

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH**

Company Petition No.100/ALD/2017  
Company Application No.92/ALD/2017  
(Under Section 230/232 of Companies Act,2013)

**IN THE MATTER OF:**

**KAMRICH HOTELS PRIVATE LIMITED**

(a Company incorporated under the companies Act, 1956 having its Registered Office at Super Complex, City Hospital, Ranipur, Haridwar-249407, Uttarakhand  
(CIN: U55101UR2005PTC001930)

.....Transferor/Applicant No.1  
Company

*AND*

**K.R. CROWNGANGA HOTELS PVT. LTD**

(A Company incorporated Under the Companies Act, 1956 having its Registered Office at Super Complex, City Hospital, Ranipur, Haridwar-249407, Uttarakhand.  
(CIN:U55101UR200PTC0329)

....Transferee/ Applicant No.2  
Company

**JUDGMENT/ORDER DELIVERED ON 27.12.2017**

**CORAM** : Sh. Harihar Prakash Chaturvedi,  
Member(Judicial)

**For the Petitioner** : Sh. Praveen K Mittal, Adv. along with  
Sh. Anil Kumar, PCS.

**For the Central Govt.** : Sh. Krishna Dev Vyas, Adv.

**AS PER: SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)**

**Order/Judgment**

The Petitioner Companies filed the Present Company Petition under Section 230/232 of Companies Act, 2013 seeking prayer for sanction of the Proposed Company Scheme of Amalgamation between **Kamrich Hotels Private Limited** (hereinafter referred to as Transferor Company), with **K.R. Crownganga Hotels Private Limited** (Transferee Company).



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2. It is submitted that the Proposed Company Scheme of Amalgamation has previously been approved by its Respective Board of Directors of the Companies in their meetings held on **1<sup>st</sup> April, 2017**.

3. The *Appointed Date* as fixed for the Proposed Company Scheme of Amalgamation is fixed is **1<sup>st</sup> April, 2017**.

4. The main object to and rationale of the Proposed Company Scheme are stated as under:

- (i) *To, consolidate the businesses presently being carried on by the Transferor Company and the Transferee Company, which shall be beneficial to the interests of the shareholders, creditors and employees of both the companies and to the interest of public at large, as such amalgamation would create greater synergies between the businesses of both the companies and would enable them to manage their business more efficiently by effectively pooling the technical and marketing skills of both the Companies as an integrated entity and also enable effective management and unified control of operations;*
- (ii) *For creating better synergies and optimal utilisation of resources built by the Transferor Company;*
- (iii) *For better administration and cost reduction (including reduction in administrative and other common costs; and*
- (iv) *For better utilisation of professional expertise and other manpower resources.*

5. The applicants submitted that the Proposed Company Scheme (of Amalgamation) is neither intended to in any manner nor having any beneficial effect on the managerial interest, of the Directors of the Petitioner Company, except to extent of their shareholdings. That, apart the Proposed Company Scheme does not adversely affect either to rights, or interest of any creditors and debenture holders or to its respective shareholders of the applicant's companies in any manner whatsoever.





6. It is further submitted that the Proposed Company Scheme of Amalgamation does not make any compromise with the Interest of its creditors and debenture holders of the Petitioner Companies because due provisions are made in the Proposed Company Scheme to make payment of all its liabilities as and when arises and falls due in its usual course.

7. It is further informed that the Auditors of the Kamrich Hotels Private Limited and K.R. Crownganga Hotels Private Limited vide their respective reports did not disclose any miss-management in the affairs of Transferor Company and Transferee Company.

It is further reported that the Transferee Company has duly complied with all the accounting standards applicable there to. In support of this, the Petitioner Companies have obtained necessary certificate from the auditor of the Transferee Company certifying that the accounting treatment under the Proposed Company Scheme is found to be in order and in conformity with the Accounting Standards. Such certificate was earlier annexed in the previous **Company Application No. 92/ALD/2017**, which is now clubbed together with the Present Company Petition.



8. A perusal of the averment made in the Present Company Petition show that the Petitioner Companies initially filed as First Stage Motion Petition before this Bench NCLT, Allahabad, the same was allowed and accordingly was disposed of vide its order dated **04.08. 2017**. Thereafter, the Present Company Petition is filed as Second Stage Motion Petition for seeking sanction of the Proposed Scheme of Arrangement under provision of section 230/232 of Companies, Act, 2013.



The Petitioner Companies, through previous Company Application (CA No.92/ALD/2017) prayed for some directions to be issued from this Court. The same were allowed vide its order dated **04.08.2017** by dispensing with the meeting of its Shareholders, secured and unsecured creditors.

9. That apart, this Bench (of NCLT), directed the Petitioner Companies to issue a formal notice to the Central Government through the offices of Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, Kanpur, The Official Liquidator, Uttarakhand and also to effect necessary paper publication in English and Hindi newspapers vide its order dated **11.09.2017**.

In Compliance, of the above stated directions, the authorised representative of the applicant companies dully filed an affidavit of service by confirming this the notices of Present Company Petition were published in the English '**Times of India**' and in the Hindi '**Amar Ujala**' Dehradun Edition. The Petitioner Companies further served a notice of the present company petition to the Central Government



through the Office of Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi as well as to the Registrar of Companies, Kanpur.

10. In response to the above referred notices. The Registrar of Companies-cum- Official Liquidator also filed its report, before this Tribunal reporting that there is no prosecution, filed against Transferor and Transferee Company nor any proceeding under section 235 to 251 of the Act, 1956 is pending nor any violation is reported against it under section



383A/215 of the Companies Act, 1956 against the Transferor and Transferee Company.

The Registrar of Companies in para 9 of its report further states that "The Transferor Company is a wholly owned subsidiary of the Transferee Company" and its share Exchange ratio can be described as under:

*"The Transferor Company is wholly owned subsidiary of the Transferee Company. Upon coming into effect of the Scheme and with effect from the appointed date, the assets of the Transferor Company shall stand transferred and vested in the Transferee Company, all the liabilities of the Transferor Company shall vest in the Transferee Company and the Transferee company will issue 36(Thirty-Six) equity share of Rs.100 each credited as fully paid up, for every 1(One) Equity Share of Rs.10 each held in the Transferor Company i.e. M/s. Kamrich Hotels Private Limited. In case of any partly paid up shares in the Transferor Company, as on the record date, if any, issue of new equity shares will be reduced proportionately".*

In addition to the above the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, having called for a report from the Registrar of Companies has filed a Representation Affidavit before this Tribunal. He deposes stating that his office is having no objections for Sanction of the Present Company scheme, because no prosecution/proceedings are reported pending against the Transferor and Transferee Company or against its Directors for alleged breach of any provision of the Companies Act or other statutory provisions of FEMA, IPC, SEBI Act, RBI Act in any Court of law.



11. The ROC cum- Official Liquidator Uttarakhand, duly filed his report in respect of the present company petition by providing detail/particulars of Authorized, Issued, Subscribed and Paid up Capital of the Transferor and Transferee Company as on 31/03/2016.



The details/particulars of Authorized, issued, Subscribed and paid up share Capital of the **Petitioner/Transferor Company** as on 31.03.2016 are stated as under:

Share Capital	Amount (In Rupee)
<b>Authorized Capital</b> 30,000 Equity Shares of Rs.100 each.	30,00,000/-
<b>Issued Capital</b> 30,000 Equity Shares of Rs.100 each	30,00,000/-
<b>Subscribed and paid up share Capital</b> 30,000 Equity shares	30,00,000/-

The detail/particulars of Authorized, issued, Subscribed and paid up share capital of the **Petitioner/Transferee Company** as on 31.03.2016 is as under:

Share Capital	Amount (In Rupees)
<b>Authorized Capital</b> 19,00,000 Equity shares of Rs.100 each.	1,90,00,000/-
<b>Issued Capital</b> 19,00,000 Equity shares of Rs.100 each.	1,90,00,000/-
<b>Subscribed and paid up share Capital</b> 19,00,000 Equity	1,90,00,000/-



*[Handwritten signature]*



Shares of Rs.10 each.	
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The OL-cum-ROC, Uttarakhand in his report informed that Shri Manish Kumar Bansal, Adv. being Authorized representative of Transferor and Transferee Company produced before him necessary accounts and statutory records of companies, for his perusal. Having made a scrutiny thereof, he submitted the present reports and expressed his office's opinion that the affairs of the Transferor Company are not found to have been conducted in any manner prejudicial to the interest of its members or to the public at large. In para 6 of its report he further informed such that his office is having no objection for dissolution of the Transferor Company without being wound up pursuant to provisions of Section 391/394 of the Companies Act, 1956 and rules made there under.

We considered, the above stated averments made in the Company Petition and perused the documents annexed therewith and examined, the merits of the present case. We have also gone through the Representation Affidavit of the RD (NR), along with report of the ROC-cum-OL filed in the present case to sanction or otherwise the Proposed Company Scheme of Amalgamation.

This Bench, in its previous decision in the matter of *Auxin Engineering Limited with Oasis Grassland Private Limited (59/ALD/2017)*, came to an occasion to consider the sanction of a company scheme, by placing reliance on a decision of Hon'ble Gujrat High Court *In Re: (Krill Standard Products ... vs Unknown) dated 24 August, 1973 Reported in: (1976 46 CompCas 203 Guj, (1974) 0 GLR 810)* and cited the observation of Hon'ble Justice D.A. Desai (as then his Lordship was)





which we feel is equally relevant for disposal of the company petition. Hence, the observation as made in para no.36 to 37 of the above reference judgement are being reproduced here as under:

36. "Last question is whether this court should accord sanction to the scheme of amalgamation. The matter is within the discretion of the court. In exercising this discretion, the court will examine the scheme as a man of business would reasonably evaluate it. I have been often told that the court should not try to substitute its judgment for the commercial judgment of those interested in the company as expressed in various meetings. That apart, the court still has discretion in the matter and the court is not a mere rubber stamp because the scheme has been approved by a statutory majority in various meetings". The zeal with which attempt is made to acquire controlling block of shares in companies, it is not difficult for the industrialists to push through the scheme with the majority at their back and call, but the court cannot abrogate the discretion in favour of such a majority. Therefore, the court must and should examine the scheme on its own merits. I would, however, not dilate upon this, for this reason that by the scheme of amalgamation, a wholly-owned subsidiary company merges into the holding company. The factual merger is now being converted into a legal and total merger. Further, both the companies are private limited companies, meaning thereby that they are something like a family concern. In this background, I need not examine the scheme in all its details.

37. Having given my anxious thought to the scheme, I would accord sanction to the scheme of arrangement for amalgamation of the transferor-company with the transferee-company, with this condition that the scheme shall not take effect and be operative until and unless it is sanctioned in an appropriate proceeding to be taken by the transferee-company in the High Court having jurisdiction to be invoked by the transferee-company. Subject however to this specific reservation, the consequential orders, as are required to be made under section 394 prayed for in prayers (i) to (iv) of paragraph 12 of the petition, including the one that on scheme of amalgamation becoming effective, the transferor-company should be deemed to have been dissolved without winding up, are hereby made.



13. Thus, In the light of the above stated judicial precedent and by considering the factual aspects of the Applicant's Company and of the Proposed Company Scheme, we feel all the statutory compliance either seems to have been complied with or are undertaken further to be



complied with by Petitioner Companies as per the affidavits of undertaking. Therefore, the Proposed Company Scheme, appears as a reasonable and fair scheme, inconformity with statutory provisions. Thus it deserves for approval.

14. Therefore, the present company petition is allowed in terms of its Prayer Clause. Accordingly, the company Scheme of Arrangement/Amalgamation as annexed with the present Company Petition is hereby sanctioned, for to be acted upon in terms and condition contained therein by the applicant's companies.
15. Consequent upon approval and sanction of the Present Company Scheme, all the property, rights and powers of the transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of Act, be transferred to and vested in the Transferee Company for all intents and interest of the Transferor Company therein.
16. All the liabilities of the Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company.
17. Notwithstanding the above, while sanctioning the Present Company Scheme, we make it clear that this order should not be inferred to as an order for grant of any exemption from payment of stamp duty, taxes, statutory charges which are required to be paid in accordance with law or relation to any relaxation, compliance with any other requirement which may be specifically required under the law.
18. That, the petitioner companies shall within thirty days of receipt of an authentic copy of the present order deliver it to the Registrar of



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Companies for registration. Further, the Transferor Company, upon delivery of such certified copy to the ROC, Kanpur shall deem to be dissolved.

The Registrar of Companies shall place all documents relating to the Transferor Company and Transferee Company. Further all files relating to the petitioner companies to be consolidated accordingly.

19. In addition to the above, a cost of Rs 25,000/- (Rupee Twenty-Five Thousand only) is awarded in favour of the Central Government through the office of the Registrar of Companies (Kanpur), Regional Director (NR) as the case may be towards Legal Expenses incurred which is payable by the Petitioner companies within four weeks from the receipt of an authentic copy of this order.
20. The Petitioner counsel is instructed to furnish a copy of the draft order of sanction of the Present Scheme in prescribed format under **Companies (Compromises, Arrangements and Amalgamations) Rules, 2016** read with other rules for the purpose of scrutiny and authentication by the Registry.
21. The Authentic copy of this order annexed with the Present Company Scheme to be acted upon by the Regulatory Authority and all concern.

Accordingly, the Company Petition is disposed of.



**Dated- 27/12/2017**

Typed by:

*Aman Kumar Dwivedi*  
(Law Research Associate)

*Sd*  
**H.R. Chaturvedi**  
**Member (Judicial)**