IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.298 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.300 OF 2016

VENUS CONTINENTAL PRIVATE LIMITED.
.....Petitioner/ First Transferor Company.

AND

COMPANY SCHEME PETITION NO.299 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.301 OF 2016

VENUS MOVIES PRIVATE LIMITED.
.....Petitioner/ Second Transferor Company.

WITH

COMPANY SCHEME PETITION NO.300 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.302 OF 2016

VENUS WORLDWIDE ENTERTAINMENT PRIVATE LIMITED.
.....Petitioner/ the Transferee Company.

In the matter of the Companies Act, 1956 (1 of 1956) and the Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and provisions of Companies Act, 2013 (to the extent notified and applicable);

AND

In the matter of the Scheme of Amalgamation & Arrangement between Venus Continental Private Limited ('the Petitioner Company' or 'the Transferor Company No.1' or 'VCL');

AND

Venus Movies Private Limited ('the Transferor Company No.2' or 'VML');

AND

Venus Worldwide Entertainment Private Limited ('the Transferee Company' or 'VWEL');

AND

Their respective shareholders and creditors

Called for Hearing

Mr. Chandrakant Mhadeshwar, Advocate for Petitioner Company.

Mr. Anand O. Singh i/b Shri. Pankaj Kapoor for Regional Director in all the Petitions.

Ms. Yogini D. Chauhan Deputy Official Liquidator, present in C.S.P No. 298 & 299 of 2016.

Coram : A. K. Menon, J.

Date: 07th October, 2016

PC:

1. Heard learned counsel for parties. None appears 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 read with Sections 100 to 103 of the Companies Act, 1956, to a Scheme of Amalgamation and Arrangement (the "Scheme") between Venus Continental Private Limited ('the Transferor Company No. 1' or 'VCL'), Venus Movies Private Limited ("the Transferor Company No. 2' or 'VML') and Venus Worldwide Entertainment Private Limited (the Transferee Company' or 'VWEL') and their respective shareholders and creditors.

3. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. 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 Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

5. 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 thereunder whichever is applicable. The said undertaking is accepted.

6. The Official Liquidator has filed his report on 01^{st} October, 2016 in Company Scheme Petition Nos. 298 of 2016 and 299 of 2016, inter alia, stating therein that the observation pointed out by the Chartered Accountant Mr. Bhupendra G. Fafadia & Co. during investigation at para (8) and (9) of his report, may be taken into consideration by the Court. He has stated that except for the said concern/qualifications, the affairs of Transferor No.1 and Transferor NO.2 are not being carried out in a manner prejudicial to the interests of its members or public interest.

<u>M/s. Venus Continental Private Limited (Transferor No.1):</u>

7. The Official Liquidator has in paragraph 8 of his report made the following observations pertaining to Transferor No.1:

"8. (a) During the period of 5 years covered under the Report Transferor Company has not valued advance received customers in foreign currency of Rs.40,81,450/- as per AS 11.Therefore current liability in respect of advance received from the customers is not correctly stated in the accounts of 5 years. The management represented that as the said amount received was not payable, therefore same has been considered as income in F.Y.2015-16.

(b) As per Directors Report of the Company for F.Y.2013-14 retiring auditor M/s. R.S. Shah and Co. Chartered Accountants was reappointed but accounts for F.Y 2014-15 but the accounts were audited by M/s. SDA & Associates Chartered Accountants.
The Company represented as under:
(i) M/s. R. S. Shah and Co. Chartered Accountants resigned as Statutory Auditors of Company vide their letter dt.01/03/2015.
(ii) The Transferor Company at EGM held on 2510312015 appointed M/s. M/s. SDA & Associates Chartered Accountants and accounts for F.Y.2014-15 were audited by said M/s. SDA & Associates Chartered Accountants.
For resignation of Auditors & appointment of new statutory Auditors the Company has not filed following forms with Registrar of Company:

(i) ADT -3 being intimation for resignation of the auditor M/s. R.S. Shah and Co. Chartered Accountants.
(ii) ADT-I being intimation for appointment of the auditor M/s. SDA & Associates Chartered Accountants in place of retiring auditor.
MGT-14 being form of holding Extra Ordinary General Meeting on 25/03/2015

8. In so far as observation made in paragraph 8(a) of the Report is concerned, the Learned Counsel for the Transferor No.1 states that the amount of Rs. 40,81,450/- was not payable by Transferor Company No. 1 as the said amount was outstanding for a long period of time, beyond the time period of three years as prescribed under Limitation Act, 1963 and hence the same written off. The said amount has been considered as income in F.Y. 2015-16. The explanation provided by Transferor No.1 is satisfactory.

9. In so far as observation made in paragraph 8(b) of the Report is concerned, the Learned Counsel for the Transferor Company No.1 states that it will file form MGT-14, ADT-3 and ADT-1 for the concerned period with the Registrar of Companies if the Court so directs. In view thereof, Transferor Company No.1 is directed to file Form MGT-14, ADT-3 and ADT-1 with the Registrar of Companies for the concerned period and the Registrar of Companies is directed to accept the same.

<u>M/s. Venus Movies Private Limited:</u>

10. The Official Liquidator has in paragraph 9 of his report made the following observations pertaining to Transferor No.2:

> *9 (a) As per Audited Accounts of the Transferor Company the Company has given interest free advance to two related parties of Rs.24,18,78,189/- which was Rs.4,00,81,189/- as on 31/03/2014. U/s. 185 of the Companies Act 2013 Company cannot give any loan to directors or to any other person in whom the directors is interested.*
> *The Management represented that out of the said advance Rs.17.83 Cr. has been repaid during F.Y.2015-16 and thereafter leaving amount receivable of Rs. 6.36 Cr.*
> *(b) On this advance the Company has not charged any interest to those two Companies.*

11. So far as the observations in paragraph 9 of the Report are concerned, the Learned Counsel for Transferor Company No.2 states that as on today the amount receivable is Rs. 6.25 cr. The Transferor Company No. 2 states that the amounts were advanced when Section 185 of the Companies Act, 2013 was not in effect. The said section was given the effect to from 12th September, 2013. Under the erstwhile Companies Act, 1956, the said related party transactions did not attract the provisions of Section 295. No amount has been advanced post 12th September, 2013.

Also, the Transferor Company No. 2 states that, the amounts advanced were in the nature of business advances in the ordinary course of business which are to be adjusted against future fulfillment of business transaction between the parties except for inter company advances which will be cancelled against each other. The explanation provided by the Transferor Company No. 2 is satisfactory.

12. The Regional Director has filed his Affidavit on 07th October, 2016 inter alia, stating therein that save and except as stated in paragraph 6 of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 of the said Affidavit, the Regional Director has stated that :

(a) *"In addition to compliance of AS-14 the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 etc.*

(b) *Regarding Clause 14 of the Scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against any other reserves of the Transferee Company.*

(c) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon 'ble Court may not deter the Income Tax Authority to scrutinize the tax return, filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority, is binding on the petitioner Company.*

(d) *The Registrar of Companies, Maharashtra. Mumbai vide report/letter No. ROC/STA (DG)/48756/391/394/421 dated 02.06.2016, at point No. 17 has mentioned that theTransferee Company has not appointed Company Secretary, resulting in violation of Section 383A of the Companies Act, 1956 (corresponding to Sec. 203 of the Companies Act, 2013) has pointed out the violation of Section 383A/203 of the Companies Act, 1956/2013 respectively. As per the provisions of Section 383A/203 of the Companies Act, 1956/2013. As per the provisions of Section 383A/203 of the Companies Act, 1956/2013, if the paid up capital of the Transferee Company is more than Rs.5 Crore, and the Transferee Company has not appointed Company Secretary, results*

in violation of Section 383A/203 of the Companies Act, 1956/2013 respectively, read with rule 8A of The Companies (Appointment and Remuneration of Management personne1) Rules, 2014.
Accordingly, the Transferee Company be directed to

(i) Furnish an undertaking to this Hon'ble Court that qualified Company Secretary will be appointed by the Company with in a period specified by this Hon'ble Court.

(ii) Further, the Transferee Company under takes to, file necessary application for Compounding of offence under the provisions of section 621A of the Companies Act, 1956, for violation of Section 383A of the Companies Act, 1956 with effect from the date of default (as per last available balance sheet is as at 31"' March 2003) up to the date of compliance (appointment of qualified Company Secretary)"

13. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner /Transferee Company through its counsel undertakes that in addition to compliance of Accounting Standard 14, the Transferee Company will pass such accounting entries which are necessary in connection with this Scheme to comply with any other Accounting Standards such as AS-5 etc.

14. So far as the observation in paragraph 6 (b) of the Affidavit of Regional Director is concerned, the Petitioner /Transferee Company through its counsel undertakes that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against any other reserves of the Transferee Company.

15. So far as the observations made in paragraph 6 (c) of the affidavit of Regional Director is concerned, the Petitioners are 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.

16. So far as the observations made in paragraph 6 (d) (i) of the affidavit of Regional Director is concerned, the Petitioner /Transferee Company through its counsel undertakes that the Transferee Company will appoint Company Secretary with in a period of twelve weeks from today.

17. So far as the observations made in paragraph 6 (d) (ii) of the affidavit of Regional Director is concerned, the Petitioner /Transferee Company through its counsel undertakes that the Transferee Company will file necessary application for Compounding of offence under the provisions of section 621A of the Companies Act, 1956, for violation of Section 383A of the Companies Act, 1956.

18. The Learned Counsel for Regional Director on instructions of Mr. S. Ramakanth, Joint Director Inspection in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertaking given by the Advocate for the Petitioner Company. The said undertaking is accepted.

19. 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.

20. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 298 of 2016 and 299 of 2016 are made absolute in terms of prayer clauses (a) to (d) and Company Scheme Petition No. 300 of 2016 is made absolute in terms of prayer clauses (a) to (e).

21. The Petitioner Companies 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 this order.

22. Petitioners are directed to file/lodge a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

23. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioners in the Company Scheme Petition Nos. 298 of 2016 and 299 of 2016 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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

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

(A. K. Menon, J.)

<u>C E R T I F I C A T E</u>

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

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