

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSP 434 OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of 230 to 232 of the
Companies Act 2013);

AND

In the matter of Scheme of Arrangement
and Amalgamation between Gangetic
Hotels Private Limited, CIN NO
U55101UP2007PTC033633 (Transferor
Company) and Palladium Constructions
Private Limited, CIN NO
U45400MH2008PTC178115 (Transferee
Company) and their respective
Shareholders.

Palladium Constructions Private Limited ... Petitioner Company

Order delivered on 20th July, 2017.

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co
Mr. Ramesh Golap, Assistant Director in the office of Regional
Director

Per: **B.S.V. Prakash Kumar**

Order

1. Heard the learned counsel for the Petitioner Company. No objector has come before the court to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation between Gangetic Hotels Private Limited, the Transferor Company with Palladium Constructions Private Limited, the Transferee Company and their respective shareholders.
3. Learned Counsel for the Petitioner states that the Petitioner Company is presently engaged in the business of construction and development of residential real estate.

The Amalgamating Company is engaged in the business of developing and owning hotels and currently owns the Hotel known as Courtyard by Marriott in Agra.

4. The rationale for the scheme is that the Amalgamating & Amalgamated Company are under the same management and are subsidiaries of the Phoenix Mills Limited. With a view to maintain a simple corporate structure and avoid duplication of expenses and corporate procedures, it is desirable to merge and amalgamate all the undertaking of the Amalgamating Company into Amalgamated Company. The amalgamation of all the undertaking of the Amalgamating Company into the Amalgamated Company will facilitate consolidation of the undertakings of both the entities in order to enable effective management and unified control of operations. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.
5. The Petitioner Company has approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the Company Scheme Petition filed by the Petitioner Company.
6. Counsel appearing on behalf of the Petitioner Company further states that the Petitioner Company has complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies is accepted.
7. The Regional Director has filed his Affidavit on 13th July, 2017 stating therein, save and except as stated in part IV "a" to "e" it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In part IV, of the said affidavit it is stated that:-

- (a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting enteries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8)etc.,*
- (b) *Regarding Clause 14 of the Scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising*

out of the same shall be debited to Goodwill Account and will not be adjusted against the Profit & Loss Account of the Transferee Company.

- (c) *As per the existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 6th March 2017 has served a copy of Company Scheme Application No. 154 of 2017 along with relevant orders etc., further the Regional Director has also issued a reminder on 3rd July, 2017 to the 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) *That the registered office of the Transferee Company is situated in the State of Uttar Pradesh. Hence the Transferee Company has to file similar petition before the Hon'ble NCLT, Allahabad Bench for approving the said scheme.*
- (f) *As far as the observations made in paragraph IV(a) of the Report of Regional Director is concerned, Petitioner Company through its Counsel undertakes that in addition to compliance of AS-14 (IND AS-103) the Petitioner/Transferee Company shall also 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.,*
8. In so far as observations made in paragraph IV(b) of the Report of Regional Director is concerned, the Transferee company through their Counsel undertakes that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against the Profit & Loss Account of the Transferee Company .
9. In so far as observations made in paragraph IV (c) & (d) of the Report of Regional Director is concerned, the Transferee Company through their counsel undertakes that the Transferee Company undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
10. In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Counsel for the Petitioner clarifies that the Transferor

Company has filed necessary Company Application before the Allahabad Bench for approving the said scheme.

11. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 8 to 10 above. The clarifications and undertakings given by the Petitioner Company are hereby accepted.
12. 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.
13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No 434 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clause (a) & (b) of the Petition.
14. Petitioner Company is directed to file 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, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.
15. The Petitioner Company to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order of the sanctioning the Scheme by NCLT Allahabad Bench.
16. The Petitioner Company to pay costs of Rs. 25,000/- to the Regional Director, Western Region, Mumbai.
17. Costs to be paid within four weeks from the date of receipt of order.
18. All authorities concerned to act on a copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
19. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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