(2020) 05 NCLT CK 0012

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : CAA No. 396/(ND) Of 2017 In Company Application (CAA) No. 128/(ND) Of 2017

Bilaspur Holdings Private Limited And Ors — APPELLANT

Vs

Rupali Hotels Private Limited — RESPONDENT

Date of Decision : 22-05-2020

Acts Referred:

Companies Act, 2013 — Section 230, 231, 232

Citation : (2020) 05 NCLT CK 0012

Hon'ble Judges : P.S.N. Prasad, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : P.K. Mittal, Praveen K. Mittal, Deepali Mittal, Lakshmi Gurung, Tania Sharma

Final Decision : Disposed Of

Judgement

Sumita Purkayastha, Member (T)

1. Under consideration is the Company Petition No. CAA- 396/(ND)/2017 filed under Sections 230 to 232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The present petition has been filed by the Petitioner Companies named above for the purpose of the approval of the Scheme of Amalgamation, as contemplated between the Companies and its Shareholders by way of Amalgamation of Transferor Companies with the Transferee Company.

2. As per the Scheme of Amalgamation (in short, 'Scheme'), Transferor Company No. 1 viz., Bilaspur Holdings Private Limited (hereinafter referred to as the "Transferor No. 1 Company"), Friendship Holdings Private Limited (hereinafter referred to as the "Transferor No. 2 Company"), RLM Associates Private Limited (hereinafter referred to as the "Transferor No. 3 Company"), Sarthak Holdings Private Limited (hereinafter referred to as the "Transferor No. 4 Company"), SGS Entertainment Private Limited (hereinafter referred to as the "Transferor No. 5

Company") and Sunny Holiday Lounges Private Limited (hereinafter referred to as the "Transferor No. 6 Company") are proposed to get merged with Rupali Hotels Private Limited (hereinafter referred to as the "Transferee Company") as going concern.

3. The Transferor Company No. 1 was incorporated on 22nd July, 1991 under the provisions of Companies Act, 1956 (hereinafter referred as "Act 1956") in the National Capital Territory of Delhi under the Company Identification Number (hereinafter referred as "CIN") U65993DL1991PTC045050. The Registered Office of the Transferor No. 1 Company is situated at Cabin No. -5, First Floor, R-10, Green Park Mam, New Delhi-110016. The Transferor No. 1 Company is carrying on the business of multidisciplinary consultancy, liaison representation, business development and all transaction related consultancy and advisory to foreign and Indian companies, firms, associations, societies and individuals engaged in and interested in inbound to or outbound investment and in business of strategic investment etc. The details of the main objects of the Transferor No. 1 Company are set out in the Memorandum of Association (hereinafter referred as "MOA") of the company.

4. The Transferor No. 2 Company was incorporated on 24th July, 1991 under the provisions of the Act, 1956 in the National Capital Territory of Delhi under the CIN U65993DL1991PTC045071. The Registered Office of Transferor No. 2 Company is situated at 20-B, Pocket-A-3, Mayur Vihar, Phase-Ill, New Delhi-110096. The Transferor No. 2 Company is carrying on the business of multidisciplinary consultancy, liaison representation, business development and all transaction related consultancy and advisory to foreign and Indian companies, firms, associations, societies and individuals engaged in and interested in inbound to or outbound investment and in business of strategic investment etc. The details of the main objects of the Transferor No. 2 Company are set out in the MOA of the company.

5. The Transferor No. 3 Company was incorporated on 2nd November, 2007 under the provisions of Companies Act, 1956 in the National Capital Territory of Delhi under the CIN No. U74120DL2007PTC170112. The Registered Office of the Transferor No. 3 Company is situated at 20-B, Pocket-A-3, Mayur Vihar, Phase-Ill, New Delhi-110096. The Transferor No. 3 Company is carrying on the business to act as management consultants, sales and marketing consultants and provide advices, services, consultancy in various fields, general, administrative, sales and marketing, commercial investment, legal, secretarial, economic, labour recruitment and training, market research and surveys, agency, industrial, public relation, scientific, technical, direct and indirect taxation and other levies, statistical, accountancy, quality control, programming and electronic data processing. The details of the main objects of the Transferor No. 3 Company are set out in the MOA of the company.

6. The Transferor No. 4 Company was incorporated on 31st July, 1991 under the provisions of the Act, 1956 in the National Capital Territory of Delhi under the

CIN No. U65993DL1991PTC045198. The Registered Office of Transferor No. 4 Company is situated at Cabin No. -02, First Floor, R-10, Green Park Main, New Delhi-110016. The Transferor No. 4 Company is carrying on the business of multidisciplinary consultancy, liaison representation, business development and all transaction related consultancy and advisory to foreign and Indian companies, firms, associations, societies and individuals engaged in and interested in inbound to or outbound investment and in business of strategic investment etc. The details of the main objects of the Transferor No. 4 Company are set out in the MOA of the company.

7. The Transferor No. 5 Company was incorporated on 1st November, 1993 under the provisions of the Act, 1956 in the National Capital Territory of Delhi under the CIN U74899 DL1993PTC055869 in the name and style of Roopali Overseas Pvt. Ltd. Thereafter name was changed to SGS Music & Entertainment Pvt. Ltd on 27th August, 2004. Finally name was changed to present name of SGS Entertainment Pvt. Ltd on 30th April, 2008. The Registered Office of the Transferor No. 5 Company is situated at R-10, Green Park Main, New Delhi-110016. The Transferor No. 5 Company is carrying on the business of hotels, restaurants, cafes, holiday camps, resorts, taverns, beer-houses, refreshment rooms, night clubs, cabarets and swimming pools etc. The details of the main objects of the Transferor No. 5 Company are set out in the MOA of the company.

8. The Transferor No. 6 Company was incorporated on 29th January, 2008 under the provisions of the Act, 1956 in the National Capital Territory of Delhi under the CIN No. U55101DL2008PTC173299. The Registered Office of the Transferor No. 6 Company is situated at A-255, Defence Colony, New Delhi-110024. The Transferor No. 6 Company is carrying on the business of hotels, motels, restaurant, resorts, cafes, beerhouse, refreshment rooms and lodging house keeps, wine, beer and spirits merchants, surveyors, caterers etc. The details of the main objects of the Transferor No. 6 Company are set out in the MOA of the company.

9. The Transferee Company was incorporated on 28th January, 2008, under the provisions of the Act, 1956 in the National Capital Territory of Delhi under the CIN No. U55101DL2008PTC173256. The Registered Office of the Transferee Company is situated at R-10, Green Park Main, New Delhi-110016. The Transferee Company is carrying on the business of hotels, motels, restaurant, resorts, cafes, beerhouse, refreshment rooms and lodging house keeps, wine, beer and spirits merchants, surveyors, caterers etc. The details of the main objects of the Transferee Company are set out in the MOA of the company.

10. The Board of Directors of both the Transferor and Transferee companies have approved the Scheme vide its Resolution dated 20th May 2017. The other necessary requirements have also been fulfilled as per the Orders dated 25.10.2017 and 16.11.2017 passed by this Bench.

11. The Ld. Counsel for the Petitioner Companies has submitted that the Petitioners Companies are closely held companies and their shares are not listed on any Stock Exchange. It is further submitted that the rationale of the Proposed scheme of Amalgamation is that the consolidation of the businesses presently being carried on by the Transferor Companies and the Transferee Company, shall be beneficial to the interests of the shareholders, creditors and employees of all the companies and to the interests of public at large, as such amalgamation would create greater synergies between the businesses of all the companies and would enable them to manage their business more efficiently by effectively pooling the technical and marketing skills of all the Companies as an integrated entity and also enable effective management and unified control of operations; also for creating better synergies and optimal utilisation of resources built by the Transferor Companies; for better administration and cost reduction (including reduction in administrative and other common costs); and for better utilisation of professional expertise and other manpower resources.

12. It is further submitted by the Ld. Counsel that the Scheme does not involve any corporate debt restructuring and the Scheme is neither intended to in any manner nor has any beneficial effect on the managerial interest, of the Directors of the Petitioner Companies also does not adversely affect either to rights, or interest of any creditors or to shareholders of the Petitioner Companies in any manner.

13. The Regional Director (hereinafter referred as "RD"), Northern Region, MCA, to whom notice was sent has filed his affidavit and has filed its affidavit dates 12.01.2018 wherein it is submitted that the Transferor and Transferee Companies are regular in filing statutory return. It is further noted that no prosecution has been filed and no investigation/inspection proceedings are conducted against any of the Petitioner Companies. It is further observed that the objects of the Petitioner companies is different and any change in the main object and the name of the Transferee Company shall be automatic and compliances are to be made as per the provisions of Companies Act, 2013 and Rules.

14. The Official Liquidator (hereinafter referred as "OL") has filed a report dated 18.01.2018, wherein it is submitted that he has not received any complaint against the Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

15. The report of Income Tax Department (hereinafter referred as "ITD") had been filed on 07.02.2018 in which it is submitted that with regard to the Transferor No. 4 Company that the revenue receipts are nil for the assessment Year, while borrowing is huge i.e. in Crores. It is noted that the Petitioner has replied to the objections raised by the ITD and submitted that the Transferor Company No. 4 is facing losses from last few years and therefore has decided to merge with the group companies. Further, it is submitted that as per the audited

financials there are no borrowings which run in crores and that the transferor No. 4 Company has filed balance sheet and profit and loss as on 31.03.2017.

16. It is further noted that the Petitioner Companies have duly complied with all the Accounting standards applicable thereto. The Petitioner Companies have obtained necessary certificates from their respective Auditors certifying that the Accounting Treatment under the Scheme is found to be in order and conform with the Accounting standards.

17. On the Scheme becoming effective, the Transferor Company shall be dissolved without any further act, deed or instrument, without going through the process of winding up and shall be succeeded by the Transferee Company.

18. There is no additional requirement for any modification and the Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under Sections 230 to 232 of the Companies Act, 2013.

19. Taking into consideration the above facts, the Company Petition is allowed and the Scheme of Amalgamation annexed with the Petitions is hereby Sanctioned. The Scheme approved shall be binding on the Shareholders, Creditors and employees of the Companies involved in this Scheme. The Appointed date of the Scheme is 1st April, 2017.

20. While approving the Scheme as above, it is further clarified that this Order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.

21. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

22. A certified copy of this Order shall be filed with the concerned Registrar of Companies within 30 days of the receipt of this Order.

23. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this Order with the concerned Registrar of Companies.

24. Upon receiving the certified copy of this Order, the RoC concerned is directed to place all documents relating to the Transferor Company with that of the Transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.

25. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

26. Accordingly, the Scheme stands sanctioned and CAA-396/ND/2017 stands disposed of.