

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

% Judgement reserved on: 21.03.2016
Judgement delivered on: 30.03.2016

+ **CO.PET. 726/2015**

IN THE MATTER OF

DLF INNS LIMITED

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

AND

DLF LUXURY HOTELS LIMITED

....Petitioner No.2/ Transferor Company No.2

AND

DLF REALTORS PRIVATE LIMITED

....Petitioner No.3/ Transferor Company No.3

AND

DLF SERVICE APARTMENTS LIMITED

....Petitioner No.4/ Transferor Company No.4

AND

DLF HOSPITALITY AND RECREATIONAL LIMITED

....Non-Petitioner / Transferor Company No.5

WITH

DLF HOTEL HOLDINGS LIMITED

.... Petitioner no.5/ Transferee Company

Through:

Mr. Ravi Bassi, Advocate,

Ms. Aparna Mudiam, Asstt. ROC for the
RD.

Mr. Raj Pal Singh, Dy. O.L.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a second motion petition filed jointly by petitioner no. 1 to 5 i.e. DLF Inns Limited (i.e. petitioner no.1/transferor company no.1), DLF Luxury Hotels Limited (i.e. petitioner no. 2/ transferor company no. 2), DLF Realtors Private Limited (i.e. petitioner no. 3/ transferor company no. 3), DLF Service Apartments Limited (i.e. petitioner no. 4/ transferor company no. 4) along with DLF Hotel Holdings Limited (i.e. petitioner no. 5/ transferee company), under Section 391 and 394 of the Companies Act, 1956 (hereafter referred to as the Act) for approval of the scheme of amalgamation (hereafter referred to as the scheme).

2. The transferor companies no.1 to 4 and the transferee company, will hereafter collectively be referred, to as the petitioners.

3. The registered office of the petitioners are located within the territorial jurisdiction of this court.

3.1 Furthermore, it is averred by the petitioners that the registered office of the transferor company no.5 is situated in the state of Haryana and a separate second motion petition under section 391 to 394 on behalf of

transferor company no. 5 has been filed with the High Court of Punjab & Haryana.

4. The details with respect to the petitioners' authorised, issued, subscribed and paid up capital are set out in paragraphs nos. 5,11,17,23 and 30 in the petition.

5. The copies of Memorandum and Articles of Association as well as the profit and loss account and the balance sheet as on 31.03.2014 have been filed by the petitioners.

6. Copies of Board of Directors' (BOD) resolution of even date i.e. 25.03.2015, concerning transferor company no.1 to 4 and the BOD resolution of the transferee company dated 30.03.2015, whereby, the scheme has been approved, are filed with the petition.

7. The petitioners 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.

8. In terms of clause 16.3 of the scheme, as the transferor companies are directly/indirectly wholly owned subsidiaries of the transferee company, the entire issued, subscribed and paid-up equity capital of all the transferor companies shall automatically stand cancelled and extinguished, upon sanction of the scheme.

9. The petitioners have averred that there are no proceedings pending against them, under Sections 235 to 251 of the Act.

10. To recapitulate, the petitioners had, in the earlier round filed an application (i.e. the first motion), being: CA(M) No.84/2015, whereby, a prayer had been made for dispensing with, the requirement of convening meetings of the shareholders and unsecured creditors of the petitioners.

11. The court vide order dated 25.05.2015, having regard to the facts as mentioned in the table below, dispensed with the requirement of convening the meetings, as prayed.

Number of Companies	Equity Shareholders	Consent given	Unsecured creditors	Consent given
Transferor company no. 1	07	ALL	01	ALL
Transferor company no. 2	07	ALL	01	ALL
Transferor company no. 3	07	ALL	01	ALL
Transferor company no. 4	07	ALL	01	ALL
Transferee company	07	ALL	05	ALL

11.1 The court, also noted, that since, the petitioners did not have any secured creditors, therefore, obviously, there was no requirement to convene meetings with respect to the said class of persons/entities.

12. The petitioners, thereafter, filed the instant petition (i.e. second motion). Notice in this petition was issued on 23.09.2015. Notice was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD).

12.1. Furthermore, citations were ordered to be published.

13. Citations were published, on 04.11.2015, in Delhi edition of the following newspapers: Statesman (English) and Veer Arjun (Hindi). An affidavit dated 07.11.2015 demonstrating service of the petition on the RD and the OL and establishing publication of citation along with the newspaper extracts, was filed by the petitioners.

13.1 Further, the petitioners filed an affidavit dated 18.02.2016, wherein it was stated that subsequent to the publication of the notice in the petition they have not received any objection or complaint qua the scheme.

14. 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.

14.1 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.

14.2 The RD, though, received information from I.T. Officer, Ward-1(4), Gurgaon vide communication dated 03.12.2015 whereby it is conveyed that

the said authority did not have any objection to the scheme as proposed. The I.T.O. specifically communicated that since, the amalgamation was being brought with a holding company which had “positive income”, the scheme would have no tax impact.

15. Furthermore, the RD, also received information from the ROC vide report dated 10.02.2016 which, inter alia, is indicative of the fact that the said authority had not received any complaint or objection from the shareholders or any of the other stakeholders who would be concerned with the petitioners.

16. Therefore, in so far as the RD is concerned, there are no objections taken by him qua the scheme.

17. 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 petitioners, it appears, the affairs of the transferor companies no.1 to 4 have been conducted in a manner which could not be construed as being prejudicial to either the interest of their members or the public at large. In other words, affairs of the transferor companies no.1 to 4, according to the OL, do not fall foul of the provisions of the second proviso to Section 394(1) of the Act.

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

18. To be noted, the scheme in clause 7 provides that all the employees of the transferor companies in service on the date immediately preceding the effective date shall become the employees of the transferee company on such

date without any break and interruption in service and on the same terms and conditions on which they are engaged with respective transferor companies, on the effective date.

19. In terms of the provisions of Section 391 and 394 of the Act, and in terms of clause 4.1 of the scheme, the entire undertaking, properties, rights and powers of the transferor companies will stand transferred to and / or vest in the transferee company without any further act or deed. Similarly, in terms of the scheme, all liabilities and duties of the transferor companies shall stand transferred to the transferee company without any further act or deed.

19.1 Furthermore, as per clause 25.1 of the scheme, the transferor companies shall stand dissolved without being wound up.

20. Accordingly, in view of the approval accorded to the scheme by the shareholders of the petitioners and, given the fact, that the RD and the OL have not articulated any objections, to the scheme, in my opinion, there appears to be no impediment in 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 petitioners will, however, comply with all statutory requirements, as mandated in law.

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

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

22. In any event, notwithstanding what is stated by the petitioners, the transferee company will file an undertaking with this court, within two weeks from today, stating therein, that it will take over and defray all liabilities of the transferor companies. It is also made clear, that the concerned Statutory Authority will be entitled to proceed against the transferee company qua any liability which it would have fastened on to the transferor company for the relevant period, and that, which may arise on account of the scheme being sanctioned.

23. 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 any action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

23. 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, 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.

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

RAJIV SHAKDHER, J

MARCH 30, 2016