

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV**

CA(CAA)-34/MB/2024

*In the matter of
Sections 230 to 232 and other applicable
provisions of the Companies Act, 2013*

And

*In the matter of
The Scheme of Amalgamation of
Moonburg Power Private Limited
(Transferor Company/
Applicant Company-1)*

with

***Tulsi Palace Resort Private Limited**
(Transferee Company/
Applicant Company-2)*

And their respective Shareholders.

Moonburg Power Private Limited
[CIN: U70200MH2022PTC384178]

... Applicant Company-1/
Transferor Company

Tulsi Palace Resort Private Limited
[CIN: U55101MH2012PTC412645]

... Applicant Company-2/
Transferee Company

(hereinafter collectively referred to as the 'Applicant Companies')

Order pronounced on: 17.04.2024

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearance :

For the Applicants : Mr. Hemant Sethi a/w Ms. Devanshi
Sethi i/b Hemant Sethi & Co., Advocates.

ORDER

1. This is an Application filed jointly by Moonburg Power Private Limited and Tulsi Palace Resort Private Limited under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013, seeking directions of this Bench for Scheme of Amalgamation of **Moonburg Power Private Limited** (Transferor Company) with **Tulsi Palace Resort Private Limited** (Transferee Company) and their respective shareholders (the "Scheme").
2. *Nature of Business:* The Counsel for the Applicant Companies submits that the First Applicant Company is engaged in the business of providing hospitality consultancy services and the Second Applicant Company is engaged in the business of establishing, running and managing hotels, heritage hotels and resorts.
3. The Applicants state that the Board of Directors of the First Applicant Company in its meeting held on 27.10.2023 and the Second Applicant Company in its meeting held on 20.10.2023 have approved the Scheme. The Appointed Date for the Scheme is 27.05.2023.
4. *Rationale of the Scheme:* The Counsel for the Applicant Companies further submits that the proposed amalgamation will result in

organizational efficiencies, reduction in overheads, administrative, operational costs and other expenses along with optimal utilization of various resources, prevention of cost duplication, creation of synergy thereby increasing operational efficiency and integrating business functions.

5. The Applicant Companies state that the Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on 31.03.2023 are as under:

Transferor Company:

Particulars	Amount (Rs.)
<u>Authorised Share Capital</u>	
1,00,000 Equity Shares of Rs. 10/- each	10,00,000
TOTAL	10,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
10,000 Equity Shares of Rs. 10/- each	1,00,000
TOTAL	1,00,000

Transferee Company:

Particulars	Amount (Rs.)
<u>Authorised Share Capital</u>	
2,60,00,000 Equity Shares of Rs. 10/- each	26,00,00,000
TOTAL	26,00,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
2,51,50,000 Equity Shares of Rs. 10/- each	25,15,00,000
TOTAL	25,15,00,000

6. **Consideration:**

The Counsel for the Applicant Companies further submits that upon the Scheme becoming effective and in consideration for the amalgamation of the Transferor Company with the Transferee Company, the Transferee Company shall without any further application or deed, issue and allot to the shareholders of the Transferor Company, holding fully paid up equity shares in the Transferor Company and whose names appears in the Register of Members of the Transferor Company as on the Effective Date or his/her/its heirs, executors, administrators or the successors in title, as may be recognised by the Board of Directors of the Transferee Company, fully paid up equity shares in the following fair share swap ratio:

"1 (One) fully paid up equity share having face value of INR 10/- (Indian Rupees Ten only) of the Transferee Company shall be issued and allotted to the shareholders of the Transferor Company for every 36 (Thirty Six) equity shares having face value of INR 10/- (Indian Rupees Ten only) each held in the Transferor Company."

7. The Counsel for the Applicant Companies further submits that there are 2 (Two) Equity Shareholders in the First Applicant Company and all the Equity Shareholders have given their consent affidavits for the proposed Scheme. In view of all the Equity Shareholders of the First Applicant Company have given their consent to the Scheme, the meeting of the Equity Shareholders of the First Applicant Company is hereby dispensed with.

8. The Counsel for the Applicant Companies further submits that there are 2 (Two) Equity Shareholders in the Second Applicant Company and all the Equity Shareholders have given their consent affidavits for the proposed Scheme. In view of all the Equity Shareholders of the Second Applicant Company have given their consent to the Scheme, the meeting of the Equity Shareholders of the Second Applicant Company is hereby dispensed with.
9. The Counsel for the Applicant Companies further submits that the First Applicant Company has received No Objection letter dated 6th February, 2024 from BSE Limited for the listed non-convertible bonds.
10. The Counsel for the Applicant Companies further submits that there is 1 (One) Secured Creditor (listed non-convertible bonds holder) in the First Applicant Company amounting to INR 4,25,00,00,000/- (Indian Rupees Four Hundred and Twenty Five Crores only) and sole Secured Creditor has given the consent affidavit for the proposed Scheme. In view of the sole Secured Creditor of the First Applicant Company have given its consent to the Scheme, the meeting of the Secured Creditor of the First Applicant Company is hereby dispensed with.
11. The Counsel for the Applicant Companies further submits that there is 1 (One) Secured Creditor in the Second Applicant Company amounting to INR 48,50,00,000/- (Indian Rupees Forty Eight Crores Fifty Lakhs only) and sole Secured Creditor has given the consent affidavit for the proposed Scheme. In view of the sole Secured Creditor of the Second

Applicant Company have given its consent to the Scheme, the meeting of the Secured Creditor of the Second Applicant Company is hereby dispensed with.

12. The Counsel for the Applicant Companies further submits that there is 1 (One) Unsecured Creditor in the First Applicant Company amounting to INR 50,00,00,000/- (Indian Rupees Fifty Crores only) and the sole Unsecured Creditor has given consent affidavit for the proposed Scheme. In view of the sole Unsecured Creditor of the First Applicant Company have given its consent to the Scheme, the meeting of the Unsecured Creditor of the First Applicant Company is hereby dispensed with.
13. The Counsel for the Applicant Companies further submits that there are 223 (Two Hundred and Twenty Three) Unsecured Creditors in the Second Applicant Company amounting to INR 31,11,81,320/- (Rupees Thirty One Crores Eleven Lakhs Eighty One Thousand Three Hundred Twenty Only) and the consent affidavit to the Company Scheme Application from 92.6% in value of the Unsecured Creditors of the Second Applicant Company have been obtained. In view of the fact that more than 90% in value of the Unsecured Creditors of the Second Applicant Company have given their consent to the Scheme, the meeting of the Unsecured Creditors of the Second Applicant Company is hereby dispensed with. However, the Second Applicant Company is directed to send notice to the remaining Unsecured Creditors through Registered AD/Speed Post and e-mail.

14. The Applicant Companies are directed to serve notice along with copy of Scheme upon the -
- i. Central Government through the office of Regional Director, Western Region, Mumbai;
 - ii. jurisdictional Registrar of Companies;
 - iii. jurisdictional Income Tax Authority within whose jurisdiction the respective Applicant Company's assessment are made;
 - iv. the concerned Nodal Officer in the Income Tax Department i.e. Pr. CCIT, Mumbai, Address: 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];
 - v. concerned Goods and Service Tax Authorities;
 - vi. the Official Liquidator, Bombay (in case of Transferor Company);
 - vii. BSE Limited (in case of the Transferor Company).
15. The above notice shall be served through Registered Post AD/Speed Post and e-mail pursuant to section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The said notice will contain a statement that *“If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme”*.
16. The Applicant Companies shall host the notices along with a copy of the Scheme on their respective websites, if any.

17. The Applicant Companies will submit –
- a. details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any;
 - b. list of pending IBC cases, if any;
 - c. details of all other litigation pending against the Applicant Company having material impact on the proposed Scheme;
 - d. details of all Letters of Credit sanctioned and utilized as well as Margin Money details, if any.
18. The Appointed Date is 27.05.2023.
19. The Applicant Companies to file an Affidavit of Service and Compliance Report within 10 working days after serving notice to all the Regulatory Authorities as stated above.
20. With the above directions, CA(CAA)-34/2024 is **allowed**.

Sd/-
Anu Jagmohan Singh
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)

17.04.2024/pvs/sj