The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Company Petition No.117 of 2015,
Comp.A.Nos.1267 & 1285 of 2015 in/& C.P.No.118 of 2015

Dated 18.08.2015

C.P.No.117/15

Between:

GSP Infratech Development Pvt. Ltd.,
having its regd. office situated at
Jubilee Hills, Hyderabad
rep. by its Director G.Siva Shankar Reddy
... Petitioner/Transferor Company

Comp.A.No.1267/15 in CP.No.118/15

Between:
M/s.Systematic Power Developers
Sholapur.
...Applicant

and

GVPR Engineers Limited (GVPREL)
Hyderabad.
...Respondent

Comp.A.No.1285/15 in CP.No.117/15

Between:

M/s.Veerabhadra Minerals Private Ltd.
Hyderabad, rep. by its Managing Director
G.V.Pratap Reddy and 2 others.
...Applicants

and

M/s.GVPR Engineers Limited (GVPREL)
Hyderabad, rep. by its Managing Director
Mr.G.Veerasekhar Reddy
...Respondent

CP.No.118/15

Between:

GVPR Engineers Limited (GVPREL)
having its regd. Office at Jubilee Hills, Hyderabad

rep. by its Managaing Director Mr.G.Veera Sekhar Reddy
...Petitioner/Transferee Company

Counsel for the Transferor Company: Sri Y.Suryanarayana

Counsel for the Transferee Company: Sri Y.Suryanarayana

The Court made the following:

Common Order:

Company Petition No.117 of 2015 is filed by M/s.GSP Infratech Development Private Limited (hereinafter referred as 'the Transferor Company') seeking approval of the proposed scheme of its amalgamation and arrangement with M/s.GVPR Engineers Limited (hereinafter referred as 'the Transferee Company') after reduction of 19 lakh equity shares of Rs.10/- each held by the Transferor Company in the share capital of the Transferee Company.

Company Petition No.118 of 2015 is filed by the Transferee Company for the same relief.

The Transferor Company pleaded that it was originally incorporated as a Public Limited Company under the name and Style of "GSP Projects Limited" on 07-05-2002; that subsequently, its name was changed as ‘GSP Infratech Development Limited’ with effect from 05-04-2007; that it converted itself into a Private Limited Company with effect from 20-01-2012; that its Corporate Identity Number (CIN) is U70102TG2002PTC038907; that its registered office is situated at D.No.8-2-293/82/A, Plot No.739-A, Road No.37, Jubilee Hills, Hyderabad; that its main objects are to prepare designs, engineering models, project reports, construct, erect, build, repair, remodel, demolish, develop, improve, grade, curve, pave, macadamize, cement and maintain building structures *etc*., and do all kinds of excavating, dredging and digging work, make all models and furnish labour and all kinds of material to supervise construction or other works and act as valuers, appraisers, referees and assessors to investigate into the conditions of buildings and other structures of all kinds *etc*.; that its authorized share capital is Rs.8 Crores divided into 80 lakh equity shares of Rs.10/- each and; that its paid up share capital as on 31-03-2014 is Rs.2,79,04,770/- divided into 27,90,477 equity shares of Rs.10/- each.

The Transferee Company pleaded that it was incorporated as a Public Limited Company under the name and style of 'GVPR Engineers Limited' on 06-12-1997; that its Corporate Indentity Number is U45201TG1997PLCO28680; that its registered office is situated at D.No.8-2-293/82/A, Plot No.739-A, Road No.37, Jubilee Hills, Hyderabad; that its main objects are to prepare designs, engineering models, project reports, construct, erect, build, repair, remodel, demolish, develop, improve, grade, curve, pave, macadamize, cement and maintain buildings, structures, houses, apartments, townships, multi-storeyed complexes, landscapes, hospitals, schools, places of worship *etc.*, and do all kinds of excavating, dredging and digging work, make all models and furnish labour and all kinds of material to supervise construction of other works and act as valuers, appraisers, referees and assessors to investigate into the conditions of buildings and other structures *etc,*; that its authorized share capital is Rs.25 Crores divided into 2.5 Crore equity shares of Rs.10/- each; and that its paid-up share capital as on 31-03-2014 is Rs.20,41,90,370/- divided into 2,04,19,037 equity shares of Rs.10/- each.

Both the Companies averred that as per the proposed Scheme of Amalgamation and Arrangement, 19 lakh equity shares held by the Transferor Company in the Transferee Company will be cancelled; that accordingly, the face value of such shares would be reduced from the paid-up share capital of the Transferee Company; and that the book value of such investment held in the Transferor Company over the face value of these shares shall be adjusted against the revaluation reserve/share premium reserve of the Transferee Company.

Both the Companies further averred that they are engaged in similar businesses; that they belong to the same group of Companies; that the proposed scheme of amalgamation and arrangement would benefit the economies of scale besides other synergetic advantages and lead to more efficient utilization of capital, creation of a linear shareholding structure, reduction in overheads and other expenses, reduction in administrative and procedural work and elimination of duplication of work and will enable the undertakings concerned to effect internal economies and optimize productivity; and that the proposed scheme of amalgamation and arrangement is also beneficial in the interests of the shareholders, creditors and employees of both the Companies.

Both the Companies pleaded that anticipating the above benefits, their respective Board of Directors, *vide* separate resolutions, dated 06-01-2015, approved the proposed scheme of amalgamation and arrangement and fixed the appointed date as 01-04-2014.

The Transferor Company pleaded that it has no secured creditors; that it has ten shareholders, two sundry creditors amounting to Rs.17,25,99,059/- and one unsecured creditor; that as all of them have given their consent affidavits for the proposed scheme of amalgamation and arrangement, the requirement of holding their meetings for consideration of the same was dispensed with by this Court *vide* Order, dated 24-02-2015, in Company Application No.191 of 2015.

The Transferee Company also pleaded that it has 17 shareholders, 11 secured creditors amounting to Rs.1,37,80,22,900/- and 41 unsecured creditors; that this Court *vide* Order, dated 24-02-2015, appointed a Chairperson for convening the meetings of its shareholders and unsecured creditors and dispensed with the requirement of convening the meeting of its secured creditors for consideration of the proposed scheme of amalgamation and arrangement having regard to its undertaking that the consent affidavits of the secured creditors will be filed at the time of hearing of the Company Petition.

The Chairperson has filed his report, dated 20-04-2015, stating that pursuant to this Court's Order, dated 24-02-2015, in Company Application No.192 of 2015, he has issued individual notices to the equity shareholders and the unsecured creditors of the Transferee Company and has also carried out publication in two daily newspapers *viz*., Business Standard (English) and Andhra Bhoomi (Telugu) of Hyderabad Edition on 25-03-2015, notifying them the date of meetings; and accordingly, convened both the mettings on 20-04-2015 at 11.00 a.m., and 2.00 p.m.

In his report, the Chairperson has stated that the meeting of the shareholders of the Transferee Company convened on the aforesaid date at 11.00 a.m., was attended by 15 equity shareholders holding 2,04,14,887 equity shares of Rs.10/- each; that the quorum of seven was fulfilled; that the proposed scheme of amalgamation and arrangement was read out to them; that all of them have unanimously passed the resolution to approve the proposed scheme of amalgamation and arrangement; and that, accordingly, all of them have voted in favour of the said resolution.

In the said report, the Chairperson further stated that the meeting of the unsecured creditors of the Transferee Company convened on the aforesaid date at 2.00 p.m. was attended by 15 unsecured creditors, to whom the Transferee Company owes an amount of Rs.93,02,69,250/- as on 31-12-2014; that the quorum of eight was fulfilled; that the proposed scheme of amalgamation and arrangement was read out to them; that all of them have unanimously passed the resolution to approve the proposed scheme of amalgamation and arrangement; and that, accordingly, all of them have voted in favour of the said resolution.

Further, it is averred that in pursuance of this Court’s Order, dated 28-04-2015, both the Companies have caused notices on the Regional Director, Government of India, Ministry of Corporate Affairs, South Eastern Region, Hyderabad; that the Transferor Company has additionally caused a notice on the Official Liquidator attached to this Court; that each of the two Companies have carried out publication of notices in two daily newspapers *viz*., the Business Standard (English) and Andhra Bhoomi (Telugu) of Hyderabad editions having circulation in the State of Telangana.

In response to the notices, the Regional Director has filed his Common report, dated 11-06-2015.

In his report, the Regional Director has stated that in pursuance of General Circular No.1/2014, dated 15-01-2014, issued by the Ministry of Corporate affairs, New Delhi, the opinion of the Income Tax Department was sought *vide* letter, dated 06-05-2015, and that no comments/objections were received by him from the Income Tax Department. It is further stated that the Registrar of Companies, Hyderabad, has reported that both the Transferor Company and the Transferee Company are regular in filing returns and that no inspections and investigations are pending against them.

However, the Regional Director has pointed out that as per Order, dated 24-02-2015, in Company Application No.192 of 2015, the Transferee Company has to submit consent affidavits of all the eleven secured creditors before this Court and that no such consent affidavits appear to have been submitted so far.

As regards the Transferor Company, the Regional Director observed that it has created a charge on the immovable properties through the State Bank of India, Hyderabad, on 23-07-2005 as modified on 15-06-2009 and that this Court may direct the Transferor Company to file the satisfaction of charge before the Registrar of Companies, Hyderabad.

In compliance with the objection raised by the Regional Director in his report, the Transferee Company has filed an affidavit *vide* USR.No.3301 of 2015 *inter alia* enclosing the list of eleven secured creditors, as certified by the Chartered Accountant, showing the names as Andhra Bank, State Bank of India, Punjab National Bank, Axis Bank, State Bank of Mauritius, State Bank of Hyderabad, Corporation Bank, Syndicate Bank, Indian Overseas Bank, IDBI Bank and Vijaya Bank and their respective consent letters for the proposed scheme of amalgamation and arrangement. Thus, the Transferee Company has complied with the objection raised by the Regional Director.

Similarly, the Transferor Company has also complied with the Regional Director's objection by filing a Memo *vide* USR No.3300 of 2015, duly enclosing letter, dated 13-06-2015, of the Chief Manager of the Punjab National Bank, and letter, dated 11-06-2015, of the Assistant General Manager of the State Bank of India, conveying their no objection to file satisfaction of charge with the Registrar of Companies.

In response to the advertisement published in pursuance of the directions of this Court, the objectors have filed Company Application Nos.1267 and 1285 of 2015 in C.P.No.118 of 2015.

Company Application No.1267 of 2015 is filed by M/s.Systematic Power Developers (hereinafter referred as 'the applicant'). In the affidavit, filed in support of the said Application, it is *inter alia* stated that the Maharashtra State Electrical Distribution Company Limited (MSEDCL) has awarded contract to the Transferee Company for supplying, testing, transporting, constructing, erecting, testing and commissioning of 33 x 11 KV distribution lines power transformers, new sub-stations, augmentation of existing sub-stations, distribution of transformers, various capacities and other allied works including transportation, insurance, uploading, handling, storage at sites in Barshi, Maharashtra; that as the Transferee Company does not possess the infrastructure required for execution of the said project, it has entered into an agreement on 17-07-2009 with the applicant for execution of the said works for a total value of Rs.52,26,28,854/-;

that as per the terms and conditions of the said agreement, the Transferee Company has to retain 9.99 % of the gross value of the yearly bills raised to MSEDCL; that the Transferee Company has from time to time paid an amount of Rs.26,00,31,369/- to the applicant and is liable to pay the balance sum of Rs.8,89,77,638/- before deductions; that the applicant- Company has made several reminders to the Transferee Company demanding payment of the balance amount, but the latter has not given any reply in writing, except giving an assurance over phone regarding payment of the balance amount; that as the Transferee Company has failed to pay the amount, the applicant has got served legal notice, dated
25-04-2015, to which the Transferee Company has sent a reply with false and frivolous allegations; that the applicant issued a rejoinder on 04.10.2014, to which a further reply was given by the Transferee Company on 26-11-2014; that, therefore, the applicant was constrained to initiate arbitration proceedings; that the applicant has, accordingly, initiated steps for reference of the dispute to an arbitrator; that Arbitration Application No.76 of 2015

filed by the applicant is pending before this Court; that the Transferee Company has failed to disclose the applicant's claim and pendency of Arbitration Application in its Company Petition; that the applicant is not aware whether the Transferee Company has indulged in similar suppression in respect of other creditors; and that its commercial solvency is doubtful.

It is further pleaded by the applicant that the fresh liabilities transferred to the Transferee Company may adversely affect the commercial solvency of the Transferee Company thereby affecting the applicant's interests as it is an unsecured creditor. The applicant has, accordingly, raised a serious objection to the proposed amalgamation.

I have heard Mr.SVR.Subrahmanyam learned Counsel for the applicant, and Mr.Y.Suryanarayana, learned Counsel for both the Transferor and the Transferee Companies.

The learned Counsel for the applicant has not disputed the fact that the amount claimed by his client is not a crystallized debt, in respect of which a serious dispute persists between the parties.

Since an apprehension is raised by the applicant that the proposed amalgamation and arrangement of the Transferor Company with the Transferee Company may result in increased liability of the Transferee Company, I have perused the balance sheet of the Transferor Company, which shows that for the financial year ending 31.03.2014, the reserves and surplus are shown as Rs.114,61,47,365/-. Both the Transferor and Transferee Companies have filed their respective networth certificates. The Transferor Company's networth certificate, dated 31-07-2015, issued by its Chartered Accountant, and filed *vide* Memo USR.No.3498 of 2015, shows that its total networth is Rs.1,18,11,16,495/-. The networth certificate, dated 31.07.2015, of the Transferee Company, issued by its Chartered Accountant and filed *vide* Memo USR No.3499 of 2015 shows that its total networth is Rs.3,52,67,35,010/-

From the above undisputed facts, I am of the opinion that the proposed amalgamation and arrangement will result in increase of networth of the Transferee Company by 1,18,11,16,495/-. Therefore, I do not find any merit in the apprehension of the applicant in Company Application No.1267 of 2015 that the proposed amalgamation and arrangement may add further liabilities to the Transferee Company. In these circumstances, Company Application No.1267 of 2015 is wholly without any merit and the same is liable to be rejected.

As regards Company Application No.1285 of 2015, filed by M/s.Veerabadra Minerals Private Limited and two others (hereinafter referred as 'the applicants'), the applicants sought for leave to get impleaded as the respondents in Company Petition No.118 of 2015.

It is averred in the affidavit, filed in support of the said application, that a Memorandum of Understanding (MOU) was entered into between Mr.GSP.Veera Reddy, the Chairman of the Transferee Company, and applicant No.2; that on 29.11.2011, 1,45,750 shares held by applicant No.1 in the Transferee Company were transferred to

Mr.G.Veera Reddy, who is the father of applicant No.2, and that under the said MOU, several reciprocal obligations have been exchanged, which have not been performed by the Chairman of the Transferee Company. It is further averred that the Chairman of the Transferee Company got the shares held by applicant No.1 transferred in his favour through deceitful means *viz.,* by forging the signature of applicant No.2. The applicants have, therefore, raised serious objections to the proposed amalgamation and arrangement without complying with the obligations under the MOU.

Mr.A.Sudershan Reddy, learned Senior Counsel appearing for Mr.Sama Sandeep Reddy, learned Counsel for the applicants, has strenuously submitted that unless the obligations under the above-mentioned MOU are fully performed by the Chairman of the Transferee Company, the approval of the proposed scheme of amalgamation and arrangement would cause serious prejudice to his clients' interests.

Mr.Suryanarayana Yellapantula, learned Counsel for the Transferee Company, submitted that the plea of the applicants relating to the illegal transfer of the shares held by applicant No.1 was conclusively rejected by the Company Law Board; that the same was confirmed in appeal by this Court and that a Special Leave Petition, filed against these orders, was also dismissed by the Supreme Court. In support of his submission, the learned Counsel has invited this Court's attention to Order, dated 09-02-2011, in Company Petition No.7 of 2002, of the Additional Principal Bench of the Company Law Board, Chennai, Order, dated 12.09.2011, in Company Appeal No.5 of 2011 of this Court and Order, dated 05-01-2012, in Special Leave Petition No.34865/2011 of the Supreme Court.

A perusal of the aforesaid orders shows that the plea of fabrication of share transfer forms set up by the applicants was unequivocally rejected by the Company Law Board, which was confirmed by this Court in the above-mentioned Company Appeal, and that the Special Leave Petition filed by the applicant against both these orders was rejected by the Supreme Court. The applicants cannot, therefore, press into service the same allegation, which was rejected by the above-mentioned *Fora*.

As regards the alleged non-compliance with the mutual obligations under the MOU, as rightly pointed out by the learned Counsel for the Transferee Company, this plea completely falls outside the scope of the provisions of Sections 391 to 394 of the Companies Act, 1956, as any dispute arising out of an agreement among the existing shareholders and the erstwhile shareholders of the Company has no relevance to the issue of approval of scheme under these provisions, more so, when the shareholders, the secured creditors and the unsecured creditors of both the Companies have conveyed their no objection for the proposed scheme of amalgamation and arrangement.

As noted above, the claim of the applicant in Company Application No.1267 of 2015 is under a serious dispute. As regards applicant Nos.2 and 3 in Company Application No.1285 of 2015, it is not in dispute that they hold certain shares, which are in absolute minority, and considering the very low quantum of shares held by them, their objections have no relevance. In any event, they have not raised any objection in their capacity as shareholders. Hence, I am of the opinion that the applicants in Company Application No.1285 of 2015 have no locus to come on record in C.P.No.118 of 2015. Hence, this Company Application is also liable to be rejected.

For the foregoing reasons, the proposed scheme of amalgamation and arrangement is sanctioned with effect from the appointed date *i.e.,* 01.04.2014. The Transferor Company is ordered to be dissolved without going through the process of winding up. Both the Companies shall, within 30 days of receipt of a copy of this order, cause a certified copy of the same to be delivered to the Registrar of Companies, Hyderabad, and take all other consequential actions in pursuance of the approval of the proposed scheme of amalgamation and arrangement.

Accordingly, Company Application Nos.1267 and 1285 of 2015 are dismissed and Company Petition Nos.117 and 118 of 2015 are allowed.

As a sequel, miscellaneous applications, pending if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 18th August, 2015
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