

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgement reserved on: 27.01.2016
Judgement delivered on: 29.02.2016

+ **CO.PET. 527/2015**

IN THE MATTER OF

COMPETENT HOTELS PRIVATE LIMITED

....Petitioner No.1/ Transferor Company No.1

AND

DIVINE HERITAGE HOTELS PRIVATE LIMITED

...Non-Petitioner/ Transferor Company No. 2

AND

HOLIDAY ON HILLS RESORTS PRIVATE LIMITED

...Non-Petitioner/ Transferor Company No. 3

WITH

MAHINDRA HOLIDAYS & RESORTS INDIA LIMITED

.... Non-Petitioner / Transferee Company

Through: Mr. Abhishek Seth, Advocate.

Mr. Atma Sah, Asstt.ROC for RD.

Mr. Rajiv Behl, Advocate for OL.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a second motion petition filed by Competent Hotels Private Limited (i.e. petitioner no.1/ transferor company no.1) under Section 391 and 394 of the Companies Act, 1956 (hereafter referred to as the Act) for approval of the scheme of amalgamation and arrangement (hereafter referred to as the scheme) between Competent Hotels Private Limited (Petitioner No.1/ Transferor Company No.1) and Mahindra Holidays & Resorts India Limited (Non-Petitioner / Transferee Company). Transferor Company No. 2, Transferor Company No. 3 and Transferee Company are non-petitioner companies and in any case do not fall within the ambit of the jurisdiction of this Court.
2. The transferor company no.1 will hereafter be referred, to as the petitioner company.
3. The registered office of the petitioner company is located within the territorial jurisdiction of this court.
4. The details with respect to authorised, issued, subscribed and paid up capital of the petitioner company are set out in paragraph 7 of the petition.
5. Copy of Memorandum and Articles of Association as well as the profit and loss account and the balance sheet as on 31.03.2015, has been filed by the petitioner company.
6. Copy of Board of Director (BOD) resolution dated 22.01.2015, concerning the petitioner company, whereby, the scheme has been approved, is filed with the petition.

7. The petitioner companies have averred that the amalgamation of the transferor companies with the transferee company would result in pooling of resources of the entities to their common advantage, resulting in more productive utilization of the resources, costs and operational efficiencies. The petitioner company further avers that the scheme will enable creation of a larger entity and derive optimal management resulting in business synergies. The scheme aims at greater integration and flexibility for the amalgamated entity and strengthening position in the industry, in terms of the asset base, revenues, product and service range.

8. In terms of clause 5, 8 and 11 respectively of the scheme, it is stated as follows:

“..the transferor company no. 1, 2 and 3 are wholly-owned subsidiaries of the transferee company, no consideration shall be payable pursuant to the amalgamation of the transferor companies with the transferee Company, and the equity shares held by the transferee company along with the joint holders in the transferor companies shall stand cancelled without any further act, application or deed”

8.1 However, only transferor company no. 1 is the petitioner company which falls within the jurisdiction of this court.

8.2 It is noted that transferor companies nos. 2, 3 and transferee company are non-petitioner companies, which fall outside the jurisdiction of this court.

9. The petitioner company has averred that there are no proceedings pending against it, under Sections 235 to 251 of the Act.

10. To recapitulate, petitioner company had in the earlier round filed a petition (i.e. the first motion), being: CA (M) No.119/2015, whereby, a

prayer had been made for dispensing with, the requirement of convening meeting of shareholders and creditors.

10.1 This court vide order dated 27.07.2015, having regard to the fact that there are three (3) equity shareholders and two (2) unsecured creditors, and that, all the shareholders and unsecured creditors of the petitioner company had given their consent to the scheme, dispensed with the requirement of convening meetings, as prayed.

10.1 The court, also noted, that since, the petitioner company did not carry any secured creditors; therefore, there could obviously be no requirement of convening a meeting with respect to that class of persons/ entities.

11. The petitioner company thereafter, filed the instant petition (i.e. second motion). Notice in this petition was issued on 19.08.2015. Notice was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD).

11.1 Furthermore, citations were ordered to be published.

12. Citations were published in Delhi edition of newspapers: Business Standard (English) on 01.10.2015 and Jansatta (Hindi) on 23.10.2015. An affidavit dated 02.11.2015, demonstrating service of the petition on the RD and establishing publication of citation along with the newspaper extracts, was filed by the petitioner company.

12.1 Further, the petitioner company filed an affidavit dated 22.01.2016, wherein it is averred that subsequent to the publication of the notice in the petition they have not received any objection or complaint qua the scheme.

13. Pursuant thereto, the RD filed its affidavit under Section 394 A of the Act. In the affidavit, the RD relied upon the general circular bearing no.

53/2011, dated 26.07.2011 and, circular bearing no. 1/2014, dated 15.01.2014.

13.1 Based on the aforementioned circulars, as per the affidavit of the RD, communication was sent to the Registrar of Companies, Delhi and Haryana (in short the ROC), and the Income Tax Department (I.T. Department), seeking their response to the scheme.

13.2 However, no comment or response from the I.T. Department, has been received, apparently, in the matter by the RD.

13.3 The RD, though, received information from the ROC vide communication dated 15.01.2016 which, inter alia, is indicative of the fact that the said authority has not received any complaint or objection from the shareholders, creditors, or any of the stakeholders of the petitioner company.

14. Therefore, in so far as the RD is concerned, there are no objections to the scheme.

15. The OL, in his report, inter alia, stated that he has not received any complaint qua the scheme from any interested person or party. The OL has also averred that on the basis of information supplied by the petitioner company, it appears, its affairs have been conducted in a manner which could not be construed as being prejudicial to either the interest of its members or the public at large. In other words, affairs of the petitioner company, according to the OL, do not fall foul of the provisions of the second proviso to Section 394(1) of the Act.

15.1 Thus, the OL, in effect, has conveyed that he has no objections to the scheme being sanctioned.

16. To be noted, the scheme in clause 16.1 provides that all the employees of the petitioner company in service on the effective date shall become the

employees of the transferee company on such date without any break and interruption in service and on the terms and conditions not in any way less favourable to them than those subsisting with reference to the petitioner company as the case may be on the said date.

17. Further, in terms of the provisions of Section 391 and 394 of the Act, and in terms of clause 10.1 of the scheme, the entire undertaking, properties, rights and powers of the petitioner company will stand transferred to and / or vest in the transferee company without any further act or deed.

17.1 Similarly, in terms of clause 10.5 of the scheme, all liabilities and duties of the petitioner company shall stand transferred to the transferee company without any further act or deed.

17.1 Furthermore, as per clause 20.1 of the scheme, the petitioner company shall stand dissolved without being wound up.

18. Accordingly, in view of the approval accorded to the scheme by the shareholders and creditors of the petitioner company and, given the fact, that the RD and the OL have not articulated any objections, qua the scheme, in my opinion, there appears to be no impediment to the grant of sanction to the scheme. Consequently, sanction is granted to the scheme in terms of Section 391 and 394 of the Act. The petitioner company will, however, comply with all statutory requirements, as mandated in law.

18.1 A certified copy of the order, sanctioning the scheme, will be filed with the ROC, within thirty (30) days of its receipt.

19. Resultantly, it is directed that the petitioner company will comply with all provisions of the scheme and, in particular, those which are referred to hereinabove.

20. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit in accordance with law, against the concerned persons, directors and officials of the petitioner company.

21. It is made clear, that this order will not be construed as an order granting exemption, inter alia, from: payment of stamp duty or, taxes or, any other charges, if any, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

22. Consequently, the petition is allowed and disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

FEBRUARY 29, 2016