IN THE HIGH COURT OF JUDICATUR AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION No. 247 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 639 OF 2014

Visa Holdings Private Limited. .. Petitioner Company.

AND

COMPANY SCHEME PETITION No. 248 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 640 OF 2014

Lucid Colloids Limited. .. Petitioner Company.

In the matter of Companies Act, 1956
And
In the matter of Sections 391 to 394
of the Companies Act, 1956.
And
In the matter of Lucid Colloids Limited.,
And
In the matter of
The Scheme of Amalgamation of
Visa Holdings Private Limited.
With
Lucid Colloids Limited.,

<u>Called for Hearing</u>

Mr. Dharmesh Pandya Advocate for the Petitioner Company.

Mr.G.Hariharan i/b A.A.Ansari for Regional Director in the Petitions.

Mr. S. Ramakantha Official Liquidator, present.

CORAM: S. C. GUPTE, J

DATE: 24th July, 2015

PC:

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 Visa Holdings Private Limited., the Transferor Company and Lucid Colloids Limited., the Transferee Company.

3. The learned Advocate for the Petitioner Company states that the Transferor Company is engaged in the business of Dealing/Trading in Shares and Securities etc., and the Transferee Company is engaged in the business of manufacturer of Guar Gum Powder and Derivatives etc

4. The learned Advocate for the Petitioner Companies further states that the Scheme of Amalgamation will be advantageous and beneficial to the share holders of the Petitioner Company as also the share holders of the Transferor Company. The business of both the Companies will be carried out more economically, efficiently and beneficially as more funds for the business of the amalgamated Company will be available therefor. The amalgamation will achieve economy of scale, optimization of resources, reduction in

overall overhead costs and better and effective management.

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 report on 18th June, 2015 stating therein that the Affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

9. The Regional Director has filed his Affidavit on 8th July, 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) With reference to 16 of the scheme, it is submitted that as per section 2(43) of the Companies Act, 2013 the reserve arising out of the scheme, shall not be construed as free reserve and that part of the reserve shall not be considered as forming part of the net worth of the Transferee Company.

(b) As per clause 12(iii) of the scheme, 23,85,501 equity shares held by Transferor Company in the capital of Transferee Company shall get cancelled without further act or deed, In this regard, it is submitted that the reduction of paid up capital of Transferee Company would attract the provisions of section 100 of the Companies Act corresponding to section 66 of the Companies Act, 2013. The scheme is silent with respect to compliance of section 100/66 of the Companies Act. It is suggested that the following lines be added in the said clause as a new sub-clause 12(iii)(a):-

"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."

(c) That the Deponent further submits that the Tax issue if any arising out of this 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 to scrutinize 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. As far as the objection of the Regional Director in paragraph 6(a) of his affidavit is concerned, the Transferee Company through its advocate undertakes that the reserve arising out of the scheme, shall not be construed as free reserve and that part of the reserve shall not be considered as forming part of the net worth of the Transferee Company.

11. As far as the objection of the Regional Director in paragraph 6(b) of his affidavit is concerned, the Transferee Company through its advocate seeks liberty, as suggested by the Regional Director in his affidavit, to insert the following paragraph as paragraph 12(iii) (a) of the Scheme after the existing paragraph 12(iii).

> "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".

Such liberty to amend/insert is granted. The amendment /insertion is allowed to be carried out within one week.

The said Scheme of Amalgamation thus stands modified to the extent of insertion of 12(iii)(a).

12. As far as the objection of the Regional Director in paragraph 6(c) 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.

13. 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 insertion of clause 12(iii)(a) to the said Scheme and with the undertakings made by the Petitioner Company through their advocate. In view thereof, the said undertakings are accepted.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.247 of 2015 filed by the Transferor Company is made absolute in terms of prayer clauses (a), (b) and (d) and Company Scheme Petition No.248 of 2015 filed by the Transferee Company is made absolute in terms of prayer clauses (a), (b) and (d).

16. 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.

17. Petitioner is directed to file/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 No.GNL-1, in addition

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

18. 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. 247 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.

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

20. 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)