

# Alpha PACKAGING PRIVATE LIMITED

## 1. Organisation and Existence

1.1 EZEE LAW , (hereinafter “the Company”) was incorporated on ..... in the name of ..... Pvt. Ltd., as a private limited company under the Indian Companies Act, 1956 (hereinafter the ‘Act’).

1.2.1 The Company became a partner in a partnership firm called Alpha Traders/Alpha Engineering Company in ..... (year). The said partnership firm was dissolved on ..... (date) and the Company became entitled to the said business and its assets and goodwill together with the ownership rights to the business premises and have been accordingly continuing the said business on their own account from the date of dissolution of the said partnership firm. A copy of the Deed of Dissolution, dated ..... is annexed hereto as Annexure 1

1.2.2 The name of the Company was changed from ..... Pvt. Ltd. to Alpha Pvt. Ltd. A copy of the fresh Certificate of Incorporation consequent to change of name of the Company, dated ..... is annexed hereto as Annexure 2.

1.3.1 The Registered Office of the Company is situated in the State of ..... at the following address:  
.....  
.....(address)

1.3.2 According to Clause III (A) of the memorandum of association of the Company, the main objects to be pursued by the Company on its incorporation are:

1. To carry on the business of manufacturers, buyers, sellers, importers, exporters and dealers in electro-pneumatic valves, airoperated valves, both hand-operated and foot-operated, solenoid valves, low watt consumption valves, intrinsically safe valves for operation by air, hydraulics and liquids, and generally of valves of every kind and description; air cylinders including single and double operated, low friction and with or without cushion and cylinders of every other kind and description; pneumatic and electric tools such as drills including Auto Feed, Screw Drivers, etc.; balances including Sky Climbers’ equipment of every size and weight; electro-pneumatic sequence control systems for machine tools, industrial machinery and any automation device incorporating valves and cylinders or otherwise, manufactured by the Company as well as by others; special purpose machines to be operated by valves and cylinders or

otherwise, manufactured by the Company as well as by others; electro-heating induction equipment for welding on high, low and contact frequency rating and electro-pneumatic machinery of every kind, nature or description, machinery of every kind incorporating pneumatic, electro-pneumatic or electro-magnetic devices.

2. To manufacture, buy, sell, import, export and otherwise deal in:

(a) all accessories and spares required for the use in and manufacture of the aforesaid articles and things, including drill chucks, drill collates, couplings, compressors, air filtration, regulation, lubrication equipment, Pneumatic Hoist, etc.;

(b) Corrugated cardboard rolls, sheets and boxes, including their printing and waxing; and flat stitching wire, flexible and other packaging items.

1.3.3 The Objects clause III (B) in the Memorandum of Association of the Company includes objects incidental and ancillary to the attainment of the main objects and other objects. A copy of the Memorandum of Association is annexed hereto as Annexure 3.

1.3.4 According to clause IV of the memorandum of association, the liability of the members of the Company is limited.

1.3.5 According to clause VA of the memorandum of association, the authorised share Capital<sup>1</sup> of the Company is Rs. ....(amount) (amount in words) divided into .....(quantity of equity shares) equity shares of Rs. ....(amount) each.

## **2. Share Capital**

2.1 As on ....., the Authorised Share Capital of the Company was Rs. .... (amount) divided into (quantity of equity shares) equity shares of Rs. .... (amount) each.

2.2 As on March....., the issued subscribed and paid-up Capital of the Company was Rs. .... (amount) divided into (Quantity of equity shares) equity shares of Rs. .... (amount) each, fully paid-up.

2.3 There are no restrictions under the memorandum of association on changes in the capital structure of the Company.

## **3. Internal Regulations**

3.1 The internal regulations of the Company are contained in the Articles of Association (hereinafter 'the Articles'). A copy of the articles of association is annexed hereto as Annexure 4.

3.2 The regulations contained in Table 'A'2 to the Act, shall not apply to the Company except as adopted by the articles.

3.3 The articles authorise the Company to issue shares at a premium or at par or subject to the provisions of section 79 of the Act<sup>3</sup>, at a discount and "to give to any person the option to call for or be allotted any shares either at par or at a premium during such time and for such consideration as the Board thinks fit". (Article 11)

3.4 Certain restrictions are placed on the transfer of shares to a person who is not a member of the Company. Therefore, a member desirous of selling his shares shall offer the same to the existing members at the first instance by giving a notice to the Board of Directors (Article 23 to Article 27 contain the procedure for transfer of shares to non-members). However, such restrictions as contained in Articles 20 to 25 and Article 27 shall not apply to transfer of shares to existing members or to a person selected by the Board and in certain other cases (Article 28).

3.5 Article 29 provides that "the Directors may, in their absolute and uncontrolled discretion and without being bound to give any reason, refuse to register transfer of any share"<sup>1</sup>. Articles 31 to 34 contain the procedure as to transfer of shares.

3.6 The provisions relating to joint holders of a share are contained in Article 42.

3.7 Article 45 provides, that any General Meeting (annual or extra ordinary) of the Company may be called by giving not less than 7 days notice in writing<sup>2</sup>. However, a General Meeting<sup>3</sup> may be called by giving a shorter notice than 7 days.

3.8 Article 46 provides, that "where any special business<sup>1</sup> is to be transacted at a general meeting, no explanatory statement need to be annexed to the notice of the meeting". The Article excludes the applicability of section 173(2).

3.9 To constitute a quorum for a General Meeting, two members are required to be present in person<sup>3</sup>.

3.10 The Articles provide as under with respect to voting rights of members<sup>4</sup>:

- (a) Upon a show of hands or on poll, every member present in person or the proxy shall be entitled to vote in proportion to his share of the paid-up equity capital viz. he shall have one vote for one equity share.
- (b) In the case of equality of votes, the Chairman of the General Meeting shall, have a second or casting vote, both on show of hands and on a poll, in addition to the vote/votes to which he may be entitled as a

member. (Article 52)

(c) Article 53 provides that a member can only appoint another member as a proxy to attend and vote instead of himself. Article 53 contains the provisions relating to Proxies<sup>5</sup>.

3.11 Unless otherwise determined in a General Meeting, the Company is required to have not less than two and not more than seven Directors (Article 59).

No qualification by way of holding shares is required of any Director (Article 63). The Directors are empowered to fill up a casual vacancy or as an addition to the Board. A Director so appointed shall hold office up to the date up to which the Director in whose place he is appointed would have held office if it had not been vacated. Any Director appointed as Additional Director shall hold office only up to the date of the next Annual General Meeting but shall be eligible for re-appointment at such meeting (Article 62).

3.12 The provisions of sections 2551 and 2562 of the Act shall apply to appointment and retirement by rotation of Directors (Article 60).

3.13 The meeting of Board of Directors shall be held once in every three months and at least four such meetings shall be held every year<sup>1</sup>. (Article 66(b))

3.14 Article 67 provides as under with respect to quorum for a Board Meeting:

“a. The quorum for a meeting of the Board of Directors shall be one-third of the total strength of the Board of Directors (any fraction contained in that one-third being rounded off as one) or two Directors, whichever is higher.

b. For the purpose of clause (a) ‘total strength’ means the total strength of the Board of Directors of the Company as determined in pursuance of the Act after deducting therefrom the number of the Directors, if any, whose places may be vacant at the time.”

3.15 Powers of Directors are contained in Articles 70 to 752. Clause 21 of Article 70 empowers the Board to delegate its powers, authorities and discretions to any person, firm, company or fluctuating body of persons.

3.16 Article 79 provides as under with respect to the inspection of accounts, books and documents of the Company:

“(1) The Board of Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of members not being Directors.

(2) No member (not being a Director) shall have any right of inspecting any books of account or documents of the Company except as conferred by

law or authorised by the Board or by the Company in general meeting.”

3.17 The provisions relating to Dividends are contained in Regulations 85 to 94 of the Table 'A' in the First Schedule to the Act.

#### **4. Directors**

4.1 At present, the Company has four Directors. A List of Directors of the Company is annexed hereto as Annexure 5.

4.2 A copy of the list of shareholders as of ....., is annexed hereto as Annexure 6.

4.3 List of companies in which the Directors are interested is annexed hereto as Annexure 7.

#### **5. Agreements**

5.1 Certain charges are required to be registered with the Registrar of Companies within 30 days of making the charge.

5.2 The Company has maintained a Register of Charges.

5.3 An Equitable Mortgage was created in respect of Company's immovable property, ..... on ..... for Rs. ....(amount) for credit facilities in favour of ..... (bank). The charge was modified subsequently and presently the amount of charge has been enhanced to Rs. ....(amount).

5.4 The Company entered into a Hypothecation of Goods Agreement dated ....., with ..... Bank for credit facilities wherein a charge of Rs. ....(amount) was created on existing and future plant and machinery installed/to be installed at the premises of the Company at ..... or elsewhere. By a Supplemental Agreement dated ....., the credit limit was enhanced to Rs. ....(amount) as and by way of second modification.

5.5 Under the Agreement for Hypothecation of Movable Assets dated ....., a charge of Rs. ....(amount) was created on one gluer machine installed at Company premises at ..... or elsewhere for term loan facility for the purchase of machinery. The aforesaid term loan is repayable by monthly instalments of Rs. ....(amount) per month, commencing from ..... until the loan account is fully adjusted.

5.6 Under the Hypothecation of Goods Agreement dated ....., with ..... (bank) for banking facilities a charge of Rs. ....(amount) was created on existing and future plant machinery installed/to be installed at the premises of the Company at ..... or elsewhere. By way of Hypothecation of Assets Agreement for Cash Credit/Overdraft/Demand Loan Facility dated ....., the credit limit was enhanced to Rs. ....(amount) as and by

way of first modification.

5.7 An equitable mortgage of the Company's immovable property at ..... was created on ....., for Rs. ....(amount) in favour of the ..... (bank). The charge was modified on ....., and the credit limit was enhanced to Rs. ....(amount).

5.8 The Company entered into an Agreement for Hypothecation of Movable Assets to secure a Term Loan of Rs. ....(amount) dated ....., for the purchase of machinery. Under the said Agreement, new plant and machinery, including office equipment, tools, vehicles, fixtures, fittings, accessories and parts at the Company premises at .....or elsewhere were hypothecated as and by way of first charge in favour of the Bank. Further, under the said Agreement, the Company shall deal exclusively with ..... (bank) for all types of credit facilities in future and shall not obtain any fund/non-fund based credit facility from any other source without the knowledge and concurrence of the Bank in writing.

5.9 Under the Agreement of Hypothecation of Goods and Agreement of Hypothecation of Book Debts dated ..... (both the Agreements constituting a single charge) for Rs. ....(amount) stocks of raw materials, work-in-process, finished goods, stores and spares at .....(address) and present and future book debts of the Company were hypothecated in favour of the Bank. The credit facility was enhanced on subsequent dates and by a Supplemental Agreement dated ....., the said credit facility was enhanced to Rs. ....(amount).

5.10 Under the Composite Agreement for Auto Loan and Guarantee dated ....., for Rs. ....(amount) with ..... (bank), the Company has to repay the loan by 36 equated monthly instalments of Rs. ....(amount), the first instalment being due on .....(date). We have been informed by the Company that it has been paying the instalments regularly.

5.11 The Trust Deed dated ....., under the Employees Group Gratuity cum Life Assurance Scheme was amended by a Deed of Variation executed on ..... pursuant to the amendments to the Payment of Gratuity Act, death of one of the trustees and change of name of the Company.

## **6. Labour Agreement**

A Settlement was entered into between the Workmen and the Management of the Company under section 2(p) read with section 18(3) of the Industrial Disputes Act, 1947. The Settlement will remain in force for a period of three years from ....., to ..... either of the parties may after the expiry of the said period, give a written notice, two months in advance to terminate this

Settlement in accordance with section 19(2) of the Industrial Disputes Act, 1947. The terms of Settlement are contained in the Memorandum of Settlement, which is annexed hereto as Annexure 8.

## 7. Title to Properties

The Company has the following immovable properties:

7.1 Property bearing ..... along with the building situated at ..... The title of the said property is still in the name of M/s Alpha Traders/ Alpha Engineering Company (Under the Deed of Dissolution .....

Annexure 1, the Company became entitled to the ownership of the said property).

Equitable Mortgage was created on the said property in favour of ..... (bank). We have not examined the title deeds of the said property.

7.2 Plot Number ..... and Survey Nos. ....

7.3 Plot Number ..... and Survey Nos. ....

## 8. Litigation

### 8.1 Taxation

8.1.1 The Assistant Commissioner of Sales Tax vide Order dated ....., rectified the Assessment Order for the financial year ....., demanding additional taxes as under:

i. Central Sales Tax ... Rs. ....(amount)

ii. .... (State) Sales Tax ... Rs. ....(amount)  
(including interest)

We were informed by the Company that the additional liability i.e. Sales Tax on sale of corrugated boxes is wrongly allowed against Form -'H' worth Rs. ....(amount) and Form 14-B worth Rs. ....(amount). We were further informed that the Company was given Form -'H' and Form 14-B by its customer .....(name) (which exports goods using the corrugated boxes manufactured by the Company). Further the Company has now received the correct forms namely viz. Form-'C' against Form-'H' and Form 'N-14' against Form

'14-B', and the liability after rectification is likely to be as under:

i. Central Sales Tax ... Rs. ....(amount)

ii. .... (State) Sales Tax ... Rs. ....(amount)

The above-mentioned liability will be borne by the Company's customer, .....(name). The Company has further informed us that it would be making the necessary application for rectification shortly.

8.1.2 The Company has filed an appeal before the Assistant Commissioner of Income Tax, Appellate Tribunal, .....(city) against the Order

of the Asst. Commissioner of Income Tax; ..... (city) dated ....., for the assessment year 1991-91. The Company has appealed against the said Order on the ground that the amount of Rs. ....(amount) being the provision for gratuity has not been deducted from taxable income of the assessee.

## 8.2 Central Excise

8.2.1 The Company has received the following Show Cause-cum-Demand Notices which aggregate to Rs. ....(amount):

Notice Date	Period	Amount/Rs.
30-6-97	1994-95	.....
30-6-97	1995-96	.....
30-6-97	1996-97	.....
30-6-97	Penalty	.....
5-12-97	1-8-97 to 31-12-97	.....
7-5-98	1-11-97 to 31-3-98	.....

The Company has made a reply to all the above-mentioned notices to the Commissioner of Central Excise wherein it has submitted that the said notices are void and illegal and require to be recomputed taking into consideration, the submissions made in its reply to the said notices. The Company also requested for a personal hearing. At the hearing on ....., the Company reiterated the submissions made in its reply to the show cause notice.

The Company sought a legal opinion on the matter and the Counsel is of the opinion that the question of liability does not arise unless the said show cause notices are converted into a confirmed demand by way of Order-In-Original after complete hearing of the case. Further, the Company has a prima facie case in view of the Central Board of Excise and Custom circular clarifying that the corrugated fittings/partitions are inherent part of the corrugated boxes and are not to be classified as separate items.

## 8.3 Labour

8.3.1 An Application before the Labour Court has been filed by a workman of the Company for unfair labour practice. The Workman was suspended in the year 1996-97, and later on, his services were terminated in the year 1997-98. In the said application, the Workman has prayed for reinstatement, back wages and subsistence allowance.

## 9. Miscellaneous

9.1 Most of the pages of the Minute Book of the Board Meetings, Annual and Extra Ordinary General Meeting are not initialled or signed by the Chairman of the Meeting and the last page of the record of the proceeding though signed, is not dated<sup>1</sup> as required by the Act. Pages ..... and ..... of the Board Minutes are blank and page number ..... of the minutes of annual and extra ordinary general meetings is blank.

9.2.1 As per the Auditor's report for the year ending ....., the Company has taken unsecured loans from the directors of the Company, companies and other parties listed in the register maintained under section 301 of the Act. The details of interest paid on unsecured loans during the Financial Year ..... are annexed hereto as Annexure

9. The Company has not taken any other loans from firms listed in the register maintained under section 301 of the Companies Act, 1956. The rate of interest paid and other terms and conditions of such loans are not prima facie prejudicial to the interest of the Company. The Company has not taken any loans, secured or unsecured from companies under the same management as defined under section 370(1B) of the Companies Act, 1956.

9.2.2 As per the Auditors report for the year ending ....., the Company during the year ....., has not granted any loans secured or unsecured, to companies, firms or other parties listed in the register maintained under section 301 of the Act and/or to the companies under the same management as defined under section 370 (1B) of the Act.

### ANNEXURE 5

#### **LIST OF DIRECTORS OF ALPHA PACKAGING PVT. LTD.**

1. .... (NAME)
2. .... (NAME)
3. .... (NAME)
4. .... (NAME)

#### **List of Documents**

The Legal Due Diligence Report is based on the documents supplied by the Companies.

**ALPHA Limited**

1. Copy of the Memorandum and Articles of Association
2. Minutes of Board and General Meetings (Original)
3. Copies of Register of—
  - (a) Transfer of Shares
  - (b) Directors
  - (c) Contracts
  - (d) Directors' Shareholding
  - (e) Charges
4. Copy of list of Shareholders as on ..... 20..... (date)
- 70 Corporate and Commercial Agreements
5. Copy of the release of first hypothecation charge for Rs. .... (amount) by ..... Bank dated.....
6. Copy of the Sale Deed dated ....., between Beta and Alpha in respect of property bearing numbers .....
7. Copy of the Sale Deed dated ....., between ..... (name) and Alpha in respect of property bearing number .....
8. Copy of letter dated ....., of ..... (name) regarding allotment of industrial sheds number ..... to Alpha.
9. Copy of the Notice under ..... (name).
10. Copy of the Sale Deed dated ..... (name), between Gama ..... (name) and Alpha in respect of industrial sheds number ..... Address
11. Copy of Memorandum of Settlement under the Industrial Disputes Act, 1947, between the Workman and the Management of the Company.
12. Copy of the Directors' Report to the Shareholders twenty first Annual Report and Accounts of the Company.
13. Copy of the Auditors' Report for the year ending .....
14. Copy of the Hypothecation of Book Debts Agreement and Hypothecation of Goods Agreement dated ....., with ..... (bank).
15. Copy of the Loan Agreement for vehicle financing dated .....
16. Copy of the Loan Agreement for Auto Loan and Guarantee dated .....
17. Copy of the Hire-Purchase Agreement dated ....., with ..... (name of company)
18. Copy of the Equipment Lease Agreement dated ....., with .....(name of company)
19. Copy of the Lease Deed dated ....., with .....Pvt. Ltd.
20. Copy of the Trust Deed dated ....., with Insurance Company..... under the Employee Group Gratuity cum CA Scheme and Copy of the Deed of variation to the Trust Deed dated .....
21. Copies of Writ Petitions, Notifications, Orders passed by the High Court, proposition notices, reply to the said notices in respect of matter relating to litigation.
22. Copy of the Assessment Order of Deputy Commissioner of Income Tax dated .....

23. Copy of Notice of Demand under section 156 of Income Tax dated  
.....

24. Copy of the Appeal to the Deputy Commissioner of Income Tax dated  
.....