

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM : Shri V. P. Singh
Hon'ble Member(J)
&
Shri Jinan K.R.
Hon'ble Member(J)

Company Application CA(CAA) No.516/KB/2017

IN THE MATTER OF:

The Companies Act, 2013 - Section 230(1)
read with Section 232(1)

-And-

IN THE MATTER OF:

GJS Hotels Limited, a Company
incorporated under the Companies
Act, 1956 and being a Company within
the meaning of the Act, having its
registered office at Hyatt Regency
Kolkata, JA-1, Sector-3, Salt Lake City,
Kolkata 700 098 in the State of West
Bengal.

.....Applicant No.1

-And-

Asian Hotels (East) Limited, a Company
incorporated under the Companies Act,
1956 and being a Company within the
meaning of the Act having its registered

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office at Hyatt Regency Kolkata, JA-1, Sector-3, Salt Lake City, Kolkata 700 098 in the State of West Bengal.

.....Applicant No.2

IN THE MATTER OF:

1. GJS Hotels Limited
2. Asian Hotels (East) Limited

. APPLICANTS

Counsels appeared For the Applicants:

Mr D N Sharma, Advocate
Mr Aniket Agarwal, Advocate
Ms Rusha Saha, Advocate

Date of Pronouncing the order: 04-01-2018

ORDER

Per Shri V. P. Singh, Member(Judicial):

This is an application under Section 230(1) read with Section 232(1) of the Companies Act, 2013 filed by the Applicant Companies, namely GJS Hotels Limited, being the Applicant Company No.1 above named (hereinafter referred to as "GJSHL") and Asian Hotels (East) Limited, being the Applicant Company No.2 above named (hereinafter referred to as "AHEL") in connection with a Scheme of Arrangement between GJSHL, AHEL and Robust Hotels Private Limited (hereinafter referred to as "RHPL") and their respective shareholders in the manner and on the terms and conditions stated in the Scheme of Arrangement. The registered office of RHPL is situated in Chennai within the jurisdiction of the Chennai Bench of the National Company Law Tribunal.

The Board of Directors of the Applicant Companies and Robust Hotels Private Limited, at their respective meetings held on 10th February, 2017 by

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resolutions passed unanimously, approved the Scheme of Arrangement between GJS Hotels Limited, Asian Hotels(East) Limited and Robust Hotels Private Limited and their respective shareholders.

It is stated in the application that Asian Hotels (East) Limited is a well established hospitality company engaged primarily in the business of running the 'Hyatt Regency' hotel at Salt Lake in Kolkata. In addition, Asian Hotels (East) Limited holds and is engaged in the business of investing in shares and securities of other bodies corporate on both, a short term basis (current investments) and long term basis (non-current investments). Asian Hotels (East) Limited thus also has substantial interests in the hospitality business through its subsidiaries, being GJS Hotels Limited which is a direct and wholly owned subsidiary of Asian Hotels (East) Limited and Robust Hotels Private Limited which is a subsidiary of GJS Hotels Limited. While Robust Hotels Private Limited is running the 'Hyatt Regency' Hotel at Anna Salai, Tenampet in Chennai, GJS Hotels Limited is pursuing a project for establishing a hotel in Bhubaneswar, Odisha. The operations of GJS Hotels Limited have been funded primarily by Asian Hotels(East) Limited by a combination of equity capital and loan while the operations of Robust Hotels Private Limited have also been funded primarily by Asian Hotels(East) Limited and GJS Hotels Limited by a combination of equity capital, preference capital and debt. While Asian Hotels (East) Limited has been in the hospitality business for several years, the business of GJS Hotels Limited and Robus Hotels Privae Limited is relatively new. The said companies have been looking at suitable proposals for restructuring with the objective, inter alia, of simplifying and rationalising their holding and financial structure and pursuing their business more conveniently and beneficially.

It is also stated in the application that the demerger will simplify the holding structure of the subsidiaries of Asian Hotels(East) Limited and result in Robust Hotels Private Limited also becoming a direct wholly owned subsidiary

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of Asian Hotels(East) Limited consequent to transfer of the investment of GJS Hotels Limited in Robust Hotels Private Limited to Asian Hotels(East) Limited as part of the demerger.

It is further submitted in the application that the demerger will enable GJS Hotels Limited to pursue operating business with greater focus and attention and facilitate the business considerations and factors applicable to the same to be addressed more effectively and adequately by GJS Hotels Limited without the responsibility of monitoring investments in Robust Hotels Private Limited. The demerger will also enable independent evaluation of the said business of GJS Hotels Limited and facilitate running and operation of such business and growth and development plans thereof to be funded independently.

It is stated in the application that the Scheme will suitably realign and adjust the relationship between the capital and assets of the respective Companies and have beneficial results for the applicant Companies, their shareholders and all concerned.

It is submitted in the application that there are no proceedings pending under Sections 210 to 227 of the Companies Act, 2013 against GJS Hotels Limited, Asian Hotels(East) Limited and Robust Hotels Private Limited.

The Auditors of GJS Hotels Limited, Asian Hotels(East) Limited and Robust Hotels Private Limited have confirmed that the accounting treatment in the Scheme is in conformity with the accounting standard prescribed under Section 133 of the Companies Act, 2013.

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Certificate issued by the Auditors of GJS Hotels Limited, Asian Hotels(East) Limited and Robust Hotels Private Limited are annexed with the application and collectively marked "P".

It is stated in the application that GJS Hotels Limited and Robust Hotels Private Limited are unlisted companies while Asian Hotels (East) Limited is a listed Company. The shares of Asian Hotels (East) Limited are listed on BSE Limited and the National Stock Exchange of India Limited.

Asian Hotels (East) Limited duly filed the Scheme with the said Stock Exchanges on 10-03-2017 for their approval pursuant to the listing agreements entered into by it with the said Stock Exchanges. Apart from the same, Asian Hotels (East) Limited has also submitted the report of its Audit Committee on the Scheme and various other documents to the stock exchanges and also displayed the same on its website in terms of the SEBI Circular dated 30-11-2015 and addressed all queries on the said documents.

The Complaints Report required to be filed in terms of the said Circular was also duly filed by Asian Hotels(East) Limited. BSE and NSE by their respective letters dated 18-05-2017 and 23-05-2017 have since confirmed that they have 'no adverse observation' on the Scheme pursuant to the said SEBI Circular. In this regard, the Applicant companies have filed an affidavit dated 16-12-2017 in terms of the Order of this Tribunal dated 14-12-2017. The copies of the said letters dated 18-05-2017 and 23-05-2017 issued by BSE and NSE are annexed with the application and collectively marked "Q".

It is further submitted in the application that the Scheme embodies the arrangement between GJS Hotels Limited, Asian Hotels(East) Limited and Robust Hotels Private Limited and their respective shareholders. No change in value or terms or any compromise or arrangement is proposed under the

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Scheme with any of the creditors of GJS Hotels Limited or Asian Hotels(East) Limited. The Scheme is an internal restructuring exercise and there would be no change in control or management of the enterprises as such under the Scheme.

It is further stated in the application that upon the Scheme coming into effect, Asian Hotels(East) Limited and GJS Hotels Limited would continue to have substantial excess of assets over liabilities and be in a position to meet their liabilities, as and when they accrue and in the ordinary course of business.

The creditors of the Applicant Companies are not affected in any manner by the Scheme. On the contrary, the Scheme will inure to their benefit and is in their interest. Meetings of creditors of the applicants are not relevant at all.

As stated vide Affidavit dated 12-12-2017 filed by the Applicant Companies, since filing of the said Application, the creditors of GJSHL have consented and accorded its approval to the proposed Scheme of Arrangement by way of affidavit.

GJS Hotels Limited has only one unsecured creditor, being Asian Hotels(East) Limited, Applicant No.2, and no secured creditor.

The List of creditors of GJS Hotels Limited as certified by the Chartered Accountants and the affidavit of consent of Asian Hotels(East) Limited, are annexed to the affidavit and marked "A-1".

Further, it is submitted in the said affidavit dated 12-12-2017, filed by the Applicant Companies, that Asian Hotels (East) Limited, has no secured creditor.

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It is also submitted that the applicant No.1, namely, GJS Hotels Limited is a wholly owned subsidiary of Asian Hotels(East) Limited. Asian Hotels(East) Limited has agreed in writing to the proposed Scheme of Arrangement by way of affidavit. The affidavit of consent issued by Asian Hotels(East) Limited is annexed with the application and marked "S".

It is submitted by the applicants that inasmuch as the shareholders of the Applicant No.,1, namely, GJS Hotels Limited has already approved the proposed Scheme of Arrangement, in writing, unnecessary expenditure and delay can be avoided in causing notice to be issued, meetings to be convened of the shareholders.

It is submitted in the application that a meeting of the Equity Shareholders of Asian Hotels(East) Limited be called to consider, and, if thought fit, to approve the Scheme of Arrangement with or without modification pursuant to Sections 230(1) and 232(1) of the Companies Act, 2013.

Further, Mr. D N Sharma, Advocate appearing for the applicants submitted that all the Equity Shareholders and Unsecured Creditor of Applicant No.1, have by way of affidavits agreed and confirmed their consent to the proposed Scheme of Arrangement.

The Ld. Counsel appearing for the Applicants prayed for directions and orders under Sections 230(1) and 232(1) of the Companies Act, 2013 for convening of separate meetings of the Unsecured Creditors and Equity Shareholders of the Applicant No.2 and dispensing with meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of Applicant No.1 and Secured Creditors of Applicant No.2, in view of the aforesaid submissions.

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Heard the submissions made on behalf of the Applicants. Perused the documents annexed to the application and the supplementary affidavit.

That Ld. Advocate, Ms. Manju Bhuteria appearing on behalf of the Applicants has verbally mentioned that Chairperson appointed by this Tribunal, Shri Sabyasachi Chowdhury, Senior Counsel, High Court, Kolkata, has refused to act as Chairperson in CA No.516/KB/2017 and date of meeting is already fixed on 21st day of February, 2018 and space for Venue for the meeting has been reserved. So, she made a request that any other person may be named as Chairperson. Ms. Manju Bhuteria, Advocate presented a copy of the e-mail received from the appointed Chairperson, Shri Sabyasachi Chaudhury, Advocate, High Court, Kolkata, which shows that he is unable to act as Chairperson. In the circumstances, the Ld. Advocate proposed the name of Mr. Ravi S. Asopa, Advocate to act as the Chairperson in place of Shri Sabyasachi Chaudhury, Advocate.

Ld. Advocate, Ms. Manju Bhuteria also pointed out some typographical errors in para 6 of the order of the Tribunal which are also being corrected herein. She mentioned that the words “within 14 days from the date of this Order” should be replaced by “in terms of Rule 8(2) forthwith after the notice is sent to the members and creditors of AHEL”.

Upon hearing the submissions of the Ld. Counsels appearing on behalf of the Applicants and on perusal of the documents on record, the following orders are passed :

1. That separate meetings of the Unsecured Creditors and Equity Shareholders of the Applicant No.2 shall be held at Hyatt Regency Kolkata, JA-1, Sector-3, Salt Lake City, Kolkata 700 098 on Wednesday, the 21st day of February, 2018 at the following times for the purpose of

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considering, and if thought fit, approving, with or without modification, the said Scheme of Arrangement :

- i. Meeting of Equity Shareholders of Applicant No.2 at 11 AM; and
- ii. Meeting of Unsecured Creditors of Applicant No.2 at 1:00 P.M.

In the event meeting of Equity shareholders of the Applicant No.2 spills over and is concluded after the time fixed for commencement of the succeeding meeting of Unsecured Creditors of Applicant No.2, such succeeding meeting shall be held immediately after such conclusion of the prior meeting.

2. Meetings of Equity shareholders and Unsecured Creditors of Applicant No.1 are dispensed with in view of all such shareholders and creditors having already considered and given their written consent to the Scheme in the form of affidavits, as stated by the Applicant Companies vide their affidavit dated 12-12-2017.
3. Further, since there are no Secured Creditors of Applicant Nos.1 and 2, no meetings of the said creditors are required to be held.
4. That at least 30 (thirty) clear days before the said separate meetings of the Unsecured Creditors and Equity Shareholders of the Applicant No.2 to be held as aforesaid, an advertisement convening the meetings stating that copies of the said Scheme of Arrangement and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 disclosing necessary details and a prescribed form of proxy can be obtained free of charge at the registered office of the Applicant No.2 or at the Office of their Advocates, M/s. Khaitan & Co LLP be inserted once each in English and in Bengali local daily Newspapers as per the requirements

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of Section 230 of the Companies Act, 2013 in Form No.CAA2 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016.

5. That, in addition, at least 30 (thirty) clear days before the separate meetings of the Unsecured Creditors and Equity Shareholders of the Applicant Company No. 2, at the place and time to be held as aforesaid, notice convening the said meetings together with a copy of the said Scheme, a copy of the statement required to be sent under the provisions of the Companies Act, 2013 disclosing necessary details and the prescribed form of proxy, shall be sent to each of the said Unsecured Creditors and Equity Shareholders of the Applicant No.2, by post or air mail or courier or email or through personal messenger at their respective or last known addresses. The said notices along with accompanying documents shall also be placed on the website of the Applicant No.2.

6. That notice as per requirement of Sub-section (5) of Section 230 of the Companies Act, 2013, along with all the documents, including a copy of the Scheme, Statement disclosing necessary details, shall be served on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, the Registrar of Companies, West Bengal, the concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income Tax with PAN Numbers of the Applicant Companies, having jurisdiction over the Applicants and such other sectoral regulators or authorities, if applicable, which are likely to be affected by the proposed Scheme, by sending the same by hand delivery through special messenger or by post, through E-Mail and by Speed Post, both in terms of Rule 8(2) forthwith after the notice is sent to the members and creditors of AHEL for filing their representation, if any, within 30 days from the date of notice. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt

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of the notice with a copy of such representation being simultaneously sent to the advocates of the Applicants. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the said Scheme of Arrangement. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 in Form No. CAA3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations, incorporating the directions herein.

7. That Shri Ravi S Asopa, Advocate (Mobile No.9830161201) shall be the Chairperson for the said meetings of the equity shareholders and the Unsecured Creditors of the Applicant Company No. 2, to be held aforesaid, at a consolidated remuneration of Rs. 50,000/- (Rupees fifty thousand only).
8. That Shri Siddhartha Murarka, Pr. CS,(Mobile No. 9903377959) shall be the Scrutiniser for the said meetings of the Equity Shareholders and the Unsecured Creditors of the Applicant Company No.2, to be held aforesaid at a consolidated remuneration of Rs.. 40,000/- (Rupees Forty thousand only).
9. That the Chairperson appointed for the said meetings or any person authorised by him do issue and send out the notice of the said separate meetings, referred to above.
10. That the quorum for the meetings of the Equity Shareholders and the Unsecured creditors of the Applicant No.2, shall be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.

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11. The voting by proxy be permitted, provided that a proxy in the prescribed form duly signed by the person(s) entitled to attend and vote at the meeting, is filed with the concerned Applicant Company at their Registered Office not later than forty eight hours before the separate meetings. The Chairperson shall have the power to adjourn the meeting, if necessary, and to conduct the procedure for the adjourned meeting as deemed necessary under the Act.
12. That the value of each creditor shall be in accordance with the respective books of the concerned applicant companies and where entries in the books are disputed, the Chairperson concerned shall determine the value for the purpose of the meeting. The value of the unsecured creditors shall be considered as on 30th December, 2017 for the purpose of the meeting of the said creditors of the Applicant No.2.
13. That the Chairperson do report to this Court, the results of the said meetings within four weeks from the date of the conclusion of the respective meetings and his report shall be verified by his affidavit.
14. The Applicants to file affidavit of service of notice of meetings and publication of advertisement and compliance of all directions of this Order.
15. The Equity Shareholders of the Applicant No.2 shall also be given the option of voting on the resolution for approval of the Scheme by casting their votes personally or by proxy at the venue of the meeting on 21st February, 2018 or by postal ballot / remote e-voting during the period from 22nd January, 2018 (9:00 A.M.) to 20th February, 2018 (5:00 P.M.). The facility for remote e-voting shall be disabled at 5:00 P.M on 20th February, 2018. It is clarified that such option

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for voting by postal ballot/remote e-voting shall not be required to be given to the Unsecured Creditors of the Applicant No.2.

16. The business of the meetings shall be transacted accordingly. The resolution for approval of the Scheme of Arrangement shall, if passed by a majority in number representing three-fourths in value of the Equity Shareholders and Unsecured Creditors casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of the said meetings of such shareholders and creditors under Section 230(1) read with Section 232(1) of the Companies Act, 2013.
17. Subject to the directions and matters dealt with herein, the procedure for postal ballot/ e-voting and conduct of voting at the venue of the meeting in so far as the same is prescribed by the Companies (Management & Administration) Rules, 2014 ("the said Rules") and the forms there under shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.
18. The cut-off date in terms of the said Rules for determining the eligibility of shareholders to vote ("hereinafter referred to as the "Relevant Date") shall be 15th January 2018. The votes cast by the shareholders shall be reckoned and scrutinized for all modes with reference to such Relevant Date.
19. The Equity Shareholders of the Applicant No.2 may opt to exercise their votes only in one mode, i.e, by (a) postal ballot, (b) remote e-voting or (c) by poll. In case they cast their votes by both, postal ballot and remote e-Voting, then voting done through remote e-voting shall prevail and voting done by postal ballot will be

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treated as invalid. Further, if they cast their votes by postal ballot and/or remote e-voting, as aforesaid, they will not be entitled to vote again by poll/e-voting at the venue of the meeting, whether in person or by proxy. If they do so, the votes so cast by them at the venue of the meeting shall be treated as invalid.

20. It is clarified that Equity Shareholders of the Applicant No.2 choosing to cast their votes by postal ballot/ remote e-voting shall nevertheless be entitled to attend and participate in the discussions in the meeting but shall not be entitled to vote again at the meeting. At the venue of the meeting the votes shall be taken by polling papers/e-voting.
21. Voting shall be allowed on the proposed Scheme by proxy at the venue of the meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.2 provided that the proxies in the prescribed form duly signed by the person(s) entitled to attend and vote at the respective meeting, is filed with the Applicant No.2 at the registered office not later than forty eight hours before the respective meeting. In case of a Body Corporate, being an Unsecured Creditor or Equity Shareholder of the Applicant No.2, opting to attend and vote at the venue of a meeting, as aforesaid, through its authorised representative, such Body Corporate may do so provided a certified copy of the resolution of its Board of Directors or other governing body authorizing such representative to attend and vote at such meeting on its behalf is deposited at the registered office of the Applicant No.2 not later than 48 (forty eight) hours before the time for holding such meeting.
22. The votes cast at the meetings shall be scrutinised by the Scrutiniser. The Scrutiniser shall prepare and submit the respective reports on

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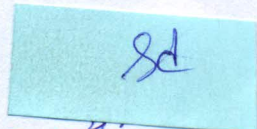
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the meetings along with all papers relating to the voting to the Chairperson of the meetings within 3 days of the conclusion of the meetings. The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutiniser to him. In case of meeting of Equity Shareholders, the votes cast by them in all the modes shall be consolidated. The declaration of results by the Chairperson shall also be published in the same newspapers in which notice of the meetings is advertised. The Applicant No.2 shall also appoint a person who shall be responsible for addressing the grievances of the shareholders, if any, in connection with the e- voting as required by the said Rules.

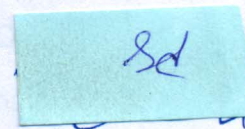
23. The application being Company Application CA(CAA)No.516/KB/2017 of 2017 is, accordingly, disposed of.

The parties and the Chairperson to act on the order.

Urgent Photostat certified copies of this Order, if applied for, be supplied to parties upon compliance of all requisite formalities.



(K. R. Jinan)
Member (J)



(V. P. Singh)
Member (J)

Signed on dated, the 4th day of January, 2018