

727155

# HIGH COURT, BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMPANY SCHEME PETITION NO. 574 OF 2016  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 628 OF 2016  
**APCOTEX SOLUTIONS INDIA PRIVATE LIMITED** ..... Petitioner

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

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners.  
Mr. D R Shah i/b Mr. Pankaj Kapoor for Regional Director.  
Mr. Vinod Sharma Official Liquidator, present in all the Company Scheme Petitions

CORAM: A.K. Menon, J.

DATE: 27<sup>th</sup> October, 2016

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1. Heard the Learned Advocate for the Petitioner Company. No objector has come before the court to oppose the Scheme 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 the Companies Act, 1956 and other applicable provisions of the Companies Act, 1956 / Companies Act, 2013 to the Scheme of Amalgamation of Apcotex Solutions India Private Limited with Apcotex Industries Limited and their respective Shareholders.
3. The learned Advocate for the Petitioner states that the Petitioner in Company Scheme Petition No. 574 of 2016 is presently engaged in business of manufacture of Nitrile Rubber and Nitrile Powder and Nitrile/PVC Blends and High Sterene Rubber.
4. The rationale for the merger is that the amalgamation of Petitioner Company with the Transferee Company will result in reducing the multiple layer inefficiencies, consolidation and synergies of operations, administrative convenience and reduction in administrative cost and overheads.
5. The learned Advocate for the Petitioner further states that the Petitioner Company is a wholly owned subsidiary of the Transferee Company and all the shares of the Petitioner Company are presently held by the Transferee Company, Apcotex Industries Limited and its nominee and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and the entire share capital of the Petitioner Company will stand cancelled and also in view of the judgement of this Court in Mahaamba Investments Limited Vs IDI Limited (2001) Company Cases 105, filing of a separate Company Summons for Direction and Company Scheme for Petition by Apcotex Industries Limited, the Transferee Company was dispensed with, by order dated 22<sup>nd</sup> July, 2016 passed in CSD NO. 628 of 2016.

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6. The Petitioner Company/Transferee Company approved the said Scheme by passing Board Resolutions which are annexed to the Company Scheme Petition of the Petitioner Company.
7. The learned Advocate for the Petitioner states that Petitioner Company has complied with all directions passed in Company Summons for Directions and that the Scheme has been filed in consonance with the order passed in Company Summons for Directions.
8. The learned Advocate for the Petitioner further states that the Petitioner Company has complied with all requirements as per directions of this Court and has filed necessary affidavit of compliance in the Court. Moreover, Petitioner Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder. The said undertaking is accepted.
9. The Regional Director has filed an Affidavit on 21<sup>st</sup> October, 2016 stating therein that save and except as stated in paragraph 6(i) and 6(ii) of the said affidavit, it appears according to Regional Director that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6(i) and 6(ii) of the said affidavit it is stated that:

*(i) That the Petitioner Companies had accepted the Purchase Method of accounting as set out in AS 14 however the Petitioner Companies should also shall pass accounting entries as mentioned in AS-5 of the Accounting Standards. Therefore, Deponent prays that the Hon'ble Court may pass such orders as deem fit.*

*(ii) The Office of the Asstt. Commissioner Income Tax, Circle 3(2)(2), Mumbai sent letter to this Directorate vide Letter No. ACIT 3 (2) (2)/Scheme of Amalgamation/2016-17 dated 23/08/2016, they have mentioned in the respective letter as mentioned at point (xiii) above. That the Deponent further submits 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*

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*the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

10. In-so-far as observations made in paragraph 6(i) of the Affidavit of the Regional Director are concerned, the Petitioner Company through its Counsel submits that the Transferee Company will comply with all applicable Accounting Standards. Further, in addition to compliance with the applicable Accounting Standards, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable Accounting Standard.
11. In-so-far as observations made in paragraph 6(ii) of Affidavit of the Regional Director are concerned, the Petitioner Company submits that the Transferee Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
12. The Learned Counsel for the Regional Director on instructions of Mr. R. K. Dalmia, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings and submissions given by the Petitioner Company. The said undertakings given by the Petitioner Company are accepted.
13. The Official Liquidator has filed his report on 24<sup>th</sup> October, 2016 in the Company Scheme Petition No 574 of 2016 stating that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved without being wound up.
14. From the material on record, the Scheme appears to be fair and reasonable and does not appear to be violative of any provisions of law or contrary to public policy.

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15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition is made absolute in terms of prayer clauses (a) to (c) of the Petition.
16. The Petitioner Company/Transferee Company to lodge a copy of this order and Scheme, duly authenticated by the Company Registrar, High Court (O.S.), 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 issuance of Order.
17. Petitioner Company/Transferee Company 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 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.
18. The Petitioner Company 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 the date of the order.
19. Filing and issuance of the drawn up order is dispensed with.
20. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

TRUE-COPY

*R. C. KALE*  
(R. C. KALE) 21-11-16  
COMPANY REGISTRAR  
HIGH COURT (O.S.)  
BOMBAY

(A.K. Menon, J.)

**CERTIFICATE**

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

Uploaded by: - Shankar Gawde, Stenographer

TRUE COPY

*285*  
15/11/16  
Section Officer  
High Court, Appellate Side  
Bombay

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**SCHEME OF AMALGAMATION  
OF  
APCOTEX SOLUTIONS INDIA PRIVATE LIMITED  
(EARLIER KNOWN AS OMNOVA SOLUTIONS INDIA PRIVATE  
LIMITED)  
WITH  
APCOTEX INDUSTRIES LIMITED  
AND  
THEIR RESPECTIVE SHAREHOLDERS  
UNDER SECTIONS 391 TO 394 OF THE COMPANIES ACT, 1956  
AND THE RULES MADE THEREUNDER OR ANY OTHER  
SECTION FOR THE TIME BEING IN FORCE**

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The Scheme of Amalgamation is presented under Sections 391 to 394 and other applicable provisions of the Companies Act, 1956 for amalgamation of Apcotex Solutions India Private Limited ("Apcotex Solutions"), earlier known as OMNOVA Solutions India Private Limited with Apcotex Industries Limited ("Apcotex"). This Scheme also provides for various other matters consequential or otherwise integrally connected herewith.

The purpose and rationale of this Scheme is as under:

- Reducing the multiple layer inefficiencies
- Consolidation and synergies of operations
- Administrative convenience
- Reduction in administrative cost and overheads

The Scheme is divided into following parts:

- (i) **Part A** – deals with definitions and Share Capital;
- (ii) **Part B** – deals with the amalgamation of Apcotex Solutions India Private Limited with Apcotex Industries Limited
- (iii) **Part C** - deals with General Terms and Conditions.

## PART A

### 1. DEFINITIONS

In this Scheme, unless inconsistent with the subject or context, the following expressions shall have the following meaning:

- 1.1 **“Act” or “the Act”** means the Companies Act, 1956 and Companies Act, 2013 (to the extent applicable) and rules made thereunder and shall include any statutory modifications, amendments or re-enactment thereof for the time being in force. Any references to the provisions of the Companies Act, 1956 shall be construed to be references to the corresponding provisions in the Companies Act, 2013.
- 1.2 **“Apcotex” or “Transferee Company”** means Apcotex Industries Limited, a Company incorporated under the Companies Act, 1956 and having its registered office at Plot No3/1, MIDC Industrial Area, Taloja, 410208, Maharashtra
- 1.3 **“Apcotex Solutions” or “Transferor Company”** means **Apcotex Solutions India Private Limited (earlier known as OMNOVA Solutions India Private Limited)**, a Company incorporated under the Companies Act, 1956 and having its registered office at Plot No3/1, MIDC Industrial Area, Taloja, 410208, Maharashtra
- 1.4 **“Appointed Date”** means 31<sup>st</sup> March, 2016 or such other date as may be fixed by the High Court or such other competent authority as may be applicable.
- 1.5 **“Board of Directors” or “Board”** means the board of directors of Apcotex Solutions and Apcotex or of any one or the relevant one of Apcotex Solutions or Apcotex, as the case may be, and shall include a duly constituted committee thereof.

- 1.6 "Court" or "High Court" means the High Court of Judicature at Bombay and shall include the National Company Law Tribunal or any other like judicial body, if applicable.
- 1.7 "Effective Date" means the date on which the certified copies/authenticated copies of the orders sanctioning this Scheme of Amalgamation, passed by the High Court of Judicature at Bombay or such other competent authority, as may be applicable, are filed with the Registrar of Companies, Mumbai.
- 1.8 "Government" means any applicable central, state or local government, legislative body, regulatory or administrative authority, agency or commission or any court or tribunal, board, bureau, instrumentality, judicial or arbitral body having jurisdiction over the territory of India.
- 1.9 "Scheme" or "the Scheme" or "this Scheme" means this Scheme of Amalgamation in its present form or with any modification(s) made under clause 16 of this scheme as approved or directed by the High Court of Judicature at Bombay or any other appropriate authority.
- 1.10 "Stock Exchange" means BSE Limited and National Stock Exchange of India Limited.
- 1.11 All terms and words not defined in this Scheme shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning ascribed to them under the Act, the Securities Contract (Regulation) Act, 1956, the Depositories Act, 1996 and other applicable laws, rules, regulations, bye-laws, as the case may be, or any statutory modification or re-enactment thereof from time to time.

## 2. DATE OF TAKING EFFECT AND OPERATIVE DATE

The Scheme set out herein in its present form or with any modification(s) and amendment(s) made under clause 16 of the





Scheme shall be effective from the Appointed Date but shall be operative from the Effective Date.

3. **SHARE CAPITAL**

3.1 The share capital of Apcotex Solutions as on 30<sup>th</sup> November, 2015 is as under:

Particulars	Amount (in Rs.)
<b>Authorised Capital</b>	
16,160,000 Equity Shares of Rs. 10/- each	161,600,000
<b>Total</b>	<b>161,600,000</b>
<b>Issued, Subscribed and Paid-up Capital</b>	
16,099,272 Equity Shares of Rs. 10/- each fully paid up	160,992,720
<b>Total</b>	<b>160,992,720</b>

Subsequent to 30<sup>th</sup> November, 2015 there is no change in the issued, subscribed and paid-up capital of Apcotex Solutions. As on date, Apcotex Solutions is a wholly-owned subsidiary of Apcotex as The entire share capital of Apcotex Solutions is held by Apcotex and its nominees.

3.2 The share capital of Apcotex as on 31<sup>st</sup> March, 2015 is as under:

Particulars	Amount (in Rs.)
<b>Authorised Capital</b>	
29,940,000 Equity Shares of Rs 5/- each	149,700,000
500 Preference Shares of Rs 100/- each	50,000
50,000 Unclassified Shares of Rs 5/- each	250,000
<b>Total</b>	<b>150,000,000</b>
<b>Issued, Subscribed &amp; Paid up Capital</b>	
10,368,992 Equity Shares of Rs.5/- each (Including Rs 390,255 towards 78,051 shares forfeited at Rs 5/-each)	52,235,215
<b>Total</b>	<b>52,235,215</b>

Subsequent to 31<sup>st</sup> March, 2015, there is a change in the issued, subscribed and paid up capital of Apcotex. Accordingly, the issued, subscribed and paid up share capital of Apcotex as on 31<sup>st</sup> December 2015 is as under:

Particulars	Amount (in Rs.)
<b>Authorised Capital</b>	
29,940,000 Equity Shares of Rs 5/- each	149,700,000
500 Preference Shares of Rs 100/- each	50,000
50,000 Unclassified Shares of Rs 5/- each	250,000
<b>Total</b>	<b>150,000,000</b>
<b>Issued, Subscribed &amp; Paid up Capital</b>	
20,737,984 Equity Shares of Rs.5/- each	103,689,920
Amount forfeited on 78,051 shares at Rs 5/- each	390,255
<b>Total</b>	<b>104,080,175</b>

Subsequent to 31<sup>st</sup> December, 2015 there has been no change in the issued, subscribed and paid up capital of Apcotex.

The shares of Apcotex are currently listed on the Bombay Stock Exchange and the National Stock Exchange.

**PART B**

**4 TRANSFER AND VESTING OF UNDERTAKING OF APCOTEX SOLUTIONS**

- 4.1 Upon coming into effect of this Scheme and subject to the provisions of this Scheme, with effect from the Appointed Date, the entire business and whole of the undertaking of Apcotex Solutions shall be vested in and/or be deemed to have been vested in and amalgamated with Apcotex, as a going concern, without any further deed or act, together with all its assets, liabilities, properties, rights, benefits and interest therein, subject to existing charges thereon in favour of banks and financial institutions or otherwise, as the case may be and subject to the provisions of the Scheme in accordance with Sections 391-394 of the Act and all other applicable provisions of law, if any. The immoveable assets forming part of the undertaking of Apcotex Solutions shall stand legally transferred to and vested in Apcotex with effect from the Appointed Date under and pursuant to order of the High Court approving the Scheme, without requiring the execution or registration of any other deed or document or instrument of conveyance, and the order of the High Court shall for all purposes be treated as an instrument conveying such immoveable assets to Apcotex.
- 4.2 Without prejudice to the generality of the foregoing:
- (a) the assets of Apcotex Solutions shall include, without limitation:
- (i) all properties and assets (whether real or personal, in possession or reversion, corporeal or incorporeal, movable or immovable, tangible or intangible) of whatsoever nature, and wherever situated, including but not limited to immovable properties, plant and machinery, furniture and fixtures, office equipment, other equipment, computers, air



- conditioners and refrigerators, investments, cash on hand, stock in trade, advances, claims whether recognized or not;
- (ii) all licenses, permissions, approvals and consents including environmental approvals and approvals of various regulatory bodies;
  - (iii) all intellectual property rights including copy rights, trade marks, logos and brands whether registered or not and other intellectual property rights;
  - (iv) all rights relating to property including allotments, registrations, lease/tenancy rights, sublicensing, subleasing rights or rights to grant sub tenancy, easement rights, permissions, approved use, title, interest, contracts, consents, approvals or powers of every kind, nature and descriptions whatsoever and wherever situated as on the Appointed Date;
  - (v) all rights and benefits under any contracts with customers, suppliers, sellers, shareholders and other counterparties; and
  - (vi) all tax incentives, minimum alternate tax credit, tax losses and unabsorbed depreciation under the Income-tax Act, accumulated book losses and depreciation, CENVAT credit, sales tax credit, all other rights.
- (b) the liabilities shall include all debts, liabilities, contingent liabilities, duties and obligations of Apcotex Solutions as on the Appointed Date, whether or not provided in the books of Apcotex Solutions which shall be deemed to be the debt, liabilities, duties and obligations of Apcotex as the case may be, and it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, liabilities, contingent liabilities, duties and obligations have arisen in order to give effect to the provisions of this sub-clause.

Provided that the Scheme shall not operate to enlarge the security for the said liabilities of Apcotex Solutions which shall vest in Apcotex by virtue of the Scheme and Apcotex shall not be obliged to create any further, or additional security thereof after the amalgamation has become effective or otherwise. The transfer / vesting of the assets of Apcotex Solutions as aforesaid shall be subject to the terms and conditions of the existing charges / hypothecation / mortgages over or in respect of the assets or any part thereof of Apcotex.

- 4.3 (a) All the assets, licenses, permits, quotas, allotments, registrations including approvals of various regulatory bodies, permissions, incentives, benefits, loans, subsidies, concessions, grants, rights, claims, leases, tenancy rights, copy rights, trade marks, logos, brands, liberties, special status and other benefits or privileges enjoyed or conferred upon or held or availed of by and all rights and benefits that have accrued to Apcotex Solutions upto the Appointed Date or after the Appointed Date and prior to the Effective Date in connection with or in relation to the operations of Apcotex Solutions shall, pursuant to the provisions of Section 394(2) of the Act, without any further act, instrument or deed, be and stand transferred to and vested in and or be deemed to have been transferred to and vested in and be available to Apcotex so as to become as and from the Appointed Date the assets, licenses, permits, quotas, allotments, registrations approvals including permissions, exemptions, exclusions, incentives, loans, subsidies, concessions, grants, rights, claims, leases, tenancy rights, liberties, special status and other benefits or privileges of Apcotex and shall remain valid, effective and enforceable on the same terms and conditions to the extent permissible under law.



Provided that notwithstanding anything contained in any document, papers or writings executed by Apcotex Solutions, this Scheme shall not operate to enlarge the security for any loan, deposit or facility created by or available to Apcotex Solutions which shall vest in Apcotex by virtue of the Scheme and Apcotex shall not be obliged to create any further, or additional security therefor as a condition for approval of the Scheme, after the Scheme has become effective or otherwise.

- (b) On the scheme becoming effective, all moveable assets including cash in hand, if any, of Apcotex Solutions, capable of passing by manual delivery or constructive delivery or by endorsement and delivery, shall be so delivered or endorsed and delivered, as the case may be to Apcotex.
- (c) In respect of all movables other than those specified in sub clause (b) above, including sundry debtors, outstanding loans and advances, if any recoverable in cash or in kind or for value to be received, bank balances and deposits, if any, with government, semi government, local and other authorities and bodies, customers and other persons, shall, without any further act, instrument or deed, be transferred to and stand vested in and, or be deemed to be transferred to and stand vested in Apcotex under the provisions of Sections 391 to 394 of the Act.
- (d) The entitlement to various benefits under incentive schemes and policies in relation to Apcotex Solutions shall stand transferred to and be vested in and/or be deemed to have been transferred to and vested in Apcotex together with all benefits, entitlements and incentives of any nature whatsoever. Such entitlements shall include (but shall not be limited to) income tax (including, but not limited to available tax losses and unabsorbed depreciation) sales tax, value added tax, excise duty, service tax, customs and other incentives in relation to Apcotex Solutions to be claimed

by Apcotex with effect from the Appointed Date as if Apcotex was originally entitled to all such benefits under such incentive scheme and/or policies, subject to continued compliance by Apcotex of all the terms and conditions subject to which the benefits under such incentive schemes were made available to Apcotex Solutions.

- (e) All cheques and other negotiable instruments, payment orders received in the name of Apcotex Solutions after Effective Date shall be accepted by the bankers of Apcotex and credited to the account of Apcotex. Similarly, the bankers of Apcotex shall honour the cheques issued by Apcotex Solutions for payment after the Effective Date.
- (f) The provisions of this Scheme as they relate to the merger of Apcotex Solutions with Apcotex, have been drawn up to comply with the conditions relating to "amalgamation" as defined under Section 2(1B) of the Income-tax Act, 1961. If any terms or provisions of the Scheme are found or interpreted to be inconsistent with the provisions of the said Section of the Income-tax Act, 1961, at a later date including resulting from an amendment of law or for any other reason whatsoever, the provisions of the said Section of the Income-tax Act, 1961, shall prevail and the Scheme shall stand modified to the extent determined necessary to comply with Section 2(1B) of the Income-tax Act, 1961. Such modification will, however, not affect the other parts of the Scheme.

## 5 CONSIDERATION

As on the Appointed Date, the entire issued, subscribed and paid-up share capital of Apcotex Solutions is directly held by Apcotex along with its nominees. Upon the Scheme becoming effective, no shares of Apcotex shall be allotted in lieu or exchange of its holding in Apcotex Solutions and Apcotex's investment in the entire share

capital of Apcotex Solutions shall stand cancelled in the books of Apcotex. Upon the coming into effect of this Scheme, the share certificates, if any, and/or the shares in electronic form representing the shares held by Apcotex in Apcotex Solutions shall be deemed to be cancelled without any further act or deed for cancellation thereof by Apcotex, and shall cease to be in existence accordingly.

## 6 ACCOUNTING TREATMENT

On the Scheme becoming effective, Apcotex shall account for the amalgamation of Apcotex Solutions in its books of accounts with effect from the Appointed Date as per the 'Purchase Method', as prescribed in Accounting Standard-14 "Accounting for Amalgamations" issued by the Institute of Chartered Accountants of India such that:

- 6.1 All the assets and liabilities (including intangibles not recorded), being the net assets excluding reserves of Apcotex Solutions transferred to and vested in Apcotex pursuant to the Scheme shall be recorded by Apcotex, at their respective fair values, to be decided by the Board of Directors of Apcotex, as on the Appointed Date
- 6.2 With effect from the Appointed Date and upon the Scheme becoming effective, the investment held by Apcotex in Apcotex Solutions shall stand cancelled.
- 6.3 Loans, advances, amount receivable or payable inter-se between Apcotex and Apcotex Solutions as appearing in the books of accounts of Apcotex and Apcotex Solutions, if any, shall stand cancelled. Further no interest shall be provided on loan and advances or outstanding, if any, after Appointed Date.
- 6.4 The excess of net assets of Apcotex Solutions as per clause 6.1 above, after adjustment of the cancellation of investments in Apcotex Solutions as per clause 6.2 above and inter company loans and advances or outstanding obligation as mentioned clause 6.3 above





would be recorded as Capital Reserve. The shortfall, if any shall be debited to the Goodwill Account of Apcotex.

- 6.5 In case of any difference in accounting policy between Apcotex and Apcotex Solutions, the impact of the same till the Appointed Date will be quantified and adjusted in the reserves of Apcotex to ensure that the financial statements of Apcotex reflect the financial position on the basis of consistent accounting policy.

**7 DISSOLUTION WITHOUT WINDING UP**

On the Scheme becoming effective, Apcotex Solutions shall stand dissolved without being wound-up.


**8 CONDUCT OF BUSINESSES UNTIL EFFECTIVE DATE**

- 8.1 With effect from the Appointed Date and upto and including the Effective Date:

(a) Apcotex Solutions shall carry on and be deemed to have been carrying on its business and activities and shall stand possessed of and hold all of its properties and assets for and on account of and in trust for Apcotex. Apcotex Solutions hereby undertakes to hold the said assets and discharge liabilities with utmost prudence until the Effective Date.

(b) Apcotex Solutions shall carry on its businesses and activities with reasonable diligence, business prudence and shall not without the prior written consent of Board of Directors of Apcotex, make any further issue of shares by way of rights or bonus or otherwise, alienate, charge, mortgage, encumber or otherwise deal with or dispose of its undertaking or any part thereof except in the ordinary course of business nor shall undertake any new business or a substantial expansion of its existing business, nor shall it create any new financial liabilities without the consent of Board of Directors of Apcotex except in the ordinary course of business.



- 
- (c) All the profits or income accruing or arising to Apcotex Solutions or expenditure or losses arising to or incurred by Apcotex Solutions, with effect from the said Appointed Date shall for all purposes and intents be treated and be deemed to be and accrue as the profits or income or expenditure or losses of Apcotex.
- (d) Apcotex Solutions shall be entitled to declare and pay dividends to its shareholders subject to prior approval of the Board of Directors of Apcotex.
- (e) Apcotex Solutions and Apcotex shall co-operate with each other for smooth transfer of the undertaking from Apcotex Solutions to Apcotex and Board of Directors of Apcotex Solutions and Apcotex shall be empowered to give effect to the Scheme in all aspects as may be necessary or expedient including settling any question or difficulties arising in relation to the Scheme in such manner as they deem fit to attain the objectives of this Scheme and their decision in this regard shall be final and binding.

## 9 LEGAL PROCEEDINGS

- 9.1 All legal proceedings, including arbitration proceedings, of whatsoever nature, by or against Apcotex Solutions pending and / or arising at or after the Appointed Date, as and from the Effective Date shall not abate or be discontinued or be in any way prejudicially affected by reason of the Scheme or by anything contained in this Scheme but shall be continued and enforced by or against Apcotex in the manner and to the same extent as would or might have been continued and enforced by or against Apcotex Solutions.
- 9.2 After the Appointed Date, if any proceedings are taken by or against Apcotex Solutions the same shall be defended by and at the cost of Apcotex.
- 9.3 Apcotex undertakes to have all legal or other proceedings initiated by or against Apcotex Solutions referred to in clause 9.1 above

transferred into its name and to have the same continued, prosecuted and enforced by or against Apcotex after the Effective Date.

**10 CONTRACTS, DEEDS AND OTHER INSTRUMENTS**

- 10.1 Subject to other provisions contained in this Scheme all contracts, deeds, bonds, agreements, arrangements, schemes, insurance policies, indemnities guarantees and other instruments of whatever nature to which Apcotex Solutions is party subsisting or having effect immediately before amalgamation shall be in full force and effect against or in favour of Apcotex and may be enforced fully and effectively as if instead of Apcotex Solutions, Apcotex had been the party thereto.
- 10.2 With effect from the Appointed Date, all permits, quotas, rights, entitlements, industrial and other licences, branches, brand registrations, offices, depots and godowns, trademarks, trade names, know-how and other intellectual property, patents, copyrights, privileges and benefits of all contracts, agreements and all other rights including lease rights, licenses, powers and facilities of every kind, nature and description whatsoever to which Apcotex Solutions is party or to the benefit of which Apcotex Solutions may be eligible and which are subsisting or having effect immediately before the Effective Date, shall be and remain in full force and effect in favour of or against Apcotex as the case may be, and may be enforced as fully and effectually as if, instead of Apcotex Solutions, Apcotex had been a party or beneficiary or obligee thereto.
- 10.3 With effect from the Appointed Date, any transferable statutory licenses, no objection certificates, permissions, or approvals or consents required to carry on operations of Apcotex Solutions shall stand vested in or transferred to Apcotex without further act or deed, and shall be appropriately mutated by the statutory authorities concerned therewith in favour of Apcotex upon the vesting and transfer of undertaking of Apcotex Solutions pursuant to the Scheme.



The benefit of all transferable statutory and regulatory permissions, environmental approvals and consents including the statutory licenses, permissions or approvals or consents required to carry on the operations of Apcotex Solutions shall vest in and become available to Apcotex pursuant to the Scheme.

10.4 Apcotex at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required under any law or otherwise, will execute deeds of confirmation or other writings or arrangements with any party to any contract or arrangement in relation to the undertaking of Apcotex Solutions to which Apcotex Solutions is a party in order to give formal effect to the above provisions. Apcotex shall, under the provisions of this Scheme, be deemed to be authorized to execute any such writings on behalf of Apcotex Solutions and to carry out or perform all such formalities or compliances referred to above on the part of Apcotex Solutions.

10.5 Upon the coming into effect of this Scheme, the resolutions, if any, of Apcotex Solutions, which are valid and subsisting on the Effective Date shall continue to be valid and subsisting and be considered as resolutions of Apcotex and if any such resolutions have upper monetary or other limits being imposed under the provisions of the Act, or any other applicable provisions, then the said limits shall be added and shall constitute the aggregate of the said limits in Apcotex.

## 11 TAXES

11.1 Upon coming into effect of this Scheme, from the Appointed Date, all tax payable by Apcotex Solutions under Income-tax Act 1961, Customs Act, 1962, Service tax, Value Added Tax, Sales tax provisions or other applicable laws/ regulations dealing with taxes/duties/levies (hereinafter referred to as "tax laws") shall be to the account of Apcotex. Similarly all credits for tax deduction at source on income of Apcotex Solutions, or obligation for deduction of tax at source on any payment made by or to be made by Apcotex

Solutions shall be made or deemed to have been made and duly complied with by Apcotex if so made by Apcotex Solutions. Similarly any advance tax payment required to be made for by the specified due dates in the tax laws shall also be deemed to have been made by Apcotex if so made by Apcotex Solutions. Further Minimum Alternate Tax paid by Apcotex Solutions under Income tax Act 1961, shall be deemed to have been paid on behalf of Apcotex and Minimum Alternate Tax Credit (if any) of Apcotex Solutions as on or accruing after the Appointed Date shall stand transferred to Apcotex and such credit would be available for set off against the tax liabilities of Apcotex. Any refunds/credit under the tax laws due to Apcotex Solutions consequent to assessments made on Apcotex Solutions and for which no credit is taken in the accounts as on the date immediately preceding the Appointed Date shall also belong to and be received by Apcotex.

- 11.2 Further any tax holiday/deduction/exemption/ tax losses and unabsorbed depreciation enjoyed by Apcotex Solutions under Income-tax Act 1961 would be transferred to Apcotex.
- 11.3 On or after the Effective Date, Apcotex Solutions and Apcotex are expressly permitted to revise their financial statements and returns along with prescribed forms, filings and annexures under the Income tax Act, 1961 (including for the purpose of re-computing tax on book profits and claiming other tax benefits), service tax law and other tax laws, and to claim refunds and/or credits for taxes paid, and to claim tax benefits etc. and for matters incidental thereto, if required to give effect to the provisions of the Scheme from the Appointed Date.
- 11.4 All taxes (including income tax, sales tax, excise duty, service tax, value added tax etc.) paid or payable by Apcotex Solutions in respect of the operations and/or profits of the business before the Appointed Date shall be on account of Apcotex Solutions and in so far it related to the tax payment (including without limitation, sales tax, excise



such fund or funds shall become those of Apcotex. It is clarified that the services of the staff, workmen and employees of Apcotex Solutions will be treated as having been continuous for the purpose of the said fund or funds.

12.5 Additionally, the contributions and all accretions thereto, in provident fund account, super annuation fund, gratuity fund and other benefit funds if any, of which the employees of Apcotex Solutions are members or beneficiaries till the Effective Date shall with the approval of the concerned authorities, be transferred to the relevant funds of Apcotex for the benefit of the employees of Apcotex Solutions on terms no less favourable. In the event that Apcotex has its own funds in respect of any of the funds referred to above, such investments shall, subject to necessary approvals and permissions, be transferred to the relevant funds of Apcotex. In the event that Apcotex does not have its own fund in respect of any of the aforesaid matters, Apcotex may subject to necessary approvals and permissions continue to contribute in respect of employees of Apcotex Solutions to the relevant fund or accounts of Apcotex Solutions. Such contributions and other balances pertaining to the employees of Apcotex Solutions shall be transferred to the funds or accounts created by Apcotex on creation of relevant funds or accounts by Apcotex.

12.6 With effect from the first of the dates of filing of this Scheme with the High Court and upto the Effective Date, Apcotex Solutions shall not vary or modify the terms and conditions of employment of any of its employees, except with the written consent of Apcotex, unless it is in the ordinary course of business. However, the terms and conditions of their employment with Apcotex shall be no less favourable than those on which they were engaged in Apcotex Solutions.



13 **SAVING OF CONCLUDED TRANSACTIONS**

The transfer and vesting of businesses under clause 4 above and the continuance of proceedings by or against Apcotex Solutions above shall not affect any transaction or proceedings already concluded by Apcotex Solutions on or after the Appointed Date till the Effective Date, to the end and intent that Apcotex accepts and adopts all acts, deeds and things done and executed by Apcotex Solutions in respect thereto as done and executed on behalf of itself.





**PART C – GENERAL TERMS & CONDITIONS**

**14 COMBINATION OF AUTHORISED SHARE CAPITAL AND AMENDMENT OF MEMORANDUM AND ARTICLES OF ASSOCIATION**

14.1 The authorised share capital of Apcotex Solutions aggregating to Rs 161,600,000 divided into 16,160,000 equity shares of Rs 10/- each shall stand transferred to and combine with the authorised share capital of Apcotex and shall be re-classified without any further act or deed. The filing fees and stamp duty already paid by Apcotex Solutions on its authorised share capital shall be deemed to have been so paid by Apcotex on the combined authorised share capital and accordingly Apcotex shall not be required to pay any fees/stamp duty on the authorised share capital so increased.

14.2 It is hereby provided that the aforesaid combination of authorised share capital shall become operative on the scheme becoming effective and subject to the requisite resolutions passed at the annual general meeting of Apcotex.

14.3 Pursuant to the Scheme, the authorised share capital of Apcotex will be as under:

Particulars	Amount (in Rs.)
<b>Authorised Capital</b>	
62,260,000 Equity Shares of Rs 5/- each	311,300,000
500 Preference Shares of Rs 100/- each	50,000
50,000 Unclassified Shares of Rs 5/- each	250,000
<b>Total</b>	<b>311,600,000</b>

14.4 Clause V of the Memorandum of Association of Apcotex be substituted by the following clause:

*"The Authorised Share Capital of the Company is Rs 311,600,000 (Rupees Thirty One Crore and Sixteen Lakhs Only) divided into 62,260,000 (Six Crore Twenty Two Lakhs and Sixty Thousand) Equity Shares of Rs 5/- (Rupees Five Only) each and 500 (Five Hundred) Preference Shares of Rs 100/- (One Hundred) each and 50,000 (Fifty Thousand) Unclassified Shares of Rs 5/- (Rupees Five) each."*

- 14.5 Clause 2(a) of the Articles of Association of Apcotex be substituted by the following clause:

*"The Authorised Share Capital of the Company is Rs 311, 600,000 (Rupees Thirty One Crore and Sixteen Lakhs Only) divided into 62,260,000 (Six Crore Twenty Two Lakhs and Sixty Thousand) Equity Shares of Rs 5/- (Rupees Five Only) each and 500 (Five Hundred) Preference Shares of Rs 100/- (One Hundred) each and 50,000 (Fifty Thousand) Unclassified Shares of Rs 5/- (Rupees Five) each."*

- 14.6 Apcotex shall file the requisite documents/information with the Registrar of Companies or any other Applicable Authority for such increase of the authorised share capital and amendment of its Memorandum of Association and Articles of Association.

## 15 APPLICATION TO THE HIGH COURT

Apcotex Solutions shall make applications / petitions under Sections 391 to 394 and other applicable provisions of the Act to the High Court for sanction of this Scheme and for dissolution of Apcotex Solutions without being wound-up. Apcotex shall, if required, make and file applications / petitions to the High Court, under whose jurisdiction the registered office of Apcotex is situated, for sanctioning this Scheme. Any such application shall upon constitution of the National Company Law Tribunal under Section 10FB of the Act, be made and/or pursued before the National Company Law Tribunal, if so required. In such event references in this Scheme to the High Court shall be construed as references to the National Company Law

Tribunal and/or appropriate Benches thereof as the context may require.

**16 MODIFICATION / AMENDMENT TO THE SCHEME**

- 16.1 The Board of Directors or any committee thereof authorised in this behalf of Apcotex Solutions and Apcotex, may consent, on behalf of respective companies, to any modifications or amendments of the Scheme or to any conditions or limitations that the High Court may deem fit to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them (i.e. the Board of Directors) and solve all difficulties that may arise for carrying out the Scheme and do all acts, deeds and things necessary for putting the Scheme into effect. No modification or amendment to the Scheme will be carried out or effected by the Board without approaching the High Court.
- 16.2 For the purpose of giving effect to this Scheme or to any modification thereof the Board of Directors, or any committee thereof authorised in this behalf of Apcotex may give and is authorised to give such directions including directions for settling any question of doubt or difficulty that may arise.
- 16.3 If the event of any of the conditions that may be imposed by the High Court or other authorities is unacceptable for any reason by Apcotex Solutions or Apcotex, then Apcotex Solutions and Apcotex are at liberty to withdraw the Scheme.

**17 CONDITIONALITY OF THE SCHEME**

The Scheme is and shall be conditional upon and subject to the following:

- 17.1 The Scheme being approved by the requisite majority of the members and/or creditors of Apcotex Solutions and Apcotex and /or by such

other persons as may be required under the Act and as directed by the High Court;

17.2 The requisite sanctions and approvals of any Government Authority including Stock Exchange and Securities and Exchange Board of India, as may be required by law, in respect of the Scheme being obtained; and

17.3 The sanction of this Scheme by the High Court and copies of the order of the High Court sanctioning the Scheme being filed with the Registrar of Companies, Maharashtra.

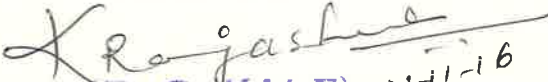
**18 EFFECT OF NON-RECEIPT OF APPROVALS / SANCTIONS**

In the event of any of the said sanctions and approvals referred to in Clause 17 not being obtained or for any other reason, the Scheme cannot be implemented on or before 31<sup>st</sup> December 2017 or within such further period(s) that the Boards of Apcotex Solutions and Apcotex may mutually agree upon, and/or Apcotex Solutions and/or Apcotex withdraw from this Scheme pursuant to Clause 16 above, the Scheme shall become null and void and in such event no rights or liabilities whatsoever shall accrue to or be incurred by Apcotex Solutions and Apcotex. In such event, each party shall bear and pay its respective costs, charges and expenses for and/or in connection with the Scheme unless otherwise mutually agreed.

**19 COSTS, CHARGES & EXPENSES**

All costs, charges, taxes including duties, levies and all other expenses, if any (save as expressly otherwise agreed), incurred in carrying out and implementing this Scheme and matters incidental thereto, shall be borne by Apcotex.

\*\*\*

**TRUE-COPY**  
  
**(R. C. KALE)** 21-11-16  
COMPANY REGISTRAR  
HIGH COURT (O.S.)  
BOMBAY

23

**CERTIFIED TRUE COPY**  
**For HEMANT SETHI & CO.**

  
**ADVOCATES**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMPANY SCHEME PETITION NO. 574 OF 2016  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 628 OF 2016

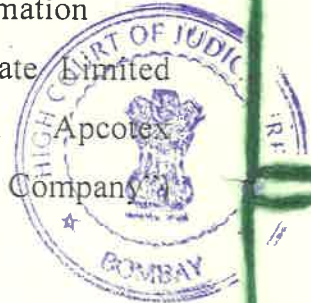
In the matter of the Companies Act, 1956 (1 of 1956) (and the rules made thereunder or any other Section for the time being in force)

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**

..... Petitioner

**AUTHENTICATED COPY OF MINUTES OF ORDER  
DATED 27<sup>th</sup> DAY OF OCTOBER 2016 AND THE  
SCHEME ANNEXED TO THE PETITION**

Applied for authenticated copies on... 27/10/16  
Authenticated copies submitted on... 15/11/16  
Engrossed on ... 21/11/16  
Examined by ... Sanket  
Compared with... Mona  
Ready on... 21 NOV 2016  
Delivered on... 22 NOV 2016

HS

**HEMANT SETHI & CO  
ADVOCATES FOR PETITIONER**