

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

Company Application C.A.(CAA) NO.02/Chd/2017

Order dated: 17.02.2017

**Present: Hon'ble Justice (Retd.) R.P.Nagrath, Member(Judicial) &
Hon'ble Deepa Krishan, Member(Technical)**

In the matter of:

Sections 230–232 and other applicable provisions of the Companies Act 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

AND

In the matter of:

- (i) **Taj Travels Private Limited**
(CIN: U63040PB199PTC021519)
SCF 85, Phase-2, Sector 54,
S.A.S. Nagar, Mohali (Pb.)160 055
Mobile No.9023757717
e-mail: dtcplb@gmail.com

- (ii) **Shan e Punjab Travels Private Limited**
(CIN:U63000PB2006PTC029735)
430, 100 Ft. Road, Near Bhagu Road,
Bathinda, Punjab, Punjab-151 001.
Mobile 9023757717
e-mail:dtcplb@gmail.com

- (iii) **Metro Eco Green Resorts Limited**
(CIN:U85199CH1985PLC006425)
SCO 54-55, Sector-9,
Chandigarh-160 009
Mobile 8146750821
e-mail:metroecogreenresorts@gmail.com

Counsel for the applicants: Mr. Anil Kumar Aggarwal, Advocate

ORDER

(ORAL)

1. This is the joint application filed by Taj Travels Private Limited, Transferor Company No.1 (for brevity to be described as A-1), Shan e Punjab Travels Private Limited, Transferor Company No.2 (for brevity to be described as A-2) and Metro Eco Green Resorts Limited, the Transferee Company (for brevity to be described as A-3) under sections 230 to 232 of the Companies Act, 2013 (for short 'the Act'). It is represented by the learned counsel for applicants that these companies are of the same group and Lakhvir Singh is the Managing Director of A-1 and A-3 companies and also the Director of A-2 company. He has filed his affidavit in support of the averments contained in the application. The learned counsel represents that this application has been filed under the aforesaid provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules 2016 (for brevity '2016 Rules'), in respect of the proposed Scheme of Amalgamation between the applicants. Copy of the said Scheme is annexed as Annexure A-31.

2. Lakhvir Singh has been authorised by separate resolutions dated 23.12.2016 of the applicant companies to file the instant application and to do all the necessary acts in connection with and incidental for the purpose of the said resolution.

3. The instant application is filed with the following prayers:-



- (i) Dispensing with requirement for convening meetings of the shareholders, secured creditors and unsecured creditors of the applicant companies and in case the same is granted the instant application may be treated as second motion petition; and
- ii) In case the exemptions are not granted to issue necessary directions for the purpose of convening, holding and conducting such meetings, fix the date, time and place of meetings by appointing chairperson and scrutinizer, to determine the value of the creditors or the members whose meeting have to be held, fix quorum for holding of the meeting, publication of advertisement of the notice of the meeting in newspapers and all other relevant directions.

4. It is submitted that the Transferor company No.1 was incorporated in the name of Taj Travels Private Limited under the Companies Act, 1956 on 22.06.1998. The registered office of the company is situated at S.A.S.Nagar, Mohali, Punjab.

5. The learned counsel for the applicants then represented that the main objects of the Transferor No.1 company are to carry on the business of travel agent, tours planners of tour organizers, transporters, suppliers of tourists and pilgrimage accessories, apparatus items and all activities and functions related or connected thereto. The main objects are set out in Clause III of Memorandum of Association of the company (Annexure A-

6. The present authorised share capital of the Transferor Company No.1 is ₹10.00 lacs divided into 1,00,000 equity shares of ₹10/- each. The

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present issued, subscribed and paid up share capital of the company is ₹3,08,600 divided into 30,860 equity shares of ₹10/- each.

7. It is also represented that Transferor Company No.2 was incorporated in the name of Shan e Punjab Enterprises Private Limited under the Companies Act, 1956 on 17.02.2006 as a private limited company. Its name was subsequently changed to Shan e Punjab Travels Private Limited and a fresh Certificate of Incorporation was issued to the company on 06.08.2009. The registered office of the company is situated at Bathinda, Punjab.

8. The learned counsel would contend that the main objects of the Transferor No.2 company are to carry on the business of travel agent, tours planners and tour organizers, transporters, suppliers of tourists and pilgrimage accessories, apparatus items and all activities and functions related or connected thereto. The main objects are set out in Clause III of Memorandum of Association of the company (Annexure A-14). The present authorized share capital of the Transferor Company No.2 is ₹25.00 lacs divided into 2,50,000 equity shares of ₹10/- each. The present issued, subscribed and paid up share capital of the company is ₹2,30,000/- divided into 23,000 equity shares of ₹10/- each.

9. The learned counsel for applicants further represents that the Transferee Company was incorporated as a private limited company in the name of Continental Hatcheries Private Limited on 23.08.1985. Subsequently its name was changed to Metro Eco Greens Resorts Private Limited on 05.06.2008. Then it was converted into a public limited company on 26.02.2010 and its name became Metro Eco Green Resorts

Limited. The Registered Office of the company is situated at Chandigarh. The main objects of the Transferee Company are to carry on the business of construction and running of hotels, resorts, motels, holiday camps, guest houses, restaurants, etc. and to carry on the business of travel, tours operators, planners and organizers, bus operators, transporters and to provide facility of travelling by air, road or sea for tourists and travellers and to provide other allied activities. The main objects are set out in Clause III of Memorandum of Association of the company (Annexure A-21).

10. It is also represented by the learned applicants' counsel that the present authorised share capital of the Transferee Company is ₹140 Crores divided into 1,40,00,000 equity shares of ₹Rs.100/- each. The present issued, subscribed and paid up share capital of the company is ₹93,92,82,800/- divided into 93,92,828 equity shares of ₹100/- each.

11. It is submitted further that the Board of Directors of Transferor Company Nos.1 & 2 and Transferee Company in their meetings held on 23.12.2016 have unanimously approved the scheme of amalgamation. The copies of the resolutions of the three companies are appended with the application as Annexure A-1, A-2 & A-3 respectively.

12. Learned counsel for the applicant companies represents that as per the Scheme the corporate debt restructuring is not contemplated and thus there is no requirement to enter into the exercise as required by section 230 (2) of the Act. The learned counsel rather represents that the Scheme in fact provides for transfer of all the assets and liabilities of A-1 and A-2 to A-3 company. It is further represented that this application is

maintainable in view of the Rule 3(2) of the Rules. The learned counsel further represents that registered office of the A-1 is located at SAS Nagar, Mohali and A-2 at Bathinda whereas the registered office of A-3 is at Chandigarh and thus this Tribunal has the territorial jurisdiction to entertain and dispose of the instant application.

13. Learned counsel for the applicants refers to Annexure A-7 to submit that shareholders of A-1 are namely; Jagpal Singh, Lakhvir Singh and Dabwali Transport Company Limited, all of whom have given their consent to the proposed Scheme of merger with A-3. These consents are attached at Annexure A-8(colly). Annexure A-17 is the list of shareholders of A-2 who all have given their consent to the proposed Scheme vide Annexure A-18(colly). The learned counsel represents that with regard to the consent of Dabwali Transport Company Limited, shareholder of A-1, there is Board Resolution dated 15.12.2016 authorising Mohd Jameel and/or Lakhvir Singh, directors of the company, to issue letter of consent and that is how there is a separate consent letter from Mohd Jameel, Director at page 113 of the Paper Book.

14. Similarly the learned counsel further represents that Taj Travels Private Limited a shareholder of A-2 company has also passed Resolution dated 16.12.2016 authorising Mohd Jameel and/or Lakhvir Singh, Directors of the company, jointly and/or severally to execute the documents with regard to the consent letter of this Scheme. Any how at page 205 of the Paper Book there is the consent letter signed by Jagpal Singh, Director of Taj Travels Private Limited a shareholder of A-2 company, but he is not one of the directors authorised to give/execute the

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consent letter on its behalf. The learned counsel however, submits that though the prayer has been made for dispensing with the meeting of the shareholders yet the directions may be issued for convening the meeting of shareholders of all the applicant companies. It is thus submitted that the aforesaid document can be ignored for the said purpose.

15. Learned counsel for applicants further refers to Annexure A-24, the list of the shareholders of A-3 company, out of which Sr. Nos. 2,8,9 and 10 are the companies who have similarly given their consent along with Board Resolutions but we are not discussing these details as the direction to hold shareholders' meeting for approval of the proposed Scheme, is being issued.

16. Learned counsel for the applicants, however, made specific request with regard to dispensing with the meeting of secured creditors of the A-1 and A-3 companies and it is represented by the learned counsel that there is no secured creditor of A-2 company.

17. It is stated by the learned counsel that the list of secured creditors of A-1 company is at Annexure A-9 and all of them have given their consent vide document A-10(colly). We have perused the consent given by some of them and it is quite apparent that certain conditions have been imposed in the said consent letters say for example HDFC Bank and India Bulls and thus the matter would require consideration if these terms and conditions are incorporated in the Scheme which is ultimately presented on the second motion. Therefore, the learned counsel for the applicants would submit that meeting of the secured creditors of A-1 company may be also directed to be convened.

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18. Annexure A-26 is the list of secured creditors of A-3 company and both the secured creditors have given consent letters Annexure A-27(colly) to the proposed Scheme without any conditions and this Annexure with documents is supported by the affidavit of Lakhvir Singh, Director of A-3 company. We would, therefore, dispense with the holding of meeting of secured creditors of A-3 company.

19. Learned counsel for the applicants further represents that Annexure-11 is the list of unsecured creditors as on 30.09.2016 of A-1 company. Out of them 14 have given their consent as per the document A-12 (colly) but the learned counsel would contend that such a list keeps on changing and further contends that meeting of unsecured creditors may also be directed to be convened with regard to the proposed Scheme.

20. It is represented by learned counsel for the applicants that there is no unsecured creditor of A-2 company. At page 310 of the Paper Books is the list of unsecured creditors of A-3 company at Annexure A-28, containing names of 57 unsecured creditors as on 30.09.2016. Out of these 16 are stated to have given their consent vide Annexure A-29(colly) but the meeting of unsecured creditors must be convened as per the latest list of unsecured creditors.

21. Keeping in view the aforesaid discussion we hereby dispense with the meeting of secured creditors of A-3 company. We, however, issue following directions for calling/convening and holding of meetings of equity shareholders, all the three companies, secured creditors of A-1 company and unsecured creditors of A-1 and A-3 at Hotel Sip 'n' Dine, SCO 16-A,

Sector 7-C, Madhya Marg, Chandigarh as suggested by learned counsel

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for the applicants for which suitable arrangements shall be made for sufficient space at the responsibility of the applicant companies.

22. The notice for the following meetings shall be issued by the transferor or transferee company as applicable:-

(i) In relation to the transferor A-1 company:-

- a) Meeting of members of A-1 company be convened at 2.00 PM on 28.03.2017 at Hotel Sip 'n' Dine, SCO 16-A, Sector 7-C, Madhya Marg, Chandigarh-160019 subject to the notice of meeting being issued well before the stipulated period;
- b) Meeting of secured creditors of A-1 company at 3.00 PM on 28.03.2017 at Hotel Sip 'n' Dine, SCO 16-A, Sector 7-C, Madhya Marg, Chandigarh-160019 subject to notice of meeting being issued and other conditions as per (a) above; and
- c) Meeting of unsecured creditors of A-1 company at 4.00 PM on 28.03.2017 at Hotel Sip 'n' Dine, SCO 16-A, Sector 7-C, Madhya Marg, Chandigarh-160019 subject to notice of meeting being issued and other conditions as per (a) above;

ii) In relation to Transferor A-2 company:-

Meeting of members of A-2 company at 2.00 PM on 29.03.2017 at Hotel Sip 'n' Dine, SCO 16-A, Sector 7-C, Madhya Marg, Chandigarh-160019 subject to notice of meeting being issued, well before the stipulated period;

iii) In relation to Transferee A-3 company:-

- a) Meeting of members of A-3 company at 3.00 PM on 29.03.2017 at Hotel Sip 'n' Dine, SCO 16-A, Sector 7-C,

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Madhya Marg, Chandigarh-160019 subject to notice of meeting being issued, well before the stipulated period; and

- b) Meeting of unsecured creditors of A-3 company at 4.00 PM on 29.03.2017 at Hotel Sip 'n' Dine, SCO 16-A, Sector 7-C, Madhya Marg, Chandigarh-160019 subject to notice of meeting being issued, and the other conditions as given in sub para (a) above.

(iv) The quorum of the meeting of members of A-1 and A-2 company shall be minimum two persons present in person and in relation to the A-3 company the quorum shall be minimum 5. If the quorum is not present at the commencement of the meeting, the meetings would be adjourned for 30 minutes and thereafter the members present in person or through proxy who would be not less than 2 and 5 respectively;

(v) In case of A-1 company quorum for the meeting of secured creditors would be 5 in number, and quorum for the meeting of unsecured creditors company would be minimum 07. In case of A-3 company the minimum quorum for unsecured creditors would be 25 in number, but the quorum must fulfil any other requirements of law as per the value of creditors. In case the quorum as noted above for the meetings is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered if the proxy is in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, filed with registered office of the respective company at least 48 hours before the

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meetings. The Chairperson and the Alternate Chairperson shall ensure that the proxy registers are properly maintained;

(vi) The applicant company shall prepare latest list of secured and unsecured creditors as on 31.12.2016 for issuance of notices to them.

(vii) Justice (Retd.) Arvind Kumar (Mobile No.9888807564, House No.275, Sector-17, Panchkula) is appointed as Chairperson of the meetings to be called under this order and the relevant law. The Hon'ble Judge shall be paid ₹2 lacs (rupees two lacs) lump sum for his services as the Chairperson. Mr. Rakesh Bhatia, Advocate (Mobile No.9815717755, House No.1890, Sector 22-B, Chandigarh) is appointed as the alternate Chairperson for the meetings to be called under this order and the relevant law. He shall be paid ₹1 lac (rupees one lac) lump sum for his services as the alternate Chairperson. The scrutinizer for the meetings shall be Mr. Girish Madan, Company Secretary, CP No.3577 (Mobile No. 9814212623, House No.623, Sector 8, Panchkula e-mail: Gmadan1959@gmail.com) and he will be paid Rs.1.00 lac (rupees one lac) lump sum for his services;

(viii) It is further directed that individual notices of the said meetings shall be sent by the Applicant Companies through Registered or Speed Post or through courier service or e-mail 30 days in advance before the scheduled date of meeting, as per the relevant rules applicable indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme of Amalgamation, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of

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proxy shall be sent along with and any other documents as may be prescribed under the Act;

(ix) That the Applicant Companies shall jointly publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the "Indian Express"(English) Chandigarh Edition and "Jagbani"(Punjabi) stating the copies of Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to Section 230 to 232 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies;

x) Voting shall be allowed on the proposed Scheme by voting in person or by proxy. The Chairperson shall be responsible to report the result of the meeting within 7 days of the conclusion of the meetings with a vote on the proposed scheme;

xi) The Companies shall individually send notices to Central Government, the Income Tax Authorities, Registrar of Companies and to such other regulators who may have significant bearing on the operation of the applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016;

xii) The applicant companies shall further furnish copy of the scheme free of charge within 1 day of any requisition for the Scheme made by every creditor or member of the applicant companies entitled to attend the meetings as aforesaid; and

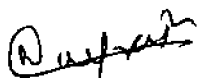
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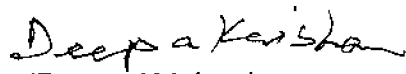
xiii) The authorised representative(s) of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013.

The application stands allowed in the aforesaid terms.

It is directed that the counsel/authorised representative of applicant companies shall deliver copy of this order to the Chairperson, Alternate Chairperson and the Scrutinizer immediately. A copy of the order be supplied to the counsel for applicant companies forthwith.


(Justice R.P. Nagrath)
Member(Judicial)


(Deepa Krishan)
Member (Technical)

February 17, 2017

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