

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

CSA NO. 993 OF 2017

In the matter of the Companies Act, 2013 (18 of 2013);

And

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013.

And

In the matter of Scheme of Arrangement among Orind Estates Private Limited (“Transferor Company 1”) and ACG Ajas Components Private Limited (“Transferor Company 2”) and Adhikar Trading Private Limited (“Transferor Company 3”) and EH Advisors and Consultants Private Limited (“Transferor Company 4”) and ACG Associated Capsules Private Limited (“Transferee Company”)

And

their respective shareholders

Orind Estates Private Limited,	}
a company incorporated under the provisions of	}
Companies Act, 1956 having its Registered Office	}
at 1001, Dalamal House,	}
Nariman Point, Mumbai, Maharashtra – 400021.	}
CIN: U70102MH2010PTC198368	}

..... First Applicant Company

ACG Ajas Components Private Limited,	}
a company incorporated under the provisions of	}
Companies Act, 1956 having its Registered Office	}
at 1001, Dalamal House,	}
Nariman Point, Mumbai, Maharashtra – 400021.	}
CIN: U29100MH1972PTC016053	}

..... Second Applicant Company

Adhikar Trading Private Limited, }
 a company incorporated under the provisions of }
 Companies Act, 1956 having its Registered Office }
 at 1001, Dalamal House, }
 Nariman Point, Mumbai, Maharashtra – 400021. }
 CIN: U51909MH2010PTC201509 }

.... Third Applicant Company

EH Advisors and Consultants Private Limited, }
 a company incorporated under the provisions of }
 Companies Act, 1956 having its Registered Office }
 at 131, Kandivali Industrial Estate, }
 Kandivali West, Mumbai, Maharashtra – 400067. }
 CIN: U74140MH2010PTC203111 }

.... Fourth Applicant Company

ACG Associated Capsules Private Limited, }
 a company incorporated under the provisions of }
 Companies Act, 1956 having its Registered Office }
 at 131, Kandivali Industrial Estate, }
 Kandivali West, Mumbai, Maharashtra – 400067. }
 CIN: U24239MH1961PTC012061 }

.... Fifth Applicant Company

Order delivered on 6th December, 2017

Coram:

Hon`ble **B.S.V. Prakash Kumar**, Member (J)
 Hon`ble **V. Nallasenapathy**, Member (T)

For the Applicant (s): Mr. Hemant Sethi i/b Hemant Sethi & Co

Per: V. Nallasenapathy, Member(T)

ORDER

1. The Counsel for the Applicant Companies states that the present Scheme is a Scheme of Arrangement among Orind Estates Private Limited ('the Transferor Company 1' or 'the First Applicant Company') and ACG Ajas Components Private Limited ('the Transferor Company 2' or 'the Second Applicant

Company') and Adhikar Trading Private Limited ('the Transferor Company 3' or 'the Third Applicant Company') and EH Advisors and Consultants Private Limited ('the Transferor Company 4' or 'the Fourth Applicant Company') and ACG Associated Capsules Private Limited ('the Transferee Company' or 'the Fifth Applicant Company'). This Scheme of Arrangement proposes to merge the Transferor Companies with the Transferee Company without winding up of the Transferor Companies pursuant to the relevant provisions of the Companies Act, 2013.

2. The Counsel for the Applicant Companies further submit that the Transferor Company 1 is primarily formed *inter alia* for the business of constructing, purchasing, developing or otherwise acquiring, foreclosing, purchasing on auction, hiring, leasing, selling or selling on hire purchase system buildings, houses, bungalows, factories, sheds, recreational clubs and facilities including golf course, sports and social clubs, trade premises, plant, machinery, public buildings, lands, farms or any other kinds of asset, estate or property, immovable rights or chose in action and the business as proprietors, developers, builders, managers, operators, hirers and dealers of land and immovable properties.
3. The Transferor Company 2 is primarily engaged *inter alia* in the business of manufacturing, fabricating, assembling, repairing, buying, selling, reselling, exchanging, altering, importing, exporting, hiring, letting on hire, or distributing or dealing in highly specialized precision components, spare parts, fittings, and accessories for pharmaceutical machinery and other kind of machinery as per drawings furnished to the company.
4. The Transferor Company 3 is primarily formed *inter alia* for carrying on the business as general merchants, traders and dealers in goods, commodities and merchandise on ready or forward basis, importer and exporter, business as agents, brokers, commission agents, buying and selling agents, distributors and indenting agents.
5. The Transferor Company 4 is primarily formed *inter alia* for carrying on the business of acting as consultants, advisors in the field of advisory services, investments, insurance, finance, management, secretarial, legal, accounting, taxation, cost accounting, economic, engineering, administrative, technical, advertising, computer, recruitment, personnel management, inventory control, training, and any other professional services and consultancy services whether

- supplementary or complimentary to these business and turnkey projects related to such consultancies and consultancy services for insurance, mutual funds, government securities and any other savings/ investment/ financial products and instruments whether supplementary or complimentary to the above to carry on any or all of the above business in India or abroad.
6. The Transferee Company is primarily engaged *inter alia* in the business as manufacturers of and dealers in all types of capsules including hard two-pieces, telescopic, pharmaceutical capsules, and to carry on the business as manufacturers of and dealers in all raw materials used in capsules, including gelatine, bones, skins, fats hydrochloric acid and all pure or impure forms of raw materials; and to deal in or carry on business of all types of products capable of being packed in capsules including pharmaceutical drugs and chemicals.
 7. The Counsel for the Applicant Companies further submit that it is proposed to merge the Transferor Companies with the Transferee Company without winding up of the Transferor Companies to ensure simplification of structure by elimination of multiple entity and to achieve greater administrative efficiency, elimination of administrative functions and multiple record keeping, thus resulting in reduced expenditure, and significant reduction in the multiplicity of regulatory compliances. Therefore, with a view to effect such plan, the Board of Directors of the Applicant Companies proposes to merge the Transferor Companies with the Transferee Company without winding up of the Transferor Companies.
 8. That the meeting of the Equity Shareholders of the First Applicant Company be convened and held at 1001, Dalamal House, Nariman Point, Mumbai – 400 021, Maharashtra on Tuesday, 30th day of January, 2018 at 3:00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Arrangement among Orind Estates Private Limited and ACG Ajas Components Private Limited and Adhikar Trading Private Limited and EH Advisors and Consultants Private Limited and ACG Associated Capsules Private Limited and their respective shareholders.
 9. That the meeting of the Equity Shareholders of the Second Applicant Company be convened and held at 1001, Dalamal House, Nariman Point, Mumbai – 400 021, Maharashtra on Tuesday, 30th day of January, 2018 at 4:00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Arrangement among Orind Estates

Private Limited and ACG Ajas Components Private Limited and Adhikar Trading Private Limited and EH Advisors and Consultants Private Limited and ACG Associated Capsules Private Limited and their respective shareholders.

10. That the meeting of the Equity Shareholders of the Third Applicant Company be convened and held at 1001, Dalamal House, Nariman Point, Mumbai – 400 021, Maharashtra on Tuesday, 30th day of January, 2018 at 5:00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Arrangement among Orind Estates Private Limited and ACG Ajas Components Private Limited and Adhikar Trading Private Limited and EH Advisors and Consultants Private Limited and ACG Associated Capsules Private Limited and their respective shareholders.
11. That the meeting of the Equity Shareholders of the Fourth Applicant Company be convened and held at 131, Kandivali Industrial Estate, Kandivali West, Mumbai – 400067 Maharashtra, on Tuesday, 30th day of January, 2018 at 10:00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Arrangement among Orind Estates Private Limited and ACG Ajas Components Private Limited and Adhikar Trading Private Limited and EH Advisors and Consultants Private Limited and ACG Associated Capsules Private Limited and their respective shareholders.
12. That the meeting of the Equity Shareholders of the Fifth Applicant Company be convened and held at 131, Kandivali Industrial Estate, Kandivali West, Mumbai – 400067 Maharashtra, on Tuesday, 30th day of January, 2018 at 11:00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Arrangement among Orind Estates Private Limited and ACG Ajas Components Private Limited and Adhikar Trading Private Limited and EH Advisors and Consultants Private Limited and ACG Associated Capsules Private Limited and their respective shareholders.
13. The Counsel for the Applicant Companies submits that there are no Preference Shareholders in any of the Applicant Companies, therefore the question of conveying or sending individual notices to the Preference Shareholders does not arise.

14. That at least 30 clear days before the said Meetings of the Equity Shareholders of the First, Second, Third, Fourth and Fifth Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on December 14, 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Hand Delivery / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the First, Second, Third, Fourth and the Fifth Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the First, Second, Third, Fourth and the Fifth Applicant Company, at their last known address or email addresses as per the records of the respective Applicant Companies.
15. That at least 30 clear days before the meetings of the Equity Shareholders of the First, Second, Third, Fourth and the Fifth Applicant Company to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the respective Registered Office of the First, Second, Third, Fourth and Fifth Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
16. That the Notice of the Meetings shall be advertised in two local newspapers viz. “Free Press Journal” in English and “Navshakti” in Marathi, both circulated in Mumbai not less 30 days before the date fixed for the meeting.
17. That Mr. Jasjit Singh, Director of the First Applicant Company, and failing him, Mr. Gopalkrishna Shetty, Authorised Signatory of the First Applicant Company and failing him, Mr. Rajendra Rana, Authorised Signatory of the First Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the First Applicant Company to be held at 1001, Dalamal House, Nariman Point, Mumbai – 400 021 on Tuesday, 30th day of January, 2018 at 3:00 p.m or any adjournment or adjournments thereof.

18. That Mr. Jasjit Singh, Director of the Second Applicant Company, and failing him, Mr. Gopalkrishna Shetty, Authorised Signatory of the Second Applicant Company and failing him, Mr. Rajendra Rana, Authorised Signatory of the Second Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Second Applicant Company to be held at 1001, Dalamal House, Nariman Point, Mumbai – 400 021 on Tuesday, 30th day of January, 2018 at 4:00 p.m or any adjournment or adjournments thereof.
19. That Mr. Jasjit Singh, Director of the Third Applicant Company, and failing him, Mr. Gopalkrishna Shetty, Authorised Signatory of the Third Applicant Company and failing him, Mr. Rajendra Rana, Authorised Signatory of the Third Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Third Applicant to be held at 1001, Dalamal House, Nariman Point, Mumbai – 400 021 on Tuesday, 30th day of January, 2018 at 5:00 p.m or any adjournment or adjournments thereof.
20. That Mr. Deepak Parekh, Director of the Fourth Applicant Company, and failing him, Mr. Gopalkrishna Shetty, Authorised Signatory of the Fourth Applicant Company and failing him, Mr. Rajendra Rana, Authorised Signatory of the Fourth Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Fourth Applicant Company to be held at 131, Kandivali Industrial Estate, Kandivali West, Mumbai – 400067 Maharashtra, on Tuesday, 30th day of January, 2018 at 10:00 a.m. or any adjournment or adjournments thereof.
21. That Mr. Jasjit Singh, Director of the Fifth Applicant Company, and failing him, Mr. Gopalkrishna Shetty, Authorised Signatory of the Fifth Applicant Company and failing him, Mr. Rajendra Rana, Authorised Signatory of the Fifth Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Fifth Applicant Company to be held at 131, Kandivali Industrial Estate, Kandivali West, Mumbai – 400067 Maharashtra, on Tuesday, 30th day of January, 2018 at 11:00 a.m. or any adjournment or adjournments thereof.
22. That the Chairman appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meetings referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies

- Act, 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).
23. That the quorum of the aforesaid meetings of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
 24. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meetings, are filed with the respective First, Second, Third, Fourth and the Fifth Applicant Company at their respective Registered Offices not later than 48 hours before the aforesaid meeting. Registered Office of First, Second and Third Applicant Company is situated at 1001, Dalamal House, Nariman Point, Mumbai – 400 021. Registered office of the Fourth and Fifth Applicant Company is situated at 131, Kandivali Industrial Estate, Kandivali West, Mumbai, Maharashtra – 400067.
 25. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the respective First, Second, Third, Fourth and the Fifth Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
 26. That Ms. Parmy Kamani, Practicing Company Secretary is hereby appointed as Scrutinizers of all the respective meetings of the Equity Shareholders of the First, Second, Third, Fourth and the Fifth Applicant Company proposed to be held on Tuesday, 30th day of January, 2018 at 1001, Dalamal House, Nariman Point, Mumbai – 400 021 in case of First, Second and Third Applicant Company and at 131, Kandivali Industrial Estate, Kandivali West, Mumbai, Maharashtra – 400067 in case of Fourth and Fifth Applicant Company and her remuneration is fixed on a consolidated basis as Rs. 20,000/- excluding taxes.
 27. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.

28. That the Chairman of the meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.
29. The First Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
30. The Second Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Second Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
31. The Third Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Third Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Third Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
32. The Fourth Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Fourth Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies with a direction that they may submit their

representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Fourth Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

33. The Fifth Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Fifth Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Fifth Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
34. The First, Second, Third and Fourth Applicant Company are also directed to serve notice along with a copy of scheme upon Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013. M/s. A.M. Solanki & Associates LLP is appointed with a remuneration of Rs. 1,00,000/- for the services. If no response is received by the Tribunal from Official Liquidator within thirty days of the date of receipt of notice, it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
35. The Counsel for the Applicant Companies submits that there are no Secured Creditors in the First, Second, Third and Fourth Applicant Company. The Counsel for the Applicant Companies submits that there are Secured Creditors in the Fifth Applicant Company. The Counsel for the Applicant Companies further states that present Scheme is an arrangement between the Applicant Companies and their respective shareholders as contemplated under section 230(1)(b) of the Companies Act, 2013 as there is no compromise or arrangement with any of the Creditors. This bench hereby directs that notice be given to all the Unsecured creditors of the Applicant Companies and to the Secured Creditors of the Fifth Applicant Company under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Companies.

36. The First, Second, Third, Fourth and Fifth Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the creditors, where applicable, publication of notices in newspapers and to the regulatory authorities as stated in clause 29 to 35 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy Member (T)

Sd/-

B.S.V. Prakash Kumar Member (J)