

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.07.2016

DELIVERED ON : 06.07.2016

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The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos.128 to 130 of 2016

GMR Holdings Private Limited
having its Registered Office at
Unit No.1B, First Floor, Riaz Garden
Old No.12, New No.29, Kodambakkam High Road,
Chennai - 600 034.
Tamil Nadu
represented by its Authorized Signatory,
Mr.Ravi Majeti

.. Petitioner in C.P.No.128 of 2016
/1st Transferor Company

GMR Projects Private Limited
having its Registered Office at
Unit No.1B, First Floor, Riaz Garden
Old No.12, New No.29, Kodambakkam High Road,
Chennai - 600 034.
Tamil Nadu
represented by its Director,
Mr.Govindarajulu Tata

.. Petitioner in C.P.No.129 of 2016/
2nd Transferor Company

GMR Enterprises Private Limited
having its Registered Office at
Unit No.1B, First Floor, Riaz Garden
Old No.12, New No.29, Kodambakkam High Road,
Chennai - 600 034.
Tamil Nadu
represented by its Authorized Signatory,
Mr.Govindarajulu Tata

.. Petitioner in C.P.No.129 of 2016/
Transferee Company

Petitions filed under sections 391 to 394 of the Companies Act, 1956 and Sections 100 to 104 of the Companies Act, 1956 read with Section 52 of the Companies Act, 2013, to sanction the scheme of amalgamation and arrangement.

For Petitioners : Mr.Harishankar Mani

Mr.G.Venkatesan
Central Government Standing Counsel
for Regional Director
Ministry of Company Affairs,Chennai
Mr.P.Achutha Ramaiah
Official Liquidator

COMMON ORDER

1. These Company Petitions are preferred under Sections 391 to 394 of the Companies Act, 1956 and Sections 100 to 104 of the Companies Act, 1956 read with Section 52 of the Companies Act, 2013, for sanctioning the scheme of amalgamation and arrangement with effect from 30.03.2015. The scheme of amalgamation and arrangement (in short the Scheme) is appended as Annexure D to these petitions.

2. The petitioner in C.P.No.128 of 2016 is the 1st transferor company; the petitioner in C.P.No.129 of 2016 is the 2nd transferor company and the petitioner in C.P.No.130 of 2016 is the transferee company.

3. A perusal of the records show that the petitioners have complied with the prescribed procedure. Certificate of the Chartered Accountant has been filed stating therein that the 1st transferor company has 13 secured creditors; 2nd transferor company has three secured creditors and the transferee company has one secured creditor and same are annexed as volume I to these petitions. No objection to the proposed scheme has been obtained from the above secured creditors in respect of both the transferor companies and that of the transferee company, which are appended as Volume II to these petitions.

3.1. A copy of three (3) separate resolutions of even date, i.e., 16.11.2015, passed by the Board of Directors of both the transferor companies as well as the transferee company adopting the scheme is enclosed as Annexure '3' to these petitions.

4. The affidavits of equity shareholders of the 1st transferor company and the transferee company giving their consent to the scheme are appended as Annexure '8' to C.P.No.128 and 130 of 2016 and the affidavits of equity shareholders of the 2nd transferor

company is Annexure '7' to C.P.No.129 of 2016. The affidavits of preference shareholders of the 1st transferor company and the transferee company giving their consent to the scheme are appended as Annexure '10' in C.P.Nos.128 and 130 of 2016.

4.1. This Court, in its order dated 11.01.2016, in C.A.Nos.1226 and 1227 of 2015 (first transferor company) and in C.A.Nos.1229 and 1230 (transferee company) dispensed with the convening, holding and conducting of the meeting of the equity shareholders and preference shareholders respectively for the purpose of considering and if thought fit, approving with or without modification, the scheme conceived by the petitioner companies involving amalgamation. This Court, in its order dated 11.01.2016, in C.A.No.1228 of 2015 (second transferor company), dispensed with the convening, holding and conducting of the meeting of the equity shareholders for the purpose of considering and if thought fit, approving with or without modification, the scheme conceived by the petitioner companies involving amalgamation.

4.2. To be noted, when the matter was called on 23.06.2016, learned counsel for the petitioner undertook to file an affidavit

disclosing the details qua unsecured creditors in terms of the value as well as number. Accordingly, when the matter was again called on 01.07.2016, the learned counsel for the petitioner companies filed three affidavits of even date, i.e., 25.06.2016, whereby the consents of unsecured creditors to the proposed scheme have been appended.

4.3. It is seen that upon the Scheme coming into effect, the transferee company shall, without any application, allot to the equity shareholders of the 1st transferor company, viz., GMR Holdings Private Limited, fully paid up equity share of Rs.10/- each for every fully paid up shares of Rs.10/- each held in the 1st transferor company. In this regard, the original valuation report is annexed as Annexure 5 to C.P.Nos.128 and 130 of 2016.

4.4. It is stated that as the 2nd transferor company is a subsidiary of transferee company, upon the Scheme coming into effect, the transferee company, shall neither pay any consideration nor allot any share to the shareholders of the 2nd transferor company and the entire investment held by the transferee company in the 2nd transferor company shall stand cancelled.

5. Upon notice being issued, the Regional Director, Ministry of Company Affairs has filed his report stating that he has no objection to the scheme being sanctioned.

6. The Official Liquidator has also filed his report along with the report of the Chartered Accountant. The report of the chartered accountant states that the affairs of both the transferor companies have not been conducted in a manner prejudicial to the interest of its members or to public interest and that he has 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, and in the absence of any comments that the affairs of the transferor companies had been conducted in a manner prejudicial to its members, the Official Liquidator has filed his report before this Court for orders.

7. I have perused the proposed Scheme filed along with the company petitions. I find that the Scheme proposed 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.

7.1. 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.

8. Consequently, there shall be an order approving the scheme of amalgamation between the 1st transferor company, viz., GMR Holdings Private Limited and 2nd transferor company, viz., GMR Projects Private Limited with the transferee company, viz., GMR Enterprises Private Limited and their respective shareholders, with effect from 30.03.2015, subject to the compliance with the extant provisions of the law including Sections 391 to 394 and Sections 100 to 104 of the Companies Act, 1956 read with Section 52 of the

Companies Act, 2013.

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

10. 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.

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

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

Index: Yes / No

Internet: Yes / No

06.07.2016

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RAJIV SHAKDHER,J.

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Pre-Delivery Order in
C.P.Nos.128 to 130 of 2016

06.07.2016