

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 328 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 111 OF 2016

Spice Towers & Resorts Limited

.... Petitioner /First Transferor Company

AND

COMPANY SCHEME PETITION NO. 329 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 110 OF 2016

Sarovar Hospitality And Leisure Private Limited

.... Petitioner /Second Transferor Company

In the matter of the Companies Act of 1956 (Or re-enactment Thereof upon Effectiveness of Relevant Provisions of the Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (Or re-enactment Thereof upon Effectiveness of Relevant Provisions of the Companies Act, 2013);

AND

IN THE MATTER of Scheme of Amalgamation of Spice Towers & Resorts Limited (First Transferor Company) AND Sarovar Hospitality And Leisure Private Limited (Second Transferor Company) WITH Sarovar Hotels Private Limited (Transferee Company) And Their Respective Shareholders and Creditors.

Called for hearing:

Mr. Arvind Talgaonkar i/b. M/s. Crawford Bayley & Co.,
Advocate for the Petitioners in both the Petitions.

Mr. Vinod Sharma, Official Liquidator, present in both the
Petitions.

Mr. Chirag Shah i/b. Mr. Pankaj Kapoor for Regional Director in all the Petitions.

CORAM: A. K. Menon J.
DATE: 20th October, 2016

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation and to contravene any averments made in the Petitions.
2. The sanction of the Court is sought to the Scheme of Amalgamation of Spice Towers & Resorts Limited (First Transferor Company) AND Sarovar Hospitality And Leisure Private Limited (Second Transferor Company) WITH Sarovar Hotels Private Limited (Transferee Company) And Their Respective Shareholders and Creditors, under Sections 391 to 394 of the Companies Act, 1956 (Or re-enactment Thereof upon Effectiveness of Relevant Provisions of the Companies Act, 2013).
3. The Learned Counsel for the Petitioners states that both the Petitioner Companies are presently carrying on the business of hotels, hotel management and consultancy, whereas the Transferee Company is presently also carrying on the business of hotels, hotel management and consultancy.
4. The Learned Counsel for the Petitioners states that as the Transferor Companies are wholly owned subsidiaries of the Transferee Company and the Amalgamation will enable the Transferee Company to carry on and conduct its business more efficiently and advantageously with

better economies of scale, more productive and optimum utilisation of various resources, strengthen its financial position and ability to raise resources for conducting business, achieve synergies in business activities, further development and growth of the business.

5. The Board of Directors of Petitioner Companies have approved the said Scheme of Amalgamation by passing resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Counsel for the Petitioners further states that, 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 Summons for Directions.
7. The Learned Counsel appearing on behalf of the Petitioners states that the Petitioners have complied with all requirements as per directions of this Hon'ble Court and that the Petitioners have filed necessary Affidavits of compliance in this Hon'ble Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said Undertaking is accepted.
8. The Regional Director has filed an Affidavit on 27th September, 2016 stating therein that save and except as stated in paragraphs 6. (i), (ii), (iii), (iv) and (v) it appears

according to the Regional Director that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6. (i), (ii), (iii), (iv) and (v) of the affidavit, the Regional Director has stated as under:

6.

- (i) The Tax implication if any arising out of the scheme is subject to final decision of Income Tax Authority. The approval of the scheme by this Hon'ble High Court may not deter the Income Tax Authority to scrutinise the return filed by the Transferee Company after giving effect to the scheme. The decision of the Income Tax Act Authority is binding on the Petitioner Company.*
- (ii) The petitioner in clause 4.2 inter alia mentioned that on and with effective date, the Immovable Property shall get transferred to and be vested in the transferee company without any further act or deed in terms of the provisions of Section 394 of the Act but, subject to the approval of appropriate authorities and government bodies in the state of uttarakhand. Further the petitioner in clause 18 of the scheme inter alia has mentioned that the scheme is and shall be conditional upon and subject to approval of appropriate authority & Government bodies in the state of uttarakhand, being received for the immovable property getting transferred to & be vested in the transferee company.*
- (iii) The petitioner in clause 4.2 inter alia mentioned that it is however specifically provided that the reserve, as created above, shall be a free reserve*

for all intents and purposes and shall form part of the net worth of the transferee company.

(iv) Petitioner in Clause 4 of the Scheme inter alia has mentioned that upon the coming into effect of the Scheme and subject to the provisions of the scheme, entire business & whole of undertaking of the transferor company as a going concern but subject to the charges affecting the same be transferred and/or deemed to be transferred to and vested in transferee company as a going concern so as to become the assets & Liabilities of transferee company.

(v) Petition in clause 1.12 of Part A of the scheme mentioned Appointment date as 01.04.2014, whereas the company has filled balance sheet upto 31.03.2015, in the affidavit dated signed by the directors of the company mentioned the date of Appointment as 01.04.2015, deponent prayed that Hon'ble court may pass such order as may deem fit.

9. Insofar as the observation made in paragraph 6 (i) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner companies are bound to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the scheme and/or from the scrutiny of the returns filed by the Petitioner Companies will be met and answered in accordance with law.

10. Insofar as the observation made in paragraph 6 (ii) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that Petitioner Companies are bound to comply with applicable provisions of the applicable act in the State of Uttarakhand.
11. Insofar as the observation made in paragraphs 6 (iii) and 6 (iv) of the Affidavit of the Regional Director are concerned, the Petitioner Companies through their Counsel submit that Petitioner Companies are bound to comply with the provisions of the Companies Act, 1956/2013 as may be applicable.
12. Insofar as the observation made in paragraph 6 (v) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Appointed Date of the Scheme of Amalgamation is '1st April, 2015' and the amendment has been carried out in the scheme to the extent of clause 1.12 of Part A of the scheme inter alia mentioned the Appointed Date '1st April, 2015' instead of '1st April, 2014' pursuant to the Hon'ble Court's Order dated 6th October, 2016.
13. The Learned Counsel for Regional Director on instructions of Mrs. P. Sheila, 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 given by the Petitioners. The above undertakings are accepted.

14. The Official Liquidator has filed his report on 1st October, 2016 in Company Scheme Petition No. 328 of 2016 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved without winding up.
15. From the material on record, the Scheme appears to be fair and reasonable and does not appear to be violative of any provisions of law or contrary to public policy.
16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 328 and 329 of 2016 are made absolute in terms of prayer clauses (a), (b) and (d), respectively.
17. The Petitioner Companies to lodge a copy of this order and Scheme duly authenticated by the Company Registrar, High Court (O.S.), Mumbai, 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 issuance of the order by the Registry.
18. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-form INC-28, in addition to physical copy as per the provisions of the Act.
19. The Petitioners in all the Petitions to pay costs of INRs.10,000/- each to the Regional Director, Western

Region, Mumbai, and the Petitioners in all the Petitions to pay cost of INRs.10,000/- each to the Official Liquidator, High Court, Mumbai. Costs to be paid within four weeks from the date of the order.

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

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

(A. K. Menon J.)

C E R T I F I C A T E

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

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