

IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on:08.12.2016

Order delivered on:19.12.2016

CO. APPL. (M) 162/2016

IN THE MATTER OF:

AKIRA MARKETING PRIVATE LIMITED

...Applicant No.1/Amalgamating Company No.1

AND

MAMA CATERING PRIVATE LIMITED

.....Applicant No.2/Amalgamating Company No.2

AND

CLARIDGES HOSPITALITY PRIVATE LIMITED

.....Applicant No.3/Amalgamating Company No.3

WITH

AZURE HOSPITALITY PRIVATE LIMITED

...Applicant No.4/Amalgamated Company

Through: Mr. Anirudh Das, Mr. Kamaljeet Singh
and Mr. Vikram Shah, Advocates for the
Applicants

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J.

1. The present application has been filed jointly, under Section 391 of the Companies Act, 1956 (hereinafter referred to as 'the Act') read with Rule 9 of

the Companies (Court) Rules, 1959 by Akira Marketing Private Limited (hereinafter referred to as 'Amalgamating Company No. 1'), Mama Catering Private Limited (hereinafter referred to as 'Amalgamating Company No.2'), Claridges Hospitality Private Limited (hereinafter referred to as 'Amalgamating Company No.3') and Azure Hospitality Private Limited (hereinafter referred to as 'Amalgamated Company'), in connection with the Scheme of Amalgamation (hereinafter referred to as 'the Scheme') between the Amalgamating Companies and the Amalgamated Company.

2. Amalgamating Company No.1, Amalgamating Company No.2, Amalgamating Company No.3 and the Amalgamated Company, shall hereinafter, collectively, be referred to as 'Applicants'.

3. The registered offices of the Applicants are situated within the National Capital Territory of Delhi, thus, this Court has the necessary territorial jurisdiction to adjudicate the present application.

4. A copy of the proposed Scheme has been enclosed along with the application and the same is on record. The rationale for the Scheme is that the proposed amalgamation *inter alia*, will result in increased operational efficiencies, consolidation of the businesses presently being carried on by Applicants, which shall aid in creating greater synergies between the business operations of the companies. It has been stated that the Scheme would also aid in optimal utilisation of resources due to pooling of management, administrative

and technical skills of various resources; better administration and cost reduction, including economisation and reduction of managerial, administrative and other common costs, thereby resulting in enhancement of the cash flows and operational efficiencies; better alignment, coordination and streamlining of day-to-day operations, leading to improvement in overall working culture and environment and; creation of large asset base and facilitating access to better financial resources.

5. So far as the share exchange ratio is concerned, the same is summarised hereinbelow:

- The Amalgamated Company shall issue fully paid-up equity shares of Rs.10/- each to the shareholders of Amalgamating Company No.1 in terms of Clause 4.2 of Part IV of the Scheme.
- The Amalgamated Company shall issue fully paid-up equity shares of Rs.10/- each to the shareholders of the Amalgamating Company No.2 in terms of Clause 4.3 of Part IV of the Scheme.
- No consideration shall be payable by Amalgamated Company to the shareholders of the Amalgamating Company No.3 since the Amalgamated Company (itself and through its nominee shareholders) is the only shareholder in Amalgamating Company No.3.

6. Amalgamating Company No.1 was incorporated under the Act, vide certificate of incorporation dated 13.08.2010 issued by the Deputy Registrar of Companies, National Capital Territory of Delhi and Haryana.
7. Amalgamating Company No.2 was incorporated under the Act vide certificate of incorporation dated 24.06.2011 issued by the Deputy Registrar of Companies, National Capital Territory of Delhi and Haryana.
8. Amalgamating Company No.3 was incorporated under the Act under the name and style of 'QSOP Hospitality Private Limited' vide certificate of incorporation dated 20.06.2013 issued by the Registrar of Companies, National Capital Territory of Delhi and Haryana. The name of Amalgamating Company No.3 was thereafter changed to its present name vide a Fresh Certificate of Incorporation dated 07.08.2014 issued by the Assistant Registrar of Companies, Delhi.
9. The Amalgamated Company was incorporated under the Act under the name of 'ARR Realty Private Limited' vide certificate of incorporation dated 20.03.2008 issued by the Assistant Registrar of Companies, National Capital Territory of Delhi and Haryana. The name of the Amalgamated Company was thereafter changed to its present name vide a fresh Certificate of Incorporation dated 15.01.2009 issued by the Registrar of Companies, National Capital Territory of Delhi and Haryana.

10. The authorized share capital of Amalgamating Company No.1 as on 31.03.2016 is, Rs.3,00,00,000/-, divided into 30,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company as on 31.03.2016 is, Rs.2,51,80,000/-, divided into 25,18,000 equity shares of Rs.10/- each.

11. The authorized share capital of Amalgamating Company No.2 as on 31.03.2016 is, Rs.11,00,00,000/-, divided into 1,10,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company as on 31.03.2016 is, Rs.3,64,70,580/- divided into 36,47,058 equity shares of Rs.10/- each.

12. The authorized share capital of Amalgamating Company No.3 as on 31.03.2016 is, Rs.8,00,00,000/-, divided into 20,00,000 equity shares of Rs.10/- each and 60,00,000 non-convertible preference shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company as on 31.03.2016 is, Rs.6,30,00,000/-, divided into 15,00,000 equity shares of Rs.10/- each and 48,00,000 non-convertible preference shares of Rs.10/- each.

13. The authorized share capital of the Amalgamated Company as on 31.03.2016 is, Rs.96,00,00,000/-, divided into 4,30,00,000 equity shares of Rs.10/- each, 1,85,00,000 series A preference shares of Rs.20/- each and 80,00,000 series B preference shares of Rs.20/- each. The issued, subscribed and paid-up share capital of the company, as on 31.03.2016 is,

Rs.86,32,51,720/-, divided into 3,48,49,748 equity shares of Rs.10/- each, 1,81,21,665 Series A cumulative convertible preference shares of Rs.20/- each and 76,16,047 Series B cumulative convertible preference shares of Rs.20/- each.

14. Copies of the Memorandum of Association and Articles of Association, the latest audited annual accounts for the year ended 31.03.2016, pertaining to the Applicants have been enclosed with the present application and the same are on record.

15. Learned Counsel appearing on behalf for the Applicants have submitted that no proceedings under sections 235 to 250A of the Act (or corresponding provisions of the Companies Act, 2013) are pending against them as on the date of institution of the present application.

16. It has been averred on behalf of the Applicants that the scheme has been approved by their respective Board of Directors (BOD). Copies of the BODs resolutions pertaining to the Applicants, all dated 28.09.2016, whereby the scheme has been approved have been filed with the application and the same are on record.

17. The status of the Shareholders, Secured Creditors and Unsecured Creditors of the Applicants and the consents obtained from them for the proposed Scheme have been set out in a table forming part of the application which reads as hereinunder:-

Name of the Company	Nos. of Equity Share-holders	Consent Given	Nos. of Preference Share-holders	Consent Given	Nos. of Secured Creditors	Consent Given	Nos. of Unsecured Creditors	Consent Given
Amalgamating Company No.1	02	ALL	NIL	N.A.	NIL	N.A.	NIL	N.A.
Amalgamating Company 2	06	ALL	NIL	N.A.	NIL	N.A.	01	ALL
Applicant/Amalgamating Company 3	02	ALL	01	ALL	NIL	N.A.	39	NIL
Amalgamated Company	08	ALL	02 (SERIES 'A' AND SERIES 'B')	ALL	01	ALL	98	NIL

18. Prayers have been sought for dispensing with the requirement of convening the meetings of, the equity shareholders of the Applicants; Preference Shareholders of Amalgamating Company No.3 and the Amalgamated Company; the Secured Creditors of the Amalgamated Company and; the Unsecured Creditors of Amalgamating Company No.2.

19. The Amalgamating Companies have no secured creditors, therefore, the requirement of convening meetings of the secured creditors of the Amalgamating Companies does not arise.

20. Amalgamating Company No.1 does not have any unsecured creditors; therefore, the requirement of convening meeting of the unsecured creditors of Amalgamating Company No.1 does not arise.

21. Amalgamating Company No.1 does not have any preference shareholders; therefore, the requirement of convening meeting of the preference shareholders of Amalgamating Company No.1 does not arise.

22. Amalgamating Company No.2 does not have any preference shareholders; therefore, the requirement of convening meeting of the preference shareholders of Amalgamating Company No.2 does not arise.

23. Amalgamating Company No.1 has 02 equity shareholders; Amalgamating Company No.2 has 06 equity shareholders; Amalgamating Company No.3 has 02 equity shareholders; the Amalgamated Company has 08 equity shareholders. All the equity shareholders of the Applicants have given their written consents/NOCs and the same have been placed on record. The said written consents/NOCs have been examined and found in order.

24. In view thereof, the requirement of convening meetings of the equity shareholders of the Applicants, to consider and if thought fit, approve, with or without modification, the Scheme, is dispensed with.

25. Amalgamating Company No.3 has 01 preference shareholder. The Amalgamated Company has 02 preference shareholders [As per the Certificate dated 04.11.2016 of the Chartered Accountant (BK Rout & Co.), 'Broad Street

Investment (Singapore) Pte. Ltd.’ holds 1,81,21,665 Series A preference shares of Rs.20/- each and also holds 76,16,047 Series B preference shares of Rs.20/- each, in the Amalgamated Company]. All the said preference shareholders have given their written consents/NOCs and the same have been placed on record. The said written consents/NOCs have been examined and found in order.

26. In view thereof, the requirement of convening meetings of the preference shareholders of Amalgamating Company No.3 and the Amalgamated Company, to consider and if thought fit, approve, with or without modification, the Scheme, is dispensed with.

27. Amalgamating Company No.2 has 01 unsecured creditor. The written consent/NOC of the unsecured creditor has been placed on record. The same has been examined and found in order.

28. In view thereof, the requirement of convening meeting of the unsecured creditor of Amalgamating Company No.2, to consider and if thought fit, approve, with or without modification, the Scheme, is dispensed with.

29. The Amalgamated Company has 01 secured creditor. The written consent/NOC of the secured creditor has been placed on record. The same has been examined and found in order.

30. In view thereof, the requirement of convening meeting of the secured creditor of the Amalgamated Company, to consider and if thought fit, approve, with or without modification, the Scheme, is dispensed with.

31. Amalgamating Company No.3 has 39 Unsecured Creditors and the Amalgamated Company has 98 Unsecured Creditors. A prayer has also been sought to direct the convening of the meetings of the Unsecured Creditors of Amalgamating Company No.3 and the Amalgamated Company.

32. In view of the foregoing facts and circumstances, the meeting of the unsecured creditors of the Amalgamating Company No.3 is hereby directed to be convened. The same shall be held on 04.02.2017 at 10:30 A.M., at Dhaba by Claridges, Epicuria Mall, Nehru Place, New Delhi- 110019. The necessary details *qua* convening the same are enumerated hereinbelow:

- i. Mr. Anubhav Bhasin, (Advocate), (Mobile No. 9971090069) is appointed as the Chairperson and Mr. Nishaank Mattoo, (Advocate), (Mobile No. 8800917722) is appointed as the Alternate Chairperson to conduct the said meeting.
- ii. The Quorum of the meeting of the unsecured creditors shall be 50% in number and more than 50% in value of the total unsecured debt.

33. The meeting of the unsecured creditors of the Amalgamated Company is also hereby directed to be convened. The same shall be held on 04.02.2017 at 12.30 P.M., at Dhaba by Claridges, Epicuria Mall, Nehru Place, New Delhi- 110019. The necessary details *qua* convening the same are enumerated hereinbelow:

- iii. Mr. Saqib, (Advocate), (Mobile No. 9910180819; 9582710004) is

appointed as the Chairperson and Ms. Sukhbeer Kour Bajwa, (Advocate), (Mobile No. 9818040158) is appointed as the Alternate Chairperson to conduct the said meeting.

- iv. The Quorum of the meeting of the unsecured creditors shall be 50% in number and more than 50% in value of the total unsecured debt.

34. In case the quorum as noted above 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 in the prescribed form duly signed by the person entitled to vote at the meetings is filed with the registered offices of Amalgamating Company No.3 and the Amalgamated Company at least 48 hours before the meetings. The Chairpersons and Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

35. The Chairpersons and Alternate Chairpersons shall ensure that notices for convening meetings of the unsecured creditors of Amalgamating Company No.3 and the Amalgamated Company along with copies of the Scheme of Amalgamation and the statement under 393 of the Act, shall be sent to the unsecured creditors of the Amalgamating Company No. 3 and the Amalgamated Company by post at their registered or last known addresses at least 21 days before the date appointed for the meetings in their presence or in the presence of

their authorized representatives. Notices of the meetings shall also be published in the Delhi editions of the Newspapers, 'The Statesman' (English Edition) and 'Jansatta' (Hindi Edition) in terms of the Companies Court (Rules) 1959 at least 21 days before the date appointed for the meeting.

36. The Chairpersons and the Alternate Chairpersons will be at liberty to issue suitable directions to the management of Amalgamating Company No.3 and the Amalgamated Company so that the aforesaid meetings of the Unsecured Creditors of Amalgamating Company No.3 and the Amalgamated Company are conducted in a just, free and fair manner.

37. The fee of the Chairpersons and the Alternate Chairpersons for the aforesaid meetings shall be Rs.75,000/- each, in addition to meeting their incidental expenses.

38. The Chairpersons shall file their reports within seven days from the conclusion of the aforesaid meetings.

39. The application stands allowed in the aforesaid terms and is disposed of accordingly.

SIDDHARTH MRIDUL, J

DECEMBER 19, 2016

sb/mk/dn