IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SUMMONS FOR DIRECTION NO 753 OF 2016

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 Hi-Build Coatings Private Limited with Indigo Paints Private Limited and their respective shareholders

Hi-Build Coatings Private Limited, a company incorporated under the provisions of Companies Act, 1956, having its Registered Office at Office No. 103, 1st Floor, Montreal Business Centre, Baner Road, Baner, Pune - 411045))))) ……Applicant Company

Called: Summons for Directions

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

CORAM: A.K. MENON, J.

DATE: 8^{TH} SEPTEMBER, 2016

MINUTES OF THE ORDER

UPON the application of the Applicant Company above named by a Summons for Directions AND UPON HEARING Mr. Hemant Sethi instructed by Hemant Sethi &

Co., Advocates for the Applicant Company, AND UPON READING the Affidavit dated 18th day of July, 2016 of Mr. Chetan Humane, Authorised Signatory of the Applicant Company, in support of Summons for Directions and Exhibits referred therein, IT IS ORDERED:

1. That convening and holding of the meeting of the Equity Shareholders of the Applicant Company, to consider and, if thought fit, approve, with or without modification(s), the proposed Scheme of Amalgamation of Hi-Build Coatings Private Limited with Indigo Paints Private Limited 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 "J1" and "J2"** to the affidavit in support of the Company Summons for Directions.

2. That convening and holding of the meeting of the Secured Creditors of the Applicant Company, to consider and, if thought fit, approve, with or without modification(s), the proposed Scheme of Amalgamation of Hi-Build Coatings Private Limited with Indigo Paints Private Limited and their respective shareholders is dispensed with in view of the averment made in paragraph (21) of the affidavit in support of the Company Summons for Directions interalia 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 the provisions of 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 secured 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 its secured creditor and that the Applicant Company undertakes to serve individual notice of the hearing of the Petition by Registered Post A.D. to its Secured Creditor and also to publish the notices of the same in 'Indian Express', in English language and translation thereof in 'Loksatta', in Marathi language, both circulated in Pune, Maharashtra. The said undertaking is accepted.

3. That convening and holding of the meeting of the Unsecured Creditors of the Applicant Company, to consider and, if thought fit, approve, with or without modification(s), the proposed Scheme of Amalgamation of Hi-Build Coatings Private Limited with Indigo Paints Private Limited and their respective shareholders is dispensed with in view of the averment made in paragraph (21) of the affidavit in support of the Company Summons for Directions interalia 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 the provisions of 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 serve individual notice of the hearing of the Petition by Registered Post A.D. to all its Unsecured Creditors and also to publish the notices of the same in 'Indian Express', in English language and translation thereof in 'Loksatta', in Marathi language, both circulated in Pune, Maharashtra. The said undertaking is accepted.

4. The Applicant Company is wholly owned subsidiary of the Transferee Company and there is no re-organization of share capital of the Transferee Company and no new shares are being issued by the Transferee Company as all shares will be cancelled pursuant to Clause 14 of the Scheme and rights of creditors of Transferee Company are not affected as mention in paragraphs 22 to 24 of the Affidavit in support of Company Summons for Direction and also in view of observations made by this court in Mahaamba Investment Ltd verses IDI Limited (2001) 105 Co cases page 16 to 18, the filing of separate Company Summons for

Direction and Company Scheme Petition under Section 391 and 394 of the Companies Act, 1956 by Indigo Paints Private Limited, the Transferee Company is dispensed with.

(A.K. MENON, J.)

CERTIFICATE

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

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