IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SUMMONS FOR DIRECTION NO. 581 OF 2016

In the matter of Companies Act, 1956

AND

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

AND

In the matter of the Scheme of Amalgamation

of

Dollex Industries Limited (Transferor Company)

into

Parvati Sweetners and Power Limited (Transferee Company)

And

Their respective Shareholders

Dollex Industries Limited, company incorporated under the provisions of the Companies Act, 1956, having its registered office situated at 201, 2nd floor, Sarvodaya, A-wing, Building No. 11, Plot No. 606, Khernagar, Bandra (E), Mumbai – 400051	) …….Applicant Company

Called Summons for Direction for hearing

Mr. Kunal Mehta i/b M/s. Crawford Bayley & Co, Advocate for Applicant Company.

CORAM: B.P. COLABAWALLA, J

DATE: JULY 8, 2016

MINUTES OF THE ORDER

UPON the Application of the Applicant Company above named by a Summons for Direction, AND UPON HEARING Mr. Kunal Mehta instructed by M/s. Crawford Bayley & Co., Advocates for the Applicant Company, AND UPON READING the Affidavit dated June 21, 2016 of Mr. Mehmood Khan, Director of the Applicant Company, in support of Summons for Direction, and the Exhibits therein referred to, IT IS ORDERED -:

1. That the meeting of the Equity Shareholders of the Applicant Company shall be convened and held at Radio Club, 157, Arthur Bunder Road, Colaba, Mumbai – 400 005, Maharashtra on August 16, 2016 at 11:00 am by the Applicant Company for the purpose of considering and if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Dollex Industries Limited into Parvati Sweetners and Power Limited and their respective shareholders.

2. That at least 21 clear days before the meeting of the Equity Shareholders of the Applicant Company is to be held as aforesaid, a notice convening the said meeting at the place, day, date and time as aforesaid, together with a copy of the Scheme of Amalgamation and a copy of the statement required to be furnished pursuant to Section

393 of the Companies Act, 1956 and the prescribed form of proxy, shall be sent by Registered Post AD/ speed post to each of the Equity Shareholders at their respective registered or last known address as per the records of the Applicant Company.

3. That at least 21 clear days before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, an advertisement convening the said meeting, at the place, day, date and time aforesaid and stating that the copies of the proposed Scheme of Amalgamation and the statement required to be furnished pursuant to Section 393 of the Companies Act, 1956 and the form of proxy can be obtained free of charge at the registered office of the Applicant Company, shall be published once each in two local newspapers viz. “Free Press Journal”, in English language and translation thereof in Marathi language in “Navshakti”, both having circulation in Mumbai.

4. Publication of Notice of Meeting of the Equity Shareholders in the Maharashtra Government Gazette is dispensed with.

5. That the settling and approving of the form of advertisement, form of proxy, the form of notice, the explanatory statement required to be furnished pursuant to Section 393 of the Companies Act, 1956 to accompany the notice to be issued to the Equity Shareholders of

the Applicant Company by the Company Registrar of this Court is dispensed with and the Applicant Company shall:

i. Issue Notice convening meeting of the Equity Shareholders as per Form No. 36 (Rule 73)
ii. Issue Form of Proxy as per Form No. 37 (Rule 73)
iii. Advertise the Notice convening meeting as per Form 38 (Rule 74)
iv. Issued Explanatory Statement containing all the particulars as per Section 393 of the Companies Act, 1956 if need be

6. That Mr. Mehmood Khan, Director and failing him Mr. Vijay Bharkatiya, Non-Executive Director of the Applicant Company shall be the Chairman of the above mentioned meeting of the Equity Shareholders of the Applicant Company, to be held at Radio Club, 157, Arthur Bunder Road, Colaba, Mumbai – 400 005, Maharashtra on August 16, 2016 at 11:00 am or any adjournment or adjournments thereof.

7. That the Chairman appointed for the aforesaid meeting to issue the advertisement and send out the notices of the meeting of the Equity Shareholders referred above. It is further directed that the said Chairman shall have all the powers as per the Articles of Association

and also under Companies (Court) Rules, 1959 or any re-enactment thereof, in relation to the conduct of the meeting including deciding any procedural questions that may arise at the meeting or at any adjournment or adjournment(s) thereof of any matter including an amendment to the Scheme or Resolutions if any, proposed at the meeting by any person(s) and to ascertain the decision of or the sense of the meeting by a poll.

8. That the quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of Companies Act, 2013.

9. That the voting by proxy/ authorized representative in case of body corporate is permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its registered office at 201, 2nd floor, Sarvodaya, A – wing, Building No. 11, Plot No. 606, Khernagar, Bandra (E), Mumbai – 400 051, Maharashtra, not later than 48 hours before the meeting, as provided in Rule 70 of Companies (Court) Rules, 1959.

10. That the number and value of the vote of Equity Shareholders shall be in accordance with the books/register of the Applicant Company and where the entries in the books/register are disputed,

the Chairman shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

11. That the Chairman of the meeting to file affidavit of service as per Rule 76 of Companies (Court) Rules, 1959 not less than seven days before the date fixed for the holding of the meeting and do report to this Court that the direction regarding issue of notices and advertisement have been duly complied with.

12. That the Chairman of the meeting do report to this Court the result of the said meeting within thirty days of the conclusion of the meeting of the Equity Shareholders and the said report shall be verified by his affidavit.

13. That there are no Secured Creditors of the Applicant Company as stated in paragraph 26 of the Affidavit in support of the Company Summons for Direction. Hence, the question of convening and holding the meeting of Secured Creditors does not arise.

14. That convening and holding the meeting of the Unsecured Creditors of the Applicant Company, for the purpose of considering, and if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of Dollex Industries Limited ("Transferor Company") into Parvati Sweetners and Power Limited ("Transferee Company") and their respective Shareholders is

dispensed with in view of averments made in paragraph 27 of the Affidavit in Support of Summons for Directions, inter alia, stating that in terms of the Scheme of Amalgamation the Transferee Company will take over all the debts, liabilities, duties and obligations as well as be vested with all the assets and properties of the Applicant Company. After the Amalgamation, the total assets of the Transferee Company would be more than sufficient to discharge the liabilities of the Transferee Company and the Applicant Company. The Applicant Company undertakes to issue individual notice of the date of hearing of the Petition by Registered Post A.D. upon its Unsecured Creditors and also to publish notice of hearing of the Petition in local newspapers, viz "The Free Press Journal" in English Language and translation thereof in "Navshakti" in Marathi Language, both having circulation in Mumbai. The said undertaking is accepted.

15. That as per clause 6(i) of the scheme, upon issue of the equity shares by the Transferee Company to the relevant shareholders of the Transferor Company, the shares held by the Transferor Company in the Transferee Company, if any, shall stand cancelled with regard to their shareholding in the Transferee Company. The reduction of Share Capital of the Applicant Company shall be effected as an integral part of the Scheme and in view of the averments made in paragraph 29 of

the Affidavit in Support of Company Summons for Direction, inter alia, stating that reduction of Share Capital does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital. The Applicant Company undertakes to pass a Special Resolution pursuant to provisions of Section 100 of the Companies Act, 1956 in the Extra Ordinary General Meeting of its Equity Shareholders for reduction of Share Capital of the Applicant Company before the admission of the Company Scheme Petition. In view of above, the procedure prescribed under section 101 (2) of the Companies Act, 1956 is dispensed with. The said undertaking is accepted.

16. Counsel for the Petitioner Companies states that Clause 13 of the Scheme gives power to Board of Director of the Petitioner Companies to amend any part of the Scheme. The Learned Counsel for the Petitioner Companies on behalf of the Petitioner Company states power to the Board of Director with regard to clause 13 of the said Scheme will be subject to prior approval of the High Court, it is clarified that the power vested under clause 13 of the said Scheme will be subject to the approval of the High Court.

(B.P. Colabawalla, J.)

<u>CERTIFICATE</u>

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

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