IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 668 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 502 OF 2014

Reed Infomedia India Private Limited

…..Petitioner/First Transferor Company

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

AND

In the matter of Sections 391 to 394 and 100 to 103 of the Companies Act, 1956 read with Rules 67 to 87 of the Companies (Court) Rules , 1959;

AND

In the matter of Scheme of Arrangement amongst Capital l8 Fincap Private Limited, (Transferee Company) and Reed Infomedia India Private Limited, (First Transferor Company), RRB Investments Private Limited, (Second Transferor Company), RRK Finhold Private Limited, (Third Transferor Company), RVT Finhold Private Limited, (Fourth Transferor Company), and Setprol8 Distribution Limited (Fifth Transferor Company) and their respective shareholders and creditors

<u>Called for Hearing</u>

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner.

Mr. C.J. Joy, i/b Mr. H.P. Chaturvedi for Regional Director.

Mr. S. Ramakantha Official Liquidator.

CORAM: S. J. Kathawalla, J.

DATE: 30th January 2015

1. Heard the learned counsel for the Petitioner. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Arrangement amongst Capital l8 Fincap Private Limited, (Transferee Company) and Reed Infomedia India Private Limited, (First Transferor Company), RRB Investments Private Limited, (Second Transferor Company), RRK Finhold Private Limited, (Third Transferor Company), RVT Finhold Private Limited, (Fourth Transferor Company), and Setprol8 Distribution Limited (Fifth Transferor Company) and their respective shareholders and creditors .

3. The Petitioner /First Transferor Company was engaged in the business of publication of special interest magazines in India. However, the Petitioner Company does not carry on any business activity currently. The Transferee Company is *inter-alia* engaged in the business of undertaking investments in various companies.

4. The learned Counsel for the Petitioner submits that benefits of Scheme is that it will simply corporate structure. Efficient and economical management, control and running of businesses and Consolidation of

businesses, thereby attaining economies of scale and eliminating unnecessary duplication of costs.

5. The Petitioner/First Transferor Company has approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the Company Scheme Petition.

6. The learned counsel for the Petitioner state that Petitioner Company has complied with all directions passed in Company Summons for Direction and that the Scheme has been filed in consonance with the orders passed in Company summons for Direction.

7. Counsel appearing on behalf of the Petitioner states that they have complied with all requirements as per directions of this Court and they have filed necessary Affidavit of compliance in the Court. Moreover, Petitioner Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertaking given by the Petitioner Company is accepted.

8. The Official Liquidator has filed his report on 28th January 2015 stating that the affairs of the Petitioner Company has been conducted in a proper manner and that Petitioner Company may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit on 18th December 2014, stating therein, save and except as stated in paragraph 6 it appears that the scheme is not prejudicial to the interest of shareholders and public.

In paragraphs 6 of the said affidavit it is stated that:-

6. *That the Deponent further submits that, it has been observed that the paid up capital of the petitioner company is Rs 10 crores and as per the latest provisional balance sheet as at 30/09/2014 the petitioner company is having accumulated loss of Rs 9.98 crores, and hence the entire share capital of the company is fully eroded. The petitioner company is also not having any business activities and not earned any income for the past few years. It is further observed that the petitioner company was not a subsidiary of Transferee Company till 13/08/2014. As on that date, the Transferee Company was holding only 49% of the equity share capital of the Transferor Company. Only on 14/08/2014 as per the shareholding pattern provided by the petitioner company, the petitioner company became wholly owned subsidiary of Transferee Company and as such there is a change in the ownership of the Transferor Company w.e.f. 14/08/2014. Under these circumstances, whether the accumulated loss of the petitioner company can be carried forward to Transferee Company u/s 72A of the Income Tax Act, is a matter needs to be examined by the Income Tax Authority. The scheme is designed only to carry forward the loss in the Transferee Company. In this regard tax implication if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by the Hon'ble High Court may not deter the Income Tax Authority to <u>scrutinize</u> the tax returns filed by the petitioner company after giving effect to the amalgamation, the decision of the Income Tax Authority is binding on the petitioner company.*

10. In so far as observations made in paragraph 6 of the Affidavit of Regional Director is concerned, the Petitioner Company submit that

the Petitioner is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

11. The Learned Counsel appearing for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertaking given by the Petitioner Company. The said undertaking given by Petitioner Company is accepted.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the Petition.

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 the physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

15. The Petitioner Company to lodge a copy of this order and the Scheme, 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 the Order.

16. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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

18. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court, Bombay.

(S. J. KATHAWALLA, J.)