

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD  
COURT NO. II**

**CA (CAA) NO. 53 / 2021**

**And**

**CA (CAA) NO. 54 / 2021**

**And**

**CA (CAA) NO. 55 / 2021**

[Sections 230-232 and read with other applicable provisions of the Companies Act 2013 read with The Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016]

**In the matter of Scheme of Amalgamation and Demerger  
of**

**CA (CAA) NO. 54 /2021**

**ZIRCON HOTELS PVT. LTD.  
(PETITIONER TRANSFEROR COMPANY NO. 1)**

**and**

**CA (CAA) NO. 55/2021**

**ZIRCON HOSPITALITY PVT. LTD.  
(PETITIONER TRANSFEROR COMPANY NO. 2)**

**with**

**CA (CAA) NO. 53/2021**

**HOTEL SUBA STAR PVT. LTD.  
(PETITIONER TRANSFEREE COMPANY)**

**MEMO OF PARTIES**

**ZIRCON HOTELS PRIVATE LIMITED**

(CIN – U55101GJ2014PTC121016)

Registered office at Hotel Suba Star,  
Judges Bunglow, Near Akash Tower Bodakdev,  
Ahmedabad-380015, Gujarat.

PETITIONER TRANSFEROR COMPANY NO. 1

**ZIRCON HOSPITALITY PRIVATE LIMITED**

(CIN – U55101GJ2014PTC121017)

Registered office at Hotel Suba Star,  
Judges Bunglow, Near Akash Tower Bodakdev,  
Ahmedabad-380015, Gujarat.

PETITIONER TRANSFEROR COMPANY NO. 2

**HOTEL SUBA STAR PRIVATE LIMITED**

(CIN – U99999MH1997PTC111492)

Registered office at Hotel Suba Star,  
Judges Bunglow, Near Akash Tower Bodakdev,  
Ahmedabad-380015, Gujarat.

PETITIONER TRANSFEREE COMPANY

**Order pronounced on: 28.09.2022**

**CORAM:**

**DR. DEEPTI MUKESH,  
HON'BLE (MEMBER (JUDICIAL))  
AJAI DAS MEHROTRA,  
HON'BLE MEMBER (TECHNICAL)**

**Appearance:**

For the Applicants : PCS, Mr. Ashish D Lalpuria and PCS, Mr. Kamal Lahoty.

**COMMON ORDER**

1. Three separate company applications are filed under Section 230-232 with other applicable provisions of the Companies Act, 2013 (hereinafter referred to as “**the Act**”) and read with the Companies (Compromise, Arrangement, and Amalgamations) Rules, 2016 for sanctioning Scheme of Amalgamation (hereinafter referred to as the “Scheme”) of Zircon Hotels Pvt. Ltd. (herein after referred to as Transferor Company No. 1) and Zircon Hospitality Pvt. Ltd. (hereinafter referred to as Transferor Company No. 2) with Hotel Suba Star Private Limited (herein after referred to as Transferee Company) and Demerger of the Hotel Suba Elite (Baroda Hotel Undertaking) of Hotel Suba Palace Private Limited (“Demerging Company” or the “Transferor Company-3”) vesting in Hotel Suba Star Private Limited with effect from the Appointed Date on the agreed terms and conditions as set out in the Scheme annexed in accordance with Sections 230 to 232 of the Companies Act, 2013.

2. It is submitted that the registered office of the Hotel Suba Palace Private Limited (“Demerging Company” or the “Transferor Company-3”) is in the state of Maharashtra and therefore separate Application vide CA(CAA)113/MB/2021 has been filed before the NCLT Mumbai Bench. The NCLT, Mumbai Bench vide its order dated 16<sup>th</sup> August, 2021 allowed the said Application.
  
3. It is submitted that the registered office of the Applicant Companies are situated within the territorial jurisdiction of Registrar of Companies, Ahmedabad, Gujarat, which is falling under the jurisdiction of this Tribunal.
  
4. It is submitted that Transferor Company No. 1 is incorporated on 03.02.2014, under the provisions of the Companies Act, 2013, with the ROC, Maharashtra with the name M/s Zircon Hotels Private Limited. The Registered Office of the Transferor Company No. 1 shifted to Ahmedabad, Gujarat to Hotel Suba Star, Judges Bungalow Road, Near Akash Tower Bodakdev, Ahmedabad, Gujarat-380015 on 10.03.2021. The certificate of incorporation as well as change of office are placed on record. The Authorised Share Capital of the Transferor Company No. 1 is Rs. 45,00,000/- which is divided into 4,50,000/- Equity shares of Rs. 10/- each

and Issued, Subscribed and Paid-up Share Capital is Rs. 36,75,000/- which is divided into 3,67,500/- equity shares of Rs. 10/- each.

5. It is submitted that Transferor Company No. 2 is incorporated on 24.01.2014, under the provisions of the Companies Act, 2013, with the ROC, Maharashtra with the name M/s Zircon Hospitality Private Limited. The Registered Office of the Transferor Company No. 2 shifted to Ahmedabad, Gujarat to Hotel Suba Star, Judges Bungalow Road, Near Akash Tower Bodakdev, Ahmedabad, Gujarat-380015 on 10.03.2021. The certificate of incorporation as well as change of office are placed on record. The Authorised Share Capital of the Transferor Company No. 2 is Rs. 30,00,000/- which is divided into 3,00,000/- Equity shares of Rs. 10/- each and Issued, Subscribed and Paid-up Share Capital is Rs. 25,00,000/- which is divided into 2,50,000/- equity shares of Rs. 10/- each.
6. It is submitted that Transferee Company is incorporated on 23.10.1997, under the provisions of the Companies Act, 1956, with the ROC, Maharashtra with the name M/s Trupti Supercaterers and Hotels Private Limited. The name of the Transferee Company was first changed to Trupti Caterers & Hotels Private Limited vide certificate dated 21.05.2008 and subsequently changed to Hotel Suba Star Private Limited vide certificate dated 08.10.2014. The Registered Office of the Transferee Company shifted

to Ahmedabad, Gujarat to Hotel Suba Star, Judges Bungalow Road, Near Akash Tower Bodakdev, Ahmedabad, Gujarat-380015 on 01.03.2021. All relevant certificates issued by ROC Maharashtra and ROC Gujarat are placed on record. The Authorised Share Capital of the Transferor Company is Rs. 2,23,00,000/- which is divided into 22,30,000 Equity shares of Rs. 10/- each and Issued, Subscribed and Paid-up Share Capital is Rs. 2,22,85,000/- which is divided into 22,28,500 equity shares of Rs. 10/- each.

7. Applicant Companies are empowered by their respective Memoranda and Articles of Association to enter into Scheme. Copy of Memoranda and Articles of Association of all the Applicant Companies are placed on record. The copies of Audited Financial Statements of all the Applicant Companies as on 31.03.2021 through Additional Affidavits dated 29.06.2022 are placed on record.
8. The Board of Directors of respective Applicant Companies have approved the Scheme at their respective Board Meetings held on 06.04.2021. Copies of Board Resolutions passed on 06.04.2021 of the companies are placed on record respectively. The Appointed Date, as envisaged in the Scheme for the Scheme is 31<sup>st</sup> October, 2020.
9. The rationale of the Scheme is set out as under :

- 1) Transferee Company, Transferor Company 1 and Transferor Company 2 have essentially same business model, operate in same segment and have similar strategies. This Scheme will result in simplified management structure after the amalgamation of Transferor Company-1 and Transferor Company -2 with the Transferee Company, leading to better administration and reduction in costs from more focused operational efforts, rationalization, standardization and simplification of business processes, elimination of duplication, reduction in multiplicity of legal and regulatory compliance and rationalization of administration expenses. The proposed amalgamation will result in greater integration and financial strength for the amalgamated entity, which would result in maximizing overall shareholders values. Amalgamation will provide varied sources of funds for rapid growth of the amalgamated entity.
- 2) The transfer and vesting of the Demerged Undertaking (as defined below) in the Transferee Company shall be in the larger interest of the shareholders, creditors and employees of the Transferor Company-3 and shall be in the interest of future growth of the Transferee Company. The demerger and vesting shall achieve the following benefits for the Transferor Company-3 and the Transferee Company:

- a. the demerger will enable Suba Palace to focus on the Mumbai Hotels Undertaking and manage hotel properties in Mumbai and Investments Outside India, catering to and serving premium and top end segment;
- b. the demerger will enable the better and more efficient management, control and running of the Baroda Hotel Undertaking as it consist of hotel situated in Gujarat and caters to economy segment. Business model of Baroda Hotel undertaking is aligned to Transferee company as both Baroda Hotel undertaking and Transferee company serve economy segment and are located in Gujarat:
- c. the demerger is in the interest of shareholders of Transferor Company 3 and will enable both Transferor Company 3 and the Transferee Company to achieve and fulfill their objectives more efficiently and offer opportunities to the management of both the companies to vigorously pursue growth and expansion opportunities as both business activities require different strategy, management approaches and focus. Moreover, the competitive dynamics of these business activities are different;



- d. Thus separation of Baroda Hotel Undertaking, by way of scheme, would lead to significant benefits for both business activities including: (a) enhanced strategic flexibility and (b) enhanced dedicated management focus to accelerate growth of both business activities; and
  - e. the demerger will enable potential investors to separately hold investments on the basis of location and segment of operation which best suit their investment strategies and risk profiles and the demerger will provide varied source of funds for the rapid growth of both business activities.
10. Valuation Reports for the proposed Exchange Ratio by the Independent Registered valuer are placed on record.
11. All the Applicant Companies have filed the certificates from Statutory Auditors confirming the proposed accounting treatment being in conformity with the applicable Accounting Standards under section 133 of the Companies Act, 2013, read with Rule 7 of the Companies (Accounts) Rules, 2014.
12. All the Applicant Companies filed additional affidavit stating that notice is not required to be issued to the Competition Commission of India, Securities

Exchange Board of India and Reserve Bank of India under the provisions of Section 230(5) of the Companies Act, 2013.

13. All three Applicant Companies have submitted that no proceedings/investigations are pending against any of the Companies under Section 210-217, 219, 220, 223-227 of the Companies Act, 2013. Also no winding up petition is pending against any of the Companies.

14. With respect to the **Transferor Company No. 1**, it is stated that:

a) There are two equity shareholders and certificate from Chartered Accountant certifying list of shareholders is annexed. Both the equity shareholders have given their consents by way of affidavits for the proposed Scheme. The copies of the consent affidavits of both equity shareholders are placed on record. Hence, the company is seeking dispensation for holding the meeting of equity shareholders.

b) There is only one Secured Creditor and certificate from Chartered Accountant certifying the same is placed on record. The sole Secured Creditor has given its consent by way of affidavit for the proposed Scheme. The copy of the consent affidavit is placed on record.. Hence, the company is seeking dispensation for holding the meeting of Secured Creditor.

- c) There are twelve Unsecured Creditors for an amount of Rs. 16,99,91,300/-. Certificate from Chartered Accountant certifying list of Unsecured Creditors is annexed. The Company has received consent affidavits by way of affidavit from 9 creditors comprising of more than 98% of total outstanding debt from Unsecured Creditors. Hence, the Company is seeking dispensation for holding the meeting of Unsecured Creditors.

15. With respect to the **Transferor Company No. 2**, it is stated that:

- a) There are two equity shareholders and certificate from Chartered Accountant certifying list of shareholders is annexed. Both the equity shareholders have given their consents by way of affidavits for the proposed Scheme. The copies of the consent affidavits of both equity shareholders are placed on record. Hence, the company is seeking dispensation for holding the meeting of equity shareholders.
- b) There is only one Secured Creditor and certificate from Chartered Accountant certifying the same is placed on record. The sole Secured Creditor has given its consent by way of affidavit for the proposed Scheme. The copy of the consent affidavit is placed on record. Hence, the company is seeking dispensation for holding the meeting of Secured Creditor.
- c) There are six Unsecured Creditors and certificate from Chartered Accountant certifying the same is placed on record. All the Unsecured Creditors have given their consent by way of affidavits for the proposed Scheme. The copies of the consent affidavits are placed on record. Hence,

the company is seeking dispensation for holding the meeting of Unsecured Creditors.

16. With respect to the **Transferee Company**, it is stated that:
- a. There are five equity shareholders and certificate from Chartered Accountant certifying list of shareholders is annexed. All the equity shareholders have given their consents by way of affidavits for the proposed Scheme. The copies of the consent affidavits of all equity shareholders are placed on record. Hence, the company is seeking dispensation for holding the meeting of equity shareholders.
  - b. There are no Secured Creditors. Certificate from Chartered Accountant certifying that there are no secured creditors is annexed with the application. Requirement of convening meeting of Secured Creditors is obviated.
  - c. There are two Unsecured Creditors and certificate from Chartered Accountant certifying the same is placed on record. Both the Unsecured Creditors have given their consent by way of affidavits for the proposed Scheme. The copies of the consent affidavits are placed on record. Hence, the company is seeking dispensation for holding the meeting of Unsecured Creditors.
17. Taking into consideration the submissions and the documents filed therewith, we issue the following directions with respect to convening or dispensing the meeting of the Equity Shareholders, Unsecured and Secured Creditors as well as issue of notices to Regulators:

**i) In relation to the Transferor Company No. 1:**

a. With respect to Equity Shareholders:

Convening of the meeting of equity shareholders of the company is hereby dispensed with, in view of 100% consent received by way of affidavits from all Shareholders.

b. With respect to Secured Creditors:

Convening of the meeting of Secured Creditors of the company is hereby dispensed with, in view of 100% consent received by way of affidavits from sole Secured Creditor.

c. With respect to Unsecured Creditors:

Since, consent affidavits from more than 98% of outstanding value of Unsecured Creditors have been received, the convening of the meeting of Unsecured Creditors of the company is hereby dispensed with.

**ii) In relation to the Transferor Company No. 2:**

a. With respect to Equity Shareholders:

Convening of the meeting of equity shareholders of the company is hereby dispensed with, in view of 100% consent received by way of affidavits from all Shareholders.

b. With respect to Secured Creditors:

Convening of the meeting of Secured Creditors of the company is hereby dispensed with, in view of 100% consent received by way of affidavits from sole Secured Creditor.

c. With respect to Unsecured Creditors:

Convening of the meeting of Unsecured Creditors of the company is hereby dispensed with, in view of 100% consent received by way of affidavits from Unsecured Creditors.

**iii) In relation to the Transferee Company :**

a. With respect to Equity Shareholders:

Convening of the meeting of equity shareholders of the company is hereby dispensed with, in view of 100% consent received by way of affidavits from all Shareholders.

b. With respect to Secured Creditors:

As there are no secured creditors in the Company, convening of the meeting of secured creditor is obviated.

c. With respect to Unsecured Creditors:

Convening of the meeting of Unsecured Creditors of the company is hereby dispensed with, in view of 100% consent received by way of affidavits from Unsecured Creditors.

18. The Applicants shall serve the notice of the separate applications on the following Authorities namely, (i) to the Central Government through the

Regional Director, North Western Region (ii) the Registrar of Companies, Gujarat, (iii) to the Income Tax Department along with full details of assessing officer and PAN numbers of all the applicant companies with the copy also to the Chief Commissioner of Income Tax Office (iv) the Official Liquidator and to such other Sectoral Regulatory Authorities who may govern the working of the respective companies involved in the Scheme, so that timely and proper reply may be filed.

19. The Application is allowed and disposed of in terms of the above directions.

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**AJAI DAS MEHROTRA**  
**MEMBER (TECHNICAL)**

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**DR. DEEPTI MUKESH**  
**MEMBER (JUDICIAL)**

*Abhishek Steno/Abhishek LRA*