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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - II, CHENNAI**

CP (CAA)/6 & 7/(CHE)/2021 &

In

CA/344 & 345/CAA/2020

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of *Scheme of Amalgamation*
Between

M/s. VAIDURIYA HOTELS PRIVATE LIMITED

CIN: U55101TZ1996PTC007272

Reg Off:

No. 72, Geetha Hall Road,
Coimbatore – 641 018

... 1st Petitioner/Transferor Company

M/s. RATNAA LAKSHMI HOTELS PRIVATE LIMITED

CIN: U55101TZ2002PTC010387

Reg Off:

No. 73, Geetha Hall Road,
Coimbatore – 641 018

...2nd Petitioner /Transferee Company
And

Their Respective Shareholders and Creditors

Order Pronounced on 1st June 2022

CORAM:

**Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Petitioners : Mr. A R Ramanathan, Advocate

COMMON ORDER

Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)

Under Consideration are two separate Applications filed by the Petitioners above named for the purpose of the approval of the Composite Scheme of Amalgamation (hereinafter referred to as the 'SCHEME') as contemplated between the Petitioner Companies viz.



M/s. VAIDURIYA HOTELS PRIVATE LIMITED (1st Petitioner / Transferor Company) and **M/s. RATNAA LAKSHMI HOTELS PRIVATE LIMITED** (2nd Petitioner / Transferee Company) under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 (hereinafter referred to as '*the Act*') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (hereinafter referred to as '*the Rules*') pursuant to the Scheme proposed between the Petitioner Companies and the said Scheme is also annexed to the typed set filed along with the above mentioned applications.

2. The Composite Scheme of Amalgamation as contemplated between the Petitioner Companies involves the following parts:

- **Part I** – Deals with Definitions, Interpretation and Share Capital.
- **Part II** – Deals with Rationale of the Scheme.
- **Part III** – Deals with transfer and vesting.
- **Part IV** – Deals with general terms and conditions that will be applicable to the Scheme.

3. 1ST MOTION APPLICATION – IN BRIEF

3.1 The Petitioner Companies have filed the First Motion Application vide CA/344-345/CAA/2020 seeking directions for dispensation of the meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Transferor and Transferee Companies.



3.2 Based on such applications moved under Sections 230-232 of the Companies Act, 2013; directions were issued by this Tribunal, vide order dated 04.02.2021 for dispensation of the meetings of the Equity shareholders, Secured and Unsecured Creditors of the Petitioner Companies based on the consent affidavits filled. Further, directions were issued to the Petitioner Companies to issue notice to the Statutory / Regulatory Authorities viz. (a) Central Government through the office of Regional Director (Southern Region), MCA (b) RoC, Chennai, MCA (c) the Income Tax Department Authorities and other sectoral regulators, who may govern the working of the respective companies in relation to the Scheme, as well as for paper publication to be made in "The New Indian Express", English (Tamil Nadu Edition) and "Dina Mani" Tamil (Tamil Nadu Edition).

3.3 Subsequent to the said order, the Petitioner Companies have filed the second motion Petition before this Tribunal on 05.03.2021 for sanction of the Scheme of Amalgamation as contemplated between the parties.

4. **RATIONALE OF THE SCHEME**

4.1 The learned Counsel appearing on behalf of the Petitioner Companies submitted that the rationale and

circumstances that have necessitated the proposed scheme are as follows:

4.1.1 The Transferor Company is interalia engaged in the business of Hotels, Restaurants, Lodges and holiday resorts etc, and Transferee Company is also interalia engaged in the same business and as such both companies having identical synergies in operations would stand benefited by proposed amalgamation.

4.1.2 By proposed amalgamation, better and efficient infrastructure, amenities and facilities could be provided to the ever changing needs of customers and guests in the said hotel business. It would also pave way for expansion in the hotel business.

4.1.3 The combine entity by virtue of having a strong financial and managerial resource base and being capable of investing in expansion of business with a view to optimally utilise the capacity created over a period of time with a view to be an integrated position to achieve the objects of the amalgamation.

4.1.4 Both the companies are owned and controlled by same group of persons i.e common shareholders and the proposed amalgamation will enable both the companies to complement each other in the various areas of expertise connected with the conduct of hotel and lodging business at large in a more meaningful manner, through effective market positioning including areas of costs efficiency issues.

4.1.5 The proposed amalgamation will bring-in economy in the scale of operation in order to fully explore the brand loyalty created over a period of time by both the entities with a view to optimise the overall profitability of the operations.

4.1.6 It would only be advantageous and in the interest of both the companies that the amalgamated business would create a strong marketing base and pave ways for future expansion and growth in the areas of hotel business.



4.1.7 Both the Companies are profit making companies. The assets including business goodwill owned hitherto by the Transferor Company by virtue of this amalgamation would vest with the Transferee Company, thereby ensuring no adverse effect in the overall financial condition of the Transferee Company.

4.1.8 The scheme thus will not be prejudicial to the interest of the creditors of both the companies, since, no compromise is entered into between them and all the existing liabilities of the Transferor Company would stand vested in the Transferee Company without any financial or otherwise compromise.

4.1.9 The proposed amalgamation would lead to better operational planning and financial management including reduction in the expenditure in running the entity, thereby, making hope for maximising the synergies associated with the amalgamation.

5. In compliance with the said directions issued by this Tribunal in CA/CAA/344 & 345/2020 vide common order dated 04.02.2021, the Petitioner Companies have filed an affidavit of service before the Registry of this Tribunal vide dairy number 1270 on 05.03.2021 in relation to the compliance of the order passed by the Tribunal as noted above and upon perusal of the same discloses that the Petitioner Companies have individually effected the paper publication as directed by the Tribunal in the issue of "The New Indian Express", English (Tamil Nadu Edition) and "Dina Mani" (Tamil Nadu Edition) on 21.02.2021. It is also seen that notices have been served to (i) The Regional Director, Southern Region, Chennai on 22.02.2022 (ii) Registrar of Companies, Coimbatore (iii) Income Tax Department, Coimbatore on 20.02.2021 and (iv) Official Liquidator, Chennai on 22.02.2021 by

the respective Companies. Affidavits of Service dated 05.03.2021 stating compliance of the directions of the Tribunal was filed. Pursuant to the service of notice of the petition the following statutory authorities have responded as follows;

6. STATUTORY AUTHORITIES

6.1. REGIONAL DIRECTOR

6.1.1 The Regional Director, (*hereinafter referred to as 'RD'*) Chennai to whom the notice was issued on 22.02.2021, had filed his Report dated 09.02.2021 before this Tribunal. It was observed that as per the report of RoC, Coimbatore, the Petitioner Companies are regular in filing their statutory returns. Further, it is also stated in the report that no prosecution / Inspection or Investigation is pending against the Petitioner Companies. However, the RD in para 3 has made an observation, which is extracted hereunder:

"3) It is further submitted that as per clause 1.2 of part I of the scheme, the appointed date is 01.04.2019, which is not acceptable, as it is ante-dated beyond a year and is not in accordance with section 232(6) of the Companies Act, 2013. Hence, it is prayed that the Hon'ble NCLT, Chennai may direct the Company to revise its appointed date or may determine an appointed date as it thinks fit."

6.1.2 With regard to the above mentioned objection in para 3 the Petitioner Companies have filed their clarification along with the synopsis filed, which is extracted hereunder:



- i. *At the outset it is submitted that the section 232 (6) as stated by Regional Director does not specify or mandate the "Appointed Date" should be within 1 year etc., However on the other hand the said observation of the Regional Director with respect to 'Appointed Date' could probably emanate from the General Circular No. 09/2019 dated 21st August 2019 issued by Ministry of Corporate Affairs and captioned as 'clarification under section 232(6) of the Companies Act, 2013'. The said General Circular clarifies that if the 'Appointed Date' is ante dated beyond a year from the date of filing of Application before this Hon'ble Tribunal, it is incumbent on the concerned companies to justify the same in the said scheme of amalgamation and further the same should not be against the public interest (clause C of page 3 of General Circular). In other words the said General Circular permits filing of Company Application within one year in the "Appointed Date" It is submitted that "Appointed Date" in the case on hand is 1# April 2019 and the Company Applications were filed before this Hon'ble Tribunal on 20.02.2020 well within the one year period permitted under the General Circular No.09/2019.*
- ii. *The Petitioners submit that they have more fully complied with General Circular No.09/2019 and filed the Company Applications within one year on 20.02.2020 which is well within one year from the "Appointed Date" of 01.04.2019.*
- iii. *Without prejudice to the above submission that the Petitioner have more fully complied with the Circular No.09/2019 and filed the Company Applications within a year from the "Appointed Date", it is submitted that it is only due to peculiar and inevitable circumstances of COVID, lockdown was promulgated, 1 month after filing w.e.f 25.3.2020. Hence due to said inevitable constraints applicable for all the applications were numbered and listed for first hearing on 14.10.2020 and due to lockdown it could not be taken on that day and orders were passed in the said Company Applications for dispensing all the meetings of both the Companies viz. CA No.344 & 345/CA/2020 on 14.10.2020. In any event the period from 15.03.2020 till 28.02.2022 shall stand excluded on account of pandemic as per the Order of Hon'ble Supreme Court dt.10.01.2022 passed in Suo moto Writ Petition (civil) No.3 of 2020.*



- iv. *It is submitted that the Regional Director would not have had the opportunity to note the date of filing of the Company Applications by the Petitioners on 20.02.2022 and hence probably the said observations are being made out of sheer oversight without any intention.*
- v. *The copy of above said General Circular No.09/2019 and proof to substantiate the date of filing the Company Applications within one year from "Appointed Date" issued by the Registry of this Hon'ble Tribunal is filed herewith as Annexure P 1 and P2 respectively.*
- vi. *The Regional Director has not made any other observation as evident from the report.*
- vii. *In the light of the above submissions made by the Petitioners, the said only observation made by the Regional Director does not factually survive for consideration and deserves to be rejected.*

6.2. OFFICIAL LIQUIDATOR

6.2.1 The Official Liquidator (In short, 'OL') in its report dated 15th April 2021, submitted that M/s. A.N. Sankaran & Co., Chartered Accountant has verified the books and accounts of the Transferor Companies. The report of the Official Liquidator states that the Chartered Accountant has examined the records of the Transferor Companies and prima facie, nothing adverse or objectionable issues affecting the Transferor Companies or its members or creditors or the public interest have been noticed. The Chartered Accountant is of the opinion that the affairs of the Transferor Companies



have not been conducted in a manner which is prejudicial to the interest of the members or to the public interest.

6.2.2 Apart from the above observations made by the Chartered Accountants, the Official Liquidator has also sought to fix the remuneration payable to the Auditor who has investigated into the affairs of the Transferor Company. In this regard, this Tribunal had directed the Applicant to pay a sum of **Rs.50,000/-** (Rupees Fifty Thousand Only) to the Official Liquidator for the payment of fees payable towards the Auditor, the same was paid and compliance of the payment is also taken on record.

6.3. INCOME TAX DEPARTMENT

6.3.1 In spite of notice having been served to the Income Tax department by the Companies on 20.02.2021, there was neither any representation nor any report filed by the said authorities. In the said circumstances as per section 230(5) of the Companies Act, 2013, this Tribunal presumes that the said Department does not have any objection to the sanction of the Scheme.

6.3.2 However, in Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi with a view to protect the interest of the revenue, has made the

following observations with regard to the right of the IT Department in the Scheme of Amalgamation,

"taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in RE: Vodafone Essar Gujarat Limited v. Department of Income Tax (2013)353 ITR 222 (Guj) and the same being also affirmed by the Hon'ble Supreme Court and as reported in (2016) 66 taxmann.com.374(SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15,2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutorily dues from the transferor or transferee or any other person who is liable for payment of such tax dues the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned."

6.4 OTHER STATUTORY AUTHORITIES

6.4.1 It is submitted by the Learned Counsel for the Petitioners that the equity shares of the Petitioner Companies are not listed with the stock exchanges, thus the Petitioner Companies do not require compliance of Listing Agreement or SEBI Rules/Regulations.

6.5 ACCOUNTING TREATMENT

6.5.1 The Learned Counsel for the Petitioner Companies have stated that the Statutory Auditors of the Petitioner Companies have examined the Scheme and certified

that the Petitioner Companies have complied with provisions of the Companies Act, 2013 and the Accounting Treatment contained in the proposed Scheme of Amalgamation is in compliance with the Applicable Indian Accounting Standards. The Petitioner Companies have individually filed the Auditor's Certificate in relation to the accounting treatment proposed in the Composite Scheme being in compliance with the Accounting Standards notified under Section 133 of the Companies Act, 2013 on 03.02.2020.

7. **OBSERVATIONS OF THIS TRIBUNAL**

7.1 After analyzing the Scheme in detail, this Tribunal is of the considered view that the scheme as contemplated amongst the petitioner companies seems to be *prima facie* in compliance with the provisions of the Companies Act, 2013. Further there seems to be no objection on the part of the shareholders that the Scheme is in no way detrimental to the interest of the shareholders of the Company. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the Scheme of Amalgamation along with Company Petitions as well as the prayer made therein.

7.2 The Learned Counsel for the Petitioner Companies submitted that no investigation proceedings are pending against the Transferor or Transferee Companies under the provisions of the Companies Act, 1956 or the Companies Act,



2013 and no proceedings against the petitioner companies for oppression or mismanagement have been filed before this Hon'ble Tribunal or erstwhile Company Law Board.

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

7.4 While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

(i) That all properties, right and interest of the the Transferor Company shall pursuant to section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Transferee Company as per the terms of the Scheme of Arrangement.

(ii) That all the liabilities, powers, engagements, obligations and duties of the Transferor Company shall pursuant to Section 232 (3) of the Companies Act, 2013

without further act or deed be transferred to the Transferee Company and accordingly the same become the liabilities and duties of the Transferee Company.

(iii) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.

(iv) That all the employees of the Transferor Company in service on date immediately preceding the date on which the Scheme finally take effect shall become the employees of the Transferee Company without any break or interruption in their service.

(v) The Appointed Date of the said Composite Scheme shall be 1st April 2019 as specified in the scheme. The Effective Date shall be within 45 days from the date of this Order.

(vi) That the Transferee Company shall file the revised Memorandum and Articles of Association with the Registrar of Companies concerned and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company.

(vii) That the Transferee Company do without further application allot to such members of the Transferor Companies, such notice of dissent, as is required by *Clause 10.1 of Part - III of the Scheme herein* the shares in the Transferee Company to which they are entitled under the said SCHEME.



(viii) That the Transferee Company, shall within thirty days of the date of receipt of this order cause a certified copy of this order to be delivered to the Concerned Registrar of Companies along with a copy of the Composite Scheme of Amalgamation for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without winding up. Accordingly, the files relating to the said companies shall be consolidated in consonance with the Scheme.

(ix) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

8. That the Company Petitions are allowed and the Composite Scheme of Amalgamation annexed with the Company Petitions is hereby **sanctioned** and shall be binding on the members, Secured, unsecured creditors and shareholders of the Transferor/ Transferee Company.

9. Accordingly, the Composite Scheme stands sanctioned and CP(CAA)/6&7(CHE)/2021 stand **disposed of**.

-Sd-

ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-

Justice (Redt.) S.RAMATHILAGAM,
MEMBER (JUDICIAL)

Mohana Priya