IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 02.12.2016
Judgment pronounced on: 06.01.2017

CO.PET. 635/2016

IN THE MATTER OF:-

KISHANPURA HOTELS PRIVATE LIMITED

…Petitioner/ Demerged Company

WITH

PRARAJ ENTERPRISES PRIVATE LIMITED

…Petitioner/Resultant company

Through: Mr. Rajeev K. Goel, Advocate for Petitioner Companies.

Ms. Aparna Mudiam, Asst. ROC for the RD

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present Petition has been filed jointly by Kishanpura Hotels Private Limited (hereinafter referred to as 'Demerged Company') and Praraj Enterprises Private Limited (hereinafter referred to as 'Resultant company') under Sections 391(2), 394, and Sections 100 to 104 of the Companies Act, 1956 (hereinafter referred to as 'the Act') for approval of the Scheme of Arrangement (hereinafter referred to as 'the Scheme') between the Demerged Company and the Resultant company.

2. The Demerged Company and the Resultant Company have been hereinafter jointly referred to as 'the Petitioner Companies'.

3. The registered offices of the Petitioner Companies are situated in the National Capital Territory of Delhi, and therefore, this Court has the necessary jurisdiction to adjudicate the present petition.

4. The Demerged Company was incorporated under the Act on 22.08.1988 with the Registrar of Companies, Delhi & Haryana at New Delhi.

5. The Resultant Company was incorporated under the Companies Act, 2013 on 07.10.2015 with the Registrar of Companies, Delhi & Haryana at New Delhi.

6. The authorized share capital of the Demerged Company as on 31.03.2015 is, Rs.2,50,00,000/-, divided into 2,50,000 Equity Shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the Demerged Company is, Rs.2,50,00,000/-, divided into 2,50,000 Equity Shares of Rs.100/- each.

7. The present authorized share capital of the Resultant Company is Rs.1,00,000/-, divided into 10,000 Equity Shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the Resultant Company is Rs.1,00,000/-, divided into 10,000 Equity Shares of Rs.10/- each.

8. It has been stated on behalf of the Petitioner Companies that there are no proceedings pending against them, under Sections 235 to 251 of the Act and/or under their corresponding sections of the Companies Act, 2013.

9. It has been further stated on behalf of the Petitioner Companies that the Scheme has been approved by the respective Board of Directors (BOD) of the Petitioner Companies. Copies of the BOD resolutions dated 16.11.2015 have been filed and the same are on record.

10. The Copies of the Memorandum of Association and Articles of Association, of the Petitioner Companies, have been duly filed as Annexures to Company Application (Main) No. 78 of 2016, which earlier came to be filed by the Petitioner Companies. The same are on record. The audited financial statements, as on 31.03.2015, along with the auditor's report, pertaining to the Demerged Company, have also been duly filed by Company and the same are on record. It has been submitted on behalf of the Petitioner Companies that the Resultant Company has been incorporated on

7th October, 2015, for the purpose of the De-merger and yet to prepare its first audited accounts.

11. A copy of the Scheme of Arrangement has been placed on record and the salient features of the Scheme have been incorporated and set out in detail in the Petition. It has been stated on behalf of the Petitioner Companies that the de-merger will enable the Demerged and Resulting Companies to decide on the financial and other resources suitable for their respective businesses; it will provide scope for independent expansion without committing the existing organization in its entirety; the De-merger will have beneficial impact on the Demerged and the Resulting Companies, their employees, shareholders and other stakeholders and all concerned.

12. To recapitulate, the Petitioner Companies had, in the earlier round, filed an application, being Company Application (Main) No. 78 of 2016, whereby a prayer was sought, seeking directions of this court to dispense with the requirement of convening the meeting of the Shareholders and Unsecured Creditors of the Demerged Company and Shareholders of the Resultant company.

13. Further, this Court, by way of its order dated 19.07.2016, dispensed with the convening of meetings of Shareholders and Unsecured Creditors of the Demerged Company and Shareholders of the Resultant Company.

14. Pursuant to the same, the Petitioner Companies have filed the present Petition. Notice in this Petition was issued by this Court, by way of order dated 01.08.2016. Notice in the present petition was accepted on behalf of the Regional Director (RD), Northern Region.

15. Furthermore, vide order of this Court dated 01.08.2016, citations were directed to be published. It has been noted that Citations were published, on 29.08.2016, in Delhi Editions (Hindi as well as English editions) of the newspaper, namely, 'Business Standard', in compliance with the order of this court dated 01.08.2016. An affidavit dated 22.09.2016 demonstrating service of the Petition on the Registrar of Companies and the Regional Director, Northern Region as well as publication of citations in the newspapers has been filed and the same is on record.

16. Further, in response to the notices issued in the Petition, the Regional Director, Northern Region, Ministry of Corporate Affairs, filed his affidavit dated 30.11.2016 wherein, *inter alia*, it has been stated that he has no objection to the sanction of the Scheme subject to the observations made in paragraph no. 8 of the said affidavit. The said paragraph has been extracted hereinbelow:

> "That the Deponent states that the Petitioner Companies have vide para 35 of the reply stated that the present authorized capital of the Resultant Company is not sufficient to accommodate issue of new shares to the members of the Demerged Company on Demerger. However, in terms of the

> provisions of Para 2.3.6 of the Scheme of Arrangement, the Resultant Company shall increase/modify its Authorized Share Capital for implementing the terms of the Scheme, to the extent necessary.
> In this regard, the Petitioner Resultant Company may be directed to comply with the applicable provisions of the Companies Act, 2013 for increase in the Authorized capital of the Company."

17. Learned counsel appearing on behalf of the Petitioner Companies undertakes to comply with the applicable provisions under the Companies Act, 2013 for the increase in the authorized share capital of the Resultant Company.

18. In view of the foregoing, Ms. Aparna Mudiam, Assistant ROC appearing on behalf of the Regional Director, states that no further objections remain to the grant of sanction to the Scheme.

19. The Petitioner Companies, vide affidavit dated 26.11.2016, have submitted that neither the Petitioner Companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 29.08.2016.

20. In view of the foregoing and upon considering the approval accorded by the members and creditors of the Petitioner Companies to the Scheme; the affidavit filed by the Regional Director, Northern Region, Ministry, of Corporate Affairs; and the circumstance that the objection raised in the affidavit of the Regional Director has been satisfied, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under section 391(2) and 394; 100 to 104 of the Companies Act, 1956. The Petitioner Companies will however, comply with the statutory requirements in accordance with law.

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

22. Resultantly, it is hereby directed that the Petitioner Companies will comply with all the provisions of the Scheme.

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 action being taken against, persons, directors and officials of the petitioner companies.

24. It is made clear, that this order shall 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.

25. The Petitioner Companies shall deposit a sum of Rs.50,000/- by way of costs with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi within a period of two weeks from today.

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

SIDDHARTH MRIDUL, J

JANUARY 06, 2017
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