

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 379 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 101 OF 2016

In the matter of the Companies Act, 1956 or any re-enactment thereof;

And

In the matter of Petition under Sections 391 to 394 read with Section 52 of the Companies Act, 2013, Sections 78, 100 to 104, of the Companies Act, 1956 or any re-enactment thereof;

And

In the matter of The Indian Hotels Company Limited [CIN: L74999MH1902PLC000183], a company, incorporated under the Indian Companies Act of 1882, having its registered office Mandlik House, Mandlik Road, Mumbai – 400001;

And

In the matter of Scheme of Arrangement amongst International Hotel Management Services LLC and The Indian Hotels Company Limited and their respective shareholders and creditors and reduction of share capital of The Indian Hotels Company Limited.

The Indian Hotels Company Limited)
[CIN: L74999MH1902PLC000183], a)
company, incorporated under the Indian)
Companies Act of 1882, having its)
registered office Mandlik House, Mandlik)
Road, Mumbai – 400001.) ...Petitioner Company

Called for Hearing

Mr. Tapan Deshpande, Advocate of Cyril Amarchand Mangaldas, Advocates for the
Petitioner Company.

Mr. Dushyant Kumar, i/b Mr. A. K. Chaturvedi for Regional Director

Coram: B. P. Colabawalla, J.

Date: 12th August, 2016

MINUTES OF THE ORDER

PC:

1. Heard Counsel for the parties. No objector has come before the Court to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. Learned Advocate for the Petitioner Company states that the Petition has been filed to seek sanction to the Scheme of Arrangement amongst International Hotel Management Services LLC (hereinafter referred to as “**Transferor Company**”) and The Indian Hotels Company Limited (hereinafter referred to as “**Transferee Company**” / “**Petitioner Company**”) and their respective shareholders and creditors and reduction of share capital of The Indian Hotels Company Limited (the “**Scheme of Arrangement**” or the “**Scheme**”), pursuant

to the provisions of Sections 391 to 394 read with Section 52 of the Companies Act, 2013, Sections 78, 100 to 104, of the Companies Act, 1956 or any re-enactment thereof.

3. The Learned Advocate for the Petitioner Company states that the Petitioner Company has complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the order passed in the Company Summons for Direction.
4. The Learned Advocate for the Petitioner Company has stated that the Petitioner Company has complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted.
5. The Transferor Company is a company incorporated in the State of Delaware, United States of America. The Transferor Company is engaged in the business of inter alia owning equity interest in entities that own and / or operate and / or manage hotels and hospitality business. The Transferor Company is a wholly owned subsidiary of the Petitioner Company. The Petitioner Company is engaged in the business of owning, operating and managing hotels, palaces and resorts. The learned Advocate for the Petitioner Company says that the rationale and significant benefits of the Scheme are that, (i) the Petitioner Company is in the process of undertaking a restructuring of its group holding

structure in some of its overseas joint ventures and wholly owned subsidiaries by consolidating certain holdings in the downstream overseas operating companies under a single holding company, namely, IHOCO BV, effectively capturing value at a single point and enabling greater organizational and operational control of these overseas joint ventures and wholly owned subsidiaries. Pursuant to this international restructuring exercise, the utility of retaining the Transferor Company as a separate entity is diminished and hence it is sought to be amalgamated with the Petitioner Company; and (ii) in view of the above, and in order to simplify the overseas group holding structure and reduce the overseas shareholding tiers, it is proposed that the Transferor Company be amalgamated with the Petitioner Company, pursuant to which the Transferor Company will cease to exist as per the applicable law in the State of Delaware, United States of America and the consequent cancellation of the share capital comprising of the outstanding common stock and the additional paid in capital in the Transferor Company held by the Petitioner Company be undertaken, pursuant to Sections 391 to 394 and other relevant provisions of the Act. Thus, the Scheme is sought to be undertaken to amalgamate the wholly owned subsidiary of the Petitioner Company being the Transferor Company with the Petitioner Company. Both, the sole shareholder / member of the Transferor Company and the Board of Directors of the Petitioner Company have approved the said Scheme by passing their respective resolutions which are annexed to the Petition. Further the Counsel for the Petitioner Company submits that as the Transferor Company is registered in State of Delaware, in

the United States of America, for the amalgamation of the Transferor Company with the Petitioner Company, the Transferor Company will follow the process as per the applicable law in the State of Delaware, in the United States of America pursuant to which the Transferor Company will cease to exist as a separate legal entity. As its integral part, the Scheme of Arrangement also postulates reduction of the Securities Premium Account of the Petitioner Company. Thus the Securities Premium Account of the Petitioner Company shall be reduced.

6. The Regional Director has filed an Affidavit dated 11th August 2016, 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 the shareholders of the Petitioner Company and public. In paragraph 6 of the Affidavit of the Regional Director, it is stated that:

“6. That the Deponent further submits that,

(a.) Regarding appointed date as per clause 1.1.2 of the scheme, it is submitted that the appointed date means 1st January 2016 or such other date as may be approved by Hon’ble High Court Judicature at Bombay.

(b.) With reference to clause 16 of the scheme, it is submitted that, the surplus if any arising out of the scheme shall be credited to Capital Reserve of the Transferee Company and deficit if any arising the same shall be debited to goodwill account of the Transferee Company and the accounting treatment is in order.

(c) The Transferor Company is within the jurisdiction of the State of Delaware United State of America, Hence similar approval be obtained from concerned Hon'ble High Court of the State of Delaware United State of America.” Order of this Hon'ble High Court is subject to the out come of the orders of Hon'ble High Court of the State of Delaware, United State of America”.

(d) Since the Transferor Company is situated in the State of Delaware, United State of America, the FEMA Regulations/RBI Guidance, if any applicable is to be complied with by the Transferor Company.

(e) 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.”

7. As regards the observation set out in paragraph 6 (a), of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Advocate undertakes that the appointed date applicable to the scheme shall be 1 January 2016 or such other date as may be approved by this Honourable Court as mentioned in the Scheme.

8. As regards the observation set out in paragraph 6 (b), of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Advocate submits that the Petitioner Company undertakes that the surplus, if any, arising out of the Scheme shall be credited to the Capital Reserve of the Transferee Company and deficit, if any, arising out of the Scheme shall be debited to Goodwill of the Transferee Company.
9. As regards the observation set out in paragraph 6 (c), of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Advocate submits that the Petitioner Company undertakes to comply with the laws and procedure as applicable in State of Delaware, United States of America with respect of the sanctioned Scheme.
10. As regards the observation set out in paragraph 6 (d), of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Advocate submits that the Petitioner Company undertakes to comply with FEMA regulations / RBI guidelines, as applicable.
11. As regards the observation set out in paragraph 6 (e), of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Advocate submits that the Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be answered in accordance with law.

12. The Learned Counsel for the Regional Director on instructions of S. Ramakantha, 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 hereinabove by the Petitioner Company through its Advocate.
13. The Scheme postulates compliances of several conditions and conditions include, the Transferor Company to follow the process as per the applicable law in the State of Delaware, in the United States of America which includes the Transferor Company to file a “Certificate of Merger” with the office of the Secretary of the State of Delaware pursuant to which the Transferor Company will cease to exist as a separate legal entity. Therefore this Petition can be allowed and the Scheme of Arrangement as annexed to the Petition can be sanctioned.
14. 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. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 379 of 2016 is made absolute in terms of prayer clauses (a) to (e).
16. The Petitioner Company to lodge a copy of this order along with a copy the Scheme, duly authenticated by the Company Registrar, High Court [O.S.],

Bombay, with the concerned Collector of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of the order.

17. The Petitioner Company is directed to file a copy of this order along with a copy of the Scheme and Form of Minute (Exhibit O to the Company Scheme Petition No. 379 of 2016) attached thereto duly authenticated by the Company Registrar, High Court [O.S.], Bombay, with the concerned Registrar of Companies, electronically, along with e-form INC 28 and also the physical copy of the same as per the provisions of Companies Act, 1956/2013, whichever is applicable.
18. The Petitioner Company to pay costs of Rs. 10,000/- to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from today.
19. Filing and issuance of the drawn up order is dispensed with.
20. All concerned authorities to act on a copy of this order along with the Scheme, duly authenticated by the Company Registrar, High Court [O.S.], Bombay.

(B. P. Colabawalla, J.)

CERTIFICATE

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

Uploaded by: S. Gawde
Stenographer