

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CSP 897/230-232/NCLT/MB/MAH/2017

CSP 898/230-232/NCLT/MB/MAH/2017

CSP 903/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Mars Catering Services Private Limited

.....Petitioner in CSP 903/2017

(Demerged Company)

M/s Taj-Birdys Food Services Private Limited

.....Petitioner in CSP 897/2017

(Transferor Company)

M/s Mars Enterprises and Hospitality Private
Limited

.....Petitioner in CSP 898/2017

(Transferee Company)

Order delivered on : 05.01.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Hemant Sethi, Advocate a/w. Mr. Hiten Sarvaiya and Ms. Raveena Jain, Practicing Chartered Accountants i/b. A. T. Jain & Co., Authorised Representatives for the Petitioners.

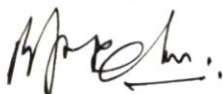
For the Regional Director:

Mr. Ramesh Gholap, Deputy Registrar (WR).

Per : Bhaskara Pantula Mohan, Member (J)

COMMON ORDER

1. The sanction of the Tribunal is sought under sections 230 to 232 of the Companies Act, 2013 to a Scheme of Arrangement and Amalgamation of M/s. Mars Catering Services Private Limited, (Demerged Company) and M/s. Taj-Birdys Food Services Private Limited, (Transferor Company) with M/s. Mars Enterprises and Hospitality Private Limited, (Transferee/Resulting Company) and their respective shareholders.



2. The Petitioner Companies have approved the said Scheme of Arrangement and Amalgamation by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The Demerged Company is engaged in the business of catering and operating of hotels.
4. The Transferor Company is engaged in the business of food, foodstuffs and food products and catering.
5. The Transferee / Resulting Company is engaged in the business of operating hotels.
6. The rationale for the Scheme is that, the segregation of Hotel Undertaking of the Demerged Company by Demerger thereof to the Transferee/Resulting Company which will enable consolidation of hotel business in a single company, result in operational and economic convenience and enable the companies to streamline operations so as to rationalize management, businesses and finances. Further, the amalgamation of the Transferor Company with the Transferee/Resulting Company will result in operational and economic convenience, enable the companies to achieve synergies and economies of scale by reducing duplication of costs and improving administrative and operational efficiency.
7. The Authorized Share Capital of the Demerged Company is ₹ 3,00,00,000/- comprising of 5,00,000 equity shares of ₹ 10/- each, fully paid up and 2,50,000 preference shares of ₹ 100/- each, fully paid up. Whereas the Issued, Subscribed and Paid-up Share Capital of the Demerged Company is ₹ 2,75,27,000/- comprising of 5,00,000 equity shares of Rs.10/- each, fully paid up and 2,25,270 preference shares of ₹ 100/- each, fully paid up.
8. The Authorized Share Capital of the Transferor Company is ₹ 50,00,000/- comprising of 4,90,000 equity shares of ₹ 10/- each, fully paid up and 10,000 preference shares of ₹10/- each, fully paid up. Whereas the Issued Share Capital of the Transferor Company is ₹ 35,01,050/- comprising of 3,50,105 equity shares of ₹ 10/- each, fully paid up. The Subscribed and Paid-up Share Capital of the Transferor Company is ₹ 35,00,600/- comprising of 3,50,060 equity shares of ₹ 10/- each, fully paid up.



9. The Authorized, Issued, Subscribed and Paid-up Share Capital Share Capital of the Transferee/Resulting Company is ₹ 5,00,000/- comprising of 50,000 equity shares of ₹ 10/- each, fully paid up.

10. The averments made in the Petition and the submissions made by the Learned Counsel for the Petitioners are:

a) The Petitioner Companies have complied with all the requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, Petitioner Companies undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder whichever is applicable.

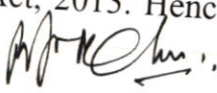
b) The Regional Director has filed his Report dated 14th November, 2017 stating therein, save and except as stated in paragraph IV(a) to (h), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

*a) The Petitioner Companies has not mentioned the reasons of **Appointed Date** as 29-07-2016. The ROC, Mumbai has also made their observation in this regard in their Report. Therefore, the Petitioner Companies may be directed to submit the justified reasons for the **Appointed Date**, otherwise the Hon'ble NCLT may decide **Appointed Date**, as deem fit in the matter.*

*b) As regards Para No. 7 & 12 of the Scheme, the Resulting Company/Transferee Company must ensure the terms & conditions of employment of the employees of the Demerged/Transferor Companies should not be **less favorable to prior to their employment** in the Demerged/ Transferor Companies, after implementation of the Scheme.*

*c) As regards Para No. 19 & 20 of the Scheme, the Demerged Company and the Resulting Company/Transferee Company shall be restricted to transfer/credit any amount in General Reserve Account. This amount should be credited in **Capital Reserve Account**, being Capital Profits in case of De-merger.*




- d) As regards Para No. 14 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation **for setting-off fees paid** by the Transferor Company on its Authorized Share Capital in accordance with the provisions of **Section 232(3)(i)** of the Companies Act, 2013.
- e) The Consideration on transfer of Demerged Undertaking should be on Fair Consideration instead of Nominal Consideration so as to avoid any future dispute, because the Share Capital of the Demerged Company held by a third party i.e. **M/s Mars Hotels and Resorts Private Limited**, as the said Company is not part of the Scheme.
- f) The **Transferee Companies** shall pass such Accounting Entries, which are necessary in connection with the Scheme to comply with other applicable Accounting Standards **AS-14 (IND AS103), AS-5 (IND AS8)** etc.
- g) In accordance to proviso to Section 232(2) of the Companies Act, 2013, the Petitioners may be directed to file **Certificate from the Company's Auditors** to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.
- h) The **Tax Implication** if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of 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."
- c) Apropos observations made in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that, on 29th July, 2016, the Transferee/Resulting Company was converted from a Partnership Firm into a Private Limited Company under Part XXI of the Companies Act, 2013. Hence the management decided to have Appointed Date as 29th July
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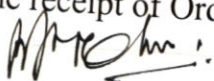
2016 which has been unanimously approved by all the Shareholders of the Demerged Company, Transferor Company and the Transferee/Resulting Company.

- d) Apropos observations in paragraph IV (b) of the Report of the Regional Director is concerned, it is submitted that the Transferee/Resulting Company undertakes to ensure the terms and conditions of employment of the employees of the Demerged Undertaking of the Demerged Company and the Transferor Company in the Transferee/Resulting Company shall not be less favorable to prior to their employment in the Demerged Undertaking of the Demerged Company and the Transferor Company respectively after the implementation of the Scheme.
- e) Apropos observations made in paragraph IV (c) of the Report of the Regional Director are concerned, it is further submitted that the Demerged Company and the Transferee/Resulting Company undertakes to adjust the deficit, if any, arising out of the Scheme in Goodwill Account and to adjust any surplus in the Capital Reserve Account and shall not adjust any deficit or surplus against General Reserve Account.
- f) Apropos observations of the Regional Director stated in paragraph IV (d) of his report are concerned, it is submitted that the Petitioner Company undertake to comply with provisions of Section 232(3)(i) of the Companies Act, 2013.
- g) Apropos observation of the Regional Director stated in paragraph IV (e) of his report are concerned, it is submitted that the entire paid-up share capital of the Demerged Company and the Resulting Company is held by the same group company i.e. M/s. Mars Hotels and Resorts Private Limited and in their capacity as shareholder of the said Companies voted in favour of the scheme. Hence, M/s. Mars Hotels and Resorts Private Limited is not a third party, hence consideration of 10,000 equity shares of ₹ 10/- each is to be issued by the Transferee/Resulting Company to M/s. Mars Hotels and Resorts Private Limited Company. Further that, the Petitioner Companies have obtained Fairness Opinion from M/s. J M Mehta & Associates, Chartered Accountants who have also opined that allotment of nominal consideration of 10,000 equity shares of ₹10/- each by the Resulting Company would be in compliance of Section 2(19AA) of the Income-tax Act, 1961. Further that, the consideration recommended has been unanimously approved by all the shareholders of the Demerged Company, Transferor Company and the Transferee/Resulting Company.



- h) Apropos the observation in paragraph IV (f) of the Report of the Regional Director is concerned, it is submitted that in addition to accounting treatment given in the Scheme, the Transferee/Resulting Company undertakes to pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.
- i) Apropos the observations made in paragraph IV (g) of the said Report, it is stated that a copy of the certificate by the auditor of the Transferee/Resulting Company certifying that the accounting treatment proposed in the Scheme is in compliance with the accounting standards prescribed under the Companies Act, 2013 and the same has been annexed to Company Scheme Application No.769 of 2017.
- j) Apropos the observation in paragraph IV (h) of the Report of the Regional Director is concerned, it is stated that the Petitioner Companies undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Arrangement and Amalgamation will be met and answered in accordance with law.
- k) It is further submitted that no objector has approached, neither to the Petitioner nor before Tribunal, to oppose this Scheme of Arrangement and Amalgamation.
- l) The Official Liquidator has filed his report on 1st September, 2017 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and also that the Transferor Company may be ordered to be dissolved without winding up.
11. From the material on record, the Scheme of Arrangement and Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Companies, **do Order that:**
- a) All the Demerged liabilities including taxes and charges, if any, and Demerged duties of the Demerged Company, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee/Resulting Company.
- b) All the liabilities including taxes and charges, if any, and duties of the Transferor Company, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee/Resulting Company.
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- c) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- d) In lieu of consideration of this Scheme, a nominal consideration of 10,000 equity shares of ₹ 10/- each shall be issued by the Transferee/Resulting Company to the shareholder of the Demerged Company since the entire paid up share capital of the Demerged Company and the Transferee/Resulting Company is held by the same group company, i.e. M/s. Mars Hotels and Resorts Private Limited.
- e) Further, since the entire issued Share Capital of the Transferor Company is held by the Transferee Company hence, the entire equity share capital of the Transferor Company shall stand automatically cancelled and there shall not be any issue and allotment of equity shares by the Transferee/Resulting Company to the shareholders of the Transferor Company.
- f) Transferor Company to be dissolved without winding up from the date of said Scheme becomes effective.
- g) The Petitioner Companies to lodge a copy of this order and the Scheme of Arrangement and Amalgamation duly authenticated by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
- h) The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy, within 30 days from the date of issuance of the order by the Registry, duly certified by the Deputy Director or Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- i) Each Petitioner Companies to pay costs of ₹ 25,000/- to the Regional Director, Western Region, Mumbai. The cost is to be paid within four weeks from the date of the receipt of Order.



- j) The Transferor Company (i.e. the Petitioner in the CSP 897 of 2017) to pay costs of ₹ 25,000/- to the Official Liquidator, High Court, Bombay. The cost is to be paid within four weeks from the date of the receipt of Order.
- k) All concerned authorities to act on a certified copy of this order along with Scheme duly certified by the Deputy Director or Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- l) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- m) Any concerned authority is at liberty to approach this Bench to seek any clarification/direction hereinafter under this Scheme.
- n) The Scheme is sanctioned hereby on the above terms and directions. The appointed date of the Scheme is fixed as 29th July, 2016.
12. Ordered Accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Dated : 05.01.2018

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)