IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.302 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 92 OF 2015

Gogri & Sons Investments Private Limited....Petitioner Company

With

COMPANY SCHEME PETITION NO.303 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 93 OF 2015

Alchemie Leasing And Financing Private Limited....Petitioner Company

With

COMPANY SCHEME PETITION NO.304 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 94 OF 2015

Anushakti Holdings Limited....Petitioner Company

With

COMPANY SCHEME PETITION NO.305 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 95 OF 2015

Anushakti Chemicals And Drugs Limited....Petitioner Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of read with Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation between Gogri & Sons Investments Private Limited and Alchemie Leasing And Financing Private Limited and Anushakti Holdings Limited and Anushakti Chemicals And Drugs Limited (the Transferor Companies) with Aarti Industries Limited (the Transferee Company) and their respective Shareholders

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company

Mr. S. Ramakantha, Official Liquidator Present

Mr. R. C. Master i/b Mr. A.A. Ansari for Regional Director.

CORAM: S. C. Gupte, J.

DATE: 10th July, 2015

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of read with Sections 100 to 103 of the Companies Act, 1956 to the Scheme of Amalgamation between Gogri & Sons Investments Private Limited and

Alchemie Leasing And Financing Private Limited and Anushakti Holdings Limited and Anushakti Chemicals And Drugs Limited (the Transferor Companies) with Aarti Industries Limited (the Transferee Company) and their respective Shareholders.

3. The Learned Counsel for the Petitioners states that Petitioner Company in Company Scheme Petition No. 302 of 2015 is a private limited company registered with the Reserve Bank of India (RBI) as a non-deposit taking non-banking financial company (NBFC). GSIPL is a promoter group company in the Transferee Company (hereinafter also referred to as "AIL"). Presently, the Petitioner Company is engaged in the business of acquiring and holding investments in the shares of AIL for the purposes other than trading of such securities, Petitioner Company in Company Scheme Petition No. 303 of 2015 is a private limited company registered with the Reserve Bank of India (RBI) as a non deposit taking non-banking financial company(NBFC). ALFPL is a promoter group company in AIL. Presently, The Petitioner Company is engaged in the business of acquiring and holding investments in the shares of AIL for the purposes other than trading of such securities, Petitioner Company in Company Scheme Petition No. 304 of 2015 is an associate of and a promoter group company in the Transferee Company (hereinafter also referred to as "AIL"). Presently, The Petitioner Company is engaged in the business of acquiring and holding investments in the shares of AIL for the purposes other than

trading of such securities and the Petitioner Company in Company Scheme Petition No. 305 of 2015 is an associate of and a promoter group company in the Transferee Company (hereinafter also referred to as "AIL"). Presently, the Petitioner Company is engaged in the business of acquiring and holding investments in the shares of AIL for the purposes other than trading of such securities.

4. Learned Counsel for the Petitioners states that the Scheme will result into following benefits namely that the merger will result in the promoter group of the Transferee Company directly holding shares in the Transferee Company, which will lead not only to simplification of the shareholding structure and reduction of shareholding tiers but also demonstrate the promoter group's direct commitment to and engagement with the Transferee Company, there will be a positive impact on earnings per share of the Transferee Company to the extent that no equity shares would be issued by the Transferee Company in consideration of this Scheme to the extent of proportionate shareholding of the Transferee Company in the equity shares of AHL (i.e. approximately 49%) and ACDL (i.e. approximately 49.59%). Further, consequent reduction of capital of the Transferee Company would result in increased shareholders value in the long term, the merger of the Transferor Companies with the Transferee Company will result in an increase in the public float of the Transferee Company, which will form part of public shareholding and not that of promoter

group. That will in turn increase the trading stock of the shares of the Transferee Company and Increase in the public float and trading stock of the shares of the Transferee Company will positively impact the liquidity of the shares of the Transferee Company.

5. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioners has stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 30th June, 2015 stating therein that the affairs of the Petitioner Companies have been conducted in a proper manner and that the Petitioner Companies may be ordered to be dissolved by this Court.

9. The Regional Director has filed an Affidavit on 12th June, 2015 stating therein, save and except as stated in paragraphs 6 (a) to 6(g) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to 6(g) of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

a) *Clause 14.5 of the Scheme states that the value of net assets of the Transferor Companies transferred to AIL and the consideration issued by AIL shall be adjusted in reserves as per AS-14. In this regard, it is submitted that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee Company and Deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.*

b) *The Registered office of the Transferee Company is situated in the state of Gujarat. Hence, the present Scheme Of Amalgamation between the Transferor Companies and Transferee Company will subject to the condition of obtaining similar approval from Hon'ble High Court of Gujarat in respect of Transferee Company.*

c) *The First Transferor Company and the Second Transferor Company are Non-Banking Finance Company, registered with Reserve Bank of India. In this regard, the said Transferor Companies may be directed to file a copy of the Scheme along with the copy this Hon'ble Court's Order within 30 days of the Order, with the Reserve Bank of India and to obtain necessary approval from Reserve Bank of India.*

d) *In Clause 1.2 of the Scheme, no specific Appointed date is provided for this Scheme of Amalgamation. To ascertain the value of such assets and liabilities so as to arrive the Share Exchange Ratio, the Specific Appointed Date is necessary. It has been observed from Clause 6.1 of the Scheme that the Share Exchange ratio has been arrived, keeping the Shareholding position as on 01/04/2014. Under these facts and circumstances of the case, it would be more appropriate to fix 01/04/2014 as Appointed Date. In this regard, the Petitioner Companies may be directed to provide specific Appointed Date accordingly.*

e) *The shares of the 3rd Transferor Company and 4th Transferor Company are held by Non Resident Indian. Hence, while giving effect to the Scheme, by issuing new shares by the Transferor Company to the Shareholders of the Transferor Company, the Transferee Company has to comply with the provisions of FEMA and RBI Regulations as applicable in this regard.*

f) *It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of the Income Tax Authorities. The approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Transferor and Transferee company*

g) *Clause 19 of the Scheme provides for Modification and Amendments to the Scheme wherein the Board of Directors of the Transferor Companies and Transferee Company have been authorised to make any amendments to the Scheme, if necessary, after the Scheme is approved by the Hon'ble High Court. Such liberty shall not be exercised by the Board of Directors without obtaining prior approval from the Hon'ble High Court. The Petitioner Companies may be directed to undertake to this effect.*

10. As far as observations made in paragraph 6 (a) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Counsel undertakes to follow the accounting treatment provided in the scheme and reserve, if any arising out of the scheme be credited to Capital Reserve Account of Transferee Company.

11. As far as the observations made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, learned Counsel appearing on

behalf of the Petitioner states that the Petition for approval of the Scheme is pending for final Hearing before Hon'ble the High Court of Gujarat.

12. As far as the observations made in paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel undertakes to file the Copy of the Scheme along with Copy of the Order with the Reserve Bank of India for its approval within 30 days of the receipt of the Order from the Hon'ble High Court.

13. As far as observations made in paragraph 6(d) of the affidavit of Regional Director is concerned, the Petitioner Companies through its counsel states that in view of the objection raised by the Regional Director, Western Region, Mumbai Clause 1.2 of the Scheme is required to be amended. Hence, learned Counsel for the Petitioner Companies seeks leave to delete clause 1.2 of the scheme and substituting with … *"Appointed Date": Appointed Date means 1st April 2015"* .

14. In so far as observations made in paragraph 6(e) of the Affidavit of Regional Director is concerned, the Petitioner Company through their Counsel undertakes to comply with FEMA/RBI regulations as may be applicable while allotting new shares to the shareholders of the 3rd and 4th Transferor Companies.

15. As far as the observations in paragraph 6 (f) of the affidavit of the Regional Director is concerned, the petitioner through their counsel submits that the petitioners is bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme of amalgamation will be met and answered in accordance with law.

16. So far as the observations in paragraph 6 (g) of the affidavit of the Regional Director is concerned, learned Counsel appearing on behalf of the Petitioner undertakes that any modification or amendment by the Board of Directors of the Transferor Companies and the Transferee Company to the Scheme as provided in Clause 19 of the Scheme is subject to prior approval of concerned High Courts.

17. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

18. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they agree with the amendment sought by the Petitioner Companies as mentioned in paragraph13 hereinabove, in view thereof

leave to amend the Scheme including all consequential amendments are granted. Amendments to be carried out within four weeks from the date of the order.

19. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

20. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 302 of 2015 to 305 of 2015 are made absolute in terms of the prayer clause (a) of the respective Company Scheme Petition.

21. The Petitioner Companies are directed to lodge a copy of this order and the amended Scheme duly authenticated by the Company Registrar, High Court, Bombay, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the order.

22. Petitioner is directed to file a copy of this order along with a copy of the amended Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

23. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

24. Filing and issuance of the drawn up order is dispensed with.

25. All concerned regulatory authorities to act on a copy of this order along with the amended Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte, J.)