HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

Company Petition Nos.179, 180 and 181 of 2016

COMMON ORDER:

These three Company Petitions are being disposed of by this common order as they relate to a proposed composite scheme of demerger and amalgamation among the petitioners.

All these Company Petitions are filed seeking to sanction the proposed composite scheme of demerger and amalgamation among the three companies so as to be binding on all the respective shareholders of the three companies with effect from the effective date i.e., on 01.4.2015.

Company Petition No.179 of 2016 is filed by M/s Varalakshmi Agencies Private Limited (for short 'VAPL')-Resulting Company.

It is stated that it was incorporated on 01.10.2014 and is having its registered office at Tripuraneni Habitat, 59-1-3, 4F-5A, Siddhartha Nagar, Gayatri Nagar, Christurajpuram, Vijayawada, Andhra Pradesh; that its authorised share capital is Rs.1 lakh divided into 10,000 equity shares of Rs.10/- each; and that its Board of Directors met on 24.3.2016 and passed a resolution approving the proposed scheme.

Company Petition No.180 of 2016 is filed by M/s Varun Ventures Private Limited (for short 'VVPL')-demerged/transferee company.

It is stated that it was incorporated on 10.8.1989 and is having its registered office at 36-12-6, Shantinagar, Vijayawada, Andhra Pradesh; that its authorised share capital is Rs.1,15,00,000/- divided into 10 lakhs equity shares of Rs.10/- each, 5 lakhs equity shares with differential voting rights of Re.1/- each and 1 lakh 6% redeemable preference shares of Rs.10/- each; that its Board of Directors met on 24.3.2016 and passed a resolution approving the proposed scheme.

Company Petition No.181 of 2016 is filed by M/s Spartex Building Products Limited (for short 'SBPL')-transferor company No.2.

It is stated that it was incorporated on 20.02.2008 and is having its registered office at 36-12-6, Shanthinagar, Mogalrajpuram, Vijayawada, Andhra Pradesh; that its authorised share capital is Rs.10 lakhs divided into 1 lakh equity shares of Rs.10/- each; that its paid up capital is Rs.5 lakhs divided into 50,000 equity shares of Rs.10/- each; and that its Board of Directors met on 24.3.2016 and passed a resolution approving the proposed scheme.

It appears that in respect of transferor company No.1, which is situated in the State of Tamilnadu, Company Petition No.261 of 2016 was filed in the High Court of Madras and the same was ordered on 18.11.2016.

The proposed composite scheme of demerger and amalgamation provides for demerger of the Portfolio Investment Division of VVPL (demerged company)-the petitioner in Company Petition No.180 of 2016 into VAPL-the Resulting company-the petitioner in Company Petition No.179 of 2016 and for the amalgamation of the first transferor company, which is situated in Tamilnadu, and SPBL (transferor company No.2)-the petitioner in Company Petition No.181 of 2016 into VVPL (transferee company)-the petitioner in Company Petition No.180 of 2016.

The scheme also provides for various other matters, consequential, supplementary and connected with the said scheme.

In respect of all these Company Petitions, earlier Company Application Nos.642, 643 and 644 of 2016 were filed seeking to dispense with the meetings of its respective shareholders and those applications were ordered by this Court on 27.4.2016.

On 08.6.2016, appropriate notices were issued to the Regional Director, South Eastern Region, Ministry of Corporate

Affairs, Hyderabad. Advertisement was also ordered to published in two news papers, *viz*, 'Business Standard' English daily newspaper and 'Andhra Bhoomi' Telugu daily newspaper of Hyderabad editions.

Pursuant to the said order, the petitioners carried out publication and filed proof of such publication and no objections/claims are stated to have been received.

In response to the notices, the Official Liquidator and the Regional Director have filed their respective reports.

The Official Liquidator filed his report, dated 18.10.2016, in Company Petition No.181 of 2016, wherein he has stated that SBPL-transferor company No.2 submitted a letter, dated 03.10.2016, signed by its creditors, stating that their liabilities under C & F Deposits and other current liabilities were settled as on that date and they expressed their consent for the proposed scheme. He has opined that the affairs of the transferor company-the petitioner in Company Petition No.181 of 2016 were not conducted in a manner prejudicial to the interests of public.

The Regional Director also filed a common report, dated 05.8.2016, in the present batch of cases, stating that pursuant to Circular No.1 of 2014, dated 15.01.2014, issued by the Ministry of Corporate Affairs, New Delhi, comments of the Income Tax were sought, vide his letter, dated 20.6.2016. In response thereof, the Regional Director received the comments of the Income Tax Department, vide letter, dated 05.7.2016, wherein it is stated that SBPL is incurring losses year after year and it has a total loss of Rs.1,12,39,646/-, which includes unabsorbed loss and unabsorbed depreciation during the assessment years 2009-10 to 2015-16 and they are governed by Section-72A of the Income Tax Act, 1961. It was cautioned that since the said company was running in losses, the demerger of the petitioner in Company Petition No.181 of 2016 with the petitioner in Company Petition No.180 of 2016 should not be for carry forward and set off of SBPL losses against the future profits of VVPL-the resulting company. It was stated that a condition may be imposed that the Resulting company would not claim set off of unabsorbed losses relating to SBPL in the returns of the Income Tax filed by the Resulting company in the subsequent year(s), in case, merger is approved by the competent authority.

It is also stated that as per the report of the Registrar of Companies, Telangana and Andhra Pradesh, all the three companies involved in the proposed composite scheme of demerger and amalgamation are regular in filing the statutory returns and no complaints, investigations and inspections are pending against the said companies.

Having regard to the reports of the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad and the Official Liquidator and as no objections/claims are stated to have been received in pursuance of the advertisement got published by the petitioners in the newspapers, the proposed composite scheme of demerger and amalgamation is sanctioned with effect from the effective date i.e., 01.04.2015 so as to be binding on all the respective shareholders of the three companies.

The petitioners shall cause a certified copy of this order to be delivered to the Registrar of Companies for the State of Telangana and State of Andhra Pradesh, Hyderabad within 30 days of its receipt and take all other consequential steps in pursuance of the approval of the composite scheme of demerger and amalgamation.

However, it is made clear that it is open to the Income Tax authorities to take appropriate action in accordance with law as and when the Income Tax returns are filed by the Resulting Company-the petitioner in Company Petition No.179 of 2016.

All the Company Petitions are, accordingly, ordered.

*JUSTICE A.RAMALINGESWARA RAO*

*13th December 2016*
*DR*