IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SUMMONS FOR DIRECTION NO. 628 OF 2016

In the matter of the Companies Act, 1956 (1 of 1956) (and the rules made thereunder or any other Section for the time being in force);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of Apcotex Solutions India Private Limited ("Transferor Company") with Apcotex Industries Limited ("Transferee Company") And their respective Shareholders

**Apcotex Solutions India Private Limited,** a company incorporated under the provisions of Companies Act, 1956 having its Registered Office at Plot No 3/1, MIDC Industrial Area, Taloja 410208, Maharashtra, India. ) ) ) ) ) )……..Applicant Company

**<u>Called Summons for Direction for hearing</u>**

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the Applicant

Coram: B. P. Colabawalla, J

Date: 22nd July, 2016

**<u>MINUTES OF THE ORDER</u>**

**UPON** the application of the Applicant Company above named by a Company Summons for Direction **AND UPON HEARING** Mr. Hemant Sethi instructed by Hemant Sethi & Co., Advocates for the Applicant Company, AND UPON READING the Affidavit dated $04^{th}$ day of July, 2016 of Mr. Anand V Kumashi, Director of the Applicant Company, in support of Company Summons for Direction and the Exhibits therein referred to, **IT IS ORDERED THAT**:

1. The convening and holding the meeting of the Equity Shareholders of the Applicant Company for the purpose of considering and if thought fit, approving with or without modifications, the proposed Scheme of Amalgamation of Apcotex Solutions India Private Limited with Apcotex Industries Limited and their respective Shareholders is dispensed with in view of the consent given by both the Equity Shareholders of the Applicant Company, which are annexed as **Exhibit 'H1'** and **'H2'** to the affidavit in support of the Company Summons for Direction.

2. The convening and holding the meeting of the Secured Creditors of the Applicant Company for the purpose of considering and if thought fit, approving with or without modifications, the proposed Scheme of Amalgamation of Apcotex Solutions India Private Limited with Apcotex Industries Limited and their respective Shareholders is dispensed with in view of the averment made in paragraph 16 of the affidavit in support of Company Summons for Direction, inter-alia stating that rights of Secured Creditor of the Applicant Company is concerned, they will not be affected by the proposed Scheme of Amalgamation since post Scheme, the assets of the Transferee Company will be sufficient to discharge its liabilities and further it also does not involve any compromise or arrangement with any creditors of the Applicant Company and there is no dilution in securities provide to the Secured Lenders who will continue to hold charge over the respective assets post sanctioning of the Scheme and that the Applicant Company undertakes to issue individual notice of hearing of

petition by R.P.A.D to its sole Secured Creditors and also undertakes to publish the same in two local newspapers i.e. 'Free Press Journal', in English language and translation thereof in 'Navshakti', in Marathi language. The said undertaking is accepted.

3. The 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 modifications, the proposed Scheme of Amalgamation of Apcotex Solutions India Private Limited with Apcotex Industries Limited and their respective Shareholders is dispensed with in view of the averment made in paragraph 17 of the affidavit in support of Company Summons for Direction, inter alia stating that rights of Unsecured Creditors are concerned they will not be affected as the present Scheme is an Arrangement between the Applicant Company and its shareholders as contemplated under Section 391(1)(b) and not in accordance with the provisions of Section 391(1)(a) of the Companies Act, 1956 as there is no Compromise and/or Arrangement with the Creditors as no sacrifice is called for and in terms of the proposed Scheme, the Transferee Company will take over all the assets and liabilities of the Applicant Company and that the Applicant Company undertakes to issue individual notice of hearing of petition by R.P.A.D to all its Unsecured Creditors and also undertakes to publish the same in two local newspapers i.e. 'Free Press Journal', in English language and translation thereof in 'Navshakti', in Marathi language. The said undertaking is accepted.

4. That in view of the averments made in paragraphs (18) to (21) of the affidavit in support of the Summons for Direction, interalia stating that the Applicant Company is a wholly owned subsidiary of the Transferee Company and the Transferee Company along with its nominees holds 100% of the paid up capital of the Applicant Company and no new shares

are required to be issued to the members of the Applicant Company and in view of the judgement of this Court in Mahaamba Investment Limited Vs IDI Limited (2001) Company Cases 105 filing of a separate Company Summons for Direction and Company Scheme Petition in relation to the said Scheme by Apcotex Industries Limited, the Transferee Company is dispensed with.

(B. P. Colabawalla, J)

CERTIFICATE

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

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