IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2016

DELIVERED ON : 29.04.2016

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The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos.525 to 531 of 2015

ABN Housing Private Limited
No.1 SIDCO Industrial Estate,
Guindy, Chennai – 600 032
represented by its Director
Mr.Bharat Kumar Chordia
.. Petitioner in C.P.No.525 of 2015
/ Transferor Company No.1

Khivraj Housing Private Limited
No.1 SIDCO Industrial Estate,
Guindy, Chennai – 600 032
represented by its Director
Mr.V.Rajamanickam
.. Petitioner in C.P.No.526 of 2015
/ Transferor Company No.2

KSM Housing Private Limited
No.1 SIDCO Industrial Estate,
Guindy, Chennai – 600 032
represented by its Director
Mr.Rahul Baid
.. Petitioner in C.P.No.527 of 2015
/ Transferor Company No.3

KSM Nirman Private Limited
No.1 SIDCO Industrial Estate,
Guindy, Chennai – 600 032
represented by its Director
Mr.Harish Kankaria .. Petitioner in C.P.No.528 of 2015
/ Transferor Company No.4

Olympia Infratech Private Limited
No.1 SIDCO Industrial Estate,
Guindy, Chennai – 600 032
represented by its Director
Mr.Chandrakant Kankaria

.. Petitioner in C.P.No.529 of 2015
/ Transferor Company No.5

Opaline Hotels Private Limited
No.1 SIDCO Industrial Estate,
Guindy, Chennai – 600 032
represented by its Director
Mr.Amritansh Bhagat

.. Petitioner in C.P.No.530 of 2015
/ Transferor Company No.6

Olympia Tech Park (Chennai) Private Limited
No.1 SIDCO Industrial Estate,
Guindy, Chennai – 600 032
represented by its Director
Mr.Chandrakant Kankaria

.. Petitioner in C.P.No.531 of 2015
/ Transferee Company

Petitions filed under sections 391 to 394 of the Companies Act, 1956 to sanction the scheme of amalgamation.

For Petitioners : Mr.P.H.Arvind Pandian
Senior Counsel
For Mr.Harishankar Mani

Mr.G.Venkatesan
Central Government Standing Counsel
for Regional Director
Ministry of Company Affairs,Chennai

Mr.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 six transferor companies with the transferee company with effect from 1st April 2014. The scheme of amalgamation (in short scheme) is appended as Annexure 4 to C.P.Nos.525 to 529 and 531 of 2015 and Annexure 5 to C.P.No.530 of 2015.

2. The petitioner in C.P.No.525 of 2015 is the first transferor company; the petitioner in C.P.No.526 of 2015 is the second transferor company; the petitioner in C.P.No.527 of 2015 is the third transferor company; the petitioner in C.P.No.528 of 2015 is the fourth transferor company; the petitioner in C.P.No.529 of 2015 is the fifth transferor company; the petitioner in C.P.No.530 of 2015 is the sixth transferor and the petitioner in C.P.No.531 of 2015 is the transferee company.

3. A perusal of the records show that the petitioners have complied with the prescribed procedure. It is stated that there are no secured creditors as far as transferor company No.1 and 2 are concerned and the certificate of the Chartered Accountant confirming the same is annexed as Annexure 6 to C.P.Nos.525 and 526 of 2015.

3.1. The Consent affidavits of the secured creditors of the transferor companies Nos.3, 4, 5, 6 and the Transferee Company are appended as Annexure 7 to C.P.Nos.527 to 529 of 2015, Annexure 8 to C.P.No.530 of 2015 and Annexure 7 to C.P.No.531 of 2015, respectively.

3.2. Copies of 7 separate resolutions passed by the Board of Directors of the six transferor companies as well as the transferee company adopting the scheme is enclosed as Annexure '3' to C.P.Nos.527 to 529 of 2015, Annexure 4 to C.P.No.530 of 2015 and Annexure 3 to C.P.No.531 of 2015, respectively.

4. The affidavits of equity shareholders giving their consent to the scheme is appended as Annexure '8' to C.P.Nos.525 and 526 of 2015 and Annexure 9 to C.P.Nos.527 to 531 of 2015.

4.1. This Court, in its order dated 10.12.2015 passed in C.A.Nos.1201 to 1207 of 2015 dispensed with the convening, holding and conducting of the meeting of the shareholders of the six transferor companies and the transferee company for the purpose of considering and if thought fit, approving with or without modification, the scheme conceived by the petitioner companies involving amalgamation.

5. Upon notice being issued, the Regional Director, Ministry of Company Affairs has filed his report, inter alia with the following relevant observations:

> *8) It is respectfully submitted that ROC, Chennai has reported that the transferee company proposes to issue Optionally Convertible Non-cumulative Preference Shares to the shareholders of the Transferor companies and the price of the shares will be determined at the time of conversion of the Optionally Convertible Non-Cumulative Preference shares. ROC, Chennai has further stated that as per the provisions of Section 62 (1)(c) of the Companies Act 2013 read with rule 9(2) and Rule 13(2)(h) of the Companies (Share Capital and Debentures) Rules 2014 the price of the shares to be issued on conversion of the Optionally Convertible Non-cumulative Preference Shares i.e., resultant shares shall be determined before hand on the basis of a valuation report of a Registered valuer. To this requirement the company has given a letter undertaking that it will "include into the final terms of issue of Optionally Convertible Non-Cumulative Preference Shares (Class A to Class F) as specified in Sch. I to VI of the Scheme of amalgamation, while being in compliance with the provisions of Rule 13 of Companies (Share Capital and Debentures) Rules, 2014 as would be mutually agreed with the respective Transferors". The Transferee*

company may be directed to comply with the above said provisions and rules framed thereunder as per its undertaking.

9. It is respectfully submitted that as per para 5.4 of the scheme of the transferee company provides for amending/inserting clauses 5 to 7 in clause III (Main objects) of its Memorandum of Association and the transferee company may be directed to file necessary eform with ROC, Chennai for the proposed amendment.

10. It is respectfully submitted that the Authorized Capital of the Transferee company is not sufficient to issue the Optionally Convertible Non-Cumulative Preference Shares to the shareholders of the transferor companies and hence this Hon'ble High Court may direct the transferee company to increase the Authorized Capital sufficiently and comply with the procedures enumerated in the Companies Act, 2013 and rules framed thereunder.

11. It is respectfully submitted that violations, if any, noticed from the documents filed by the companies will be dealt with in accordance with the provisions of Companies Act, 1956.

12. I respectfully submit that the petitioner transferor companies M/s.ABN Housing Private Limited, M/s.Khivraj Housing Private Limited, M/s.KSM Housing Private Limited, M/s.KSM Nirman Private Limited, M/s.Olympia Infratech Private Limited, M/s.Opaline Hotels Private Limited seek dissolution without winding up.

13. The scheme of amalgamation filed with the petitions *have been examined and it has been decided not to make any objection to the scheme except the observation made in para (8), (9) and (10) above and it is therefore prayed that this Hon'ble Court may dispose of the petitions on merits."*

6. Learned counsel appearing for the petitioners submits that the petitioners undertake that they will comply with the provisions of the Companies Act, 2013 and Rules thereunder. In this regard, the petitioners have filed an affidavit of undertaking dated 27.04.2016, the relevant portion of which reads as follows:

"4. I, Director of the transferee company, under the aforementioned Scheme shall hereby undertake that the transferee company shall include, into the final terms of issue of the Optionally Convertible Non-Cumulative Preference [Class A to Class F] as specified in Schedule I to VI of the Scheme of Amalgamation, such other provisions, to be in compliance with the provisions of Rule 13 of Companies (Share Capital and Debentures) Rules 2014 as would be mutually agreed with the respective Transferor companies.

5. I also state that the similar undertaking was given to the Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai vide letter dated 15th February 2016

6. I also undertake on behalf of the transferee *company that appropriate e-forms would be filed to effect the alteration of Memorandum of Association of the transferee company as provided under the Scheme of Amalgamation.*

7. I also further state that the authorized capital of the transferee company shall be appropriately increased before the discharge of consideration under the scheme of amalgamation."

7. The Official Liquidator has also filed his report along with the report of the Chartered Accountant. Chartered Accountant, in his report, states that the affairs of the transferor companies have not been conducted in a manner prejudicial to the interest of its members or to public interest and that he did not come across any act of misfeasance by the Directors attracting the provisions of Sections 542 and 543 of the Companies Act, 1956. It is further stated that the records maintained in the office of the Registrar of Companies were also caused to be inspected by the said Chartered Accountant. In the absence of any inference that the affairs of the transferor companies were being conducted in a manner prejudicial to the interest of its members or public interest, the Official Liquidator has filed his report before this Court for appropriate orders.

8. I have perused the scheme filed along with the company petitions. I find that the Scheme is not prejudicial to the interest of any person or entity, which has a stake/interest in the petitioner companies. The said scheme, as framed, is not violative of any statutory provisions.

8.1. The scheme as formulated is fair, just, sound and is not contrary to any public policy or public interest. No proceedings appear to be pending under the provisions of Sections 231 to 237 of the Companies Act, 1956. All the statutory provisions appear to have been complied with.

9. Consequently, subject to the transferee company complying with the undertaking given by its Director vide affidavit dated 27.4.2016, there shall be an order approving the scheme of amalgamation between six transferor companies, viz., M/s.ABN Housing Private Limited, M/s.Khivraj Housing Private Ltd., M/s.KSM Housing Private Ltd., M/s.KSM Nirman Private Limited, M/s.Olympia Infratech Private Ltd., and M/s.Opaline Hotels Private Ltd. and the transferee company, viz., M/s.Olympia Tech Park (Chennai) Private Ltd., with effect from 1st April, 2014, as per the procedure laid down

under Sections 391 to 393 of the Companies Act.

10. Taking note of the report by the Chartered Accountant as enclosed by the Official Liquidator, in terms of the order passed by this Court, the above six transferor companies shall stand dissolved, albeit, without winding up.

11. It is made clear, that this order will not be construed as an order granting exemption from payment of stamp duty or, taxes or, any other charges, if any, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

12. The learned Senior Central Government Standing Counsel is entitled to a fee of Rs.5,000/- from the transferee company.

13. The above petitions are disposed of in the aforementioned terms.

Index: Yes / No
Internet: Yes / No 29.04.2016

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RAJIV SHAKDHER,J.

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Pre-Delivery Order in
C.P.Nos.525 to 531 of 2015

29.04.2016