



**ELLENBARRIE
INDUSTRIAL GASES LTD**

A member of Air Water Inc. Group

ELLENBARRIE INDUSTRIAL GASES LTD

CIN: U24112WB1973PLC029102

Registered Office: 3A RIPON STREET KOLKATA - 700016

Email Id: company.secretary@ellenbarrie.com

Website: www.ellenbarrie.com

NOTICE OF EXTRAORDINARY GENERAL MEETING OF SHAREHOLDERS

NOTICE is hereby given that an Extra-Ordinary General Meeting of the equity shareholders of the Company will be held at a shorter notice on Monday, the 26th day of July, 2021 at 11.30 A.M. at its Registered Office at 3A Rippon Street Kolkata-700016 (the deemed venue of the meeting) through Video Conferencing (VC) / Other Audio Visual Means (OAVM) to transact the following business:

1. APPROVING VARIATION OF TERMS OF REDEEMABLE PREFERENCE SHAREHOLDERS OF THE COMPANY

To consider and, if thought fit, to pass, with or without modification(s), the following resolution as a Special Resolution:

“RESOLVED THAT pursuant to Section 42, 55 and other applicable provisions of the Companies Act, 2013 read with The Companies (Share Capital and Debentures) Rules, 2014 made thereunder and the Articles of Association of the Company, the consent of the shareholders be and is hereby accorded to vary the existing terms of redemption of existing 10,50,000 9% Redeemable Cumulative Preference Shares (RCPS) of Rs.100/- (Rupees One Hundred) aggregating to Rs.10,50,00,000/- (Ten Crore Fifty Lakhs only) be redeemed at face value as per the terms of the Settlement Agreement within 30 days from the date of this resolution.”

“RESOLVED FURTHER THAT in accordance with Section 43 of the Companies Act 2013,

- The RCPS shall carry no cumulative right of dividend after March 31, 2020;
- The RCPS shall be non-participating in the surplus funds;
- The RCPS shall not carry any voting rights. However, in the event of non-payment of dividend for a continuous period of two years, the preference shares shall automatically be entitled to voting rights alongside the equity shareholders;
- The RCPS shall be redeemed at nominal value of Rs. 100 per share within August 31, 2021

- Any variation to the terms of RCPS will be in accordance with the Articles and the Companies Act 2013 and Rules thereunder;
- The terms of issue and redemption of RCPS to non-resident shareholders resulting in External Commercial Borrowing (ECB), the norms applicable for ECB shall be complied by the Company;

“RESOLVED FURTHER THAT the variation in terms of the RCPS hereby shall override all the existing terms of redemption, including terms relating to waiver of dividend not declared so far, relating to redemption schedule, relating to premium payable at the time of redemption.”

“RESOLVED FURTHER to take note of the consent be obtained from the meeting of the Redeemable Preference Shareholders of the Company scheduled to be held on 26th July 2021 at 10.30 A.M. at its registered office agreeing with the variation in the terms and conditions of redemption of the Preference Shares.”

“RESOLVED FURTHER THAT for the purpose of giving effect to the above, the Board be and is hereby authorized on behalf of the Company to take all actions and do all such deeds, matters and things, as it may in its absolute discretion, deem necessary, desirable or expedient to the issue or allotment of aforesaid securities and to resolve and settle all questions and difficulties that may arise in the proposed issue, offer and allotment of any of the said Securities, utilization of the issue proceeds and to do all acts, deeds and things in connection therewith and incidental thereto as the Board in its absolute discretion deem fit, without being required to seek any further consent or approval of the members or otherwise to the end and intent that they shall be deemed to have given their approval thereto expressly by the authority of this resolution.”

2. ALTERATION OF THE ARTICLES OF ASSOCIATION OF THE COMPANY PURSUANT TO THE COMPANIES ACT, 2013:

To amend the Articles of Association of the Company in conformity with the Companies Act, 2013 and in this regard to consider and if thought fit, to pass, with or without modification(s), the following resolution as a Special Resolution.

“RESOLVED THAT pursuant to the provisions of Section 14 and any other applicable provisions of the Companies Act, 2013 (including any statutory modification(s) or re-enactment thereof, for the time being in force) the existing articles of the Articles of Association of the Company be and are hereby deleted and substituted with the new articles as contained in the draft Articles of Association submitted to this meeting be and are hereby approved and adopted.”

"RESOLVED FURTHER THAT Mr. Padam Kumar Agarwal, Managing Director or Mr. Shanti Prasad Agarwala, Director the Company be and is hereby severally authorized to sign all such forms and returns and other documents and to do all such acts, deeds and things as may be necessary to give effect to the above resolution."

Place: Kolkata
Date: 16.07.2021

For and on behalf of,
ELLENBARRIE INDUSTRIAL GASES LTD


(Padam Kumar Agarwala)
Managing Director
DIN: 00187727



NOTES:

1. In view of the outbreak of the COVID-19 pandemic, social distancing norm to be followed and the continuing restriction on movement of persons at several places in the country and pursuant to the Circulars issued by MCA dated 8th April, 2020, 13th April, 2020, 15th June, 2020, 28th September, 2020, 31st December, 2020 and 23rd June, 2021 ("MCA Circulars"), the EGM of the Company is being conducted through VC/OAVM Facility, without the physical presence of Members at a common venue. The deemed venue for the EGM shall be the Registered Office of the Company.
2. Consent for shorter notice has been obtained from majority shareholders holding not less than 95% of the paid-up share capital of the company to convene this meeting at shorter notice.
3. Explanatory Statement as per Section 102 of the Companies Act, 2013 in respect of the businesses specified above is annexed hereto.
4. Pursuant to provisions of the Act, a member entitled to attend and vote at the EGM is entitled to appoint a proxy to attend and vote at the meeting on his/her behalf, such proxy need not be a member of the company. Since this EGM is being held pursuant to the MCA Circulars through VC / OAVM, physical attendance of Members has been dispensed with. Accordingly, the facility for appointment of proxies by the Members will not be available for the EGM and hence the Proxy Form and Attendance Slip are not annexed to this Notice.

5. The Register of Directors and Key Managerial Personnel and their shareholding maintained under section 170 of Companies Act, 2013 (“the Act”) and Register of Contracts or Arrangements in which directors are interested maintained under section 189 of the Act will be available electronically for inspection by the members during the time of EGM.
6. In case of joint holders attending the Meeting, only such joint holder who is higher in the order of names will be entitled to vote.
7. Corporate members intending to send their authorised representatives to attend the Meeting are requested to send to the Company a certified copy of the Board Resolution authorizing their representative to attend and vote on their behalf at the Meeting.
8. To be in compliance with social distancing requirements, meeting will be held remotely via video conference using Google Meet

ELLENBARRIE - EGM of Equity Shareholders

Monday, July 26 · 11:15am – 1:15pm

Google Meet joining info

Video call link: <https://meet.google.com/rox-umtf-wmk>

Or dial: (US) +1 617-675-4444 PIN: 505 481 845 0484#

More phone numbers: <https://tel.meet/rox-umtf-wmk?pin=5054818450484>

9. Members or any other participant of the meeting can submit their questions on any item and shall be allowed to speak and/or raise query during the meeting only when 48 hours prior intimation has been sent to the Company at its registered email id at company.secretary@ellenbarrie.com.
10. Helpline number for any sort of technical assistance before or during the meeting:
+91 11 2249 1922
11. The Notice of the EGM has been sent through email to those members who have opted to receive electronic communication or who have registered their email addresses with the Company/depository participants. The Notice is also available on our website, i.e. www.ellenbarrie.com. The physical copy of the Notice has been sent to those members who have either opted for the same or have not registered their email addresses with the Company/depository participant.
12. Participation of Members through VC will be reckoned for the purpose of quorum for the EGM as per section 103 of the Act.

13. The facility to join the meeting will open 15 minutes before the scheduled time to start the meeting and close after expiry of 15 minutes after the end of the meeting.

**Explanatory Statement
Pursuant to Section 102(1) of the Companies Act, 2013**

ITEM NO. 1:

The Company had issued 10,50,000 9% Redeemable Cumulative Preference Shares (RCPS) of Rs.100/- (Rupees One Hundred) at a price of Rs. 300/- (Rupees Three Hundred) per share including premium of Rs. 200/- (Rupees Two Hundred) per share aggregating to Rs.31,50,00,000/- (Thirty-one crore fifty lacs only) in the year 2016 for redemption over a period of 15 years.

As per Section 55 of the Companies Act, 2013 read with Rule 9(6) of The Companies (Share Capital and Debentures) Rules, 2014, a company may redeem its preference shares only on the terms on which they were issued or as varied after due approval of preference shareholders under section 48 of the Act and the preference shares may be redeemed:-

- (a) at a fixed time or on the happening of a particular event;
- (b) any time at the company's option; or
- (c) any time at the shareholder's option.

Further in terms of Section 48 of the Companies Act, 2013, the consent of the Members by way of special resolution is required for approving change in variation of term of Equity Shares and Redeemable Preference Share of the Company.

The Board in its meeting held on 24th June, 2021 discussed about the draft Settlement Agreement entered between the Company and AWI, whereby AWI, inter-alia, expressed requirement to seek approval for variation in the terms and conditions of redemption of the Preference Shares so as to effect earlier redemption of the Preference shares.

Pursuant to the ongoing discussion for a settlement between the Company and AWI, a Settlement Agreement was executed on 9th July 2021. The revised terms of redemption of RCPS shall be as under:

	Description of Terms	Terms as Existing	Terms as Modified by this resolution
1	Issue Price including premium at the time of Issue	- Nominal Value Rs. 100.00 per RCPS; - Issue Premium Rs. 200.00 per RCPS;	- Nominal Value Rs. 100.00 per RCPS - Issue Premium Rs. 200.00 per RCPS
2	Annual Dividend	9.00% per annum until redemption	9.00% per annum until 31 March 2019 – as declared and paid till the date of resolution

3	Redemption Price including premium at the time of redemption	Tranche I (on 31-March-2023): Rs. 33.33 nominal value per RCPS, and redemption premium of Rs. 242.00 per RCPS; Tranche II (on 31-March-2027): Rs. 33.33 nominal value per RCPS, and redemption premium of Rs. 266.00 per RCPS; Tranche III (on 31-March-2031): Rs. 33.34 nominal value per RCPS, and redemption premium of Rs. 290.00 per RCPS;	Single Tranche (on or before 31-August-2021): Rs. 100.00 nominal value per RCPS
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A copy of the Settlement Agreement shall be tabled during the meeting for verification, if required.

The Board consented to vary the existing terms of redemption of existing 10,50,000 9% Redeemable Cumulative Preference Shares (RCPS) of Rs.100/- (Rupees One Hundred) aggregating to Rs.10,50,00,000/- (Rupees Ten crore fifty lacs only) at face value as per the terms of the Settlement Agreement within 30 days of obtaining consent from the shareholders of the Company.

The Directors recommend the resolution for Member's approval as a Special Resolution.

After passing the Special Resolution, the Company will submit necessary form/ relevant documents to the concerned authority/ies.

The Members are requested to note that the amendment is subject to the approval granted by the Registrar of Companies, Kolkata, Ministry of Corporate Affairs and such other regulatory authorities, as may be required.

None of the Directors or key managerial personnel or any relative of any of the Directors of the Company or the relatives of any key managerial personnel is, in anyway, concerned or interested in the above resolution.

ITEM NO. 2

The Board of Directors of the Company at its meeting held on 24th June, 2021, has, subject to the approval of the Shareholders of the Company by way of special resolutions and approvals of statutory, regulatory or governmental authorities as may be required under applicable laws, expressed the need for Alteration of the Articles of Association of the Company as some of the clauses would be rendered ineffective once the proposed Settlement Agreement between the Company and AWI becomes effective.

The said agreement got executed on 9th July, 2021.

The proposed change in the Articles of Association would be subject to the necessary approvals in terms of Section 14 of the Companies Act, 2013. Since the aforesaid section requires approval of the Shareholders of the Company by way of passing Special Resolution, your Directors recommend the said resolution for your approval.

A copy of Articles of Association of the Company before and after alteration will be made available for inspection at the registered office of the Company during working hours, i.e. 9.30 a.m. to 6.00 p.m. excluding Saturdays and Sundays till the conclusion of the General meeting and will also be made available during the meeting.

A copy of the same has also been annexed herewith and marked as Annexure.

None of the Directors or key managerial personnel or any relative of any of the Directors of the Company or the relatives of any key managerial personnel is, in anyway, concerned or interested in the above resolution.

Place: Kolkata
Date: 16.07.2021

For and on behalf of,
ELLENBARRIE INDUSTRIAL GASES LTD



(Signature)
(Padam Kumar Agarwala)
Managing Director
DIN: 00187727

ARTICLES OF ASSOCIATION – PART B BEFORE AMENDMENT

PART B

1. DEFINITIONS

"Affiliate" of a Person (the "Subject Person") shall mean: (i) in the case of any Subject Person other than a natural Person, any other Person that, either directly or indirectly through one or more intermediate Persons, controls, is controlled by or is under common control with the Subject Person; and (ii) in the case of any Subject Person that is a natural Person, the relatives of the Subject Person and any other Person that, either directly or indirectly, is controlled by the Subject Person. For purposes of this definition, "control" shall mean the power to direct and control the management or policies of a Person, whether through ownership of over 26% (twenty six percent) of the voting power of such Person, through the power to appoint over half of the members of the board of directors or similar governing body of such Person, through contractual arrangements or otherwise.

"Applicable Law" shall mean all applicable provisions of all (a) constitutions, treaties, statutes, laws (including the common law), codes, rules, regulations, ordinances, bye-laws or orders of any Governmental Authority, (b) Governmental Approvals; and (c) orders, decisions, injunctions, judgments, awards and decrees of or agreements with any Governmental Authority.

"AWI" means Air Water Inc. a company incorporated under the laws of Japan and having its principal office at 128, Minami Semba 2-chome, Chuo-ku, Osaka 5420081, Japan.

"AWI Directors" shall mean the directors nominated on the Board by AWL

"Business" shall mean the manufacture, sale, distribution, trading, or marketing of the Products and the providing of related services.

"Business Day" shall mean any day other than a Saturday, Sunday or any day on which banks in Kolkata, India and Osaka, Japan are permitted to be closed.

"Deed of Adherence" shall mean a deed of adherence in a form acceptable to AWI and the Promoters.

"Encumbrances" shall mean (i) any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, deed of trust, security interest or other encumbrance or interest of any kind securing, or conferring any priority of payment in respect of, any obligation of any Person, including any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security under Applicable Law, (ii) any voting agreement, interest, option, right of first offer, refusal or transfer restriction in favour of any Person and (iii) any adverse claim as to title, possession or use.

"Financial Year" shall mean the financial year of the Company, which begins on April 1st of a calendar year and ends on March 31st of the following calendar year.

"Governmental Approvals" shall mean any notice, consent, approval, authorization, waiver, permit, grant, concession, agreement, license, certificate, exemption, order or registration, of, with or to any Governmental Authority and a "Governmental Approval" shall mean any of them.

"Governmental Authority" shall mean any nation or government or any province, state or any other political subdivision thereof; any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including Foreign Investment Promotion Board,

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Reserve Bank of India, SEBI, any government authority, agency, department, board, commission or instrumentality of India, or any other jurisdiction, as applicable, or any political subdivision thereof or any other applicable jurisdiction; any court, tribunals and any securities exchange or body or authority regulating such securities exchange.

"Material Contract" shall mean a contract that is: (a) material to the Business such that a breach thereof would adversely impair the Business (financial or otherwise); or (b) a contract which subjects the Company to a non-compete provision, as the case may be.

"Maximum Permissible Non-Public Shareholding" means such percentage shareholding in the Company excluding the minimum public shareholding required under the Securities Contracts (Regulation) Rules, 1957 or any other Applicable Law from time to time.

"Products" shall mean any industrial gases and related equipments manufactured by the Company from time to time as well as any services related thereto, and shall include all industrial gases such as oxygen, nitrogen, argon, carbon-dioxide, medical oxygen, acetylene, manufactured and/or traded by the Company from time to time.

"Promoter Directors" shall mean the directors nominated on the Board by the Promoters.

"Promoters" shall mean Mr. Shand Prasad Agarwala, Mr. Padam Kumar Agarwala and Mr. Varun Agarwala.

"SEBI" shall mean the Securities and Exchange Board of India.

"SEBI Takeover Regulations" shall mean the Securities and Exchange Board of India (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011, as amended from time to time.

"Share Equivalent" shall mean any instrument convertible into Equity Shares and shall include the global depository receipts, American depository receipts, warrants, convertible preference shares and options including options issued pursuant to any employee stock option plan that may be implemented by the Company, loans or other securities that are directly or indirectly convertible into or exercisable or exchangeable for Equity Shares (whether or not by their term then currently convertible, exercisable or exchangeable).

"Shareholders Agreement" shall mean the shareholders agreement entered into between the Promoters and AWI on June 14, 2013 recording the terms and conditions agreed to between them in respect of the management and control of the affairs of the Company and their mutual rights and obligations.

"Transfer" (including with correlative meaning, the terms "Transferred", "Transferring" and "Transferability") shall mean to transfer, sell, Encumbrance on, place in trust (voting or otherwise), exchange, gift or transfer by operation of law or otherwise deal in, whether or not voluntarily.

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2. GENERAL MEETINGS

2.1 General

The Company shall hold shareholders' meeting in accordance with the Act and these Articles.

Subject to the provisions of the Act, all shareholders' meetings shall require a quorum of at least 5 (five) shareholders present in person or through their representative; provided that shareholders with at least majority of the total voting power (in proportion to their shareholding in the Company) shall be required to be present to form a quorum.

If such quorum is not present within half-an-hour from the time appointed for the shareholders' meeting, (a) the shareholders' meeting shall be adjourned to the same day in the next week at the same time and place, or to such date and such other time and place as the Board may determine. If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

2.3 Voting

Each shareholder shall vote its Equity Shares at any shareholders' meeting or matters required to be voted by way of poll or postal ballot, upon any matter submitted for action by the shareholders or with respect to which the shareholders may vote. For the avoidance of doubt, voting by way of poll or postal ballot shall be in proportion to the share capital held by such shareholder in the Company.

2.4 Chairman

The shareholders' meeting shall be chaired by the chairman of the Board; provided that in the absence of the chairman of the Board, a director nominated by AWI shall be appointed as the chairman.

3. BOARD OF DIRECTORS

3.1 General

Meetings of the Board shall take place in accordance with Applicable Law. Subject to the provisions of the Articles, the Board shall be entitled to delegate powers to such persons and such committees that the Board may create to assist it in its business strategy and objectives. The daily management of the Company shall be entrusted to the chief executive officer, managing director, chairman and the executive directors.

3.2 Composition of the Board.

- (a) The Company shall appoint Directors to the Board in accordance with these Articles. The number of Directors constituting the entire Board shall be 9 (nine), which Directors shall be appointed in accordance with this Article 3.2 (Composition of the Board).
- (b) The Promoters shall have the right to nominate 3 (three) Directors on the Board (Promoter Directors).
- (c) AWI shall have the right to nominate the 3 (three) Directors on the Board (AWI Directors).
- (d) Subject to Article 3.2(b) and Article 3.2(c), the number of independent Directors appointed to the Board shall be 3 (three), who shall be nominated by the Board in accordance with Applicable Law.
- (e) No Directors shall be required to hold any qualification shares.
- (f) Promoters Directors and AWI Directors shall be directors liable to retire by rotation; provided, however, that replacement or reappointment of such directors shall be made in accordance with Article 3.4 hereunder.

3.3 Management.

- (a) The Promoter Directors shall be in charge of day to day affairs of the Company and appoint such other person suitable for running the day to day affairs of the Company. The Promoters shall have the right to appoint the Chief Executive Officer of the Company in consultation with AWI.
- (b) The Promoters shall continue to stay as the management of the Company by serving as the Directors and/or officers of the Company, for as long as AWI remains as a shareholder of the Company. In the event the shareholding of the Promoters falls below 22% then the Promoters and AWI shall discuss in good faith the management structure of the Company.

3.4 Removal and Replacement of Directors.

Subject to Article 3.2 (Composition of the Board), AWI and the Promoters shall have the right to require the removal of an AWI Director or the Promoter Director, as the case maybe, at any time and shall be entitled to nominate another representative as a Director in place of the Director so removed. In the event of the resignation or retirement of a AWL Director or Promoter Director, AWI or the Promoters, *as* the case maybe, shall be entitled to nominate such replacement Director in place of the resigning or retiring Director, as the case may be. Such successor or replacement AWI Director or Promoter Director, as the case maybe, shall be nominated and elected on or as soon as practicable after the date of such resignation or removal and in any event within 20 (twenty) Business Days after such resignation or removal.

3.5 Alternate Director.

AWI and the Promoters shall be entitled to nominate alternate Director to act in accordance with the Act for any Director nominated by AWI or the Promoters (as the case may be) and shall issue a written notice to the Company providing the name and contact address of such alternate Director. The Board shall appoint the alternate Director so nominated within 7 (seven) Business Days of the receipt of such notice. AWI and Promoters shall also have a right to withdraw their nominated alternate Director and nominate another in his place.

3.6 Notice of Board Meeting.

A meeting of the Board shall be called by the chairman of the Board or any Director giving notice in writing to the company secretary of the Company specifying the date, time and agenda for such meeting. The company secretary shall upon receipt of such notice give a copy of such notice to all Directors of such meeting, accompanied by a written agenda specifying in reasonable detail the business of such meeting. Not less than 7 (seven) Business Days notice of a meeting of the Board shall be given to all Directors; provided, however, that such notice period: (i) shall not apply in the case of an adjourned Board meeting pursuant to Article 3.7 (Quorum); and (ii) maybe reduced with the written consent of a majority of the Directors, provided, however, that such majority shall include a AWI Director and a Promoter Director, and any decisions taken at such meeting with shorter notice period, in the absence of independent directors, shall be circulated to all the directors and shall be ratified by at least one independent director.

3.7 Quorum.

Subject to the provisions of the Act, all meetings of the Board shall require a quorum of the higher of: 2 (two) Directors or 1/3rd (one third) of the total strength of the Board, out of which at least 1 (one) Director shall be an AWI Director and 1 (one) Director shall be a Promoter Director. If such a quorum is not present within 1. (one) hour from the time appointed for the Board meeting, the Board meeting shall be adjourned to such place and time as those Directors who did attend shall decide or, if no such decision is reached, at the same place and time 7 (seven) Business Days later. The meeting shall stand adjourned in the same manner until the requisite quorum is met.

3.8 Voting.

At any Board meeting, each Director may exercise 1 (one) vote. The adoption of any resolution of the Board shall require the affirmative vote of a majority of the Directors present at a duly constituted meeting of the Board or in the case of a circular resolution signing by the majority of the Directors to whom the resolution is circulated; provided however, such majority vote or signing shall include at least 1 (one) vote/signing by an AWI Director and 1 (one) vote/signing by a Promoter Director. The Board shall not at any meeting adopt any resolution covering any matter that is not expressly specified on the agenda for such meeting unless a majority of the Directors present at such meeting vote in favour of such resolution.

3.9 Video Participation.

Directors may participate in Board meetings by video conferencing or any other means of contemporaneous communication as permitted under the Applicable Law.

3.10 Chairman of the Board.

The chairman of the Board shall be appointed by AVVI who shall be a non-executive director and not related to AWL

3.11 Committees.

The Board may, from time to time, constitute committees of the Board, which may consist with or without Directors, and may determine their functions, powers, authorities and responsibilities. Subject to Applicable Law, each committee of the Board so constituted shall however be comprised of a majority of AWI personnel.

3.12 Directors' Access.

Directors shall be entitled to examine the books, accounts and records of the Company and shall have free access, at all reasonable times and with prior reasonable written notice, to any and all properties and facilities of the Company. The Company shall provide such information relating to the Business and financial position of the Company, as the Directors may reasonably require. The Directors may provide such information to the shareholder by whom they have been nominated.

4. SPECIAL MATTERS.

4.1 Notwithstanding anything contained herein, any of the matters set out below ("Special Matters") shall not be executed by the Company unless such matter is resolved at either a Board meeting or a shareholder's meeting. A resolution at a Board meeting or at a shareholder's meeting shall not be passed in respect of

Special Matters unless the details of such matters are fully disclosed to AWI and the Promoters and the prior written approval of AWL Directors or AWI and the Promoter Directors or the Promoters, as the case may be, is obtained.

- (a) Amendment of its charter documents (including change of name);
- (b) Material change related to its internal rules and regulations (including change in the accounting or tax policies);
- (c) Increase or decrease of share capital and matters that would *affect* the shareholding ratio such as allotment and issuance of shares or Share Equivalents, redemption/ repurchase of its shares, etc.;
- (d) Entering into material finance arrangements, investments, loans or guarantees;
- (e) Acquisition or disposal of material assets including real property, machines and equipments, intellectual properties and investment securities, which exceeds Rs. 10,000,000 (Rupees Ten Million only) in value;
- (f) Amalgamation, merger, demerger, share exchange, equity transfer, business transfer or business acquisition, or dissolution or any other transaction of similar nature;
- (g) Personnel decisions/allocations of Directors and officers as well as material employees;
- (h) Decision on the approval of financial statements and on dividend distribution (including factors as the debt equity ratio);
- (i) Material change in the operation of the Business;
- (j) Adoption or revision to the Business Plan (including capital investment plan);
- (k) Important matters related to management such as matters related to Material Contracts;
- (l) Acceptance of secondees from AWL as well as the conditions such as salaries of such secondees;
- (m) Matters pertaining to commencing of any legal proceeding; and
- (n) Granting powers of attorney to act on behalf of the Company, except in the ordinary course of business.

5. BUSINESS PLAN

- 5.1 For each Financial Year, AWI and the Promoters shall 45 (forty five) days prior to commencement of business for the relevant Financial Year, consider and by mutual consent adopt a business plan ("Business Plan") which shall be placed before the Board for approval, as a Special Matter.
- 5.2 The Business Plan shall set out the key performance indicators, a quarterly budget, projections of the Company for the subsequent 5 (five) Financial Years, an annual income statement, a statement of annual cash flow, a balance sheet and a detailed breakdown of the working capital requirements and capital expenditure of the Company. The Company shall operate in accordance with the annual budget and in conformity with the Business Plan and any deviation from the Business Plan shall have to be approved by the Board, as a Special Matter.

5.3 The Business Plan shall include, inter-alia, the following:

- (a) Annual budget;**
- (b) Business goals and strategy for the relevant year;**
- (c) Re-investment into Business from revenues as part of Business Plan;**
- (d) New streams or territories of Business;**
- (e) Capital expenditure;**
- (f) Expansion or further investment by the Company,**
- (g) Availing of any credit facilities; and**
- (h) Expenses in relation to construction and development and related activities for commencement of commercial operations of the Company's project at Hyderabad.**

6. ACCOUNTING AND AUDIT

6.1 The books and records of the Company shall be maintained in accordance with Applicable Law, including, without limitation, the Act and the Income-tax Act, 1961, and in accordance with Indian Accounting Standards applied on a consistent basis.

6.2 The books and records of Company shall be audited annually by the statutory auditors or an independent chartered accountant(s) in India with mutual consent of both Promoters and AWI.

7. FINANCE . 7.1 Accounting Year.

All financial records of the Company shall be maintained in the English language and the accounting year of the Company shall begin on April 1 of each year and end on March 31 of the following year.

7.2 Auditors.

The statutory auditors and internal auditors for the Company shall be appointed by the shareholders on the recommendations of the Board in writing and in accordance with the Act, SEBI regulations and Applicable Law.

7.3 Books and Records.

The Company shall be required at all times to maintain proper books of account and records, which shall contain accurate and complete records of all transactions, receipts, expenses, assets and liabilities of the Company. Such books of records shall be submitted to the Board for inspection within such time as may be decided by the Board.

7.4 Inspection and Information.

Each shareholder may examine the books of accounts, records and accounts to be kept by the Company at its own cost.

8.1 Permitted Transfers.

- (a) For the purpose of this Article 8 (Transfer or Acquisition of Equity Shares) any reference to shareholder(s) shall mean the Promoters and/or AWI, as applicable. The Promoters and AWI may at any time Transfer all or any of their respective Equity Shares in the Company to an Affiliate without the consent of the Board or the other shareholders or without having to comply with the provisions of Article 8.1(b) below, so long as the transferring shareholder has given prior written notice to the other non-transferring shareholders (being AWI, when Promoters are transferring their Equity Shares and Promoters when AWI is transferring its Equity Shares) and such Affiliate shall have agreed in writing to be bound by the terms of the Shareholders Agreement by executing a Deed of Adherence; provided that if such Affiliate ceases to be an Affiliate of the transferring shareholder, the transferring shareholder shall immediately purchase or otherwise recover ownership of all such Equity Shares so transferred to such Affiliate. In the event of a transfer of the Equity Shares of the Company in the manner provided above, the transferring shareholder undertakes to the other shareholders that it shall continue to be responsible for the performance of all its obligations hereunder and shall ensure the performance of the obligations by such Affiliate. Any Equity Shares held by an Affiliate of the Promoters and AWI **(as the case may be) shall be deemed to be the Equity Shares held by the Promoters and AWI (as the case may be).**
- (b) **In the event that either AWI or the Promoters ("Transferor") intends to Transfer the Equity Shares held by them to a third-party which has made an offer ("Bona Fide Offer") to purchase all or any of the Transferor's Equity Shares, then Transferor shall first provide, within 5 (five) Business Days of receipt of such Bona Fide Offer, a written offer notice to the other shareholder(s) ("Remaining Shareholder") to purchase the Equity Shares proposed to be transferred (the "ROFR Offer Notice") stating: (i) the identity of the third-party offeror ("Proposed Transferee"); (ii), the number of Equity Shares proposed to be transferred ("ROFR Shares"); (iii) the price ("Transfer Price") and material terms concerning the transfer; and (iv) the period for which such offer shall be available to the Remaining Shareholder, which period shall not be less than [90 (ninety) Business Days] from the receipt of the ROFR Offer Notice ("ROFR Acceptance Period"). It is clarified that the Transfer Price of the ROFR Shares shall be equal to the price in the Bona Fide Offer made by the third party offeror.**
- (c) **The Remaining Shareholder may within the ROFR Acceptance Period, elect in writing, to purchase all (and not less than all) of the ROFR Shares referred to in the ROFR Offer Notice at the Transfer Price and on terms and conditions as set out in the ROFR Offer Notice. If the Remaining Shareholder elects to purchase the ROFR Shares, the consummation of the sale and purchase of the ROFR Shares shall take place within 30 (days) days of the date of such election to accept the ROFR Offer Notice simultaneously with the Remaining Shareholder paying to the Transferor the entire Transfer Price for the ROFR Shares (or pro-rata Transfer Price in case of more than 1 (one) Transferor). If the Remaining Shareholder fails to pay the entire amount of the Transfer Price within the aforementioned period of 30 (thirty) days or fails to consummate the sale and purchase for any reason whatsoever (except when such failure is owing to any pending regulatory/ Government Approval or owing to any default of the Transferor), the Transferor shall have the right, to sell the ROFR Shares to the Proposed Transferee provided that such Proposed**

Transferee agrees to purchase the ROFR Shares at a price not less than the Transfer Price and on terms and conditions not more favorable than those offered to the Remaining Shareholder in the ROFR Offer Notice.

- (d) If the Remaining Shareholder does not elect to purchase the ROFR Shares within the ROFR Acceptance Period ("ROFR Non Acceptance Notice") or fails to respond to the ROFR Offer Notice within the ROFR Acceptance Period, it shall be deemed to be not interested in acquiring the ROFR Shares and the same shall be deemed to be the delivery of ROFR Non Acceptance Notice from the Remaining Shareholder. In any of such events, the Transferor shall sell the ROFR Shares to the Proposed Transferee, provided that such Proposed Transferee agrees to purchase the ROFR Shares at a price not less than the Transfer Price and on terms and conditions not more favorable than those offered to the Remaining Shareholder in the ROFR Offer Notice. In the event the Transfer Price has not been arrived at in accordance with required pricing guidelines under FEMA, SEBI Takeover Regulations or any other Applicable Law then in such event the Transfer Price shall be adjusted to comply with pricing requirements as aforesaid.
- (e) In the event of sale of the ROFR Shares to the Proposed Transferee is not consummated within a period of 60 (sixty) days of the ROFR Non Acceptance Notice (except when such failure is owing to any pending regulatory/ Government Approval), the Transferor shall not Transfer the ROFR Shares to the Proposed Transferee without complying with the procedures as set out in this Article 8.1.
- (f) Notwithstanding anything contained in this Article 8 (Transfer or Acquisition of Equity Shares) but subject to the Applicable Law and Government Approvals. AWI shall have the right to transfer up to 10% (ten percent) of its shareholding to its external business partner (i.e. trading company) ("Transferee") without obtaining the prior written consent of the Promoters and the Board subject to the following conditions:
 - (i) The Transferee shall not have right to appoint any director in the Board or participate in the management of the Company;
 - (ii) The Transferee is not a business competitor of the Company;
 - (iii) The Transferee agrees to sign a Deed of Adherence and be bound by the terms and obligations of AWI under the Shareholders Agreement; and
 - (iv) The Transferee will be deemed to be an Affiliate of AWI for all purposes under the Shareholders Agreement.

8.2 Acquisition

The Promoters shall acquire Equity Shares in terms of SEBI Regulations and if the said acquisition by the Promoters triggers a mandatory open offer under the SEBI Takeover Regulations, then the Promoters shall inform AWI by written notice of such acquisition. The shareholding of AWI will not exceed 51% except as specifically provided herein.

8.3 Compliance with minimum public shareholding requirements.

In the event that the aggregate shareholding of AWI and the Promoters in the Company exceeds the Maximum Permissible Non-Public Shareholding and provided that the shareholding of AWI in the Company does not exceed 51% (fifty one percent), then the Promoters alone (and not AWI) shall forthwith bring down their shareholding in the Company in accordance with Applicable Law and such that the aggregate shareholding of AWI and the Promoters is within the Maximum Permissible Non-Public Shareholding limits within the time limit prescribed for the same under Applicable Law.

DRAFT ARTICLES OF ASSOCIATION – PART B, AS AMENDED

PART B

1. DEFINITIONS

"Affiliate" of a Person (the "Subject Person") shall mean: (i) in the case of any Subject Person other than a natural Person, any other Person that, either directly or indirectly through one or more intermediate Persons, controls, is controlled by or is under common control with the Subject Person; and (ii) in the case of any Subject Person that is a natural Person, the relatives of the Subject Person and any other Person that, either directly or indirectly, is controlled by the Subject Person. For purposes of this definition, "control" shall mean the power to direct and control the management or policies of a Person, whether through ownership of over 26% (twenty six percent) of the voting power of such Person, through the power to appoint over half of the members of the board of directors or similar governing body of such Person, through contractual arrangements or otherwise.

"Applicable Law" shall mean all applicable provisions of all (a) constitutions, treaties, statutes, laws (including the common law), codes, rules, regulations, ordinances, bye-laws or orders of any Governmental Authority, (b) Governmental Approvals; and (c) orders, decisions, injunctions, judgments, awards and decrees of or agreements with any Governmental Authority.

"Business" shall mean the manufacture, sale, distribution, trading, or marketing of the Products and the providing of related services.

"Encumbrances" shall mean (i) any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, deed of trust, security interest or other encumbrance or interest of any kind securing, or conferring any priority of payment in respect of, any obligation of any Person, including any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security under Applicable Law, (ii) any voting agreement, interest, option, right of first offer, refusal or transfer restriction in favour of any Person and (iii) any adverse claim as to title, possession or use.

"Financial Year" shall mean the financial year of the Company, which begins on April 1st of a calendar year and ends on March 31st of the following calendar year.

"Governmental Approvals" shall mean any notice, consent, approval, authorization, waiver, permit, grant, concession, agreement, license, certificate, exemption, order or registration, of, with or to any Governmental Authority and a "Governmental Approval" shall mean any of them.

"Governmental Authority" shall mean any nation or government or any province, state or any other political subdivision thereof; any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including Foreign Investment Promotion Board, Reserve Bank of India, SEBI, any government authority, agency, department, board, commission or instrumentality of India, or any other jurisdiction, as applicable, or any political subdivision thereof or any other applicable jurisdiction; any court, tribunals and any securities exchange or body or authority regulating such securities exchange.

"Material Contract" shall mean a contract that is: (a) material to the Business such that a breach thereof would adversely impair the Business (financial or otherwise); or (b) a contract which subjects the Company to a non-compete provision, as the case may be.

"Maximum Permissible Non-Public Shareholding" means such percentage shareholding in the Company excluding the minimum public shareholding required under the Securities Contracts (Regulation) Rules, 1957 or any other Applicable Law from time to time.

"Products" shall mean any industrial gases and related equipment manufactured by the Company from time to time as well as any services related thereto, and shall include all industrial gases such as oxygen, nitrogen, argon, carbon-dioxide, medical oxygen, acetylene, manufactured and/or traded by the Company from time to time.

"Promoter Directors" shall mean the directors nominated on the Board by the Promoters.

"Promoters" shall mean Mr. Shanti Prasad Agarwala, Mr. Padam Kumar Agarwala and Mr. Varun Agarwal.

"SEBI" shall mean the Securities and Exchange Board of India.

"SEBI Takeover Regulations" shall mean the Securities and Exchange Board of India (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011, as amended from time to time.

"Share Equivalent" shall mean any instrument convertible into Equity Shares and shall include the global depository receipts, American depository receipts, warrants, convertible preference shares and options including options issued pursuant to any employee stock option plan that may be implemented by the Company, loans or other securities that are directly or indirectly convertible into or exercisable or exchangeable for Equity Shares (whether or not by their term then currently convertible, exercisable or exchangeable).

"Transfer" (including with correlative meaning, the terms "Transferred", "Transferring" and "Transferability") shall mean to transfer, sell, Encumbrance on, place in trust (voting or otherwise), exchange, gift or transfer by operation of law or otherwise deal in, whether or not voluntarily.

2. GENERAL MEETINGS 2.1 General

The Company shall hold shareholders' meeting in accordance with the Act and these Articles.

2.2 Quorum

The quorum for a general meeting shall be as provided in the Companies Act, 2013.

If such quorum is not present within half-an-hour from the time appointed for the shareholders' meeting, (a) the shareholders' meeting shall be adjourned to the same day in the next week at the same time and place, or to such date and such other time and place as the Board may determine. If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

2.3 Voting

Each shareholder shall vote its Equity Shares at any shareholders' meeting or matters required to be voted by way of poll or postal ballot, upon any matter submitted for action by the shareholders or with respect to which the shareholders may vote. For the avoidance of doubt, voting by way of poll or postal ballot shall be in proportion to the share capital held by such shareholder in the Company.

2.4 Chairman

The shareholders' meeting shall be chaired by the chairman of the Board; provided that in the absence of the chairman of the Board, a director nominated by the Promoters shall be appointed as the chairman.

3. BOARD OF DIRECTORS

3.1 General

Meetings of the Board shall take place in accordance with Applicable Law. Subject to the provisions of the Articles, the Board shall be entitled to delegate powers to such persons and such committees that the Board may create to assist it in its business strategy and objectives. The daily management of the Company shall be entrusted to the chief executive officer, managing director, chairman and the executive directors.

3.2 Composition of the Board.

(a) The Company shall appoint Directors to the Board in accordance with these Articles. The number of Directors constituting the entire Board shall be minimum 3 (Three) and maximum 9 (Nine), which Directors shall be appointed in accordance with this Article 3.2 (Composition of the Board).

(b) The Promoters shall have the right to nominate minimum of 3 (Three) and maximum of 6 (Six) Directors on the Board (Promoter Directors).

(c) Subject to Article 3.2(a) and Article 3.2(b), the number of independent Directors appointed to the Board shall be maximum 3 (Three), who shall be nominated by the Board in accordance with Applicable Law.

(d) No Directors shall be required to hold any qualification shares.

(e) Promoters Directors shall be directors liable to retire by rotation; provided, however, that replacement or reappointment of such directors shall be made in accordance with Article 3.4 hereunder.

3.3 Management.

The Promoter Directors shall be in charge of day to day affairs of the Company and appoint such other person suitable for running the day to day affairs of the Company. The Promoters shall have the right to appoint the Chief Executive Officer of the Company.

3.4 Removal and Replacement of Directors.

Subject to Article 3.2 (Composition of the Board), the Promoters shall have the right to require the removal of a Promoter Director, as the case maybe, at any time and shall be entitled to nominate another representative as a Director in place of the Director so removed. In the event of the resignation or retirement of a Promoter Director, the Promoters shall be entitled to nominate such replacement Director in place of the resigning or retiring Director, as the case may be. Such successor or replacement of the Promoter Director shall be nominated and elected on or as soon as practicable after the date of such resignation or removal and in any event within 20 (twenty) days after such resignation or removal.

3.5 Alternate Director.

The Promoters shall be entitled to nominate alternate Director to act in accordance with the Applicable Law and shall issue a written notice to the Company providing the name and contact address of such alternate Director. The Board shall appoint the alternate Director so nominated within 7 (seven) days of the receipt of such notice. The Promoters shall also have a right to withdraw their nominated alternate Director and nominate another in his place.

3.6 Notice of Board Meeting.

A meeting of the Board shall be called by the chairman of the Board or any Director giving notice in writing to the company secretary or any other authorised officer of the Company specifying the date, time and agenda for such meeting. The company secretary shall upon receipt of such notice give a copy of such notice to all Directors of such meeting, accompanied by a written agenda specifying in reasonable detail the business of such meeting. Not less than 7 (seven) days' notice of a meeting of the Board shall be given to all Directors; provided, however, that such notice period: (i) shall not apply in the case of an adjourned Board meeting pursuant to Article 3.7 (Quorum); and (ii) maybe reduced with the written consent of a majority of the Directors, provided, however, that such majority shall include a Promoter Director, and any decisions taken at such meeting with shorter notice period, in the absence of independent directors, shall be circulated to all the directors and shall be ratified by at least one independent director.

3.7 Quorum.

Subject to the provisions of the Applicable Law, all meetings of the Board shall require a quorum of the higher of: 2 (two) Directors or 1/3rd (one third) of the total strength of the Board, out of which at least 1 (one) Director shall be a Promoter Director. If such a quorum is not present within 1. (one) hour from the time appointed for the Board meeting, the Board meeting shall be adjourned to such place and time as those Directors who did attend shall decide or, if no such decision is reached, at the same place and time 7 (seven) days later. The meeting shall stand adjourned in the same manner until the requisite quorum is met.

3.8 Voting.

At any Board meeting, each Director may exercise 1 (one) vote. The adoption of any resolution of the Board shall require the affirmative vote of a majority of the Directors present at a duly constituted meeting of the Board or in the case of a circular resolution signing by the majority of the Directors to whom the resolution is circulated; provided however, such majority vote or signing shall include at least 1 (one) vote/signing by a Promoter Director. The Board shall not at any meeting adopt any resolution covering any matter that is not expressly specified on the agenda for such meeting unless a majority of the Directors present at such meeting vote in favour of such resolution.

3.9 Video Participation.

Directors may participate in Board meetings by video conferencing or any other means of contemporaneous communication as permitted under the Applicable Law.

3.10 Chairman of the Board.

The chairman of the Board shall be appointed by the Promoters who shall be a non-executive director.

3.11 Committees.

The Board may, from time to time, constitute committees of the Board, which may consist with or without Directors, and may determine their functions, powers, authorities and responsibilities.

3.12 Directors' Access.

Directors shall be entitled to examine the books, accounts and records of the Company and shall have free access, at all reasonable times and with prior reasonable written notice, to any and all properties and facilities of the Company. The Company shall provide such information relating to the Business and financial position of the Company, as the Directors may reasonably require. The Directors may provide such information to the shareholder by whom they have been nominated.

4. BUSINESS PLAN

4.1 For each Financial Year, the Promoters shall 45 (forty five) days prior to commencement of business for the relevant Financial Year, consider and by mutual consent adopt a business plan ("Business Plan") which shall be placed before the Board for approval.

4.2 The Business Plan shall set out the key performance indicators, a quarterly budget, projections of the Company for the subsequent 5 (five) Financial Years, an annual income statement, a statement of annual cash flow, a balance sheet and a detailed breakdown of the working capital requirements and capital expenditure of the Company. The Company shall operate in accordance with the annual budget and in conformity with the Business Plan and any deviation from the Business Plan shall have to be approved by the Board.

4.3 The Business Plan shall include, inter-alia, the following:

- (a) Annual budget;
- (b) Business goals and strategy for the relevant year;
- (c) Re-investment into Business from revenues as part of Business Plan;
- (d) New streams or territories of Business;
- (e) Capital expenditure;
- (f) Expansion or further investment by the Company,
- (g) Availing of any credit facilities; and
- (h) Expenses in relation to construction and development and related activities for commencement of commercial operations of the Company's project at Hyderabad.

5. ACCOUNTING AND AUDIT

5.1 The books and records of the Company shall be maintained in accordance with Applicable Law, including, without limitation, the Act and the Income-tax Act, 1961, and in accordance with Indian Accounting Standards applied on a consistent basis.

5.2 The books and records of Company shall be audited annually by the statutory auditors or an independent chartered accountant(s) in India with the consent of Promoters.

6. FINANCE.

6.1 Accounting Year

All financial records of the Company shall be maintained in the English language and the accounting year of the Company shall begin on April 1 of each year and end on March 31 of the following year.

6.2 Auditors.

The statutory auditors and internal auditors for the Company shall be appointed by the shareholders on the recommendations of the Board in writing and in accordance with the Act, SEBI regulations and Applicable Law.

6.3 Books and Records.

The Company shall be required at all times to maintain proper books of account and records, which shall contain accurate and complete records of all transactions, receipts, expenses, assets and liabilities of the Company. Such books of records shall be submitted to the Board for inspection within such time as may be decided by the Board.

6.4 Inspection and Information.

Each shareholder may examine the books of accounts, records and accounts to be kept by the Company at its own cost.