

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

CSP NO. 816 OF 2017
&
CSP NO. 819 OF 2017
&
CSP NO. 818 OF 2017
&
CSP NO. 814 OF 2017
&
CSP NO. 820 OF 2017
&
CSP NO. 813 OF 2017
&
CSP NO. 815 OF 2017
&
CSP NO. 811 OF 2017
&
CSP NO. 812 OF 2017
&
CSP NO. 817 OF 2017

Under Section 230-232 of the Companies Act, 2013

In the matter of the Scheme of Arrangement between: Indira Investments Private Limited and Kamat Holdings Private Limited and Kamats Club Private Limited and Kamats Eateries Private Limited and Kamats Super Snacks Private Limited and Kamburger Foods Private Limited and Karaoke Amusements Private Limited and Nagpur Ecohotel Private Limited and VITS Hotels (Bhubaneshwar) Private Limited (Collectively, the '**Transferor Companies**') with Vishal Amusements Limited (the **Transferee Company/ Resulting Company**) and their respective Shareholders and Creditors.

Indira Investments Private Limited

....Petitioner/ the Transferor Company No. 1
AND

Kamat Holdings Private Limited

....Petitioner/ the Transferor Company No. 2

AND

Kamats Club Private Limited

....Petitioner/ the Transferor Company No. 3

AND

Kamats Eateries Private Limited

....Petitioner/ the Transferor Company No. 4

AND

Kamats Super Snacks Private Limited

....Petitioner/ the Transferor Company No. 5

AND

Kamburger Foods Private Limited

....Petitioner/ the Transferor Company No. 6

AND

Karaoke Amusements Private Limited

....Petitioner/ the Transferor Company No. 7

AND

Nagpur Ecohotel Private Limited

....Petitioner/ the Transferor Company No. 8

AND

VITS Hotels (Bhubaneshwar) Private Limited

....Petitioner/ the Transferor Company No. 9

AND

Vishal Amusements Limited

....Petitioner/ the Transferee Company

Judgement/ order delivered on 25th January, 2018

Coram:

Hon'ble B.S.V. Prakash Kumar, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Ms. Rubina Khan, Advocate for the Petitioner.

Per: V. Nallasenapathy, Member (T)

ORDER

1. Heard learned counsel for parties. 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 Scheme of Arrangement between: Indira Investments Private Limited and Kamat Holdings Private Limited and Kamats Club Private Limited and Kamats Eateries Private Limited and Kamats Super Snacks Private Limited and Kamburger Foods Private Limited and Karaoke Amusements Private Limited and Nagpur Ecohotel Private Limited and VITS Hotels

(Bhubaneswar) Private Limited (Collectively, the '**Transferor Companies**') with Vishal Amusements Limited (the **Transferee Company/Resulting Company**) and their respective Shareholders and Creditors.

2. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to a Scheme of Arrangement between: Indira Investments Private Limited and Kamat Holdings Private Limited and Kamats Club Private Limited and Kamats Eateries Private Limited and Kamats Super Snacks Private Limited and Kamburger Foods Private Limited and Karaoke Amusements Private Limited and Nagpur Ecohotel Private Limited and VITS Hotels (Bhubaneswar) Private Limited (Collectively, the '**Transferor Companies**') with Vishal Amusements Limited (the **Transferee Company/Resulting Company**) and their respective Shareholders and Creditors.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in their Company Scheme Application Nos. 602, 607, 598, 599, 600, 601, 605, 604 and 603 of 2017 of the National Company Law Tribunal.
5. 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. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.

6. The Learned Counsel for the Petitioners states that the First Transferor Company No.1 has been primarily engaged in the business of an Investment Company and the Second Transferor Company has been primarily engaged in the business of an Investment Company and the third Transferor Company has been primarily engaged inter-alia in the business of constructing, developing, hiring, letting, selling, purchasing, managing and running clubs, public amusements and recreation centres etc and the Fourth Transferor Company has been primarily engaged inter-alia in the business of manufactures, fabricators, processor, producers, growers, makers etc. of all kinds of processed food as well as materials required or used for preparation of or being food articles and the Fifth Transferor Company has been primarily engaged inter-alia in the business of running hotels, motels, holiday camps, guest houses, restaurants, canteens etc. and the Sixth Transferor Company has been primarily inter-alia in the business of running hotels, motels, holiday camps, guest houses, restaurants, canteens etc. and the Seventh Transferor Company has been primarily inter-alia in the business of musical entertainers, discotheque, song editors, sing-along parlours, amusement machines like video games etc. and the Eight Transferor Company has been primarily engaged inter-alia in the business in all the segments of hospitality and hotel industry etc. and the Ninth Transferor Company has been primarily engaged inter-alia in the business in all the segments of hospitality and hotel industry etc. and the Transferee Company has been primarily engaged in the business of dealing, distributing, installing, maintaining, importing, exporting, repairing, processing, transcribing, of stereo systems, cassette recorders, transistor, radios, tv etc. and to carry on the business in all segments of hospitality and hotel industry etc. As per the opinion of the management the Scheme will result in many benefits for all the Transferor Company as well as the Transferee Company and that the amalgamation of all undertaking of Transferor Companies into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations and that further, the amalgamation

would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.

7. The Regional Director has filed a Report on 18th day of December, 2017 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

"IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:

- a) The Transferee Company shall pass such Accounting Entries which are necessary in connection with the Scheme to comply with applicable Accounting Standards such as AS-14 (IND AS-108), AS-5 (IND AS-8) etc.,*
- b) In accordance to proviso to Section 232(3) of the Companies Act, 2013, the Petitioner may be directed to file a Certificate from the Company's Auditors to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accountings Standards as prescribed under section 133 of the Companies Act, 2013.*
- c) As regard Para No. 11.1.10 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorised Share Capital, subsequent to the Amalgamation for setting-off of fees paid by the Transferor Company on its Authorized Share Capital in accordance to the provisions of Section 232(3)(i) of the Companies Act, 2013.*
- d) As regard Para 11.1.10 of the Scheme, the Transferee Company proposes to increase its Authorised Share Capital to 15,75,00,000/-Hence the Transferee Company shall pay requisite fees as per Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014 and applicable Stamp duty for further increase in Authorized Share Capital from Combined*

Authorised Share Capital of Rs. 14,67,00,000/- to proposed Authorised Share Capital of Rs. 15,75,00,000/- upon the Scheme become effective.

e) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.

8. So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company will pass such Accounting Entries which is necessary in connection with the Scheme to comply with applicable Accounting Standards such as AS-14 (IND AS-108), AS-5 (IND AS-8) etc.
9. So far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company had filed a Certificate from the Company's Auditors to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accountings Standards as prescribed under section 133 of the Companies Act, 2013 being Exhibit G to the Application.
10. So far as the observations in paragraph IV(c) and (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company /Transferee Company undertakes the Transferee Company shall pay requisite fees as per Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014 and applicable Stamp duty for further increase in Authorized Share Capital from Combined Authorised Share Capital of Rs. 14,67,00,000/- to proposed Authorised Share Capital of Rs. 15,75,00,000/- upon the Scheme become effective.

11. So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company /Transferee Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
12. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 12 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
13. The Official Liquidator has filed his report on 12th December, 2017 in the Company Scheme Petition No. CSP NO. 816, 819, 818, 814, 820, 813, 815, 811, 812 AND 817 of 2017 inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Tribunal.
14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law including but not limited to Companies Act, 2013; Income Tax Act; Accounting Standards and various other applicable statutory acts and is not contrary to public policy.
15. Since all the requisite statutory compliances have been fulfilled, Company Petition CSP NO. 816, 819, 818, 814, 820, 813, 815, 811, 812 of 2017 are made absolute in terms of prayers clause (a) to (d) thereof and CSP No. 817 of 2017 is made absolute in terms of prayer clauses (a) to (d) thereof.
16. Petitioners are directed to lodge 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, as per the relevant provisions of the Companies Act 2013.

17. The Petitioner Companies to lodge a copy of this Order and the Scheme duly certified by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the order, if any.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition No. CSP NO. 816, 819, 818, 814, 820, 813, 815, 811, 812 of 2017 to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.
19. All concerned regulatory authorities 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.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)