IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SUMMONS FOR DIRECTION NO.340 OF 2015

In the matter of Companies Act, 1956 and Companies Act, 2013

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956

AND

In the matter of the Scheme of Arrangement of
Bhoomika Constructions Private Limited

And

Dragon Eastwest Trading Private Limited

And

Dynasty Impoexpo Private Limited

And

Surekh Chitra Investments Private Limited

And

Trishul Sakti Investment Private Limited

And

Viraj Profiles Limited

And

Their respective shareholders

Viraj Profiles Limited, a company incorporated under the Companies Act, 1956 and having its registered office at G-34, MIDC, Tarapur Industrial Area, Boisar, Palghar, Thane, Tarapur, Maharashtra – 401 506. )……Applicant Company

<u>Called Summons for direction for hearing</u>

Mr. Ashish Kamat i/b M/s Crawford Bayley & Co, Advocate for Applicant Company.

CORAM: S.J.Kathawalla, J

DATE : 24th April, 2015

<u>MINUTES OF THE ORDER</u>

UPON the Application of the Applicant Company above named by a Summons for Direction, AND UPON HEARING Mr. Ashish Kamat instructed by M/s Crawford Bayley & Co., Advocates for the Applicant Company, AND UPON READING the Affidavit dated 31st day of March, 2015 of Mr. Gaurav Raghuvanshi, Authorised Signatory of the Applicant Company, in support of Summons for Direction, and the Exhibits therein referred to, IT IS ORDERED THAT -:

1. The meeting of the Equity Shareholders of the Applicant Company above named shall be convened and held at the registered office of the Applicant Company at Viraj Profiles Limited, G-34 MIDC, Tarapur Industrial area Bhoisar, Palghar, 401506, Maharashtra, on Monday, 1st June, 2015 at 11.00 A.M by the Applicant Company, for the purpose of considering, and if thought fit, approving, with or without modification(s) the proposed Scheme of Arrangement of Bhoomika Constructions Private Limited and Dragon Eastwest Trading Private Limited and Dynasty Impoexpo Private Limited and Surekh Chitra Investments Private Limited and Trishul Sakti Investment Private Limited and Viraj Profiles Limited and their respective shareholders.

2. At least 21 clear days before the meeting of Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, day, date and time as aforesaid, together with a copy of the Scheme of Arrangement and a copy of the statement required to be sent under Section 393 of the Companies Act 1956 or

corresponding provisions of Companies Act, 2013 and the prescribed form of proxy, shall be sent by RPAD/ speed post to each of the Equity Shareholders at their respective registered or last known address as per the record of the Applicant Company.

3. At least 21 clear days before the meeting of Equity Shareholders of the Applicant Company to be held as aforesaid, an advertisement convening the said meeting, at the place, day, date and time aforesaid and stating that copies of the proposed Scheme of Arrangement and the statement required to be furnished pursuant to Section 393 of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013 and form of proxy can be obtained free of charge at the registered office of the Applicant Company, shall be published once each in two local news papers viz. “Free Press Journal”, in English language and translation thereof in “Navshakti”, in Marathi language, both having circulation in Mumbai.

4. Publication of notice of meeting of the Equity Shareholders of the Applicant Company in the Maharashtra Government Gazette is dispensed with.

5. The settling and approving of the form of advertisement, form of proxy, the form of notice, the Explanatory Statement required to be furnished pursuant to Section 393 of the Companies Act, 1956 to accompany the notice to be issued to the Equity Shareholders of the

Applicant Company by the Company Registrar of this Court is dispensed with. The Applicant Company undertakes to:-

i. issue Notice convening meeting of the Equity Shareholders as per Form No. 36 (Rule 73)

ii. issue Form of Proxy as per Form No. 37 (Rule 73);

iii. advertise the Notice convening meeting as per Form No. 38 (Rule 74)

iv. issue Explanatory Statement containing all the particulars as per Section 393 of the Companies Act, 1956 if need be;

The said undertaking is accepted.

6. Mr. Shilan Thaker, Director of the Applicant Company or failing him Mr. Neeraj Kochhar, Director or failing him Mrs. Renu Kochhar, Director shall be the Chairman for the above meeting of Equity Shareholders to be held at the registered office of the Applicant Company at Viraj Profiles Limited, G-34 MIDC, Tarapur Industrial area Bhoisar, Palghar, 401506, Maharashtra on Monday, 1st June, 2015 at 11.00 A.M or any adjournment or adjournments thereof.

7. The Chairman appointed for the aforesaid meeting to issue the advertisement and send out the notices of the meeting of Equity Shareholders referred above. It is further directed that the said Chairman shall have all powers as per the Articles of Association and also under the Companies (Court) Rules, 1959 or any re-enactment thereof upon effectiveness of Companies Act, 2013 in relation to conduct of the

meeting including for deciding any procedural questions that may arise at the meeting or at any adjournment or adjournment(s) thereof of any matter including an amendment to the Scheme or Resolutions if any, proposed at the meeting by any person(s) and to ascertain the decision of or the sense of the meeting by a poll.

8. The quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under section 103 of the Companies Act, 2013.

9. The voting by proxy/ authorized representative in case of body corporate is permitted, provided that a proxy in the prescribed form / authorization duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its registered office at Viraj Profiles Limited, G-34 MIDC, Tarapur Industrial area Bhoisar, Palghar, 401506, Maharashtra, India not later than 48 hours before the meeting, as provided under Rule 70 of the Companies (Court) Rules, 1959.

10. The number and value of the vote of Equity Shareholders shall be in accordance with the books/ register of the Applicant Company and where the entries in the books/ register are disputed, the Chairman shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

11. The Chairman of the meeting of to file affidavit of service as per Rule 76 of Company (Court) Rules, 1959 not less than Seven days before the date fixed for the holding of the Meeting and do report this Court that

the direction regarding the issue of notices and advertisement have been duly complied with.

12. That the Chairman of the meeting do report to this Court the result of the said meeting within thirty days of the conclusion of the meeting of Equity Shareholders and the said report shall be verified by his affidavit.

13. That convening and holding the meeting of Secured Creditors of the Applicant Company above named for the purpose of considering and if thought fit, approving, with or without modification the proposed Scheme of Arrangement of Bhoomika Constructions Private Limited and Dragon Eastwest Trading Private Limited and Dynasty Impoexpo Private Limited and Surekh Chitra Investments Private Limited and Trishul Sakti Investment Private Limited and Viraj Profiles Limited and their respective shareholders, is dispensed with in view of the averment made in paragraph 55 of the affidavit in support of the Company Summons for Direction of the Applicant Company, inter alia, stating that the interest of Secured Creditors is not affected as the assets of the Applicant after the proposed Arrangement will be far more than its Liabilities and that the Applicant Company undertakes to issue individual notice of the date of hearing of the Company Scheme Petition to all its Secured Creditors by R.P.A.D. and also publish the same in 'Free Press Journal', in English, language and a translation thereof in 'Navshakti' in Marathi language both having circulation in Mumbai. The said undertaking is accepted.

14. The convening and holding the meeting of Unsecured Creditors of the Applicant Company above named for the purpose of considering and if thought fit, approving, with or without modification the proposed Scheme of Arrangement of Bhoomika Constructions Private Limited and Dragon Eastwest Trading Private Limited and Dynasty Impoexpo Private Limited and Surekh Chitra Investments Private Limited and Trishul Sakti Investment Private Limited and Viraj Profiles Limited and their respective shareholders, is dispensed with in view of the averment made in paragraph 56 of the affidavit in support of the Company Summons for Direction of the Applicant Company, inter alia, stating that This Scheme is between shareholders of the Applicant Company and the each of the Transferor Companies, as contemplated under Section 391(1)(b) and not in accordance with the provisions of Section 391(1)(a) of the Companies Act, 1956 as there is no compromise and/or Arrangement with the creditors and the creditors of the Applicant Company are being paid in the normal course of business and as per the agreed terms and are not called upon to make any sacrifices, hence their interests are not getting affected in any way and that the Applicant Company undertakes to issue individual notice of the date of hearing of the Company Scheme Petition to all its Unsecured Creditors by R.P.A.D. and also publish the same in 'Free Press Journal', in English, language and a translation thereof in 'Navshakti' in Marathi language both having circulation in Mumbai. The said undertaking is accepted.

15. Learned Counsel for the Petitioner Company States that pursuant to that as per clause (7) of the scheme, the reduction of Share Capital of the Applicant Company shall be effected as an integral part of the Scheme and in view of the averments made in paragraph 57 and 58 of the Affidavit in support of the Company Summons for Direction, inter alia, stating that reduction of Share Capital does not involve either diminution of liability in respect of unpaid Share Capital or payment to any shareholder of any Paid up Share Capital and that the Applicant Company undertakes to pass a Special Resolution pursuant to provisions of Section 100 of the Companies Act, 1956 in the Court Convening Meeting of its Equity Shareholders scheduled herein above, separately for reduction of Share Capital of the Applicant Company and copy of the said Resolution will annex to Company Scheme Petition. In view of above, the procedure prescribed under section 101 (2) of the Companies Act, 1956 is dispensed with.

(S. J. Kathawalla, J.)