(2020) 10 NCLT CK 0010

In the National Company Law Appellate Tribunal

Case No : Company Application (CAA) No. 62(ND) Of 2020

Begonia Hotels Private Limited Vs

Date of Decision : 15-10-2020

Acts Referred:
Companies Act, 2013 — Section 230, 231, 232

Citation : (2020) 10 NCLT CK 0010

Hon'ble Judges : Dr. Deepti Mukesh, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Saurabh Kalia, Devesh Vasisht, Apurva Jain, Shankari Mishra

Final Decision : Disposed Of

Judgement

Dr. Deepti Mukesh, J

1. This is joint application filed by the applicant companies herein, Begonia Hotels Private Limited(â??brevity Transferor Company No.1â?),

Nightingale Hotels Private Limited (â??brevity Transferor Company No.2â?), Fleur Hotels Private Limited(â??brevity Transferee Companyâ?),

under the provisions of Sections 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies

(Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter

referred to as the â??SCHEMEâ??) proposed between the applicants.

2. Affidavits in support of the above application has been sworn by Mr. Nikhil Sethi, beingthe Authorized Signatory on behalf of the Transferor

Company No.1, Transferor Company No. 2and on behalf of Transferee Company authorized vide Board Resolution dated 13.11.2019. It is also

represented that the registered office of all the applicant companies are under the domain of Registrar of Companies, NCT of New Delhi & Haryana and within the territorial jurisdiction of this Tribunal.

3. The Transferor Company No.1 is a private limited company incorporated on 15th April, 2009under the name and style of â??Begonia Hotels

Private Limited.â? under the provisions of Companies Act, 1956 bearing CIN U55101DL2009PTC189339 with registrar of Companies, NCT of Delhi

and Haryana, having its registered office at Asset No.6, Aerocity Hospitality District, and New Delhi-110037. The Authorized Share Capital of the

Transferor No.1 Company is Rs.1,50,00,000/- divided into 1,50,00,000 Equity shares of Rs.1 each and the Issued, Subscribed and Paid-up Share

Capital is Rs.1,46,45,682/- divided into 1,46,45,682 Equity Shares of Rs.1/- each.

4. The Transferor Company No. 2 is a private limited company incorporated under the provisions of Companies Act, 1956 on 19th January, 2007 vide

CIN U55101DL2007PTC158178with Registrar of Companies, NCT of Delhi & Haryana in the name and style of â??Nightingale Hotels Private

Limitedâ? and having its registered office at Asset NO.6, Aerocity Hospitality District. New Delhi-110037. The Authorized Share Capital of the

company is Rs. 13,05,00,000/- divided into 13,05,00,000 Equity shares of Rs.1 each and the Issued, subscribed and Paid-Up Share Capital is Rs.

13,03,66,000/-divided into13,03,66,000Equity Shares of Rs.1/- each.

5. The Transferee Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 9th July 2003, vide CIN

U155101DL2003PTC207912with Registrar of Companies, NCT of Delhi & Haryana in the name and style of â??Cyberhills Developers Private

Limitedâ?, thereafter on 10th April 2012 the name was changed to â??Fleur Hotels Private Limitedâ? and new certificate of registration giving effect

to the change in name was issued by Registrar of companies, NCT of Delhi and Haryana. The company having its registered office at Asset No-6,

Aerocity Hospitality District, New Delhi -110037.The Authorized Share Capital of the company is Rs. 1,21,00,00,000/- divided into12,10,00,000 Equity

Shares of Rs.10/- each and Issued, Subscribed and Paid up Share Capital is Rs. 59,28,62,530/- divided into5,92,86,253 Equity Shares of Rs.10/- each.

6. The Transferor Companies as well as the Transferee Company has filed their respective Memorandum and Articles of Association inter alia

delineating their object clauses, as well as their last Audited Annual Accounts for the financial 31.03.2019. The provisional balance sheet as on 30th

September 2019 is also annexed herewith.

7. All the Applicant companies, vide meeting of Board of Directors held on 13th November 2019 have unanimously approved the proposed Scheme of

Amalgamation as contemplated above. Copies of said resolutions passed in the said board meetings have been placed on record.

8. With regards the Transferor Company No.1 it is stated as under:

a) The company has 7 equityshareholdersand nil preference shareholders, certificate from Chartered Accountants certifying list of shareholders is

annexed and all of them have given their respective consents by way of affidavits holding 100% of voting share.

b) The company has 1 secured creditor, certificate from Chartered Accountant certifying list of secured creditor is annexed,who has givenconsent by

way of affidavits holding 100% of total value of debt.

c) The company has 7 unsecured creditors, certificate from Chartered Accountants certifying list of unsecured creditors is annexed and 5 creditors

out of the total have given their consent by way of consent affidavits holding 95.09% of total value of debt.

In relation to the equity shareholders, secured creditor and unsecured creditors it seeks dispensing with holding/convening of the meetings as their

consent affidavits are placed on record. Since there is no preferential shareholder therefore the necessity of convening/holding a meeting does not

arise.

9. With regards the Transferor Company No.2 it is stated as under:

a) The company has 7 equity shareholders and nil preference shareholders, certificate from Chartered Accountants certifying list of shareholders is

annexed and all of them have given their respective consents by way of affidavits holding 100% of voting share.

b) The Company has 2secured creditors, certificate from Chartered Accountants certifying list of secured creditors is annexed,only 1 creditor has

given consent by way of affidavits holding 99.69% of total value of debt.

c) The company has 41unsecured creditors, certificate from Chartered Accountants certifying list of unsecured creditors is annexed and 32 creditors

out of the total have given their consent by way of consent affidavits holding 90.06% in value of debt.

In relation to the equity shareholders, secured creditor and unsecured creditors it seeks dispensing with holding/convening of the meetings as their

consent affidavits are placed on record. Since there is no preferential shareholder therefore the necessity of convening/holding a meeting does not

arise.

10. With regards the Transferee Company it is stated as under:

a) The company has 6 equity shareholders and 2 preference shareholders, certificate from Chartered Accountants certifying list of shareholders is

annexed and all of them have given their respective consents by way of affidavits holding 100% of total value.

b) The Company has 5 secured creditors;certificate from Chartered Accountants certifying list of secured creditors is annexed, 4 out of the total

creditors has given consent by way of affidavits holding 99.71% of total value of debt.

c) The company has 228 unsecured creditors, certificate from Chartered Accountants certifying list of unsecured creditors is annexed and 106

creditors out of the total have given their consent by way of consent affidavits holding 90.51% in total value of debt.

In relation to the equity and preference shareholders, secured creditors and unsecured creditors it seeks dispensing with holding/convening of the

meetings as their consent affidavits are placed on record.

11. The appointed date as specified in the Scheme is 1st April 2019 subject to the directions of this Tribunal.

12. Taking into consideration the submissions and the documents placed on record, we propose to issue the following directions with respect to

convening/holding or dispensing with the meetings of the Shareholders, Secured and Unsecured Creditors as well as issue of notices including by way

of paper publication as follows: -

A. In relation to the Transferor Company No.1:

a. With respect to Equity shareholders: In view of consent affidavits from all equity shareholders having 100% voting share been filed, convening

the meeting of shareholders/members is dispensed with.

b. With respect to Secured Creditor: In view of consent affidavit from sole secured creditor having 100% of the debt been filed, convening the meeting of secured creditor/members is dispensed with.

c. With respect to Unsecured Creditors: In view of consent affidavits from 5 unsecured creditors having 95.09% of the debt been filed,

convening the meeting of unsecured creditors/members is dispensed with.

B. In relation to the Transferor Company No.2:

a. With respect to Equity shareholders: In view of consent affidavits, from all the equity shareholders having 100% voting share been filed,

convening the meeting of shareholders/members is dispensed with.

d. With respect to Secured Creditors: In view of consent affidavit, from one secured creditor having 99.69% of total debt been filed, convening

the meeting of secured creditor/member is dispensed with.

b. With respect to Unsecured Creditors: In view of consent affidavit, from the 32 Unsecured creditors having 90.06% of total debt been filed,

convening the meeting of Unsecured creditors is dispensed with.

C. In relation to the Transferee Company:

a. With respect to Equity and shareholders: In view of consent affidavits, from all the equity shareholders having 100% voting share, been filed

convening the meeting of shareholders/members is dispensed with.

b. With respect to preference shareholder: In view of consent affidavits, from both preferential shareholders having 100% of total debt, been

filed convening the meeting of preferential shareholders/members is dispensed with.

c. With respect to Secured Creditors: In view of consent affidavits, from four secured creditors having 99.71% of total debt been filed, convening

the meeting of secured creditors/members is dispensed with.

d. With respect to Unsecured Creditors: In view of consent affidavit, from 106 unsecured creditors having 90.51% of total debt been filed,

convening the meeting of Unsecured Creditors is dispensed with.

13. Notice of this application shall also be served on the following Statutory Authorities:

(i) Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2 Floor, Paryawaran Bhavan, CGO Complex, New Delhi-110003;

(ii) Registrar of Companies at 4 floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;

(iii)Official liquidator, Lok Nayak Bhavan, 8 Floor, Khan Market, New Delhi-110001;

(iv)Income Tax Department, Income Tax Office, Additional Commissioner Of Income Tax, Special Range 4, Central Revenue Building, IP Estate,

New Delhi-110002. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing officers so that

timely and proper reply may be filed.

(v) and any other sectoral regulators required to be served.

The application stands allowed on the aforesaid terms and disposed off.