IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.727 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.656 OF 2015

Annakoot Properties Private Limited

…..Petitioner/ Demerged Company

AND

COMPANY SCHEME PETITION NO.728 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 657 OF 2015

Saffron Spice Hospitality Private Limited

…..Petitioner/ Resulting Company

In the matter of the Companies Act, 1956

AND

In the matter of petition under Sections 391 to section 394 read with Section 100 to 103 of the Companies Act, 1956.

AND

In the matter of Scheme of Arrangement between Annakoot Properties Private Limited

…Demerged Company

AND

Saffron Spice Hospitality Private Limited

… Resulting Company

AND

Their Respective Shareholders and Creditors

<u>Called for Hearing</u>

Mr. Naserali Rizvi i/b Thakore Jariwala & Associates, Advocates for Petitioners.

Mr. Y.R. Mishra i/b. Mr. A. A. Ansari for Regional Director in both the Petitions.

CORAM: K. R. Shriram, J.

DATE: 18th December, 2015

PC:

1. Heard learned counsel for parties. No objector has come to oppose the Scheme nor has any party controverted any averments made in the Petitions.

2. The sanction of the Court is sought under Sections 391 to section 394 read with Section 100 to 103 of the Companies Act, 1956 to a Scheme of Arrangement ("Scheme") between Annakoot Properties Private Limited and Saffron Spice Hospitality Private Limited and their respective shareholders and creditors.

3. The learned Advocate for the Petitioner Companies states that the Demerged Company is engaged in businesses of hotel, hospitality, restaurant, dining hall and banquets and the Resulting Company is also engaged in business of restaurant, catering and banquets services.

4. The learned Advocate for the Petitioner Companies states that the business carried on from the Demerged Undertaking i.e. Powai Business Division does not have hotel business and hence from the hotel business perspective it is distinct from other businesses undertaken by the Demerged Company from its other Division and each of its businesses and undertakings is capable of attracting a different set of investors, strategic partners, lenders and other stakeholders based on its location, accessibility to guests, facilities it offers, types of patrons etc. and the business of Demerged Company on demerger will be carried out more efficiently and beneficially as it would enable Demerged Company to focus on its growth efforts and the transfer of the Demerged Undertaking to the Resulting Company will enable greater focus on the operations of the Demerged Undertaking and would enable unlocking value. Further the Demerger Undertaking has immense potential for growth and development and requires infusion of funds and undivided care and attention for optimum growth, expansion and development and also has the potential of being developed into a food chain restaurant. The Demerger will also enable the Demerger entity to concentrate growth in a focused manner, for its growth including technological advancements and different focus for alliance/ consolidation so as to enable direct equity participation from overseas strategic investors in restaurants, eating houses, cafés, lounge bars & party halls etc. The learned Advocate for petitioner submits that the restructuring proposed by this Scheme will also provide an opportunity to the investors to select investments which best suit their investment strategies and risk profile without any adverse effect on either the shareholders or the employees or the creditors of the Demerged Company.

5. The Learned Advocate for the Petitioner in Company Scheme Petition No. 728 of 2015 states that as per clause (14) of the Scheme of Arrangement, the reduction of paid up equity share capital of the Resulting Company as contemplated in this Scheme shall be carried out and effected as integral part of this Scheme and in view of the averments made in paragraph 26 of the Company Scheme Petition inter alia stating that the reduction would not effect the interest of the shareholders in any manner as the reductions shall not involve either diminution of liability in respect of unpaid share capital of the Resulting Company nor payment to any shareholder of any paid-up capital nor is any call being waived. Further, the creditors of the Resulting Company will not be effected in any manner as there is no cash outflow involved nor any sacrifice or compromise called from any of the creditor. Further the Resulting Company shall not be required to add the words "and reduced" as a suffix to its name consequent upon such reduction. The Resulting Company has passed a Special Resolution pursuant to provisions of Section 100 to 103 of the Companies Act, 1956 in the Extra Ordinary General Meeting of its Equity Shareholders held on 11th August, 2015 for the reduction of paid-up equity share capital and same is annexed as Exhibit "L" to the Company Scheme Petition No. 728 of 2015. In view thereof, the procedure prescribed under section 101 (2) of the Companies Act, 1956 was dispensed with.

6. The learned Advocate for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction and seeks sanction to the said proposed Scheme of Arrangement.

7. The Learned Advocate appearing on behalf of the Petitioners has stated that they 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 the Rules made thereunder. The said undertaking is accepted.

8. The Regional Director has filed his Affidavit on 7th December, 2015, *inter alia,* stating therein that save and except as stated in paragraph 6 of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that :

> "*6. That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company."*

9. So far as the objection of the Regional Director as stated in paragraph 6 of his Affidavit is concerned, the Petitioner Companies submit that the Petitioners are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

10. 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 undertakings made by the Petitioner Companies through their advocate. In view thereof, the said undertakings are accepted.

11. 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.

12. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.727 of 2015 filed by the Demerged Company is made absolute in terms of prayer clauses (a) and (b) and Company Scheme Petition No.728 of 2015 filed by the Resulting Company is made absolute in terms of prayer clauses (a) to (c).

13. The Petitioners to lodge a copy of this order along with the Scheme and Form of Minutes (Exhibit - 'N' to Company Scheme Petition No.728 of 2015) duly authenticated by the Company Registrar, High Court, 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 this order.

14. The Petitioners are directed to file/lodge a copy of this order along with the Scheme and Form of Minutes (Exhibit - 'N' to Company Scheme Petition No.728 of 2015) duly authenticated by the Company Registrar, High Court, Bombay, 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.

15. The Petitioners to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai within four weeks from the date of the order.

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

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

(K. R. SHRIRAM, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

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