IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 406 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 130 OF 2016

ANCHIT CHEMICALS PRIVATE LIMITED

....Petitioner/The Transferor Company 1

AND

COMPANY SCHEME PETITION NO 407 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 131 OF 2016

ROHA ECO ENERGY PRIVATE LIMITED

....Petitioner/The Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956) (or any re-enactment thereof upon effectiveness of Companies Act, 2013)

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956

AND

In the matter of Scheme of Amalgamation of Anchit Chemicals Private Limited ("Transferor Company 1") and Jagsons Intermediates And Chemicals Private Limited ("Transferor Company 2") with Roha Eco Energy Private Limited ("Transferee Company") and their respective shareholders

Called for Hearing

Mr. Hemant Sethi i/b. M/s. Hemant Sethi & Co., Advocates for the Petitioners

Mr. D.R. Shah i/by Pankaj Kapoor for Regional Director in both Petitions.

CORAM: S. C. Gupte, J

DATE: 14TH DECEMBER, 2016

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

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to the Scheme of Amalgamation of Anchit Chemicals Private Limited and Jagsons Intermediates And Chemicals Private Limited with Roha Eco Energy Private Limited and their respective shareholders.

3. Counsel for the Petitioners state that Anchit Chemicals Private Limited is engaged involved in the business of manufacturing, producing, transporting, refining, exporting, importing and dealing in sulphuric acid, oleums, detergents, dyes, etc.

4. The rationale for the Scheme is to:

    - Consolidate and streamlining of operational businesses;
    - Maximize synergies;
    - Reduce administrative cost;
    - Achieve management efficiency;
    - Elimination of administrative functions and multiple record keeping; and
    - Reduction in the multiplicity of regulatory compliances

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

6. Counsel for the Petitioners further state that, the Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in

consonance with the orders passed in Company Summons for Directions.

7. The Counsel appearing on behalf of the Petitioners have stated that the Petitioners have complied with all requirements as per directions of this Court and they have filed necessary affidavits 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 the Rules made there under whichever applicable. The said undertaking is accepted.

8. The Regional Director has filed an affidavit on 29th day of September, 2016 stating therein that save and except as stated in paragraph 6 of the said affidavit, it appears according to R.D. that the scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said affidavit it is stated that:

   a. *In addition to compliance of AS-14 the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5, etc.*

   b. *It is submitted that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and 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 amalgamation. The decision of the Income Tax Authority is binding on the petitioner company*

   c. *The Registered Office of the M/s Jagsons Intermediates and Chemicals Private Limited ('JICPL') the Transferor Company-2 is situated at GIDC Estates, Pandesara, Surat, Gujarat-394221, is outside the jurisdiction of this Hon'ble Court and falls within the jurisdiction of Hon'ble High Court of Gujarat. Accordingly, similar approval by the Transferor Company-2* *from Hon'ble High Court of Gujarat.*

d. *Regarding Clause 1.3 of the Scheme, the scheme the appointed date is 1st January, 2016. In this regard it is submitted that expression "Appointed Date" is used to reflect the date of which assets and liabilities of the existing company were to be identified for the purpose of transfer to the Transferee Company / Resulting Company. The Assets and liabilities as on the date of "Appointed Date" stands lawfully transferred. As per scheme the "Appointed Date" is 01.01.2016. The developments subsequent to the Balance Sheet date as 31.03.2015 (i.e. 01.04.2015 to 31.12.2015) are not in the knowledge of this Hon'ble Court. Shareholders, Creditors, etc., of the Transferor Company are entitled to know the details of transactions subsequent to balance sheet date and up to the Appointed Date i.e. 01.01.2016. Further, the applicant has to explain and offer explanation to the satisfaction of this Court that why the Appointed Date should be 01.01.2016, and why not 01.04.2015. The gap between the date of audited balance sheet and the appointed date should be reasonable and nearer. This is a statutory requirement. Further, both Transferor Company-1 and Transferee Company have filed balance sheet as at 31.03.2015. The filing position of Transferee Company – 2 is not known as the same falls within the jurisdiction of ROC Ahmedabad / Hon'ble High Court of Gujarat. Accordingly, both Transferor Company-1 and Transferee Company may please be directed to file audited balance sheet as at 31.12.2015 (01.04.2015 to 31.12.2015).*

e. *Regarding clause 5 of the Scheme, the financial statements as at 31.03.2015 of both the companies involved in the Scheme, shows under the head Share capital, none of the company is having / or issued non-cumulative redeemable* *preference shares. Further, it is confirmed at clause 6.1 of the Scheme. In the absence existence of such capital, company has no authority to issue non-cumulative redeemable preference shares. Conversion of shares of one clause into another under the scheme of arrangement is not permissible. Further, AS-14 also does not permit such issue. Consideration for amalgamation paid in equity shares by Transferee Company to the equity shares of Transferor Company. Hence as on date the Transferee Company has to issue equity shares only. The issue of Non-Cumulative Redeemable Preference Shares and redemption of the same amounts to repaying paid up share capital and amounts to reduction of Share Capital. This requires compliance of section 100 to 104 of the Companies Act, 1956. As the companies act, 1956 contains express provision for reduction of capital and that provisions cannot be circumvented by obtaining the approval of the court to a scheme or an arrangement under the provisions of sections 391 to 394 of the Companies Act, 1956.*

f. *Regarding clause 5.1 of the Scheme, REEPL shall take necessary steps to increase its authorized Share Capital, the Transferee Company shall comply with the provision of section 97 of the Companies Act, 1956 and to pay necessary Central Government Fee and Stamp Duty payable to State Government.*

g. *Regarding clause 7.1 of the Scheme, Upon the scheme coming into effect all assets and liabilities of the Transferee Companies shall be transferred to and vested in the Transferee Company in its Books of Account at their book value as on Appointed Date and not as decided by the Board of Directors of the Transferee Company.*

9. In so far as observations made in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Transferee Company through their Counsel undertakes that in addition to compliance with AS-14, Transferee Company shall pass such accounting entries as may be necessary in connection with the scheme to comply with any other applicable accounting standards.

10. In so far as observations made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioners clarifies that the approval of the Scheme by this court will not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the Scheme and all issues arising out of the Scheme will be met and answered in accordance with the applicable law.

11. In so far as observations made in paragraph 6 (c) of the Affidavit of the Regional Director is concerned, the counsel for the Petitioners submits that the scheme in case of Jagsons Intermediates and Chemicals Private Limited (Transferor Company – 2) has been sanctioned by the Gujarat High Court on 21st April 2016.

12. In so far as observations made in paragraph 6 (d) of the Affidavit of the Regional Director is concerned, the counsel for the Petitioners submit that the scheme of amalgamation was approved by the board of directors on 15th September 2015 and the valuation report has been prepared on the basis of the audited financials of the Petitioner company as on 31st March 2015 and management certified financials as on 31st August 2015. Further the scheme of amalgamation was filed by the Petitioner Company with this Court on 2nd December, 2015. The Petitioner Companies have submitted management and auditor certified provisional financial statement for the period ended 30th September, 2015 as a part of the exhibits.

    The Counsel for the Petitioners further submits that the expression "Appointed Date" is used to reflect the cut-off date at which assets and liabilities of the existing company were to be identified for the purposes of transfer to the Transferee Company/Resulting Company. The assets and liabilities as on the date of "Appointed Date" would be transferred. The Counsel for the Petitioners further submit that audited balance sheet as 31.03.2015 was placed before Annual General Meeting held on 30.09.2015 and the same was approved by the shareholders. In so far as audited financials as on March 31 2016 are concerned, the Transferee Company has sought extension to hold AGM which has been extended by the Registrar of Companies, Mumbai vide SRN G12517355, upto 31.12.2016. The audited accounts of both the Transferor Companies have been adopted at their respective annual general meeting and have been filed with the Registrar of Companies.

13. In so far as observations made in paragraph 6 (e) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its counsel submits that as per Accounting Standard – 14 Accounting for Amalgamations, amalgamations fall into two broad categories:

I. Pooling of interest method (Amalgamation in the nature of merger)

II. Purchase method:

The counsel submits that the Petitioners have adopted the Purchase method of accounting under Accounting Standard – 14 which permits issuance of non-redeemable convertible preference shares. The appointed date in the scheme has not only been approved by the Board of Directors of all the Petitioner Companies, but also by the Equity shareholders.

14. The Counsel for the Petitioners invite my attention to section 394(1) of the Companies Act, 1956 which permits issuance of any shares by the Transferee Company pursuant to any scheme of reconstruction or amalgamation of the company. Also, as per the definition of 'Consideration' provided in paragraph 3(g) of Accounting Standard-14 states that consideration for the amalgamation means the aggregate of the shares and other securities issued and the payment made in the form of cash or other assets by the transferee company to the

shareholders of the transferor company. As per section 2 (84) Companies Act, 2013, shares means a share in the share capital of the company and includes stock.

In so far observations regarding redemption of Preference shares, the counsel for Petitioners clarify that provisions of section 100-104 of the Companies Act, 1956 are not triggered on issuance of redemption of preference shares and that the provisions of section 55 shall be complied with at the time of redemption of such shares. The counsel for the Petitioners further states that the explanation to section 55(3) of the Companies Act, 2013 specifically states that the redemption of preference shares under section 55 of the Companies Act, 2013 shall not be deemed to be an increase or as the case may be a reduction in the share capital of the company. Therefore the consideration issued to the shareholders in the form of non-cumulative redeemable preference share pursuant to merger is permitted.

15. In so far as observations made in paragraph 6 (f) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its counsel submits that the Transferee Company has increased its authorized share capital by Rs. 6,00,00,000 and made necessary filings with the ROC. The Transferee Company has adequately reclassified its authorized share capital to facilitate issuance of preference shares pursuant to the scheme.

16. In so far as observations made in paragraph 6 (g) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its counsel submits that para 7.1 of the scheme provides for all assets and liabilities of the Transferor Company to be transferred and vested to the Transferee Company pursuant to the scheme and shall be recorded by the Transferee Company at their respective fair values and such fair values would be determined by the board of the Transferee Company. Accounting Standard 14, under the purchase method of accounting permits recognition of assets and liabilities at their respective fair value as on the date of amalgamation.

17. The Official Liquidator has filed his report on 25th day of October 2016 stating therein save and except as stated in paragraph 7 of the said report, the affairs of the Petitioner Company has been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved. In paragraph 7 of the said report it is stated that:

    a. *As mentioned above, the company has not commenced commercial production and has only lease income. Further, company has entered into an assignment with Roha Eco Energy Private Limited (the Transferee Company herein) vide deed of assignment dated 19th December, 2014 to acquire unsecured loan of Rs. 18,54,78,674/- payable by Roha Leasing and Financing Limited and for a sum of Rs. 11,45,21,326/- payable by Roha Infrastructure Developers Private Limited against a total consideration of Rs. 30 crores. Nothing has been realized from the these assets in last 2 years*

18. Counsel for the Petitioners further submit that the Board of Directors of Roha Eco Energy Private Limited (the Transferee Company herein) will take necessary steps to realize the assets in due course of business.

19. The Counsel for the Petitioners submits that in respect to clause 5.1 of the Scheme, the consideration to be issued by the transferee company to the shareholders of Transferor Company – 2, there is typographical error where instead of "552" the figure has been wrongly mentioned as "5528". The Counsel for the Petitioners therefore seek leave of this Court to amend Scheme by deleting the figures 5528 in clause 5.1 and substituting with 552. Leave to amend Scheme is allowed. Amendment to be carried out within 4 weeks from today.

20. 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.

21. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 406 of 2016 filed by the Petitioner

Company is made absolute in terms of prayer clauses (a) and Company Scheme Petition No. 407 of 2016 filed by the Petitioner Company is made absolute in terms of prayer clauses (a).

22. The Petitioner Companies to file an authenticated copy of this order and the Scheme 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.

23. Petitioners are directed to file a copy of this order along with a copy of the 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, 2013.

24. Roha Eco Energy Private Limited and Anchit Chemicals Private Limited to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and Anchit Chemicals Private Limited to pay cost of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.

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

26. All concerned regulatory authorities to act on an authenticated copy of this order along with Scheme.

(S. C. Gupte, J)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

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