HON'BLE SRI JUSTICE S.V.BHATT

COMPANY PETITION Nos.141, 142 & 140 OF 2016

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COMMON ORDER:

Heard Sri Anil Mukherji, learned counsel for the petitioners, Sri B.Narayana Reddy for the Regional Director, Ministry of Corporate Affairs, South East Region, Hyderabad and Sri M.Anil Kumar, for Official Liquidator.

The instant company petitions are filed under Sections 391 and 394 of the Companies Act, 1956 (for short 'the Act') for sanction to the scheme of arrangement for amalgamation between Aparna Buildtech Private Limited (Petitioner in C.P.No.141 of 2016), U.B. Properties Private Limited (Petitioner in C.P.No.142 of 2016) with Aparna Urban Infrastructure Private Limited (Petitioner in C.P.No.140 of 2016).

For convenience, the corporate entities are called transferor No.1 company (Aparna Buildtech Private Limited), transferor No.2 company (U.B. Properties Private Limited) and transferee company (Aparna Urban Infrastructure Private Limited) respectively.

Learned counsel for the petitioners has placed reliance upon **MIHEER H.MAFATLAL V. MAFATLAL INDUSTRIES LIMITED**[1], **NEBULA MOTORS LIMITED**[2] **AND ANDHRA BANK HOUSING FINANCE LIMITED V. M/S ANDHRA BANK**[3] to explain the jurisdiction of this Court under Sections 391 and 394 of the Act.

The circumstances relevant for considering the prayer for sanction to the scheme of arrangement for amalgamation are as follows:

The transferor No.1 company/petitioner in C.P.No.141 of 2016 was incorporated as a private limited company under the Act. The authorized share capital of transferor No.1 company as on

31.03.2015 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of transferor No.1 company as on 31.03.2015 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each.

The objects of transferor No.1 are to conceive, plan, survey, design, study and evaluate all steps, process, techniques and methods for setting up all types of infrastructure projects, facilities or works including industrial/agricultural parks, gardens, roads, bridges, flyovers, highways, roadways, structures and facilities, railroads, railway stations, platforms, railway tracks, including gauge conversions thereof and to carry on the business as manufacturers, suppliers dealers, representatives, stockiest dealers, assignors and consumables in connection with the aforesaid activities and projects. The Memorandum and Articles of Association of the transferor No.1 company are exhibited as Annexure-A.

The petitioner in C.P.No.142 of 2016 was incorporated as a private limited company under the Act. The objects of petitioner/transferor No.2 company are to carry on the business in India or any part of the Word of all types of civil, electrical and mechanical, water supply works, civil constructions, constructions of projects, dams, bridges, canals, townships, colonies, flats, individual houses, undertaking of supply works, railway works, military and other engineering works with State and Central Government Corporations, Municipalities, Parishads, and with such other local bodies or authorities or individuals or bodies. The Memorandum and Articles of Association of the transferor No.2 company are exhibited as Annexure-C. The authorized share capital of transferor No.2 company as on 31.03.2015 is Rs.25,00,000/- divided into 25,000 equity and preference shares of Rs.100/- each. The issued, subscribed and paid up capital of transferor No.2 company as on 31.03.2015 is Rs.25,00,000/- divided into 25,000 equity and preference shares of

Rs.100/- each.

The petitioner in C.P.No.140 of 2016 was incorporated as a private limited company under the Act. The transferee company has substantially same and similar business objectivities and activities as that of transferor No.1 and transferor No.2 companies. The Memorandum and Articles of Association are filed as Annexure–E. The authorized share capital of transferee company as on 31.03.2015 is Rs.2,70,00,000/- divided into 27,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of transferee company as on 31.03.2015 is Rs.1,27,00,000/- divided into 12,70,000 equity shares of Rs.10/- each.

The petitioners herein have filed Company Application Nos.462, 463 and 461 of 2016 praying for dispensing with the convening of meeting of equity shareholders, secured and unsecured creditors etc. On 31.03.2016, the said applications were allowed.

On 20.04.2016, this Court in the instant company petitions ordered notice to the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad and the Official liquidator attached to the Company Court. The petitioners were directed to cause publication of notice of scheme of amalgamation in Business Standard (English) and Andhra Bhoomi (Telugu) daily newspapers of Hyderabad edition. The petitioners submit that notices on statutory authorities were served and the advertisement was published in the newspapers on 05.05.2016. On 16.06.2016, the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad filed report. On 13.06.2016, the Official Liquidator filed the report on the scheme of amalgamation under consideration.

The petitioners submit that the proposed scheme of amalgamation would help the transferor No.1, transferor No.2 and the transferee companies to facilitate streamlining administration of business and provides opportunities for focusing on the sphere of business activity accepted by each of the entities. One of the objects of arrangement is to integrate the ongoing business for achieving maximum returns. It is further stated that the conditions imposed by this Court while ordering Company Application Nos.462, 463 and 461 of 2016 have been complied with and the attention of the Court is specifically drawn to due compliance of each one of the conditions. The attention of this Court is drawn to the salient feature of composite scheme of amalgamation.

The jurisdiction of this Court, while approving the scheme of amalgamation, according to often cited ***Miheer H.Mafatlal's*** (1 supra) case, is as follows:

> "(1) The sanctioning Court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by Section 391(1)(a) have been held.
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> (2) That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391(2).
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> (3) That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of the class.
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> (4) That all necessary material indicated by Section 393(1)(a) is placed before the voters at the concerned meetings as contemplated by Section 391(1).
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> (5) That all the requisite material contemplated by the proviso to sub-section (2) of Section 391 of the Act is placed before the Court by the

concerned applicant seeking sanction for such a scheme and the Court gets satisfied about the same.

(6) That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously xray the same.

(7) That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter compromising the same class whom they purported to represent.

(8) That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.

(9) Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there could be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction."

Learned counsel appearing for the statutory authorities have reported no objection for the proposed scheme of amalgamation.

I have considered the material available on record, the principles of law enunciated by the Apex Court in ***Miheer H.Mafatlal's*** case (1 supra) and the conclusions/recommendations of the statutory authorities through their reports dated 13.06.2016 and 16.06.2016.

Having regard to the above material/reports, this Court is of the opinion that the proposed scheme of amalgamation is in conformity with the provisions of the Act. The scheme does not affect the interest of stakeholders and public or public interest.

The scheme is intended to further the business interests of transferor No.1, transferor No.2 and transferee companies for profit and maximum utilization of available resources. The scheme of amalgamation approved in the meeting of Board of Directors of transferor No.1 and transferor No.2 companies on 21.03.2016 is sanctioned with effect from the appointed date i.e., 01.04.2015.

The transferor No.1 and transferor No.2 companies are ordered to be dissolved without going through the process of winding up, subject to complying with the conditions under the FEMA and RBI guidelines.

The petitioners are directed to communicate certified copy of this order to the Registrar of Companies for the State of Telangana and the State of Andhra Pradesh, Hyderabad within 30 days from the date of receipt of a copy of this order.

The petitioners are further directed to undertake all consequential and statutory steps required in pursuance of the approval of composite scheme of amalgamation and arrangement and the Act.

The company petitions are allowed accordingly.

S.V.BHATT,J

Dt.12.07.2016

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[1] 1996(87) Company Cases 792

[2] 2003(5) ALD 327

[3] 2002(3) ALD 654