

(2023) 12 NCLT CK 0029

In the National Company Law Tribunal

Case No : C.P. (Caa)-15(Nd)/2023 With C.A.(Caa)-86(Nd)/2022

M/s. Valerian Management Services Private Limited Vs

Date of Decision : 14-12-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 232, 232(4), 232(7)
Companies Accounts Rules, 2014 — Rule 7

Citation : (2023) 12 NCLT CK 0029

Hon'ble Judges : Bachu Venkat Balaram Das, Member (J); Atul Chaturvedi, Member (T)

Bench : Division Bench

Advocate : Saurabh Kalia, Sarvik Singhai, Hemlata Rawat, Niharika Tanwar, Puneet Rai, Nikhil Jain

Final Decision : Disposed Of

Judgement

Atul Chaturvedi, Member, (Technical)

1. The present Joint Petition is filed by the Petitioner Companies viz., M/s. Valerian Management Services Private Limited (Transferor Company/Petitioner Company No.1) and M/s. Grey Fox Project Management Private Limited (Transferor Company/Petitioner Company No.2) and M/s. PSK Resorts & Hotels Private Limited (Transferor Company/Petitioner Company No.3) and M/s. Dandelion Hotels Private Limited (Transferor Company/Petitioner Company No.4) under Section 230-232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and the National Company Law Tribunal Rules, 2016, for the purpose of the Sanction of the proposed Scheme of Amalgamation of the Transferor Company with M/s. Lemon Tree Hotels Private Limited (Transferee Company/Petitioner Company No.5). The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme"), has been placed on record.

2. The Transferor Company No.1 i.e. M/s. Valerian Management Private Limited is a private limited company incorporated on 17.10.2007 under the provisions of the Companies Act, 1956 vide CIN: U2029DL2007PTC169518, having its

registered office situated at Asset No.6, Aerocity Hospitality District, Delhi-110037. The registered office of the Transferor Company is under the jurisdiction of the Tribunal. The Authorized Share Capital of the Transferor Company is Rs. 10,00,000/- (Ten Lakhs) and the paid-up share capital of the company is Rs. 1,00,000/- (One Lakh).

3. The Transferor Company No.2 i.e. M/s. Grey Fox Project Private Limited is a private limited company incorporated on 02.07.2012 under the provisions of the Companies Act, 1956 vide CIN: U74140DL2012PTC238272, having its registered office situated at Asset No.6, Aerocity Hospitality District, Delhi-110037. The registered office of the Transferor Company is under the jurisdiction of the Tribunal. The Authorized Share Capital of the Transferor Company is Rs. 4,60,00,000/- (Four Crore Sixty Lakhs) and the paid-up share capital of the company is Rs. 4,55,00,668/- (Four Crore Fifty-Five Lakhs Sixty-Six Thousand and Eight).

4. The Transferor Company No.3 i.e. M/s. PSK Resorts & Hotels Private Limited is a private limited company incorporated on 05.10.2007 under the provisions of the Companies Act, 1956 vide CIN: U74140DL2007PTC169861, having its registered office situated at Asset No.6, Aerocity Hospitality District, Delhi-110037. The registered office of the Transferor Company is under the jurisdiction of the Tribunal. The Authorized Share Capital of the Transferor Company is Rs. 1,20,00,000/- (One Crore Twenty Lakhs) and the paid-up share capital of the company is Rs. 1,18,69,100/- (One Crore Eighteen Lakhs Sixty-Nine Thousand and Hundred).

5. The Transferor Company No.4 i.e. M/s. Dandelion Hotels Private Limited is a private limited company incorporated on 19.07.2007 under the provisions of the Companies Act, 1956 vide CIN: U55101DL2007PTC166044, having its registered office situated at Asset No.6, Aerocity Hospitality District, Delhi-110037. The registered office of the Transferor Company is under the jurisdiction of the Tribunal. The Authorized Share Capital of the Transferor Company is Rs. 5,00,000/- (Five Lakhs) and the paid-up share capital of the company is Rs. 1,15,000/- (One Lakh Fifteen Thousand).

6. The Transferee Company i.e. M/s. Lemon Tree Hotels Limited CIN: L74899DL1992PLC049022 incorporated on 02.06.1992 under the provisions of the Companies Act, 1956, and having its registered office at Asset No.6, Aerocity Hospitality District, Delhi-110037. The registered office of the Transferor Company is under the jurisdiction of the Tribunal. The authorised share capital of the Transferee Company is Rs. 10,02,89,00,000/- (One Thousand Two Crore Eighty Nine Lakhs) and the paid-up share capital of the company is Rs. 7,90,81,33,720/- (Seven Hundred Ninety Crores Eighty-One Lakhs Thirty-Three Thousand Seven Hundred Twenty).

7. The Petitioner Companies submit that the proposed scheme of amalgamation of the Transferor Company and Transferee Company would have the following

benefits: -

- i. The merger of the Transferor Companies into the Transferee Company will result in Operational synergies resulting in cost optimization.
- ii. The Scheme will also achieve rationalization of costs by simplification of management structure leading to better administration and cost savings.
- iii. It is also the intention of the management of the Company to rationalize the group holding structure by way of reduction in the number of entities and streamline the structure of the Company.
- iv. The proposed merger will also simplify the financial reporting to all stakeholders & help evaluate financial results of the Company more meaningfully.
- v. In addition, the proposed Scheme will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by Transferor Companies.

7. The appointed date as fixed for the proposed scheme of Amalgamation is 1st April, 2022 or such other date as may be directed by the Hon'ble National Law Tribunal.

8. From the record, it is seen that the First Motion application was filed before this Tribunal vide CA(CAA)86/ND/2022. Vide order dated 22nd October, 2022, the meeting of Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company was dispensed with.

9. As regards to the Transferee Company/Applicant No.5, it was observed that there are 1,72,459 Equity Shareholders, 6 secured creditors out of whom 4 secured creditors gave their consent. There are 1280 Unsecured Creditors in respect to whom no objection certificates are not available. Meeting of equity shareholders and Unsecured Creditors of the Transferee Company took place. Therefore, Mr. B.S Bhaduria, Advocate was appointed by the Hon'ble NCLT as the Chairperson.

10. The Chairperson of the meeting of Equity Shareholders of the Transferee Company had placed on record Chairperson's report dated 24.01.2023. As per their report the resolution stands passed with the requisite majority of Equity Shareholders (i.e. majority in number representing 3/4th in value) based on the consolidated result of remote e-voting and e-voting at the meeting.

11. The Chairperson of the meeting of Unsecured Creditors of the Transferee Company had placed on record Chairperson's report dated 24.01.2023. As per their report the resolution stands passed with the requisite majority of Unsecured Creditors (i.e. majority in number representing 3/4th in value) based on the consolidated result of remote e-voting and e-voting at the meeting.

12. The Tribunal directed the petitioner companies to issue individual notices to the (i) Regional Director, Northern Region of Ministry of Corporate Affairs, (ii) Income Tax Department, (iii) Registrar of Companies NCT of Delhi and Haryana, (iv) Official Liquidator, v) Any other Sectoral Regulatory Authority.

13. The Petitioner Companies were also directed to carry out publication in the newspapers. It is seen from the records that the petitioners have filed an Affidavit affirming compliance and disclosing that the applicants have effected publication in "Indian Express" (English, Delhi edition) New Delhi edition as well as "Jansatta" (Hindi, Delhi edition), both dated on 10.03.2023. In addition to the public notice, notices were served on the (i) Regional Director, Northern Region of Ministry of Corporate Affairs, (ii) Income Tax Department, (iii) Registrar of Companies NCT of Delhi and Haryana, (iv) Official Liquidator, v) Securities and Exchange Board of India, vi) BSE Limited, vii) National Stock Exchange of India Limited.

14. Pursuant to the notice issued to the Regional Director and Official Liquidator and Income Tax Department, they have filed their response/reply in the matter.

15. The Regional Director vide it's report dated 28.03.2023 has made certain observations with regard to the proposed scheme of Amalgamation among the Petitioner Companies. The Petitioner Companies had filed reply dated 07.06.2023 in response to the observations made by the Regional Director, under wherein the Petitioner Companies gave clarifications and undertaking to address the observations made by the Regional Director.

16. The Petitioner Companies vide affidavit dated 07.06.2023 have given the reply to the observations of the Regional Director.

17. The Income Tax Department in its report dated 13.02.2023 in respect to M/s. Valerian Management Services Pvt. Ltd (Transferor Company No. 1) has stated that the Income Tax Department has no objection for the proposed scheme of Amalgamation.

18. The Income Tax Department in its report dated 20.06.2023 in respect to M/s. Grey Fox Project Management Company Private Limited (Transferor Company No. 2) has stated that the Income Tax Department has no objection for the proposed scheme of Amalgamation.

19. The Income Tax Department in its report dated 02.06.2023 in respect to M/s. PSK resorts & Hotels Private Limited has stated as below:-

S. No

Name

PAN

Demand Outstanding (Rs.)

Pending Assessment proceedings

1

M/s. PSK Resorts & Hotels Private Limited

AAECP4221D

NIL

NIL

20. The Income Tax Department in its report dated 09.01.2023 in respect to M/s. Dandelion Hotels Private Limited (Transferor Company No. 4) has stated that the Income Tax Department has no objection for the proposed scheme of Amalgamation.

21. The Income Tax Department in its report dated 02.03.2023 in respect to M/s. Lemon Tree Hotels Ltd. (Transferee Company No. 5) has stated that Assesse has filed an affidavit that "the Transferee Company will continue its operations as a going concern and all tax liabilities pertaining to the Transferor Companies as well as any liability arising on account of any legal proceedings taking place against the Transferee company shall be dealt by the Transferee company pursuant to the composite scheme of arrangement which shall be fulfilled by the Transferee Company".

22. Income Tax Department vide order dated 28.08.2023 has stated that there is a demand of Rs. 58,117/- (Fifty-Eight Thousand One Hundred Seventeen Rupees Only) on the Transferor Company No. 1. The Applicant was directed to file an undertaking stating therein that the Transferee Company will pay all the demands of the Transferor Company, if any.

23. Undertaking dated 28.09.2023 is on record which has been filed by the Mr. Nikhil Sethi authorized signatory for the Transferor/Petitioner Company Nos. 1 to 4 and Transferee/Petitioner Company No.5.

24. Vide order dated 28.08.2023 passed by this Tribunal, the Ld. Counsel for the Official Liquidator had appeared and stated that they have no objection with respect to the scheme.

25. Considering the reply of the Petitioner Companies and further, the undertaking of the Petitioner Companies with respect to the observations and clarifications, we find no impediment in approving the present Scheme of Amalgamation.

26. In this petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies

27. Certificates of Statutory auditor of the petitioner companies, has been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the

Central Government as specified under the provisions of Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies Accounts Rules, 2014 and Companies (Accounting Standards) Amendment Rules, 2016, and other generally accepted accounting principles in accordance with the Companies Act, 2013, as applicable.

28. The shareholders of the petitioner companies are the best judges of their interest, being fully conversant with market trends, and therefore, their decision should not be interfered with by the Tribunal for the reason that it is not a part of the judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate decisions of companies as approved by shareholders and creditors.

29. It has also been affirmed in the petition that the Scheme is in the interest of all the Petitioner Companies including their shareholders, creditors, employees and all concerned. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the present Scheme.

30. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following directions: -

(i) The Petitioners shall always remain bound to comply with the statutory requirements in accordance with law.

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

(iii) While approving the Scheme as above, we further clarify 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, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

31. This tribunal further directs with respect to all the Transferor company and the Transferee company, that:

(i) The Appointed Date of the Scheme shall be 01.04.2022.

(ii) Upon the sanction becoming effective from the appointed date as provided under the scheme, the Transferor Company shall stand dissolved without undergoing the process of winding up.

(iii) All contracts of the Transferor Company, which are subsisting or having effect

immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;

(iv) All the employees of the Transferor Company shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the Transferor Company, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

(v) All liabilities of the Transferor Company, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.

(vi) All proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.

(vii) Any person interested or effected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

(viii) Further, 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 Transferor company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

(ix) In compliance with the requirement of Section 232 (7) of the Act, the transferee company shall until the full implementation of the Scheme of Amalgamation shall file a statement every year in the Form CAA 8 along with the required fees with the Registrar of Companies as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.

32. The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.