

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT II

CA(CAA)/1117/MB/2020

In the matter of
The Companies Act, 2013
And

In the matter of
Sections 230-232 and other
Applicable provisions of the
Companies Act, 2013
And

In the matter of
Scheme of Amalgamation
between
Belaire Hotels Private Limited
(Transferor No. 1
Company)

And
Sea pearl Hotels Private Limited
(Transferor No. 2
Company)

And
Chalet Hotels Limited
(Transferee Company)
and their respective shareholders

Belaire Hotels Private Limited

[CIN: U55101MH2007PTC170789] ...
Company

Transferor No. 1

Sea pearl Hotels Private Limited

[CIN: U55204MH2007PTC168713] ...
Company

Transferor No. 2



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Chalet Hotels Limited

[CIN: U55101MH1986PLC038538] ...

Transferee

Company

Order pronounced on: 05.02.2021

Coram:

Mr. H.P Chaturvedi

: Hon'ble Member Judicial

Mr. Ravikumar Duraisamy

: Hon'ble Member Technical

Appearances:

For the Applicant

: Mr. Sameer Pandit a/w
Mr. Pranay Kamdar i/b.
M/s. Wadia Ghandy &
Co., Advocate.

ORDER

Per: H.P. Chaturvedi Member (Judicial)

1. The Bench is convened by videoconference today .
2. Counsel for the Applicants states that the present Scheme is a Scheme of Amalgamation between Belaire Hotels Private Limited (“**Transferor No. 1 Company**”), Seaparl Hotels Private Limited (“**Transferor No. 2 Company**”) and Chalet Hotels Limited (“**Transferee Company**”) and their respective shareholders under the provisions of section 230 to 232 of the Companies Act, 2013.



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3. The Counsel for the Applicants states that resolutions approving the Scheme were passed by the Board of Directors of the Transferor Companies and the Transferee Company in their respective meetings held on September 3, 2020 and August 11, 2020. The Appointed Date fixed under the Scheme is April 1, 2020.

4. The Counsel for the Applicants submits that the meeting of the Equity Shareholders of the Transferor No. 1 Company be dispensed with in view of the fact that 100% of the Equity Shareholders of the Transferor No. 1 Company have given their Consent for the said Amalgamation. The Consent Affidavits submitted by the Equity Shareholders of the Transferor No. 1 Company have been annexed as Exhibit "HH" to the Company Application. In view of this fact, the meeting of the Equity Shareholders of the Transferor No. 1 Company is hereby dispensed with.

5. The Counsel for the Applicants submits that the meeting of the Equity Shareholders of the Transferor No. 2 Company be dispensed with in view of the fact that 100% of the Equity Shareholders of the Transferor No. 2 Company have given their Consent for the said Amalgamation. The Consent Affidavits submitted by the Equity Shareholders of the Transferor No. 2 Company have been annexed as Exhibit



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“II” to the Company Application. In view of this fact, the meeting of the Equity Shareholders of the Transferor No. 2 Company is hereby dispensed with.

6. A meeting of the Equity Shareholders of the Transferee Company be convened and held at Raheja Tower, 4th Floor, Block – G, Plot No. C-30, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 on April 12, 2021 at 11:00 a.m. or where such physical meeting is not possible and practical under the given scenario of Covid-19, such meeting be held through Video Conference on April 12, 2021 at 11:00 a.m. for the purpose of considering and, if thought fit approving, with or without modification(s), the proposed Scheme of Arrangement and Amalgamation between the Transferor Companies and the Transferee Company.
7. A meeting of the Preference Shareholders of the Transferee Company be convened and held at Raheja Tower, 4th Floor, Block – G, Plot No. C-30, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 on April 12, 2021 at 12:00 noon or where such physical meeting is not possible and practical under the given scenario of Covid-19, such meeting be held through Video Conference on April 12, 2021 at 12:00 noon for the purpose of considering and, if thought fit approving, with or without modification(s), the proposed Scheme of



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Arrangement and Amalgamation between the Transferor
Companies and the Transferee Company.

8. At least 30 [thirty] days before the date fixed for the aforesaid meetings of the Equity Shareholders and Preference Shareholders of the Transferee Company, notice of the meetings shall be sent to the Equity Shareholders and Preference Shareholders of the Transferee Company by speed-post, registered-post, courier, hand-delivery and/or email as per the records of the Transferee Company indicating the day, date, time and venue of the meeting, together with a copy of the Scheme of Arrangement and such other documents as are prescribed under the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

9. At least 30 [thirty] days before the date fixed for the meeting of the Equity Shareholders and Preference Shareholders of the Transferee Company, notice of the aforesaid meetings indicating the day, date, time and venue of the aforesaid meeting and stating that copies of the Scheme of Arrangement, the Explanatory Statement and the form of proxy shall be provided free of charge at the registered office of the Transferee Company shall be published once each in the "Business Standard" in English and "Navshakti" in Marathi, both having wide circulation in the state of



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Maharashtra. In view of the COVID-19 situation, the Transferee Company may publish the notice in the online editions of the said newspapers.

10. The Transferee Company undertakes to:

- (a) issue notice convening meeting of the Equity Shareholders and Preference Shareholders as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- (b) issue a Statement containing all the particulars as per section 230 of the Companies Act, 2013;
- (c) issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
- (d) advertise the notice convening meeting as per Form No. CAA.2 (Rule 7) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The above undertakings are accepted.

11. Ms. Prachi Wazalwar, Practising Advocate (Mob 9930112354) or in her absence Mr. Milind Wadekar shall be the Chairperson for the meetings of the Equity Shareholders and Preference Shareholders of the Transferee Company and for any adjourned meeting thereof. The Scrutiniser for the Meetings shall be Mr. Avinash Bagul.



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12. The Chairman appointed for the meeting of the Equity Shareholders and Preference Shareholders of the Transferee Company to issue and advertise the notices for the aforesaid meetings. The Chairman shall have all the powers under the Articles of Association of the Transferee Company and under the Companies Act, 2013 in relation to conduct of the meeting, including the power to decide any procedural questions that may arise, any adjournment thereof, or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
13. The quorum for the meeting of the Equity Shareholders and Preference Shareholders of the Transferee Company shall be as prescribed under Section 103 of the Companies Act, 2013.
14. Voting at the meeting of the Equity Shareholders and Preference Shareholders of the Transferee Company shall be permitted in person, or by an authorised representative in case of a body corporate, or by proxy provided that a proxy filled in the prescribed form is duly deposited at the registered office of the Transferee Company not later than 48 hours before the meeting.
15. The number and value of the shares of each member of the Transferee Company shall be in accordance with the



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Register of Members of the Transferee Company, and where the entries in the Register of Members are disputed, the Chairman of the meeting shall determine the value for the purpose of the aforesaid meeting and the said decision in that regard would be final.

16. The Chairman of the meetings shall file an Affidavit not less than seven [7] days before the date fixed for the meeting stating that the directions regarding the issuance of notices and advertisement have been duly complied with.
17. The Chairperson shall report to this Tribunal the result of the meetings of the Equity Shareholders and Preference Shareholders of the Transferee Company within 7 [seven] days of the conclusion of the meetings or the last of such meetings. Fee fixed for the Practising Advocate appointed as chairperson for the meetings is Rs. 1,00,000/- excluding all taxes.
18. The Counsel for the Applicants submits that there are no Secured Creditors in the Transferor No. 2 Company. The Chartered Accountants of the Transferor No. 2 Company vide their certificate dated September 14, 2020 have confirmed that there are no Secured Creditors in the Transferor No. 2 Company as on August 31, 2020, which is annexed as Exhibit "LL" to the Company Application.



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view of this fact, the necessity of convening and holding meeting of Secured Creditors of the Transferor No. 2 Company does not arise.

19. The Counsel for the Applicants submits that the present Scheme is an arrangement only between the Applicant Companies and their respective shareholders under Section 230(1)(b) of the Companies Act, 2013. There is no compromise or arrangement with any creditors and no sacrifice of any amounts due to creditors is called for. Further, the rights and interests of the creditors of Transferor No. 1 Company will not be prejudicially affected by the Scheme as the creditors of Transferor No. 1 Company, upon sanction of the Scheme, will become creditors of the Transferee Company and will be paid off in due course of business. The Counsel for the Applicants submits that as per the financial position as at June 30, 2020 there is an excess of assets over liabilities to the tune of Rs. 1082.55 million, Rs. 102.47 million and Rs. 15,168.7 million in the Transferor No. 1, Transferor No. 2 and Transferee Company respectively which is annexed as Exhibit "MM" to "OO" to the Company Application. Further, upon effectiveness of the Scheme, there will also be an excess of assets over liabilities to the tune of Rs. 15,148.74 million in the Transferee Company upon effectiveness of the Scheme. Therefore, upon effectiveness of the Scheme, the Transferee



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Company will have more than sufficient assets to satisfy the claims of all creditors. Thus, the rights of the creditors of the Applicant Companies will not be prejudicially affected by the Scheme. Accordingly, the necessity of convening and holding meeting of Secured and Unsecured Creditors of the Applicant Companies does not arise.

20. The Applicant Companies to serve a notice along with a copy of the Scheme on: (i) Regional Director (Western Region), Ministry of Corporate Affairs; Mumbai, (ii) Registrar of Companies, Maharashtra, Mumbai; (iii) the Income-tax Authority within whose jurisdiction the respective companies assessment is made clearly indicating the PAN of the concerned company; (iv) Securities and Exchange Board of India; (v) the BSE Ltd; and (vi) the National Stock Exchange of India Ltd pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and applicable Sectoral Regulators or Authorities. In case no response is received by this Tribunal from the aforesaid authorities within 30 [thirty] days of receipt of the notice, it will be presumed that the aforesaid authorities have no objection to the proposed Scheme.
21. The Transferor Companies are also directed to serve a notice along with a copy of the Scheme upon the Official



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Liquidator, High Court, Bombay pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies, (Compromises, Arrangements and Amalgamations) Rules, 2016. The bench hereby appoints Mr Ajay Vijaykumar Agrawal, Chartered Accountant and a registered Insolvency Professional (ajayamarca@yahoo.com) to provide professional assistance to Official Liquidator and fee fixed for the same is Rs 1,00,000 excluding all taxes. If no representation/ response is received by the Tribunal from the Official Liquidator within a period of thirty [30] days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation/ objection to the proposed Scheme.

22. The Applicant Companies shall host the notices along with a copy of the Scheme on their respective websites and for the listed company, these documents shall be sent to the Securities and Exchange Board of India and stock Exchanges where the securities of the company is listed for placing on their website as per sec 230(3).
23. The Applicant Companies may file a compliance report with the Registry in regard to the directions given in this Order in lieu of the customary affidavit of service.



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24. Present Company Application is allowed, and stand disposed.

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)
05.02.2021
Jd/SAM

Sd/-

H.P. CHATURVEDI
MEMBER (JUDICIAL)

Certified True Copy
Copy Issued "free of cost"
On 01/02/2021


Joint Registrar
National Company Law Tribunal Mumbai Bench

