IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.07.2015

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The Honourable Mrs.Justice **PUSHPA SATHYANARAYANA**

C.P.Nos.1 and 2 of 2015

M/s.Bloomifield Power Projects Private Limited,
Having its registered office at
KRM Centre, 9th Floor,
No.2, Harrington Road,
Chetpet,
Chennai 600 031.
Represented by its
Authorised signatory and Director
Mrs.Jhansi Sureddi .. Petitioner in C.P.No.1 of 2015 /Transferor Company

M/s.PVP Global Ventures Private Limited,
Having its registered office at
KRM Centre, 9th Floor,
No.2, Harrington Road,
Chetpet,
Chennai 600 031.
Represented by its
Authorised signatory and Director
Mr.Vinay Chilakapati .. Petitioner in C.P.No.2 of 2015 /Transferee Company

Petitions filed under sections 391 to 394 of the Companies Act, 1956 to sanction the scheme of amalgamation between the petitioner/Transferor Company viz., M/s Bloomifield Power Projects Private Limited and the Transferee Company viz., M/s. PVP Global Ventures Private Limited is annexed in Annexure 4 in both the petitions so as to be binding on all the Shareholders and Creditors of the Petitioner Companies, with effect from

10.11.2014 and the petitioner Company viz., M/s.Bloomifield Power Projects Private Limited, be dissolved without the process of winding up.

For Petitioners : Mr.K.Ramasamy

Mr.M.Gopikrishnan
Additional Central Government
Standing Counsel
for Regional Director
Ministry of Company Affairs, Chennai.

Mr.P.Achutha Ramaiah,
Official Liquidator.

COMMON ORDER

These Company Petitions are preferred under Sections 391 to 394 of the Companies Act, 1956 for sanctioning the scheme of amalgamation of the Transferor company with the Transferee company with effect from 10th November 2014. The scheme of amalgamation is annexed in Annexure - 4 in the respective petitions.

2.The petitioner in C.P.No.1 of 2015 - M/s.Bloomifield Power Projects Private Limited is the Transferor company and the petitioner in C.P.No.2 of 2015 - M/s.PVP Global Ventures Private Limited, is the Transferee company.

3. A perusal of the records shows that the petitioners have complied with the formalities as prescribed under the Companies Act and the Rules framed therein. The copies of the resolutions, dated 10th November 2014 of the Board of Directors adopting the scheme of amalgamation are annexed in Annexure 3 in the respective petitions. There are no secured creditors for the petitioners/Transferor and the Transferee companies have no secured creditors and the certificates of the Chartered Accountant confirming the same are annexed in Annexure 7 in the respective petitions.

4. By order dated 04.12.2014, in Comp.A.Nos.1163 and 1164 of 2015 in the case of Transferor and Transferee Companies respectively, this Court dispensed with the convening, holding and conducting the meeting of the Equity shareholders of both the petitioner companies for the purpose of considering and if thought fit approving with or without modification the scheme of amalgamation between the Transferor Company and the Transferee Company. The consent affidavits from the equity shareholders of both the Transferor and Transferee Companies to the Scheme of Amalgamation are annexed in Annexure 4 in the respective petitions.

5. On notice, the Regional Director, Ministry of Company Affairs has filed his report without stating any objection to the Scheme being sanctioned.

6. The Official Liquidator has also filed his report along with the report of the Chartered Accountant, wherein, he has raised the following objections to the Scheme of Amalgamation.

> The Transferor Company has not furnished the details regarding filing of its Income Tax Returns irrespective of their request and thereby, they could not ascertain the factual position of any liability towards this category.
>
> (ii)In such a situation, their reply for the misfeasance is not correct in the sense they should disclose modus operandi of the group company and all the above mentioned five companies who have signed the tripartite agreements for the outstanding liabilities and receivables.
>
> (iii)Mere transferring entries by means of transfer agreements and replying there was no need to get legal opinion and justifying their perception the entries are pertaining to the transferor company is not acceptable. Further, the intentions and justifications have not been properly brought out both in accounting principles and legal parameter.
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> (iv)The Director has done wrongly by

misapplying the transactions of her personal liabilities taken over by the Transferor company. The complete factual positions have been concealed. The taken over of liabilities of a Director into the books of the Transferor company, (just before the process of amalgamation), without any underlying to be considered as breach of trust in relation to the company, complete disclosure of facts was not given. Further, it shows that this Transferor company has been formed only for the purpose of routing of this transactions, to be considered as intentions/wilful and ensuring the indirect benefit for the Directors."

7. In respect of the objections raised by the learned Official Liquidator to the scheme of amalgamation, the learned counsel for the petitioner has filed his reply affidavit wherein, it has been stated as follows:

(i)"We further submit that the Auditor arrived at a conclusion that the Transaction routed through into the books of Transferor Company of a directors liability in other companies, would attract the provisions of Sections 542 and 543 of the Companies Act 1956 and opined that the affairs of the company have been conducted in a manner by the directors which shall cover the possible action of misfeasance, on the part of the directors of Transferor company.

(ii)With reference to the aforesaid conclusion of the Auditor, we submit that his statement is completely based on mere conjectures and surmises. We further submit that the Auditor has failed to note that the provisions of sections 542 and 543 will have application only in the case voluntary winding up by the Court, but whereas the present scheme of Amalgamation is being sought in pursuance of the provisions of section 393/394 of the companies Act, 1956. As required under the provisions thereto, the Members of the Company approved the scheme of Amalgamation and the said amalgamation is not prejudicial to the interest of the public in any manner. It is also relevant to note that the Auditor failed to emphasize as to what kind of misfeasance that the directors have indulged in nor did he attribute any reason as to how the directors are liable for the alleged misfeasance, when the interest of the shareholders, creditors and the public are not affected prejudicially in any manner.

(iii)In the absence of any specific finding by the Auditor that the business of the Company has been carried with an intent to defraud the Creditors of the Company or any other person or misapplication or retention or became liable or accountable for any money or property of the Company, and moreover such findings are devoid of any legal basis, that Auditor cannot conclude that there is misfeasance on the basis of mere conjectures. Hence, the conclusion of the Chartered Accountant/Auditor cannot be accepted and the same is not justified without any Documentary proof."

8. I have gone through the report filed by the learned Official Liquidator and the reply filed by the petitioner company. Keeping in view

the explanation furnished by the petitioner company that there is no public interest, there may not be any impediment to attract the provisions of Sections 542 and 543 of the Companies Act. It is to be noted that the Transferor company is a Private Limited company. Hence, no public interest is involved. Moreover, the Members of the company approved the scheme of Amalgamation and the same is not prejudicial to the interest of the public in any manner. The Director of the transferor company has transferred equivalent amount of assets to the Company to the extent of her liability transferred and the same was taken over by the Company and therefore, there is no misfeasance. It is stated in the report of the learned Official Liquidator that the petitioner Company had mentioned proper books of accounts and that all entries have been made in the statutory registers in accordance with the Companies Act 1956. In view of the above, the petitioner company convinced the Court by filing their reply with regard to the objections raised by the learned Official Liquidator.

9. I have perused the scheme filed in the company petitions and finds it beneficial to the working of the Transferee company and is in the interests of the Transferor company. There is no objectionable feature in the scheme of amalgamation detrimental either to the employees of the transferor company or of the Transferee company. The said scheme is not violative of any statutory provisions. The scheme is fair, just, sound and is

not against any public policy or public interest. No proceedings are pending under Sections 231 to 237 of the Companies Act, 1956. All the statutory provisions are complied with.

10. Consequently, there shall be an order approving the scheme of amalgamation between the Transferor company viz., M/s.Bloomifield Power Projects Private Limited, the petitioner in C.P.No.1 of 2015 and the Transferee company M/s.PVP Global Ventures Private Limited, petitioner in C.P.No.2 of 2015, as provided in Annexure 4 in these Company Petitions, with effect from 10.11.2014, as the procedure laid down under Sections 391 and 394 of the Companies Act are duly complied with. The petitions are allowed.

11. Taking note of the report by the Chartered Accountant as enclosed by the Official Liquidator and the reply given by the petitioner in terms of the order passed by this Court, the Transferor company shall stand dissolved without winding up.

12. The learned Senior Central Government Standing Counsel is entitled to a fee of Rs.5,000/- for each petition.

24.07.2015

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PUSHPA SATHYANARAYANA,J.

cla

C.P.Nos.1 and 2 of 2015

DATE : 24.07.2015