

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, BENCH VI

CA(AA)/08/ND/2024

(Under sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.)

IN THE MATTER OF SCHEME OF ARRANGEMENT OF

M/s. Ambrosia Corner House Private Limited

Registered Office at:

10185C, Arya Samaj Road, Karol Bagh, New Delhi- 110005

... Transferor Company

AND

M/s. Kafila Hospitality and Travels Private Limited

Registered Office at:

10185C, Arya Samaj Road, Karol Bagh, New Delhi-110005

... Transferee Company

For the Applicant Companies: Mr. Vivek Sinha, Mr. Vivek Malik, Mr.

Shubham Bharara, Advs.

CORAM:

SH. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

ORDER

PER – RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Delivered on: 08.07.2024

1. This is a first motion application filed jointly by the Applicant Company No 1, M/s. Ambrosia Corner House Private Limited (for brevity “Transferor Company / Applicant Company No 1”) and M/s. Kafila Hospitality and Travels Private Limited (for brevity “Transferee Company / Applicant Company No 2”) under Section 230-232 of Companies Act, 2013 read with other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Arrangement between the Applicant Companies in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the “SCHEME”) proposed between the applicants.
2. That the Transferor Company and the Transferee Company under the Scheme of Arrangement have their respective registered office in New Delhi and hence are under the jurisdiction of the National Company Law Tribunal, Bench at New Delhi.
3. The Scheme of Arrangement was approved by Board of Directors of both the Applicant Companies No 1& 2 on 12.12.2023 and the copy of the same have been duly signed and filed along with the application.
4. The Applicant Company No.1/Transferor Company – M/s. Ambrosia Corner House Private Limited, having CIN U55101DL1974PTC007297, was incorporated under the provisions of the Companies Act, 1956 as a

Private Limited Company vide Certificate of Incorporation dated 05.06.1974, having its registered office at 10185C, Arya Samaj Road Karol Bagh New Delhi DL 110005. The Share Capital of the Applicant Company No. 1/ Transferor Company is as under: -

| Authorized Share Capital | Amount (in Rs.) |
|---|------------------------|
| 13730000 equity shares of Rs. 10/- each | 137300000 |
| Total | 137300000 |
| Issued, Subscribed and Fully Paid-up Share Capital | Amount (in Rs.) |
| 13418689 equity shares of Rs. 10/- each | 134186890 |
| Total | 134186890 |

5. The Applicant Company No. 2/Transferee Company – M/s. Kafila Hospitality and Travels Private Limited, having CIN U74899DL199SPTC064578, was incorporated under the provisions of the Companies Act, 2013 as Private Limited Company vide Certificate of Incorporation dated 20.01.1995 with the Registrar of Companies, NCT of Delhi & Haryana and having its registered office at 10185C, Arya Samaj Road Karol Bagh New Delhi DL 110005. The Share Capital of the Transferee Company is as under-

| Authorized Share Capital | Amount (in Rs.) |
|---|------------------------|
| 20,00,000 equity shares of Rs.10/- each | 2,00,00,000 |
| Total | 2,00,00,000 |
| Issued, Subscribed and paid up Share Capital | Amount (in Rs.) |
| 9,28,776 equity shares of Rs.10/- each | 92,87,760 |
| Total | 92,87,760 |

6. The Transferor Company as well as the Transferee Company have filed their respective Memorandum and Articles of Association, inter alia delineating their object clauses, as well as their last Audited Annual Accounts for the Financial 31.03.2023.
7. The proposed scheme of amalgamation will have following benefits:
- It would result in a simple corporate structure, optimal use of personnel and infrastructure; synergy and optimization of operations; avoiding duplication of work
 - The amalgamation is expected to reduce redundancies and multiplicity/duplication of various accounts and overheads due to Petitioner Companies being holding and subsidiary entities.
 - It will be conducive to better and more efficient and effective conduct of business and operations of the amalgamated entity, by utilizing the financial resources, managerial, technical, and marketing and services delivery capabilities.
 - The Amalgamation will result in simplification of the group structure and management structure and other costs from more focused operational efforts, rationalization, standardization and simplification of business processes.
 - The Amalgamation will enable the combined entity to leverage their consolidated resources to: (a) increase revenue capacities; and (b) undertake research and development initiatives to improve business processes.
 - The synergies that exist between the companies in terms of services and resources can be put to the best advantage of all stakeholders.
8. It has been stated that the Transferor Company has 8 Shareholders. Certificate from the Chartered Accountants certifying list of Shareholders was annexed. All of them have given their respective consents by way of affidavits, which were annexed to the application. In relation to the Shareholders, it seeks to dispense with the holding/convening of the meetings as their consent affidavits were placed on record. The Transferor

Company had 1 Secured Creditor as on the latest audited books of account. However, as on the appointed date, all liabilities towards the secured creditor have been paid and as on appointed date there is no secured creditor. Copy of the Form CHG-4 evidencing repayment of loan and satisfaction thereof, along with no due certificate is attached with the application. Hence, necessity of convening or dispensing the meeting does not arise. It was further represented that the Transferor Company has 217 Unsecured Creditors. Certificate from Chartered Accountants certifying list of creditors was annexed. The Applicant Company No 1 has prayed to convene the meeting of Unsecured Creditors.

9. It has been stated that the Transferee Company has 7 Shareholders. Certificate from the Chartered Accountants certifying list of Shareholders was annexed. All of them have given their respective consents by way of affidavits, which were annexed to the application. In relation to the Shareholders, it seeks to dispense with the holding/convening of the meetings as their consent affidavits were placed on record. The Transferee Company has 3 Secured Creditors. Certificate from the Chartered Accountants certifying list of Creditors was annexed. The Transferee Company has prayed to convene the meeting of Secured Creditors. It was further represented that Transferee Company has 3174 Unsecured Creditors. Certificate from the Chartered Accountants certifying list of Creditors was annexed. The Applicant Company has prayed to convene the meeting of Unsecured Creditors of Transferee Company.

10. The Applicant Companies have stated that the provisions relating to the accounting treatment for the proposed scheme were in conformity with the applicable provisions of the Companies Act, 2013. Certificates from the Statutory Auditor of the Applicant Companies on the accounting treatment, as proposed in the Scheme, were annexed to the application and it is clearly stated that the accounting treatment is in conformity with that prescribed under Section 133 of Companies Act, 2013.

11. The Applicant Companies have stated there are no proceedings for inspection / investigation under the Companies Act, 1956 and Companies Act, 2013 or the Act or any proceedings under any other department of Applicant Companies or their Directors.

12. Taking into consideration the submissions and the documents filed therewith, the following directions are issued forthwith in respect of convening/holding or dispensing with the meetings of the Shareholders.

Secured and Unsecured Creditors of Applicant Companies: -

A. In relation to the Transferor Company:

a) With respect to Equity Shareholders: In view of consent affidavits from the 8 Equity Shareholders, having 100% voting share, been filed, convening the meeting of shareholders/members is dispensed with.

b) With respect to Secured Creditors: Since there are no secured creditors of the Transferor Company, therefore the necessity of convening the meeting does not arise.

c) With respect to Unsecured Creditors: The meeting of the Unsecured Creditors of the Transferor Company is directed to be held at the venue, date, time and mode as decided by the Chairperson in consultation with the counsel for Applicant Companies. The quorum for the meeting will be 145, being 2/3 in number.

B. In relation to the Transferee Company:

a) With respect to Equity Shareholders: In view of consent affidavits from the 7 Equity Shareholders, having 100% voting share, been filed, convening the meeting of shareholders/members is dispensed with

b) With respect of Secured Creditors: The meeting of the Secured Creditors of the Transferee Company is directed to be held at the venue, date, time and mode as decided by the Chairperson in consultation with the counsel for Applicant Companies. The quorum for the meeting will be 2, being 2/3 in number.

c) With regard to Unsecured Creditors: The meeting of the Unsecured Creditors of the Transferee Company is directed to be held at the venue, date, time and mode as decided by the Chairperson in consultation with the counsel for Applicant Companies. The quorum for the meeting will be 2116, being 2/3 in number

13. Mr. Harbhajan Singh, IAS (Retd), (Email Id- hbsingh2311@gmail.com; Mobile No.-9560877722) is appointed as the **Chairperson**, Mr. Swaralipi Debroy, Advocate (E-mail Id- rkabcl_sdr@yahoo.in; Mobile No.- 8510094876) is appointed as **Alternate Chairperson** and Ms. Sonali Gupta, CS (E-mail Id- csguptasonali@gmail.com; Mobile No.-

9920110834) is appointed as **Scrutinizer** for the aforesaid meetings of the Transferor Company and Transferee Company in terms of the directions issued herein.

14. In case the quorum for the aforesaid meeting is not present at the meeting, then the meeting shall be adjourned by half an hour. Thereafter the persons present and voting shall be deemed to constitute the quorum. The Chairperson and Alternate Chairperson appointed herein along with the Scrutinizer shall ensure that the proxy Registers are properly maintained.
15. The Fees of the Chairperson for the aforesaid three meetings shall be Rs. 1,75,000/ -. The Fees of the Alternate Chairperson shall be Rs. 1,50,000/- and the Fees of the Scrutinizer shall be Rs. 1,25,000/- in addition to meeting their incidental expenses. The Chairperson will file his report within a week from the date of holding of the aforesaid meeting. The fees of Chairperson, Alternate Chairperson and Scrutinizer along with the travelling expenses and other out of pocket expenses shall be borne by the respective Applicant Company. A copy of this order shall be provided to the learned counsels for the Applicant Companies who in turn shall provide a copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer.
16. Individual notices shall be sent to the Unsecured Creditors of all the Applicant Companies as well as Secured Creditors of the Transferee Company through email or through registered post or speed post, 30 days in advance before the scheduled date of meeting, indicating the day, date, the place fixed for and time of meeting as aforesaid, together with a copy of the Scheme and copy of explanatory statement as required under the

Companies Act, 2013 and the Rules, along with the proxy forms and any other documents as may be prescribed under the Act. These will be provided free of cost. A compliance affidavit of service will be filed with this Tribunal.

17. The Applicant Companies shall publish an advertisement at least 30 clear days before the aforesaid meeting, indicating the day, date and the place fixed and time of meeting as aforesaid, which will be published in “Business Express” (English) and “Business Standard” (Hindi), both Delhi NCR editions. The Applicant Companies shall also publish the notice on their websites, if any and file a compliance affidavit of service with this Tribunal.

18. The Chairperson shall be responsible to report the results of the meetings to the Tribunal within 7 (seven) days of the conclusion of the meetings. The Chairperson shall be assisted by the Authorized Representative / Company Secretary of the Applicant Companies and the Scrutinizer, who will assist the Chairperson and Alternate Chairperson in preparing and finalizing the reports.

19. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be decided by the Chairperson in consultation with the counsel of the Applicant Companies in terms of the provisions of the Companies Act, 2013 and Rules framed there under.

20. Notice of this application shall be served on the following:

- i. The Regional Director, Northern Region, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, New Delhi-110003;
- ii. The Registrar of Companies, NCT of Delhi and Haryana, 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;
- iii. Official liquidator, Lok Nayak Bhavan, 8th Floor, Khan Market, New Delhi-110001;
- iv. Concerned office of Income Tax Department of both the Applicant Companies. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing officers so that timely and proper reply may be filed.
- v. Any other sectoral regulators required to be served.

The application stands allowed on the aforesaid term and accordingly disposed off.

SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)