

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II**

**Company Petition (CAA) No. 72/ (KB)/2024
Connected with
Company Application (CAA) No.54/(KB)/2024**

In the Matter of the Companies Act, 2013 - Section 230(6) read with
Section 232(3)

And

In the Matter of :

Pearltree Hotels & Resorts Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U74900WB2013PTC191430 and its registered office at 16 Ganesh Chandra Avenue Gandhi House, Kolkata - 700013 in the State of West Bengal.

..... Petitioner Company No. 1./ Resulting Company / Transferee
Company

And

In the Matter of :

Kushal Bharat Equipments And Infrastructure Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U45400WB2007PTC119795 and its registered office at 16 Ganesh Chandra Avenue Gandhi House, Kolkata - 700013 in the State of West Bengal.

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Company Petition (CAA) No. 72/ (KB)/2024
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Company Application (CAA) No.54/(KB)/2024

..... Petitioner Company No. 2./ Demerged Company / Transferor
Company

And

In the Matter of :

- 1) Pearltree Hotels & Resorts Private Limited
- 2) Kushal Bharat Equipments And Infrastructure Private Limited
..... Petitioner Company

Date of pronouncing the order: 3/7/2024

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**
Shri. D. Arvind : **Member (Technical)**

Authorised Representative on Record for the Petitioner(s):

Mr Shashi Agarwal, FCA
Meenakshi Manot, Advocate

And

Mr Alok Tandon, Joint Director (MCA)

ORDER

Per: D. Arvind, Member (Technical)

1. The instant petition has been filed under Section 232(3) and other applicable provisions of the Companies Act, 2013 ("**Act**") for sanction of the Scheme of Arrangement/ Demerger relating to de-merger of Mall Undertaking ("Demerged Undertaking") of Kushal Bharat Equipments And Infrastructure Private Limited being the Petitioner

No. 2 abovenamed (“Demerged Company” /or “Transferor Company” /or “Kushal”) , with and into Pearltree Hotels & Resorts Private Limited being the Petitioner No. 1 abovenamed (“Resulting Company” /or “Transferee Company” /or “Pearltree”) from the Appointed Date, viz 1st Day of April, 2023 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“**Scheme**”).

(Page No. 38-64 of Petition)

2. The Petition has now come up for a final hearing. Authorised Representative for the Petitioners submits as follows:-
 - (a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 16/01/2024 respectively. **(Page No. 36-37 of Petition)**
 - (b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-
 - i) enable greater/enhanced focus of the management of the Transferee Company and Resulting Company to exploit the anticipated business opportunities more efficiently respectively.
 - ii) The proposed Scheme is in line with the current global industry practice to achieve size, scalability, integration, greater financial strength and flexibility thereby maximizing shareholder value and to achieve higher long-terms financial returns.
 - iii) The rationale for continuing with separate businesses in the same entities no longer exists.
 - iv) Demerger of businesses of the said companies would be in the best interests of the Companies as well as their respective shareholders and other stakeholders.

- v) the Mall Division/ undertaking of Demerged Company /or Kushal and the Pearltree Hotel operated/managed by Resulting Company /or Pearltree share the common building. Hence, demerger of Demerged Undertaking into Resulting Company /or Pearltree will be more beneficial and economical require different leadership skills and focus.
- vi) Unlocking of value for the shareholders as after the effective implementation of the scheme, would enable optimal exploitation, monetization and development of both Mall Undertaking and the Residual Undertaking (including Real Estate/Assets Division / Undertaking Business) by attracting focused investors, joint venture partners and strategic partners having the necessary ability, experience and interests in respective sector and by allowing pursuit of inorganic and organic growth opportunities in such businesses;
- vii) Enabling the business and activities to be pursued and carried on with greater focus and attention through two separate Companies each having its own separate administrative set up and dedicated management.
- viii) After the scheme is effective, stakeholders can exit any business in which the stakeholders are not interested

The implementation of this Scheme is aimed at protecting and maximizing value for the shareholders of the Companies. This Scheme is in the interest of the Companies as well as the shareholders, creditors and all other stakeholders of the Companies

- C. The Statutory Auditors of respective Petitioner Companies have by their certificates dated 28/02/2024 confirmed that the accounting treatment in the Scheme is in conformity with the accounting

standards prescribed under Section 133 of the Companies Act, 2013.

(Page No. 187-188 of Petition)

- D. No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).
- E. The exchange ratio of shares in consideration of the Scheme of Arrangement/ Demerger has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Pranab Kumar Chakrabarty, Registered Valuer. **(Page No. 191-202 of Petition)**
- F. The shares of all Petitioner Companies are not listed in any Stock exchange.
- G. By an order dated 10/04/2024 in Company Application (CAA) No. 54/(KB)/2024, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) :- **(Page No:- 152-157 of Petition)**

Meetings dispensed: Meetings of the Equity Shareholders, of the Petitioner No. 1, 2 was dispensed with under Section 230(1) read with Section 232(1) of the Act.

- H. Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 03/05/2024 the instant petition was admitted by this Tribunal and initially fixed for hearing on 20/06/2024 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 03/05/2024 an affidavit of compliance duly affirmed on 31/05/2024 in this regard has also

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been filed and the Petitioners have duly served such notices by hand delivery upon the Statutory / Sectoral Authorities:-

Sl No	Description of Statutory / Sectoral Authorities including mode	Date	Page of Affidavit of Service affirmed on 31/05/2024
1	The Regional Director, Eastern Region, Ministry of Corporate Affairs	21/05/2024	7
2	The Registrar of Companies, West Bengal	21/05/2024	8
3	The Official Liquidator, High Court, Calcutta	21/05/2024	9
4	Income Tax Assessing Officer, Ward: 2(1)	21/05/2024	10
5	The DCIT, Circle: 1(1)	21/05/2024	11
6	The Chief Commissioner of Income Tax-1	21/05/2024	12
7	Business Standard	30 th May. 2024	5
8	Aajkal	30 th May. 2024	6

- I. Further, in compliance with the said order dated 03/05/2024 notice was also sent by speed post and the Petitioners have also duly served such notices on the Statutory / Sectoral Authorities:

Sl No	Description of Statutory / Sectoral Authorities including mode	Date	Page of Affidavit of Service sent through
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			speed post affirmed on 31/05/2024
1	The Regional Director, Eastern Region, Ministry of Corporate Affairs	on 21/05/2024 delivered on 22/05/2024	13-14
2	The Registrar of Companies, West Bengal	on 21/05/2024 delivered on 22/05/2024	15-16
3	The Official Liquidator, High Court, Calcutta	on 21/05/2024 delivered on 22/05/2024	17-18
4	Income Tax Assessing Officer, Ward: 2(1)	on 21/05/2024 delivered on 22/05/2024	19-20
5	The DCIT, Circle: 1(1)	on 21/05/2024 delivered on 22/05/2024	21-22
6	The Chief Commissioner of Income Tax-1	on 21/05/2024 delivered on 22/05/2024	23-24

J. Further, in compliance with the said order dated 03/05/2024 notice was also sent by email and the Petitioners have also duly served such notices on the Statutory / Sectoral Authorities:

Sl No	Description of Statutory / Sectoral Authorities including mode	Date	Page of Affidavit of Service sent through email affirmed on 31/05/2024
1	The Regional Director,	24/05/2024	26

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	Eastern Region, Ministry of Corporate Affairs		
2	The Registrar of Companies, West Bengal	24/05/2024	27
3	The Official Liquidator, High Court, Calcutta	24/05/2024	28
4	Income Tax Assessing Officer, Ward: 2(1)	24/05/2024	29
5	The DCIT, Circle: 1(1)	24/05/2024	30
6	The Chief Commissioner of Income Tax-1	24/05/2024	31
7	Certificate in Compliance of Section 65B of Evidence Act	24/05/2024	25

- K. Further, in terms of the order dated 03/05/2024, notice of Petition was published in newspapers Business Standard (English Edition) on 30/05/2024 and in Aajkaal (Bengali Edition) on 30/05/2024. **(Page No. 5 & 6 of Affidavit dated 31/05/2024)**
- L. All statutory formalities requisite for obtaining the sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.
3. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“RD”), Official Liquidator, High Court, Calcutta have filed their representations before this Tribunal.
4. The RD has filed his reply affidavit dated 19th June, 2024 (“**RD affidavit**”) which has been dealt with by the Petitioners. The

observations of the RD and responses of the Petitioner(s) are summarized as under:-

- a. **Paragraph No. 2 (a) of RD affidavit:** (a) That it is submitted that as per available record, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. Further, all the petitioner companies are updated in filing their Financial Statements and Annual Returns for the financial year ended 31/03/2023.

Paragraph No. 5(a) of Rejoinder: (a) With reference to paragraph 2(a) of the said reply, since the statements made in the said paragraphs are general, no comments are required to the said statements.

- b. **Paragraph No. 2 (b) of RD affidavit:** (b) The Petitioner Companies should be directed to provide list/details of Assets, if any, to be demerged/transferred from the Demerged/Transferor Company to the Resulting/Transferee Company upon sanctioning of the proposed Scheme.

Paragraph No. 5(b) of Rejoinder: (b).. With reference to paragraph 2(b) of the said reply, I say that the assets and liabilities of Demerged Undertaking of Transferor Companr/Demerged Company to be transferred to the Transferee Company / Resulting Company is annexed hereto and marked with the **letter "A"**.

- c. **Paragraph No. 2 (c) of RD affidavit:** (c) That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013, if any, through appropriate affirmation.

Paragraph No. 5(c) of Rejoinder: (c) With reference to para 2(c), it is stated that provisions of section 232(3)(i) of the Companies Act

2013 are not applicable as the Scheme relates to Demerger and further none of the Petitioner Company will be dissolved. Further, I say that the Scheme does not contain any clause relating to the transfer of authorized capital from one Company to another Company.

- d. **Paragraph No. 2 (d) of RD affidavit:** (d) *That the Transferee/Resulting Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor/Demerged Company to it.*

Paragraph No. 5(d) of Rejoinder: (d) With reference to para 2 (d), it is stated that the transferee company undertake to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Company relating to demerged undertaking.

- e. **Paragraph No. 2 (e) of RD affidavit:** (e) *The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.*

Paragraph No. 5(e) of Rejoinder: (e) With reference to para 2(e), it is stated that the Scheme enclosed in the Company Application and Company Petition are the same and there is no discrepancy and no change.

- f. **Paragraph No. 2 (f) of RD affidavit:** (f) *It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 29/04/2024 for their views/observation in the matter. However, no such views/observation in the matter from the Income Tax*

Department has been received yet. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

Paragraph No. 5(f) of Rejoinder: (f) With reference to paragraph 2(f) of the said reply, it is stated that the petitioner companies have also sent the notice of the Scheme two times in three different modes to the respective income tax assessing officer and have received no communication. However, the Petitioner Companies undertakes that even after the sanction of the scheme, the Transferee Company will be liable for all liabilities of Demerged Undertaking of the Demerged Company/Transferor Company.

5. After hearing submissions made by the Ld Authorised Representative appearing for the Petitioners, it is ordered that in case of any default including any Provisions of Income Tax Act in this respect of the Transferor Companies the Income Tax department , the ROC, West Bengal, and all other Statutory Department shall be at liberty to initiate appropriate proceedings against the Transferee Company, which after the sanction of the scheme by this Tribunal is in any case responsible for the liabilities/non-compliance of the Transferor Companies also.
6. Further, heard submissions made by the Ld Authorised Representative appearing for the Petitioner, Joint Director for and on behalf of RD, who appeared and were heard. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders: -
 - a) the Scheme of Arrangement/Demerger mentioned in paragraph 1 of the petition, being Annexure "A" hereto, be and is hereby

sanctioned by this Tribunal to be binding with effect from 1st April, 2023 (“Appointed Date”) upon Kushal Bharat Equipments And Infrastructure Private Limited (“Demerged Company”/or “Transferor Company” /or “Kushal”), Pearltree Hotels & Resorts Private Limited (“Resulting Company” /or “Transferee Company” /or “Pearltree”), their shareholders, creditors and all concerned;

- b) All the properties, rights, permission, license and interest, including those described in the Schedule of Assets herein, of Mall Undertaking/ Demerged Undertaking of Kushal Bharat Equipments And Infrastructure Private Limited (“Demerged Company” /or “Transferor Company” /or “Kushal”) be transferred to and vested in Pearltree Hotels & Resorts Private Limited (“Resulting Company” /or “Transferee Company” /or “Pearltree”) without further act or deed pursuant to Section 230 to 232 of the Companies Act, 2013 but subject nevertheless to all charges, now affecting the same;
- c) All the liabilities and duties of Mall Undertaking /Demerged Undertaking of Kushal Bharat Equipments And Infrastructure Private Limited (“Demerged Company” /or “Transferor Company” /or “Kushal”) only shall pursuant to section 230 to 232 of the Companies Act, 2013 be transferred to and become the liabilities and duties of Pearltree Hotels & Resorts Private Limited (“Resulting Company” /or “Transferee Company” /or “Pearltree”);
- d) That all the proceedings and/or suit appeals now pending by or against Mall Undertaking/ Demerged Undertaking of Kushal Bharat Equipments And Infrastructure Private Limited (“Demerged Company” /or “Transferor Company” /or “Kushal”) be continued by or against Pearltree Hotels & Resorts Private Limited (“Resulting Company” /or “Transferee Company” /or “Pearltree”);

- e) Pearltree Hotels & Resorts Private Limited (“Resulting Company” /or “Transferee Company” /or “Pearltree”) shall without further application, issue and allot Equity Shares to the Shareholder of Kushal Bharat Equipments And Infrastructure Private Limited (“Demerged Company” /or “Transferor Company” /or “Kushal”);
 - f) Leave is granted to the Petitioners to file the Schedule of Assets of Demerged undertakings being the Mall Undertaking ("Demerged Undertaking") as prescribed in the Schedule to Form No.CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 60 days of the date of order;
 - g) Kushal Bharat Equipments And Infrastructure Private Limited (“Demerged Company” /or “Transferor Company” /or “Kushal”) and Pearltree Hotels & Resorts Private Limited (“Resulting Company” /or “Transferee Company” /or “Pearltree”) shall within 30 days after the date of obtaining the certified copy of the order to be made herein cause certified copies of this order to be delivered to the Registrar of Companies, West Bengal for registration respectively and the Registrar of Companies shall place all documents relating to the Demerged Undertaking and registered with him on the file kept by him in relation to the Resulting Company/Transferee Company and the files relating to the said Demerged Undertaking shall be consolidated accordingly.
 - h) Any person interested be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary;
7. The Petitioners shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.

8. **Company Petition (CAA) No. 72/KB/2024** is **disposed of** accordingly.

9. Urgent certified copy of this order, if applied be supplied to the parties, subject to compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order dated 3.7.2024

NKS(LRA)