

IN THE HIGH COURT OF BOMBAY AT GOA**COMPANY APPLICATION NO. 24 OF 2019****IN****COMPANY PETITION NO. 4 OF 2012**

Zuri Hotels and Resorts Private
Limited, a Company registered
under the Companies Act, 1956
having its registered office at the
Zuri Varca, Goa White Sands
Resort & Casino, Varca Beach,
Varca – 403 721.

... Applicant

Versus

.....

... Respondent

Mr. Ram Kakkar, Advocate for the Applicant.

Coram:- M. S. SONAK, J.

Date:- 29th November, 2019

P.C.

Heard Mr. R. Kakkar, learned counsel for the Applicant.

2. This application seeks certain directions in respect of an order dated 16th August, 2012 made by this Court in Company Petition No.4 of 2012 by which a Scheme of Arrangement (in the nature of De-Merger) and transfer of undertakings between the Applicant and two other companies belonging to the same group of amalgamation came to be sanctioned

subject to modification recorded in the minutes of the order accompanying the said order.

3. The order dated 16th August, 2012, *inter alia* involved the transfer and vesting of certain immovable properties, the details whereof have been set out not only in the scheme but also in the present application. Accordingly, the Applicant applied for mutation before the Revenue Authorities in Kerala, since such immovable properties were situated in Kerala. This application was rejected by the said Authorities vide order dated 5th February, 2016.

4. The Applicant aggrieved by such rejection instituted a petition before the Hon'ble Kerala High Court bearing No. WP(C) No.10939 of 2017. This was allowed and the Revenue Authorities were directed to reconsider the Applicant's application for mutation by taking into account the directions and observations contained in the order of the High Court.

5. The Revenue Authorities instituted a writ appeal against the order dated 5th March, 2018, which was disposed of by the Division Bench of Hon'ble Kerala High Court by an order dated 26th August, 2019. The material part of the order dated 26th August, 2019 reads as follows :-

“ We find from a perusal of the Registration Act, 1908, and in particular, Section 89(5) of the said Act, that every Court passing any decree or order creating, declaring, transferring, limiting or extinguishing any right, title or interest to or in

immovable property in favour of any person, is expected to send a copy of such decree or order, together with a memorandum describing the property as far as may be practicable, in a manner required by Section 21, to the Registering Officer within the local limits of whose jurisdiction the whole or any part of immovable property comprised in such order is situated, and such officer has to file the copy and memorandum in his Book No.1. The entry of the details of the property in Book No.1 is the starting point for the enquiry that is then to be made by the authorities functioning under the Transfer of Registry Rules, 1966. We feel, therefore, that an application for mutation under the Transfer of Registry Rules, 1966, before the Village Officer, Kumarakom in the instant case, should be preceded by the procedure contemplated under Section 89 of the Registration Act, read with Section 21 thereof, and only thereafter, can the Village Officer, Kumarakom, be expected to act upon the application for transfer of registry submitted by the writ petitioner. Hence, while disposing this Appeal, by upholding the directions given by the learned Single Judge for the reasons mentioned in the impugned judgment, as supplemented by the reasons given in this judgment, we also direct that, as and when a fresh application for mutation is preferred by the writ petitioner, after following the procedure contemplated under Section 89(5) read with Section 21 of the Registration Act, the Village Officer, Kottayam, shall proceed to consider the said application and effect mutation thereof, without insisting on a registration of the orders of the Bombay High Court sanctioning the schemes of amalgamation/de-merger/re-organisation in the Company Petitions aforementioned. The mutation shall be effected within a period of three weeks from the date of receipt of the fresh application from the writ petitioner company as indicated above.”

(Emphasis supplied)

6. In order to comply with the steps spelt out in the aforesaid order dated 26th August, 2019 as also in order to comply with the provisions of Section 21 and Section 89(5) of the Registration Act, 1908 as applicable to the State of Kerala, the present application has been filed by the Applicant herein.

7. Since the circumstances in which this application has been filed have been explained in sufficient detailed in the application and such explanation is backed by the orders made not only by this Court but also by the Hon'ble Kerala High Court, there can be no difficulty in granting the reliefs in terms of the prayer clauses (A), (B) and (C) of this application. In fact, such reliefs are necessary so that this Court's order dated 16th August, 2012 is fully and effectively implemented.

8. Accordingly, this application is made absolute in terms of prayer clauses (A), (B) and (C). There shall be no order as to costs.

9. The issuance of certified copy is expedited upon payment of usual charges.

M. S. SONAK, J.

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