

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.132 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTIONS NO.129 OF 2016

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 BFIL Finance Limited, a
company incorporated under the
provisions of the Companies Act, 1956

And

In the matter of a Scheme of
Amalgamation of BFIL Finance Limited
("Transferor Company") with Russell
Credit Limited ("Transferee Company").

BFIL Finance Limited

...Petitioner Company

Called for Hearing

Senior Counsel, Mr Kevic Setalvad, Mr. Sairam Subramanian i/b Khaitan & Co,
Advocates for the Petitioner Company.

Advocate Mr Arun Kumar Roy i/b Regional Director in the Petition.

Ms Yogini Chauhan, Official Liquidator.

Coram: S C Gupte J.

Date: 4 May 2016

P.C:

1. Heard Learned Counsel for the Parties. No objector has come before the Court to oppose the Scheme and nor has any party 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 for the proposed Scheme of Amalgamation of BFIL Finance Limited ('Transferor Company') with Russell Credit Limited ('Transferee Company').
3. The Learned Counsel for the Petitioner Company states that as authorised by its main objects, the Petitioner Company was engaged in the business of investing and dealing in shares and securities and providing loans and advances. The Petitioner Company is presently focused primarily on recovering its dues from defaulting clients.
4. The Learned Counsel for the Petitioner Company states that proposed Scheme is beneficial since, *inter alia*, the proposed Amalgamation will (i) enable appropriate consolidation of the Undertaking of the Transferor Company and the Transferee Company with better and more efficient utilisation of the available resources of the Transferor Company in the business of the Transferee Company; (ii) reduce overheads and other expenses, reduction of administrative and procedural work and enable the business of the amalgamated entity to be run, controlled and managed more economically and effectively; and (iii) enable assets of the Transferor Company to be held and returns obtained therefrom more effectively through the Transferee Company.
5. The Petitioner Company and the Transferee Company have approved the said Scheme by passing Board Resolutions which are annexed to the Company Scheme Petition.

6. The Learned Counsel for the Petitioner Company further states that, the Petitioner Company has complied with all the directions passed in the Company Summons for Directions and that the Company Scheme Petition has been filed in consonance with the order passed in the Company Summons for Directions.
7. The Learned Counsel appearing on behalf of the Petitioner Company has further stated that the Petitioner Company has complied with all the requirements as per directions of this Court and filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company undertakes to comply with all the statutory requirements, if any, under the Companies Act, 1956 and Companies Act, 2013, and rules made thereunder, whichever is applicable. The said undertaking is accepted.
8. The Regional Director has filed an Affidavit dated 3 May, 2016 stating that save and except as stated in paragraphs 6(a) to 6(c) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. The said paragraphs 6(a) to 6(c) of the said affidavit are as follows:-

“6. That the Deponent further submits that:

- (a) That the Registered office of the Transferee Company is situated in the State of West Bengal. Hence the Transferee Company has to file a similar Petition before the Hon’ble High Court of Kolkata for approving the said scheme.*
- (b) As the Transferee Company is a NBFC Company Registered with the Reserve Bank of India, Petitioner Company may be directed to file a copy of the Scheme along with the copy of this Hon’ble Court’s order with the RBI within 30 days and shall also comply with the other applicable provisions of the RBI Act.*

(c) That the Deponent further submits that the tax issue if any arising of this Scheme shall be subject to final decision of the Income Tax Authority and approval of the Scheme by Hon'ble High Court may not deter the Income Tax Authorities to scrutinize 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."

9. As far as the observation in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that by an order dated 27th November, 2015 made in Company Application No.690 of 2015 filed by the Transferee Company before the Hon'ble High Court at Calcutta. the Court has already for the reasons set out therein directed that no separate Company Petition is required to be filed and no further proceedings are required to be taken by the Transferee Company under Sections 391 to 394 of the Companies Act, 1956 in relation to the said Scheme of Amalgamation. Proceedings for sanction are only required to be taken by the Petitioner Company which has accordingly filed the instant application on 23rd December, 2015.
10. As far as the observation in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies, states that the Petitioner Company undertakes to file a copy of the scheme along with the copy of this Hon'ble Court's order with the RBI within 30 days and shall also comply with the other applicable provisions of RBI Act, if any.
11. As far as the observation in paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Company, states that the Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act and that all tax issues arising out of the Scheme will be met and answered in accordance with law

12. The Official Liquidator has filed his report on 25th April, 2016 in the Company Scheme Petition stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition is made absolute in terms of prayer clauses (a) to (c) of the Company Scheme Petition. The Scheme of Amalgamation is sanctioned accordingly with effect from the Appointed Date, i.e. 1st April, 2015. The Transferor Company shall stand amalgamated with the Transferee Company with effect from the Appointed Date and all assets and liabilities of the Transferor Company transferred to the Transferee Company in terms of the Scheme. Further, the Transferor Company shall stand dissolved without winding up on the Effective Date of the Scheme.
15. The Petitioner Company to lodge a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Superintendent of Stamps, for purposes of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.
16. The Petitioner Company is directed to file a copy of this order alongwith a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form 21/INC28 in addition to physical copy as per relevant provisions of the Companies Act, 1956, the Companies Act, 2013 and Rules made thereunder as applicable.

17. The Petitioner Company is directed to pay a cost of Rs 10,000/- to the Regional Director, Western Region, Mumbai and a cost of Rs 10,000/- to the Official Liquidator. Costs to be paid within four weeks from the date of the order.
18. Filing and issuance of the drawn up order is dispensed with.
19. All concerned regulatory authorities to act on a copy of this order along with Scheme attached thereto, duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

S.C. Gupte J.

C E R T I F I C A T E

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

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