IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SUMMONS FOR DIRECTION NO 718 OF 2015

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

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956

AND

In the matter of Scheme of Amalgamation of KineticGlue Online Communities Private Limited ("Transferor Company") with BMC Software India Private Limited ("Transferee Company") and their respective shareholders

KineticGlue Online Communities Private Limited, }
A company incorporated under the provisions of }
Companies Act, 1956 having its registered office }
At Fourth Floor, CTS No. 1608, Plot No. 33A, }
Vedwati Apartments, Shivajinagar, Pune- 411005 }..Applicant Company

Called Summons for Directions for hearing

Mr. Hemant Sethi with Mr. Ajit Singh Tawar i/b. Hemant Sethi & Co., for Applicant

Coram: S. C. Gupte, J.

Date: 28th August 2015

<u>MINUTES OF THE ORDER</u>

UPON the application of the Applicant Company above named by a Company Summons for Directions AND UPON HEARING Mr. Hemant Sethi instructed by M/S Hemant Sethi & Co., Advocates for the Applicant Company, AND UPON READING the Affidavit dated 10th day of August, 2015 of Mr. Vikas Chhabra, Authorised Signatory of the Applicant Company, in support of Summons for Directions and the Exhibits therein referred to, IT IS ORDERED THAT:

1. The convening and holding the meeting of the Equity Shareholders of the Applicant Company for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of KineticGlue Online Communities Private Limited ("Transferor Company") with BMC Software India Private Limited ("Transferee Company") and their respective shareholders, is dispensed with in view of the consent given by both the Equity Shareholders of the Applicant Company, which are annexed as Exhibits **"D-1" and "D-2"** to the Affidavit in support of the Summons for Directions.

2. The convening and holding the meeting of the 1% Convertible Non-Cumulative Preference Shareholders of the Applicant Company for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of KineticGlue Online Communities Private Limited ("Transferor Company") with BMC Software India Private Limited ("Transferee Company") and their

respective shareholders, is dispensed with in view of the consent given by the sole 1% Convertible Non-Cumulative Preference Shareholder of the Applicant Company, which are annexed as Exhibits **"F"** to the Affidavit in support of the Summons for Directions.

3. That the question of convening and holding of the meeting of the Secured Creditors of the Applicant Company does not arise since, there are no Secured Creditors in the Applicant Company as stated in paragraph 15 of the Affidavit in support of the Company Summons for Direction.

4. That convening and holding the meeting of the Unsecured Creditors of the Applicant Company for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of KineticGlue Online Communities Private Limited ("Transferor Company") with BMC Software India Private Limited ("Transferee Company") and their respective shareholders, is dispensed with in view of averments made in paragraph 16 of the Affidavit in support of the Summons for Directions inter-alia stating that The present Scheme of Amalgamation is an arrangement between the Applicant Company and its shareholders as contemplated under Section 391(1)(b) and not in accordance with Section 391(1)(a) of the Companies Act, 1956 as there is no compromise and/or arrangement with the creditors as no sacrifice is called for. In terms of the proposed Scheme, the Transferee Company will take over all the assets and liabilities of the

Applicant Company. As far as the rights of the unsecured creditors of the Applicant Company are concerned, they will not be affected adversely with the proposed Scheme of Amalgamation as post amalgamation, all the liabilities of the Applicant Company will get transferred to the Transferee Company and the Transferee Company will discharge all such liabilities in the normal course of business without jeopardizing the rights of such unsecured creditors and that the Applicant Company undertakes to issue individual notice of the date of hearing of petition to all its Unsecured Creditors and also publish notices in 'Indian Express' in English language and translation thereof in 'Loksatta' in Marathi Language both having circulation in Pune. The said undertaking is accepted.

(S. C. Gupte, J.)