

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CA(CAA)/264/MB-IV/2021

In the matter of

The Companies Act, 2013

And

*In the matter of Section 230- 232
and other applicable provisions of
the Companies Act, 2013*

And

*In the matter of Scheme of
Compromise and Arrangement
and its Secured Financial
Creditors*

Sahara Hospitality Limited

[U5510MH1989PC140211]

...Applicant Company

Order delivered on:10.03.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicants

: Mr. Abhijeet Sinha a/w
Mr. Sandeep Bajaj, Advocates

ORDER

Per: Rajesh Sharma Member (Technical)

1. The Court is convened through video conferencing today.

2. The Learned Counsel for the Applicant Companies states that the Applicant Company is wholly owned subsidiary of the Sahara Prime City Limited (SPCL). The present Scheme is the Scheme of Compromise and Arrangement filed by Sahara Hospitality limited and their respective Secured Financial Creditors('Scheme'), under the provisions of Sections 230 to 232 of the Companies Act, 2013. The accounts of the company turned NPA with effect from 30.09.2019. The Applicant Company is promoted by Sahara Prime City Limited("SPCL") and is a group company of the Sahara India Pariwar.
3. The Counsel for the Applicant Company further submits that the Rationale for the Scheme as follows:
 - a. The interests of the Secured Financial Creditors are duly protected.
 - b. To make upfront payment towards the outstanding debts immediately upon the approval of its scheme.
 - c. Repayment by way of ballooning instalments.
4. The Counsel for the Applicant Company further submits that Applicant Company was set up on dated 26.09.1989 and is engaged in the business of operating and managing Hotel Sahara Star, Opposite Domestic Airport. Vile Parle, Mumbai, Maharashtra- 400099. It is submitted that the Applicant Company has substantial Assets and potential to expand and grow its business. The promoters of the Applicant Company have decided to support the Applicant Company in the proposed Scheme of Arrangement with the Secured Financial Creditors to tide over the outstanding debt. The total Equity Paid Share Capital & Preference Share Capital is as follows;

Nature of Share Capital	No of Shareholders	No. of Shares 31.03.2021	Authorized Capital	Issued/Paid Up Capital
Equity Share of Rs.10 each	7	5,71,12,047	70,00,00,000	57,11,20,470
Preference Share of Rs.10 each	9	58,65,00,000	680,00,00,000	586,50,00,000

5. The Applicant Company declares that by the accompanying Scheme of compromise and arrangement, the Company is seeking to arrive at a compromise with the class of Secured Financial Creditors and no modification or change is being sought in the terms between(I)the Applicant Company and its other creditors (II)the Applicant Company and its members. Hence, the Applicant is seeking dispensation of meeting with (I) its equity shareholders (II) its preference Shareholders and (III) its other Creditors.
6. The Applicant has obtained consent and approval of its Equity Shareholders, Preference Shareholders by way of consent letters issued by SPCL. The Consent Letters has been attached as Annexure 'A-4' and Annexure 'A-5' to the Application.
7. The Counsel for the Applicant Company further submits that the Financial Creditors of the company have already entered into an inter creditors agreement dated 14.02.2005.
8. The Counsel for the Applicant states that in the interest of all the stakeholders, the Applicant Company has prepared a comprehensive scheme with Secured Financial Creditors on revised terms and conditions. Under the

provisions of Sections 230 and other applicable provisions of the Companies Act, 2013 to repay the debt owed to its Secured Financial Creditors.

9. The Applicant Company has also submitted a list of Secured and Unsecured creditors as on cut-off date. The list of Secured Creditor is attached as Annexure 'A' to the application. The list of Unsecured Creditor is attached as Annexure 'A/4' to the Additional Affidavit.
10. The Counsel for the Applicant Company submits that the Company is a going concern with good works in hand and the promoters are proposing the current scheme with the Secured Financial Creditors, in larger interest of all the stakeholders, so that the account of the Applicant Company can become Standard.
11. The Counsel for the Applicant Company further submits that there are various proceedings against the Applicant Company which are filed and pending before various courts/tribunals/forums in respect of the same debt which is covered under the present Scheme of Arrangement with the Secured Financial Creditors of the Applicant Company. The salient features of the Scheme may be brought to the notice of all concerned, wherever needed.
12. The prayers made in the application and the first motion are:
 - a) Direct the convening of the meeting of Secured Financial Creditors of the Applicant company, as enlisted in Appendix-A of the Scheme Application
 - b) Appoint the Chairperson to convene the proposed meeting of the Secured Financial Creditors and fix his remuneration;

- c) Prescribe the quorum and procedure for the proposed meeting with the Secured Financial Creditors including by permitting voting to be done in person or by proxy or by postal ballot or by voting through electronic means;
 - d) The Chairperson so appointed be directed to report the result of the meeting of the Secured Financial Creditors to this Hon'ble Tribunal within a period of 7 days of holding of the said proposed meeting;
 - e) Direct publications of Notices of the proposed meetings as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
 - f) Direct service of notice of the present Application to (a) the Reserve Bank of India, (b) the Central Government through the Office of the Regional Director, Western Region, Ministry of Corporate Affairs, New Delhi (c) the Registrar of Companies (d) Goods and Service Tax Department (e) Airport Authority on India, and (t) the Income Tax Department;
 - g) Dispense with the meeting of the Equity Shareholders of the Applicant company, as enlisted in Appendix-C in light of the consent in writing provided by SPCL filed as Annexure-4 of the Scheme Application.
 - h) Dispense with the meeting of the Preference Shareholders of the Applicant company, as enlisted in Appendix-D in light of the Consent in writing provided by the said preference shareholders filed as Annexure-5 to 8 of the Scheme Application.
13. The Bench hereby directs that within 60 days from the date of the order, the Applicant Company shall hold the meeting of the Secured Financial Creditor

("said Meeting") through physical meeting of the Authorized Representatives of the Secured or by way of video conference. Further, the uncut recorded video of the meetings with creditors shall be submitted to this Tribunal along with an affidavit. It made clear that the validity of this order is 60 days only from the date of its issuance.

14. The Applicant Company submits that there are 6 (Six) Secured Creditors having outstanding of Rs.597,60,00,000/- (Rupees five hundred ninety-seven crore sixty lakh only). This Bench hereby directs the Applicant Company to issue notice enclosing copy of scheme to all the Secured Creditors named in the Scheme, by Registered Post-AD/Speed Post and Hand-Delivery and by E-mail and that they may submit their objections, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
15. The Learned Counsel for the Applicant Company further submits that no meeting of Unsecured Creditors is required to be held for the approval of the Scheme of Compromise and Arrangement dated 20.09.2021, and the same is dispensed with under section 230(1)(a) being a separate and distinguishable class, whose rights are not affected by the said Scheme of Compromise and Arrangement. This Bench hereby directs the Applicant Company to issue notices along with Snapshot of the Arrangement proposed by the Secured Financial Creditors to 168 Unsecured Creditors having value more than Rs.5,00,000/- by Registered Post-AD/Speed Post and by E-mail (whose Email-Ids are available with the Applicant company) and that the Unsecured Creditors may submit their objections, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the

Applicant Company. Such objections, (if any, received) shall be dealt with at the time of the hearing of the scheme petition.

16. The Applicant Company is directed to serve the notice by Registered Post-AD/Speed Post and by Hand-Delivery and by e-mail upon (i) Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, (ii) Income Tax Authority within whose jurisdiction respective assessments are made and (iii) other regulators, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, (iv) Register of Company, Mumbai (v) Reserve Bank of India (vi) GST (vii) Airports Authority of India. If no response is received by the Tribunal from such authorities/ regulators within 30 days of the date of receipt of the notice it will be presumed that such authorities/regulators have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
17. The Learned Counsel for the Applicant Company further submits that no meeting of (a) the Equity Shareholders of the Applicant Company and (b) the Preference Shareholders holding Non- Cumulative, Optionally Convertible, Redeemable Preference Shares of the Applicant Company, is required to be held for the approval of the said Scheme of Compromise and Arrangement dated 20.09.2021 in light of the consent letters stating so having been filed on record duly supported by the resolutions of such shareholders and the same is dispensed with under section 230(9) of the Companies Act, 2013 read with Rule 5(a) of the Companies (Compromise and Arrangement) Rules, 2016;

18. The quorum for the said meeting of Secured Financial Creditors of the Applicant Company shall be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy. It is however provided that in case the quorum of the meeting is not available on the scheduled time and date, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum for the adjourned meeting.
19. Mr. Durgesh Kabra, DMKH & Co. Chartered Accountants, 803-804 Ashok Heights opp. Saraswati Apartments, Nikalwadi Road, Old Nagardas Road, Gundavale, Andheri-Mumbai-400069 is appointed as the Chairperson of the said meeting of the Secured Financial Creditors of the Applicant Company to be held as aforesaid in terms of this order Rule 5(1)(c) of the Companies (Compromise and Arrangement) Rules, 2016. The Chairperson shall be paid a consolidated sum of Rs2,00,000/- (Rupees Two Lakhs Only) for conducting the aforesaid meeting as Chairperson.
20. Mr. Arvind Kumar Pilla, Practicing Chartered Accountant, having its E-mail Id-arvind.pilla@gmail.com, Address- 404, Imperial Plaza Opp. Anand Talkies, Somwar Bazaar Road, Sitabuldi, Nagpur- 440012, is appointed as the Scrutinizer of the said meetings of Secured Financial Creditors of the Applicant to be held as aforementioned in terms of this order as per Rule 5(1)(c) of the Companies (Compromise and Arrangement) Rules, 2016. The Scrutinizer shall be paid a consolidated sum of Rs.1,00,000/- (Rupees One Lakh only) for acting as Scrutinizer.
21. The Chairperson appointed for the said meetings, shall issue and send out the notices and advertisement of the said meeting referred above.

22. The Applicant Company to file an affidavit of service of the notices issued to its Creditors not less than seven days before the date fixed for the holding of the meetings and do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.
23. The value of each Secured financial Creditor shall be in accordance with the respective books of the Applicant and, where entries in the books are disputed, the Chairperson shall determine the value for the purpose of the meeting. The value of the creditors shall be considered as on 31st August 2021 for the said purpose.
24. At least 30 Days before the meeting of Secured Creditors of the Applicant Company to be held, an advertisement of notice convening the said meeting, indicating the day, date and time of the meeting be published once each in 'Free Press Journal' in English and 'Navshakti' in Marathi, both circulated at Mumbai pursuant to section 230(3) of the Companies Act,2013.
25. The Chairperson shall submit a report to this Tribunal with the result of the said meeting within four weeks from the date of the conclusion of the said meeting. The report shall be in Form No. CAA-4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.
26. In exercise of powers conferred Under Section 230 of the Companies Act, 2013 read with Rule 11 of the National Company Law Tribunal Rules, 2016, we direct that in the meantime, the Secured Financial Creditors of the Applicant Company shall not take coercive steps with respect to their respective contractual terms dues claims and rights until the said Scheme of

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Compromise and Arrangement is considered by and this Tribunal after the said Meeting is conducted in terms of the present order.

27. The Applicant Company to file an Affidavit of Service and Compliance report within 10 working days after serving notice to all including the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

Kishore Vemulapalli
Member (Judicial)
10.03.2022

Sd/-

Rajesh Sharma
Member (Technical)