IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2016

DELIVERED ON :18.11.2016

Coram

The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.No.261 of 2016

Sriven Realtors Private Limited
Manasa Apt., No.145, St. Mary's Road,
Alwarpet, Chennai - 600 018
represented by its Director,
Mr.B.Sivaramakrishna Shailendar

.. Petitioner/1st transferor company

Petition filed under Sections 391 to 394 of the Companies Act, 1956 to sanction the Scheme of Amalgamation.

For Petitioner : Mr.Arun C.Mohan

Mr.K.Ramana Moorthy
Central Government Standing Counsel
for Regional Director
Ministry of Company Affairs,Chennai

Mr.Atchuta Ramaiah,
Official Liquidator

O R D E R

1. This company petition is preferred under Sections 391 to 394 of the Companies Act, 1956 for seeking sanction of the composite scheme of arrangement and amalgamation of two (2) transferor companies with the transferee company, with effect from 01.04.2015. The composite scheme of arrangement and amalgamation (in short the scheme) is appended as Annexure '9' to the petitions.

2. The petitioner in this petition is the 1st transferor company, i.e., Sriven Realtors Private Limited. The 2nd transferor company, i.e., Spartek Building Products Limited, has its registered office at Shanti Nagar, Mogalrajpuram Vijayawada - 520 010, Andhra Pradesh. The demerged/transferee company, i.e., Varun Ventures Private Limited, has its registered office at 36-12-6, Shanti Nagar, Vijayawada - 520 010, Andhra Pradesh. The resulting company, i.e., Varalakshmi Agencies Private Limited, has its registered office at 32-36-34D, B Rama Rao Road, Suryaraopet, Vijayawada - 520 010, Andhra Pradesh.

2.1. It is averred that the 2nd transferor company, demerged/transferee company and the resulting company have filed necessary petitions before the High Court of Hyderabad for the sanction of the Scheme.

3. I must note that in this matter, arguments had been heard and the judgment was reserved on 01.11.2016. On a closer examination of the matter, it came to light that the learned Official Liquidator, in his report dated 03.10.2016 had stated that the petitioner company has seven (7) unsecured creditors, who had given consent to the proposed Scheme.

3.1. The total value of these unsecured creditors, which comprises of unsecured loans of a value of Rs.55,50,000/-, liability towards compulsorily convertible debentures amounting to Rs.26,81,85,680/- and trade creditors amounting to Rs.5,80,45,347/-, adds upto Rs.33,17,81,439/-.

3.2. This aspect (without the summation) finds mention in the table given in the Official Liquidator's report dated 03.10.2016. However, upon perusal of the said report, it was found that the Official Liquidator had stated that as per the report of Chartered Accountant, the liability owed to trade creditors was a sum of Rs.5,83,96,000/- as against the figure in table set out in the very same report. As indicated above, in the table, the trade creditors were valued at Rs.5,80,45,347/-. There was there a difference in the two figures of an amount equivalent to Rs.3,51,030/-.

3.3. It is on account of this reason that on 11.11.2016, the matter was listed, in Court, for clarification. On that date, the Official Liquidator sought time and, accordingly, the matter stood adjourned to 15.11.2016.

3.4. The Official Liquidator, thereafter, filed a report dated 15.11.2016, which gave the break up of the unexplained current liabilities, equivalent to Rs.3,51,030/-. The details, as per the said report, are as follows: i)provision for taxation - Rs.1,57,000/-; ii) Audit fees payable - Rs.1,87,030 and iii) professional fees payable - Rs.7,000/-.

3.5. Quite obviously, for the aforesaid, NOC was not sought. For the rest, as indicated above, consents have been received.

4. Furthermore, a perusal of the record shows that the petitioner has complied with the prescribed procedure. It is stated that there are no secured creditors in so far as the petitioner/1st transferor company is concerned. A certificate of the Chartered Accountant affirming the said position is appended as Annexure 'M' to the petition.

5. A copy of the resolution dated 24.03.2016, passed by the Board of Directors of the petitioner/1st transferor company approving the proposed scheme is enclosed as Annexure 'J' to the petition.

6. The affidavits of equity shareholders of the petitioner/1st transferor company giving their consent to the proposed scheme are appended as Annexure 'L' to the petition.

7. It is stated that the petitioner/1st transferor company has one debenture holder. The said debenture holder has given consent to the proposed Scheme, which is appended as Annexure 'P' to the petition.

7.1. This Court, by order dated 29.04.2016, passed in C.A.No.486 of 2016 dispensed with the convening, holding and conducting of the meeting of the shareholders of the petitioner/1st transferor company to consider the proposed Scheme, inter alia, for the reason that its equity shareholders had given their consent to it.

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

9. The Official Liquidator has also filed the report prepared by the the Chartered Accountant. The Chartered Accountant, in his report, states that the affairs of the petitioner/1st transferor company 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 petitioner/1st transferor company 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.

10. I have perused the proposed scheme filed along with the company petition as also the affidavits placed on record. I find that the Scheme as proposed is not prejudicial to the interest of any person or entity, which

has a stake/interest in the petitioner company. The said scheme, as framed, is not violative of any statutory provisions.

11. 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.

12. Consequently, subject to the sanction of Scheme by the High Court of Hyderabad, there shall be an order approving the scheme of amalgamation of the petitioner/1st transferor company, viz., M/s.Sriven Realtors Private Limited with the transferee company, viz., Varun Ventures Private Limited, with effect from 01.04.2015, as per the procedure laid down under Sections 391 to 394 of the Companies Act.

13. 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 petitioner/1st transferor company shall stand dissolved, albeit, without winding up.

14. 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.

15. The learned Senior Central Government Standing Counsel will be entitled to a fee of Rs.5,000/-, which shall be paid by the transferee company.

16. The above petition is disposed of in the aforementioned terms.

Sd/-R.S.A.J
18.11.2016

//Certified to be a true copy//

Dated this the day of 2016

R.s/29.11.2016 COURT OFFICER

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