

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH - V**

**C.A.(CAA)/83(MB)/2024**

In the matter of the Companies Act, 2013

AND

In the matter of Sections 230 to 232 read with Section 66 and other applicable provisions of the Companies Act, 2013 read with relevant rules of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Composite Scheme of Arrangement between Aditya Birla New Age Hospitality Private Limited (Demerged Company) and KA Hospitality Private Limited (Resulting Company) and their respective shareholders (“Scheme”)

**ADITYA BIRLA NEW AGE )**

**HOSPITALITY PRIVATE LIMITED, )**

a company incorporated under the )

Companies Act, 2013 having its registered )

office at 213, 2<sup>nd</sup> Floor, T. V. Industrial )

Estate, 52, S. K. Ahire Marg, Worli, )

Mumbai 400 030, Maharashtra )

**CIN: U74999MH2019PTC325583 )**

)... First Applicant Company /

Demerged Company

**KA HOSPITALITY PRIVATE )**

**LIMITED, a company incorporated under )**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH - V**

**C.A.(CAA)/83(MB)/2024**

the Companies Act, 1956 having its )  
registered office at Unit No. 503b, Wing B, )  
Birla Centurion, Pandurang Budhkar Marg, )  
Worli, Mumbai Century Mill, Mumbai 400 )  
030, Maharashtra, India. )...Second Applicant Company/  
**CIN: U55101MH2010PTC202911** Resulting Company  
(Together referred as ‘**Applicant Companies**’)

**Order dated:24.07.2024**

**Coram:**

Ms. Reeta Kohli, Hon’ble Member (Judicial)

Ms. Madhu Sinha, Hon’ble Member (Technical)

***Appearances:***

**For the Applicant Companies:** Mr. Rahul Atal i/b A R C H & Associates, Professional

**ORDER**

1. The Professional for the Applicant Companies states that the present Scheme is a Composite Scheme of Arrangement between Aditya Birla New Age Hospitality Private Limited (‘Demerged Company’) and KA Hospitality Private Limited (‘Resulting Company’) and their respective shareholders (‘Scheme’), under the provisions of Sections 230 to 232 read with Section 66 and other applicable provisions of the Companies Act, 2013 and relevant rules of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
2. The Scheme involves following:
  - a. The demerger of the Demerged Undertaking of the Demerged Company and vesting of the same in the Resulting Company, and the consequent issue of New Equity Shares and New NCRPS by the Resulting Company to the

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH - V**

**C.A.(CAA)/83(MB)/2024**

shareholders of the Demerged Company in the manner as set out in Part III of the Scheme;

- b. Capital Reduction of paid-up preference share capital of Aditya Birla New Age Hospitality Private Limited in the manner as set out in Part IV of the Scheme; and
  - c. Various other matters consequential, supplemental and/ or otherwise integrally connected therewith.
3. The Professional for the Applicant Companies states that the resolutions passed by the Board of Directors of the respective Applicant Companies in their meeting held on 23<sup>rd</sup> April, 2024 approved the Scheme. The Appointed Date for the purpose of Part III of the Scheme means the 31<sup>st</sup> day of March, 2024 or any other date as may be decided by the National Company Law Tribunal. The Board resolution approving the Scheme for Applicant Companies is annexed as Annexure – D1 and D2 (Page Nos. 348 – 355) to the Company Scheme Application.
4. The Share Capital of the Applicant Companies as on 31<sup>st</sup> December, 2023 is as under:
- i. The Authorised Share Capital of the First Applicant Company is Rs. 1,00,00,00,000 divided into 10,00,000 Equity Shares of Rs. 10/- each and 99,00,000 Preference Shares of Rs. 100/- each. Issued, subscribed and paid-up share capital of the First Applicant Company is Rs. 51,10,00,000 divided into 2,00,000 Equity Shares of Rs. 10/- each and 50,90,000 8% Non-Convertible Non-Cumulative Redeemable Preference Shares of Rs. 100/- each.
  - ii. The Authorised Share Capital of the Second Applicant Company is Rs. 12,58,00,000 divided into 1,25,80,000 Equity Shares of Rs. 10/- each. Issued, subscribed and paid-up share capital of the Second Applicant Company is Rs. 12,39,74,910 divided into 1,23,97,491 Equity Shares of Rs.

10/- each. The Second Applicant Company is a wholly owned subsidiary of the First Applicant Company.

5. The Professional for the Applicant Companies further submits the business activities of the Applicant Companies is as follows:

**The First Applicant Company / The Demerged Company**

The First Applicant Company is primarily engaged in business of owning and operating Private Member's only Club named 'Club Jolies' in Worli, Mumbai and also operates, through its subsidiaries, premium restaurants. Further, it also invests in new age start-up companies, i.e., venture investments.

**The Second Applicant Company / The Resulting Company**

The Second Applicant Company is primarily engaged in the business of owning and operating premium restaurants, including Hakkasan, Yauatcha, CINCIN and Nara.

6. The Professional for the Applicant Companies further submits the rationale for the Scheme is as follows:

Recently, the Demerged Company as part of its strategic acquisition and to expand its footprint in Hospitality Business, acquired 100% equity shares of the Resulting Company pursuant to which the Resulting Company became wholly owned subsidiary of the Demerged Company. Considering that both the Resulting Company and Demerged Company are engaged in same business, the management of the Companies have examined the strengths of combined Hospitality Business and the potential commercial and other synergies of the combining Hospitality Businesses of the Companies under the present Scheme and hence proposed to de-merge the Demerged Undertaking to the Resulting Company under the present Scheme. The demerger of the Hospitality Business of the Demerged Company into the Resulting Company will, inter alia, result in the following benefits :

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH - V**

**C.A.(CAA)/83(MB)/2024**

- (i) Would enable consolidation of Hospitality Businesses and carry on the same more efficiently and effectively;
  - (ii) Under a fast changing and highly competitive environment, the demerger shall strengthen the business of the Demerged Undertaking and of the Resulting Company, by pooling up resources for common purpose;
  - (iii) Will rationalize the management structure, reduce overhead costs and ultimately lead to streamlining the operations structure of the Demerged Undertaking and the Resulting Company to achieve better economies of scale on account of efficiencies in operations and management of the Business resulting in cost savings across various business functions;
  - (iv) The demerger will enable the future business activities to be carried on more conveniently and advantageously with enhanced flexibility in funding of expansion plans, improving profitability and stronger balance sheet of the Resulting Company;
  - (v) Synergies expected to bring in cost savings in the marketing and operating expenses as well as give benefits of the economies of scale and elimination of duplication of administrative expenses; and
  - (vi) Provide a higher degree of flexibility to evaluate independent business opportunities as well as attract the right set of investors, strategic partners, lenders and other stakeholders for the businesses of the Demerged Company and the Resulting Company, respectively post coming into effect of the Scheme.
7. The Professional for the Applicant Companies further submits that upon Part III of the Scheme becoming effective and in consideration of the demerger of the Demerged Undertaking from the Demerged Company and vesting of the Demerged Undertaking into the Resulting Company, the Resulting Company shall, without any further application or deed, issue and allot to the shareholders of the Demerged Company whose names appear in the register of members of the

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - V

C.A.(CAA)/83(MB)/2024

Demerged Company on the Record Date, or to such of their heirs, executors, administrators or the successors-in-title, as the case may be recognized by the Board of Directors, in the following manner:

For equity shareholder of Demerged Company

*"1 (one) Equity Share of Rs. 10 (Indian Rupees Ten) each of the Resulting Company for every 1 (one) Equity Share of Rs. 10 (Indian Rupees Ten) each held in the Demerged Company ("Demerger Equity Share Entitlement Ratio")"*

For preference shareholder of Demerged Company

*"100 (One Hundred) New NCRPS of Rs. 100 (Indian Rupees One Hundred) each of the Resulting Company for every 509 (Five Hundred and Nine) NCRPS of Rs. 100 (Indian Rupees One Hundred) each held in the Demerged Company ("Demerger Preference Share Entitlement Ratio")"*

The copy of Share Entitlement Ratio Report issued by Registered Valuer – Securities or Financial Assets is annexed as Annexure F (Page Nos. 362-376) to the Company Scheme Application.

8. The Professional for the Applicant Companies submits that there are no inquiry, investigation or proceedings instituted or are pending under the Companies Act, 1956 / Companies Act, 2013 against the Applicant Companies or by any other regulatory authorities. Further, there are no winding-up petitions or petitions under the Insolvency and Bankruptcy Code, 2016 admitted against the Applicant Companies.
9. The Professional for the First Applicant Company submits that there are 3 (Three) Equity Shareholders in the First Applicant Company and all the Equity Shareholders have given their consent in writing vide consent affidavits to the proposed Scheme. In view of the consents filed by all the Equity Shareholders of the First Applicant Company, the meeting of the Equity Shareholders of the First Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby dispensed with.

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - V

C.A.(CAA)/83(MB)/2024

The consent affidavits are annexed as **Annexure – G2 to G3 (Page Nos. 382 – 390)** to the Company Scheme Application and **Exhibit A (Page Nos. 7 - 9)** to the Additional Affidavit in support of Company Scheme Application filed on 8<sup>th</sup> July 2024 (“First Additional Affidavit”).

10. The Professional for the Second Applicant Company submits that there are 2 (Two) Equity Shareholders in the Second Applicant Company and all the Equity Shareholders have given their consent in writing vide consent affidavit to the proposed Scheme. In view of the consents filed by all the Equity Shareholders of the Second Applicant Company, the meeting of the Equity Shareholders of the Second Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby dispensed with. The consent affidavits are annexed as **Annexure – H1 (Page Nos. 394 – 397)** to the Company Scheme Application and **Exhibit B (Page Nos. 10 - 12)** to the First Additional Affidavit.
11. The Professional for the First Applicant Company submits that there is 1 (One) Preference Shareholder in the First Applicant Company and the sole Preference Shareholder has given its consent in writing vide consent affidavit to the proposed Scheme. In view of the consent filed by the sole Preference Shareholder of the First Applicant Company, the meeting of the Preference Shareholders of the First Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby dispensed with. The consent affidavit is annexed as **Annexure – I1 (Page Nos. 403 - 407)** to the Company Scheme Application.
12. The Professional for the First Applicant Company submits that as on 31<sup>st</sup> December, 2023 there are no Secured Creditors in the First Applicant Company. Therefore, the question of convening and holding the meeting and issue of notices to the Secured Creditors of the First Applicant does not arise. The independent Chartered Accountant’s Certificate verifying the ‘No Secured Creditors’ in the

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - V

C.A.(CAA)/83(MB)/2024

First Applicant Company as on 31<sup>st</sup> December 2023 is annexed as **Annexure – J (Page No. 408)** to the Company Scheme Application.

13. The Professional for the Second Applicant Company submits that there are 2 (Two) Secured Creditors in the Second Applicant Company aggregating to amount of INR 25,36,69,350 (Indian Rupees Twenty Five Crores Thirty Six Lakhs Sixty Nine Thousand Three Hundred and Fifty) as on 31<sup>st</sup> December, 2023 and all the Secured Creditors have given their consent in writing vide Consent Affidavits to the proposed Scheme. In view of the Consent Affidavits given by all the Secured Creditors of the Second Applicant Company, the meeting of the Secured Creditors of the Second Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby dispensed with. The Consent Affidavits of the Secured Creditors received by the Second Applicant Company are annexed as **Exhibit C1 and C2 (Page Nos. 13 – 21)** to the First Additional Affidavit. Further, the independent Chartered Accountant's Certificate verifying the list of Secured Creditors of the Second Applicant Company as on 31<sup>st</sup> December 2023 is annexed as **Annexure – K (Page Nos. 409 – 411)** to the Company Scheme Application.
14. The Professional for the First Applicant Company submits that there are 205 (Two Hundred and Five) Unsecured Creditors in the First Applicant Company aggregating to amount of INR 14,95,56,672/- (Indian Rupees Fourteen Crores Ninety Five Lakhs Fifty Six Thousand Six Hundred and Seventy Two) as on 31<sup>st</sup> December 2023. There are 311 (Three Hundred and Eleven) Unsecured Creditors in the Second Applicant Company aggregating to amount of INR 10,48,19,860/- (Indian Rupees Ten Crores Forty Eight Lakhs Nineteen Thousand Eight Hundred and Sixty) as on 31<sup>st</sup> December 2023. The independent Chartered Accountant's Certificate verifying the list of Unsecured Creditors of the Applicant Companies as on 31<sup>st</sup> December, 2023 are annexed as **Annexure - L and Annexure - M respectively (Page Nos. 412 – 450)** to the Company Scheme Application. The Professional for the Applicant Companies submits that the pre-Scheme Net Worth



IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - V

C.A.(CAA)/83(MB)/2024

of the Demerged Company and the post-Scheme Net Worth of the Resulting Company as on 31<sup>st</sup> December, 2023 is/ will be positive. Copy of the Net Worth certificates duly certified by Chartered Accountant are annexed as **Exhibit E1 and E2 (Page Nos. 30 – 35)** to the First Additional Affidavit. The Professional for the Applicant Companies submits that the meeting of the Unsecured Creditors of the Applicant Companies be dispensed with, since the present Scheme is an arrangement between the First Applicant Company, Second Applicant Company and their respective shareholders as contemplated under Section 230(1)(b) of the Companies Act, 2013 and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no compromise and/or arrangement with the Unsecured Creditors as no sacrifice is called for.

15. The Professional for the Applicant Companies submits that the Applicant Companies undertake that the present Scheme is not an arrangement with their Unsecured Creditors and that the rights of the Unsecured Creditors of the Applicant Companies will not be affected and all the Unsecured Creditors would be paid off as per their terms of payment or in the ordinary course of business, as the case may be. The Applicant Companies shall continue to be owned and controlled by the same group, the Applicant Companies undertakes to protect the interest of their creditors and no prejudice shall be caused to any of the Creditors, as a result of the Scheme to the end and effect that both the Applicant Companies will take care of its dues towards all the Creditors. This undertaking was filed with the Hon'ble NCLT on 9<sup>th</sup> July 2024 by way an Additional Affidavit in support of the Company Scheme Application ("Second Additional Affidavit").
16. Based on above and considering the Second Additional Affidavit, this Bench is of the view that since the rights of the Unsecured Creditors of the Applicant Companies will not be affected as the Applicant Companies has submitted that all the Unsecured Creditors of the Applicant Companies would be paid off as per their terms of payment or in the ordinary course of business, as the case may be, meeting of Unsecured Creditors can be dispensed with. Further, the Applicant

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH - V**

**C.A.(CAA)/83(MB)/2024**

Companies are directed to intimate all its Unsecured Creditors as on 31<sup>st</sup> December 2023 by sending notices through R.P.A.D or by Email or by speed post or by courier or hand delivery of the proposed Scheme with a direction that they may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such intimation to the Tribunal with copy of such representations shall simultaneously be served upon the respective Applicant Companies, failing which, it shall be presumed that they have no representations to make on the proposed Scheme.

17. The Professional for the First Applicant Company submits that there is 1 (One) Unsecured Compulsorily Convertible Debenture Holder in the First Applicant Company aggregating to amount of INR 275,00,00,000/- (Indian Rupees Two Hundred and Seventy-Five Crores) as on 31<sup>st</sup> December, 2023 and the sole Unsecured Compulsorily Convertible Debenture Holder has given its consent in writing vide consent affidavit to the proposed Scheme. In view of the consent filed by the sole Unsecured Compulsorily Convertible Debenture Holder of the First Applicant Company, the meeting of the Unsecured Compulsorily Convertible Debenture Holders of the First Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby dispensed with. The consent affidavit is annexed as **Exhibit D (Page Nos. 22 – 29)** to the First Additional Affidavit.
18. The Applicant Companies are accordingly directed to serve notices along with copy of the Company Scheme Application, Scheme and Minutes of the Order passed by the Tribunal upon:- (i) concerned Income Tax Authorities within whose jurisdiction the Applicant Company's assessments are made i.e. for the First Applicant Company, DCIT Ward 5(1)(1), Mumbai, having PAN AASCA3018R, and for the Second Applicant Company, DCIT Circle 4(3)(1), Mumbai, having PAN AADCK9508M, and the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3<sup>rd</sup> Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH - V**

C.A.(CAA)/83(MB)/2024

022-22017654 [Email: Mumbai.pccit@incometax.gov.in] (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies, Mumbai, (iv) Concerned GST Authority within whose jurisdiction the Applicant Companies are assessed to GST, and (v) any other Sectoral/ Regulatory Authorities relevant to the respective Applicant Companies or their business, pursuant to Section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 through R.P.A.D or by Email or by speed post or by courier or hand delivery with a direction that they may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such notice to the Tribunal with copy of such representations being simultaneously served upon the respective Applicant Companies, failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme.

19. The Professional for the Applicant Companies further clarifies that the Applicant Companies will file the Company Scheme Petition and comply with the provision of service of notices upon all the regulatory authorities and creditors (wherever applicable).
20. That the Applicant Companies to file an Affidavit of Service with this Tribunal for the service of notice upon the regulatory authorities and unsecured creditors as stated above and do report to this Tribunal that the direction(s) regarding the issue of notices have been duly complied with.
21. Ordered accordingly.

**Sd/-**

**Madhu Sinha**  
**Member (Technical)**  
/priyanka/

**Sd/-**

**Reeta Kohli**  
**Member (Judicial)**