### Article 14 - Governing Law and Jurisdiction

This Settlement Agreement shall be governed by, and construed in accordance with the laws of India. Any dispute arising out of or in connection with this Settlement Agreement shall be subject to the exclusive jurisdiction of the Courts at Chennai.

#### Article 15 - Communications

All notices and communications given pursuant to this Settlement Agreement shall be sent by courier and / or registered post to the following addresses:

NMIPL

Tel: + 91 9995403000

Email: praveen.viswambharan-karthayani@rntbci.com

Attention: Mr.Praveen V.K.

SRL

Tel: +91 9971033977

Email: rajesh@srladvisors.com

Attention: Mr.Rajesh Lal

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement as of the date(s) set forth below

Nissan Motor  
India Pvt. Ltd.

M/s.SRL Advisors LLP

sd/-

sd/-

YOGESH WADHWA

RAJESH LAL

5. Affidavit dated 22.02.2019 filed by the petitioner in W.P.No.2334 of 2018, is as hereunder.

"1. The Petitioner Company had filed an O.S.A.477/2018 assailing the Transfer of the Company Petition being C.P. No.295/2015 under the Rules 3 & 5 of the Company (Transfer of Pending Proceedings) Rules, 2016 and Rule 5 of Company (Transfer of Pending Proceedings) Second Amendment Rules, 2017 by reference Rule 26 of the Company (Court) Rules, 1959, along with an application seeking leave to file sue in as much as the Petitioner Company was not a party in those proceedings.

2. The Petitioner Company had also subsequently filed a writ Petition bearing numbers WP no. 2334/2018 challenging the vires / competence of the Central Government (Respondent No. 1) to have come out and notified the impugned Rules 3 & 5 of the Company (Transfer of Pending proceedings) Rules, 2016 and Rule 5 of Company (Transfer of Pending Proceedings) Second Amendment Rules, 2017 providing for treating, the winding up petition filed before the Hon'ble High Court under Section 433/434 and 439 of the Companies Act, 1956 to be an application under Sections 7, 8 and 9 of the Insolvency & Bankruptcy Code, 2016.

3. Both the O.S.A. 477/2018 and the writ petition bearing number WP No. 2334/2018 and other connected matters were heard together and the judgement has been reserved in the said matters.

4. It is submitted that after the said matters were reserved for judgement, the Parties have amicably and voluntarily of their volition settled all underlying disputes and have arrived at a settlement amongst themselves the terms and conditions whereof have been reduced in the Settlement Agreement dated 22nd February, 2019. The Copy of the Settlement Agreement dated 22nd February, 2019 is being annexed herewith as Annexure A.

5. The parties to the O.S.A. 477/2018 and the writ petition bearing numbers WP no. 2334/2018 in terms of the above-mentioned Settlement Agreement have voluntarily out of their own free will and volition amicably resolved their differences and disputes in connection with the controversies pending before this Court and other courts and tribunals including any future litigations in this behalf, and have thought it fit to reduce the terms and conditions thereof in order to avoid any controversy henceforth in future. It is submitted the parties have no claim against each other and unconditionally state to have resolved their differences in terms herein above-mentioned and they

have already initiated their' part of the obligations mentioned therein save and except those that can be done only after seeking leave of this Hon'ble Court.

6. There are no subsisting disputes between the parties who have resolved all present and future differences in respect of all/any issues forming the subject matter of the O.S.A. 477/2018 and the writ petition requiring any adjudication by this Hon'ble Court, save and except the point of law being decided by this Hon'ble Court, and thus the Settlement Agreement executed amongst the parties may be taken on record and appropriate direction be issued in that regard.

7. The parties to the instant Application are filing their respective affidavits in support to the present application.

8. This Application is made bonafide and in interest of justice.

#### PRAYER

In the premises and circumstances set forth herein above, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

(i). Take on record the Settlement Agreement dated 22nd February, 2019 annexed as Annexure A;

(ii). Allow the present application and vacate the order dated 2nd February 2018 whereby this Hon'ble Court stayed proceedings bearing no.TCP No. 412/ (IB)/ 2017 pending before the Ld. NCLT, Chennai

(iii) Permit M/s SRL Advisors LLP to seek withdrawal of TCP No. 412/ (IB) /2017 pending before the Ld. NCLT, Chennai in terms of the Settlement Agreement dated 22nd February, 2019; and

(iv) Pass such other and further orders as may be deemed fit and proper in the premises and circumstances of the present case."

6. Mr.Robin David, learned counsel for the 3rd respondent submitted that TCP Nos.411 & 412/(IB)/2017, filed before the National Company Law Tribunal, Chennai have already been withdrawn, in terms of the settlement of agreements dated 22.02.2019, extracted supra.

7. In view of the above, prayer (iii) sought for in both the writ petitions viz. W.P.Nos.2333 & 2334 of 2018 becomes infructuous.

8. In terms of the Settlement of Agreements recorded supra, stay granted in WMP Nos.2863 to 2866 of 2018, is vacated.

9. In terms of the Statement of Agreements dated 22.02.2019 and affidavits, taken on record, both writ petitions are disposed of. Statement of agreements dated 22.02.2019 executed between the parties and their respective counsel, shall form part of record of this Court and the affidavits extracted supra, shall form part of the record. No Costs.

\* Xerox copy of Affidavit enclosed

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ars

To

1. The Secretary,  
Union of India,  
Ministry of Corporate Affairs,  
'A' Wing, Shastri Bhawan,  
Rajendra Prasad Road, New Delhi - 110 001.
2. The Registrar,  
National Company Law Tribunal (Chennai Bench),  
Corporate Bhavan, 3rd Floor,  
26, Rajaji Salai, Chennai - 600 001.

+1cc to M/S.Paul & Paul, S.R.No.20463  
+1cc to Mr.M.Velmurugan, Advocate, S.R.No.20366  
+2cc to Mr.Venkatasamy Babu, Advocate, S.R.No.19669

WP.No.2333 & 2334 of 2018  
and WMP Nos.2863 to 2866 of 2018

GJII(CO)  
CS/07/03/2019

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