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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO.PET. 343/2011

IN THE MATTER OF

M/S. S CHAND & CO. LTD. Petitioner

Through

Mr. N.P.S. Chawla with Ms. Simran
Sethi and Mr. Gaurav Kochar,

Advocates for petitioner-companies.

Mr. K.S. Pradhan, Dy. ROC for RD
(NR).Mr. Rajiv Bahl, Advocate for Official
Liquidator.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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21.10.2011

1. This second motion Petition has been filed under Sections 391 & 394 of the Companies Act, 1956 (for short 'Act') seeking sanction of the Scheme of Arrangement (for short 'Scheme') between M/s. Atlantic Hotels Private Limited (hereinafter referred to as 'Non Petitioner Company'), M/s. S.Chand & Company Limited (hereinafter referred to as 'Petitioner Company – I'), M/s. S.Chand Hotels Private Limited (hereinafter referred to as 'Petitioner Company – II'), M/s. SC Hotel Tourist Deluxe Private Limited (hereinafter referred to as 'Petitioner Company – III'), M/s. SHAARA Hospitalities Private

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 physical file have been compared and
 the digital data is as per the physical
 file and no page is missing.

Limited (hereinafter referred to as 'Petitioner Company – IV') and M/s. S Chand Properties Private Limited (hereinafter referred to as 'Petitioner Company – V').

2. The registered offices of all the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

3. Details with regard to the date of incorporation of all the Petitioner Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.

4. Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 31st March, 2010 and a copy of Provisional Balance Sheet for the year ended 31st March, 2011 of all the Petitioner Companies have also been enclosed with the Petition.

5. Copies of the Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme have also been placed on record.

6. It has been submitted that no proceeding under Sections 235 to 251 of the Act is pending against the Petitioner Companies.

7. So far as the share exchange ratio for arrangement is concerned, the Scheme provides that, upon the Scheme finally coming into effect,

the Petitioner Companies – II to V shall issue shares to the shareholders of the Petitioner Company – I in the following manner :-

- *Petitioner Company - II shall issue and allot 30,926,693 equity shares to the shareholders of the Petitioner Company - I in proportion to their shareholding as on Demerger Record Date;*
- *Petitioner Company - III shall issue and allot 17,09,711 equity shares to the shareholders of the Petitioner Company - I in proportion to their shareholding as on Demerger Record Date;*
- *Petitioner Company - IV shall issue and allot 15,89,894 equity shares to the shareholders of the Petitioner Company - I in proportion to their shareholding as on Demerger Record Date;*
- *Petitioner Company - V shall issue and allot 82,48,394 equity shares to the shareholders of the Petitioner Company - I in proportion to their shareholding as on Demerger Record Date.*

8. The Petitioner Companies had earlier filed CA (M) No. 111 of 2011 seeking directions of this Court for dispensation/convening of meetings. Vide order dated 3rd June, 2011, this Court allowed the

Application and dispensed with the requirement of convening meetings of Shareholders of all the Petitioner Companies and Unsecured Creditors of the Petitioner Companies— II, III, V. Petitioner Company Nos. II, III, IV and V do not have any secured creditor. Petitioner Company No. IV does not have any unsecured creditor. Further, this Court ordered for the meetings of the Secured and Unsecured Creditors of the Petitioner Company-I to be held.

9. The aforesaid meetings were convened in accordance with the order of this Court wherein the Scheme was unanimously approved and agreed to by the creditors who attended and voted at the said meetings. Copies of the Chairpersons' Reports have been enclosed with the Petition.

10. All the Petitioner Companies thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 12th August, 2011, notice in the Petition was directed to be issued to the Regional Director, Northern Region. Citations were also directed to be published in 'Financial Express' (English, Delhi Edition) and 'Jansatta' (Hindi, Delhi Edition). Affidavit of proof of Publication has been filed by the Petitioners confirming the publication of citations in the aforesaid newspapers on 11th October, 2011. Copies of

the newspapers' cuttings, in original, containing the publications have been filed along with the said Affidavit.

11. In response to the notices issued in the Petition, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit on 29th September 2011. The Regional Director in his affidavit has submitted that as provided in clause 3.5(a) of Part-III of the Scheme, all the employees of the Demerged Company viz. S.Chand & Company Ltd. engaged in Demerged Undertaking – I, II, III and IV shall become the employees of the Resulting Company viz. S.Chand Hotels Pvt. Ltd., SC Hotels Tourist Deluxe Pvt. Ltd., SHAARA Hospitalities Pvt. Ltd. and S.Chand Properties Pvt. Ltd. without any break or interruption in their services, upon the sanctioning of the Scheme by this Court. In response to the said observation of the Regional Director, the Petitioner Companies have submitted that the same shall be duly ensured.

12. Further, the Regional Director in his affidavit has made an observation that the name of the Company cannot be substituted in the documents relating to the charges with the Registrar of Companies unless the process for satisfaction and creation of charges are followed by the Petitioner Companies. In response to the said observation, the

Petitioner Companies have submitted that, pursuant to the Scheme being sanctioned by this Court, they undertake to comply with all the applicable provisions of the Act in relation to the satisfaction and creation of charges.

13. The undertakings given by the Petitioner Companies are accepted by this Court and Petitioner Companies are held bound by the same.

14. The Regional Director in his affidavit has also observed that the Appointed Date has been fixed as 1st April, 2011, while the Scheme is based upon the Provisional Balance Sheet as at 31st March, 2011 of the De-merged Company. All the Resulting Companies were incorporated after the Appointed Date i.e. in the month of May, 2011. In reply to this observation of the Regional Director, the Petitioner Companies have relied upon a judgment of this Court in the matter of *Alchemist Limited V. Alchemist Foods Limited*, 2010 160 Comp Cas. 469 Delhi wherein this Court while relying on *Re: HCL Hewlett-Packard Ltd.*, 1994 80 Comp Cas. 228 Delhi has held that the Appointed Date is fixed for the purpose of identifying the assets and liabilities of the division to be transferred. Thus the appointed date is the date which has been mentioned only for the purpose of identification of the assets, which have to be transferred and for the

valuation purposes. The Court in the above referred case rejected a similar plea of the Regional Director and held that the provision in the scheme of arrangement is in conformity with the provisions made in the Act.

15. In view of the aforesaid judgments, Mr. K.S. Pradhan, Deputy Registrar of Companies appearing for Regional Director (Northern Region) does not wish to press this objection. Accordingly, the same stands disposed of.

16. No objection has been received to the Scheme from any other party. Mr. N.P.S. Chawla, learned counsel for the Petitioner Companies, has filed an affidavit dated 19th October, 2011 confirming that neither the Petitioner Companies nor he has received any objections pursuant to publication of citations in the newspapers.

17. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; affidavit/report filed by the Regional Director, Northern Region and Official Liquidator, to the proposed Scheme, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act subject to receipt of sanction of High Court of Madras in relation to the Non Petitioner

Company. The Petitioner Companies will comply with the statutory requirements in accordance with law. Certified copy of the order be filed with the Registrar of Companies within thirty days from the date of receipt of the same. In terms of the provisions of Sections 391 and 394 of the Act, and in terms of the Scheme, all assets, rights, title, interest and authorities acquired by Petitioner Company – I / Demerged Company for operating respective Demerged Undertaking(s) shall stand transferred to and vested in the respective Resulting Company(ies) / Petitioner Companies – II to V without any further act or deed. Similarly, in terms of the Scheme, the respective Resulting Company(ies) alone shall be liable to perform all the obligations with regard to the respective Demerged Undertaking Liability(ies), and the Demerged Company shall not have any obligations in respect of the said Demerged Undertaking Liabilities and the respective Resulting Company(ies) shall indemnify the Demerged Company in this behalf. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

18. Learned Counsel for the Petitioners states that the Petitioner Companies would voluntarily deposit a sum of Rs. 1,00,000/- with the Common Pool fund of the Official Liquidator within three weeks from today. The said statement is accepted.

19. The Petition is allowed in the above terms.

Order Dasti.


MANMOHAN, J

OCTOBER 21, 2011

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