

203

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH - I, CHENNAI**

**CP/28/CHE/2021  
In  
CA/401/CAA/2020**

*(Filed under Sections 230 to 232 of the Companies Act, 2013)*

*In the matter of Scheme of Arrangement, Demerger and  
Reduction of Capital*

Between

**M/s. ASIAN HOTELS (EAST) LIMITED**

CIN: L15122WB2007PLC162762

HYATT REGENCY KOLKATA,  
JA-1, SECTOR - 2, SALT LAKE CITY,  
KOLKATA - 700 098

*Demerged Company*

And

**M/s. ROBUST HOTELS PRIVATE LIMITED**

CIN: U55101TN2007PTC062085

365, ANNA SALAI, TEYNAMPET,  
CHENNAI - 600 018

*... Petitioner / Resulting Company*

And

**THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS**

*Order Pronounced on 13<sup>th</sup> October 2021*

CORAM

**R. SUCHARITHA, MEMBER (JUDICIAL)**

**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Applicant(s): Arun Karthik Mohan, Advocate*

## **ORDER**

**Per: ANIL KUMAR B, MEMBER (TECHNICAL)**

CP/28/CHE/2020 is a Company Petition filed by the Petitioner / Resulting Company viz. M/s. Robust Hotels Private Limited for the purpose of the approval of the Scheme of Arrangement, (Demerger) (hereinafter referred to as the 'SCHEME') as contemplated between the Petitioner Companies viz. M/s. **Asian Hotels (East) Limited** (hereinafter referred to as "Demerged Company") and **M/s. Robust Hotels Private Limited** (hereinafter referred to as "Resulting Company") under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 (for brevity 'the Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') pursuant to the Scheme proposed between the Petitioner Companies and the said Scheme is also annexed as "Annexure A" to the typed set filed along with the CP/28/CHE/2021.

2. The Registered office address of the Demerged Company is situated at Kolkata, West Bengal and falls within the jurisdiction of NCLT Kolkata Bench. The Demerged Company had filed a company application bearing CA (CAA) No.1155/KB/2020 before the NCLT, Kolkata Bench and directions were issued vide order dated 28.01.2021.



3. **1<sup>ST</sup> MOTION APPLICATION – IN BRIEF**

3.1. The Resulting Company had filed its First Motion Application vide CA/401/CAA/2020 seeking directions for dispensation of the meetings of the Equity Shareholders and Secured Creditors and for holding of meeting of the Unsecured Creditors. Based on such application moved under Sections 230-232 of the Companies Act, 2013; directions were issued by this Tribunal, vide order dated 23.12.2020. Subsequent to the said order, the Resulting Company has filed the present Petition before this Tribunal on 11.02.2021 for sanction of the Scheme of Arrangement by this Tribunal.

4. **RATIONALE OF THE SCHEME**

4.1. The Rationale and benefits of the Scheme as submitted by the Learned Counsel for the Petitioner Companies would *inter alia* result in the following benefit;

- a. Unlocking the value of AHEL shares to its shareholders, which is presently getting subdued on account of subdued performance and balance sheet of RHPL.
- b. Possible release of guarantee(s) presently given by AHEL to the lenders of RHPL. This would clear the contingent liability as appearing in the financial statements of AHEL and will potentially improve the credit rating of AHEL, thereby enabling reduction in cost of finance for AHEL and better price discovery on the stock market.



- c. Improving the balance sheet of RHPL and its credit rating by providing liquid assets and resources that would enable enhancement in future profitability without any sacrifice of value by the shareholders of AHEL, enabling potential turn-around and/or expansion programs for RHPL, and assist RHPL in supporting and potentially reducing its debt burden and cost of financing.
- d. Enable unlocking of true value of RHPL for the shareholders of AHEL (in a separate entity, being RHPL), which does not appear to be reflecting fully and accurately in the present consolidated market valuation of AHEL on account of there being a holding company discount;
- e. Provide scope of attracting and accessing targeted funding and investors for each of AHEL and RHPL and provide better flexibility in pursuing long term growth plans and strategies for the separate companies AHEL and RHPL, instead of RHPL continuing to use AHEL's credit rating and guarantees and equity funds;
- f. Enable the management of AHEL to evaluate the performance of the Hotel Division on an independent basis and keep its risks (if any) ring fenced; and
- g. Enable enhanced strategic flexibility and focus of the respective managements of AHEL and RHPL, thereby facilitating the separate managements to efficiently exploit opportunities for each of the said businesses.

5. In the second motion application filed by the Petitioner Companies, this Tribunal vide order dated 29.03.2021 has directed



the Resulting Company to issue notice to the Statutory / Regulatory Authorities viz. (i) Regional Director (Southern Region), (ii) RoC, Chennai, (iii) the Income Tax Department, and other sectoral regulators, who may govern the working of the respective companies in relation to the Scheme, as well as for paper publication to be made in "*Business Standard*", English (Chennai Edition) and "*Dina Mani*" Tamil (Chennai Edition).

6. In compliance to the said directions issued by this Tribunal, the Petitioner Companies have filed an affidavit of service before the Registry of this Tribunal on 23.04.2021 and a perusal of the same discloses that the Resulting Company has effected paper publication as directed by the Tribunal in one issue of "*Business Standard*" (Chennai Edition) in English and "*Dina Mani*" (Chennai Edition) in Tamil on 16.04.2020. It is also seen that notices have been also served to (i) The Regional Director, Southern Region on 01.04.2021(ii) Regional Director, Northern Region on 05.04.2021 (iii) Registrar of Companies Chennai on 01.04.2021 (iv) Income Tax Department, Circle 5(2), Chennai on 01.04.2021, (v) Deputy Commissioner of Income, Circle 8(1), Kolkata on 05.04.2021, (vi) Securities Exchange Board of India, Mumbai on 06.04.2021, (vii) The BSE Limited, Mumbai on 06.04.2021, (viii) National Stock Exchange of India on 06.04.2021. Pursuant to the service of notice



of the petition the following statutory authorities have responded as follows;

## 7. STATUTORY AUTHORITIES

### 7.1. REGIONAL DIRECTOR

The Regional Director, (*hereinafter referred to as 'RD'*) Chennai to whom the notice was issued in the first motion itself, has filed his Report before this Tribunal and has stated that Clause 4.1.2 of Part IV of the Scheme provides for the protection of the interest of the employees of the Demerged Company. It was further observed in para 3 of the report of the RD as follows;

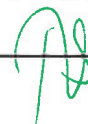
3. It is further submitted that as per Clause 1.4.5 of Part – I of the Scheme, the Appointed Date is mentioned as Effective Date, which is not in accordance with the provisions of Sec.232(6) of the Act. The Appointed date is significant in respect of demerger since the consideration for transfer / demerger of identified business is to be arrived at beforehand by valuation of concerned assets and liabilities of the demerged business.

7.2. Thus, after examining the Scheme, except the observations as extracted *supra*, the Regional Director in their Report has stated that they have decided not to make any objection to the Scheme.



7.3. In relation to the objections raised by the Regional Director, the Learned Counsel for the Petitioner submits that there are catena of Judgments laid down by the High Court that there is no legal provision that requires the Appointed Date to be a specific calendar date and in this connection reliance was placed upon the decision of the Hon'ble High Court of Madras in the matter of *In re: Equitas Finance Limited & ORs. [2016] 199 CompCas 124 (Mad.)*. Further in order to bolster his argument, the Learned Counsel for the Petitioner referred to the Ministry of Corporate Affairs, vide General Circular No. 09/2019 dated August 21, 2019 regarding "*Clarification under Section 232(6) of the Companies Act, 2013*" with respect to the Appointed Date has clarified as follows;

- (a) *The provisions of Section 232 (6) of the Act enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event...or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc. which are relevant to the scheme.*
- (b) .....
- (c) .....
- (d) *The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself upon*



*occurrence of which the scheme would become effective..."*

7.4. It was submitted by the Learned Counsel for the Petitioner that taking note of the aforementioned circular and judicial precedent, the Mumbai Bench of NCLT in the matter of Tata Power Company Limited vide its order dated 12.12.2019 passed in CP/4655(MAH)/2018 has rejected a similar objection on behalf of the Regional Director and approved the Scheme.

7.5. In relation to the objections raised by the Regional Director, Southern Region with respect to the Appointed Date, it is significant to point out to the clarification issued by the MCA vide its General Circular No.09/2019 on 21.08.2019, which manifest the following facts;

- The 'Appointed date' can be a specific calendar date or be tied to the occurrence of an event e.g.: grant or transfer of licenses, the fulfilment of conditions precedent, etc. (prospective date).
- If the 'Appointed date' is a calendar date, it may precede the date of applying for the Scheme before the NCLT.
- If the 'Appointed date' is predated by a year or more from the date of applying with NCLT, justification should be provided for the same in the Scheme and it should not be against the public interest.





- If 'Appointed date' is based on the occurrence of an event, the said event should be specifically identified in the Scheme upon the occurrence of which the scheme would become effective. If the event-based date is a date after the date of filing the order with the concerned RoC under Section 232(5) of the Companies Act, the concerned company shall file an intimation of the same with the RoC within 30 days of such Scheme coming into force.
- The 'Appointed date' shall also be the 'acquisition date' and date of transfer of control to conform to Indian Accounting Standards 103.

Coming to the present case, it is relevant to refer to the definition of the term "Appointed Date", "Effective Date" and Clause 6.7 of the Scheme;

**Appointed Date** means the Effective Date (beginning of business hours) or such other date as may be directed / approved by the Tribunal(s) being the date with effect from which this Scheme shall, post effectiveness of this Scheme, be operative;

**Effective Date** has the meaning assigned to such term in Clause 6.7; Any references in this Scheme to "upon this Scheme becoming effective" or upon the effectiveness of this Scheme" or "post effectiveness of this Scheme" means and refers to the Effective Date;

#### **Clause 6.7. Effectiveness of the Scheme**

6.7.1. This Scheme is conditional upon, and shall become effective on the happening of the last of the following ("Effective Date");

- (i) this Scheme being approved by the respective requisite majorities of the various classes of



shareholders and / or creditors (if required) of each of the Scheme Entities as required under the 2013 Act;

- (ii) the Scheme being sanctioned by the jurisdictional Tribunal(s) and appropriate orders being passed by the Tribunal(s) pursuant to Sections 230 and 232 of the 2013 Act and other relevant provisions thereof, as applicable; and
- (iii) Certified copies of the relevant Orders of the Tribunal (s) being filed with the Registrar of Companies, West Bengal by AHEL and Registrar of Companies, Chennai by RHPL

6.7.2. This Scheme shall become effective from the Effective Date and the provisions of this Scheme shall be applicable and come into operation from the Appointed Date.

7.6. It could be seen from sub- clause (iii) Clause 6.7.1 of the Scheme that the Effective Date is the date of filing of the certified copies of the relevant order with the concerned Registrar of Companies. The Resulting Company has adopted such date as an "Effective Date" as well as "Appointed Date" and this Tribunal, by taking into consideration the clarification issued by MCA vide its General Circular No.09/2019 on 21.08.2019 and being guided by the decision of the Madras High Court in the matter of *In re: Equitas Finance Limited & ORs. [2016] 199 CompCas 124 (Mad.)*, the objections as raised by the Regional Director, Southern Region in para 3 of its report is not sustainable. Thus, the



Effective Date” as well as “Appointed Date” of the Resulting and the Demerged Company, subject to the sanctioning of the Scheme by the NCLT Kolkata Bench, shall be the date on which they file the Certified copy of the order sanctioning the Scheme with the concerned Registrar of Companies as per sub-clause (iii) of Clause 6.7.1 of the Scheme.

#### **7.7. OTHER STATUTORY AUTHORITIES**

In relation to the other statutory authorities to whom notices have been issued, neither they have filed any reply nor raised any objections to the Scheme and in the circumstances, this Tribunal presumes that other statutory Department viz. The Income Tax Department, the SEBI and the BSE do not have any objection to the sanction of the Scheme.

#### **8. VALUATION REPORT**

8.1. The Learned Counsel for the Petitioner Companies invited the attention of this Tribunal to the Valuation Report obtained from one Mahim Singh Mehta, Registered Valuer dated January 2020, wherein it has been recommended by the Independent Valuer as follows;

- 1 (one) Equity Share of RHPL having a face value of Rs.10 (Indian Rupees Ten) each shall be issued

and allotted to shareholders of AHEL for every 1 (one) Equity Share of AHEL having a face value of Rs.10 (India rupees ten) each, held by shareholders of AHEL as of the Record Date.

**9. ACCOUNTING TREATMENT**

9.1. The Learned Counsel for the Petitioner Companies have stated that the Statutory Auditors of the Petitioner Companies have examined the Scheme and has certified that the Petitioner Companies have complied with proviso to Section 230 (7) / Section 232 (3) and the Accounting Treatment contained in the proposed Scheme of Arrangement is in compliance with the Applicable Indian Accounting Standards. The Certificates issued by the Statutory Auditors certifying the Accounting Treatment of each of the Petitioner Companies are placed at pages 684 and 685 to the typed set filed along with the petition.

**10. OBSERVATIONS OF THIS TRIBUNAL**

10.1. After analyzing the Scheme in detail, this Tribunal is of the considered view that the scheme as contemplated amongst the petitioner companies seems to be *prima facie* beneficial to the Company and will not be in any way detrimental to the interest of the shareholders of the Company. In view of absence of any other objections having

been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the Scheme of Arrangement appended as Annexure "A" along with CP/28/CHE/2021.

10.2. The Learned Counsel for the Petitioner companies submitted that no investigation proceedings are pending against the Transferor or Transferee Companies under the provisions of the Companies Act, 1956 or the Companies Act, 2013 and no proceedings against the petitioner companies for oppression or mismanagement have been filed before this Hon'ble Tribunal or erstwhile Company Law Board.

10.3. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

10.4. 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 stamp duty, taxes or any other charges, if any, payment is due or

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

**11. THIS TRIBUNAL DO FURTHER ORDER:**

- (i) The Existing Equity Shares of RHPL held by AHEL shall be reduced and cancelled (without payment of any consideration)
- (ii) That the sanction of the scheme resulting in the reduction of the share capital of the Resulting Company as above shall be in accordance with the provisions of Section 230 of the Companies Act, 2013 without any further application, act or deed required by the Resulting Company or its shareholders.
- (iii) That all properties, rights and powers of Demerged undertaking be transferred without further act or deed to the Resulting Company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 be transferred to and vested in the Resulting Company for all intents, purposes and interest of the Demerged undertaking subject nevertheless to all changes now affecting the same; and
- (iv) That all the liabilities, (if any) and powers, engagements, obligations and duties of the Demerged undertaking shall pursuant to Section 232 (3) of the Companies Act, 2013 without further act or deed be transferred to the Resulting Company and accordingly



the same become the liabilities and duties of the Resulting Company; and

- (v) That all proceedings now pending by or against the Demerged undertaking shall be continued by or against the Resulting Company; and
- (vi) That all the services of all the employees of the Demerged Company employed in the Demerged undertaking shall stand transferred to the Resulting Company on the same terms and conditions at which these employees are engaged by the Demerged Company without any interruption of service as a result of the transfer; and
- (vii) That upon the Scheme coming into effect, the Resulting Company shall, without any further application or deed, issue and allot 17,291,696 (One Crore Seventy Two Lakh ninety one thousand six hundred and ninety six) New Equity Shares having a face value of Rs.10/- (Rupees ten) each, fully paid – up, to the shareholders of AHEL as on Record Date.
- (viii) That the Resulting Company is directed to file the necessary application before the concerned authorities for the conversion of the public limited company to a private limited company.
- (ix) That the Resulting Company shall file the revised Memorandum and Articles of Association with the concerned Registrar of Companies and further make

the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Resulting Company after setting off the fees paid by the Transferor Company.

- (x) That the Appointed date for the Scheme is as mentioned in sub-clause (iii) of Clause 6.7.1 of the Scheme.
- (xi) That the Petitioner Companies, 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 Demerged undertaking shall be deemed to be transferred; and
- (xii) That any person interested in the Scheme, shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary;

12. Accordingly, the Company Petition stands **allowed** on the aforementioned terms.

-sd-  
(ANIL KUMAR B)  
MEMBER (TECHNICAL)

-sd-  
(R. SUCHARITHA)  
MEMBER (JUDICIAL)

*Raymond*