

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P.(CAA)/72(KB)2024
IN
C.A.(CAA)/54(KB)2024

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI D. ARVIND**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 03RD MAY 2024

IN THE MATTER OF	PEARLTREE HOTELS & RESORTS PRIVATE LIMITED
UNDER SECTION	SEC. 230-232 - SECOND MOTION

Appearance (via video conferencing/physically)

Ms. Meenakshi Manot, Adv.] For the Applicant
Mr. A. Mishra, Adv.]

ORDER

1. Ld. Counsel for the applicant present.
2. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 (“Act”) for orders and directions with regard to dispensation of meeting of shareholders, unsecured creditors and notice to secured creditor as applicable, in connection with the Scheme of Arrangement/ Demerger relating to de-merger of Mall Undertaking ("Demerged Undertaking") of Kushal Bharat Equipments And Infrastructure Private Limited being the Applicant No. 2 abovenamed (“Demerged Company” /or “Transferor Company” /or “Kushal”) , with and into Pearltree Hotels & Resorts Private Limited being the Applicant 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 Arrangement (“Scheme”). **(Page No. 123-150 of Application).**
3. It is submitted by Ld. counsel appearing for the Applicants submit that the shares of the Applicant No. 1 , 2 are not listed in any stock exchanges. Further, the Applicants have the following classes of shareholders and creditors:-

Sl. No	Name of Applicant Companies	Equity Shareholders (Nos)	Preference Shareholders (Nos)	Secured Creditors (Nos)	Unsecured Creditors (Nos)
1	Pearltree Hotels & Resorts Private Limited	3 Nos (Page No. 165-175 of Application) NOC in Affidavit - 100 %	Nil	8 Nos NOC in Affidavit -NIL	10 Nos (Page No. 205-249 of Application) NOC in Affidavit - 100%
2	Kushal Bharat Equipments And Infrastructures Private Limited	6 Nos (Page No. 176-196-177 of Application) NOC in Affidavit - 100 %	Nil	3 Nos NOC in Affidavit -NIL	3 Nos (Page No. 250-263 of Application) NOC in Affidavit - 100 %

4. The Scheme was approved unanimously by the respective Board of Directors of the Applicant Companies at their meetings held on 16/01/2024 respectively. **(Page No. 151-152 of Application).**

5. The Statutory Auditors of respective Applicant 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. 264-265 of Application).**

6. The exchange ratio of shares in consideration of the arrangement 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. 153-164 of Application).**

7. It is submitted that all Equity Shareholders of the Applicant No. 1 , 2 in 100% in value , Unsecured Creditors of Applicant Company No. 1 and 2 , being 100% in value have already given their consent to the Scheme by way of affidavits which are annexed to the application.

8. Directions are sought for dispensing with meetings of the Equity shareholders of Applicant No. 1 and 2 and also of unsecured creditors of Applicant No. 1 and 2 who have already given their consent to the Scheme. Notice to secured creditors of Applicant No. 1 and 2.

9. It is submitted that Applicant Companies have positive networth. Further, as per the Statutory Auditor, Applicants have the following networth as on Appointed Date:-

Particulars	Networth As on Appointed date (INR)
Pearltree Hotels & Resorts Private Limited	38,46,33,047
Kushal Bharat Equipments And Infrastructure Private Limited	26,04,56,329

(Page No. 266, 267 of the Petition)

10. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicants, we allow the instant application and make the following orders:-

(a) Further, as the present Scheme is an arrangement between the Applicant Companies and their respective shareholders as contemplated under section 230(1)(b) of the Companies Act, 2013 as there is no compromise or arrangement with or diminution of liability of any of the Secured Creditors, Unsecured Creditors. Therefore, while no meeting is necessary, this Tribunal hereby directs that individual notice be given to:-

- (i) Secured Creditor of the Applicant No. 1
- (ii) Secured Creditor of the Applicant No. 2

under section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the respective Applicant Companies. The notice be sent by Registered Post AD/Speed Post/Email. It shall be the responsibility of the Applicant Companies to ensure that the said Secured creditors of Applicant No. 1 as indicated above are sent notice regarding the Scheme, so that they may take informed decision thereon.

(b) **Meetings dispensed:** Meetings of the Equity Shareholders of the Applicant No. 1, 2 and meeting of Unsecured Creditor of Applicant No. 1, 2, are dispensed-with under Section 230(1) read with Section 232(1) of the Act.

11. Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall be served upon the following Statutory Authorities:-

- a) Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;
- b) Registrar of Companies with whom the Applicant is registered;
- c) Official Liquidator; and
- d) Income Tax Department and Commissioner of Income Tax having jurisdiction over the Applicant ;

by sending the same by hand delivery through special messenger or by post and also by email within two weeks from the date of receiving this order. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Authorised Representative of the said Applicant. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Composite Scheme of Arrangement. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Arrangement/ Demergers) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

12. The application being **Company Application (CAA) No. 54/(KB)/2024 in C.P.(CAA)/72(KB)2024** is **allowed** and **disposed of** accordingly.

13. The applicants to file an affidavit proving service of notices to all statutory /sectoral authorities and compliance of all the directions contained.

14. Connected Company Petition should be filed within a period of four weeks from the date of issue of this order.

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

16. List the matter on **20.06.2024**.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)