IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.06.2016

DELIVERED ON: 06.07.2016

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The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos.131 to 133 of 2016

M/s. Merryland Infrastructure Private Limited
having its Registered Office at
Plot No.31, Door No.2/354
2nd Main Road, AGS Colony,
Kottivakkam, Chennai - 600 041
represented by its Director
Mr.Natarajan Rajesh Kumar

.. Petitioner in C.P.No.131 of 2016 /1st Transferor Company

M/s.Shine Home Appliances Private Limited
having its Registered Office at
Plot No.31, Door No.2/354
2nd Main Road, AGS Colony,
Kottivakkam, Chennai - 600 041
represented by its Director
Mr.N.Paramasivam Muthu

.. Petitioner in C.P.No.132 of 2016/ 2nd Transferor Company

M/s.Original Innovative Logistics (India) Private Limited
having its Registered Office at
having its Registered Office at
Plot No.31, Door No.2/354
2nd Main Road, AGS Colony,
Kottivakkam, Chennai - 600 041
represented by its Director
Mr.J.Rajaraman

.. Petitioner in C.P.No.133 of 2016/ Transferee Company

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

For Petitioners : Mr.B.Dhanraj

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

Mr.P.Achutha Ramaiah
Official Liquidator

C O M M O N O R D E R

1. These Company Petitions are preferred under Sections 391 to 394 of the Companies Act, 1956, for sanctioning the scheme of amalgamation with effect from 01.04.2015. The scheme of amalgamation (in short the Scheme) is appended as Annexure 4 to these petitions.

2. The petitioner in C.P.No.131 of 2016 is the 1st transferor company; the petitioner in C.P.No.132 of 2016 is the 2nd transferor company and the petitioner in C.P.No.133 of 2016 is the transferee company.

3. A perusal of the records show that the petitioners have complied with the prescribed procedure. Certificates of the Chartered Accountant has been filed stating therein that the both the transferor companies and the transferee company have no secured creditors, which are appended as Annexure No.5 to these Petitions.

3.1. A copy of two (2) separate resolutions of even date, i.e., 16.12.2015, passed by the Board of Directors of both the transferor companies adopting the scheme is enclosed as Annexure '3' to C.P.Nos.131 and 132 of 2016. A copy of a resolution dated 18.12.2015, passed by the Board of Directors of the transferee company adopting the scheme is enclosed as Annexure '3' to C.P.No.133 of 2016.

4. The affidavits of equity shareholders of both the transferor companies and the transferee company giving their consent to the scheme are appended as Annexure '7' to these Petitions.

4.1. This Court, in its order dated 12.02.2016, in C.A.Nos.125 to 127 of 2016, dispensed with the convening, holding and conducting of the meeting of the equity shareholders of both the transferor companies and the transferee company respectively 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. As far as the unsecured creditors of the petitioner companies are concerned, learned counsel for the petitioner has filed three affidavits of even date, i.e., 28.06.2016, enclosing the certificates of the Chartered Accountant, in which, the details of the unsecured creditor and their outstanding dues have been stated. It is seen that the unsecured creditors are the Directors and Auditors of the company only.

4.3. It is stated in the affidavit, that Clause 3.3 of the Scheme provides to secure the interest of the unsecured creditors.

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., Meryland Infrastructure Private Limited and 2nd transferor company, viz., Shine Home Appliances Private Limited with the transferee company, viz., Original Innovative Logistics (India) Private Limited, with effect from 01.04.2015, subject to the compliance with the extant provisions of law including Sections 391 to 394 of the Companies Act, 1956.

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.

06.07.2016

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RAJIV SHAKDHER,J.

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Pre-Delivery Order in
C.P.Nos.131 to 133 of 2016

06.07.2016