

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

C.A.(CAA)No.11/BB/2017

DATED: WEDNESDAY THE 31<sup>st</sup> DAY OF MAY 2017

*PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL  
SHRI ASHOK KUMAR MISHRA, MEMBER TECHNICAL*

IN THE MATTER OF COMPANIES ACT, 2013 (18 OF 2013)

AND

IN THE MATTER OF SECTION 230-232 OF THE COMPANIES ACT, 2013

AND

OTHER RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013

ALONG WITH RULES OF THE COMPANIES (COMPROMISES,

ARRANGEMENTS AND AMALGAMATIONS) RULES 2016

AND IN THE MATTER OF

MAGNA WAREHOUSING AND DISTRIBUTION PRIVATE LIMITED

C.A.(CAA)No.11/BB/2017

1. Magna Warehousing and Distribution Private Limited,

No.-75, EPIP Area, Next to Satya Sai Hospital,

Whitefield Bangalore- 560-066

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APPLICANT/TRANSFEROR COMPANY

PARTIES PRESENT :

Mr.C K NANDAKUMAR, ADVOCATE

NO.67/3/A-1, GROUND FLOOR, 4<sup>TH</sup> CROSS, LAVELLE ROAD,  
BENGALURU 560001

Heard on: 22.03.2017, 05.04.2017 & 12.04.2017

O R D E R

This Company Application is filed on behalf of the Applicant Company, praying to order to dispense with the convening of the separate meeting(s) of the Equity Shareholders, Preference Shareholder, Secured Creditor and Unsecured Creditors of the Applicant/Transferor Company for approving the Scheme of Arrangement, where under the Transferor Company **MAGNA WAREHOUSING AND DISTRIBUTION PRIVATE LIMITED** is proposed to be merged with Transferee Company **CHALET HOTELS PRIVATE LIMITED** for purposes of considering the Scheme of Arrangement etc.

This Application is coming up for orders this day, the Tribunal made the following orders:-

The averments made in the Company Application are briefly described hereunder:-

The Applicant seeks an order to dispense with convening of separate meeting(s) of the Equity Shareholders, Preference Shareholder, Secured Creditor and Unsecured Creditors of the Applicant/Transferor Company for approving the Scheme of Arrangement where under MAGNA WAREHOUSING AND DISTRIBUTION PRIVATE LIMITED is proposed to be merged with Transferee Company CHALET HOTELS PRIVATE LIMITED in terms of Scheme of Arrangement shown as **Annexure R**.



It is further averred in the Company Application that the Applicant Company was incorporated as a private company under the name and style of MAGNA WAREHOUSING AND DISTRIBUTION PRIVATE LIMITED on 16<sup>th</sup> September, 2005 in the State of Maharashtra. Subsequently Company shifted its registered office to the State of Karnataka on 25<sup>th</sup> June, 2005 and obtained fresh Certificate of Incorporation from the Registrar of Companies, Karnataka bearing CIN No.U60232KA2005PTC054207.

The Registered office of the Applicant Company is situated at Magna Warehousing and Distribution Private Limited, No.-75, EPIP Area, Next to Satya Sai Hospital, Whitefield Bangalore- 560-066.

The Applicant Company's objects as set out in its Memorandum of Association inter alia are as follows:-

- a) To carry on the business of warehousing, logistic, supply chain, packers and distribution, clearing and forwarding agents, custom house agents, cargo movers, cargo agents, freight brokers, freight contractors, carrier of goods, multimodal transport operators, freight forwarding transporters, containerization, and couriers by any conveyance or conveyances in respect of any assets, goods, containers, luggage freight, documents and parcels, whether commercial or otherwise, to and from any part of the world.

A copy of Certificate of Incorporation and Memorandum and Articles of Association of the Transferor Company are shown as **Annexure B**.





The latest authorized share capital of the Transferor Company is Rs.24,10,00,000/- divided into 1,00,000 Equity Shares of Rs.10/- each and 2,400 Non-Cumulative Redeemable Preference Shares of Rs.1,00,000/- each. The issued, subscribed and paid up share capital is Rs.8,06,17,450/- divided into 61,745 Equity Shares of Rs.10/- each and 800 Non-Cumulative Redeemable Preference Shares of Rs.1,00,000/- each fully paid up. The copy of Audited Balance Sheet for the year ending 31.03.2016 and Unaudited Financial statements as on 31<sup>st</sup> October, 2016 of the Applicant Company are shown as **Annexure F & Annexure G** respectively.



The Board of Directors of the Applicant Company has approved and adopted a Scheme of Arrangement at its meeting held on 5<sup>th</sup> January, 2017 by virtue of which the **Magna Warehousing and Distribution Private Limited**. The Transferor Company is proposed to be merged with the Transferee Company **Chalet Hotels Private Limited**. A copy of the Board Resolution of the Applicant Company is shown as **Annexure - A**.

We have heard the counsel appearing for the Applicant Company, who has filed the application to dispense with convening of the separate meeting(s) of the Equity Shareholders, Preference Shareholder, Secured Creditors and Unsecured Creditors of the Applicant/Transferor Company for approving the Scheme of Arrangement.

The Applicant Company is seeking an order to dispense with convening separate meeting(s) of the Equity Shareholders, Preference Shareholder, Secured Creditor and Unsecured Creditors of the Applicant/Transferor Company for approving the Scheme of Arrangement on the following grounds:

That the Applicant Company has only four Equity Shareholders and One Preference Shareholder as certified by the Chartered Accountant, and both have given their Consent Affidavits to the scheme of Arrangement. The Applicant Company has only one Secured Creditor, who has also given his Consent Affidavit and Fifty Unsecured Creditors as certified by the Chartered Accountant and Ninety percent in value of unsecured creditors have given their consent to the scheme.

The Certificate's of Chartered Accountant dated 10<sup>th</sup> January, 2017 certifying the Four Equity Shareholders and One Preference Shareholder of the Applicant Company are shown as **Annexure T & Annexure U** respectively.





We have seen the Consent Affidavit of the authorized representative of the Applicant Company stating that he is the authorized signatory of Chalet Hotels Private Limited and also authorized to swear this Affidavit in relation to the 300 Equity Shareholders that their Company holds jointly with other LLP's. The Four Equity Shareholder's i.e. (i) Chalet Hotels Private Limited holding 61,445 Equity shares, constituting 99.52% of the paid up capital and (ii) Chalet Hotels Private Limited jointly with Anbee Constructions LLP holding 100 Equity shares, constituting 0.16% of the paid up capital (iii) Chalet Hotels Private Limited jointly with Cape Trading Constructions LLP holding 100 Equity shares, constituting 0.16% of the paid up capital (iv) Chalet Hotels Private Limited jointly with Capstan Trading LLP holding 100 Equity shares, constituting 0.16% of the paid up capital of the Applicant Company and accords their Unconditional Consent to the Proposed Scheme. The Consent Affidavit as shown at **Memo dated 11<sup>th</sup> April, 2017 at Page No.1-4.**

We have seen the Consent Affidavit of the One Preference Shareholder holding 2,400 Preference shares of the paid up capital of the Applicant Company and accords No Objection to the Proposed Scheme. The Consent Affidavit of Preference Shareholder is shown @ **Page Nos.5-8 in Memo dated 11<sup>th</sup> April, 2017.**

We have seen the Certificate issued by the Chartered Accountant of the Applicant Company stating that there is only one Secured Creditor and 50 Unsecured Creditors as shown in **Annexure-W and Memo dated 11<sup>th</sup> April, 2017 at Page No.13-14** respectively.

We have seen the Consent Affidavit of the one Secured Creditor who has extended a Secured Facility of Rs.44.25 Crores as certified by the Chartered Accountant, has given his consent to the Scheme. The consent of Secured Creditor is shown in **Page Nos.9-12 in Memo dated 11<sup>th</sup> April, 2017.** The Applicant Company has also furnished the Consent Affidavits of the Three Unsecured Creditors i.e. (i) Newfound Properties & Leasing Private Limited indebted to Rs.628,000,000/- (ii) Chalet hotels Private Limited indebted to Rs. 27,365,280/- (iii) Genext Hardware & Parks Private Limited collectively indebted to Rs.665,612,140 i.e. 94.8% out of the Total Unsecured Debt of Rs.702,080,252/-. The consent of Unsecured Creditors are shown at **Page Nos.15-29 in Memo dated 11<sup>th</sup> April, 2017.**





Hence the application is allowed and holding of meeting of the Equity Shareholders Preference Shareholder, Secured Creditor and Unsecured Creditors of the Applicant/Transferor Company for approving the Scheme of Arrangement is dispensed with accordingly. In any eventuality when the Applicant Company approaches this Tribunal for seeking approval of the scheme it would be open for any person who are interested in the scheme of Amalgamation to put forth their contentions before the Tribunal.

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

DATED THIS THE 31<sup>st</sup> DAY OF MAY, 2017