IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.10.2016

DELIVERED ON:15.11.2016

Coram

The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos.174 to 188 of 2016

M/s.K.V.T.Builders Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.174 of 2016
/1st Transferor Company

M/s.K.V.T.Builders & Developers Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.175 of 2016
/2nd Transferor Company

M/s.K.V.T.Civil Erectors Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.176 of 2016
/3rd Transferor Company

M/s.K.V.T.Constructions Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.177 of 2016
/4th Transferor Company

M/s.K.V.T.Foundation Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.178 of 2016
/5th Transferor Company

M/s.K.V.T.Gardens Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.179 of 2016
/6th Transferor Company

M/s.K.V.T.Homes Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.180 of 2016
/7th Transferor Company

M/s.K.V.T.Realties Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.181 of 2016
/8th Transferor Company

M/s.K.V.T.Properties Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.182 of 2016
/9th Transferor Company

M/s.K.V.T.Infrastructure Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.183 of 2016
/10th Transferor Company

M/s.K.V.T.Land Promoters Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.184 of 2016
/11th Transferor Company

M/s.K.V.T.Realtors Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.185 of 2016
/12th Transferor Company

M/s.K.V.T.Shelters Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.186 of 2016
/13th Transferor Company

M/s.Susi Property Developers Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.187 of 2016
/14th Transferor Company

M/s.K.V.T.Homes and Estates Private Limited
having its Registered Office at
No.26, 'AI' Block, 1st Floor,
8th Main Road, Shanti Colony,
Anna Nagar, Chennai - 600 040
represented by its Managing Director
Mr.Thiruppathaiah Kattari Venkatasubbaiah

.. Petitioner in C.P.No.188 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.Vishnu Mohan for
M/s.Harishankar Mani

Mr.Venkatasamy Babu
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, for the purpose of seeking sanction of 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.174 of 2016 is the 1st transferor company; the petitioner in C.P.No.175 of 2016 is the 2nd transferor company; the petitioner in C.P.No.176 of 2016 is the 3rd transferor company; the petitioner in C.P.No.177 of 2016 is the 4th transferor company and the petitioner in C.P.No.178 of 2016 is the 5th transferor company; the petitioner in C.P.No.179 of 2016 is the 6th transferor

company; the petitioner in C.P.No.180 of 2016 is the 7th transferor company the petitioner in C.P.No.181 of 2016 is the 8th transferor company; the petitioner in C.P.No.182 of 2016 is the 9th transferor company; the petitioner in C.P.No.183 of 2016 is the 10th transferor company; the petitioner in C.P.No.184 of 2016 is the 11th transferor company; the petitioner in C.P.No.185 of 2016 is the 12th transferor company; the petitioner in C.P.No.186 of 2016 is the 13th transferor company; the petitioner in C.P.No.187 of 2016 is the 14th transferor company; and the petitioner in C.P.No.188 of 2016 is the transferee company.

3. A perusal of the records show that the petitioners have complied with the prescribed procedure.

4. It is seen that except the 10th transferor company, none of the transferor companies as well as the transferee company has secured creditors. Chartered Accountant's certificates indicating the status of the secured and unsecured creditors of the transferor companies and the transferee company and their respective financial position, as on 01.08.2016 have also been filed.

4.1. For the sake of convenience, the details of the secured creditors, unsecured creditors and the equity shareholders of the 14 transferor companies as well as the transferee company are set out herein below:

A. 1st transferor company:

i) It is stated that initially the 1st transferor company had only one secured creditor, viz., HDB Financial Services Limited, who is also a shareholder and that, at the time of obtaining permission of this Court to dispense with the meeting of its shareholders, the consent of this entity to the proposed Scheme was received. It is averred that, since then, HDB Financial Services Limited has closed its loan account and, consequently, the 1st transferor company has no secured creditor. A certificate of the Chartered Accountant stating that there are no secured creditors is appended as Annexure '1' to the additional typed set of document.

ii) As far as the unsecured creditors are concerned, it is stated that there are five (5) unsecured creditors, valued at Rs.8,58,88,057/-. A certificate of the Chartered Accountant confirming the same is appended as Annexure '1' to the additional typed set of document. It is stated that the said unsecured creditors, who are none other than the 10th transferor company and the shareholders of the 1st transferor company, have given their consents to the proposed Scheme.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended as Annexure '9' to C.P.No.174 of 2016.

B. 2nd transferor company:

i) It is stated that there are no secured creditors. The certificate of the Chartered Accountant confirming the same is appended as Annexure '2' to the additional typed set of document.

ii) As far as the unsecured creditors are concerned, it is stated that there are six (6) unsecured creditors, valued at Rs.3,08,24,350/-. Out of the six (6) unsecured creditors, five (5) unsecured creditors, valued at Rs.2,08,24,350/- have given given their consents to the proposed Scheme. It is stated that the remaining one (1) unsecured creditor, valued at Rs.1,00,00,000/-, is a third party lender. It is stated that the net assets of the 2nd transferor company are valued at Rs.3,67,70,797/- and, the net worth is equivalent to Rs.59,46,447/-. The certificate of the Chartered Accountant confirming the same is appended as Annexure '2' to the additional typed set of document.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended as Annexure '8' C.P.No.175 of 2016.

C. 3rd transferor company:

i) It is stated that there are no secured creditors. The certificate of the Chartered Accountant confirming the same is appended as Annexure '3' to the additional typed set of document.

ii) As far as the unsecured creditors are concerned, it is stated that there are five (5) unsecured creditors, valued at Rs.2,98,07,660/- Out of the five (5) unsecured creditors, three (3) unsecured creditors, valued at Rs.2,60,57,660/- have given given their consents to the proposed Scheme. It is stated that the remaining two (2) unsecured creditors, valued at Rs.37,50,000/-, are third party lenders. It is stated that the net assets of the 3rd transferor company are Rs.3,45,35,406/- and, the net worth is equivalent to Rs.47,27,746/-. The certificate of the Chartered Accountant confirming the same is appended as Annexure '3' to the additional typed set of document.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended as Annexure '8' to C.P.No.176 of 2016.

D. 4th transferor company:

i) It is stated that there are no secured creditors. The certificate of the Chartered Accountant confirming the same is appended as Annexure '4' to the additional typed set of document.

ii) As far as the unsecured creditors are concerned, it is stated that there are three (3) unsecured creditors, valued at Rs.88,74,429/-. The certificate of the Chartered Accountant confirming the same is appended as Annexure '4' to the additional typed set of document. The three (3) unsecured creditors, who are also the shareholders of transferor company No.4, have given their consents to the proposed Scheme.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended as Annexure '8' to C.P.No.177 of 2016.

E. 5th transferor company:

i) It is stated that there are no secured creditors. The certificate of the Chartered Accountant confirming the same is appended as Annexure '5' to the additional typed set of document.

ii) As far as the unsecured creditors are concerned, it is stated that there are three (3) unsecured creditors, valued at Rs.66,09,122/-. The certificate of the Chartered Accountant confirming the same is appended as Annexure '5' to the additional typed set of document. The three (3) unsecured creditors, who are also the shareholders of transferor company No.5, have given their consents to the proposed Scheme.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended as Annexure '8' to C.P.No.178 of 2016.

F. 6th transferor company:

i) It is stated that there are no secured creditors. The certificate of the Chartered Accountant confirming the same is appended as Annexure '6' to the additional typed set of document.

ii) As far as the unsecured creditors are concerned, it is stated that there are five (5) unsecured creditors, valued at Rs.37,11,147/-. The certificate of the Chartered Accountant confirming the same is appended as Annexure '6' to the additional typed set of document. The five (5) unsecured creditors, who are also the shareholders of transferor company No.6, have given their consents to the proposed Scheme.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended as Annexure '8' to C.P.No.179 of 2016.

G. 7th transferor company:

i) It is stated that there are no secured creditors. The certificate of the Chartered Accountant confirming the same is appended as Annexure '7' to the additional typed set of document.

ii) As far as the unsecured creditors are concerned, it is stated that there are two (2) unsecured creditors, valued at Rs.33,73,776/-. The certificate of the Chartered Accountant confirming the same is appended as Annexure '7' to the additional typed set of document. The two (2) unsecured creditors, who are also the shareholders of transferor company No.7, have given their consents to the proposed Scheme.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended as Annexure '8' to C.P.No.180 of 2016.

H. 8th transferor company:

i) It is stated that there are no secured creditors. The certificate of the Chartered Accountant confirming the same is appended as Annexure '8' to the additional typed set of document.

ii) As far as the unsecured creditors are concerned, it is stated that there are six (6) unsecured creditors, valued at Rs.4,25,10,365/-. The certificate of the Chartered Accountant confirming the same is appended as Annexure '7' to the additional typed set of document. The six (6) unsecured creditors, who are also the shareholders of transferor company No.8, have given their consents to the proposed Scheme.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended as Annexure '8' to C.P.No.181 of 2016.

I. 9th transferor company:

i) It is stated that there are no secured creditors. The certificate of the Chartered Accountant confirming the same is appended as Annexure '9' to the additional typed set of document.

ii) As far as the unsecured creditors are concerned, it is stated that there are sixteen (16) unsecured creditors, valued at Rs.2,76,75,597/-. Out of sixteen (16) unsecured creditors, fifteen (15) unsecured creditors, who are shareholders of transferor company No.9 and group companies, have given their consents to the proposed Scheme. The remaining one (1) unsecured creditor, valued at Rs.50,00,000/- is a third party lender. It is stated that the net assets of the 9th transferor company are valued at Rs.5,23,34,623/- and, the net worth is equivalent to Rs.2,46,44,589/-. The certificate of the Chartered Accountant confirming the same is appended as Annexure '9' to the additional typed set of document.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended as Annexure '8' to C.P.No.182 of 2016.

J. 10th transferor company:

i) It is stated that there are two (2) secured creditors. The certificate of the Chartered Accountant confirming the same is appended as Annexure '10' to the additional typed set of document. Consent from the above-said secured creditors have been obtained, which are appended as Annexure 7 to C.P.No.183 of 2016.

ii) As far as the unsecured creditors are concerned, it is stated that there are two (2) unsecured creditors, valued at Rs.10,40,000/-. The certificate of the Chartered Accountant confirming the same is appended as Annexure '10' to the additional typed set of document. Out of the two (2) unsecured creditors, one (1) unsecured creditor, who is also the shareholder of transferor company No.10, and has debt valued at Rs.2,00,000/-, has given its consent to the proposed Scheme. The remaining one (1) unsecured creditor has outstandings which pertain to rental advance and is valued at Rs.8,40,000/-. It is stated that out of the current assets of transferor company No.10, there is a cash and bank balance comprising of Rs.14,82,459/-. Further the net worth of transferor company No.10 is, valued at Rs.61,38,689/-.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended as Annexure '9' to C.P.No.183 of 2016.

K. 11th transferor company:

i) It is stated that there are no secured creditors. The certificate of the Chartered Accountant confirming the same is appended as Annexure '11' to the additional typed set of document.

ii) As far as the unsecured creditors are concerned, it is stated that there are three (3) unsecured creditors, valued at Rs.38,91,670/-. The certificate of the Chartered Accountant confirming the same is appended as Annexure '11' to the additional typed set of document. The three (3) unsecured creditors, who are also the shareholders of transferor company No.11, have given their consent to the proposed Scheme.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended as Annexure '8' to C.P.No.184 of 2016.

L. 12th transferor company:

i) It is stated that there are no secured creditors. The certificate of the Chartered Accountant confirming the same is appended as Annexure '12' to the additional typed set of document.

ii) As far as the unsecured creditors are concerned, it is stated that there are nine (9) unsecured creditors, valued at Rs.3,85,84,669/- The certificate of the Chartered Accountant confirming the same is appended as Annexure '12' to the additional typed set of document. Out of the nine (9) unsecured creditors, four (4) unsecured creditors, who are also the shareholders of transferor company No.12, and have debts valued at Rs.1,58,84,669/-, have given their consent to the proposed Scheme. The remaining five (5) unsecured creditors, valued at Rs.2,27,00,000/- are third party lenders. It is stated that the net worth of transferor company No.12 is equivalent to Rs.78,24,797/-.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended as Annexure '8' to C.P.No.185 of 2016.

M. 13th transferor company:

i) It is stated that there are no secured creditors. The certificate of the Chartered Accountant confirming the same is appended as Annexure '13' to the additional typed set of document.

ii) As far as the unsecured creditors are concerned, it is stated that there are four (4) unsecured creditors, valued at Rs.87,59,095/-. The certificate of the Chartered Accountant confirming the same is appended as Annexure '13' to the additional typed set of document. The four (4) unsecured creditors, who are also the shareholders of transferor company No.13, have given their consent to the proposed Scheme. It is stated that the net worth of transferor company No.13 is valued at Rs.1,17,44,811.26.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended as Annexure '8' to C.P.No.186 of

2016.

N. 14th transferor company:

i) It is stated that there are no secured creditors. The certificate of the Chartered Accountant confirming the same is appended as Annexure '14' to the additional typed set of document.

ii) As far as the unsecured creditors are concerned, it is stated that there are three (3) unsecured creditors, valued at Rs.1,74,42,693/-. The certificate of the Chartered Accountant confirming the same is appended as Annexure '14' to the additional typed set of document. The three (3) unsecured creditors, who are also the shareholders of transferor company No.14, have given their consent to the proposed Scheme.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended as Annexure '8' to C.P.No.187 of 2016.

O. Transferee Company:

i) It is stated that there are no secured creditors. The certificate of the Chartered Accountant confirming the same is appended as

Annexure '15' to the additional typed set of document.

ii) As far as the unsecured creditors are concerned, it is stated that there are two (2) unsecured creditors, valued at Rs.2,00,000/-. The certificate of the Chartered Accountant confirming the same is appended as Annexure '15' to the additional typed set of document. The said unsecured creditors, who are also the shareholders of transferee company, have given their consent to the proposed Scheme.

iii) The affidavits of equity shareholders giving their consent to the proposed scheme are appended Annexure '8' to C.P.No.188 of 2016.

5. It is averred that the assets of the transferor companies and the transferee company are more than sufficient to meet the liabilities of both the companies and the proposed Scheme will not adversely affect the rights of any of the creditors of the petitioner companies in any manner whatsoever.

6. Copies of fifteen (15) separate resolutions of even date, i.e.,

03.09.2015, passed by the Board of Directors of the respective transferor companies as well as the transferee company approving the scheme are enclosed as Annexure '3' to the respective petitions.

6.1. This Court, in its order dated 09.03.2016, in C.A.Nos.242 to 256 of 2016, dispensed with the convening and holding of the meeting of the equity shareholders of the above transferor companies and the transferee company respectively to consider the proposed Scheme, inter alia, for the reason that its equity shareholders had given their consent to it.

7. 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.

8. 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 the above 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 material 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.

9. 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.

10. 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.

11. Consequently, there shall be an order approving the scheme of amalgamation between the 14 transferor companies, viz., K.V.T.Builders Private Limited, K.V.T. Builders & Developers Limited, K.V.T.Civil Erectors Private Limited, K.V.T.Constructions Private Limited, K.V.T.Foundation Private Limited, K.V.T.Gardens Private Limited, K.V.T.Homes Private Limited, K.V.T.Realties Private Limited, K.V.T.Properties Private Limited, K.V.T.Infrastructure Private Limited, K.V.T.Land Promoters Private Limited, K.V.T.Realtors Private Limited, K.V.T.Shelters Private Limited and M/s.Susi Property Developers Private Limited and the transferee company, viz., K.V.T.Homes and Estates Private Limited, with effect from 01.04.2015, as per the procedure laid down under Sections 391 to 394 of the Companies Act, 1956.

12. 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 14 transferor companies shall stand dissolved without winding up.

13. 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.

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

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

15.11.2016

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RAJIV SHAKDHER,J.

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Pre-Delivery Order in
C.P.Nos.174 to 188 of 2016

Dated: 15.11.2016