**HON'BLE SRI JUSTICE S.V.BHATT**

**COMPANY PETITION Nos.295, 296 & 297 OF 2015**

**COMMON ORDER:**

Heard Sri S.Ravi, learned senior counsel for the petitioners, Sri B.Narayana Reddy for the Regional Director, Ministry of Corporate Affairs, South East Region, Hyderabad and Sri M.Anil Kumar, for Official Liquidator.

The instant company petitions are filed under Sections 391 and 394 of the Companies Act, 1956 (for short 'the Act') praying for according sanction to the composite scheme of arrangement and amalgamation between GAR Hotels and Estates Private Limited (Petitioner in C.P.No.295 of 2015), Meera Sales Private Limited (Petitioner in C.P.No.296 of 2015) and GAR Corporation Private Limited (Petitioner in C.P.No.297 of 2015).

For convenience, the corporate entities are called as GAR Hotels and Estates Private Limited/de-merged company, Meera Sales Private Limited (MSPL)/transferor company and GAR Corporation Private Limited (GCPL)/transferee company) respectively.

Learned counsel for the petitioners has placed reliance upon **MIHEER H.MAFATLAL V. MAFATLAL INDUSTRIES LIMITED**[1], **NEBULA MOTORS LIMITED**[2] **AND ANDHRA BANK HOUSING FINANCE LIMITED V. M/S ANDHRA BANK**[3] to explain the jurisdiction of this Court under Sections 391 and 394 of the Act.

The circumstances relevant for considering the prayers for sanction of scheme of amalgamation are as follows:

The de-merged company was incorporated as M/s GAR Constructions Private Limited under the Act. In the year 2009, the name of de-merged was changed to GAR Hotels and Estates Private Limited. The authorized, issued, subscribed and paid up share capital of de-merged company is as follows:

As on 31.03.2014

| | Rupees |
|---|---|
| **Authorised capital** | |
| 5,00,000 Equity shares of Rs.10/- each | 50,00,000 |
| **Total** | **50,00,000** |
| **Issued, Subscribed and Paid up** | |
| 1,11,900 Equity shares of Rs.10/- each | 11,19,000 |
| **Total** | **11,19,000** |

As on 31.03.2015

| | Rupees |
|---|---|
| **Authorised capital** | |
| 5,00,000 Equity shares of Rs.10/- each | 50,00,000 |
| **Total** | **50,00,000** |
| **Issued, Subscribed and Paid up** | |
| 1,11,900 Equity shares of Rs.10/- each | 11,19,000 |
| **Total** | **11,19,000** |

The de-merged company has been incorporated to do business in establishing, constructing, managing and running hotels, including restaurants and motels etc. The Memorandum and Articles of Association of the de-merged company are exhibited as Annexure ‘P2’.

The petitioner/MSPL in C.P.No.296 of 2015 is a company registered under the Act. The objects of MSPL are to carry on business as distributors, representatives, agents, brokers, stockists etc. The Memorandum and Articles of Association are filed as Annexure ‘P8’. The authorized, issued, subscribed and paid up share capital of the transferee company is as follows:

As on 31.03.2014

| | Rupees |
|---|---|
| **Authorised capital** | |
| 10,000 Equity shares of Rs.10/- each | 10,00,000 |
| **Total** | **10,00,000** |
| **Issued, Subscribed and Paid up** | |
| 5000 Equity shares of Rs.10/- each | 5,00,000 |
| **Total** | **5,00,000** |

As on 31.03.2015

| | Rupees |
|---|---|
| **Authorised capital** | |
| 10,000 Equity shares of Rs.10/- each | 10,00,000 |
| **Total** | **10,00,000** |
| **Issued, Subscribed and Paid up** | |
| 5000 Equity shares of Rs.10/- each | 5,00,000 |
| **Total** | **5,00,000** |

The petitioner/GCPL in C.P.No.297 of 2015 is a company incorporated under the provisions of the Act to do business in providing infrastructural facilities and service for setting up of information technology parks in India and abroad etc. The Memorandum and Articles of Association of GCPL are filed as Annexure 'P5'. The authorized, issued, subscribed and paid up share capital of the transferee company is as follows:

As on 31.03.2014

| | Rupees |
|---|---|
| **Authorised capital** | |
| 50,00,000 Equity shares of Rs.10/- each | 5,00,00,000 |
| **Total** | **5,00,00,000** |
| **Issued, Subscribed and Paid up** | |
| 20,00,000 Equity shares of Rs.10/- each | 2,00,00,000 |
| **Total** | **2,00,00,000** |

As on 31.03.2015

| | Rupees |
|---|---|
| **Authorised capital** | |
| 1,17,50,000 Equity shares of Rs.10/- each | 11,75,00,000 |
| **Total** | **11,75,00,000** |
| **Issued, Subscribed and Paid up** | |
| 45,94,102 Equity shares of Rs.10/- each | 4,59,41,020 |
| **Total** | **4,59,41,020** |

The petitioners herein have filed C.A.Nos.1390, 1391 and 1392 of 2015 praying for dispensing with the convening of the meeting of shareholders/secured and unsecured creditors. On 31.08.2015, the applications were allowed and the operative portion of the order reads as follows:

> "Accordingly, in Company Application No.1390 of 2015, the holding of the meetings of the equity shareholders and unsecured creditors of the applicant is dispensed with for considering the proposed composite scheme of arrangement, subject to the applicant filing the no-objection letters of the 16 trade creditors at the stage of filing the Company Petition; in Company Application No.1391 of 2015, the holding of the meetings of the shareholders and unsecured creditors of the applicant is dispensed with for considering the proposed composite scheme of amalgamation; and in Company Application No.1392 of 2015, the holding of the meetings of the equity shareholders and unsecured creditors of the applicant is dispensed with, subject to the applicant filing the no-objection letters of the trade creditors to whom it owes more than Rs.1 lakh at the stage of filing the Company Petition.
>
> The applications are accordingly allowed".

On 12.10.2015, this Court in the instant company petitions ordered notice to the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad and the Official liquidator attached to the Company Court. The petitioners were directed to cause publication of notice of scheme of amalgamation in Business Standard (English) and Andhra Prabha (Telugu) daily newspapers of Hyderabad Main editions. The petitioners submit that notices on statutory authorities are served and the advertisement was published in the newspapers on 31.10.2015. The Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad filed report dated 08.12.2015. On 21.01.2016, the Official Liquidator has filed the report on the scheme of arrangement and amalgamation under consideration. It is contextual to refer to one of the objections raised by the Regional Director and they are attended to and properly replied by filing additional affidavits dated 01.03.2016 and as directed by this Court, the corrected scheme of arrangement is placed on record and the same is accepted.

The petitioners submit that the proposed composite scheme of arrangement and amalgamation would help the de-merged company, MSPL and GCPL companies to facilitate streamlining administration of business and provides opportunities for focusing on the sphere of business activity accepted by each of the entities. The shareholders of the de-merged company, MSPL and GCPL companies are same. One of the objects of arrangement is to integrate the ongoing business for achieving maximum returns.

It is further stated that the conditions imposed by this Court while ordering Company Application Nos. C.A.Nos.1390, 1391 and 1392 of 2015 have been complied with and the attention of the Court is specifically drawn to due compliance of each one of the conditions.

The attention of this Court is drawn to the salient feature of composite scheme of arrangement and amalgamation.

The jurisdiction of this Court, while approving the scheme of arrangement and amalgamation, according to ***Miheer H.Mafatlal's*** (1 supra) case, is as follows:

> "(1) The sanctioning Court has to see to it that all the requisite statutory procedure for supporting

such a scheme has been complied with and that the requisite meetings as contemplated by Section 391(1)(a) have been held.

(2) That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391(2).

(3) That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of the class.

(4) That all necessary material indicated by Section 393(1)(a) is placed before the voters at the concerned meetings as contemplated by Section 391(1).

(5) That all the requisite material contemplated by the proviso to sub-section (2) of Section 391 of the Act is placed before the Court by the concerned applicant seeking sanction for such a scheme and the Court gets satisfied about the same.

(6) That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously xray the same.

(7) That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter compromising the same class whom they purported to represent.

(8) That the scheme as a whole is also found to be just, fair and reasonable from the point of

> view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.
>
> (9) Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there could be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction."

Learned counsel appearing for the statutory authorities have reported no objection for the proposed scheme of arrangement and amalgamation.

I have considered the material available on record, the principles of law enunciated by the Apex Court in ***Miheer H.Mafatlal's*** case (1 supra) and the conclusions/recommendations of the statutory authorities through their reports dated 08.12.2015 and 21.01.2016.

Having regard to the above material/reports, this Court is of the opinion that the proposed scheme of arrangement and amalgamation is in conformity with the provisions of the Act.

The scheme does not affect the interest of stakeholders and public or public interest. The scheme is intended to further the business interests of de-merged and transferee companies for profit and maximum utilization of available resources. The scheme of arrangement and amalgamation approved in the meeting of Board of Directors of transferor company on 24.07.2015 is sanctioned with effect from the appointed date i.e., 01.04.2015.

The composite scheme of arrangement and amalgamation envisages the demerger of the residuary division of GAR Hotels and Estates Private Limited/de-merged company into GAR Corporation Private Limited/transferee company. Meera Sales Private Limited (MSPL)/ company)/transferor company is ordered to be dissolved without going through the process of winding up.

The petitioners are directed to communicate certified copy of this order to the Registrar of Companies for the State of Telangana and the State of Andhra Pradesh, Hyderabad
within 30 days from the date of receipt of a copy of this order.
The petitioners are further directed to undertake all consequential and statutory steps required in pursuance of the approval of composite scheme of amalgamation and arrangement and the Act.

The company petitions are allowed accordingly.

**_S.V.BHATT,J_**

Dt.22.03.2016
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[1] 1996(87) Company Cases 792

[2] 2003(5) ALD 327

[3] 2002(3) ALD 654