

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

C.A. (CAA)No.569/KB/2017

In the Matter of:

An application under Sections 230 and 232 of the
Companies Act, 2013;

And

In the Matter of:

New Kenilworth Hotel Private Limited (CIN
U55101WB1970PTC027716), a company incorporated
under the provisions of the Companies Act, 1956,
having its registered office at 1 & 2, Little Russel Street,
Kolkata 700071 ;

And

New Kenilworth Hotel (Coimbatore) Private Limited,
(CIN U55101WB2008PTC125576), a company
incorporated under the provisions of the Companies
Act, 1956, having its registered office at 1 & 2, Little
Russel Street, Kolkata 700071.

..... Applicants.

Coram : Shri Jinan K.R., Member(Judicial)

For the Applicants :

1. Mr D N Sharma, Advocate
2. Mr T. Khaitan, Advocate

sd

Date of Pronouncing the Order : 06-02-2018

Per Jinan K.R. Member(Judicial) :

O R D E R

This is an application filed by the applicants namely M/s New Kenilworth Hotel Private Limited ("NKHPL") and M/s. New Kenilworth Hotel (Coimbatore) Private Limited ("NKHCP") under Section 230(1)/ Section 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the proposed Scheme of Arrangement between NKHPL and NKHCP.

The object of this application is to ultimately obtain sanction of this Tribunal to a Scheme of Arrangement whereby and where under it is proposed to demerge the Coimbatore Unit of NKHPL to NKHCP on the terms and conditions fully stated in the said Scheme, a copy whereof is annexed with the Application and marked "E".

It is stated in the Application that NKHPL is presently engaged in the business of running hotel in Kolkata.

Sd

NKHCPL has been incorporated to undertake the work of the Hotel Project at Coimbatore as a special purpose vehicle company.

For the last many years, business and the operational activities of NKHPL has grown up in size.

Under the liberalised, fast changing and highly competitive environment, it is necessary for NKHPL to re-define its objectives for strengthening its business and operational activities.

The units of NKHPL have grown up on their own to the size of independent companies. Coimbatore unit is to be developed. The leasehold land at Coimbatore was acquired in 1994 from the said Tamilnadu Corporation for Development of Women Ltd., an undertaking of Tamil Nadu Government.

Immediately thereafter, there arose a dispute and several court proceedings were initiated by NKHPL as well as Tamil Nadu Government.

In August, 2017, the disputes were ultimately settled and the legal proceedings have come to an end. Hence the present Scheme is now proposed to undertake the Hotel Project in NKHCPL as a special purpose vehicle company.

Sd

To enable NKHPL to provide adequate and timely resources for such programme and to meet the working capital requirement of its Coimbatore Unit more effectively and conveniently, it is considered desirable and expedient to reorganise and reconstruct the business and units of NKHPL by transferring the said Coimbatore Unit of NKHPL to NKHCPL which would independently finance the capital investment needed for the setting up and development of Coimbatore Unit.

The Coimbatore Unit has good prospect for growth and development of its business which requires induction of substantial finance which can be more conveniently and adequately raised in a separate company.

As such, the Scheme will enable the Coimbatore Unit and the remaining business of NKHPL to be carried on more conveniently and advantageously by the two separate companies i.e. NKHCPL and NKHPL with independent management set up and greater focus, attention and specialisation.

It is stated in the Application that the Scheme is beneficial for its shareholders, employees and other stakeholders of the applicant companies.

Sd

The Board of Directors of both the applicant companies, have at their respective meetings, by resolutions passed unanimously, approved the said Scheme of Arrangement.

It is stated in the Application that the aggregate assets of both the applicant companies(combined) are more than sufficient to meet their aggregate liabilities.

Further, the aggregate assets of the Coimbatore Unit of NKHPL are more than sufficient to meet its liabilities.

The said Scheme will not adversely affect the rights of any of the creditors of the applicant companies in any manner whatsoever as due provisions have been made for payment of all the liabilities as and when the same fall due in usual course.

It has also been stated in the Application that there are no proceedings pending under Sections 210 and Sections 212 to 225 of the Companies Act, 2013 and/or Sections 235 to 251 of the Companies Act, 1956 against the applicant companies.

Sd

It is stated in the Application that NKHPL and NKHCPL have 8 equity shareholders and 2 equity shareholders, respectively as on 30-09-2017.

Further, as on 31-03-2017, NKHPL had 6 Secured Creditors and 167 Unsecured Creditors and NKHCPL had 2 Unsecured Creditors.

The NKHCPL did not have any Secured Creditors as on the said date.

A list of the said equity shareholders and the creditors of the applicant companies are enclosed and collectively marked "H".

The applicants have also filed a Supplementary Affidavit affirmed on 22nd November, 2017 wherein the applicants have annexed the list of shareholders and creditors of the applicants duly certified by the Chartered Accountants.

In the Supplementary Affidavit, it has been stated that the consents of the Secured Creditors of NKHPL are less than 90% of the total secured debts of NKHPL and hence the meeting of Secured Creditors of NKHPL is required to be held to consider the said Scheme.

Sd

All the equity shareholders of both the applicant companies, and all the Unsecured Creditors of NKHCPL have, by their respective affidavits, approved the said Scheme of Arrangement.

The said affidavits in original are enclosed and collectively marked "I".

Heard the learned Advocate of the applicants, perused the records documents annexed to the application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed by this Tribunal :

1. In view of the specific consents for the Scheme of Arrangement by affidavits by all the equity shareholders of NKHPL and NKHCPL, convening and holding of separate meetings of the equity shareholders of NKHPL and NKHCPL is dispensed with ;
2. In view of the fact that NKHCPL did not have any Secured Creditors as on 31-03-2017, the question of convening and holding of separate meeting of the Secured Creditors of NKHCPL does not arise ;

Sd

3. The Meeting of the secured creditors of New Kenilworth Hotel Private Limited (NKHPL) shall be convened and held at 1 & 2, Little Russel Street, Kolkata 700071 on Wednesday, the 14th day of March, 2018 at 3.30 P.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Arrangement between NKHPL and NKHCPL;
4. The Meeting of the unsecured creditors of New Kenilworth Hotel Private Limited (NKHPL) shall be convened and held at 1 & 2, Little Russel Street, Kolkata 700071 on Wednesday, the 14th day of March, 2018 at 4.00 P.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Arrangement between NKHPL and NKHCPL.
5. In view of the consents for the Scheme of Arrangement by affidavits by the Unsecured Creditors of NKHCPL, convening and holding of separate meeting of the Unsecured Creditors of NKHCPL is dispensed with ;
6. That at least 30 (thirty) clear days before the date of the said separate meetings of the secured creditors and the unsecured creditors of New Kenilworth Hotel Pvt. Ltd. (NKHPL) , an advertisement convening the

Sd

meetings and stating that copies of the said Scheme of Arrangement and of the Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and a form of proxy can be obtained free of charge at the Registered Office of the concerned applicant companies or at the office of their Advocate, M/s. Khaitan & Co. LLP, be inserted once each in the in the "Financial Express" in the English Daily and "Pratidin", in the Bengali Daily.

7. That in addition, at least 30 (thirty) clear days before the separate meetings to be held as aforesaid, a notice convening the said meetings of the secured creditors and the unsecured creditors of New Kenilworth Hotel Pvt. Ltd. (NKHPL) at the place and time as aforesaid together with a copy of the said Scheme of Arrangement, a copy of the Statement required to be sent under the Act and the prescribed form of Proxy be sent by registered post or by hand or by courier or by e-mail, both addressed to each of the secured creditors and the unsecured creditors of New Kenilworth Hotel Pvt. Ltd. (NKHPL) at their respective or last known addresses.
8. To serve the notice as per requirements of sub-section (5) of Section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme of Arrangement and the Statement

Sd

disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal; and 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 Applicant Companies and such other relevant sectoral regulators/ authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery, through E-Mail and by Speed Post, special messenger or by registered post, both, within 14 days from the date of this order 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 of the date of receipt of the notice with a copy of such representation being sent simultaneously to the applicants and/or their Advocates. 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 Scheme of Arrangement. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 and Companies (Compromises, Arrangements & Arrangement) Rules, 2016 with necessary variations incorporating the directions therein.

Sd

9. Mr. Tapas Kumar Das, (Mobile 98300 85971), Advocate is appointed as the Chairperson for the meetings to be held, as aforesaid at a consolidated remuneration of Rs. 50,000/- (Rupees Fifty thousand only).
10. That the Chairperson appointed for the said meetings or any person authorised by him do issue and send out the notice of the said meetings referred to above.
11. The quorum for the meetings of the Secured and the Unsecured creditors of New Kenilworth Hotel Pvt. Ltd. (NKHPL), be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.
12. That 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 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.

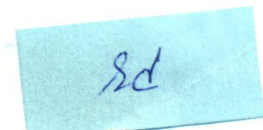
Sd

13. That the value of each creditor shall be in accordance with the respective books of the concerned applicant Company and where entries in the books are disputed, the Chairperson concerned shall determine the value for the purpose of the meeting.
14. 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.

The Application bearing No. CA(CAA) No. 569/KB/2017 is, accordingly, disposed of.

Parties and the Chairpersons to act on the order.

Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.



(Jinan K.R.)
Member(Judicial)

GOUR_STENO