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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CO.PET. 372/2010

IN THE MATTER OF

SUHAG HOTELS PRIVATE LTD

..... Petitioner

Through: Mr. Ashish Middha, Advocate for
Petitioner.

Mr. Rajiv Bahl, Advocate for Official
Liquidator.

Mr. K.S. Pradhan, Deputy Registrar of
Companies for Regional Director,
Northern Region.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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20.10.2011

1. This second motion joint Petition has been filed under Sections 391(2) & 394 of the Companies Act, 1956 (for short 'Act') seeking sanction of the Scheme of Amalgamation (for short 'Scheme') of SUHAG HOTELS PRIVATE LIMITED (hereinafter referred to as 'Transferor Company No.1'), QUALITY DESIGNS PRIVATE LIMITED (hereinafter referred to as 'Transferor Company No.2'), and SUNNY MEADOWS ESTATES PRIVATE LIMITED (hereinafter referred to as 'Transferor Company No.3'),

Co. Pet. 372 of 2010

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Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

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(collectively as 'Transferor Companies') with SUHAG TRADERS PRIVATE LIMITED (hereinafter referred to as 'Transferee Company').

2. The registered offices of the Transferor and Transferee Companies are situated at New Delhi, within the jurisdiction of this Court.

3. Details with regard to the date of incorporation of Transferor and Transferee 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, 2009 of the Transferor and Transferee 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.

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7. The Petitioner Companies had filed the amended Valuation Report on Share Exchange Ratio and Amended Scheme and the same have been approved by the Board of Directors in their meeting held on 11th May, 2011 and the consents of Shareholders and Un-secured Creditors have been filed to the amended Scheme, wherever applicable. The same are taken on record.

8. So far as the share exchange ratio for amalgamation is concerned, the Scheme provides that, upon this Scheme finally coming into effect, the Transferee Company shall issue shares in the following manner:

- a) 11 (eleven) Equity Shares of Rs.100/- (Hundred) each of Suhag Traders Private Limited for every 1 (one) Equity Share of Rs.100/- (Hundred) each of Suhag Hotels Private Limited.
- b) 9 (Nine) Equity Shares of Rs.100/- (Hundred) each of Suhag Traders Private Limited for every 1 (One) Equity Share of Rs.100/- (Hundred) each of Quality Designs Private Limited.
- c) 7 (Seven) Equity Shares of Rs.100/- (Hundred) each of Suhag Traders Private Limited for every 20 (Twenty) Equity Share of Rs.10/- (Ten) each of Sunny Meadows Estates Private Limited.

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9. The Petitioner Companies had earlier filed CA (M) No. 143 of 2010 seeking directions of this Court for dispensation of meetings. Vide order dated 16th August, 2010, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders and Un-secured Creditors of the Transferor and Transferee Companies. None of these Companies had any Secured Creditors.

10. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 13th September, 2010, notice in the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator. Citations were also directed to be published in 'Statesman' (English, Delhi Edition) and 'Veer Arjun' (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioners showing compliance regarding service of the Petition on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 16th December, 2010. Copies of the newspapers' cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

11. Pursuant to the notice issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed his report dated 18th May, 2011, wherein he has stated that he has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or to public interest.

12. The Official Liquidator in its report had, however, raised a grievance with regard to the share exchange ratio and the valuation. To incorporate the share exchange ratio as suggested by the Official Liquidator, the Petitioners have amended the Scheme and filed a valuation report. In view of the amended Scheme, the objection of the Official Liquidator no longer survives.

13. In response to the notice issued in the Petition, Mr. B.K. Bansal, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavits dated 03rd November, 2010 and 28th March, 2011. Relying on Clause 9 of Part-III of the Scheme, he has stated that all the employees of

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the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Court.

14. Mr. K.S. Pradhan, Deputy Registrar of Companies appearing for Regional Director, Northern Region, has today handed over in Court a copy of the letter dated 18th October, 2011. The same is taken on record. The relevant facts of the said letter reads as under:-

Sub: Co. Petition No. 372 of 2010 connected with Co. Application No. 143 of 2010-Petition under section 391/394 of the Companies Act, 1956 for getting Sanction of Scheme of Amalgamation between M/s. Suhag Hotels Pvt. Ltd., M/s. Quality Designs Pvt. Ltd., M/s. Sunny Meadows Estates Pvt. Ltd. & (Transferor Companies) with M/s. Suhag Traders Pvt. Ltd. (Transferee Company) – regarding Application under Rule 6 & 9 of the Companies (Court) Rules, 1959, seeking modification in the Valuation Report & Amended Scheme of Amalgamation.

DATE OF HEARING IS FIXED FOR : 20.04.2011

Sir,

Please refer to your office daily report dated 24.05.2011 and to state that this Directorate has received a copy of Application under Rule 6 & 9 of the Companies (Court) Rules, 1959, seeking modification in the Valuation Report & Amended Scheme of Amalgamation. You are advised to make the submission before the Hon'ble Court that what have been stated in the Affidavit dated 28.03.2011, this Directorate has nothing to add further in the matter. In regard to Amendment Valuation

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Report & amended Scheme of Amalgamation, you are advised to make the submission before the Hon'ble Court that in view of the consent of the Shareholders & Creditors of all the Companies obtained by the Petitioner Companies, the Hon'ble Court may decide the case on its merits, if deemed fit & proper by the Hon'ble Court.

Let the matter may be decided by the Hon'ble Court on its merits. The developments of the case may be intimated to this Directorate."

15. No objection has been received to the Scheme from any other party. Ms. Jaivani Khanna, Director of the Transferee Company has filed an affidavit dated 24th May, 2011, confirming that the Petitioner Companies have not received any objection pursuant to citations published in the newspapers. Today, an affidavit dated 20th October, 2011 has also been filed by Mr. Ashish Middha, learned counsel for Petitioner Companies stating that he has not received any objection from the general public till date. The same is taken on record.

16. Even today, during the course of hearing, Mr. Rajiv Bahl, learned counsel for Official Liquidator and Mr. K.S. Pradhan, Deputy Registrar of Companies appearing for Regional Director, Northern Region state that they have no objection to the present Scheme being sanctioned.

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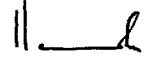
17. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; affidavit/report filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to the proposed Scheme, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act. 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 30 days from the date of receipt of the same. In terms of the provisions of Sections 391 and 394 of the Act, all the properties, rights and powers of the Transferor Companies be transferred to and vest in the Transferee Company without any further act or deed. Similarly, all the liabilities and duties of the Transferor Companies be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Companies shall stand dissolved without winding up. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or any other charges, if payable in accordance

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with any law; or permission/compliance with any other requirement which may be specifically required under any law.

18. Mr. Ashish Middha, learned counsel states that the Petitioner Companies would voluntarily deposit a sum of ₹ 50,000/- with the Common Pool fund of the Official Liquidator within four weeks from today. The said statement is accepted.

19. The Petition is allowed in the above terms.

Order dasti.


MANMOHAN, J

OCTOBER 20, 2011

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— Fresh CA 57/12 Amendment of orders 20/10/11