IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.4.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

C.P.No.352 of 2014

Sterling Holiday Resorts (India) Limited
No.7, 3rd Cross Street, "Citi Tower"
Kasturba Nagar, Adyar
Chennai 600 020
rep. by its Company Secretary
M.Balasubramaniyan. .. Petitioner

Petition filed under Sections 391 to 394 of the Companies Act, 1956 for sanctioning of the Scheme of Arrangement and Amalgamation.

For Petitioner : Mr.T.K.Baskar
Mr.A.P.Babu
For Official Liquidator

O R D E R

The main company petition is filed under Sections 391 (2) and 394 of the Companies Act, 2014, for sanctioning a composite Scheme of Arrangement and Amalgamation between (i) Sterling Holiday Resorts India Limited, which is a de-merged company, (ii) Thomas Cook Insurance Services (India) Limited, which is a resulting company, and (iii) Thomas Cook (India) Limited, which is a transferee company, with effect from 01.4.2014.

2. On 07.11.2014, notice was ordered by this Court in

the main company petition. Pursuant to the said order, the petitioner had effected publications and also took notices to the Regional Director, the Registrar of Companies and the Official Liquidator. Copies of the paper publications have also been filed before Court.

3. This Court also appointed M/s. Chaturvedi & Company as Chartered Accountants for scrutinising the books of accounts with a direction to file a report.

4. Thereafter, the Official Liquidator filed a report on 13.01.2015 along with a copy of the report of the Chartered Accountants appointed by this Court. Similarly, the Regional Director also filed his report on 12th December 2014.

5. Subsequently, the petitioner realised that a small modification was required in the Composite Scheme originally submitted by them. Therefore, the de-merged company came up with an application in Comp.A.No.215 of 2015 for modifying the composite scheme.

6. In the meantime, a firm by name P.M.Associates came up with two applications in Comp.A.Nos.216 and 217 of 2015 seeking inter alia (i) to implead them as an Objector and (ii) an interim stay of all further proceedings, on the ground that one of the properties of the transferor company was bought by them in an auction conducted under the SARFAESI Act, 2002 and that the subject matter of purchase is now pending adjudication before the Supreme Court in

Special Leave Petitions. Therefore, all these applications were taken up along with the main company petition.

7. I have heard Mr.T.K.Baskar, learned counsel for the petitioner in the main petition, Mr.A.P.Babu, learned counsel representing the Official Liquidator and Mr.Shanmugam, learned counsel appearing for the Objector.

8. For the purpose of convenience, I shall take up the two applications filed by the Objector first. The case of the Objector is that in an auction conducted by the Industrial Financial Corporation of India, under the SARFAESI Act, 2002, they became the successful bidder and that a sale certificate dated 16.9.2011 was already issued in their favour in respect of a property measuring about 6.99 acres in R.S.No.649 and 652/1 in Fern Hill, Udhagamandalam Town, Nilgiris District.

9. It appears that the transferor company thereafter settled the dues to IFCI and got the mortgage redeemed. Consequently, IFCI cancelled the sale certificate forcing the Objector to come up with a writ petition. The writ petition was allowed by a Division Bench with a direction to IFCI to register the sale certificate. As against the said order, the transferor company filed Special Leave Petition (Civil) No.27951 of 2013. The Objector also filed a Special Leave Petition contending that the direction to register the sale certificate was unnecessary, on the ground that sale certificates do not warrant registration. Both Special Leave

Petitions are now pending before the Supreme Court with an interim order directing the parties to maintain status quo in all respects.

10. Therefore, the only objection of the Objector is that when the Supreme Court has granted an interim order directing the parties to maintain status quo in all respects, even a merger cannot take place. But, such a contention is wholly unsustainable. The Scheme of Arrangement and Amalgamation between the transferor company, transferee company and the resulting company, is not with particular reference to one property or for the purpose of dealing with one property. The Scheme as a whole is for the purpose of transfer of the entire undertaking of the transferor company, so that the company merges with the resulting company. The right of the Objector is only with respect to one of the properties owned by the transferor company and not with respect to the entire business of the transferor or transferee or resulting company. Therefore, the Objector cannot stand in the way of the Scheme.

11. Insofar as the Scheme presented by the petitioner is concerned, the Official Liquidator has filed a report, enclosing a copy of the report of the Chartered Accountants to the effect that the affairs of the company are not carried in a manner prejudicial to the interest of the shareholders. The shareholders have given their consent in a

meeting properly convened at the instance of this Court. The creditors have also given their consent.

12. The Regional Director has also filed a report, indicating that there can be no objections. Therefore, all that has to be done is to reserve the right of the Objector with respect to the property that has become the subject matter of the Special Leave Petitions pending before the Supreme Court.

13. In view of the above, Comp.A.No.215 of 2015 for modification of Scheme is allowed. Comp.A.Nos.216 and 217 of 2015 are dismissed, making it clear that after the Scheme comes into effect, the resulting company shall take necessary steps to substitute their name in the place of the transferor company in the matters pending before the Supreme Court.

14. The company petition is allowed and the modified Composite Scheme of Arrangement and Amalgamation between the petitioner company, Thomas Cook Insurance Services (India) Limited and Thomas Cook (India) Limited is sanctioned, subject to the approval of the Scheme by the Bombay High Court in respect of the transferee company and the resulting company. Taking note of the report by the Chartered Accountant as enclosed by the Official Liquidator, in terms of the order passed by this Court, the transferor company shall stand dissolved without winding up, subject to the

approval of the Scheme by the Bombay High Court in respect of the transferee company and the resulting company. The sanction of the Scheme of Amalgamation, will not in any way prejudice or affect the rights of the Objector with regard to the only property that is the subject matter of the dispute there.

sd/.V.R.S.J
13.04.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/30.04.2015 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.