(2022) 09 NCLT CK 0035

In the National Company Law Tribunal

Case No : CA (CAA) (IB) No. 50/MB/C-I/2022

Mars Hotels And Resorts Private Limited Vs

Date of Decision : 12-09-2022

Acts Referred:
Companies Act, 2013 — Section 230, 230(1)(a), 230(5), 232
Income Tax Act, 1961 — Section 2(1B), 2(19AA)
Companies (Compromises, Arrangements and Amalgamations) Rules 2016 — Rule 8

Citation : (2022) 09 NCLT CK 0035

Hon'ble Judges : P. N. Deshmukh (Retd.), Member, (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Gaurav Joshi

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam Member (Technical)

1. The present Application is a Scheme of Amalgamation and Arrangement between Mars Hotels And Resorts Private Limited (‘First Applicant Company’ or ‘Transferor Company 1’ or ‘MHRPL’), Vrihis Properties Private Limited (‘Second Applicant Company’ or ‘Transferor Company 2’ or ‘VPPL’) and Kairos Property Managers Private Limited (‘Third Applicant Company’ or ‘Transferee Company’ or ‘Demerged Company’ or ‘KPMPL’) and Striton Properties Private Limited (‘Fourth Applicant Company’ or ‘Resulting Company 1’ or ‘SPPL’) and Aerobode One Private Limited (‘Fifth Applicant Company’ or ‘Resulting Company 2’ or ‘AOPL’) and Parthos Properties Private Limited (‘Sixth Applicant Company’ or ‘Resulting Company 3’ or ‘PPPL’) and their Respective Shareholders under sections 230 to 232 of the Companies Act, 2013 (‘hereinafter referred to as the Scheme’).

2. The Ld. Counsel for the Applicant Companies states that the Board of Directors of the Transferor Companies, Transferee Company / Demerged Company and Resulting Companies in their respective meetings conducted on 3rd December, 2021 for the Transferor Companies, Transferee Company and Resulting Companies have approved the Scheme. The Appointed Date fixed under the

Scheme is October 1, 2021.

3. The Applicants submits that the rationale for the proposed Scheme is as under:

(a) KPMPL, MHRPL, VPPL, SPPL, AOPL and PPPL are companies held directly or indirectly by the same group. The management of the group has envisaged a re-organisation exercise to eliminate multiple entities, achieve operational efficiency and flexibility for independent growth and expansion of certain business undertakings without causing any changes to the shareholding structure.

(b) Accordingly, the management of KPMPL believes that wholly owned subsidiaries can be consolidated and brought under a simplified holding structure via merger of the existing wholly owned subsidiaries viz. MHRPL and VPPL into KPMPL on an 'as is' basis to achieve elimination of multiple entities under the structure.

(c) Pursuant to the aforesaid merger of wholly owned subsidiaries, KPMPL will house the businesses of MHRPL and VPPL. The shareholders of KPMPL further believe that the Demerger of Hotel and Development Business, Redevelopment Business and Strata Floors Business into Resulting Company 1, Resulting Company 2 and Resulting Company 3 respectively, can help in unlocking maximum value for the shares held in KPMPL and ensure standalone focus on the Hotel and Development Business, Redevelopment Business and Strata Floors Business. This will also facilitate independent investment into the aforesaid specific business and lead to an independent growth and expansion of these businesses. Currently, the Resulting Companies and the Demerged Company are held by the same shareholder. Hence, the proposed Demerger will facilitate the said objective of segregation without changing the shareholding pattern and will maintain the desired shareholding pattern.

(d) Hence based on the aforesaid commercial rationale, this Scheme provides for Merger of MHRPL and VPPL into KPMPL and thereafter Demerger of Hotel and Development Business, Redevelopment Business and Strata Floors Business into Resulting Company 1, Resulting Company 2 and Resulting Company 3, respectively and would inter alia have the following benefits:

i. Elimination of multiple entities under the group which results in simplification of the group structure via Merger leading to savings of costs incurred in maintaining separate compliances etc and running of multiple entities;

ii. As regards subsequent Demerger of Hotel and Development Business, Redevelopment Business and Strata Floors Business, it shall enable focused management and leadership attention to each of the aforesaid business in the Resulting Companies;

iii. Confer shares in each business to the existing shareholder of KPMPL thereby giving them an opportunity to participate in Hotel and Development Business, Redevelopment Business and Strata Floors Business directly via separate entities;

iv. Enable each business to pursue growth opportunities and avail potential real estate investment opportunities in Mumbai region which meet the relevant business criteria for the respective Resulting Companies;

v. Flexibility for each business to avail project specific investments in respective Resulting Companies with ease of entry and exit from such specific businesses housed separately in the respective Resulting Companies or enter into a joint venture in any of the respective businesses in the Resulting Companies;

vi. Ability for each business to attain fluid leverage terms in the respective Resulting Companies pertaining to assets that are transferred to the respective Resulting Companies pursuant to the Demerger;

vii. Beneficial to all stakeholders of the Scheme, leading to growth and value creation in the long run and maximizing the value and return to the shareholders, unlocking intrinsic value of the assets, achieving cost efficiencies and operational efficiencies;

viii. Result in economies in business operations, provide optimal utilization of resources and greater administrative efficiencies.

(e) The intended Scheme is not prejudicial to the interest of the creditors or the employees of the Transferor Companies, Transferee Company/ Demerged Company and Resulting Companies.

(f) The Merger of the Transferor Companies into the Transferee Company and the Demerger of respective Demerged Undertakings into the respective Resulting Companies pursuant to and in accordance with this Scheme shall take place with effect from the Appointed Date and shall be in accordance with Section 2(1B) (with respect to the Merger) and Section 2(19AA) (with respect to the Demerger) of the Income-tax Act, 1961.

4. The Ld. Counsel for the Applicant Companies submits that the convening and holding the meeting of the Equity Shareholders of the Applicant Company No. 1 to 6 for the purpose of approving the Scheme be dispensed with in view of the consent affidavits of Equity Shareholders which are placed in the Company Application as follows:

i. Consent affidavits given by both the two Equity Shareholders of the Applicant Company No. 1, are annexed as 'Exhibit K-1 and K-2'.

ii. Consent affidavits given by both the two Equity Shareholders of the Applicant Company No. 2, which are annexed as 'Exhibit L-1 and L-2'.

iii. Consent affidavits given by both the two Equity Shareholders of the Applicant Company No. 3, which are annexed as 'Exhibit M-1 and M-2'.

iv. Consent affidavits given by both the two Equity Shareholders of the Applicant Company No. 4, which are annexed as 'Exhibit N-1 and N-2'.

v. Consent affidavits given by both the two Equity Shareholders of the Applicant

Company No. 5, which are annexed as 'Exhibit O-1 and O-2.

vi. Consent affidavits given by both the two Equity Shareholders of the Applicant Company No. 6, which are annexed as 'Exhibit P-1 and P-2'.

In view of the above, the meetings of the equity shareholders of the Applicant companies mentioned in i to vi are dispensed.

5. That the convening and holding the meeting of the Secured Creditors of the Applicant Company No. 1 under section 230(1)(a) of the Companies Act 2013 is not required in view of the consent affidavits given by all the 3 Secured Creditors of the Applicant Company No. 1 representing 100% of the total outstanding amount of Secured Creditors as on 30 November 2021, which are annexed as 'Exhibit B1, B2 and B3' to the Additional Affidavit filed on 10th March,2022 in Support Of original Joint Company Scheme Application.

6. That the convening and holding the meeting of the Secured Creditor of the Applicant Company No. 2 under section 230(1)(a) of the Companies Act 2013 is not required in view of the consent affidavit given by the Sole (1) Secured Creditor of the Applicant Company No. 2 representing 100% of the total outstanding amount of Secured Creditors as on 30 November 2021, which is annexed as 'Exhibit B' to the Additional Affidavit filed on 11th March,2022 in Support Of original Joint Company Scheme Application.

7. That the counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company No. 3, Applicant Company No. 4, Applicant Company No. 5 and Applicant Company No. 6 as mentioned in Para 16 to 19 of the original Joint Company Scheme Application.

8. In view of the above submissions, the meetings of the Secured Creditors of Applicant Company 1 and 2 are dispensed.

9. That the convening and holding the meeting of the Unsecured Creditors of the Applicant Company No. 1 under section 230(1)(a) of the Companies Act 2013 is not required in view of the consent affidavits given by the 09 Unsecured Creditors of the Applicant Company No. 1 representing 90.03% of the total outstanding amount of Unsecured Creditors as on 30 November 2021, which are annexed as 'Exhibit A1 to A9' to the Additional

Affidavit filed on 05th April, 2022 in Support Of original Joint Company Scheme Application.

10. That the convening and holding the meeting of the Unsecured Creditors of the Applicant Company No. 2 under section 230(1)(a) of the Companies Act 2013 is not required in view of the consent affidavits given by the 75 Unsecured Creditors of the Applicant Company No. 2 representing 90.65% of the total outstanding amount of Unsecured Creditors as on 30 November 2021, which are annexed as 'Exhibit B1 to B52' to the Additional Affidavit filed on 05th April, 2022 in Support Of original Joint Company Scheme Application and as 'Exhibit B',

‘Exhibit C1 to C22’ to the Additional Affidavit filed on 09th May, 2022 in Support Of original Joint Company Scheme Application.

11. That the convening and holding the meeting of the Unsecured Creditors of the Applicant Company No. 3 under section 230(1)(a) of the Companies Act 2013 is not required in view of the consent affidavits given by the 04 Unsecured Creditors of the Applicant Company No. 3 representing 96.58% of the actual total amount outstanding of Unsecured Creditors as on 30 November 2021, which are annexed as ‘Exhibit C1 to C7’ to the Additional Affidavit filed on 05th April, 2022 in Support Of original Joint Company Scheme Application.

12. That the convening and holding the meeting of the Unsecured Creditors of the Applicant Company No. 5 under section 230(1)(a) of the Companies Act 2013 is not required in view of the consent affidavit given by the 01 Unsecured Creditor of the Applicant Company No. 5 representing 100% of the total outstanding amount of Unsecured Creditors as on 30 November 2021, which is annexed as ‘Exhibit D’ to the Additional Affidavit filed on 05th April, 2022 in Support Of original Joint Company Scheme Application.

13. That the counsel for the Applicant Companies submits that there are no Unsecured Creditors in the Applicant Company No. 4 and Applicant Company No. 6 as mentioned in Para 17 and 19 of the original Joint Company Scheme Application.

14. In view of the above submissions, the meetings of the unsecured creditors of the Applicant Company No. 1,2,3 and 5 is dispensed.

15. The Applicant Companies to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

16. The Applicant Companies to serve the notice upon the Registrar of Companies, Mumbai, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules. 2016.

17. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction to the following.

Sr.

PAN Number

Assessment Address

No.

1.

AAACM3827C

WARD 10(2)(3), MUMBAI

2.

AADCH8388N

DCIT 15(3)(1), MUMBAI

3.

AAGCK5022K

DCIT 15(1)(2), MUMBAI

4.

ABGCS5807F

WARD 15(3)(1), MUMBAI

5.

AATCA4660J

WARD 12(1)(1), MUMBAI

6.

AAMCP1898E

WARD 15(2)(1), MUMBAI

The Applicant Company's assessments are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Transferor Companies are also directed to serve intimations of the Scheme upon Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Liquidator to scrutinize the books of accounts of the said Transferor Companies for the last 5 years and submit its

representation / report to the Tribunal. If no representation / response is received by the Tribunal from Official Liquidator, Bombay within a period of thirty days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

19. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

20. The Appointed Date is 1st October, 2021.

