

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Company Petition No.770 of 2018 connected with CA(CAA) No.
516/KB/2017

IN THE MATTER OF:

The Companies Act, 2013 - Section 230(6) read with Section 232(3)

-And-

IN THE MATTER OF:

GJS Hotels Limited, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Act, having its registered office at Hyatt Regency Kolkata, JA-1, Sector-III, Salt Lake City, Kolkata 700 098 in the State of West Bengal.

-And-

..... Petitioner No.1

Asian Hotels (East) Limited, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Act having its registered office at Hyatt Regency Kolkata, JA-1, Sector-III, Salt Lake City, Kolkata 700 098 in the State of West Bengal.

..... Petitioner No.2

IN THE MATTER OF:

1. GJS Hotels Limited
2. Asian Hotels (East) Limited

. PETITIONERS

Coram : Shri Madan B Gosavi, Member(Judicial)

sd

For the Petitioners:

Mr. Ratnanko Banerji, Senior Advocate

Mr. DN Sharma, Advocate

Mr Aniket Agarwal, Advocate

Ms Rusha Saha, Advocate

Mr. KS Pradhan, Joint Director, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs

Date of Pronouncement of the order : 6 / 2 / 2019

ORDER

Per: Shri Madan B Gosavi, Member(Judicial)

1. The object of this Petition is to obtain sanction of this Tribunal to the Scheme of Arrangement between GJS Hotels Limited, being the Petitioner Company No.1, "**GJSHL**", Asian Hotels (East) Limited, being the Petitioner Company No.2, "**AHEL**" and Robust Hotels Private Limited, "**RHPL**" and their respective shareholders whereby and whereunder it is proposed to reorganise and reconstruct the said Companies by (1) reconstructing GJSHL and AHEL by demerging the Demerged Undertaking of GJSHL(including investment in RHPL) to AHEL and (2) reorganising and converting the outstanding 43,00,000 12% Cumulative Redeemable Preference Shares of Rs. 100/- each of RHPL ("Specified Preference Shares") and 1,55,00,000 0.1% Unsecured Cumulative Non-Convertible Debentures of Rs. 100/- each of RHPL ("Specified Debentures") into Equity Shares of RHPL, in the manner and on the terms and conditions stated in

Sd
2

the Scheme of Arrangement, a copy whereof is annexed with the Petition and marked "A".

2. The Scheme shall be operative from the Appointed Date, i.e. the close of business hours on the 31st March, 2016.

3. The Board of Directors of the Petitioner Companies and Robust Hotels Private Limited, at their respective meetings held on 10th February, 2017, by resolutions passed unanimously, approved the Scheme of Arrangement between GJS Hotels Limited, Asian Hotels(East) Limited and Robust Hotels Private Limited and their respective shareholders.

4. The true copies of the said Board resolutions are annexed with the Petition and collectively marked "K".

5. It is stated in the Petition that Asian Hotels (East) Limited is a well established hospitality company engaged primarily in the business of running the 'Hyatt Regency' hotel at Salt Lake in Kolkata. In addition, Asian Hotels (East) Limited holds and is engaged in the business of investing in shares and securities of other bodies corporate on both, a short term basis (current investments) and long term basis (non-current investments). Asian Hotels (East) Limited thus also has substantial interests in the hospitality business through its subsidiaries, being GJS Hotels Limited which is a direct and wholly owned subsidiary of Asian Hotels (East) Limited and Robust Hotels Private Limited which is a subsidiary of GJS Hotels Limited. While Robust Hotels Private Limited is running the 'Hyatt Regency' hotel at Anna Salai, Tenampet in Chennai, GJS Hotels Limited is pursuing a project for establishing a hotel in Bhubaneswar, Odisha. The operations of GJS Hotels Limited have been funded primarily by Asian Hotels(East) Limited by a combination of equity capital and loan

Sd

3

while the operations of Robust Hotels Private Limited have also been funded primarily by Asian Hotels(East) Limited and GJS Hotels Limited by a combination of equity capital, preference capital and debt. While Asian Hotels (East) Limited has been in the hospitality business for several years, the business of GJS Hotels Limited and Robust Hotels Private Limited is relatively new. The said companies have been looking at suitable proposals for restructuring with the objective, inter alia, of simplifying and rationalising their holding and financial structure and pursuing their business more conveniently and beneficially.

6. It is also stated in the Petition that the demerger will simplify the holding structure of the subsidiaries of Asian Hotels (East) Limited and result in Robust Hotels Private Limited also becoming a direct wholly owned subsidiary of Asian Hotels (East) Limited consequent to transfer of the investment of GJS Hotels Limited in Robust Hotels Private Limited to Asian Hotels (East) Limited as part of the demerger.

7. It is further submitted in the Petition that the demerger will enable GJS Hotels Limited to pursue operating business with greater focus and attention and facilitate the business considerations and factors applicable to the same to be addressed more effectively and adequately by GJS Hotels Limited without the responsibility of monitoring investments in Robust Hotels Private Limited. The demerger will also enable independent evaluation of the said business of GJS Hotels Limited and facilitate running and operation of such business and growth and development plans thereof to be funded independently.

8. It is stated in the Petition that the Scheme will suitably realign and adjust the relationship between the capital and assets of the respective

Companies and have beneficial results for the applicant Companies, their shareholders and all concerned.

9. It is submitted in the Petition that there are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 to 227 of the Companies Act, 2013 against GJS Hotels Limited, Asian Hotels (East) Limited and Robust Hotels Private Limited.

10. The Auditors of GJS Hotels Limited, Asian Hotels (East) Limited and Robust Hotels Private Limited have confirmed that the accounting treatment in the Scheme is in conformity with the accounting standard prescribed under Section 133 of the Companies Act, 2013.

11. The Certificate issued by the Auditors of GJS Hotels Limited, Asian Hotels (East) Limited and Robust Hotels Private Limited are annexed with the Petition and collectively marked "R".

12. It is stated in the Petition that GJS Hotels Limited and Robust Hotels Private Limited are unlisted companies while Asian Hotels (East) Limited is a listed Company. The shares of Asian Hotels (East) Limited are listed on BSE Limited and the National Stock Exchange of India Limited.

13. Pursuant to the SEBI Circular No. CIR/CFD/CMD/16/2015 dated 30th November, 2015, Asian Hotels (East) Limited duly filed the Scheme with the said Stock Exchanges on 10-03-2017 for their approval pursuant to the listing agreements entered into by it with the said Stock Exchanges. Apart from the same, Asian Hotels (East) Limited has also submitted the report of its Audit Committee on the Scheme and various other documents to the stock exchanges and also displayed the same on

Sd

its website in terms of the SEBI Circular dated 30-11-2015 and addressed all queries on the said documents.

14. The Complaints Report required to be filed in terms of the said Circular was also duly filed by Asian Hotels (East) Limited. BSE and NSE by their respective letters dated 18-05-2017 and 23-05-2017 have since confirmed that they have 'no adverse observation' on the Scheme pursuant to the said SEBI Circular.

15. In this regard, the Petitioner companies have filed an affidavit dated 16-12-2017 in terms of the Order of this Tribunal dated 14-12-2017.

16. The copies of the said letters dated 18-05-2017 and 23-05-2017 issued by BSE and NSE are annexed with the Petition and collectively marked "S".

17. It is further submitted in the Petition that the Scheme embodies the arrangement between GJS Hotels Limited, Asian Hotels (East) Limited and Robust Hotels Private Limited and their respective shareholders. No change in value or terms or any compromise or arrangement is proposed under the Scheme with any of the creditors of GJS Hotels Limited or Asian Hotels (East) Limited. The Scheme is an internal restructuring exercise and there would be no change in control or management of the enterprises as such under the Scheme.

18. It is further stated in the Petition that upon the Scheme coming into effect, Asian Hotels (East) Limited and GJS Hotels Limited would continue to have substantial excess of assets over liabilities and be in a

Sd

position to meet their liabilities, as and when they accrue and in the ordinary course of business.

19. The creditors of the Petitioner Companies are not affected in any manner by the Scheme. On the contrary, the Scheme will inure to their benefit and is in their interest. The Scheme does not involve any debt restructuring and therefore, the requirement to disclose details of capital restructuring is not applicable.

20. From the record it appears that pursuant to an order dated 21st December, 2017, as modified by an order dated 4th January, 2018, passed by this Tribunal in Company Application CA(CAA) No.516/KB/2017, the petitioners had duly served notices of separate meetings of the Equity Shareholders and Unsecured Creditors of the Petitioner No.2 and also on Statutory Authorities through post, including the Central Government through the Regional Director, Ministry of Corporate Affairs, Eastern Region, Kolkata; (b) The Registrar of Companies, West Bengal; (c) Deputy Commissioner of Income Tax; (d) Chief Commissioner of Income Tax; (e) Securities Exchange Board of India; (f) The Manager, Listing Department, BSE Limited; (g); The Manager, Listing Department, National Stock Exchange of India Limited.

21. Further, notice of meetings was also published in the "Business Standard" in English and in "Ekdin" in Bengali on 21st January, 2018.

22. An affidavit of compliance was duly filed on 14th February 2018 by the petitioners in respect of said service and publication.

sd

23. Pursuant to the above order dated 21st December, 2017, as modified by an order dated 4th January, 2018, separate meetings of the Equity Shareholders and Unsecured Creditors of the Petitioner No.2 were duly held on 21st day of February, 2018.

24. The meeting of the Equity Shareholders and Unsecured Creditors of Petitioner No.1 were dispensed with in view of such shareholders and creditors having already considered and giving their written consent to the Scheme in the form of Affidavits. Further since there were no Secured Creditors of Petitioner Companies no meetings were required to be held of the said Companies.

25. In terms of the order dated 21st December, 2017, as modified by an order dated 4th January, 2018, of this Tribunal, the Shareholders of the Petitioner Companies were also given the option of voting on the Scheme prior to the date of the meeting by postal ballot or e-voting during the respective voting period fixed therefor in accordance with the said order and the relevant rules. In terms of the said order only those shareholders who had not already cast their votes by postal ballot/e-voting were allowed to vote by poll at the venue of the meeting.

26. The Scrutinizer appointed by this Tribunal scrutinized the papers relating to the voting at the meetings and submitted his report thereon. The votes cast in each mode, i. e postal ballot, e-voting and poll at the venue were consolidated. The requisite quorum was present at the said meetings of the Equity Shareholders and Unsecured Creditors. The said meeting of the Equity Shareholders of AHEL approved the said scheme by requisite majority without any modification in terms of the aforesaid resolution and the said meeting of the Unsecured Creditors of AHEL

sd

unanimously approved the said Scheme without any modification in terms of the aforesaid resolution.

27. The Chairperson of the respective meetings of the Equity Shareholders and Unsecured Creditors of Petitioner No.2 has submitted his respective reports vide affidavit affirmed on 21st March, 2018.

28. The declaration of the results of the respective meeting were also posted on the website of AHEL and published in the "Business Standard" and "Ekdin", in their respective issues dated 24th February, 2018.

29. After such due compliance, the petitioners have made the instant petition bearing No. CP (CAA) No. 770/KB/2018, connected with CA(CAA) No. 516/KB/2017, before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Arrangement.

30. This Tribunal had passed an order dated 10th August, 2018 in the said Petition, bearing CP(CAA) No. 770/KB/2018, connected with CA(CAA) No. 516/KB/2017, and directed publication to be effected of the hearing of the Petition, issuance of the notices of this Petition to the statutory authorities for their objections, if any.

31. In compliance of the Order dated 10th August, 2018, passed in CP(CAA) No. 770/KB/2018, connected with CA(CAA) No. 516/KB/2017, the Petitioner Companies have filed affidavit of service affirmed on 30th August, 2018, evidencing publication of notice in the newspapers and

Sd

service of notice upon the Central Government and other relevant Statutory Authorities.

32. The Regional Director, Eastern Region, Ministry of Corporate Affairs, has given his observations, vide Reply affidavit affirmed on 17th September, 2018 ("**Reply**").

33. The Petitioners have filed their rejoinder affirmed on 20th November, 2018 dealing with all the observations of the Regional Director in the said Affidavit dated 17th September, 2018 ("**Rejoinder**").

34. Upon considering the Rejoinder, the Regional Director has filed his Sur Rejoinder vide affidavit affirmed on 28th November, 2018 ("**Sur-Rejoinder**") to which the petitioners have filed their Explanatory Notes dated 2nd January, 2019 ("**Explanatory Notes**"), as was directed by this Tribunal vide its Order dated 21st December, 2018.

35. The Regional Director Regional Director, Eastern Region, Ministry of Corporate Affairs had replied to the Explanatory Notes vide his supplementary sur-rejoinder affidavit affirmed on 3rd January, 2019 ("**Supplementary Sur-Rejoinder**"), to which Supplementary Notes dated 24th January, 2019 ("**Supplementary Notes**") was submitted by the petitioners.

36. The Regional Director has principally made three observations in his Reply which have been reiterated in his subsequent affidavit, as aforesaid. The same have been dealt with by the petitioners in their Rejoinder and the responses have been reiterated in their rejoinder and notes, as aforesaid. The said observations made by the Regional Director, Eastern Region, Ministry of Corporate Affairs vide his Affidavits are given

sd

below :

I. 2(a) of the Supplementary Sur-Rejoinder on NBFC Issue :

"That in respect of the contentions made in paragraph 2 and 3 of the rejoinder, it is submitted that in earlier affidavits of this deponent detailed submissions were duly made regarding the petitioner company is a systematically important core investment company and requires to make necessary pertinent compliances of RBI norms and regulations, may be considered by the Hon'ble Tribunal."

II. 2(b) of the Supplementary Sur-Rejoinder on Composite Scheme:

"It is submitted that in respect of the contentions made in paragraph 3 of the rejoinder the petitioner companies citing the provisions for merger of more than one transferor companies with one Transferee Company as a provision approval of the proposed composite scheme of arrangement. In this regard, the detailed submissions of this deponent in earlier affidavit regarding the composite schemes are not allowable under section 230-232 of the Companies Act, 2013 may be considered by the Hon'ble Tribunal."

III. Paragraph 2(g) of the Reply Affidavit of the Regional Director, Eastern Region, Ministry of Corporate Affairs on Authorised Share Capital of RHPL:

"It is submitted that clause 15 of the scheme provides for increase of the Authorized Capital of Robust Hotels Private Limited but no mention of fee payable to Registrar of Companies for such increase. In the Companies Act 2013, under section 61 or section 64 there is no provision for conversion of Authorized Preference Share Capital into Authorized Equity Share Capital or debentures into

Sd

Authorized Equity Share Capital. Since the Companies Act 2013 does not provide for such conversion, it shall result into loss of Government revenue if the Authorized Capital is increased without payment of fee."

37. The petitioners have inter alia, dealt with the issue of NBFC in paragraph 2 of their Explanatory Notes in terms as follows:

"AHEL is admittedly not a non-banking financial company and is operating a hotel, being the Hyatt Regency hotel in Kolkata. Further, GJSHL had undertaken a project for establishing a hotel at Bhubaneswar, in the State of Odisha and is also a holding company of Robust Hotels Private Limited ("RHPL"), a company owning and operating a hotel in Chennai. As such GJHSL does not trade in its investments in RHPL. As stated in paragraph 5 of the petitioners' Rejoinder, the petitioner No.1 (GJSHL) is not a non-banking financial company and is not required to be registered under the Reserve Bank of India Act, 1934 ("RBI Act"). The same has also been certified by the Statutory Auditors of GJSHL in their reports to the members of GJSHL, including in their report on the financial statements of GJSHL for the financial year ended 31st March, 2017, included in Annexure "C" to the petition (Per clause (xvi) at page 124 of the petition). Without prejudice to the aforesaid, it is reiterated that GJSHL would in any event be a core investment company which is not a systemically important core investment company in terms of clause (xxv) of paragraph 3 of the Master Direction - Core Investment Companies (Reserve Bank) Directions, 2016 ("CIC Master Directions") and hence exempted from registration under the RBI Act as per paragraph 2(i) of such CIC Master Directions."

Sd

38. The petitioners have, inter alia, dealt with the observations relating to Composite Scheme in paragraph 3 of their Explanatory Notes, inter alia as follows:

"The petitioners reiterate that the instant Scheme is a composite Scheme of Arrangement between three companies, being AHSL, GJSHL and RHPL and their respective shareholders of which two companies, viz GJSHL and AHSL have their registered offices at Kolkata within the jurisdiction of this Hon'ble Tribunal while the third company, viz RHPL, has its registered office at Chennai within the jurisdiction of the Hon'ble Chennai Bench of the National Company Law Tribunal. All provisions and parts of the Scheme, including Parts I, II and III thereof, are connected and necessary for proper working of the Scheme as a whole. Such Scheme of Arrangement is a composite Scheme of Arrangement between the said parties under Sections 230 and 232 of the Companies Act, 2013 ("Act"). The Scheme is squarely covered and contemplated by the Act, including the said sections and is in accordance therewith. Such schemes are clearly contemplated and provided for under the said sections 230 and 232 of the Act and must necessarily be so in the context of schemes entailing amalgamation or demerger or otherwise involving two or more companies. Further, such composite Schemes of Arrangement are in fact encouraged by legislation and judicial precedents for avoiding multiple and cumbersome applications and procedures and facilitating a single window clearance to such schemes. The principle is also enshrined in Companies (Compromises, Arrangements & Amalgamations) Rules, 2016. Rule 3(2) of the said Rule provided that **"where more than one company is involved in a scheme in relation to which an application under sub-rule (1) is being filed, such application may, at the discretion of such companies be filed as a joint application"**. Accordingly, GJSHL and AHSL having their registered offices within the jurisdiction of this Hon'ble Tribunal, have jointly filed

the instant petition before this Hon'ble Tribunal for sanction of the Scheme and are the two petitioners before this Hon'ble Tribunal, as also correctly reflected in the cause title of the instant petition while RHPL, the third company, having its registered office in Chennai has also duly filed its petition for sanction of the Scheme before the Hon'ble Chennai Bench of the National Company Law Tribunal and is pursuing the same."

39. With respect to the observations of the Regional Director relating to Authorised Share Capital of RHPL, the Petitioners have dealt with the same in paragraph 8 of their Rejoinder and submitted that fees, if any, required to be paid on increase of Authorised Share Capital of RHPL, will be paid by RHPL.

40. It is further stated in the said explanatory notes dated 02-01-2019 that the instant Scheme of Arrangement is to the benefit and advantage of the said Companies, their shareholders, employees and all concerned. The Scheme is just, fair and reasonable and is not contrary to any provisions of law and does not violate any public policy. The Scheme has also been approved bona fide by the shareholders of the Petitioner Companies.

41. Heard the arguments of Ld. Senior Counsel for the Petitioner Companies and the Ld. Joint Director, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs. Perused the records, documents annexed to the petition and affidavits and Notes filed in the instant proceedings.

42. in view of the facts stated above and since all the requisite compliance has been fulfilled, the following orders in terms of prayers

Sd

made in the Petition are passed :

- a. The Scheme of Arrangement mentioned in paragraph 1 of this petition, being Annexure "A" to the Petition, is sanctioned by this Tribunal to be binding with effect from the close of business hours on the 31st day of March, 2016 ("Appointed Date") on GJS Hotels Limited ("GJSHL") and Asian Hotels (East) Limited ("AHEL"), their respective shareholders, creditors and all concerned ;
- b. All the property, rights and powers of GJSHL relating to the Demerged Undertaking, including those described in the Schedule of Assets but excluding those specified in clause 4.2 of the Scheme, be transferred from the said Appointed Date, without further act or deed, to AHEL and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013 be transferred to and vested in AHEL for all the estate and interest of GJSHL therein but subject, nevertheless, to the charges affecting the same, as provided in the Scheme ;
- c. All the debts, liabilities, duties and obligations of GJSHL relating to the Demerged Undertaking be transferred from the said Appointed Date, without further act or deed, to AHEL and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of AHEL ;
- d. All the employees of GJSHL relating to the Demerged Undertaking shall be engaged by AHEL as provided in the Scheme ;
- e. All proceedings and/or suits and/or appeals pending by or against GJSHL in respect of the Demerged Undertaking be continued by or

SD

against AHEL as provided in the Scheme ;

f. Leave is granted to the Petitioners to file the Schedule of Assets showing the present freehold and leasehold properties of the Demerged Undertaking of GJSHL to be transferred to AHEL in the form as prescribed in the Schedule to Form No.CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of this order ;

g. GJSHL and AHEL do each within thirty days of the date of the receipt of this order, cause a certified copy to be delivered to the Registrar of Companies for registration.

43. In the event the Petitioners supply legible computerized print out of the scheme and schedule of assets in acceptable form to the department, the department will append such computerized print-out, upon verification to the certified copy of the order without insisting on a hand-written copy thereof.

44. Accordingly, CP(CAA) No.770/KB/2018, connected with CA(CAA) No. 516/KB/2017 stands disposed of.

45. Urgent Photostat certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

SD
(Irajan P. Gosavi)
Member(Judicial)

GOUR_STENO