

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment:05.7.2012*

+ **COMPANY PETITION NO. 116 OF 2012**

Petition under Sections 391 & 394 of the Companies Act, 1956

Scheme of Amalgamation of

GROVER CHITS PVT. LTD. Petitioner/Transferor Company

AND

SKS BUILDHOME PVT. LTD.....Petitioner/Transferee Company

Through Mr Rajeev K Goel, Advocate for
the Petitioners

Mr.K.S.Pradhan Deputy Registrar of
Companies for the Regional Director

Mr. Rajiv Behl, Advocate for the Official
Liquidator

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This joint Petition has been filed under sections 391 & 394 of the Companies Act, 1956 by the Petitioner Companies seeking sanction to the Scheme of Amalgamation of Grover Chits Pvt Ltd with SKS

Buildhome Pvt Ltd. The registered offices of both the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

2. It has been submitted that no proceedings under sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

3. The Petitioner Companies had earlier filed CA (M) 36 of 2012 seeking directions of this Court for dispensation/convening of meetings. Vide order dated 29th February, 2012, this Court allowed the Application and requirement of convening meetings of Shareholders and Creditors of the Applicant Transferor Company and Transferee Company.

4. The Petitioner Companies had thereafter filed the present Petition seeking sanction to the Scheme of Amalgamation. Vide order dated 19th March, 2012, notice of the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator attached with this Court. Citations were also directed to be published in 'Business Standard' (English, Delhi Edition) and 'Veer Arjun' (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioners showing compliance regarding service of the Petition on

the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspaper. Copies of the newspaper cuttings, in original, containing the publications have also been filed along with the Affidavit of Service.

5. Pursuant to the notice issued, the Learned Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Learned Official Liquidator has filed his report dated 28th June, 2012 wherein he has stated that he has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Company, which is a subject matter of dissolution, do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

6. In response to the notice issued in the Petition, Mr B K Bansal, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 3rd July, 2012. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme, all the employees of the Transferor Company shall become the

employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Hon'ble Court.

7. In Para 5 of his Affidavit, Learned Regional Director drew the attention of this court with regard to non submission of the Share Valuation Report from the Chartered Accountant.

8. In response to the aforesaid observation of the Learned RD, the Petitioners have filed a Reply/Affidavit dated 4th July, 2012 of Mr Vijay Girdhar, Director of the Petitioner Transferee Company. The Petitioners submitted that in case of amalgamation, valuation exercise is required to calculate fair value of shares of different Transferor and Transferee Companies so that an exchange ratio may be fixed based on comparison of such fair value. However, in merger of a Holding and a wholly owned Subsidiary, entire share capital of the wholly owned Subsidiary gets cancelled. Since, only the share holders of the Holding Company holds shares in the merged entity, no valuation exercise/valuation report is required in such cases. The learned Counsel of the Petitioners has clarified that in the present case, the transferee Company is a wholly owned subsidiary of the Transferor Company. Accordingly, post merger entire share capital of the Transferee Company, being a cross

holding, will be cancelled. The Transferee Company will issue ten shares to the Shareholders of the holding company being the Transferor Company, for every one share held by them in the Transferor Company. This will result in all the shareholders of the Transferor Company getting the same amount and % of shareholding in the Transferee Company as they were holding in the Transferor Company before merger. The learned Counsel of the Petitioners also submitted that similar objections raised by the Regional Director had already been overruled by this Court in a number of cases in the past. A copy of order passed this Hon'ble Court in CP 262 of 2011 and CP 23 of 2009 on the aforesaid point has been placed on record.

9. Learned Regional Director in Para 6 and 7 of his representation/ affidavit pointed out that the Transferor Company has not filed e-form no. 2 regarding issue of Bonus Shares and e-form no. 32 regarding change in directorship from additional director to director, respectively.

10. The Petitioner has submitted that e-form no. 2 and e-form no. 32 in question have already been filed with the Registrar of Companies, Delhi along with the requisite filing fee. A copy each of e-form no. 2

and e-form no. 32 along with ROC filing proof on the aforesaid point have been placed on record.

11. Learned Regional Director in Para 8 of his representation/affidavit pointed out that the Transferor Company is a chit fund company whereas there is no mention whether it has registered of Chit Fund.

12. With regard to the aforesaid observations of the Learned Regional Director, the Petitioners have submitted that the Transferor Company is engaged in sale, purchase and trading of readymade garments, fabrics and textile goods; investment in shares, providing loans and advances and other related activities. Learned Counsel for the Petitioners clarified that though the Transferor Company was incorporated with the main objects of conducting chits, however, it has never been engaged in chit fund business. He further submitted that the aforesaid facts are duly disclosed in Para 5 of the 1st motion Application (Affidavit in support of Summons) and Para 1.4 of the Petition filed by the Transferor Company with this Hon'ble Court. Learned Counsel for the Petitioners reiterated the aforesaid fact during the course of hearing today in the Court.

13. That in view of the clarifications given by the Petitioners, I am satisfied that the points raised by the Learned Regional Director have been duly answered.

14. No objection has been received to the Scheme of Amalgamation from any other party. Mr Vijay Girdhar, Director of the Transferee Company has filed an affidavit confirming that neither the Petitioner Companies nor their Counsel has received any objection pursuant to citations published in the newspapers.

15. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation/reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under sections 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law. Certified copy of the formal order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of

sections 391 and 394 of the Companies Act, 1956, all the property, rights and powers of the Transferor Company be transferred to and vest in the Transferee Company without any further act or deed. Similarly, all the liabilities and duties of the Transferor Company be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without winding up. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or any other charges, if payable, in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

16. The Petitioner Companies would voluntarily deposit a sum of Rs. 1,00,000/- in the Common Pool fund of the Official Liquidator within three weeks from today.

17. The Petition is allowed in the above terms.

Order Dasti.

INDERMEET KAUR, J.

JULY 5, 2012
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