

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
TRANSFERRED COMPANY SCHEME PETITION NO. 176 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 637 OF 2016  
(HIGH COURT TRANSFERRED PETITION).

PEONY INVESTMENTS LIMITED

....Petitioner/ the Transferor Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
TRANSFERRED COMPANY SCHEME PETITION NO. 177 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 638 OF 2016  
(HIGH COURT TRANSFERRED PETITION).

HEGDE HOTELS (INDIA) PRIVATE LIMITED

....Petitioner/ the Transferor Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
COMPANY SCHEME PETITION NO. 178 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 639 OF 2016  
(HIGH COURT TRANSFERRED PETITION)

TUNGA INFRASTRUCTURE PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 2013 (18 of  
2013);

AND

In the matter of the Companies Act, 1 of 1956  
and other relevant provisions of the Companies  
Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Composite Scheme of Amalgamation and Arrangement between PEONY INVESTMENTS LIMITED, the First Transferor Company and HEGDE HOTELS (INDIA) PRIVATE LIMITED, the Second Transferor Company or Demerged Company and TUNGA INFRASTRUCTURE PRIVATE LIMITED, the Transferee Company or Resulting Company and their Respective Shareholders And Creditors.

Called for hearing

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co.,  
Advocate for the Petitioner.

Coram: B.S.V. Prakash Kumar, Member (J)  
V. Nallasenapathy, Member (T)

Date: 7<sup>th</sup> June, 2017

**MINUTES OF THE ORDER**

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Composite Scheme of Amalgamation and Arrangement between PEONY INVESTMENTS LIMITED, the First Transferor Company and HEGDE HOTELS (INDIA) PRIVATE LIMITED, the Second Transferor Company or Demerged Company and TUNGA INFRASTRUCTURE PRIVATE LIMITED, the Transferee Company or Resulting Company and their Respective Shareholders.

2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013 to a Composite Scheme of Amalgamation and Arrangement between PEONY INVESTMENTS LIMITED, the First Transferor Company and HEGDE HOTELS (INDIA) PRIVATE LIMITED, the Second Transferor Company or Demerged Company and TUNGA INFRASTRUCTURE PRIVATE LIMITED, the Transferee Company or Resulting Company and their Respective Shareholders.
3. The Petitioner Companies have approved the said Composite Scheme of Amalgamation and Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Summons for Direction Nos. 637 of 2016 to 639 of 2016 of the Hon'ble Bombay High Court.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioners states that the First Transferor Company has been carrying on the business is invest in, acquire, hold, underwrite, sell or otherwise deal in shares, stock,

debentures, debenture stocks, bonds, negotiable instruments, securities of the Company, Government, Public Body or Authority, Municipal and Local Bodies and the Second Transferor Company has been carrying on the business in hotel, restaurant, café, tavern, bars, refreshment-rooms, boarding and lodging, house keepers, clubs in India or in any other part of the world and the Transferee Company has been carrying on the business of construct, alter, improve, maintain, enlarge, pull down, remove, replace and to develop, work, manage, carry out and control any buildings, residential and commercial complexes, office, factories, warehouses, mills, chawls, hotels, parking lots, shops, roads, ports, airports, highways, tramways, railways, branches or sidings, bridges, wells, reservoirs, dams, multiplexes and other constructions related to civil works, real estate. As per the opinion of the management both the companies are under the same management that the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and it would be advantageous to combine the activities and operations of all the companies into a single Company for synergistic linkages and the benefit of combined financial resources and this will be reflected in the profitability of the Transferee Company and this Scheme of amalgamation would result in merger and thus consolidation of business of all the Transferor Companies and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform and that the Amalgamation of all the Transferor Companies with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience,

expertise and infrastructure of all the companies and that the merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme and that the Scheme of amalgamation will result in cost saving for all the companies as they are capitalizing on each other's core competency and resources which are expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company and that there is no cross holding and the transferee Company is not holding shares in transferor companies. But all the companies are owned managed and controlled by Sudhakar Hegde and his family

7. The Regional Director has filed a Report on 16<sup>th</sup> day of May, 2017 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

*"IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:*

- a. In addition to compliance of AS-14 (Ind AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (Ind As-8) etc*
- b. As per Clause 1.8 Definitions of the scheme "The Appointed Date" means the 1 April 2016 or such other date as may be mutually agreed upon by the Board of Directors of the of the transferor Company/ ies and transferee Company or as may be decided by the High Court of Judicature at Mumbai or other competent authority may otherwise direct/ fix. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1<sup>st</sup> April 2016.*
- c. As per the existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to Income Tax Department for their comments. It appears that the company vide letter dated 8<sup>th</sup> November, 2016 has served a copy of company petition No. 638 to*



*685 of 2016 along with relevant orders etc., further the Regional Director has also issued a reminder 07.04.2017, to IT Department.*

- d. The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
  - e. In view of the objection raised by the ROC, Mumbai, mentioned at para 13 above Hon'ble NCLT may pass appropriate orders/ orders as deem fit.*
8. So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes that in addition to compliance of AS-14 corresponding (Ind AS-103) accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5/corresponding Ind AS-8 etc.
  9. As far as the observation in paragraph IV (b) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that the appointed date mentioned in the scheme is 1<sup>st</sup> April, 2016.
  10. So far as the observation in paragraph IV (c) and (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law

11. So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that said observations have been dealt with in further Affidavit stating that it will continue to pursue and carry on its Hotel Business as main business as per the main object of the Memorandum of Associations, after effecting the Demerger of its Investment Division.
12. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 11 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
13. The Official Liquidator has filed his report on 10<sup>th</sup> March, 2017 in the Company Petition No. 176 of 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.
14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
15. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 176 of 2017 is made absolute in terms of prayers clause (a) to (d) and 177 and 178 of 2017 is made absolute in terms of prayer clauses (a) to (c).
16. Petitioners are directed to lodge a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, as per the relevant provisions of the Companies Act 1956 / 2013.

17. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any.
18. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition No. 176 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.
19. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy Member (T)

Sd/-

B.S.V. Prakash Kumar Member (J)