

# HIGH COURT, BOMBAY

0933949

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.966 OF 2007

CONNECTED WITH

COMPANY APPLICATION NO.1002 OF 2007

In the matter of sections 100,  
391 and 392 of the Companies Act,  
1956;

And

In the matter of Scheme of  
Compromise or Arrangement between  
JD Orgochem Ltd and its Secured  
Creditors and Equity  
Shareholders

JD Orgochem Ltd.

.. Petitioner

WITH

COMPANY APPLICATION NO.53 OF 2008

IN

COMPANY PETITION NO.966 OF 2007

J.D.Orgochem Ltd.

.. Petitioner/  
Respondent

And

Dyes and Chemical Workers Union

.. Applicant

Mr.Hemant Sethi i/by Hemant Sethi & Co for petitioner.  
Ms.Priya Ranade i/by Harshal & Co for UTI.  
Mr.C.J.Joy i/by S.K.Mohapatra for Regional Director.  
Mr.S.M.Oak with Ms.Bhavana Mhatre i/by Ms.Gayatri Singh  
for workers & applicant in C.A.No.53 of 2008.

CORAM: S.C.DHARMADHIKARI J.


DATE : 20th June, 2008

P.C.

1. This Company Petition has been filed under  
sections 100, 391 and 392 of the Companies Act, 1956.  
Sanction of this Court is sought to the scheme of  
compromise arising between petition company and its

secured creditors so also equity shareholders.

2. In the petition it has been pointed out that the petitioner was incorporated on 05th October, 1973. Thereafter, name of the petitioner underwent change. After a fresh certificate of incorporation, the present name of the company has been inserted in the scheme as well as proceedings.




3. After setting out the objects, share capital and the financial position, it is contended that the petitioner manufactures dyes, dyes intermediates and organic chemicals. Its manufacturing facilities are at Thane-Belapur Industrial area and MIDC Industrial area, Patalganga, District Raigad. Both plants of the petitioner are closed. The contention is that the operations have become un-economic. In order to meet the business and long-term working capital requirements, the petitioner company is required to obtain financial assistance from banks and financial institutions by way of secured loans and privately placed secured debentures. The securities are set out and thereafter the market position and the losses are referred to. The accumulated losses leading to reference under BIFR and the petitioner being declared a sick company so also rehabilitation scheme are referred to. Subsequently some of secured creditors exercised their rights under the Securitization and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002 (for short Securitization Act). In the light of the exercise of the powers conferred by Securitization Act by a majority of secured creditors the reference before BIFR has abated. This is the position in terms of statutory provisions.

4. Now, the present scheme, according to petitioner is for revival of operations through induction of fresh equity resources, sale of surplus assets to retire a part of the unsustainable debt and reorganization of the remaining debt burden to sustainable level through a comprehensive restructuring-cum-waivers of the liabilities. The scheme envisages sale of surplus assets and restructuring of the debt. The present debt burden of the company cannot be satisfied and that is how the petition averments proceed. Further, it is contended that the revival scheme is prepared with the help of Asset Reconstruction Company (India) Ltd. The said agency/company had approved the scheme in particular. They are the majority secured creditors. It is in such circumstances and the above factual background that the sanction is sought. The object of the scheme and its salient features are set out in the petition. A copy of the scheme is also annexed to the petition.

5. It is pointed out that the statutory compliance



was made in as much as Company Application No.1002 of 2007 was moved and direction sought with regard to convening of meetings of the secured creditors (1st and 2nd charge holders) and equity share holders. The meetings were directed to be convened vide order dated 21st September, 2007. Accordingly, meetings were held of the above creditors on 27th October, 2007. The order is in Company Application No.1002 of 2007 and a copy thereof is annexed to the petition. Thereafter, the chairman's report and the text of the resolution passed at the meeting are annexed. In para 21 to 24 it is pointed out that the scheme was put before the three secured creditors who are 2nd charge holders and two out of them have voted in favour of the scheme. Their claim is to the tune of Rs.39 crores approximately. One secured creditor (2nd charge holder) to whom an amount of Rs.3,29,920/- is allegedly due and payable opposed the scheme. Thus, the percentage of this majority approval has been set out alongwith text of resolution. Similar is the position with regard to equity share holders who have voted in favour of the scheme substantially. Thus, 28 out of 30 equity share holders present at the meeting voted in favour of the scheme. The resolutions also have been set out and the same are annexed along with Chairman's reports. Thus, all statutory compliances have been made, declarations given on oath given and the petition prays that the Court should sanction the above scheme.



6. The Regional Director has filed an affidavit and has stated that upon scrutiny of the scheme so also verification thereof, certain queries were raised by the Registrar of Companies to whom the Regional Director had forwarded the scheme. It is stated that he examined the scheme from various angles including shareholder's interest, creditor's interest and the public interest. The Registrar of Companies has forwarded his report and has stated that there is no violation of any law nor is the scheme contrary to the interest of the above and public. In such circumstances, he prays that appropriate orders be passed.

7. The scheme is opposed by the workers. Affidavit in reply is filed by one Shashikant Gawade who claims to be a workman/employee employed at Turbhe. He states that he is working in factory for more than 18 years. He submits that possession of the factory was taken and thereafter a sale took place pursuant to private treaty. The sale was certified at the amount mentioned in the affidavit. But according to him the property was sold at a value much below its worth in the market. Thus, it is stated that dues of above 420 workers are outstanding and there are no business operations. Secured creditors have stepped in and have taken over movable and immovable assets and therefore, the company is as good as non-functional. He refers to certain resignation

letters of workmen. The resignations were conditional. Only part payment of dues has been made and the dues which is legal and legitimate has not been cleared. Reference is also made to various orders passed by the Industrial Court in favour of the workmen. Finally, it is contended that the scheme of arrangement does not have any clause pertaining to payment of legal dues of workers who were employed with the petitioner company at Turbhe plant. The petition does not contain the correct statement of facts and some of the statements are misleading. Thus, neither is the employment assured nor payment of legal dues.


8. The secured creditor, namely the administrator of UTI Asset Management Company Ltd. and UTI Trustee Company Pvt. Ltd. are the other objector and they have pointed out that the notice/intimation of the meeting was received by the objectors on 04th October, 2007. By the time the sanction of the appropriate authority was obtained, the statutory period of 21 days for filing proxy forms expired. In such circumstances, though the objector's representative attended the meeting and expressed their intention to oppose the Scheme, on technical grounds, the Chairman has not allowed the representative to raise objections nor has taken into consideration their objections. In para 3 of the affidavit filed in this Court on 04th April, 2008 it is contended that the scheme/arrangement proposes that the

petitioner will reduce its liability to the UTI from the present principal of Rs.400 lakhs to Rs.180 lakhs and that too by extending period of payment to four years from 30th March, 2007 to 30th September, 2011. The scheme is therefore not viable and certainly not in the interest of the unit holders. The unit holders have to make a large sacrifice and the administrator as well as the UTI being trustees of the funds of these unit holders have rightly stepped in and opposed the scheme.



9. The parameters within which the objections to the scheme have to be considered so also the issue of sanction are by now well settled. In the latest decision brought to my notice by Mr.Sethi appearing for the petitioner, the Supreme Court was concerned with the proceedings initiated by UTI itself. The Supreme Court has after referring to section 391 read with section 393 in para 33 of the decision set out the exceptions laid down in the earlier decision. The decision is in the case of Miheer H.Mafatlal V. Mafatlal Industries Ltd. (792 Company Cases Vol.87). This decision has been followed consistently. In such circumstances, while rejecting that the stand of UTI that a separate meeting should be convened and they be treated as separate class, the Supreme Court has observed that when this Court considers the scheme it must scrutinise it as a whole and if it is found to be fair and reasonable from the point of view of sound business and commercial

decision, beneficial to the class for whom the scheme is meant, then, the Court cannot interfere. The Court is not exercising appellate powers and has no authority to substitute its own views and opinions. It cannot suggest any alternatives and direct their inclusion. Ultimately, the scheme is a commercial document according to the Supreme Court. In such circumstances, the present proceedings also will have to be decided on the touchstone of these settled principles.



10. Having examined the scheme with the assistance of learned counsel appearing for the parties so also perusing the affidavit of Regional Director, I am of the view that the same is not prejudicial to the interest of the creditors and shareholders. The same is also not contrary to public policy and public interest.


11. Mr.Oak appearing for the union however would urge that the union has locus to object to the Scheme having sanctioned. After inviting my attention to section 391 (a), 393 and other provisions of the Companies Act so also the decision of the Supreme Court reported in [(2007) 7 S.C.C. 753 (Meghal Homes (P) Ltd. Vs. Shree Niwas Girni K.K.Samiti & Ors.) he contends that if workers interest are sacrificed or are completely ignored then this Court should not sanction the scheme. Ultimately, this is a Public Limited Company. It cannot be said that the workers have no role in its



functioning. Placing reliance upon the decision reported in AIR 1983 Supreme Court 75 and another decision of the Division Bench of this Court reported in 2006(108) FLR 605 (Khandelwal Tube Mill Kamgar Sangh, Kanhan and Government of Maharashtra & Ors.) he submits that the present scheme does not take care of any claims and legal dues of the workman. The workman have no employment and now even their dues are not being paid. In such circumstances, this Court should not sanction the scheme.


12. The learned counsel appearing for the UTI reiterated contents of the affidavit in reply and the objections therein. She urges that the scheme is not in the interest of the unit holders and the first charge holders. Therefore, the scheme should not be sanctioned.

13. Assuming for the purposes of the present petition that the workers can be heard when the scheme is being sanctioned and proceeding on the basis that they can step in because they had filed application being Company Application No.53 of 2008, I am of the opinion that other larger issues need not be addressed in the facts of this case. Assuming that the workers can step in and raise the objection to the scheme, yet, I am of the opinion that sanction cannot be refused in peculiar facts of this case to the scheme only because the



workers are objecting to it. The workers have admittedly their remedies and they have availed of the same. Some of the decisions as stated by them are in their favour. The matter pertaining to the legal dues is also pending. All their legal rights and contentions in such proceedings are not affected merely because the arrangement as proposed by the Company with its shareholders, equity share holders and secured creditors is sanctioned. No provision is brought to my notice by Mr. Oak which would jeopardise the rights of the workers under industrial law or otherwise. The remedy available to them under the industrial law so also company law is not affected neither their contentions in the same prejudiced in any manner. Such being the legal position, in my view, there is no substance in the objection raised by the workers to the scheme. Additionally, Mr. Sethi after taking instructions makes a statement that the petitioner would provide for settlement of all legal dues of the workmen and merely because the present scheme is sanctioned does not mean that the same would not be settled or met by the petitioner. The workers dues are thus secured by the statement of the company.

14. As far as UTI is concerned, all that is suggested is another alternative. That four years is too longer a period and that UTI and its trustees will have to wait for repayment of the dues till that time is the



objection. It is contended that because the objections have not been allowed to be raised in the meeting or that objections during the hearing of this petition have not been accepted, that would be considered as an act of consent on the part of UTI to the scheme. In my view, there is no force in this contention. No amount of consent can take away the legal rights vested in the UTI as secured creditor. Merely because the scheme envisages postponement of repayment or rescheduling of the debt does not mean that the UTI cannot exercise its powers under general law. If they can be otherwise exercised and all remedies in that behalf are provided for then I see no prejudice to UTI in this case. Merely because this Court sanctions the scheme does not mean that the legal rights of UTI come to an end. All those rights and remedies so also contentions therein are intact and the sanction is without prejudice thereto. Needless to state that the clarification sought by Mr. Sethi appearing for the company in so far as the effect of the order of sanction is not diluted nor is affected adversely. The law, if permits the petitioner to take a plea in the proceedings that are to be initiated or may be initiated by secured creditors including UTI with regard a sanctioned scheme being binding on all, is also available for being urged. If urged, the clarification as above does not prejudice the petitioner. As of now, there are no proceedings by UTI. It may instituted proceedings or may not and accept the

arrangement. Therefore, all apprehensions of the petitioner are premature. In any event petitioners' legal rights are also intact.

15. Having thus disposed of the objections and clarified the matter, I am of the opinion that the scheme deserves to be sanctioned. More so, in the light of the report of Registrar of Companies and the affidavit of the Regional Director. As a result of the above discussion, Company Petition is made absolute in terms of prayer clauses (a) to (c). Company Applications which are placed alongwith this petition are accordingly disposed of.

16. At this stage Mr.Oak appearing for the Union applies for stay of this order. Mr.Sethi opposes and submits that the order does not in any manner affect the workers. More particularly in the light of the clarification issued and statements recorded. In my view, the objection of Mr.Sethi has some basis. In the light of the above clarification, there is no necessity of staying the operation of this order. Accordingly application is refused.

17. Petitioner company to lodge a copy of this order and the scheme with the concerned superintendent of Stamps for the purposes of adjudication of stamp duty payable, if any, on the same within 30 days of obtaining



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the certified copy and/or an authenticated copy of the order.

18. Petitioner to pay cost of Rs.5000/- to the Regional Director and Official Liquidator each. Costs to be paid within four weeks from today.

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

20. All Authorities concerned to act on a copy of this order alongwith scheme to be authenticated by the company Registry.

(S.C.Dharmadhikari, J)

TRUE COPY

*M. D. Narvekar*  
M. D. NARVEKAR  
COMPANY REGISTRAR  
HIGH COURT (O.S.)  
BOMBAY

TRUE COPY

*AMB 27/06/08*  
Section Officer  
High Court, Appellate Side  
Bombay.

# SCHEME OF COMPROMISE / ARRANGEMENT BETWEEN JD ORGOCHEM LIMITED AND ITS SECURED CREDITORS AND EQUITY SHAREHOLDERS

## PART I – INTRODUCTION :

- 1) This Composite Scheme of Compromise/Arrangement hereinafter referred to as 'the Scheme' provides for compromise by (i) the Secured Creditors and (ii) the Equity Shareholders (as referred hereinafter) under provisions of Section 391 to 394 and other relevant provisions of the Companies Act, 1956 in the manner provided for herein and for increase of paid up Equity Capital by issue of new Equity Shares for conversion of Secured Loans into Equity and for raising fresh funds to meet the requirement of funds for restarting of the Company's operations as envisaged in the Scheme.
- 2) The Scheme also provides for various other matters consequential or otherwise integrally connected herewith.

## PART II - PRELIMINARY:

### 1. DEFINITIONS

In the Scheme, unless repugnant to the meaning, subject or context thereof, the following expressions shall have the following meaning:

- a) **"The Company"** means JD Orgochem Limited, a public limited company incorporated under provisions of the Companies Act, 1956 having its registered office at 301, Sumer Kendra, Pandurang Budhkar Marg, Worli, Mumbai - 400 018.
- b) **"Arcil"** means Arcil – JD Orgochem Ltd. Trust, Arcil -JDOL Trust, Arcil – SBPS – 001 –IX Trust.
- c) **"The Act"** means the Companies Act, 1956 or any statutory modifications thereto or re-enactment thereof.
- d) **"The Court"** means the High Court of Judicature at Bombay.
- e) **"Cut off Date"** means September 30, 2006.
- f) **"Effective Date"** or **"Coming into effect of this Scheme"** means the date on which a certified / authenticated copy of the order of the Court, that may be passed sanctioning this Scheme, is filed with the Registrar of Companies, Maharashtra at Mumbai.
- g) **"The Scheme"** means this Scheme of Compromise/ Arrangement in the present form or with any modifications or alterations approved or imposed or directed by the Court.
- h) **"Secured Creditors"** means 1) Arcil – JD Orgochem Ltd. Trust, 2) Arcil -JDOL Trust, 3) Arcil – SBPS – 001 –IX Trust, 4) Stressed Assets Stabilization Fund (SASF), 5) Unit Trust of India (UTI), 6) Life Insurance Corporation of India (LIC), 7) LIC Mutual Fund (LICMF) and includes their assigns.
- i) **"Equity Capital"** means 1,32,50,000 Equity Shares of Rs. 10/- each, fully paid up issued by the Company.
- j) **"Equity Shareholders"** means shareholder holding Equity Shares of Rs. 10/- each, fully paid up issued by the Company.
- k) **"Guarantors"** means 1) Shri Sharadchandra S Kothari, 2) Shri Mahendra K Kothari, 3) Shri Rajesh K Kothari and 4) Shri Shrikant K Kothari, who have provided personal guarantees in respect of the Secured Financial Assistances.
- l) **"Turbhe Unit"** means all the movable and immovable assets in respect of the Company's Unit situate at Plot No: D-55, D-54/2, D-54/3 and D-56, T.T.C Indl.Area, Thane Belapur Road, Village Turbhe, Dist:Thane, Maharashtra .
- m) **"Patalganga Unit"** means all the movable and immovable assets in respect of the Company's Unit situate at Plot No. A-4/2, MIDC Industrial Area, Patalganga, Village – Khalapur, Dist: Raigad, Maharashtra .
- n) **"Asset Sale Committee"** or **"ASC"** means a committee constituted by majority of the Secured Lenders representing more than 75% of the secured creditors to sell the Turbhe Unit.

### 2. AUTHORISED AND PAID UP SHARE CAPITAL

The details of authorised and paid up Share Capital as on the Cut off Date are as under :-

<u>Authorised Share Capital</u>	<u>Rs in Lacs</u>
2,98,80,000 Equity Shares of Rs. 10/- each	2988.00
12,000 9% Redeemable Cumulative Preference Shares of Rs. 100/- each	12.00
	<u>3000.00</u>
<u>Paid up Share Capital</u>	<u>Rs in Lacs</u>
1,32,50,000 Equity Shares of Rs. 10/- each	1325.00
	<u>1325.00</u>

## PART III – ARRANGEMENT/COMPROMISE WITH THE SECURED CREDITORS:

The Scheme provides for arrangement / compromise with the creditors, without any other or further act, application or deed, in the following manner:

### 1. SALE OF TURBHE UNIT

The Asset Sale Committee (ASC) has sold the Turbhe unit, possession of which has been taken over by Arcil under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. ("SARFAESI Act"). The sale proceeds realised have been distributed amongst secured creditors holding first charge and secured creditors holding second charge, as per the decision of Asset sale Committee, in proportion to their principal outstanding dues as on Cut off date as a part of Settlement cum Restructuring Scheme. The sale proceeds have been distributed amongst secured creditors as under :

<u>(A) Secured Creditors holding First charge :</u>	<u>Sale Proceeds (%)</u>	<u>Sale Proceeds (Rs)</u>
Arcil – JD Orgochem Ltd. Trust	24.29%	7,89,82,440
Arcil – JDOL Trust	31.82%	10,34,71,561
Stressed Assets Stabilization Fund	27.40%	8,90,81,234
Unit Trust of India	2.25%	73,04,734
Life Insurance Corporation of India	1.12%	36,52,367
LIC Mutual Fund	1.12%	36,52,367
<b>Total (A)</b>	<b>88.00%</b>	<b>28,61,44,703</b>
<u>(B) Secured Creditors holding Second charge :</u>		
Arcil – JD Orgochem Ltd. Trust	6.23%	2,02,54,939
Arcil – JDOL Trust	4.81%	1,56,46,526
Arcil – SBPS – 001 – IX Trust	0.96%	31,18,267
<b>Total (B)</b>	<b>12.00%</b>	<b>3,90,19,732</b>
<b>Total (A) + (B)</b>	<b>100.00%</b>	<b>32,51,64,435</b>



- a) The Company / Guarantors shall make payment as per law for full and final settlement of the workmen's liabilities pertaining to Turbhe unit of the company within 60 days of confirmation of sale by ASC, without any recourse to the company's existing assets. In respect of the Legal cases pending before the court, pertaining to the terminated employees, the Company/ Guarantor(s) undertake to comply with the court orders without recourse to the purchaser or the assets of the company or the secured lenders.
- b) The Company / Guarantors shall provide adequate proof to the ASC that it has made payment as per law for full and final settlement of the workmen's liabilities pertaining to Turbhe unit of the company within 60 days of confirmation of sale by ASC.

## 2. RESTRUCTURING OF DEBT

### a) Zero Coupon Loan (ZCL) :

- i) Upon Sanction of the Scheme, an amount of Rs. 12.00 crore shall be carved out of the existing secured financial assistances as Zero Coupon Loan as under :

<u>Secured Creditor</u>	<u>Amount of ZCL</u>
Arcil – JD Orgochem Ltd. Trust	3,66,00,000
Arcil – JDOL Trust	4,39,50,000
Stressed Assets Stabilization Fund	3,29,00,000
Unit Trust of India	27,00,000
Life Insurance Corporation of India	13,50,000
LIC Mutual Fund	13,50,000
Arcil – SBPS – 001 –IX Trust	11,50,000
<b>Total</b>	<b>12,00,00,000</b>

- ii) The ZCL, envisaged above, shall be carved out based on the proportion of 88% for Secured creditors holding first charge on fixed assets and 12% for secured creditors holding second charge on fixed assets and within the common chargeholder same shall be in proportion to their outstanding balances as on cut off date.
- iii) The Zero Coupon Loan shall be repaid in five quarterly installments commencing from March 30, 2008 and ending on March 30, 2009 as detailed in **Annexure A** hereto.

### b) Zero Coupon Non Convertible Debentures (ZCD) :

- i) Upon Sanction of the Scheme, an amount of Rs. 16.80 crore shall be carved out of the existing secured financial assistances as 16,80,000 Zero Coupon Non Convertible Debentures of Rs. 100/- each as under :

<u>Secured Creditor</u>	<u>Amount of NCD</u>
Arcil – JD Orgochem Ltd. Trust	5,13,00,000
Arcil – JDOL Trust	6,15,00,000
Stressed Assets Stabilization Fund	4,60,00,000
Unit Trust of India	38,00,000
Life Insurance Corporation of India	19,00,000
LIC Mutual Fund	19,00,000
Arcil – SBPS – 001 –IX Trust	16,00,000
<b>Total</b>	<b>16,80,00,000</b>

- ii) The ZCD, envisaged above, shall be carved out based on the proportion of 88% for Secured creditors holding first charge on fixed assets and 12% for secured creditors holding second charge on fixed assets and within the common chargeholder same shall be in proportion to their outstanding balances as on cut off date.
- iii) The ZCD shall be redeemable at a premium of 50% in ten quarterly installments commencing from June 30, 2009 and ending on September 30, 2011, as detailed in **Annexure B** hereto.
- iv) The ZCD shall be issued within 60 days of the Effective Date.
- v) Where called upon to do so, on or before March 31, 2009, the company shall arrange for early redemption of the Debentures or shall arrange to sell the debentures to a third party by way of take out financing. Such pre-mature redemption / sale of ZCD to third party shall be at a discount of 9% per annum. The company shall be liable to get the debentures listed as and when requested by secured creditors.

### c) Re-organization of Security :

- i) Upon sanction of the Scheme all existing security/securities and charges for the secured loans will stand re-organized to the extent ZCL of Rs. 12.00 crore and ZCD of Rs. 16.80 crore with premium payable thereon, secured by first pari passu charge on all the existing assets of the company situate at the Patalganga Unit and upon creation of such security, the existing security/ securities/ existing personal guarantees and charges shall stand satisfied and released without any further act on part of the Secured Creditors.
- ii) All the Guarantor(s) of the Company shall, jointly and severally, provide an irrevocable and unconditional Guarantee cum Shortfall Undertaking in favour of the Secured Creditors to make good the shortfall, if any, in the event realization to Secured Creditors from the sale of the Patalganga Unit is less than Rs. 12.00 crore.
- iii) The Company, Guarantors & Secured Creditors shall enter into any documentation that may be required, to give effect to reorganization of security and for the creation of the security as contemplated by the Scheme and to govern the prospective/ongoing relationship between the Company, Guarantors & Secured Creditors.

### d) Waiver of the Secured Financial Assistances :

Subject to compliance with Part III and IV as contemplated in the Scheme, the residual debt including interest, penal interest, liquidated damages and other charges of whatsoever nature, shall be waived.

## 3. REORGANISATION OF CAPITAL :

- a) **TRANSFER OF SHARES:** The Guarantor(s) shall arrange to transfer in electronic form 12 lac fully paid-up equity shares of face value of Rs. 10/- each of equivalent to 9.1% of the paid up capital of the Company to secured creditors as detailed in Annexure D hereto.
- b) **EQUITY SHARE CAPITAL:** The Scheme provides for reorganisation of the Equity Capital in the following manner:
  - i) The issued, subscribed and paid-up Equity Share Capital of the Company of Rs.13,25,00,000/- comprising of 1,32,50,000 Equity Shares of Rs. 10/- each, fully paid up shall be reduced to Rs. 1,32,50,000/- comprising of 1,32,50,000 Equity Shares of Re. 1/- each, fully paid up. The paid up value per Equity Share shall reduce by 90% i.e. by canceling Rs. 9/- per Equity Share from the face value of Rs. 10/- each held by the Equity Shareholders as on the Record Date to be fixed by the Board of Directors of the Company in consultation with the Stock Exchange, Mumbai.



- ii) Upon the Effective Date and inconsideration of cancellation of Equity Share Capital, the existing certificates representing Equity Shares of the face value of Rs.10/- each held by the Equity Shareholders, whose names appears in the Register of Members as on Record date, shall without further act, application or deed be deemed to have been cancelled and in lieu thereof, the Company shall issue new certificates representing Equity Shares of the face value of Re.1/- each. In case of Equity Shares held in Dematerialised Form, as on the Record Date, the face value of Equity Shares shall be reduced automatically to Re. 1/- per share.
- iii) The reduction of the Equity Share Capital as aforesaid shall be effected as an integral part of the Scheme itself and no separate act, application, petition or deed would be required in accordance with the Section 101 or any other provisions of the Act, as the same does not involve either the diminution of any liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital, and the order of the Court sanctioning the Scheme shall be deemed to be an order under Section 102 of the Act confirming the reduction. The Company will not be required to add the words "and reduced" after its name. The Company shall pass Special Resolution under Section 100 of the Act, confirming reduction of existing Equity Share Capital in the manner set out hereinabove

Form of Minutes reflecting reduction of the Equity Share Capital is enclosed as "Annexure – C" hereto.

**c) AMENDMENT TO THE MEMORANDUM AND ARTICLES OF ASSOCIATION :**

The Capital clause no IV of the Memorandum of Association of the Company and Article 5 of the Article of Association of the Company shall upon the coming into effect of this Scheme and without any further act, application or deed, be replaced and substituted by the following clauses respectively :

**MEMORANDUM OF ASSOCIATION**

- A. The Authorised Share Capital of the Company is Rs. 300,000,000/- (Rupees Thirty Crores only) divided into 300,000,000 (Thirty Crores only) Equity Shares of Re.1/- (Rupee One only) each.
- B. The Company has power to increase or reduce the Share Capital with the rights privileges and conditions attaching hereto as are provided by the Articles of Associations of the company for the time being, with the power to divide the share in the capital for the time being into several classes and to attach thereto respectively into preferential qualified or special rights privileges or conditions as may be determined by or in accordance with the Articles of Association of the Company for the time being and to vary modify or abrogate any such rights privilege or condition in such manner as may be permitted by the Companies Act, 1956 or statutory modification thereat or provided by the Articles of Association of the company for the time being.

**ARTICLES OF ASSOCIATION**

The Authorised Share Capital of the Company is Rs. 300,000,000/- (Rupees Thirty Crores only) divided into 300,000,000 (Thirty Crores only) Equity Shares of Re.1/- (Rupee One only) each with power to increase and reduce the capital and to divide the Shares in the capital for the time being into several classes and to attach thereto respectively any preferential rights, privileges or conditions as may be determined by or in accordance with the regulations of the Company and to vary, modify or abrogate any such rights, privileges or conditions in such manner as may for the time being be provided by the regulations of the Company and allowed by law.

The Company shall file amended copy of the Memorandum and Articles of Association with concerned Registrar of Companies.

**4. ISSUE OF FRESH EQUITY SHARES:**

- a) Upon the Scheme becoming effective and after reduction of the Equity Capital, as envisaged in this Scheme:
- i) the Company shall proceed to make a Right Issue of new 377 Equity Shares of Rupee 1/- each for every 100 existing Equity Share of Rupee 1/- each held by the Equity Shareholders whose names appear on the Register of Members on the Record Date to be fixed by the Board of Directors of the Company in consultation with the Stock Exchange, Mumbai, to meet the requirement of funds to restart the operations.  
Shareholders holding less than 100 shares will be entitled to Right shares on proportionate basis. Fractional shares shall be ignored.
- ii) the Company shall, within 180 days of the Effective Date or within 60 days of issue of new shares under Rights issue, whichever is later, make allotment of 9,60,00,000 Equity Shares of Rupee 1/- each to the Secured Creditors against conversion of financial assistances granted by them as under :

<b><u>Secured Creditor</u></b>	<b><u>No of Shares</u></b>
Arcil – JD Orgochem Ltd. Trust	2,92,90,000
Arcil – JDOL Trust	3,51,70,000
Stressed Assets Stabilization Fund	2,63,00,000
Unit Trust of India	21,60,000
Life Insurance Corporation of India	10,80,000
LIC Mutual Fund	10,80,000
Arcil – SBPS – 001 - IX Trust	9,20,000
<b>Total</b>	<b>9,60,00,000</b>

- b) The Guarantor(s)/Promoter(s) shall bring in advance subscription of Rs.5,00,00,000/- (Five Crore) within 7 days of 75% of the secured creditors voting in favour of the Scheme and same shall be utilized to meet capital expenditure requirements and for restarting Patalganga Unit. Such amount received by the Company as advance subscription to the Rights Issue, as envisaged in the Scheme, shall be adjusted / appropriated towards the monies payable for the Right Issues.
- c) The Guarantor(s)/Promoter(s) shall make up for any shortfall in the raising of funds in the Rights Issue by way of additional subscription.
- d) The details of the Rights Issue shall be worked out by the Company in accordance with the rules, regulations and guidelines of the Bombay Stock Exchange Ltd., Mumbai, National Stock Exchange Ltd., and Securities and Exchange Board of India (SEBI), governing the Rights Issue of Equity Shares.
- e) Post-write-down of equity capital and conversion of debt into equity, the holding of secured creditors in the equity share capital of the company shall be 61.00% of the fully diluted equity capital of the company. Reference to equity shares means shares in electronic form only. The share holding pattern of the company pre sanction and post sanction of the said Scheme is as detailed in "Annexure – D" hereto. As long as any of the obligations of the company and/or



Guarantors/Investors remains outstanding, the company shall not issue /allot any shares, so as to effect change in the shareholding pattern, without the express approval of the secured creditors.

- f) The Equity Shares to be issued and allotted by the Company, as mentioned above, shall rank pari passu in all respect with the existing Equity Shares of the Company.
- g) The Equity Shares so issued by the Company shall, subject to applicable regulations, be listed and/or admitted to trading on the relevant stock exchanges where the Equity Shares of the Company are listed and/or admitted to trading.
- h) The Equity Shares so issued by the Company to Secured Creditors shall be exempt under Preferential Issue Guidelines and Takeover Regulations and other guidelines of the Bombay Stock Exchange Ltd, National Stock Exchange Ltd., and Securities and Exchange Board of India (SEBI), governing the Issue of Equity Shares.
- i) Approval of this Scheme by the Shareholders of the Company shall, without any further act or deed, be deemed to be the due compliance of the relevant provisions of the Act for consequential alterations of Clause IV of the Memorandum of Association and Article 5 of the Articles of Association of the Company and provisions of Section 81(1A) of the Act, SEBI (Disclosure & Investor Protection) Guidelines, 2000, SEBI (Substantial Acquisition of Shares & Takeover) Regulation, 1997 and such other regulations as are relevant and applicable for the issue and allotment of New Equity Shares by the Company.
- j) The Company shall, if and to the extent required, apply for and obtain any permissions, sanctions or approvals from concerned authorities for the issue and allotment by the Company of New Equity Shares under the Scheme.
- k) **Transfer of Shares:**
  - i. Stand Still: The Guarantor(s)/Promoter(s) shall not transfer or otherwise dispose of any of its shareholding or any interest in its shareholding, allotted under the proposed Right Issue, till March 31, 2010 subject to clauses "ii & iii" herein below.
  - ii. Right of First Offer: In the event of proposed sale by any secured creditor(s) of the equity shares issued to it pursuant to the Scheme to a third party buyer, the Guarantor(s)/ Promoter(s) shall have right of first offer to purchase or arrange for purchase such shareholding at the same price as that offered by the third party buyer;
  - iii. Drag along: In the event of the Guarantor(s)/ Promoter(s) failure to purchase or arrange for procuring a third party to purchase shareholding of secured creditor(s) at the same price as that offered by the third party buyer as per clause "ii" above, it will be mandatory for the Guarantor(s)/ Investor to sell their entire shareholding in the company to the third party buyer at the same price as that offered by the third party buyer to such secured creditor(s).
- l) The company and the Guarantor(s) shall comply with all procedural compliances as required to keep the company's equity shares listed on Bombay Stock Exchange and National Stock Exchange at all times.

#### PART IV – KEY PERFORMANCE PARAMETERS:

1. The company and/or the Guarantor(s), shall restart operations at Patalganga unit before 31<sup>st</sup> December, 2007 or within 3 months of Effective Date whichever is earlier.
2. The company undertakes to constitute a **Monitoring Committee** comprising of representatives of the company and/or secured creditor(s) as and when required by the majority secured creditor (s) to monitor the progress of the Scheme and the performance of the company post Scheme on a monthly basis.
3. The company and Guarantor(s) shall procure working capital finance for running the day-to-day operations of the company, upon the terms and conditions and to the extent as may be agreed to by majority secured creditors.
4. The company shall recast its balance sheet to incorporate write down of unrealizable assets and write back of dues payable to "related parties" as defined in the Accounting Standard 18.
5. The company undertakes to repay the statutory liabilities and workers dues, as per law, in a timely manner, subject to and based upon approvals of concerned authorities.
6. The company shall reconstitute its Board of Directors, in consultation with and to the satisfaction of majority secured creditor(s) and the company and the Guarantor(s) shall ensure that more than half of the company's Board of Directors shall comprise non-promoter and professional director(s). Further, during the currency of the settlement of restructured liability as mentioned hereinabove, the company shall keep one-half of its strength of its Board of Directors vacant to facilitate majority secured creditor(s) to appoint its nominee(s). Any appointment/change/ substitution/addition/re-appointment of the Director(s) of the company' Board shall be done only with the prior consent of majority secured creditor(s) in writing. Further, the Chairman of the Board shall be such person as may be nominated by majority secured creditor(s).
7. The company shall open a **Trust and Retention Account/s (TRA)** with bank(s) acceptable to majority secured creditor(s) within 30 days from the Effective Date. All receipts and payments of any nature of the company shall be routed through these accounts only. The company shall only operate such accounts as may be permitted by majority secured creditor(s) and not open any other account with any bank without prior approval of majority secured creditor(s) in writing.
8. **TRA** shall have pre-defined mechanism for utilization of funds as agreed from time to time by majority secured creditors. All the amounts available in **TRA** would be utilized as per the business plan approved by the **Monitoring Committee** and certified by the auditors to be nominated by majority secured creditors.
9. The company shall settle unsecured creditors independent of the Scheme without causing any prejudice to the secured lenders.
10. The company shall obtain approvals from various agencies including Government of India, State Government of Maharashtra, Sales Tax Authorities, Employees State Insurance Authorities, Provident Fund Authorities, Employees etc. and/or any other Authorities, statutory and others as applicable, the relief and concessions as maybe necessary to the satisfaction of secured creditors.
11. The company and/or Guarantor(s) shall procure renewal from the concerned authorities/ bodies of all the existing leases/ licenses/ approvals/ permissions, whether in company's name or otherwise.
12. The company and/or Guarantor(s) shall observe General Terms & Conditions as described in **Annexure - E** enclosed hereto.

#### PART V – EVENT OF DEFAULT AND RIGHTS AND REMEDIES:

1. **Event of Default:** Subject to a review being conducted by secured creditors/Arcil anytime before the **Effective Date** and subject to "force-majure" events such as war, flood, earthquake, and/or any such act of God, breakdown of law and order in the area, non compliance with any of the conditions in Parts III and IV hereinabove shall constitute









## ANNEXURE — B

### ZERO COUPON NONCONVERTIBLE DEBENTURES

Rs in Lacs

Sr No	Secured Creditor	30-06-09	30-09-09	31-12-09	31-03-10	30-06-10	30-09-10	31-12-10	31-03-11	30-06-11	30-09-11	Total
1	Arcil-JD Orgochem Ltd. Trust	51.30	51.30	51.30	51.30	51.30	51.30	51.30	51.30	51.30	51.30	513.00
	Premium	25.65	25.65	25.65	25.65	25.65	25.65	25.65	25.65	25.65	25.65	256.50
		76.95	76.95	76.95	76.95	76.95	76.95	76.95	76.95	76.95	76.95	769.50
2	Arcil-JDOL Trust	61.50	61.50	61.50	61.50	61.50	61.50	61.50	61.50	61.50	61.50	615.00
	Premium	30.75	30.75	30.75	30.75	30.75	30.75	30.75	30.75	30.75	30.75	307.50
		92.25	92.25	92.25	92.25	92.25	92.25	92.25	92.25	92.25	92.25	922.50
3	SASF	46.00	46.00	46.00	46.00	46.00	46.00	46.00	46.00	46.00	46.00	460.00
	Premium	23.00	23.00	23.00	23.00	23.00	23.00	23.00	23.00	23.00	23.00	230.00
		69.00	69.00	69.00	69.00	69.00	69.00	69.00	69.00	69.00	69.00	690.00
4	UTI	3.80	3.80	3.80	3.80	3.80	3.80	3.80	3.80	3.80	3.80	38.00
	Premium	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	19.00
		5.70	5.70	5.70	5.70	5.70	5.70	5.70	5.70	5.70	5.70	57.00
5	LIC	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	19.00
	Premium	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	9.50
		2.85	2.85	2.85	2.85	2.85	2.85	2.85	2.85	2.85	2.85	28.50
6	LICMF	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	19.00
	Premium	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	9.50
		2.85	2.85	2.85	2.85	2.85	2.85	2.85	2.85	2.85	2.85	28.50
7	Arcil-SBPS-001-IX Trust	1.60	1.60	1.60	1.60	1.60	1.60	1.60	1.60	1.60	1.60	16.00
	Premium	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	8.00
		2.40	2.40	2.40	2.40	2.40	2.40	2.40	2.40	2.40	2.40	24.00
	Total Principal	168.00	168.00	168.00	168.00	168.00	168.00	168.00	168.00	168.00	168.00	1,680.00
	Total Premium	84.00	84.00	84.00	84.00	84.00	84.00	84.00	84.00	84.00	84.00	840.00
	Total(Principal+Premium)	252.00	252.00	252.00	252.00	252.00	252.00	252.00	252.00	252.00	252.00	2,520.00

## ANNEXURE – C

### FORM OF MINUTES

#### EQUITY SHARE CAPITAL

The issued, subscribed and paid-up Equity Share Capital of JD Orgochem Limited of Rs. 13,25,00,000/- comprising of 1,32,50,000 Equity Shares of Rs. 10/- each, fully paid up shall be reduced to Rs. 1,32,50,000/- comprising of 1,32,50,000 Equity Shares of Re. 1/- each, fully paid up.

## ANNEXURE — D

### DETAILS OF SHAREHOLDING

Shareholder Category	Existing Shareholding (Face value Rs 10/-)		Post Transfer by Promoters to Secured Creditors (Face value Rs 10/-)		Post write-down upon Sanction of Scheme (Face value Re 1/-)		Post Issuance of New shares upon Right Issue in the ratio of 377:100 (Face value Re 1/-)		Post Issuance of fresh shares on conversion to Secured Creditors after Rights Issue (Face value Re 1/-)		
	No	%	No	No	No	%	Rights	Total No	Conversion	Total No	%
Promoters	7,922,110	59.79%	(1,200,000)	6,722,110	6,722,110	50.73%	25,342,355	32,064,465	-	32,064,465	20.14%
Non-Promoters	5,327,890	40.21%		5,327,890	5,327,890	40.21%	20,086,145	25,414,035	-	25,414,035	15.96%
Arcil-JD Orgochem Ltd Trust	-	0.00%	366,229	366,229	366,229	2.76%	1,380,683	1,746,912	29,290,000	31,036,912	19.50%
Arcil-JDOL Trust	-	0.00%	439,598	439,598	439,598	3.32%	1,657,284	2,096,882	35,170,000	37,266,882	23.41%
IDBISASF	-	0.00%	328,749	328,749	328,749	2.48%	1,239,384	1,568,133	26,300,000	27,868,133	17.50%
UTI	-	0.00%	26,958	26,958	26,958	0.20%	101,632	128,590	2,160,000	2,288,590	1.44%
LIC	-	0.00%	13,479	13,479	13,479	0.10%	50,816	64,295	1,080,000	1,144,295	0.72%
LICMF	0.00%	13,479	13,479	13,479	0.10%	50,816	64,295	1,080,000	1,144,295	0.72%	
Arcil-SBPS-001-IX Trust	-	0.00%	11,508	11,508	11,508	0.09%	43,385	54,893	920,000	974,893	0.61%
Total	13,250,000	100.00%	0	13,250,000	13,250,000	100.00%	49,952,500	63,202,500	96,000,000	159,202,500	100.00%



**ANNEXURE — E**  
**GENERAL TERMS AND CONDITIONS**

**1. Composition of Board and Key-Management Personnel:**

- a) The company and Guarantor(s) shall ensure to constitute committee(s) of directors in compliance of the provisions of law and the listing agreement, if applicable. Such committee shall decide, inter alia, compensation package of various executives/ working directors including the promoters and their relatives as applicable under law.
- b) The company and Guarantor(s) shall appoint to the satisfaction of majority secured creditors, the key management personnel to head departments like Finance and Accounts; Sales and Marketing; Purchase; Production; Legal; company Secretary and any other critical departments as majority secured creditors may stipulate from time to time.

**2. Nominee Directors:**

- a) Majority secured creditors shall be entitled to appoint from time to time, one or more person(s) whether secured creditor's employee(s) or not, as director(s) ("the Nominee Director") on the Board of Directors of the company for which purpose, the company and Guarantor(s) shall promptly take necessary corporate and regulatory actions and authorizations to implement such appointment by secured creditors. The Nominee Director shall not be required to hold any qualification shares and shall not be liable to retire by rotation. If required by secured creditor, the Nominee Director shall be also included as a member of any management committee or other committee(s) that may be constituted by the Board of Directors of the company. The Nominee Director shall be entitled to all the rights and privileges of other directors of the company and shall also have the right to receive notices of and attend all general meetings and Board meetings of the company and meetings of any committee of the company of which the Nominee Director may be a member.
- b) The Nominee Director shall be paid the same sitting fees, commission, remuneration and expenses as shall be payable to other non-whole-time directors. The company shall pay the sitting fees, in case such Nominee director is not an employee of secured creditor to the Nominee Director directly, and in other cases to secured creditor. All other expenses incurred/to be incurred by Nominee Directors shall be paid to them directly. However, the commission, if any payable to Nominee Director, shall accrue to secured creditor and accordingly be paid by the company directly to secured creditor. In addition, any expenses that may be incurred by secured creditor on such Nominee Director during the currency of directorship shall also be paid or reimbursed by the company to secured creditor.
- c) No Nominee Director appointed as aforesaid shall incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto. The company shall indemnify every Nominee Director and secured creditor against all actions and proceedings, and losses and expenses suffered or incurred by the Nominee Director or secured creditor in, or in relation to, the discharge of his duties as such director.
- d) The company shall furnish agenda notes of the meetings of its Board of Directors to secured creditor whenever required by it provided that agenda notes of Board Meetings at which the company's annual accounts shall be taken up for consideration shall be forwarded by the company well in advance even if not specifically called for by secured creditor.

**3. Monitoring Committee:**

- a) The company and/or secured creditors as and when deem fit may constitute a Monitoring Committee, to monitor the filing and progress of the said Scheme and the performance of the company on a monthly basis. The company shall undertake to provide all information as and when required by the Monitoring Committee. All costs, charges and expenses for convening the Monitoring Committee shall be incurred, met, paid by the company and Guarantor(s). The company shall finalise its annual budget in consultation with Monitoring Committee of lenders.
- b) The company shall take prior written approval of Monitoring Committee of lenders for incurring any capital expenditure exceeding the budgeted amount. The company and Guarantor(s) shall not undertake any new project or expansion or make any investments or take assets on lease or any divestments or sale without the prior approval of Monitoring Committee of lenders.
- c) The company shall not pay any dividend on the equity shares without the prior written approval of Monitoring Committee of lenders.

**4. Right to appoint Technical/Financial Consultants and Concurrent/Special Auditors**

- a) The secured creditor(s) shall have the right to appoint/retain a concurrent auditor to oversee and monitor the operations of the company and the Trust Retention Account/Escrow Account and carry out a concurrent audit of the accounts of the company in consultation with the company. All costs, charges and expenses of the concurrent auditor shall be incurred, met, paid by the company. The concurrent auditor would continue for duration as is satisfactory to Monitoring Committee of lenders.
- b) The secured creditor(s) shall be entitled to appoint any person, firm, company or association of persons engaged in technical, management or consultancy business or any chartered accountant/cost accountant for carrying out any specific assignment including examining systems and procedures and/or to act as its concurrent or special auditors or for conducting concurrent/special audit.
- c) The costs, charges and expenses including professional fees and traveling and other expenses incidental thereto shall be payable by the company. Such consultants/auditors shall give their report directly to secured creditor(s).
- d) The company shall extend necessary co-operation and provide required assistance and infrastructure to such persons in carrying out his/their assignment.

**5. Insurance:**

- a) The company and Guarantor(s) shall keep insured upto the reinstatement value thereof as approved by secured creditors (including surveyor's/valuer's/architect's fees) the assets charged/to be charged to secured creditors and such of its other assets as are of an insurable nature against fire, theft, lightning, explosion, earthquake, storm, tempest, flood, any other natural calamity, riot, strike, civil commotion, marine risks, erection risks, war risks and such other risks as may be required from time to time.
- b) The company and Guarantor(s) shall renew such insurance policies from time to time during currency of the assistance and shall assign such policy(ies) in favour of Arcil and/ or Arcil-Trust and other charge-holders, if any. The company shall notify Arcil and/ or Arcil-Trust within 24 hours of any incidents or claims arising out of any such policy and shall also duly lodge the necessary claims with insurers and comply with all requirements thereto.
- c) In the event of failure on the part of the company to insure the assets or to pay the insurance premium or other sums referred to above, secured creditors may at their sole discretion get the assets insured or pay the insurance premium



and other sums referred to above, as the case may be. The company and Guarantors shall immediately upon secured creditors so insuring or paying premium, reimburse secured creditors of all amounts incurred by secured creditors for the said purpose and any expenses therefor.

- d) The company and Guarantor(s) shall deliver to secured creditors promptly and in no event later than 10 days after the same are issued, originals of all policies of insurance and renewals therefore and endorsements thereto.

#### 6. Acceleration

In the event that the actual financial performance (earnings before interest, depreciation and taxation) is higher than the projections by over 10%, 35% of such excess shall be used for acceleration of payments to secured creditors. The amount of debt repaid under the Right of Acceleration shall be computed in present value terms at a discounting rate of 9% per annum.

7. The company and Guarantor(s) shall arrange to resolve all pending legal disputes to the satisfaction of secured creditors. All suits filed by any other lenders and agencies shall be resolved in accordance with the parameters of the said Scheme.
8. The company shall appoint an external counsel, to complete the documentation, creation of security and complete all legal formalities as required under this restructuring scheme. All costs, charges and expenses of the external counsel shall be incurred, met, paid by the company. The external counsel would continue till all the legal formalities required under this restructuring scheme are completed to the satisfaction of secured creditors.

#### 9. Records, Reports and Inspection

So long as any part of the assistance shall remain outstanding, the company shall:

- a) maintain separate records showing expenditure incurred and the operations and financial condition of the company, and permit the authorised agents and representatives of secured creditors to carry out all technical survey and inspections of works and operations of the company as also inspection of the records, registers and accounts of the company. Such agents and representatives of secured creditors shall have free access at all reasonable times to such records, registers and accounts and to all schedules, cost estimates, plans and specifications relating to such works, and they shall receive full co-operation and assistance from the company. The cost of such survey and inspection shall be payable by the company forthwith on receipt of a notice of demand from secured creditors;
- b) forward to secured creditors on demand a chart showing the actual progress of the company as compared to original schedule together with percentage of completion, and furnish to secured creditors a statement with various heads of expenditure showing the final cost as compared to the original estimate together with reasons for variation(s), if any;
- c) as soon as available but no later than 30 days after the close of each quarter of its financial year furnish its unaudited financial statements for such period to secured creditors, duly certified by the whole-time director/managing director of the company as being complete and correct and fairly representing its financial condition and results of operation;
- d) as soon as available but no later than 45 days after the close of each financial year of the company, furnish its financial statements for the year then ended to secured creditors, audited and certified by its statutory auditor; and
- e) provide monthly monitoring reports in the form and manner as may be required by secured creditors.

#### 10. Increase in Authorised Capital

The Promoter/company shall undertake to increase its authorised share capital when called upon to do so, so as to ensure that the secured creditors may convert such defaulted amounts into equity.

#### 11. Negative Covenants

The company further covenants and agrees that until full and final payment by the company of all its indebtedness to secured creditors, it shall not, without the prior written consent of secured creditors:

- a) create any mortgage, charge, lien or other encumbrance in any form whatsoever over any of its properties and assets;
- b) create, incur or assume any further indebtedness of any nature whether for borrowed money or otherwise;
- c) enter into any merger/amalgamation or consolidation or any scheme of arrangement or compromise for the benefit of its creditors, or sell; lease or transfer all or any part/portion of its undertaking or division(s) and/or fixed assets;
- d) effect any material change in the composition of its board of directors or in the management set-up or ownership of its business;
- e) assume, guarantee, endorse or in any manner become directly or contingently liable for or in connection with the obligation of any person, firm, company or corporation except for transactions in the ordinary course of business;
- f) amend its Memorandum and Articles of Association or alter its capital structure or its shareholding pattern;
- g) allow transfer or disposal of shareholding of any of the promoters in its equity or quasi equity capital or permit withdrawal of any subordinated loans or deposits obtained at any time by the company from its promoter directors and their friends and associates or the working capital requirements of the company, or make prepayment of any long-term debt; declare or pay any dividend or make any distribution to any of the shareholders;
- h) extend any loan or advance to or place deposit with any company.

#### 12. Delay in payments

All monies payable by the company under this Scheme including any reimbursements, if not paid within the stipulated period, shall from the due date carry interest of 18% per annum compounded at monthly/ quarterly/half-yearly/annual rests. If such amounts including the interest as aforesaid, are not paid within 30 days, shall further carry additional interest by way of liquidated damages at the rate of 2% per annum in addition to 18% as above.

#### 13. Miscellaneous:

- a) The company and Guarantor(s) shall enter into such agreements, deeds and writings as may be required for effectually complying with their obligations as may be stipulated by secured creditors under these presents.
- b) The company and Guarantor(s) shall promptly give written notice to secured creditors of the following :
- any litigation, arbitration or other proceedings commenced or threatened against the company and Guarantor(s) including any application for its winding-up, which if determined against the company, Investor and Guarantors may impair its ability to discharge its obligations hereunder and such proceedings shall also entitle secured creditors to, at its sole discretion, cancel, suspend, reduce or modify, including withdraw with retrospective effect, all or any of the relief and concessions and/or amend or vary the terms and conditions of the Scheme;
  - any dispute between the company and/or Guarantor(s) and any third party which if not resolved may lead to a material adverse change in the company's/Guarantor's financial condition or operations, or adversely affect the observance and performance of its obligations hereunder; and
- c) All terms and conditions in respective loan agreements and other documents including security documents shall continue to remain in full force and effect as if those terms and conditions are incorporated herein, except as specifically modified herein. In case of any inconsistency or repugnancy, the terms and conditions contained herein shall prevail.

TRUE-COPY

M. D. NARVEKAR  
COMPANY REGISTRAR  
HIGH COURT (O.S.)  
BOMBAY



In The High Court of Judicature at Bombay

Ordinary Original Civil Jurisdiction

Company Petition No 966 of 2007

In the matter of Sections 100, 391 & 392 of the  
Companies Act, 1956;

And

In the matter of Scheme of Compromise or  
Arrangement between JD Orgochem Limited  
and its Secured Creditors and Equity  
Shareholders

JD Orgochem Limited.....Petitioner



AUTHENTICATED COPY OF  
ORDER DATED 20<sup>TH</sup> JUNE 2008  
AND THE SCHEME ANNEXED TO  
THE PETITION

Appointed on 30-6-2008  
Engrossed on 30-6-2008  
Section Writer  
Entered  
Examined by [Signature]  
Compared with [Signature]  
Ready on 02-07-08  
Witnessed on 03-07-08

HEMANT SETHI & CO

Advocates for Petitioner