

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD**

**CP NO. 388 OF 2016**

**[CP (TCAA) No. 51/HDB/2017]**

**Connected with CA No. 1447 of 2016**

**CP No. 389 of 2016**

**[CP (TCAA) No. 52/HDB/2017]**

**Connected with CA No. 1448 of 2016**

**In the matter of the Companies Act, 1956 (1 of 1956)**

**AND**

**In the matter of Section 391 to 394 of the Companies Act, 1956**

**AND**

**In the Matter of Scheme of Arrangement**

**Between**

**Hyderabad Duty Free Retail Limited  
(Transferor Company)**

**AND**

**GMR Hotels and Resorts Limited  
(Transferee Company)**



**CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL**

**Date of Order: 18.04.2017**

**Between:**

Hyderabad Duty Free Retail Limited  
GMR Aero Towers, Rajiv Gandhi International Airport,  
Shamshabad, Hyderabad – 500409  
(Represented by its Director, Mr. George Cherian)  
... Transferor Company/Petitioner Company

GMR Hotels and Resorts Limited  
Novotel Hyderabad Airport, Rajiv Gandhi International Airport,  
Shamshabad, Hyderabad – 500409  
(Represented by its Director, Mr. Rajesh Kumar Arora)  
... Transferee Company/Petitioner Company

Counsel for the Petitioners:

Mr. LVV Iyer

Counsel for Regional Director:

Mr. Appa Rao, CGSC

Counsel for Official Liquidator:

Official Liquidator

**CORAM**

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

**ORDER**

**(As per Ravikumar Duraisamy, Member (T))**

1. The present petitions numbered 388 of 2016 and 389 of 2016 are filed by Hyderabad Duty Free Retail Limited and GMR Hotels and Resorts Limited respectively, under Section 391(2) read with Section 394 of the Companies Act, 1956 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh praying for sanction of the Scheme of Arrangement, so as to be binding on all the shareholders and creditors of the Transferor Company and Transferee Company respectively, with effect from the appointed date.
2. Subsequent to the transfer of the case from the Hon'ble High Court of Judicature at Hyderabad, the case was posted for hearing before NCLT, Hyderabad Bench on 02.02.2017, 14.02.2017 and on 28.02.2017, the matter was reserved for Orders.
3. The brief facts of the case as submitted in the Petitions are as follows:
  - a. Hyderabad Duty Free Retail Limited (Transferor Company), having CIN U52390TG2010PLC068442, is a public Company under Section 2(71) of the Companies Act, 2013, formed and registered under the Companies Act, 1956 on May 14, 2010 in Hyderabad

The Authorized share Capital of the Transferor Company as on 1<sup>st</sup> April, 2015 is Rs.20,00,00,000 divided into 2,00,00,000 Equity shares of



Rs.10/- each. The issued, subscribed and paid up capital is Rs.1,69,500,000 divided into 1,69,50,000 Equity Shares of Rs. 10/- each, fully paid.

The main objects of the Transferor Company are to carry on business of dealing in, sale, purchase, export, import, distribute, all goods and services including books, publications, artefacts, jewellery, electronic items, etc.

- b. GMR Hotels and Resorts Limited (Transferee Company), having CIN U55101TG2008PLC060866, is a public limited company under Section 2(71) of the Companies Act, 2013, which was originally incorporated as GMR Airport Handling Services Limited under the Companies Act, 1956 on 8<sup>th</sup> September, 2008 and issued a fresh Certificate of Incorporation dated 31.12.2009, upon a change of name to GMR Hotels and Resorts Limited.

The Authorized share capital of the Transferee Company is Rs. 1,10,00,00,000 divided into 11,00,00,000 Equity Shares of Rs. 10/- each. The issued, subscribed and paid up capital is Rs.109,65,89,160 divided into 10,96,58,916 Equity shares of Rs.10/- each, fully paid up.

The main objects of the Transferee Company are to carry on all or any of the business of running hotels, resorts, restaurants, lodging house, swimming pools, night clubs, exhibition halls, entertainment centres, amusement parks, wine, beer shops and departmental stores, etc.

- c. The Transferor Company is presently engaged, inter alia, in the business of providing tax and duty free shopping facility to international passengers flying to and from Rajiv Gandhi International Airport through its outlets there. It has record revenue from operations of Rs.80,78,61,244/- and a profit after tax of Rs. 7,26,13,384/- as per audited financial statements for the financial year ended 31.03.2016.
- d. The Transferee Company currently owns a five star rated hotel property viz. Novotel Hyderabad Airport Hotel, located close to Rajiv Gandhi International Airport, Hyderabad, which is managed and operated by AAPC India Hotel Management Private Limited (Part of Accor Group) under the Novotel Brand under an arrangement with the Transferee Company. It has record revenue from operations of Rs. 56,87,17, 570/- as per the audited financial statements for the financial year ended 31.03.2016.





- e. The Board of Directors of the Petitioner Companies in their meeting held on 11.08.2016, passed a resolution approving the Scheme of Arrangement between the Transferor Company and the Transferee Company and their respective shareholders.
- f. Both the Transferor Company and the Transferee Company are wholly owned subsidiaries of GMR Hyderabad International Airport Limited (“GHIAL”) and to that extent the Scheme of Arrangement involves the amalgamation of one wholly owned subsidiary of GHIAL namely Hyderabad Duty Free Retail Limited with another wholly owned subsidiary of GHIAL namely GMR Hotels and Resorts Limited.
- g. The benefits of Scheme of Arrangement between the Transferor Company and Transferee Company, are summarized below:
  - i. It would enable to achieve higher long-term financial returns and inculcation of greater financial strength and flexibility that could be achieved by the companies individually;
  - ii. It would enable the Transferee Company to have diversified product portfolio which would enable it to manage risks in a better way;
  - iii. It would be beneficial for pooling of financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies of the merging companies leading to increased competitive strength; and
  - iv. Would simplify management structure, leading to better administration and a reduction in costs from more focused operational efforts, rationalization, standardization and simplification of business processes, and the elimination of duplication, and rationalization of administrative expenses.
- h. The said Scheme requires the approval of requisite majority of the equity shareholders, sole secured creditor and the unsecured creditors of the Transferor Company. In addition, approval of requisite majority of the equity shareholders, secured creditors and the unsecured creditors is required of the Transferee Company.
- i. The Transferor Company has only one secured creditor namely Kotak Mahindra Bank with an outstanding amount of Rs. 2,15,00,000 as on 30.06.2016 and 66 unsecured creditors with aggregate outstanding amount



of Rs. 9,68,48,946 as on 30.06.2016. The Scheme does not propose any arrangement with the creditors of the Transferor Company. It has obtained the 'No Objection' from unsecured creditors amounting to 86.40% in value of the total outstanding amount due. It is further submitted that the 'No Objection' from the sole secured creditor of the Transferor Company will be obtained and submitted at the time of final hearing of this Petition.

- j. The Transferee Company has two secured creditors namely State Bank of Bikaner and Jaipur and State Bank of Hyderabad with a total outstanding amount of Rs. 1,27,70,64,138 as on 30.06.2016 and 167 unsecured creditors with aggregate outstanding amount of Rs. 5,68,27,772 and one unsecured creditor (loan) (i.e. GHIAL which is the holding company of both the Petitioner Companies) with outstanding amount of Rs.63,86,97,937 as on 30.06.2016. It has obtained the 'No Objection' from unsecured creditors amounting to 95% in value of the total outstanding amount due. It is further submitted that the 'No Objection' from the two secured creditors of the Petitioner Company shall be obtained and will be submitted at the time of final hearing of this Petition.
- k. According to the proposed Scheme, the exchange ratio of 1:1, i.e. one share of the Transferee Company in exchange for every one share of the Transferor Company has been held as fair by SSPA and Co., Chartered Accountants, Andheri – West, Mumbai – 400058 in their Fairness Opinion dated August 10, 2016 rendered in this connection.
- l. The assets of Transferee Company after the Effective date would be sufficient to meet all the liabilities including that of the Transferor Company. The financial position of the Transferee Company, shall be strengthened by the vesting of assets of the Transferor Company under the Scheme of Arrangement and accordingly will remain strong and in light of the benefits flowing from the amalgamation and there is no likelihood that any creditor of Petitioner Companies would lose or to be prejudiced as a result of the Scheme being implemented since no sacrifice or waiver is called for from them nor their rights sought to be modified in any manner. The Transferee Company would be able to meet the liabilities as they arise in the ordinary course of business.





- m. All the seven equity shareholders of the Transferor Company and Transferee Company have given their individual consent affidavits unconditionally approving the proposed scheme of arrangement which were submitted as Affidavits in CA Nos. 1447 of 2016 and 1448 of 2016.
  - n. It is submitted that no investigation proceedings in relation to the Petitioner Companies under Section 235 to 251 of the Companies Act, 1956 or the corresponding Sections as applicable to Companies Act, 2013 are pending against them.
4. The Regional Director has filed a report dated 10.01.2017, submitting that pursuant to the General Circular No. 1/2014 dated 15.01.2014, issued by the Ministry of Corporate Affairs, New Delhi, wherein comments of Income Tax Department is required to be sought under Section 391 or 394 of the Companies Act, 1956, a letter dated 05.01.2017 was issued to the Income Tax Department for submitting their comments/objections, if any, within 15 days. It is further stated that the Petitioner Companies submitted copies of letters dated 26.12.2016 evidencing the service of notice on the concerned Income Tax Authority and also submitted copies of letters dated 10.01.2017 addressed by Deputy Commissioner of Income Tax, Circle-2(2), Hyderabad addressed to the Pr. Commissioner of Income Tax – 2, Hyderabad expressing no objection for the proposed amalgamation.

It is also submitted that RoC has reported that the transferor Company and the Transferee Company involved in the Scheme of merger/amalgamation are regular in filing the statutory returns and no complaints, no investigations and no inspections are pending against the Petitioner Companies.

5. The Official Liquidator filed a report dated 20.04.2016, stating that the Petitioner Companies have not accepted any deposits from the public. It is also stated that the Petitioner Company has obtained individual “No Objection” letters from the unsecured creditors aggregating to 86.40% of the total value of the unsecured debt. The same was also recorded by the Hon’ble Court of Hyderabad vide order dated 18.10.2016 made in CA No.



1447/2016 and 1448/2016, while dispensing with the holding of the meeting of equity share-holders and unsecured creditors. It is further submitted that basing on the information made available by the Petitioner Company, it appears that the affairs of the Petitioner Companies have not been conducted in a manner prejudicial to the interests of the members or to public interest.

6. A memo dated 27.02.2017 was filed with respect to Transferor Company and Transferee Company by the Counsel for the Petitioner Companies in relation to the NOCs/No Due Certificate from Secured Creditor (s). It is submitted that they have obtained NOCs from Secured creditors of both the Petitioner Companies. In relation to the Transferee Company, it is submitted that the outstanding loans and overdraft facilities from the State Bank of Hyderabad and State Bank of Bikaner and Jaipur have been repaid by way of refinancing from Aditya Birla Finance Limited in September, 2016.
7. When the Bench questioned as to the position of unsecured creditors amounting to Rs. 9,68,48,946 with respect to Transferor Company and Rs. 63,86,97,937 with respect to Transferee Company, the learned counsel submitted that Transferor Company is amalgamating with Transferee Company whose financial position is strong. However, upon perusal of the Balance sheets/ financial statements, it is noted that Transferor Company is a profit making company and the Transferee Company is a loss making Company and incurred loss of about Rs.20.65 Crores for the year ending 31.03.2015 and about Rs.16.63 Crores for the year ending 31.3.2016 and the Reserves and Surplus was (-)Rs.45.82 Crores for the year ending 31.03.2016.



When the Bench questioned the Learned Counsel about the proposed Appointed Date i.e., 01.04.2015, which is approximately one and a half year from the Board Meeting held on 01.08.2016, he submitted that the Appointed Date can be even more than 1 or 2 financial years from the



Board Meeting date/ submission of scheme for sanction. He further asserted that so far there is only one judgment in this regard by the Hon'ble Supreme Court and submitted a copy of the Judgment viz. the Hon'ble Supreme Court Judgment in Marshall Sons and Company (India) Limited Versus Income Tax Officer (Civil Appeals No. 1661 and 1662 of 1992). Upon perusal of the Judgment, it is noted that as a consequence of the change in accounting year from December 31, 1982 to June 30, 1983, the income of the period of 18 months from January 1, 1982 to June 30, 1983 will be assessed for the assessment year 1984-85. In addition, it is pertinent to note the plea of learned counsel for the Revenue that the amalgamation itself is a device designed to evade the taxes legitimately payable by the subsidiary company. However, the above referred judgment does not discuss about the Appointed Date which can be beyond one or two years as submitted by the Learned Counsel, whereas the aforesaid judgment deals with the issue of tax avoidance, which is not related in the current case and the Deputy Commissioner of Income Tax, Circle – 2(2), Hyderabad vide F.No. DCIT-2(2)/2016-17 dated 10.01.2017, issued no objection for proposed scheme of amalgamation between the Transferor Company and Transferee Company.

Further, upon perusal of Board Resolution dated 11.08.2016 of both the Petitioner Companies, there is no justification given for Appointed Date fixed as far back as 01.04.2015, even though the Accounts were finalized for the latest Financial Year ending 31.3.2016.

8. The proposed scheme submitted to this Tribunal specifies that the "Appointed Date means 1<sup>st</sup> April, 2015 or such other date as may be fixed by the Hon'ble High Court." Considering the entire facts and circumstances of the case, Judgment of Hon'ble Supreme Court as discussed above and in the absence of Justifiable reasons provided in the Board Resolution/ scheme submitted for the approval of the Tribunal, we hereby sanction the Scheme of Amalgamation approved by Board of Directors of the Transferor and Transferee Companies and we specify the appointed date as 1.4.2016.





9. The Petitioner Companies are directed to file the certified copy of this order with the Registrar of Companies for the State of Telangana and the State of Andhra Pradesh within 30 days from the date of receipt of a copy of this order.
10. The Petitioners are directed to issue newspaper publication with respect to approval of scheme of amalgamation, in the same newspapers in which previous publications were issued. The same is to ensure transparency/dissemination of complete information to all stake holders about the status/approval granted by Tribunal for the proposed Scheme. The petitioners are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Amalgamation under the Provisions of the Act.

The Company Petition is allowed accordingly as prayed for.

Sd/-

Sd/-

**RAVIKUMAR DURAISAMY**

**RAJESWARA RAO VITTANALA**

**MEMBER (T)**

**MEMBER (J)**

V. Annapoorna  
V. ANNA POORNA  
Asst. DIRECTOR  
NCLT, HYDERABAD - 63

CERTIFIED TRUE COPY  
CASE NO. CP/3888/389/2016  
DATE OF JUDGEMENT 18/4/17  
COPY MADE READY ON 18/4/17

