IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.11.2016

DELIVERED ON : 15.11.2016

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The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos.308 and 309 of 2016

ETA Star Bashyam Properties Private Limited
No.11, Gopalakrishnan Street,
1st Floor, T.Nagar,
Chennai - 600 018
represented by its Director
Mr.R.Yuvaraajann

.. Petitioner in C.P.No.308 of 2016
/ Transferor Company

Arun Excello Realty Private Limited
Bhattad Towers, 19, West Cott Road,
Royapettah, Chennai - 600 014
represented by its Managing Director
P.Suresh

.. Petitioner in C.P.No.309 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.Pawan Jabhakh
for M/s.Harishankar Mani

Mr.D.Ramesh Kumar, CGSC
for Regional Director
Ministry of Company Affairs,Chennai

Mr.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 seeking a sanction of the scheme of amalgamation concerning ETA Star Bashyam Properties Private Limited (in short transferor company) and Arun Excello Realty Private Limited (in short transferee company), with effect from 01.04.2015. The scheme of amalgamation (in short scheme) is appended as Annexure '4' to the respective petitions.

2. The petitioner in C.P.No.308 of 2016 is the transferor company and the petitioner in C.P.No.309 of 2016 is the transferee company.

2.1. I may only note that hereafter, the transferor and transferee companies will be collectively referred to as petitioners.

3. A perusal of the record shows that the petitioners have complied with the prescribed procedure.

3.1. A copy of two separate resolutions of even date, i.e., 22.04.2016, passed by the Board of Directors of the petitioners approving the scheme is enclosed as Annexure '3' to the respective petitions.

4. It is stated that the transferor company has no secured creditor. A certificate of the Chartered Accountant confirming the same is appended as Annexure '6' to C.P.No.308 of 2016.

4.1. It is averred that the transferor company has one (1) unsecured creditor, valued at Rs.34,350/-. A certificate of the Chartered Accountant confirming the same is appended as Annexure '7' to C.P.No.308 of 2016.

4.2. It is stated that the transferor company has eight (8) shareholders. This Court, by order dated 06.06.2016, passed in C.A.No.509 of 2016, directed the transferor company to obtain approval from its shareholders by convening a meeting for the purpose of considering and, if, thought fit, approving with or without modification, the scheme conceived by the petitioners.

4.3. Subsequently, this Court, by order dated 06.07.2016, passed in C.A.No.595 of 2016 appointed Hon'ble Mrs.Justice Chitra Venkataraman as the Chairperson of the said meeting.

4.4. Accordingly, the transferor company, after due compliance with all formalities, convened the meeting of its equity shareholders on 11.07.2016. It is averred that after scrutiny of ballots, the Chairperson declared the result of the meeting via her report dated 14.07.2016. The said report of the Chairperson is annexed as Annexure '9' to C.P.No.308 of 2016.

4.5. The Chairperson has filed her report dated 14.07.2016, wherein, she states that all the eight (8) shareholders, holding 2,78,76,000 equity shares, equivalent in value to a sum of Rs.27,87,60,000/- had attended the meeting and cast their votes in favour of the resolution.

5. It is stated that the transferee company has four (4) secured creditors. A certificate of the Chartered Accountant confirming the same is appended as Annexure '6' to C.P.No.309 of 2016.

5.1. It is seen that the above-said secured creditors of the transferee company have given their consent to the proposed Scheme, which are appended as Annexure '6' to C.P.No.309 of 2016.

5.2. It is averred that the transferee company has thirty three (33) unsecured creditors, valued at Rs.6,53,30,307/-. A certificate of the Chartered Accountant confirming the same is appended as Annexure '7' to C.P.No.309 of 2016.

5.3. The transferee company has obtained consent from one (1) unsecured creditor, viz., Arun Excello Homes Private Limited, having an outstanding of Rs.5,35,27,888/-, constituting 81.9% of the total owed amount. The said consent is appended to additional typed set of document.

5.4. The affidavits of equity shareholders of the transferee company giving their consent to the proposed scheme are appended as Annexure '9' to C.P.No.309 of 2016.

5.5. This Court, by order dated 06.06.2016, passed in C.A.No.510 of 2016 dispensed with the convening, holding and conducting of the meeting of the shareholders of the transferee company 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 Chartered Accountant, in his report, states that the affairs of the 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 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.

9. I have perused the proposed scheme filed along with the company petitions 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 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 of the transferor company, viz., Eta Star Bashyam Properties Private Limited with the transferee company, viz., Arun Excello Realty Private Limited, with effect from 01.04.2015, as per the procedure laid down under Sections 391 to 394 of the Companies Act.

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 transferor company shall stand dissolved, albeit, 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 will be entitled to a fee of Rs.5,000/-, which shall be paid by the transferee company.

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

Index: Yes / No
Internet: Yes / No 15.11.2016
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RAJIV SHAKDHER,J.

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Pre-Delivery Common Order in

C.P.Nos.308 and 309 of 2016

Dated: 15.11.2016