THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 417 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 353 OF 2015.

FORTUNE HOTELS AND ESTATES PRIVATE LIMITED,
....Petitioner/ First Transferor Company.
AND
COMPANY SCHEME PETITION NO.418 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.354 OF 2015.

IVORY REALTORS PRIVATE LIMITED,
....Petitioner/ Second Transferor Company.
AND
COMPANY SCHEME PETITION NO.419 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 355 OF 2015.

K.RAHEJA PROPERTIES PRIVATE LIMITED,
....Petitioner/ Third Transferor Company.
WITH
COMPANY SCHEME PETITION NO.420 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 356 OF 2015.

SARYU PROPERTIES AND HOTELS PRIVATE LIMITED,
....Petitioner/ Transferee Company.

In the matter of the Companies Act 1 of 1956;
AND
In the matter of Sections 391 to 394 of the Companies Act, 1956;
AND
In the matter of M/s. Saryu Properties & Hotels Private Limited
AND
In the matter of Scheme of Amalgamation of M/s. Fortune Hotels & Estates Private Limited,
AND
M/s. Ivory Realtors Private Limited,
AND

M/s. K.Raheja Properties Private Limited,
WITH
M/s. Saryu Properties & Hotels Private Limited and their respective Shareholders and Creditors.

Called for hearing

Mr. Rahul Oak, Advocate for the Petitioners in all the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in Company Scheme Petition No. 417 of 2015 to 419 of 2015 .

Mr. H. V. Mehta, Advocate i/b Mr. A. A. Ansari for Regional Director in all the Petitions.

CORAM: S. C. Gupte, J.
DATE : 11th September, 2015

PC:

1. Heard learned counsel for the parties. No objector has come before the court to oppose the Scheme andnor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought to a Scheme of Amalgamation and Arrangement of Fortune Hotels & Estates Private Limited, Ivory Realtors Private Limited, K.Raheja Properties Private Limited with Saryu Properties & Hotels Private Limitedand their respective shareholders and creditors, under Sections 391 to 394 of the Companies Act, 1956.

3. The Transferor Companies and Transferee Company has approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. The learned Advocate for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in

Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

5. The learned counsel appearing on behalf of the Petitioners have stated that the Transferor Company and Transferee Company have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rule made there under whichever is applicable. The said undertaking is accepted.

6. The Official Liquidator has filed his report on 31stAugust, 2015 in Company Scheme Petition Nos. 417 of 2015 to 419 of 2015 stating that the affairs of the Transferor Companies has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

7. The Regional Director has filed an Affidavit on 3rd September, 2015 stating therein, save and except as stated in paragraph 6(a) to 6(c), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6(a) to 6(c) of the said Affidavit, it is stated as under.

> *"6. (a) It has been observed from the shareholding list of the Transferee Company that First and Second Transferor Companies are holding 100 and 6450 Equity Shares of Rs.100*

each respectively in the share capital of Transferee Company. Upon Scheme becoming effective, these shares shall get cancelled and consequently, there will be a reduction of paid up equity capital of Transferee Company. The Scheme is silent in respect to such reduction of paid up equity capital of Transferee Company as well as compliance of Section 100 of the Companies Act, 1956 corresponding to Section 66 of the Companies Act, 2013. In this regard, it is submitted that the Petitioner Companies may be directed to incorporate a suitable clause in the Scheme itself and amend the Scheme accordingly to reflect such reduction of capital as an integral part of the Scheme.

(b) Clause 14.2 of the scheme states that upon the scheme coming into effect, the surplus, if any, of the net value of assets, liabilities and reserves of the Transferor companies acquired and recorded by the Transferee Company and the face value of the new equity shares on merger issued and allotted pursuant to Clause 12.1 shall be adjusted in Reserves. In this regards, it is submitted that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee Company.

(c) It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income tax Authority is binding on the Transferor Companies and Transferee Companies."

8. So far as the observation in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Transferee Company through its counsel agrees to amend the Scheme thereby incorporating a suitable Clause in the Scheme in respect of reduction of equity share capital of Transferee Company as under:

The Transferor Companies no.1 & 2 holds 100 and 6450 equity shares of Rs.100/- each in the Transferee Company, pursuant to this scheme of amalgamation, the investment of Transferor Companies in the Transferee

Company shall stand cancelled. The cancellation and reduction of the share capital account as aforesaid shall be effected as an integral part of this Scheme itself as the same does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital and the order of the Court sanctioning the Scheme shall be deemed to be an order under section 102 of the Act confirming the Capital Reduction.

Counsel for the Petitioner Company seeks leave of the court to amend Scheme thereby inserting appropriate clause mentioned above and consequential amendment in Scheme. Leave to amend is granted. Amendments to be carried out within two weeks from today.

9. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Transferee Company through its counsel undertakes that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee Company.

10. So far as the observation in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Petitioner Companies are bound to comply with all applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law

11. The Learned Counsel for Regional Director on instructions of Mr. M. ChandanaMuthu, Joint Director Legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states

that they are satisfied with the undertaking given by the Advocate for the Petitioner Company. The said undertaking is accepted.

12. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 417 of 2015 to 420 of 2015 are made absolute in terms of prayer clauses (a).

14. The Petitioner Companies to lodge a copy of this order and the amended Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the order.

15. Petitioners are directed to file a copy of this order along with a copy of the amended Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

16. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the Company Scheme Petition Nos. 417 of 2015 to 419 of 2015 to pay costs

of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

17. Filing and issuance of the drawn up order is dispensed with.

18. All concerned regulatory authorities to act on a copy of this order along with amended Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte, J.)