

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CP NO.200/2016
RT CP(CAA) NO.138/Chd/Hry/2017

**Under Sections 391 to 394 of
the Companies Act, 1956**

In the matter of:

IHG IT Services (India) Private Limited, an existing company incorporated under the 1956 Act and has its Registered Office at 11th Floor, Building No.10, Tower C, DLF Cyber City, DLF Phase-2, Gurgaon, Haryana-122002, India, Pan No.AAHCS8349E, AO Gurgaon Branch, through its Authorized Representative Mr. Rohit Narang.

...Petitioner/Transferor Company

AND

Intercontinental Hotels Group (India) Private Limited, an existing company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 11th Floor, Building No.10, Tower C, DLF Cyber City, DLF Phase-2, Gurgaon, Haryana-122002, India, Pan No.AAGCS7613G, AO Gurgaon Branch, through its Authorized Representative Mr. Rohit Narang.

..Petitioner/Transferee Company

Order delivered on: 06.07.2017

Coram: Hon'ble Mr. Justice R.P.Nagrath, Member(Judicial).

For the petitioner:

1. Mr. Rohit Khanna, Mr. Dheeraj Nair
2. Mr. Kunal Chaturvedi and
3. Mr. Raghav Kapoor. Advocates.

For Official Liquidator and

Regional Director:

Ms. Amarpreet Kaur, STA

Order (Oral)

This is a joint Second Motion petition filed by the Petitioner-Companies for approval of the 'Scheme' of amalgamation (for brevity, the 'Scheme') of petitioner No.1 Company IHG IT Services (India) Private Limited, the Transferor-Company with Transferee-Company, i.e., Intercontinental Hotels

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Group (India) Private Limited (for brevity, A-1 and A-2) Companies, respectively. The joint petition is maintainable in the terms of sub-rule (2) of Rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 for short to be referred hereinafter as 'the Rules'. Both the companies are wholly owned subsidiaries of the same parent company i.e. Intercontinental Hotels Group (Asia Pacific) Pte. Ltd.

2. The Petitioner-Companies filed First Motion petition No.166/2016 with prayer for dispensing with meeting of shareholders, secured and unsecured creditors of both the companies and the said prayer was allowed on 20.09.2016 observing that in respect of A-1 Company out of 58 unsecured creditors, 44 gave their consent/approval to the proposed 'Scheme' and they represented 99.83% in value and 75.86% in number of the total unsecured debt. Similarly, out of 42 unsecured creditors of A-2 Company, 31 consented/approved the proposed 'Scheme' and they represented 99.30% in value and 73.81% in number of the total unsecured debt. It was also observed that both the companies do not have any secured creditors. There are two shareholders each, of both the companies who gave their respective approval/consent to the proposed scheme, thus, shareholders meeting was also dispensed with

3. Thereafter, this Second Motion petition was filed under Sections 391 to 394 of the Companies Act, 1956 corresponding to Sections 230 and 232 of the Companies Act, 2013 for sanction of the 'Scheme'.

4. When the matter was listed on 25.10.2016 in the Hon'ble Punjab and Haryana High Court, notice was to be published in 'Indian Express' (English) and 'Jansatta' (Hindi) both Delhi NCR Editions and in the official Gazette of Government of Haryana. The affidavit of compliance dated 14.01.2017 was filed by the

petitioners in the Registry of Hon'ble High Court along with copies of the newspaper clippings dated 09.11.2016 and also copy of the official 'Gazette' notification dated 06.12.2016.

5. Notice of hearing was also directed to be sent to the Regional Director, Ministry of Corporate Affairs, New Delhi and the Official Liquidator. Report by way of Affidavit of Mr. Mahesh Kumar, Incharge Regional Director, Northern Region, Ministry of Corporate Affairs dated 02.05.2017 was filed. The Official Liquidator also filed his report vide forwarding letter dated 08.05.2017 along with the Annexures.

6. I have heard the learned counsel for the petitioners, the official representing the Official Liquidator and the Regional Director and perused the record with their able assistance.

7. It is stated that the authorised share capital of A-1 Company as on 31.03.2016 was ₹5.00 crores divided into 50 lacs equity shares of ₹10/- each with its issued, subscribed and paid-up share capital of ₹4,54,84,430/- divided into 45,48,443 equity shares of the same value. A-2 Company had authorised share capital as on 31.03.2016 to the tune of ₹76,75,40,000 divided into 7,67,54,000 equity shares of ₹10/- each with its issued, subscribed and paid-up share capital of ₹75,54,75,280/- divided into 7,55,47,528 equity shares of the same value. The registered office of both the companies is the same and located at Gurgaon in the State of Haryana and, therefore, the matter falls within the territorial jurisdiction of this Tribunal.

8. The learned counsel for the petitioner-companies submits that there has not been any change in the authorised, issued, subscribed and paid-up share capital of both the companies till date. Both A-1 and A-2 Companies have two

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shareholders each with major shareholding of one Group i.e. Intercontinental Hotels Group (Asia Pacific) Pte. Ltd. and one share each of the nominee of the parent-company.

9. A-1 Company was incorporated on 07.01.2004 and A-2 on 23.08.1996. The 'Scheme' was approved by the Board of Directors of A-1 Company vide resolution dated 11.05.2016 (Annexure P-8) and by A-2 Company vide resolution dated 20.05.2016 (Annexure P-9).

The rationale of the proposed 'Scheme' is as under:-

- (a) *Simplify group structure leading to better administration and reduction in costs from more focused operational efforts, rationalization, standardisation and simplification of the business and compliance processes and the elimination of duplication, and rationalization of administrative expenses.*
- (b) *Providing flexibility in the overall organizational structure of InterContinental Hotel Group's (IHG) operations in India, thus enabling it to achieve operational and management efficiency.*
- (c) *Consequent upon the merger, the Transferor-Company would be able to optimize the resources required for overall general and administrative and operational purposes, and this would reduce the cost of maintaining and using separate resources, and achieve sustainable funding for IHG operations in India in the longer term.*
- (d) *To achieve economies of scale, greater efficiency optimization of logistic and other related economies.*
- (e) *Realignment of the corporate structure of IHG's operations in India in line with its business objectives in order to enhance long term value for its shareholders.*
- (f) *Result in enhanced leveraging capability of the combined entity which in turn will allow the combined entity to undertake future expansion strategies and tap bigger opportunities in the hotel industry.*
- (g) *The Transferee-Company is the flagship entity for IHG's operations in India and, therefore, the merger of the Transferor-Company with the*

Transferee-Company will help achieve all the above objectives and retain identity of the flagship entity without affecting the external facing contracts.

- (h) *The 'Scheme' has been drawn up to comply with the conditions relating to "Amalgamation" as specified under the tax laws, specifically Section 2(1B) of the Income-Tax Act, 1961 ("IT Act"), and other relevant Sections of the IT Act. If any terms or provisions of the 'Scheme' are found to be or interpreted to be inconsistent with any of the said provisions at a later date, whether as a result of any amendment of law or any judicial or executive interpretation or for any other reason whatsoever, the aforesaid provisions of the tax laws shall prevail. The 'Scheme' shall then stand modified to the extent determined necessary to comply with the said provisions. Such modification will however not affect other parts of the 'Scheme'.*

10. As per the 'Scheme' the appointed date is 01.04.2016 or such other date as may be directed by the Appropriate Authority. The petitioner-companies have also attached share valuation report dated 25.05.2016 (Annexure P-11) prepared by MZSK & Associates, Chartered Accountants to the effect that in case the 'Scheme' is approved, 1 (one) fully paid equity share of the face value of ₹10/- each of A-2 Company shall be allotted for every 4 (four) fully paid up equity shares of A-1 Company of the value of ₹10/-. On the basis of this valuation report the provision has been made in the 'Scheme' in paragraph 11.

11. The interest of employees of the Transferor-Company have also been taken care of and it is provided as under:-

On the 'Scheme' becoming effective, the employees, if any, of the Transferor-Company on the effective date shall be deemed to have become the employees of the Transferee-Company and their employment with the Transferee-Company shall be on the following terms and conditions:-

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- (i) *The terms and conditions of service (cost to company basis) applicable to the employees shall not be less favourable than those applicable to them as on the effective date.*
- (ii) *The services of such employees shall not be treated as having been broken or interrupted for the purpose of provident fund/employee state insurance, gratuity, superannuation fund or otherwise and for all purposes will be reckoned from the date of their respective appointments with the concerned Transferor-Company.*
- (iii) *The Transferee-Company undertakes to continue to abide by the agreement/settlement if any entered into by the Transferor-Company with any employee of any of the Transferor-Company which is in force as on the Effective Date.*
- (iv) *The existing benefits such as provident fund, gratuity, and any other benefits, including employee's welfare trust, if any, created by the Transferor-Company for their employees shall be transferred to the Transferee-Company. The Transferor-Company shall take all steps necessary for the transfer, where applicable, of the provident fund, gratuity fund and/or schemes and trusts, including employee welfare trust, pursuant to the 'Scheme', to the Transferee-Company. All obligations of the Transferor-Company with regard to the said fund or funds as defined in the respective trust deed and rules shall be taken over by Transferee-Company with the intent that all rights, duties, powers and obligations of the Transferor-Company in relation to such fund or funds shall become those of the Transferee-company and all the rights, duties and benefits of the employees employed in the Transferor-Company under such funds or trusts shall be fully protected, subject to the provisions of law for the time being in force. It is clarified that the services of the staff, workmen and employees of Transferor-Company will be treated as having been continuous for the purpose of the said fund or funds.*
- (v) *The provident fund, gratuity fund, and superannuation fund dues, if any, of the employees of the Transferor-company, subject to the necessary approvals and permissions and at the discretion of the Transferee-Company either be continued as a separate fund of the Transferee-Company for the*



benefit of the employees or be transferred to and merged with the similar funds of the Transferee-Company. The Transferee-Company shall continue to make contributions into the provident fund accounts of employees maintained under the registration of the Transferee-Company, till such time the accounts are transferred under the registration of the Transferee-Company. The Transferee-Company shall also continue to make contributions to the gratuity fund and superannuation fund maintained by the Transferor-Company, till the date of completion of the transition.

12. As per proviso to sub-section (7) of Section 230 and proviso to sub-section (3) of Section 232 of the Companies Act, 2013, no compromise or arrangement can be sanctioned by the Tribunal unless a certificate of the company's auditor has been filed with the Tribunal to the effect that the accounting treatment proposed in the 'Scheme' for compromise or arrangement is in conformity with the accounting standards prescribed under Section 133 of the Act. In this regard, learned counsel for the petitioners referred the additional affidavit dated 24.05.2017 of Mr. Rohit Narang, Authorised Representative of both the companies, stating therein about the aforesaid compliances. This affidavit is accompanied by a certificate from the company's auditor S.R. Batliboi & Co. LLP, Chartered Accountants. It is certified in respect of both the companies, that accounting treatment proposed in the 'Scheme' is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rules, 2014 and general accounting principles.

13. It would now be appropriate to refer to the report of the Official Liquidator and that of the Regional Director, Corporate Affairs, New Delhi. There seems to be no serious objection to the 'Scheme' as per report of the Regional Director. It is stated in the report of the Regional Director that notice of this petition

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was sent to the Income Tax Department for inviting specific comments and the petitioner-companies were also asked to serve copy of the petition to the Income Tax Department under whose jurisdiction the companies are assessed. The Regional Director has reported that in response to his letter dated 14.12.2016 the Income Tax Department has sent no comments or observations. Learned counsel for the petitioners further submits that to comply with the directions of the Regional Director of serving the notice to the Income Tax Department, there is a receipt dated 30.12.2016 in proof of service.

14. There is, however, a particular objection with regard to the amount of ₹2,83,05,785/- which is liable to be deposited by A-1 Company in respect of the assessment year 2012-13 which the petitioner-companies should settle. Learned counsel for petitioners, however, referred to the affidavit dated 24.05.2017 of the Authorised Representative of the companies stating that order of assessment has been challenged before the Income Tax Appellate Tribunal, Delhi Bench (ITAT) with the affidavit dated 24.05.2017. The order of ITAT dated 17.03.2017 is attached to contend that the order of assessment imposing the aforesaid tax has been stayed subject to A-1 Company depositing ₹50.00 lacs by 31.03.2017. Learned counsel for the petitioner companies has stated that A-1 Company deposited ₹50.00 lacs as per the direction of ITAT and deposited the aforesaid amount. This fact is also stated in the affidavit of the Authorised Representative of the petitioner-companies. The learned counsel for the petitioner has further contended and rightly so, that A-2 Company shall be bound to deposit the amount of tax as determined by the Income Tax Authorities and further if any action is initiated against A-1 Company or its directors etc. that will not be any hindrance in approval to the 'Scheme',

particularly when the Transferee-Company would always be liable as the liabilities of A-1 Company are also to be transferred to A-2 Company.

15. The petitioner-companies shall always be liable to comply with the provisions of FEMA and RBI guidelines in all respects and even while allotting shares as per the 'Scheme'. In the affidavit dated 24.05.2017, the Authorised Representative of the petitioner-companies has stated that there is no prosecution proceedings pending before any court against the applicant-companies or any of its Directors.

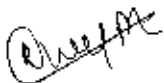
16. It is contended by the representative for the Official Liquidator that having scrutinized the accounts of A-1 Company the useful lives in respect of plant and machinery, office furniture, computers, furniture and fixtures etc. has been taken on quite lower side than the number of years as per Schedule II of the Companies Act. The learned counsel for the petitioners, however, contended that in view of the nature of the business of the companies the aforesaid period of useful lives has been taken into consideration for accounting purposes. For this objection and observation of the Official Liquidator, I am of the view that the petitioner-companies are bound to follow the provisions of the Companies Act and the Rules framed thereunder and for the violation(s), if any, it would always be open for the statutory authorities to proceed in accordance with law. The objection, however, cannot come in the way of sanctioning the 'Scheme'.

17. It is, however, reported by the Official Liquidator that having scrutinized the accounts of both the companies the 'Scheme' for amalgamation is not against the interest of its members, creditors or public at large. However, there has been slight delay in depositing the statutory dues. It is also represented that there are no accumulated losses of A-1 Company for the past 15 years. The Official Liquidator has also observed that the petitioner-companies are wholly owned

subsidiaries of Foreign Company situated at Singapore and they may be directed to comply with the RBI guidelines and the provisions of FEMA as may be applicable. Learned counsel for petitioners refers to the affidavit dated 24.05.2017 of the Authorised Representative, that the petitioners are engaged in the business which are under 100% automatic route under the Foreign Direct Investment Policy, notified by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Govt. of India. It is undertaken by the petitioners in this affidavit that they would comply with any and all guidelines, requirements, directions under FEMA and/or given by RBI to the 'Scheme' and/or matter incidental thereunder. In the petition itself it is stated in paragraph 31, that no investigation proceedings have been instituted or are pending in relation to the petitioners under any provision of Sections 235 to 251 of the Companies Act, 1956 or any other applicable provisions of the Companies Act, 1956 or Companies Act, 2013.

18. For the reasons stated above and considering all relevant facts, procedural requirements of the Act and the Rules, and considering the reports of Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi and the Official Liquidator, the 'Scheme' Annexure P-1 is sanctioned as a result thereof the assets and liabilities of A-1 Company shall stand vested in A-2 Company and A-1 Company shall stand dissolved without being wound up. The 'Scheme' of amalgamation shall be binding on the petitioner-companies, their respective shareholders, creditors and all concerned.

19. 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 any stamp duty, taxes or any other charges, if any, and payment in accordance



with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

20. The applicant/petitioner-companies shall deposit ₹20,000/- each with the Regional Director, New Delhi and in addition, the Transferor-Company shall deposit an amount of ₹20,000/- with the Official Liquidator within a period of five weeks from the date of this order.

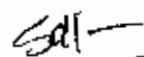
THIS TRIBUNAL DO FURTHER ORDER

- i) That all the property, rights and powers of the Transferor-Company be transferred without further act or deed to the Transferee-Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor-Company therein but subject nevertheless to all charges now affecting the same; and
- ii) That all the liabilities and duties of the Transferor-Company be transferred without further act or deed to the Transferee-Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee-Company; and
- iii) That all the employees of the Transferor-Companies shall be transferred to the Transferee-Company in terms of the 'Scheme'; and
- iv) That all proceedings now pending by or against the Transferor-company be continued by or against the Transferee-Company; and
- v) That the Transferee-Company do without further application allot to all the members of the Transferor-Company as is required by clause 11.1 of the 'Scheme' (Annexure P-1) the shares in the Transferee-Company to which they are entitled under the said compromise or arrangement; and



- vi) That the fee, if any, paid by the Transferor-Company on its authorized capital shall be set off against any fees payable by the Transferee-Company on its authorized capital subsequent to the amalgamation; and
- vii) That the Transferor-Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor-Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor-Company and registered with him on the file kept by him in relation to the Transferee-Company and the files relating to the said companies shall be consolidated accordingly; and
- viii) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

21. The formal order be issued on the petitioners on filing of the Schedule of Property i.e. (i) freehold property of the Transferor-Company; and (ii) leasehold property of the Transferor-Company as per Form No.CAA 7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.


 (Justice R.P. Nagrath)
 Member(Judicial)

July 06, 2017
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