

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH
KOLKATA**

C.A.(CAA) No.827/KB/2018

Coram: Mr. Jinan K.R., Member (Judicial)

In the matter of:

An application under Section 230 to 232 of the Companies Act, 2013 and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

In the matter of:

NEW KENNILWORTH HOTEL PRIVATE LIMITED, a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at 1 & 2, Little Russel Street, Kolkata 700071 in the state of West Bengal within the aforesaid jurisdiction;

And

In the matter of:

KHR HOSPITALITY INDIA LIMITED, a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at 1 & 2, Little Russel Street, Kolkata 700071 in the state of West Bengal within the aforesaid jurisdiction;

... Applicants.

4. The aggregate assets of both the applicant Companies (combined) are more than sufficient to meet their aggregate liabilities. Further, the aggregate assets of the Goa Undertaking of NKHPL are more than sufficient to meet its liabilities. The said Scheme will not adversely affect the rights of any of the creditors of the applicant Companies in any manner whatsoever as due provisions have been made for payment of all liabilities as and when the same fall due in usual course. There are no proceedings pending under Sections 206 to 225 of the Companies Act, 2013 and / or Sections 235 to 251 of the Companies Act, 1956 against the applicant Companies. Copy of the Board Resolution is annexed with the application as Annexure-H.

5. The applicants had, vide their resolutions passed at the respective meetings of the board of directors held on 22nd June, 2018, approved the Valuation Report prepared by Messrs. H. B. & Associates, an independent firm of Chartered Accountants and the Scheme of Arrangement. Further, M/s. Salarpuria & Partners, Chartered Accountants have, vide their certificate dated 22nd June, 2018, certified that the Scheme complies with the applicable Accounting Standards.

Heard the arguments of the Ld. Counsel for the Applicant Companies. Order with the following directions is passed:

ORDER

(1) In view of specific consents provided by affidavits by all the equity shareholders of NKHPL and KHIL, convening of separate meetings of equity shareholders of NKHPL and KHIL be dispensed with;

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(2) Separate meetings of the Secured Creditors and Unsecured Creditors of NKHPL and Secured Creditors and Unsecured Creditors of KHIL be called to consider and approval of the Scheme of Arrangement;

(3) Meetings will be convened and held as under:

(a) Meeting of the secured creditors of New Kenilworth Hotel Private Limited ("NKHPL") shall be convened and held at 1 & 2, Little Russel Street, Kolkata 700071 on Wednesday, the 14th day of November, 2018 at 3.00 P.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Arrangement between NKHPL and KHIL and their respective shareholders and creditors;

(b) Meeting of the unsecured creditors of New Kenilworth Hotel Private Limited ("NKHPL") shall be convened and held at 1 & 2, Little Russel Street, Kolkata 700071 on Wednesday, the 14th day of November, 2018 at 3.30 P.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Arrangement between NKHPL and KHIL and their respective shareholders and creditors;

(c) Meeting of the secured creditors of KHR Hospitality India Limited ("KHIL") shall be convened and held at 1 & 2, Little Russel Street, Kolkata 700071 on Wednesday, the 14th day of November, 2018 at 4.00 P.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Arrangement between NKHPL and KHIL and their respective shareholders and creditors; and

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(d) Meeting of the unsecured creditors of KHR Hospitality India Limited ("KHIL") shall be convened and held at 1 & 2, Little Russel Street, Kolkata 700071 on Wednesday, the 14th day of November, 2018 at 4.30 P.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Arrangement between NKHPL and KHIL and their respective shareholders and creditors.

(4) The quorum for the meetings of the secured creditors and unsecured creditors of NKHPL and unsecured creditors of NKHPL and KHIL will be as under:

(a) 2 (two) persons present in person or by proxy for meeting of secured creditors of NKHPL;

(b) 2 (two) persons present in person or by proxy for meeting of unsecured creditors of NKHPL;

(c) 2 (two) persons present in person or by proxy for meeting of secured creditors of KHIL; and

(d) 2 (two) persons present in person or by proxy for meeting of secured creditors of KHIL.

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If the quorum is not present at the commencement of the meeting(s), the meeting(s) would be adjourned for 30 minutes and thereafter, the creditors present in person or through proxy would be treated as proper quorum.

(5) Ms. Debjani Mitra (Mobile No.9830360953) is appointed as the Chairperson for the meetings to be held under this order and the relevant law. The Chairperson shall be paid Rs. 50,000/- (Rupees Fifty Thousand only) lump sum for his services as the Chairperson.

(6) At least one month before the aforesaid date of the said meetings, an advertisement about convening of the meetings indicating the place, day, date and times, as aforesaid, shall be published in the "Financial Express" in English Daily and "Pratidin", in the Bengali Daily. The publication shall indicate the time within which copies of the scheme shall be made available to the concerned persons free of charge from the respective registered offices of the applicant companies in accordance with second proviso to sub-section (3) of Section 230 of the Act and shall be in accordance with Rule 7 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 ["Companies (CAA) Rules, 2016"].

(7) At least one month before the aforesaid date of the said meetings of the secured creditors and unsecured creditors of the applicant companies, a notice convening the said meetings in Form C.A.A.2 indicating the day, date, place and times as aforesaid together with a copy of the Scheme, copy of statement required to be furnished pursuant to Section 102 of the Act read with Section 230 (3) of the Act and Rule 6 of Companies (CAA) Rules, 2016 and the

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prescribed form of proxy shall be sent to each of the said secured creditors and unsecured creditors of the applicant companies at their respective registered or last known addresses either by registered post or speed post and by e-mail or through courier. The notice shall be sent to the secured creditors and unsecured creditors of the applicant companies with reference to the list of persons appearing on the record of the applicant companies as on 31st May, 2018.

(8) The applicant companies shall individually send notice to the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal, the Official Liquidator of the Hon'ble High Court of Calcutta and the concerned Income Tax assessing officers and Chief Commissioner of Income Tax with PAN numbers along with copies of required documents and disclosures required under the provisions of Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (CAA) Rules, 2016 in Form No. CAA.3 of the Companies (CAA) Rules, 2016 with necessary variations incorporating the directions therein, by sending the same by hand delivery through special messenger or by registered post or speed post and by e-mail. After the notice is sent to the secured creditors and unsecured creditors of the applicant companies, for filing their representation, if any, within thirty days from the date of notice. The notice shall specify that representation, if any, should be filed before this Tribunal within thirty days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the applicants and/or their advocates. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Arrangement.

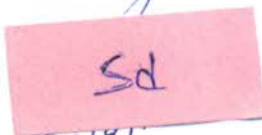


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- (9) Voting of the meetings shall be allowed on the proposed Scheme by voting in person or by proxy.
- (10) The Chairperson shall be responsible to report the results of the meetings within 5 days of the conclusion of the meetings.
- (11) The authorized representative of the Applicant Companies / their Advocates shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least seven days before the date of the proposed meetings.
- (12) All the aforesaid directions are to be complied with in accordance with the applicable laws.

The Company Petition No.827/KB/2018 is disposed of accordingly.

Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.


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(Jinan K.R.)
Member (J)

Signed this day of 7th September 2018.