

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT III

20. C.P.(CAA)/155/MB/2022

IN

C.A.(CAA)/132/MB/2022

CORAM: SH. H. V. SUBBA RAO, MEMBER (J)

MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **12.01.2023**

NAME OF THE PARTIES: Hotel Tunga International Private Limited.

SECTION 230-232 OF COMPANIES ACT, 2013

ORDER

Mr. Ahmed Chunawala, counsel for the Petitioner and Ms. Rupa Sutar, representative of Regional Director are present through virtual hearing.

C.P. (CAA)/155/MB/2022

Heard both sides and the above Company Petition is **allowed. Detail order would follow:**

Sd/-
MADHU SINHA
Member (Technical)
//SGP//

Sd/-
H. V. SUBBA RAO
Member (Judicial)

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In the matter of
Companies Act, 2013

AND

In the matter of
Section 230-232 of the Companies Act, 2013
and 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 of HOTEL TUNGA
INTERNATIONAL PRIVATE LIMITED, the
Transferor Company with HEGDE HOTELS
(INDIA) PRIVATE LIMITED, the Transferee
Company

HOTEL TUNGA INTERNATIONAL PRIVATE LIMITED
CIN: U14220MH1985PTC034955

... Petitioner Company No. 1

HEGDE HOTELS (INDIA) PRIVATE LIMITED

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CIN: U55200MH1992PTC065929

... Petitioner Company No. 2

Order delivered on: 12th January, 2023

Coram:

Sh. H. V. Subba Rao : Member (Judicial)
Ms. Madhu Sinha : Member (Technical)

Appearances (via videoconferencing):

For the Applicants : Mr Ahmed M Chunawala, i/b Rajesh
Shah & Co, Advocates
For the Regional Director (WR) : Rupa Sutar, Authorized
Representative of Regional Director
MCA (Western Regional), Mumbai

ORDER

1. The Bench is conveyed by videoconference today (12.01.2023).
2. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.

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3. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Amalgamation of HOTEL TUNGA INTERNATIONAL PRIVATE LIMITED, the Transferor Company with HEGDE HOTELS (INDIA) PRIVATE LIMITED, the Transferee Company.
4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 29th March, 2022 which are annexed to the respective Company Scheme Petitions.
5. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in the Company Scheme Application No. 132 of 2022 of the Hon'ble Tribunal.
6. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.

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7. The Learned Counsel for the Petitioner Companies states that the Petitioner Company No. 1 is presently carrying on business of own, construct, run, render technical advice in constructing, furnishing and running of, take over, manage, carry on business of hotel, restaurant, café, tavern, bars, refreshment, rooms, boarding and lodging, house keepers, clubs in India or in any other part of the world and that the Petitioner Company No. 2 is presently carrying on the business of hotel, restaurant, café, tavern, bars, refreshment-rooms, boarding and lodging, house keepers, clubs in India or in any other part of the world.
8. The rationale for the Scheme of Amalgamation of the Petitioner Companies is in the interest of the stakeholders of these companies and shall result in the following benefits:

The Transferor and Transferee Companies are owned, managed and controlled by the same family and group. With a view to maintain simple corporate structure and eliminate duplicate corporate procedure, it is desirable to merge and amalgamate the undertaking of Transferor Company with Transferee Company. Further to consolidate and effectively manage the Business of the Transferor

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Company and the Transferee Company in a single entity as it will provide synergy benefits, attain efficiencies and cost competitiveness and would create economies in administrative and managerial costs.

9. The Regional Director has filed his Report dated 31st October, 2022 inter-alia making the following observations in paragraphs 2 (a) to (g) which are reproduced hereunder:

Para	Observation by the Regional Director	Undertaking of the Petitioner Company/Rejoinder
2(a)	In compliance of AS-14 (IND AS-I03), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.	So far as the observation in paragraph 2 (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes that in addition to compliance of AS-14 for accounting treatment, the Transferee Company shall pass

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		such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 as applicable.
2(b)	<p>As per the Definition of the Scheme.</p> <p>“The Appointed Date” means 1st April 2022, or such other date as the National Company Law Tribunal (Tribunal) or other competent authority may otherwise direct/fix</p> <p>“The Effective Date” means the date on which certified copies of the Order(s) of the National Company Law Tribunal (Tribunal) vesting the assets, properties, liabilities, rights, duties, obligations and the like of all the Transferor Company in the Transferee Company are filed with the Registrar of Companies, Mumbai Maharashtra, after obtaining the necessary consents, approvals, permissions, resolutions, agreements sanctions and</p>	<p>So far as the observation in paragraph 2 (b) of the Report of the Regional Director is concerned, the Petitioner Companies through their Counsel submits that the Appointed Date is 1st April, 2022. The Counsel further submits that the Petitioner will comply with the requirements as to Appointed Date and clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry.</p>

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	<p>orders in this regard.</p> <p>The Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>	
2(c)	<p>Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section. The petitioner company may please be directed to pay the difference/balance amount of fees & Stamp duty.</p>	<p>So far as the observation in paragraph 2 (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be accordance with provisions of section 232(3)(i) of the Companies Act, 2013.</p>
2(d)	<p>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approval</p>	<p>So far as the observation in paragraph 2 (d) of the Report of</p>

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	by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.	the Regional Director is concerned, the Petitioner Companies undertake that this Scheme is approved by the requisite majority of members and notice was served to creditors as per the order given by the NCLT.
2(e)	The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income tax Act, 1961. In this regards, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.	So far as the observation in paragraph 2 (e) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.
2(f)	It is observed from MCA21 record that Transferee Company in financial statements as on 31.03.2007 has issued shares on Security Premium of Rs. 400/- per share and collected total premium	So far as the observation in paragraph 2 (f) of the Report of the Regional Director is concerned, the Petitioner Companies submits that 12000

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<p>amounting to Rs. 48,00,000/- by way of accommodation entry as the following particulars:-.</p>						<p>Share of Hegde Hotels (India) Private Limited (Transferee Company) were issued to the three allottees on 28/02/2007 at a premium of Rs.400. The issue price of Rs.500/- was arrived at having regard to the Book Value then, illiquidity factor and other relevant factors and that the book value of shares in the F.Y. 2005-06 and 2006-07 were Rs 672 and Rs 693 respectively. Thus there was no excessive premium charged at the time of issue of shares. The Petitioner Company further submits that the transferor company, which is holding 75000 shares of transferee Company, had not bought any shares from the Original allottees at all nor has it acquired the shares at Rs. 42.85 from anybody. The Petitioner Company further submits the per</p>
Date of Allotment	Name of Allottees	No. of Shares	Issue Price of Share including Premium	Security Premium Share	Total share Premium collected (RS.)	
28.02.2007	Savita Shridhar Shetty	1,000	500	400	4,00,000	
28.02.2007	Arundutti R. Shetty	1,000	500	400	4,00,000	

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	28.02. 2007	Ashwini Infra	10,000	500	400	4,00,000	<p>value shares of Transferee company in the books Transferor company at Rs. 42.85 is to value derived after demerger of Transferee company which has been shown in the records and it is not the acquisition cost based on any actual transaction and further Income tax Assessment had been carried out of the Transferor company is up to date. The petitioner Company further submit in view of the above, we state that no excessive premium was charged by the Transferee Company when shares were issued in 2007 as book value was higher than the issue price and that no shares of Transferee Company were sold by the original allottees to transferor Company and that the Value of 42.85 is a derived value of shares of Transferee Company</p>
		Total	12,000			48,00,000	
<p>In the view of above, if agreed, Hon'ble NCLT may ask to Petitioners to clarify that Income Tax Departments has properly assessed the increase of share capital from time to time u/s. 68 of the Income Tax Act, 1961 or seek the reply from Income tax department about issue of share capital at high premium on the shares and transfer of shares by original allottees to the existing shareholders at much lower price i.e. 42.85 per shares as observed from Investments section of the Transferor Companies which is a shareholder in Transferee Company and purchase of shares below fair values is taxable in the hand of buyers (Transferor Company).</p>							

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		after demerger and it is not the value based on any transfer transaction.
2(g)	<p>That on examination of the report of the Registrar of Companies, Mumbai dated 30.06.2022 (Annexed as Annexure A-1) that the Transferor Company and Transferee Company fall within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and /or representation regarding the proposed scheme of Amalgamation has been received against the Transferor Company and Transferee Company. Further, the Transferor Company and Transferee Company have filed Financial Statements up to 31.03.2021 further observations in ROC report are as under:-</p> <p>i. No of inquiry/ inspection/investigation/ prosecution is pending against the petitioner companies.</p>	<p>So far as the observation in paragraph IV (g)(i) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that it is the facts of the case. So far as the observation in paragraph IV (g)(ii) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that it has filed GNL-1 vide SRN No. F14053227 and F14050371. So far as the observation in paragraph IV (g)(iii) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the</p>

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	<p>ii. E-form GNL-1 not filed by Transferor Company on MCA portal.</p> <p>iii. It is submitted that as per the provisions of Section 230(3) of the Companies Act, 2013, where there the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting-off the fees already paid by the transferee company on the increased authorised capital subsequent to the amalgamation.</p> <p>iv. Interest of the creditors should the protected.</p> <p>v. May be decided on its merits</p>	<p>setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be accordance with provisions of section 232(3)(i) of the Companies Act, 2013. So far as the observation in paragraph IV (g)(vi) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the interest of creditors will be protected.</p>
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10. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above. The rejoinder dated 25th November, 2022 filed by the Petitioner Company, the clarifications and undertakings given by the Petitioner Company are accepted by this Tribunal, and the Petitioner Company are directed to comply with the same. Moreover, the Petitioner Company undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made thereunder. The Authorised Representative of the Regional Director, MCA (WR), Mumbai Ms. Rupa Sutar who is present at the time of the hearing has submitted that the explanation and clarifications given by the Petitioner Company are found satisfactory for approving the scheme by the Tribunal.
11. The Official Liquidator has filed his report on 7th September, 2022 in the Company Scheme Petition No. 155 of 2022, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner not prejudicial to the interest of the Shareholders of the Transferor Companies

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and that the Transferor Company may be ordered to be dissolved by this Tribunal.

12. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 155 of 2022 is made absolute in terms of clauses (a) to (c) of the said Company Scheme Petition
14. The First Petitioner Company be dissolved without winding up.
15. Petitioners are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 (thirty) days from the date of receipt of the Order from the Registry.
16. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent

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of Stamps, for the purpose of adjudication of stamp duty payable within 60 (sixty) days from the date of receipt of the Order, if any.

17. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.
18. The Appointed Date is 1st April, 2022.
19. Ordered Accordingly. Pronounced in open court today.

Sd/-

Madhu Sinha
Member (Technical)
12.01.2023

Sd/-

H. V. Subba Rao
Member (Judicial)