(2024) 03 NCLT CK 0012

In the National Company Law Tribunal

Case No : CA (CAA) 92 / MB / 2023

Sharanam Hotels And Resorts Privatelimited Vs

Date of Decision : 07-03-2024

Acts Referred:
Companies Act, 2013 — Section 230(1)

Citation : (2024) 03 NCLT CK 0012

Hon'ble Judges : Reeta Kohli, Member (J);Madhu Sinha, Member (T)

Bench : Division Bench

Advocate : Avinash R. Khanolkar, Surekha Yadav, Yachika Jain

Final Decision : Disposed Of

Judgement

1. The sanction of this Tribunal is sought under Section 230 (1) r.w. S. 232 of the Companies Act for the Scheme of Arrangement (hereinafter as Scheme) between M/s. Sharanam Hotels & Resorts Private Limited CIN:U45200MH1996PTC102739 (hereinafter referred as the Demerged Company) and M/s. Alokik Hospitality Private Limited CIN: U55100MH2017PTC289829 (hereinafter referred as the Resultant Company) and with their respective Shareholders.

2. The respective Board of Directors of the Applicant Companies passed a Resolution on 02.12.2022, respectively, and approved the proposed Scheme. The proposed appointed date of the Scheme is 01.04.2022.

3. The Demerged Company is incorporated under provisions of the Companies Act, 1956 on 23.09.1996 having the Registered office at Hotel Sharanam, Eastern Express Highway, Next to New RTO Office, Thane, Maharashtra ? 400604 and having CIN: U45200MH1996PTC102739. The Demerged Company is inter-alia engaged in the business of builders, contractors, erectors and construction of building and house.

4. The Resultant Company is incorporated under provisions of the Companies Act, 2013 on 23.01.2017 and having the Registered office at 903/904, Tower 2A, Siddhachal Phase 6 Pokharan Road No. 2, Near Vasant Vihar, Thane, Maharashtra ? 400 607 and having CIN: U55100MH2017PTC289829. The

Resultant Company is inter-alia engaged in the business to construct, develop, improve, maintain and manage hotel, club, restaurants.

5. This Scheme inter-alia provides for the demerger and consequent sale/transfer of ?Sharanam Goa? business of the Demerged Company into Resulting Company.

6. The respective Board of Directors of the Applicant Companies anticipate the following benefits pursuant to the Scheme :

a) In order to align with the group?s global holding structure and to focus on core business areas, the Business Undertaking would need to be segregated into a separate legal entity allowing concentrated focus by the respective managements of the Demerged Company and the Resulting Company on its core business areas.

b) Enable the Demerged Company and the Resulting Company to own and use separate technology platforms in an independent manner.

c) Segregate the businesses with different profiles between the legal entities thereby creating an enhanced value for the shareholders.

d) Enable the Resulting Company to explore new opportunities in its segregated business, productively utilize its resources and achieve operational and managerial efficiencies towards growth of the Business Undertaking.

e) Enable the Demerged Company to focus on the undertaking of the Demerged Company from a long-term perspective by streamlining operations and cutting costs thereby ensuring more efficient management control.

f) Similar shareholding in the Demerged Company and the Resulting Company.

7. The Ld. Counsel for the Applicant drawn our attention to the Shareholding pattern of the 1st Applicant Company which as follows:

Sr.

No.

Name & address

No. of shares

Value per share

(Rs.)

% to Total

1

Salil Mansukh Barai 903/904, Tower 2A, Siddhachal Phase 6 Pokharan Road No.2, Near Vasant Vihar Thane 400607

7,42,547

10

51.12%

2

Gaurav Mansukhlal Barai 1B/ 1201, Siddhachal Elite, Phase 7, Near Vasant Vihar, Off Pokhran Road No. 2, Thane 400610

7,10,014

10

48.88%

Total

14,52,561

100.00%

8. We have been further informed about the Shareholding of the 2nd Applicant Company which is follows:

Sr.

No.

Name & address

No. of shares

Value per share

(Rs.)

% to Total

1

Salil Mansukh Barai

903/904, Tower 2A, Siddhachal Phase 6 Pokharan Road No.2, Near Vasant Vihar Thane 400607

5,000

10/-

50.00%

2

Bhavika Salil Barai

903/904, Tower 2A, Siddhachal Phase 6 Pokharan Road No.2, Near Vasant Vihar Thane 400607

5,000

10/-

50.00%

Total

10,000

100.00%

9. The Learned Counsel for the Applicant Companies states and submits that all the Equity Shareholders of the Applicant Companies, respectively, have given their individual consent affidavits to the proposed Scheme. The individual Consent Affidavits of all of the Equity Shareholders of the Applicant Companies are annexed the Company Scheme Application and therefore it is prayed that the meeting of the Equity Shareholders may be dispensed with.

10. The Learned Counsel further submitted that this present Scheme does not seek any arrangement with the Creditors of the Applicant Companies and there will not be any pre-judice to the Creditors of the Applicant Companies. It is also pointed out that the none of the Applicant Companies are having Secured Creditors.

11. As far as the Unsecured Creditors are concerned, the Ld. Counsel submits that there are total 65 Unsecured Creditors of the Demerged Company. And the Demerged Company has abled to Secure Consent Affidavits by its Creditors having 90% outstanding of total debt. The Learned Counsel submitted that these Consent Affidavits will be placed on record before the Final Hearing of the Scheme. The Learned Counsel further submitted that the Demerged Company will issue individual notices to its Unsecured Creditors who did not give their consent to the proposed Scheme inter-alia seeking their representation, if any, to the proposed Scheme.

12. As far as the Unsecured Creditors of the Resultant is concerned there is only 1 Unsecured Creditor of the Resultant Company who is a Director of the Resultant Company. The Ld. Counsel further submits that the Resultant Company will obtain a consent of the said Creditor and the same shall be placed with on record before the Final Hearing of the Scheme.

13. The Bench, after going through the submissions and averments made by the Learned Counsel for the Applicant Companies and after perusing the records, do order hereinbelow :

(1) That, in light of the respective individual consent Affidavits of the Equity Shareholders of the Applicant Companies the requirement of the holding of the respective meetings of the Equity Shareholder of the Applicant Companies are hereby dispensed-with.

(2) That, as submitted by the Learned Counsel hereinabove, since there are no

Secured Creditors of any of the Applicant Companies the question for holding meeting and / or issuance of notices to the Secured Creditor does not arise and the said requirement is dispensed-with.

(3) That, as submitted by the Ld. Counsel hereinabove, since the Demerged Company has obtained an individual Consent Affidavits from its Unsecured Creditors having 90% of the total outstanding, we hereby direct to Demerged Company to place the said consent Affidavits on record of this Tribunal before the Final Hearing of the proposed Scheme. The Demerged Company further directed to issue individual notices to such Unsecured Creditors of the Demerged Company inter-alia seeking their representations to the proposed Scheme within 30 days of receipt of such notice.

(4) That, as submitted by the Ld. Counsel hereinabove, the Resultant Company is directed to obtain consent affidavit to the proposed Scheme from its Unsecured Creditor and to place on record of this Tribunal the same before final hearing of the proposed Scheme.

(5) That, as submitted by the Learned Counsel hereinabove, since there is no arrangement proposed through the Scheme a requirement of holding meetings with the Unsecured Creditors of the Applicant Companies is hereby dispensed-with. However, as submitted by the Ld. Counsel the Applicant Companies, respectively, are directed to obtain the Individual Consents from the respective Secured Creditors of the Applicant Companies and to place on record the same before the Final Hearing of the Scheme.

(6) That, the Demerged Company having PAN : AACG6153H is further directed to serve notices along with copy of the Scheme upon: (i) Asst. Commissioner of Income Tax, Ward 3 (2), Thane, Aayakar Bhavan, Qureshi Mansion, Gokhale Road, Thane, Maharashtra, where the Demerged Company?s Income Tax assessments are made and also to the Nodal Officer, Income Tax Department, Maharashtra and Goa Circle, (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies, Mumbai (iv) Commissioner of Goods and Services Tax, Maharashtra & Goa with a direction that they shall submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Companies, failing which, it shall be presumed that the Authorities have no representations to make on the proposal.

(7) That, the Resultant Company having PAN : AASCA0275A is further directed to serve notices along with copy of the Scheme (i) Asst. Commissioner of Income Tax, Ward 2 (1), Thane, Aayakar Bhavan, Qureshi Mansion, Gokhale Road, Thane, Maharashtra, where the Resultant Company?s Income Tax assessments are made and also to the Nodal Officer, Income Tax Department, Maharashtra and Goa Circle, (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies, Mumbai (iv)

Commissioner of Goods and Services Tax, Maharashtra & Goa with a direction that they shall submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Companies, failing which, it shall be presumed that the Authorities have no representations to make on the proposal.

(8) Applicant Companies are further directed to file Affidavit of Service proving dispatch of notices to the regulatory authorities and / or the Creditors as directed hereinabove.

14. With the aforesaid Directions the present Application is allowed and disposed-off accordingly.

