IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 424 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 306 OF 2015.

Vikram Credit and Capital Services Pvt. Ltd,)....Petitioner/ First Transferor Company

AND

COMPANY SCHEME PETITION NO. 425 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 305 OF 2015

M/s. Vispra Developers Limited,) ... Petitioner /Second Transferor Company

AND

COMPANY SCHEME PETITION NO. 426 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.307 OF 2015

Bhoruka Classic Finance Pvt. Ltd.,) ... Petitioner/Transferee Company

In the matter of the Companies Act, 1956

AND

In the matter of Petition under Section 391 to 394 of the Companies Act, 1956

AND

In the matter of Vikram Credit and Capital Services Pvt. Ltd, a company incorporated under the provisions of the Companies Act, 1956

AND

In the matter of Scheme of Amalgamation

BETWEEN

Vikram Credit and Capital Services Pvt. Ltd, (the first Transferor Company)

AND

Vispra Developers Limited, (the Second Transferor Company).

WITH

Bhoruka Classic Finance Pvt. Ltd,(the Transferee Company)

Called for Final Hearing:

Ms. Dipti Vora., Advocate for the Petitioner

Mr.Pranil K Sonawan i/b A.A.Ansari for Regional Director in all Petitions.

Mr. S. Ramakantha Official Liquidator, present.

Coram : S.C. Gupte J.

Date 16th October, 2015

MINUTES OF THE ORDER

1. Heard learned counsel for the parties. No objector has come to oppose the Scheme nor any party has controverted any averments made in the Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a arrangement embodied in the Scheme of Amalgamation between Vikram Credit and Capital Services Pvt. Ltd, the Petitioner, (the first Transferor Company) and Vispra Developers Limited, (the Second Transferor Company) with Bhoruka Classic Finance Pvt. Ltd, (the Transferee Company)".

3. The learned Advocate for the Petitioner Company states that the First Transferor Company is engaged in the business of promoting the formation and mobilization

of finance, consultancy assignments, factoring, consumer financing and foreign exchange broking and securities dealing and to carry on the business of merchant Banking, Bill Discounting and the Second Transferor Company was engaged in the business of Builders, Developers, Tractors, Machinery, engineers, Estate Agents, and General Construction Contractors and business of proprietors of lands and entering into contracts and other arrangement, with tenants, occupants, builders, developers, contractors and other persons more particularly describe in respective petition. However, at present both the company does not have much of the activities. The Petitioner/Transferee Company is engaged in the business of financing and hire purchase, Industrial and Trading enterprises in any movable and/or immovable goods and property of any description including inter corporate Deposits with or without securities, foreign exchange dealings, international business finance, acquire/sale shares, debentures etc and as such transferor companies are NBFC'S as stated in petition as define under Banking Corporation Act 1949.

4. The learned Advocate for the Petitioner Companies further states that the Scheme of Amalgamation will be advantageous and upon amalgamation, the business of Transferee Company will be carried out more efficiently, effectively and beneficially, as it would enable Transferee Company to obtain advantages of economies of large scale. The amalgamation will enable the transferee company to consolidate the business and lead to synergies in operation and create a stronger financial base, It would be advantageous to combine the activities and

Operations of above said companies into a single company for synergistic linkages and the benefit of combined financial resources this will be reflected in the profitability of the Transferee Company etc.

5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which is annexed to the respective Company Scheme Petition.

6. The learned Advocate for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction and seeks sanction to the said proposed Scheme of Amalgamation.

7. The Learned Advocate appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under. The said undertaking is accepted.

8. The Official Liquidator has filed his affidavit dated 24th September, 2015 stating therein that the Affairs of the Transferor Companies have been conducted in a proper manner.

9. The Advocate for petitioner states that the Reserve Bank of India has communicated to the Petitioner that upon the scheme being sanctioned petitioner companies should file post merger audited balance sheet of Transferee Company with other requirements. However in affidavit filed by the official liquidator, the official liquidator has submitted in paragraph 10 of his affidavit that *"scheme may be kept in abeyance till the prior approval of Reserve Bank of India is not obtained by the transferor company".*

10. The learned counsel for petitioner therefore states that they are ready and willing to comply with requirements laid down by Reserve Bank of India and therefore objection of official liquidator be dispense with and petitioner companies further through their advocate undertakes to comply with requirements of Reserve Bank of India. The said undertaking is accepted.

11. The Regional Director has filed his Affidavit on 9th October, 2015, inter alia, stating therein that save and except as stated in paragraphs 6(a), (b) & (c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to (c) of the said Affidavit, the Regional Director has stated that :

"6. That the Deponent further submits that:-

(a) Clause 13.4 of the scheme provides for adjustment for the differences in accounting policies between Transferor companies and Transferee companies. In this regards, it is submitted that in addition to compliance of Accounting

Standard -14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with accounting standards such as AS-5,

(b) The First Transferor Company and Transferee Company are Non-banking Finance Company, regulated by the Reserve Bank of India. The Transferee company had issued notices to the Reserve Bank of India vide its letter dated 11/03/2015, 07/09/2015, and 23/09/2015. In this regards, the Transferee Company may be directed to file copy of this Hon'ble High court order, approving the scheme within 30days from the date of the order, with the Reserve Bank of India and to obtain necessary approval from Reserve Bank of India.

(c) It has been observed from the shareholding List of the Transferee Company that the First Transferor Company and the second Transferor Company is holding 100 shares and 3200 Equity shares of Rs.10/- each respectively in the shares capital of transferee company. Upon the scheme being effective, these shares shall get cancelled and consequently, there will be a reduction in the paid up equity capital of the Transferee company. The scheme is silent with respect of such reduction of paid up equity capital of Transferee company as well as compliance of section of section 100 of the Companies Act 1956 corresponding to the section 66 of the Companies Act, 2013. In this regards it is submitted that the petitioner companies may be directed to incorporate a suitable clause in the

scheme itself and amend the scheme accordingly to reflect such reduction of capital as an integral part of scheme.

(d) It is respectfully submitted that the Tax implications, if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner company.

12. As far as the objection of the Regional Director in paragraph 6(a) of his affidavit is concerned, the Transferee Company through its advocate submitted that in addition to the compliance of Accounting Standard – 14, the Transferee Company shall pass such accounting Standard which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

13. As far as the objection of the Regional Director in paragraph 6(b) of his affidavit is concerned, the Transferee Company through its advocate undertakes that the Transferee Company *will file copy of Hon'ble court's order, approving the scheme within 30days from the date of the order, with the Reserve Bank of India for necessary compliance.*

14. As far as the objection of the Regional Director in paragraph 6(c) of his affidavit is concerned, the Transferee Company through its advocate seeks liberty, as suggested by the Regional Director, to amend the following paragraph as clause 13.5 of the Scheme after the existing clause 13.4.*"The reduction shall be effected as an integral part of this Scheme under section 100 to 103 of the Companies Act, 1956 corresponding to section 66 of the Companies Act, 2013 and the Order of the High Court sanctioning the Scheme shall be deemed to be also the Order under section 102 of the Companies Act, 1956 for the purpose of confirming the reduction*". Liberty to amend is granted. The amendment to be carried out within two week. The said Scheme of Amalgamation thus stands modified

15. As far as the objection of the Regional Director in paragraph 6(d) of his affidavit is concerned, the Transferee Company through its advocate submits that the Tax issue if any arising out of the scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority.

16. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the amended clause 13.5 to the said Scheme and with the undertakings made by the Petitioner Company through their advocate. In view thereof, the said undertakings are accepted.

17. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

18. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.424 of 2015 and Company Scheme Petition No.425 of 2015 filed by the First and Second Transferor Company are is made absolute in terms of prayer clauses (a), to (d) and Company Scheme Petition No.426 of 2015 filed by the Transferee Company is made absolute in terms of prayer clauses (a), to (d).

19. The Petitioner Companies to lodge a copy of this Order along with the Scheme and Form of Minutes duly authenticated by the Company Registrar, High Court, Bombay, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of this order.

20. Petitioner is directed to lodge a copy of this order along with the Scheme and Form of Minutes duly authenticated by the Company Registrar, High Court, Bombay, with the concerned Registrar of Companies, electronically, along with E-Form INC-28 in addition to physical copy, as per the relevant provisions of the Companies Act 1956/ 2013, whichever is applicable.

21. The Petitioners to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in Company Scheme Petition Nos. 424 of 2015 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

23. All concerned regulatory authorities to act on copy of this order along with the Scheme and Form of Minutes duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S.C. Gupte J.)

<u>C E R T I F I C A T E</u>

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

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