IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 539 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 439 OF 2015

Varun Leasing and Finance Private Limited
….. Petitioner Company

AND

COMPANY SCHEME PETITION NO. 540 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 476 OF 2015

Jayant Finvest Limited …. Petitioner Company

In the matter of Companies Act, 1956 (1 of 1956);

And

In the matter of Sections 391 and 394 of the Companies Act, 1956; (1 of 1956)

And

In the matter of Scheme of Amalgamation of Varun Leasing and Finance Private Limited with Jayant Finvest Limited.

Called for hearing:

Mr. Guaraj Shah i/b. M/s. Kanga & Company, Advocates for the Petitioner in Company Scheme Petition No. 539 & 540 of 2015.
Mr. S. Ramakantha, Asstt. Official Liquidator, present in CSP No. 539 of 2015.

Mr. Vijay Kiledar i/b. Mr. A.A. Ansari for Regional Director in both the Petitions.

CORAM: K.R. Shriram J.

DATE: 11th December 2015

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has contraverted any averments made in the Petition.

2. The sanction of the Court is sought to a Scheme of Amalgamation of Varun Leasing and Finance Private Limited, the Transferor Company with Jayant Finvest Limited, the Transferee Company under Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provisions of the Companies Act, 2013 as may be notified.

3. The Learned Counsel for the Petitioners state that both the Companies are under a common management. The Transferor Company is at present engaged in the business of investments and the Transferee Company is also engaged in the business of investments. With a view to have better utilization of resources and assets and synergies of operations with integration of management and other expertise and strong capital structure and to also have greater efficiency in cash management and cost savings from focused operational efforts, rationalization, standardization and simplification of business processes, and to eliminate duplication, and to rationalize administrative expenses it was proposed to amalgamate the Transferor Company with the Transferee Company. The Amalgamation would be in the interest of both the Companies and their shareholders. The Transferor and Transferee Companies approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.

3. The Learned Counsel for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in the respective Company Summons for

Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Summons for Directions.

4. The Learned Counsel appearing on behalf of the Petitioners state that the Petitioners have complied with all requirements as per directions of this Court and that the Petitioners have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and Companies Act, 2013 and the Rules made thereunder as may be applicable. The said undertaking is accepted.

5. The Regional Director has filed an Affidavit on 27th October 2015 stating therein that save and except as stated in para 6(a), (b), (c), it appears that the Scheme is not prejudicial to the interest of shareholders and public. The said para is reproduced below:

"*6. That the Deponent further submits that :*

a) Clause 14.4 of the Scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard – 14, the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standard such as AS-5 etc.

b) It has been observed that, both the Transferor and Transferee Companies are having investment activities and the income of the companies are substantially from the investment activity. In this regard, it is suggested that copy of the order approving the Scheme shall be filed with Reserve Bank of India within 30 days from the date of approval of the Scheme.

c) *That the Deponent further submits that the Tax issue if any, arising out of the Scheme is subject to final decision of Income Tax Authorities and approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner companies.*"

6. The Learned Counsel appearing on behalf of the Petitioner Companies in respect of paragraph 6(a) of the Affidavit of the Regional Director, undertakes that in addition to the compliance of Accounting Standard -14, the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standard such as AS-5 etc.

7. The Learned Counsel appearing on behalf of the Petitioner companies further states that in respect of paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel undertake to file a copy of this Order with the Reserve Bank of India within 30 days from the date of approval of the Scheme.

8. The Learned Counsel appearing on behalf of the Petitioner companies further state that in respect of paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel agree and confirm that the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of the Scheme will be answered in accordance with law.

9. The Learned Counsel for Regional Director on instructions of Mr. Chandanamuthu, Joint Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings given by the Learned Counsel for the Petitioner Companies. The undertakings given by the Petitioner Companies are accepted.

10. The Official Liquidator has filed his report on 8th October 2015 in Company Scheme Petition No. 539 of 2015 stating that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved.

11. 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.

12. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 539 of 2015 is made absolute in terms of prayers (a) to (f) and Company Scheme Petition No. 540 of 2015 is made absolute in terms of prayers (a) to (e).

13. The Petitioner Companies to lodge a copy of this order and scheme duly authenticated by the Company Registrar, High Court (O.S.), 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 the order.

14. Petitioners are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form – INC 28 in addition to physical copy as per the provisions of the Companies Act, 1956/2013.

15. The Petitioners in both the Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order and the Petitioner in Company Scheme Petition No. 539 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.

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

17. All concerned regulatory authority to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(K.R.Shriram J.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer