IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2016

DELIVERED ON : 15.11.2016

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The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos.343 and 344 of 2016

M/s.Madras Sugars Limited
1212, Trichy Road, Coimbatore - 641 018
rep. by its Director Sri.B.Saravanan

.. Petitioner in C.P.No.343 of 2016
/ Transferor Company

M/s.Bannari Amman Sugars Limited
1212, Trichy Road, Coimbatore - 641 018
rep. by its Company Secretary
Sri.C.Palaniswamy

.. Petitioner in C.P.No.344 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.Vidhya Shankar
for M/s.Ramani & Shankar

Mr.K.Ramamoorthy
for Regional Director
Ministry of Company Affairs,Chennai

Mr.Arun Prasad
Asst. Official Liquidator

COMMON ORDER

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 M/s.Madras Sugars Limited (in short transferor company) and Ms/Bannari Amman Sugars Limited (in short transferee company), with effect from 01.01.2016. The scheme of amalgamation (in short scheme) is appended as Annexure 'E' to the respective petitions.

2. The petitioner in C.P.No.343 of 2016 is the transferor company and the petitioner in C.P.No.344 of 2016 is the transferee company.

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

3. A perusal of the record shows that the petitioners have complied with the prescribed procedure. It is stated that the transferor company has five (5) secured creditors. A certificate of the Chartered Accountant confirming the same is appended as Annexure 'H' to C.P.No.343 of 2016.

3.1. It is seen that the above-said secured creditors of the transferor company have given their consent to the proposed Scheme, which are appended as Annexure 'I' series to C.P.No.343 of 2016.

3.2. It is stated that the transferee company has sixteen (16) secured creditors, valued at Rs.792 Crores. A certificate of the Chartered Accountant confirming the same is appended as Annexure 'L' series to C.P.No.344 of 2016.

3.3. It is seen that out of the sixteen (16) secured creditors, fifteen (15) secured creditors of the transferee company has given their consent to the proposed Scheme, which is appended as Annexure 'M' series to C.P.No.344 of 2016. It is stated that the remaining one (1) secured creditor is valued at Rs.23 Crores.

4. A copy of two separate resolutions of even date, i.e., 25.04.2016, passed by the Board of Directors of both the transferor company as well as the transferee company approving the scheme is enclosed as Annexure 'F' to the respective petitions.

5. It is stated that the transferor company is a 100% wholly owned subsidiary of M/s.SVB Holdings Private Limited. The affidavit of the 100% equity shareholder of the transferor company giving its consent to the scheme is appended as Annexure 'G' series to C.P.No.343 of 2016.

5.1. This Court, by order dated 28.07.2016, passed in C.A.No.633 of 2016, dispensed with the convening and holding of the meeting of the shareholders of the transferor company to consider the proposed Scheme, inter alia, for the reason that its equity shareholders had given their consent to it.

5.2. It is stated that the transferee company is a listed company having approximately 7200 equity share holders. This Court, by order dated 28.07.2016 passed in C.A.No.635 of 2016 directed the transferee company to obtain approval from its shareholders via postal ballot/e-voting for the purpose of considering and, if, thought fit, approving with or without modification, the scheme conceived by the petitioner companies involving amalgamation.

5.3. Accordingly, the transferee company, after due compliance with all formalities, had ballotting done via post and internet between 17.08.2016 and 16.09.2016. It is averred that after scrutiny of ballots and e-votes, the Chairperson declared the result of the voting.

5.4. The Chairperson has filed his report dated 17.09.2016, wherein he has stated that more than three-fourth of the total number of votes polled, were cast in favour of the resolution, while, the votes cast by the public shareholders against the resolution are less than the votes cast in favour of the resolution.

5.5. In compliance with the SEBI circulars, it is averred, the transferee company has obtained no objection to the proposed Scheme from the National Stock Exchange of India Limited (NSE) and Bombay Stock Exchange (BSE). The consent letters dated 21.06.2016 and 22.06.2016 issued by BSE and NSE respectively are appended as Annexure 'P' Series to C.P.No.344 of 2016.

6. It is averred that the transferor company has unsecured creditors, which fall in three categories, viz., a) Unsecured loans from

banks and others, valued at Rs.225 Crores; b) Sundry creditors for supply of materials, cane harvesting, valued at Rs.9.31 Crores, and c) other services and sundry debtors by way of advance received for supply of sugar, valued at Rs.8.36 Crores. A certificate of the Chartered Accountant confirming the same is appended as Annexure 'J' series to C.P.No.343 of 2016.

6.1. The transferor company has obtained consents from the unsecured creditors falling under category (a), viz., unsecured loans from banks, equivalent to Rs.225 Crores. The said consents are appended as Annexure 'K' series to C.P.No.343 of 2016. It is averred that post amalgamation, the petitioner will have healthy reserves and would be in a position to continue to discharge its liabilities.

6.2. Similarly, it is averred that the transferee company has unsecured creditors, which fall in three categories, viz., a) Unsecured loans from banks and others, valued at Rs.115 Crores; b) Sundry creditors for supply of materials, cane harvesting, valued at Rs.14.36 Crores and c) Sundry debtors by way of advance received for supply of sugar and granite products, valued at Rs.8.31 Crores. A certificate of the Chartered Accountant confirming the same is appended as

Annexure 'N' series to C.P.No.344 of 2016.

6.3. The transferor company has obtained consents from the unsecured creditors falling under category (a), viz., unsecured loans from banks, equivalent to Rs.115 Crores. The said consents are appended as Annexure 'O' series to C.P.No.344 of 2016. Likewise, it is averred that post amalgamation, the petitioner will have sufficient reserves to be able to discharge its liabilities.

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., M/s.Madras Sugars Limited with the transferee company, viz., M/s.Bannari Amman

Sugars Limited, with effect from 01.01.2016, 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
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15.11.2016

RAJIV SHAKDHER,J.

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Pre-Delivery Common Order in

C.P.Nos.343 and 344 of 2016

Dated: 15.11.2016