IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY PETITION NO.6 OF 2011 CONNECTED WITH COMPANY APPLICATION NO.18 OF 2011

Zuari Holdings Limited,
a company incorporated
under the Companies Act, 1956,
having its registered office at
Jai Kisaan Bhawan, Zuarinagar,
Goa-403726. ..... Petitioner/Transferee Company.

Mr. S.D. Padiyar, Advocate for the Petitioner.
Mr. Sanjay Kumar Gupta, Official Liquidator.
Mr. C.A. Ferreira, Assistant Solicitor General for Regional Director.

COMPANY PETITION NO.7 OF 2011 CONNECTED WITH COMPANY APPLICATION NO.19 OF 2011

Zuari Industries Limited,
A company incorporated
under the Companies Act,
1956, having its registered office at
Jai Kisaan Bhavan,
Zuarinagar, Goa-403726. .... Petitioner/Transferor Company.

Mr. A. Rajadhyaksha, Senior Advocate with Mr. M.S. Sonak, Advocate for the Petitioner.

Mr. Shivan Desai, Advocate for Mr R.G. Furtado/Objector.
Mr. Sanjay Kumar Gupta, Official Liquidator.
Mr. C.A. Ferreira, Assistant Solicitor General for Regional Director.

CORAM: S.C. DHARMAHIKARI,J.
DATED: 2nd MARCH, 2012.

JUDGMENT:

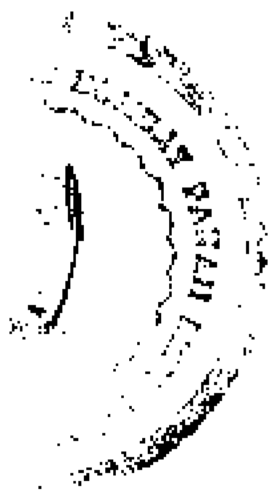
These company petitions invoke the jurisdiction of this Court under Sections 391, 394 and 395 of the Companies Act, 1956.

2. The petitioner seeks sanction to the scheme of Arrangement and Demerger hereinafter referred to as the "Scheme" between Zuari Industries Limited (Transferor) and Zuari Holdings Limited (Transferee) and their respective shareholders and creditors. The sanction is sought from the appointed date that is 1st July 2011.

3. The Petitioner Zuari Industries Ltd. was incorporated as Zuari Agro Chemicals Limited on 12/5/1967.

The change of name was effected on 12/2/1998. The petitioner's name Zuari Industries Ltd. has originated since then.

4. After setting out the objects and Annexuring a certified true copy of the Memorandum and Articles of Association of the Petitioner in paragraph 4 of the petition the details of the authorized, issued, subscribed and paid-up share capital of the petitioner as on 24/5/2011 are set out. Annexue "B" to the petition is a certified true copy of the audited accounts of the petitioner as on 31/3/2011.



5. In paragraph 5 it is stated that the equity shares of the petitioner are listed on the Bombay Stock Exchange and the National Stock Exchange of India. Both Stock Exchanges have given their No Objection to the scheme and the no-Objections are at Anneuxres "C-1" and "C-2".

6. As far as the Transferee Company Zuari Holdings Limited is concerned, it is incorporated on 10/9/2009. It has is registered office within the State of Goa.

7. The objects of the Transferee company are also set out and Annexure "D" to the petition is a certified true copy of the Memorandum and Articles of Association of the Transferee.

8. After setting out its capital structure at Annexure "E" what has been stated is that the Board of Directors at its Board meeting held on 24/5/2011 approved the scheme. The board of Directors of the Transferee Company have also held a meeting and accordingly approved the scheme. A certified true copy of these resolutions of the Board of Directors are at Annexures"F-1" and "F-2".

9. Thereafter, the scheme is pointed out with its details and according to the petitioner, it contemplates transfer and vesting of the Fertilizer Undertaking of the company in the Transferee company. The salient features of the scheme are set out with the details in paragraph 10 and what is then stated is that Annexure "G" is a copy of the proposed Scheme of Arrangement and Demerger. The petitioner is primarily engaged in the business of fertilizers, but also has distinct and diverse business activities, which are set out in paragraph 11. It is stated that the petitioner has grown to a very sizeable organization and has evolved into a well diversified and progressive industrial group. Each of the businesses of the petitioner are distinct and diverse in their characteristics, growth trajectories, risk profile, maturity stage, requirement of funds and require entirely different approaches. For the purposes of effectively and efficiently catering to independent growth plans, for each of the respective businesses, and with the intent of adopting a linear structure in the businesses of

the petitioner, the Board of Directors of the petitioner have decided to demerge the Fertilizer Undertaking of the petitioner into Transferee company. The benefits of this scheme are set out in paragraph 11.

10. Thereafter, what has been stated is that four secured creditors of the petitioner to whom Rs.787.41/- crores was due and payable so also the ninety four unsecured creditors to whom petitioner owed an amount of Rs.10,00,000/- and above were approached and the secured creditors and most of the unsecured creditors have conveyed their No-objection. The orders dated 7/7/2011 are referred to which dispense with the meetings of the secured creditors also the unsecured creditors and it has been stated that the meeting of the equity shareholders was convened on 17/8/2011.

11. In paragraphs 13 and 14 of the petition, this is what is stated:

"..13. The petitioner Company had filed Company Application in this Hon'ble Court, being Company Application No.19 of 2011, seeking requisite directions for convening the meeting of the Equity shareholders of the Petitioner Company to consider the Scheme. The Petitioner Company had also sought requisite directions for dispensing with the requirement of convening the meetings of its Secured Creditors and Unsecured Creditors, to consider the Scheme.

14. This Hon'ble Court by order dated 07th July 2011 was pleased to direct that a meeting of the Equity Shareholders of the Petitioner Company shall be convened on 17th August 2011 at the Registered Office of the Petitioner Company, to consider and if though fit, approve with or without modification(s), the Scheme.

This Hon'ble Court further, by order dated 14th July 2011 was pleased to-

(i) dispense with the requirement of convening the meetings of the Secured Creditors in view of the No Objection Certificates received from 100% of the Secured creditors and

(ii) dispense with the requirement of convening the meetings of the Unsecured Creditors of the Petitioner Company in view of the No-objection certificates received from 75% of the unsecured creditors to whom the petitioner company owes an amount of Rs.10 lakhs and above each and further undertaking given by the Petitioner Company that individual notice of date of hearing of the petitioner would be given to the balance Unsecured Creditors to whom the Petitioner company owes an amount of Rs.10 lakhs and above as on 31st May 2011, in the

event that an NOC is not received from them.

14 A. The notice of the meeting of the Equity Shareholders of the petitioner company, together with a copy of the Scheme, Explanatory Statement under Section 393 of the Act, Form of Proxy and Attendance Slip were dispatched by post to the Equity Shareholders of the petitioner company on 21st July 2011. The notice of the aforesaid meeting of the Equity Shareholders was also published in the newspapers namely, Navhind Times (English edition) on 23rd July 2011 and Tarun Bharat (Marathi edition) on 24th July 2011.

14.B. The meeting of the Equity Shareholders of the Petitioner Company was accordingly held on 17th August 2011, at 11.00 a.m. At the Registered office of the the Company at Jai Kisaan Bhawan, Zuarinagar,Goa-403726. The

said meeting was attended in person and by proxy by 89 Equity Shareholders of the petitioner company entitled together to 1,79,34,436/- equity shares of total value of Rs, 17,93,44,360/-. At the said meeting, the following resolution was put to vote by ballot:

Mr. Girish Naik Desai proposed the following resolution of Scheme of Arrangement/Demerger:

RESOLVED THAT pursuant to Sections 391 to 395 of the Companies Act, 1956 ("the Act), Rules 67 to 87 of the Companies (Court) Rules, 1959 ("the Rules") and other applicable provisions, if any, of the Act and the the Rules, and subject to sanction by the Hon'ble High Court of Judicature of Bombay at Goa and other requisite consents and approvals, if any, being obtained, and subject to such terms and

conditions and modifications as may be imposed, prescribed or suggested by the said Hon'ble High Court or other appropriate authorities, Scheme of Arrangement and Demerger between Zuari Industries Limited and Zuari Holdings Limited and their respective Shareholders in terms of the draft of the Scheme placed before the meeting and initiated by the chairman for the purpose of identification be and is hereby approved.

RESOLVED FURTHER THAT the Board of Directors of the Transferor Company be and is hereby authorized to sign, seal and deliver all documents, agreements and deeds and do and perform all acts, matters and things and to take all such steps as may be necessary or desirable to give effect to this resolution.

RESOLVED FURTHER THAT the

arrangement embodied in the Scheme of Arrangement and Demerger between Zuari Industries Limited and Zuari Holdings Limited placed on the table and initiated by the Chairman for the purposed of identification, upon the scheme becoming effective the fertilizer undertaking shall stand demerged and transferred by the transferor company to the transferee company and be vested in and managed by transferee company without any further deed or act together with all properties, assets, rights, benefits and interest therein subject to existing charges, liens or lispendens, if any, upon and subject to the terms and conditions contained in the said Scheme of Arrangement and Demerger, be and is hereby approved and that the Board of Directors of the Company, be and are hereby authorised to take

all such steps as may be necessary or desirable and do all such acts, deeds and things as are considered requisite or necessary to effectively implement the said Scheme of Arrangement and Demerger and this resolution and to accept such alterations, modifications and/or conditions if any, which may be proposed, required or imposed by the Court while sanctioning the Scheme."

12. It is stated that the net result of voting by poll at the meeting of the Equity Shareholders was that 86 Equity Shareholders representing 17401756 Equity Shares of the petitioner company and which are 96.63% in number and 97.03% in value, present and voted in favour of the resolution. The 3 Equity Shareholders representing 5,32,680 Equity Shares, which constitute 3.37% in number and 2.97% in value, present and voting, voted against the resolution.

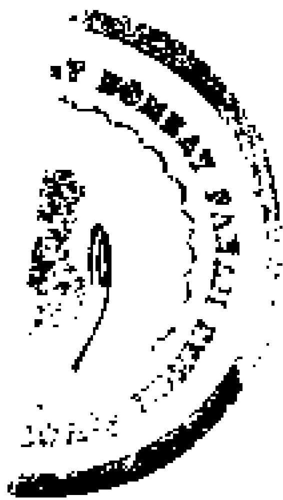
13. The Chairman's report together with the result of the poll is then referred and copies thereof are annexed as Annexure "I". There are additional No objections received from unsecured creditors to whom the company owes Rs.10 lakhs.

14. It is in these circumstances that it is stated that the scheme is just, fair and reasonable to the Equity Shareholders and Creditors of the petitioner company and therefore it be sanctioned.

15. The necessary declarations and statements are made in the petition including that Shri R.Y. Patil, Chief General Manager and Company Secretary who is conversant with the facts of the case has signed, verified and declared this petition. The petitioner has stated that there are no criminal proceedings, no investigation proceedings under Sections 235 and 250A of the Companies Act 1956 have been instituted or

pending against the petitioner and there are no winding up proceedings.

16. A copy of the petition and its annexures came to be served on the Regional Director, Ministry of Corporate Affairs, Government of India, Mumbai. Upon receipt of the same, the Regional Director has forwarded the petition to the concerned Registrar of Companies. The Registrar of Companies has forwarded his report. This report has been examined by the Regional Director and he has made his comments. All that the Regional Director states is that he has filed an affidavit dated 31/10/2011 and submits that save and except as stated in paras 6(a), (b), (c), (d) and (e), it appears that the Scheme is not prejudicial to the interest of shareholders and public. As far as paragraph 6 (a) is concerned what has been stated is that Clause 3.8 of the Scheme interalia provides for change of name of Demerged Company as well as Resulting Company. By this clause it is



proposed to changed the name of the Resulting Company by adopting the name of the Demerged company and vice versa. There is no provision in the Companies Act for exchange of name. Further both the companies will continue to be in existence and therefore it is not possible to adopt the name of the other company. Besides the proposed swapping of names would invariably confuse and mislead the mind of the stakeholders of both the companies and therefore it is not just and proper to allow this scheme. In view of the above it is suggested that the said clause may be deleted from the scheme. As far as Clause 4.1 of the scheme, it is stated that the scheme provides for increase in the Authorized Share capital of the Transferee Company to Rs.42,06,00,000. and therefore the Transferee company may be directed to comply with provisions of section 94/97 read with Schedule IX of the Companies Act 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty. Thereafter, reference is made to

Regional Director are concerned, he has stated that the petitioner will file necessary forms with the Registrar of Companies and pay filing fee and stamp duty.

21. It is stated that the promoters of the Transferor Company would necessarily, as per the provisions of law including various regulations framed by the Securities and Exchange Board of India, be the promoters of the transferee company. The suggestion of the Regional Director regarding deletion of clause 4.8 of the scheme is not only misconceived but is contrary to the provisions of law.

22. As far as the other objections are concerned it is stated that the Transferor and Transferee companies are agreeable that the business reconstruction reserve would not be utilized for declaration of dividend of the transferee company.

23. As far as the objections of Mr. R.G. Furtado are

Clause 4.8 of the Scheme and it is stated that this clause be deleted because like other shareholders of the Transferee company the promoters of Transferor company become promoters of the transferee company pursuant to issuance of new shares as provided in Clause No.4.2.2 of the scheme. In this regard it is submitted that like the other shareholders of the Transferor company, promoters of the Transferor Company will also be allotted the new shares at par by the Transferee company and they would become shareholders of the Transferee company and hence treating promoters of the Transferor company, as promoters of the Transferee company is not justified. As far as Clause 5.2.3 is concerned it is stated that the said Reserves be treated as Free Reserve and may be restricted and not utilized for declaration of dividend by the transferee company.

17. The attention of this Court has been invited by the Regional Director to the complaint of one R.G. Furtado, one

of the shareholders of the demerged company against the present scheme and what has been stated is that his complaint was forwarded to demerged company by the complainant R.G. Furtado. He attended the Court convened meeting of the demerged company on 17/8/2011.

18. In answer to this affidavit of the Regional Director a Rejoinder has been filed by the Transferor petitioner and my attention is invited to the same. It is stated in this rejoinder affidavit at page 478 of the petition paper book that clause 3.8 of the scheme can be retained in as much as interchanging of name has been sanctioned by this Court and also other courts in respect of various other schemes involving other companies and illustration can be given of the judgment and order dated 18/12/2007 of this Court in the case of Bajaj Auto Limited. It is submitted that the Regional Director has not pointed out as to how such change of names is prohibited or impermissible or as to what prejudice would be caused to the shareholders or

the public at large. It is denied that interchanging of names would confuse or mislead the stakeholders of the companies. It is submitted that Zuari Industries Limited is associated in the minds of the stakeholders with fertilizer business of the petitioner. Therefore, upon demerger and this business coming in the hands of the transferor company that the interchange is proposed that has been approved in the meetings as well. Thus, the decision taken in commercial wisdom need not be interfered with.

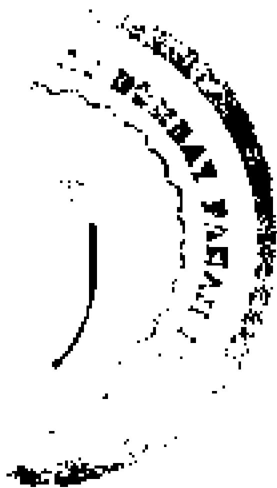
19. Alternatively, it is proposed in any event and without prejudice to the above, if this Court is of the opinion that it would not be permissible to allow change of names in the manner contemplated under Clause 3.8 of the said scheme, then the petitioners are agreeable to dropping clause 3.8 of the said scheme.

20. As far as the other objections or comments of the

concerned he has filed an affidavit. His affidavit states that he is a shareholder and has a right therefore to object to the scheme. He states that there is a circular of Ministry of Corporate Affairs dated 26/7/2011 issuing guidelines and the Registrar of the Companies is required to adhere to these guidelines and the circular. He states that it is illegal for a company Zuari Holding limited to assume the name, corporate identity number and old dates of registration of Zurai Industries Limited.

24. What he pertinently says is that he attended the meeting convened pursuant to the orders of this Court. Further, pertinently he refers to the Accountant's report and the valuation report and submits that the valuation should have been done after the appointed date. The appointed date is relevant for the purpose of determining the share valuation and share exchange rate, which the resultant company would offer to its shareholders after the demerger.

25. The principal objection appears to be that the valuation report is silent on the capital structure of the company. Further, what would result from the scheme is that the holding/controlling stake of the promoter group increased from 32.13% pre-demerger to 52.49% post-demerger. To this extent, the stake of the non-promoter shareholders stands diluted. The promoter group has, at the stroke of the pen, through the scheme, increased their stake in Zuari Holding Ltd. at no extra cost. He has prepared a chart and has submitted that the control of the promoter group over the fertilizer undertaking is absolute i.e. 52.49%. By transferring only 70% of the value of net assets (including the fertilizer undertaking) to the transferee company the promoter increased their control/stake from 32.13% to 52.49% and the non-promoter shareholders would always be losers. He has invited the attention of the Court to the valuation report of M/s. Bansi S. Mehta and Company and submits that it does



not contain any valuation. The valuer recommended the swap ratio, but without the valuation. He then submits that it makes no sense to segregate the companies by having one company to operate plants and the other to make strategic investments and hold securities of other entities. Therefore, there is no point in demerging the fertilizer undertaking and along with it transferring/selling investments and also holdings and securities of other entities.

26. These objections have been replied to by the petitioner and my attention is invited to the rejoinder at page 461 of the paper book in which it is submitted that the objector holds a minuscule quantity of 50 shares in the petitioner company forming 0.00017% of the paid-up capital of the petitioner company. The scheme was approved by an overwhelming majority of the equity shareholders. The meeting was attended by 89 equity shareholders of the petitioner company, 86 out of of 89 equity shareholders who

attended the meeting voted in favour of the scheme. Their value is enormous and only three shareholders including the Objector objected the scheme. Though the Objector remained present at the meeting he did not chose to address the other shareholders or to raise any pertinent objections to the scheme. Admittedly, all that the Objector chose to do was to ask the Company Secretary of the petitioner company as to when the petitioner would respond to his letter dated 11/8/2011. It is in such circumstances that the petitioner firstly states that the shareholders who remained present for the meeting and voted in favour of the scheme included several foreign institutional investors/foreign sovereign funds amongst others. The overwhelming majority having voted in favour of the scheme, it is not permissible for this Court to sit over in judgment over the decision of the equity shareholders who are supposed to be men of the world and reasonable, they know the benefits and interest underlying the present scheme It is in these circumstances, that it is submitted that the

objections of Furtado, ex employee, be rejected.

27. However, while dealing with these objections on merit what has been pointed out in relation to clause 3.8 of the scheme and the stake of the promoters reads thus:

> "16. With reference to paragraph no.3 of the said objections which relates to clause 3.8 of the scheme, it is submitted that such interchange of name is in the interest of the company and its shareholders. It is to be noted that both companies, namely the transferor and transferee will be listed companies. Insofar as the transferor company is concerned, the same is already a listed company and will continue to remain listed. Insofar as the transferee company is concerned, the same would be listed by following the relevant procedure, once the scheme is sanctioned. It is significant that the stock exchange on which the shares of the transferor company are listed have

given their NOCs to the said scheme. The same have been annexed to the Company application filed along with the Company petition. It is thus apparent that the stock exchanges have no objections to the said scheme including the interchange of names. It is to be noted that major undertaking of the transferor company is its fertilizer undertaking. The fertilizer undertaking is to be transferred to the transferee company. The name "Zuari Industries Limited" is associated in the minds of the stakeholders and the investing public with the fertilizer operations/fertilizer undertaking. It is for this reason that the change of name was contemplated in the said scheme and the same has been approved by the shareholders in their commercial wisdom. Similar schemes involving such interchange of names have been approved and accepted by this Hon'ble Court and various other High Courts in various matters. I

crave leave to refer to and rely upon copies of the said schemes and the relevant orders when produced. It is submitted that Sections 391 to 395 of the Companies Act, 1956 are in themselves a complete code and separate approval or procedures including those for change of name are not required to be obtained or followed. It is denied that it is illegal for the transferee company to assume the name of Zuari Industries Limited subsequent on this scheme being sanctioned by this Hon'ble Court. It is denied that any procedure for change of name as contemplated under the companies Act, 1956 will be required to be independently followed. It is denied that the question of availability of names will arise. It is denied that this Hon'ble Court has no jurisdiction to permit change of names or interchange of names. It is denied that there will be any listing through any backdoor method. It is submitted that apart from

raising vague and baseless objections, the Objector has failed to make out any case as to how the interests of the shareholders or the general public would be adversely affected by the change of name as contemplated under the said scheme.

17. With reference to paragraph No.4(i) of the said objections, I repeat and reiterate what is stated by me with respect to the accountants' report and deny all that is inconsistent therewith and/or contrary thereto. It is submitted that as stated by the expert accountants in the report dated 21st May 2011, since the ultimate ownership of the transferor and transferee company lies with the same set of shareholders in the same ownership interest, question or aspect of adjusting the equities between two or more disparate groups of shareholders does not arise in this case. It is inter alias in view of the above that the said expert accountants have recommended

allotment of 1 equity share in the transferee company for every 1 equity share in the transferror company. Since the report is dated 21st May 2011 and was required to be presented to the Board of Directors of the Petitioner Company, the question of basing the same on the values of 30th June 2011 does not arise. The same could not have been prepared after the appointed date as the same was to be considered and approved by the Board of Directors of the Petitioner Company in its meeting held on 24th May 2011. In any event, as stated above, since the present case of demerger, the question of determining the share exchange ratio or carrying out a complex process of valuation as on the appointed date does not arise.

18. With reference to paragraph No.4(ii) of the said objections, it is denied that the said report is silent on the capital structure of he company. In fact, the capital structure has been specifically referred to

in paragraphs 1.3, 2.1.3 and 2.1.11 of the report. The subscribed capital of the transferee company would only increase to Rs.42.05 Crores on the scheme being sanctioned. Since the transferee company is currently direct/indirect wholly owned subsidiary of the transferor company, the shareholding in the transferee company held by the transferor company and Zuari Management Services Limited (an wholly owned subsidiary of the transferor company) is required to be showed as a part of the promoter group holdings in view of the relevant definitions under the relevant regulations. It is denied that the promoter group has at the stroke of a pen through their scheme increased their stake in the transferee company. On the contrary, the personal holdings of the promoters of the transferor company in the transferee company would reduce post demerger. I crave leave to refer to and rely upon the relevant

charts showing the holdings pre and post demerger of the public and the promoters in the transferor and transferee companies when produced. It is significant that the public shareholders in the transferor company are to the extent of approximately 65.63% and they would continue to have their hold in the affairs of the transferor company. The nominees of the transferor company representing the transferor in the transferee (resulting company) would be obliged to conduct themselves in the manner desired by the general body of the transferor company. The shareholding pattern post demerger will not affect the interest of the public shareholders in any manner. On the other hand, it will create an opportunity for the public shareholders to continue to hold shares in the transferee company or to exit therefrom by selling the shares allotted to them. It is to be noted that the public shareholders will continue to directly hold

45.94% of shares in the transferee company and will get representation to the extent of 19.69% on account of the 30% of shares held by the transferor company and its subsidiary in the transferee company. It is significant that shareholders of the transferor company have by overwhelming majority in their commercial wisdom approved the scheme. It is thus submitted that it is not open for the Objector to raise any of the purported objections particularly in regard to the shareholding patterns. It is denied that the promoters have increased their control as alleged or at all. It is denied that the share held in wholly owned subsidiaries are under the control of the promoter group. It is denied that the petitioner has created a maze of subsidiaries as alleged or at all. It is submitted that upon demerger, the transferee company ceased to be a wholly owned subsidiary of the transferor company. The observations of the

Objector are thus misplaced and irrelevant."

28. It is submitted that the personal holding of ZHL would reduce post merger and a part is handed to it.

29. It is on the above material that I have heard the learned counsel for the parties. My attention is invited to a Sur-Rejoinder and an Affidavit-in-Rejoinder of Mr. R.G. Furtado seeking to deal with the affidavit of the petitioner.

30. Mr. Rajadhyaksha, learned Senior Counsel appearing on behalf of the petitioner submitted that the scheme has been approved by a overwhelming majority of the shareholders and creditors. Further, the petitioner has given an undertaking that it would duly comply with the objections which have been raised by the Regional Director. Shri Rajadhyaksha submits that the statements made in the affidavit by Mr. R.Y. Patil, in response to the affidavit of the

Regional Director may be accepted as an undertaking to this Court. Even in relation to Clause 3.8 of the scheme Shri Rajadhyaksha submits that it is not as if swapping of names upon the order of this is automatic, but subject to compliance with law. The requirement of the provisions of law and particularity those pointed out by Mr. Furtado has to be complied with. However, in any case it cannot be said that the scheme is against the interest of the shareholders, creditors or general public. In such circumstances, he submits that the scheme is fair, reasonable and just and be sanctioned and approved by this Court.

31. As far as the other objections of the Objector is concerned, Mr. Rajadhyaksha submits that there is no merit therein. Firstly, he has attended the meeting but has not addressed the same by referring to any objections or by pointing out anything from the scheme. He only states that he voted against the scheme and his vote is noted. He is just

one of the three shareholders who voted against the scheme. His objections should be seen as a result of some personal grudge and out of sheer malice. He has been unable to point out as to whether the scheme would be prejudicial to the Equity shareholders, creditors and general public. On the other hand barring him none of the shareholders including foreign institutional investors and buyers have objected either to the valuation or to the manner in which the shares would be allotted post demerger. Each of the aspects thereof were put for investigation and scrutiny of the shareholders. It is not the case where the promoters have not disclosed the true state of affairs of the company and have framed the scheme to benefit itself at the cost of the other shareholders. This is not a case of minority being forced to accept something against its wishes and because of lack of bonafides on part of the majority. This is a case where one may have a different view of the matter. However, once in commercial wisdom, the decisions have been taken by the majority and all particulars

as to how the shareholders would stand post demerger are on record, then, this Court should not up-hold the objection but reject the same. The petition therefore be made absolute.

32. Shri Rajadhyaksha has relied on the following decisions:

(i) You Telecom India (P) Ltd. Vs. YOU Boradbrand Networks India (P) Ltd., (2008) 1 Comp L.J 276 (Bom).

(ii) Intertek Testing Services India (P) Ltd. V. CALEB BRETT India (P) Ltd., (2009) 4 Comp L.J. 637)(Bom).

33. On the other hand, learned Assistant Solicitor General Mr. C.A. Ferreira appearing on behalf of the Regional Director invited my attention to the affidavit of the Regional Director and has stated that if the statutory compliance has been made and if this Court is of the opinion that the interchange of names would cause no confusion or misleading then the swapping may be approved subject to the undertaking

of the petitioner.

34. Mr. Shivan Dessai, learned counsel appearing for the Objector submits the objector has pointed out something which affects the shareholders post demerger and approval of the scheme. He submits that a one sided scheme which is absolutely beneficial to the promoters is being foisted on the shareholders. It is irrelevant whether the same has been voted by majority and accepted in the present form. That does not mean that this Court cannot scrutinize and verify the same, particularly when serious objections are brought on record. Besides my attention is invited to the affidavit which has been filed by Mr. Furtado and Mr. Dessai submits that the company has not disclosed the true state of affairs by refusing to comply with the queries in terms of circular dated 26/7/2011, and this Court should not approve the scheme. Mr. Shivan Dessai submits that as far as the general idea of a demerger is that the value of the divided companies is more than the

combined entities. This will not help in the present case due to increase in the capital structure. He submits that the earnings per share of the existing shareholders would be reduced after demerger. Zuari Holding Ltd. would cease to be a subsidiary of the Zuari Industries Ltd. The Promoter Group will tighten its grip on the demerged company and after demerger their stake would go up in great number. The stake of promoters group in Zurai Industries Ltd. is 34.37% and key decisions in Zuari Industries are influenced by the promoters. Out of 10 directors, 5 are from the promoter group/employees. Out of 5, independent directors, 2 are partners of the firm who are legal advisers of the company. Therefore, the promoter group and their associates have overwhelming influence over the decision of ZIL. Even, post demerger, the stake of the promoter and public shareholders would reduce by 10.31% and 19.69% respectively and these shares will be held by ZIL (30%). Since promoters will hold stake of 34.37% in ZHL, they can influence key decisions relating to ZHL by virtue of

direct holding which is 24.06%, as well as their stake in ZIL. On the other hand, the non-promoters shareholders will face a decline in their combined holding in ZHL and their percentage will come down from 65.63% to 45.94%. Thus, stake of the promoter group will increase by 54.06% and it may go up to more than 75%, if the holding of the promoter Transferor company is taken into account. All this shows that the scheme is not fair and the approval thereto is by all interested parties such as promoters and employees. The public shareholders did not attend the meeting and major financial Institutions/Investors such as M/s. Franklin Templeton Mutual Fund has disapproved the Scheme. Therefore,this is nothing but a rear-door route by the promoters to raise their shareholding and tighten their grip in the transferee Undertaking, which is now given to ZHL. The 95.46% shareholders who voted in favour of the scheme belonged to the promoters group and therefore they knew that they are the beneficiaries of the demerger. In these circumstances, that the

majority have approved the scheme is no answer to the objections to the scheme. The Court must independently find out by applying the principles laid down in the case of Miheer H. Mafatlal Vs. Mafatlal Industries Ltd., AIR, 1997 S.C. 506.

35. For all these reasons, Mr. Desai submits that the objections may not be overruled but given due weight-age and serious consideration. He has also given a chart and relied upon the valuation report.

36. With the assistance of the learned counsel appearing for the parties, I have perused the petition, the annexures thereof and relevant statutory provisions brought to my notice. The ambit and scope and power of this Court while approving and sanctioning the scheme of this nature are now well settled and which are noted in the decision in the case of Miheer H. Mafatlal Vs. Mafatlal Industries Ltd., AIR, 1997 S.C. 506.

37. The principles that are summarized by the Hon'ble Supreme Court in paragraph 28-A of this decision read thus:

"28-A The following broad contours of such jurisdiction have emerged :

1 The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meeting as contemplated by Section 391(1) (a) have been held.

2. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391 sub-section (2).

3. That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just fair to the class as whole so as to legitimately blind even the dissenting members of that class.

4. That all the necessary material indicated by Section 393(1)(a) is placed before the voters at the concerned meetings as contemplated by Section 391 sub-Section (1).

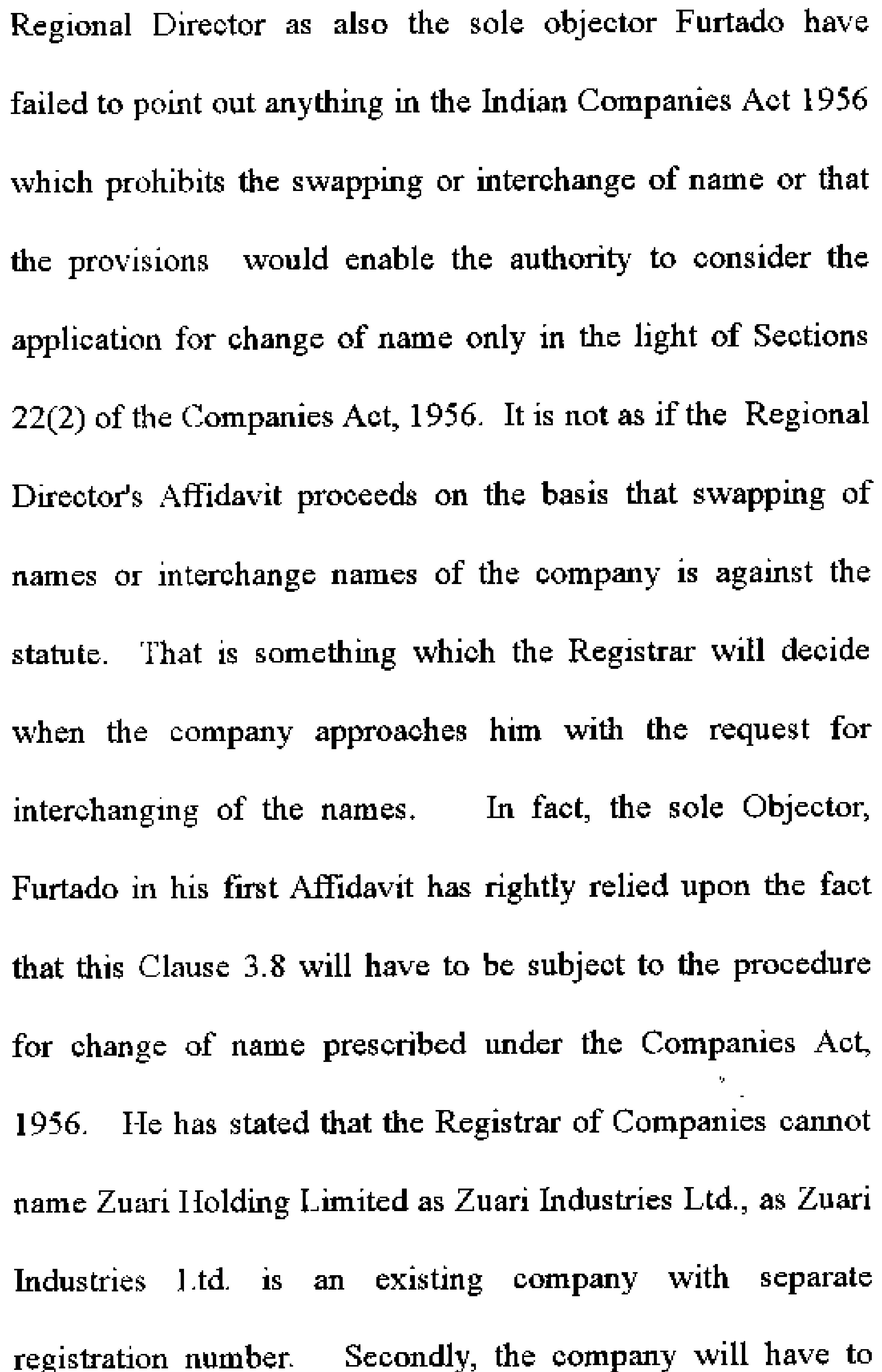
5. That all the requisite material contemplated by the provision of sub-Section (2) of Section 391 of the Act is placed before the

Court by the concerned applicant seeking sanction for such a scheme and the Court gets satisfied about the same.

6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view of to satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.
7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent.
8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.
9. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even

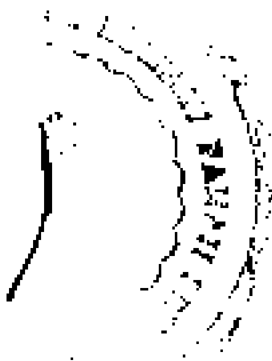
> if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court
>
> exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.
>
> The aforesaid parameters of the scope and ambit of the jurisdiction of the Company Court which is called upon to sanction a Scheme of Compromise and Arrangement are not exhaustive but only broadly illustrative of the contours of the Court's jurisdiction."

38. If this principles are applied to the facts of the instant case what I find is that Regional Director upon examination and scrutiny of the report of the Registrar of Companies has come to the conclusion that the scheme is not prejudicial to the shareholders, creditors and general public. While explaining this point he has invited attention of this Court to certain aspects of the scheme. As far as his reliance on clause 3.8 is concerned, I am of the opinion that both the



Regional Director as also the sole objector Furtado have failed to point out anything in the Indian Companies Act 1956 which prohibits the swapping or interchange of name or that the provisions would enable the authority to consider the application for change of name only in the light of Sections 22(2) of the Companies Act, 1956. It is not as if the Regional Director's Affidavit proceeds on the basis that swapping of names or interchange names of the company is against the statute. That is something which the Registrar will decide when the company approaches him with the request for interchanging of the names. In fact, the sole Objector, Furtado in his first Affidavit has rightly relied upon the fact that this Clause 3.8 will have to be subject to the procedure for change of name prescribed under the Companies Act, 1956. He has stated that the Registrar of Companies cannot name Zuari Holding Limited as Zuari Industries Ltd., as Zuari Industries Ltd. is an existing company with separate registration number. Secondly, the company will have to

hold a Board meeting and pass the resolution authorizing the person to sign Form "A" along with fees. The company will have to hold general body meeting for passing said resolution for change of name. The reasons have to be provided accordingly for change in name. He has stated that this Court has no jurisdiction over Registrar of Companies in the matter of change of names. Precisely, this is what I have concluded. Clause 3.8 will come into force only upon compliance with the provisions of the Companies Act, 1956 and particularly the procedure laid down in the Affidavit of Furtado. Equally this Court putting its seal of approval and sanction to the scheme does not mean that the Registrar of Companies would not exercise independent power under the Companies Act, 1956 in relation to change or swapping of names. Therefore, by clarifying that clause 3.8 would be subject to the provisions of the Companies Act, 1956, the scheme can be sanctioned.



39. Mr. Rajadhyaksha, learned Senior counsel reliance upon the decision of this Court in the case of Intertek Testing Services India (P) Ltd. And Caleb Brett India (P) Ltd. Reported in (2009) 4 Comp. L.J 637 is well placed. The learned Single Judge while relying upon the judgment of this Court dated 11/4/2007 in Company petition no.64/2007 YOU Telecom India (P) Ltd. And YOU Broad and Networks India (P) Ltd., (2008) 1 Comp LJ 276, has found that the provisions of Section 21 of the Companies Act by itself do not prohibit this Court from making an order of swapping of names. It is not as if for the first time any company has approached this Court for swapping of names. In case of Bajaj Auto Limited, the companies in the same group with the same name had approached this Court earlier for such relief. Reliance upon the scheme of identical nature between Bajaj Auto Limited Vs. Bajaj Holding and Investment Ltd. Company Petition no.716 of 2007 along with connected matter decided on 18/12/2007 is also appropriate.

40. In such circumstances, as far as this objection of the Regional Director and of sole Objector is concerned, by virtue of the above clarification, the apprehension may not survive.

41. The Regional Director has then stated that the scheme envisages increase in the authorized share capital of the transferee company. The company has clarified it will adhere to the provisions of the Companies Act 1956 and particularly Sections 94 to 97 thereof. Mr. R.Y. Patil has reiterated the statement. Therefore, the statement made by Mr. Rajadhayaksha, on instructions from the petitioner company is accepted as undertaking to this Court. As far as Clause 4.1 of the scheme is concerned, beyond stating that allotment to promoters of the transferor company, the shares of the transferee company would make them shareholders of the transferee company and that is not justified, the Regional

Director has not shown anything in law which prevents such a course. In the light of the clarifications given by the company and particularly the requirements of the section, I do not see how clause 4.8 of the scheme can be deleted as desired by the Regional Director. The objection of the Regional Director in that behalf is therefore rejected.

42. As far as Clause 5.2.3 of the scheme is concerned, Mr. Rajadhyaksha on instructions states that reserve will not be utilized for declaration of the dividend by the transferee company. Thus creation of business reconstruction reserve and treating it as Reserve in the books of transferee company but it would not be utilized for declaration of dividend by transferee company. The statement made by Mr. Rajadhyaksha on instructions is accepted as an undertaking to this Court and clause 5.3 of the scheme is approved in terms subject to this statement and undertaking.

43. As far as the main objection and that is raised by Mr. Furtado is concerned, equally that is without any substance and merit. It is pertinent to note that Shri Furtado has not denied the fact that he attended the meeting. He has also not denied the fact that during the course of the meeting he has not raised any of the objections now noted but chose to seek clarification from the Company Secretary as to what is the response by the company to his letter dated 11/8/2011. The said Furtado was present at the meeting and particularly till the end. He has also voted against the scheme along with 2 others equity shareholders. However, other shareholders have approved the scheme by voting at the said meeting . The statements made in report of the Chairman are not denied. In fact Shri Furtado's affidavit would reiterate the position and the factual basis in the report. As far as his contention that the circular of the Ministry of Corporate Affairs dated 26/7/2011 is not adhered to by the Regional Director is concerned, I am of the opinion that the report of the Regional Director

forwarded to this Court upon the scrutiny and verification of the Report of the Registrar of Companies shows that the scheme has been verified in terms of the circular. Therefore, it is not as if this circular has been ignored or given go by, as apprehended.

44. The principal contention and objection is that the stake of the promoters has been increased by demerger. The adoption of demerger group is nothing but tightening of the grip by the promoters and they would together dictate the non-promoters-shareholders to their prejudice, according to Furtado. In this behalf it may be noted that as far as the petitioner is concerned i.e. Zuari Industries Ltd. is an existing company incorporated in year 1967. It has its fertilizer undertaking from this time in the State of Goa. It is a listed company. It is listed at the Bombay Stock Exchange as well as in the National Stock Exchange. Promoters and the Group Managing these companies are well known in the market in

India. It is common for families to establish companies either by family names or other style because of peculiar business activities or their location. Further, Zuari Holding Ltd. was incorporated in 2009 that both the petitions disclose as to what is the object of the company, their composition and the nature of the activities undertaken by them which is not disputed by Furtado. That is the position revealed from the statutory declarations including the annual accounts, balance sheet and the relevant documents. The stake of the promoters group and composition of Board of Directors is not a secret. Despite all this, the majority of equity shareholders, public and Institutional buyers have their faith and trust in the company and have approved the scheme. The apprehension that the Directors on the board of Directors of the company are incapable of independent approach and outlook is nothing but casting aspersions on them without any material. It is not as if the promoter group is associated involved in the management for the first time. Several members of the family

and the promoter group are on board for all these years. In such circumstances, the apprehension that this is nothing but an attempt to increase the stranglehold of the promoter group is not well founded.

45. The scheme with all its salient features has been referred to in the petition and copy thereof has been duly annexed. The scheme has been scrutinized by independent body such as Registrar of Companies and Regional Director. Independent thereof, the scheme appears to be to increase the effectiveness of the business operations and better co-ordination and efficiency. The scheme has been envisaged so that fertilizer undertaking gets demerged in holding company and thereafter in the transferor company. The petitioners before this court can concentrate in a better manner on other activities and other business in which they are specialized. It is in such circumstances and for better coordination and efficiency the said scheme is envisaged, the decisions which

are essentially commercial cannot be set aside merely because on some of the objections raised by the objector another view is possible The test that has been laid down by the Hon'ble Supreme Court and followed from time to time would not enable me to exercise an appellate power. In these circumstances, I do not see how the objections of the sole objector can be taken note of.

46. Besides the said objection it has been also pointed out by the sole objector that the scheme of Bajaj Auto Ltd. was being scrutinized by this Court. The learned Single Judge has found that the objection of the identical nature cannot be accepted and no prejudice has been established. In this behalf the learned Single Judge has held in paras 22,23,24 and 25 thus:

"22. As aforesaid, the main grievance of the objector was that the process adopted by the company would result in sucking the real value

of the equity shares held by the shareholders and increasing percentage of holding of the promoters. Insofar as increasing percentage of the holding is concerned, that apprehension is totally misplaced. Inasmuch as, the pattern of holding of public shareholders and promoter shareholders remains unaffected in BAL.. Insofar as the resulting companies are concerned, the pattern would be that around 30% share capital to be held by BAL and the remaining 70% between the shareholders of BAL in the same proportion of their holding in the BAL.. As already discussed earlier, it may appear that the promoters will end up in getting 51% representation in the resulting companies. That may happen on account of 21% holding being direct shareholders in the resulting companies and 30% of the shares held in the

name of BAL. However, it cannot be overlooked that 30% holding of BAL in the resulting companies cannot be ascribed to be the holding of the promoter shareholders as such. The promoter shareholders who may be nominees of BAL. May have to conduct themselves in line with the decision of the General Body shareholders of BAL.

23. Suffice it to observe that the pattern of share holding is not going to increase percentage of the holding of the promoter shareholders as such either in the BAL or for that matter in the two resulting companies. Inasmuch as, out of 70% of shares of the resulting companies are to be allotted to the 100% shareholders of the BAL in the proportion of public shareholders of 70% and all promoter shareholders of 30% in BAL. The same holding would emerge in respect of

those 70% shares to be allotted in the resulting companies. The direct shares held by the BAL cannot be said to be the holding of promoter shareholders as such, whereas, it will also represent the aspirations of public shareholders in BAL.

24. Insofar as the grievance about sucking of the valuation of shares held by the shareholders, once again is without any basis. As a result of the arrangement, the shareholder (a) will continue to hold his shares in BAL and addition would get same number of shares in respective two resulting companies. In addition, they would indirectly hold shares through BAL who will have direct holding of equity shares in the respective two resulting companies to the extent of 30%. Considering all this holding cumulatively, the pattern of share holding

remains the same and there would be no sucking of valuation of shares as is contended.

25. On the above finding, I find no merits in the grievance of the objector that any prejudice will be caused to any shareholder or there would be a situation of reduction of valuation of all shares, as is contended."

The chart that has been handed over by Shri Rajadyaksha is nothing but reiteration of shareholding pattern emerging from the books to demonstrate that the promoter grouping being made shareholders of the transferee company does not show that non-promoters shareholders, who are sizable in number and more than 65%, would be adversely affected. The entire attempt appears to cast a shadow of doubt and question the bonafides of the promoters group. However, making such allegations by themselves would not be of any assistance to the sole objector. His objections have been referred to by me in great details. He has reiterated them in paras 10 to 15 of his

rejoinder. However, the affidavit that is filed of Shri R.Y. Patil and the statements which I have reproduced above would go to show that the promoter group has not increased their stake in the transferee company, but the statement which is relied upon and referred to in para 18 of the affidavit in rejoinder would show that the position is otherwise.

47. It is in these circumstances that I am of the view that objection based on increase in the stake of the promoter shareholders is liable to be rejected.

48. Accordingly, all the objections are rejected and in view of the clarifications that have been issued above so also undertakings of the petitioner company, I am of the opinion that the scheme is not demonstrated and proved to be prejudicial to the interest of the shareholders/creditors and general public. Accordingly it deserves to be approved.

49. The company petitions are made absolute in terms of prayer clauses "a","b" and "c". The costs of the Regional Director are quantified at Rs.25,000/- (Rupees twenty five thousand only) in each of these petitions.

50. At this stage Mr. Dessai prays that the operation of this order be stayed so as to enable the sole objector Furtado to challenge this order in higher court. This is objected by Mr. Sonak and Mr. Padiyar appearing in other petition no.6 of 2011.

51. Once I have come to the conclusion that the objector has failed to prove that the scheme is prejudicial to the interest of the shareholders who have overwhelmingly approved the same, the request to stay the operation of this order cannot be granted. It is accordingly refused.

S. C. DHARMADHIKARI,J.

Ap/-

IN THE HIGH COURT OF JUDICATURE OF BOMBAY AT GOA

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 7 OF 2011

CONNECTED WITH

COMPANY APPLICATION NO.19 OF 2011

In the matter of the Companies Act, 1956;

-And-

In the matter of Petition under Sections 391 to 395 of the Companies Act, 1956;

-And-

In the matter of Scheme of Arrangement and Demerger between Zuari Industries Limited and Zuari Holdings Limited;

And

In the matter of Zuari Industries Limited, a company incorporated under the Companies Act, 1956, having its registered office at Jai Kisaan Bhawan, Zuarinagar, Goa- 403726;

-And-

In the matter of Zuari Holdings Limited, a company incorporated under the Companies Act, 1956, having its registered office at Jai Kisaan Bhawan, Zuarinagar, Goa-403726.

Zuari Industries Limited, a company incorporated under the Companies Act, 1956, having its registered office at Jai Kisaan Bhawan, Zuarinagar, Goa- 403726 } ...Petitioner /Transferor Company

a. that the Scheme of Arrangement and Demerger being **Exhibit "G"** be sanctioned by this Hon'ble Court so as to be binding, with effect from 01 July 2011, the Appointed Date, on the Petitioner Company and all its shareholders and concerned persons;

b. for an order under Section 394 of the Companies Act, that with effect from the Appointed Date, the Fertilizer Undertaking of the Petitioner Company shall be transferred to and vested in and/or deemed to be transferred to and vested in the Transferee Company, as set out in the Scheme being **Exhibit "G"**;

c. for an order under Section 394 of the Companies Act, 1956 that the Petitioner Company shall file within 30 days after the date of receipt of the order to be made herein or within such other time as may be permitted by this Hon'ble Court, cause a certified copy thereof to be delivered and filed with the Registrar of Companies, Goa for registration;

d. for such further or other orders be made and/or directions be given as this Hon'ble Court may deem fit and proper.

29 The Petitioner Company has paid the requisite court fee of Rs 50 on the Petition.

30 The Petition is filed within time.

31 The Petitioner Company will rely upon the documents, a list whereof is annexed hereto.

The Petitioner Company therefore prays :-

a. that the Scheme of Arrangement and Demerger being **Exhibit "G"** be sanctioned by this Hon'ble Court so as to be binding, with effect from 01 July 2011, the Appointed Date, on the Petitioner Company and all its shareholders and concerned persons;

b. for an order under Section 394 of the Companies Act, that with effect from the Appointed Date, the Fertilizer Undertaking of the Petitioner Company shall be transferred to and vested in and/or deemed to be transferred to and vested in the Transferee Company, as set out in the Scheme being **Exhibit "G"**;

c. for an order under Section 394 of the Companies Act, 1956 that the Petitioner Company shall file within 30 days after the date of receipt of the order to be made herein or within such other time as may be permitted by this Hon'ble Court, cause a certified copy thereof to be delivered and filed with the Registrar of Companies, Goa for registration;

d. for such further or other orders be made and/or directions be given as this Hon'ble Court may deem fit and proper.