

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMPANY SCHEME PETITION NO. 557 OF 2016  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 458 OF 2016  
KANAKIA HOSPITALITY PRIVATE LIMITED  
....Petitioner/Transferor Company  
WITH

COMPANY SCHEME PETITION NO.558 OF 2016  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 459 OF 2016  
KANAKIA HOTELS & RESORTS PRIVATE LIMITED  
....Petitioner/ Transferee Company

In the matter of the Companies Act, 1956  
(1 of 1956);

AND

In the matter of Sections 391 to 394 of the  
Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation  
of Kanakia Hospitality Private Limited (the  
'Transferor Company')

WITH

Kanakia Hotels & Resorts Private Limited  
(the 'Transferee Company')

AND

Their respective Shareholders

Called for hearing

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocate for the  
Petitioners in both the Petitions.

Ms. Priya V. Sankpal, i/b. Pankaj Kapur for Regional Director in both  
the Petitions.

Mr. Vinod Sharma, Official Liquidator, present in CSP No 557 of  
2016

CORAM: S.C.GUPTA, J

DATE: 29<sup>th</sup> NOVEMBER, 2016

PC:

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Petition and to contravene averments made in the Petition.
2. The sanction of the Court is sought to the Scheme of Amalgamation of Kanakia Hospitality Private Limited with Kanakia Hotels & Resorts Private Limited and their respective Shareholders.
3. Learned Counsel for the Petitioners states that the Transferor Company is engaged in the business of Hotels and the Transferee Company is the holding company for the hotel business.
4. The proposed Scheme of Amalgamation will lead to consolidation of companies within the group, reduction of intra-group transactions and compliance requirements under various laws, reduction of operating and compliance costs and achievement of administrative, operative and management efficiencies.
5. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Direction.

7. The Counsel for the Petitioner Companies further states that the Petitioner Companies have 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 Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or Companies Act 2013, as may be applicable and the rules made there under. The said undertaking is accepted.
8. The Regional Director has filed an Affidavit on 23<sup>rd</sup> November 2016 stating therein that save and except as stated in paragraph 6 (i) & (ii) 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 Submits that :
- (i) *In addition to compliance of AS-14, the transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.*
  - (ii) *The office of the Principal Commissioner of Income Tax-10, Mumbai has sent letter to this Directorate vide Letter No. Pr. CIT-10/Amalgamation/2016-17 dated 08/09/2016, they have mentioned in the respective letter as mentioned at point (xi) above. 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*

*Companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

9. In so far as observations made in paragraph 6(i) of the Affidavit of Regional Director is concerned, the Petitioner Company through its Counsel submits that the Transferee Company undertakes to pass such accounting entries which are necessary in connection with the Scheme to comply with Accounting Standard – 14 or any other applicable Accounting Standard such as Accounting Standard – 5.
10. In so far as observations made in paragraph 6(ii) of the Affidavit of the Regional Director is concerned, the Petitioners clarify that the approval of the Scheme by this court will not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the Scheme and all issues arising out of the Scheme will be met and answered in accordance with the applicable law.
11. The Counsel for the Regional Director on instructions of Mr. R K. Dalmia, Deputy Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.
12. The Official Liquidator has filed his report on 10<sup>th</sup> November, 2016 stating therein that the Affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Court.

13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 557 of 2016 and Company Scheme Petition 558 of 2016 are made absolute in terms of prayer clause (a) of the respective Petitions.
15. The Petitioner Companies to lodge a copy of this order and the 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 receipt of the order.
16. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of companies, electronically, along with form INC-28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry.
17. The Petitioner Companies in all Petitions to pay costs of Rs.10,000/- each to the Regional Director. The Petitioner Company in Company Scheme Petition No. 557 of 2016 to pay sum of Rs.10,000/- to the Official Liquidator, High Court, Bombay. The Costs to be paid within four weeks, from date of this Order.

18. Filing and issuance of the drawn up order is dispensed with.
19. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.
20. It is directed that the scheme shall take effect from the date of the filing of a signed copy of this order with the Registrar of Companies. Learned Counsel for the Petitioner undertakes to file a authenticated copy of the scheme along with this order with the Registrar of Companies within a period of one month from today.

**(S.C. Gupte, J)**

CERTIFICATE

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

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