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T.P.No. 43/2017
[C.P.No. 631/2016]
Middleton Hotels Pvt. Ltd.
& Moksh Investors Pvt. Ltd.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Shri V. P. Singh
Hon'ble Member (J)

Shri S. Vijayaraghavan
Hon'ble Member (T)

T.P.No. 43/2017
[C.P.No. 631 of 2016 Transferred from High Court]
[Connected with C.A.No. 485 of 2016]

In the matter of : Sections 391(2) and 394 of the Companies
Act, 1956.

And

In the matter of: 1. Middleton Hotels Private Limited
2. Moksh Investors Private Limited

... Petitioners

Counsels on Record.

1. Mr. Arun Kr. Mishra, Advocate] For the Petitioners
2. Mr. Shashi Agarewal, CA]

Date of Pronouncing the Order : 1-3-2017

ORDER

Per Shri Vijai Pratap Singh, Member (J)

This C.P. No. 631 of 2016 has been filed for sanctioning the
Scheme of Amalgamation of Moksh Investors Private Limited

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(hereinafter referred to as "Transferor Company") with Middleton Hotels Private Limited (hereinafter referred to as "Transferee Company") where all the assets, properties, rights and claims whatsoever of the Transferor Company and entire undertaking together with all rights and obligations relating thereto are proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation, which has been annexed as Annexure "A" to the company petition. This petition has been received after it was transferred from the Hon'ble Calcutta High Court. Before transfer Hon'ble Calcutta High Court passed an order dated 5th December, 2016 wherein it is mentioned that Learned Counsel appearing on behalf of the Central Government has produced before this court a communication dated 23rd November, 2016 showing pendency of the search and seizure operation in respect of Surana Group of Company.

Under the circumstances, the matter is adjourned for eight weeks. The Income Tax Authorities are directed to conclude the proceeding in the meantime. Let a copy of this order be

communicated by the learned Advocate representing the Central Government to the Assistant Commissioner, Income Tax, Central Circle-4(1), Kolkata immediately.

There is no information whether the Counsel representing the Central Government has duly complied with the direction of the Hon'ble Calcutta High Court dated 5th December, 2016 and whether communication of the said order of the Hon'ble Calcutta High Court to the Income Tax Authorities has been made or not.

Learned Counsel for the petitioners had argued that in this matter under the Scheme of Amalgamation the assets and liabilities of the Transferor Company are to be transferred and vested in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation.

Ld. Counsel has also relied on the case law of the Hon'ble Gujarat High Court reported in **[2013] 35 taxmann.com 397 (Gujarat) Vodafone Essar Gujarat Ltd. -vs- Department of Income Tax** wherein on the objection of the Income Tax Dept. order was passed for sanctioning of the scheme, even after the objection of the Income

Tax Dept. while protecting the right of the Income Tax Dept. to recover due in accordance with law irrespective of sanction of scheme.

The petitioners have also filed order of the Hon'ble Supreme Court passed in S.L.P. against the above mentioned order, which is reported in [2016] 66 taxmann.com 374 (SC). In the above mentioned case the Hon'ble Supreme Court has held that Income Tax Dept. is entitled to take out appropriate proceedings for recovery of any tax, statutory due from the transferor or transferee company or any other person who is liable for payment of such tax due. With the above observation Hon'ble Supreme Court has dismissed the S.L.P.

From the case law cited by the petitioner it appears that the Income Tax Dept. opposed proposed scheme on the ground that the scheme was just a device to avoid tax liability of the appellant.

In the present case from the report of Income Tax Dept. dated 23/11/2016 it appears that Income Tax Dept. has informed that search and seizure operation was carried out in the Surana Group of

companies, including the transferor and transferee company on 02/03/2016 and notice under Section 153A of the Income Tax Act was issued to the Surana Group and the assessment procedure is under process. This procedure also require involvement from assessee's side also. The case could be disposed early if it is carried out smoothly. If the amalgamation procedure of the above mentioned transferor and transferee companies are sanctioned, the whole assessment will be disturbed. On the basis of the above report dated 23/11/2016 of the Income Tax Department, on 5th December, 2016, the Hon'ble Calcutta High Court has passed the order for adjournment of the proceedings for 8 weeks and further direction was issued to the Income Tax Authorities to conclude the proceedings in the meanwhile. The Counsel representing the Central Government was also directed to communicate the order to the Income Tax Authorities. Till date we are not clear whether Hon'ble Calcutta High Court's order dated 05/12/2016 was communicated to the Income Tax Authorities or not and what is the status of the

proceedings initiated by the Income Tax Authorities on the basis of search and seizure carried on 02/03/2016.

Facts of the case cited by the petitioners are quite different from this case. Here, proceeding under Section 153A of the Income Tax Act, on the basis of search and seizure operation of Transferor and Transferee companies on 02/03/2016, is pending and assessment procedure is in process. However, if the Income Tax Authorities are not complying with the Hon'ble Calcutta High Court's order and fail to complete the assessment of the Transferor and Transferee Companies by 31st March 2017 then this Tribunal will be constrained to pass the necessary orders without waiting any further.

ORDER

We hereby direct the Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs to file affidavit regarding compliance of the directions of the Hon'ble Calcutta High Court dated 05/12/2016 and status of the proceedings

initiated by the Income Tax Authorities on the basis of search and seizure operations on the transferor and transferee companies.

Regional Director who is representing the Central Government is hereby directed to file an affidavit by 03/04/2017 regarding the status of the proceedings.

List the matter on 10/04/2017 for arguments / further orders.



(S. Vijayaraghavan)
Member (T)



(Vijai Pratap Singh)
Member (J)

Signed on this the 1st day of March 2017