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(2022) 09 NCLT CK 0025

In the National Company Law Tribunal

Case No : CA (CAA) No. 49/KB/2022

Bharat Residency & Resorts Limited Vs

Date of Decision : 09-09-2022

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(5), 232
Companies (Compromises, Arrangements and Amalgamations)Rules 2016 — Rule 7, 8(2)

Citation : (2022) 09 NCLT CK 0025

Hon'ble Judges : P. Mohan Raj, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Anil Kumar Dubey

Final Decision : Disposed Of

Judgement

Balraj Joshi, Member (Technical):

a) This Application has been filed under Sections 230-232 of the Companies Act by the Applicant Companies namely; BHARAT RESIDENCY & RESORTS LIMITED, (hereinafter referred to as the DEMERGING COMPANY NO.1), BHARAT ENGINEERING & BODY BUILDING COMPANY PRIVATE LIMITED, (hereinafter referred to as the DEMERGING COMPANY NO.2) and BHALOTIA RESIDENCY & RESORTS PRIVATE LIMITED (hereinafter referred to as the RESULTANT COMPANY) for obtaining sanction of this Tribunal to the Scheme of Demerger proposed to be made between the Demerger Companies and the Resulting Company. A copy of the Scheme of Demerger has been annexed with the application as Annexure-4.

b) Ld. Authorized Representative for the Applicant(s) submits that the shares of the Applicant Companies are not listed at any stock exchange.

c) Further, the Applicant(s) have the following classes of shareholders and creditors:-

(a) Applicant Company /Demerging Company No. 1 has 9 (Nine) equity shareholders, NIL secured creditors and unsecured creditors.

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(b) Applicant Company/ Demerging Company No. 2 has 10 (Ten) equity shareholders, 248 (Two Forty Eight) Sundry Creditors.

(c) Applicant Company/ Resultant Company has 3 (Three) equity shareholders, Nil secured creditors and unsecured creditor.

2. It is submitted that the Board of Directors of the Applicant Companies in their respective meetings held on 31st January, 2022 approved the Scheme. Copy of the board resolution dated 31st January, 2022 of all the Applicant Companies are annexed with the application and marked as 'Annexure-"5".

3. The accounting treatment as proposed in the scheme is in conformity with the Indian Accounting Standard prescribed under Section 133 of the Companies Act, 2013 for which the Certificates from the Auditors of the Applicant Companies are annexed with the application and marked as Annexure-"9".

4. The Valuation Report dated 20th January, 2022 issued by Anil Kumar Dubey, Registered Valuer, IBBI Registration Number: IBBI/RV/03/2019/12411 recommending the fair equity share exchange ratio in respect of the Proposed Demerger. Copy of the Valuation Report dated 20th January, 2022 is annexed with the application and marked as 'Annexure 10'.

5. It is submitted that the Scheme does not contemplate any compromise or arrangement with the Creditors of the Demerging Company and the Resultant Company. The Scheme does not provide or contemplate any variation in the rights of the Creditors of the Demerging Company and the Resultant Company. It is submitted that the Creditors of the Demerging Company and the Resultant Company are not in any manner adversely or prejudicially affected by the Scheme. It is further submitted that the Resultant Company shall have a positive net worth post effectiveness of the Scheme and accordingly, the creditors of the Demerging Company and the Resultant Company are not in any manner adversely or prejudicially affected by the Scheme. There are NIL secured and unsecured creditors in Demerging Company No. 1 and 248 (Two Forty Eight) Sundry Creditors in Demerging Company No. 2 and Nil Secured and Unsecured Creditor in Resultant Company have given their written consents to the Scheme by way of affidavits.

6. It is submitted that:

(a) The Demerging Companies No. 1 have 9 (Nine) equity shareholders and the Demerging Companies No. 2 have 10 (Ten) equity shareholders. List of the equity shareholders along with Consent of Affidavits of all the equity shareholders approving the Scheme are annexed with the application and marked as 'Annexure 6'. Applicant Companies No. 1 /Demerging Companies No. has NIL secured and unsecured creditors and the Applicant Companies No. 2/ Demerging Company No. 2 have 248 (Two Hundred Forty Eight) Sundry Creditors as on 31st January, 2022. List of unsecured creditors certified by Chartered Accountant is annexed with the application and marked as 'Annexure 7'

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(b) Applicant Company /Resultant Company has 3 (Three) equity shareholders. List of the equity shareholders along with Consent of Affidavits of all the equity shareholders approving the Scheme are annexed with the application and marked as 'Annexure 6'. Applicant Company /Resultant Company has Nil Secured Creditors and unsecured creditors as on 31st January, 2022. List of unsecured creditors certified by Chartered Accountant along with consent is annexed with the application and marked as 'Annexure 7'.

7. Directions are sought accordingly for dispensation with meetings of the equity shareholders and preference shareholders and secured creditors and unsecured creditors of all the Applicant Companies.

8. Heard the Ld. Authorised Representative for the Applicant(s), perused the records, documents annexed to the application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following Orders are passed: -

a) Meetings of equity shareholders of all the Applicant Companies i.e. the Demerging Companies and Resultant Company are dispensed with in view of all the equity shareholders having already considered and given their written consents to the Scheme by way of affidavits.

b) Meetings of secured and unsecured creditors of the Demerging Companies No.1 are dispensed as there is NIL secured creditors and unsecured creditors.

c) Meeting of secured creditors and unsecured creditors of the Resultant Company is dispensed as there is NIL Secured creditors and Unsecured Creditors.

d) Meeting of Sundry Creditors of the Demerging Company No. 2 shall be convened and held physically on 20.10.2022 at 4th Floor, R R Square, Main Road, Bistupur, Jamshedpur, Purba Singhbhum, Jharkhand- 831001 for the purpose of considering, and if thought fit, approving, with or without modification, the scheme at the following times:

i Meeting of Sundry Creditors of the Demerging Company No. 2 at 11 a.m.

ii At least 30 (Thirty) clear days before the meetings are to be held as aforesaid, an advertisement of notice of meetings be inserted once each in the "Financial Express" in English and "Uditwani" in Hindi as per Rule 7 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions herein. That any sundry creditor, can approach this tribunal in case of any grievance related to the holding of meeting. In addition the details of the meeting to be held shall also be put up on the website of the company for wide dissemination.

iii That Mr. Jay Prakash Heerwal, Practising Chartered Accountant (Contact No. 9835546228) and Email id: jp.heerwal@gmail.com) and having registered office at P B Road, Jugsalai, Jamshedpur, Jharkhand shall be the chairman of the aforesaid meeting of the unsecured Creditor of the Demerging Company No.

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2 to be held on 20.10.2022 or any adjournment or adjournments thereof at a consolidated remuneration of Rs. 75,000/-(Rupees Seventy-five Thousand only).

iv Mr. Sital Swain, Practising Company Secretary, (Contact no: 9334283328) and Email id: sitalpr@yahoo.co.in; and having his office address at Room No. 2, 4th Floor, Meghdep Tower, Besides South Part Hotel, Bistupur, Jamshedpur- 831001 is hereby appointed as the Scrutinizer for the aforesaid meetings of the Sundry Creditors of the Demerging Company, at a consolidated remuneration of Rs. 60,000/- (Rupees Sixty Thousand only).

v The quorum for the said meeting of the Sundry Creditors of the Demerging Company No. 2 shall be 2(Two) persons present personally or by proxy.

vi Voting on the resolution shall be through Ballot Paper at the venue of the meeting and the Applicant Companies shall make necessary arrangement for voting accordingly.

vii Subject to the directions and matters dealt with herein, the procedure for voting by polling paper/ ballot paper and conduct of voting, in so far as the same is prescribed by the Companies (Management & Administration) Rules, 2014 ("the said Rules"), and the forms there under shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.

viii In case the quorum of meeting of Sundry Creditors of Demerging Company No. 2 is not available on the scheduled time and date, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum for the adjourned meeting.

ix The cut-off date for determining the eligibility to vote and value of votes of the Meeting of Sundry Creditors of the Demerging Company No. 2 as on 30th September, 2022.

x That the Chairperson appointed for the said meeting(s) or any person authorized by the Chairperson do issue and send the notices of the aforesaid meeting(s).

xi The votes cast shall be scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the respective reports on the meeting(s) along with all papers relating to the voting to the Chairperson of the meeting(s) within 3 days from the conclusion of the meeting(s). The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutinizer.

xii The Chairperson do report to this Tribunal the results of the said meeting(s) within four weeks from the date of the conclusion of the said meeting(s). Such report shall be in Form No. CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit. The original paper cuttings of the notice of the meeting shall also be annexed to the report for record.

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e) Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents including copy of scheme and statement under provisions of the Companies Act, 2013 shall also be served to on the Regional Director (Eastern Region) - Ministry of Corporate Affairs, Kolkata and the Registrar of Companies cum official liquidator, Jharkhand and the concerned Income Tax Authority having jurisdiction over the Applicant Companies indicating the PAN numbers of the respective Applicant Companies by sending the same by registered post or by speed post, by courier and by email or through hand delivery. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Ld. Authorised Representative of the said Applicant(s). If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Demerger. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA.3 of the said Rules with necessary variations, incorporating the directions herein.

9. The Applicant(s) to file an affidavit proving service of notices of meeting(s) and publication of advertisement and compliance of all directions contained herein at least a week before the meeting(s) to be held.

10. The Application for confirmation and sanction of the Scheme to be filed within 4 weeks from the date of filing of the Report by the Chairperson.

11. The Company Application being CA (CAA) No. 49/KB/2022 is disposed of accordingly.

12. Urgent certified copies of this Order, if applied for, be supplied to the parties upon compliances of all requisite formalities.

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