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**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 3rd JUNE, 2024, 10:30 A.M.

**CP (CAA)/1/GB/2024
(CA (CAA)/5/GB/2023)**

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

Name of the Company	Mayfair Hotels & Resorts (Sikkim) Pvt. Ltd. (Transferor Company) With Mayfair Hotels & Resorts Ltd. (Transferee Company)
Under Section	U/s 230-232 of Companies Act, 2013

For Petitioner (s) : Mr. Gopinath Nayak, CS

For Respondent (s) :

ORDER

Order pronounced in the open court *vide* separate sheets.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)



Zeba (PS)



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**C.P (CAA)/1/GB/2024
Connected With
CA (CAA) No. 5/GB/2023**

In the Matter of:

A Petition under Section 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 for sanction of Scheme of Arrangement;

-And-

In the Matter of:

MAYFAIR HOTELS & RESORTS (SIKKIM) PRIVATE LIMITED, a company incorporated under the Registration of Companies Act, Sikkim, 1961; and having its registered office at Lower Samdur Block, Gangtok, East Sikkim, Ranipool -737135 in the state of Sikkim;

.... Transferor/Petitioner Company

-And-

MAYFAIR HOTELS & RESORTS LIMITED, a company incorporated under the Companies Act, 1956; and having its registered office at 8B, Jayadev Vihar Bhubaneswar, Khurda, Orissa- 751013, in the state of Odisha.

.... Transferee Company

Coram:

Shri H. V. Subba Rao : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

For Petitioner : Mr. Gopinath Nayak, PCS
For Govt. of Sikkim : Mr. D.J. Kapil, Adv for Law and Parliamentary
Department, Govt. of Sikkim





NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P (CAA)/1/GB/2024
Connected With
CA (CAA) No. 5/GB/2023

Order reserved on: 27.05.2024
Order pronounced on: 03.06.2024

ORDER

1. The instant Petition has been filed under Section 230(6) of the Companies Act, 2013 ("Act") for sanction of the Scheme of Amalgamation of MAYFAIR HOTELS & RESORTS (SIKKIM) PRIVATE LIMITED, being the Petitioner above named ("Transferor Company") with MAYFAIR HOTELS & RESORTS LIMITED ("Transferee Company") whereby and whereunder the Transferor Company is proposed to be amalgamated with the Transferee Company from the Appointed Date, 1st April, 2023 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme").
2. By an Order dated 18.12.2023 in Company Application (CAA) No. 5/GB/2023, directions were issued by this Tribunal, wherein the meetings of Equity Shareholders Creditors of Petitioner Company were dispensed with in view of the written consent through affidavit obtained from the Equity Shareholders and Creditors of the Petitioner Company. Further by the said order directions were given to serve notice including copy of Scheme of Amalgamation and the statement disclosing necessary details on the Central Government (if applicable); the Secretary, Law Department, Government of Sikkim, Gangtok; the concerned Assessing Officer along with the Chief Commissioner of Income-Tax and the Reserve Bank of India; the Competition Commission of India, New Delhi and such other relevant sectorial regulators/authorities, having jurisdiction over the Petitioner Company in terms of the provisions of Section 230(5) of the Companies Act, 2013, through electronic mail or hand delivery through special messenger or by post.
3. It is submitted that the Petitioner Company have complied with all directions passed by this Tribunal in Company Application No. CA (CAA) No. 5/GB/2023 and have filed





NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P (CAA)/1/GB/2024
Connected With
CA (CAA) No. 5/GB/2023

the present Company Petition for seeking sanction and confirmation of the Scheme. A copy of Affidavit of Compliance along with the proof of service of notice to the directed authorities in terms of order dated 18.12.2023 has been annexed.

4. *Vide* order date 20.01.2023 passed by this Tribunal, the present Company Petition C.P (CAA) NO 1/ GB /2024 was admitted, with directions for publication of notice of hearing to be advertised in “SIKKIM EXPRESS” in English Edition Newspaper and the “HIMALAYA DARPAN” in Nepali Edition Newspaper. The Petitioners were also directed to once again serve notice upon Statutory Authorities, having jurisdiction over the Petitioner Company. The same have been complied with and Affidavit of Compliance along with the proof of service of notice to the directed authorities has been filed.
5. It is submitted by the Petitioner Company that:
 - 5.1 The Scheme does not contain any clause due to which there will be any reduction of share capital of Petitioner Company.
 - 5.2 There are no proceedings pending under the Companies Act, 1956, the Companies Act, 2013 and/or any other corresponding provisions of the Registration of Companies Act, Sikkim, 1961 against the Petitioner Company.
 - 5.3 The Scheme does not provide or contain any clause for any kind of Corporate Debt Restructuring.
 - 5.4 The assets of the Petitioner Company are sufficient to meet all its liabilities. The Petitioner Company has made due provisions for payment of all liabilities as and when the same will fall due. Further, the said Scheme of Amalgamation does not involve any compromise or composition with the creditors of the Petitioner Company and Scheme will not affect the rights of the creditors of the Petitioner Company in any manner whatsoever.





NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P (CAA)/1/GB/2024
Connected With
CA (CAA) No. 5/GB/2023

- 5.5 A certificate from Statutory Auditor relating to compliance of Accounting Standard is annexed and marked as "A-7" to the petition.
6. Secretary, Law & Parliamentary Affairs Department, Government of Sikkim, has filed affidavit duly affirmed on 01.05.2024 wherein he has made the following objections/observations:
- 6.1 The Transferor/Petitioner Company was registered incorporated on 22.11.2004 under the Registration of Companies Act, Sikkim, 1961 by the Law Department, Government of Sikkim *vide* Registration No. 723.
- 6.2 The above mentioned Act is an old law of the State of Sikkim which is protected under Article 371F of the Constitution of India as such, the Companies Act, 2013 is neither extended nor enforced in the State of Sikkim.
- 6.3 There does not exist any provision under the Registration of Companies Act, Sikkim, 1961 for amalgamation of Companies hence the State of Sikkim is under no legal obligation to allow amalgamation of the Transferor/Petitioner Company with the Transferee Company.
- 6.4 Since, the Companies Act, 2013 is neither enforced nor extended in the State of Sikkim, this Tribunal has no jurisdiction to entertain the instant application of the Transferor/Petitioner Company registered under the old laws of the State of Sikkim.
7. The Petitioner Company *vide* Rejoinder affidavit dated 03.05.2024 replied to the objections/observations of the Law & Parliamentary Affairs Department, Government of Sikkim. Relevant paras are extracted hereunder:
- 7.1 *With reference to paragraph No. 2(ii) of the said objections/observations:*
By including the Registration of Companies (Sikkim) Act, 1961 under clause (ix) to Section 2(67) of the Companies Act, 2013, though not notified yet, it can clearly be inferred that the legislature had intended to bring companies registered in the state of





NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P (CAA)/1/GB/2024
Connected With
CA (CAA) No. 5/GB/2023

Sikkim under the Companies Act, 2013. Identifying intention of legislature while interpretation of an act or provision is one of the most essential tools. It seems cruel to deny a just and proper transaction(s), in this case amalgamation, just because the relevant provision, though present in the Act, is yet to be notified.

Further, the very governing enactment i.e. Registration of Companies (Sikkim) Act, 1961 does not prohibit amalgamation. Then should companies in Sikkim which is well within the territorial jurisdiction of India not be allowed to amalgamate whereas the same benefit extends to foreign companies incorporated outside India under Section 234 of the Act.

Furthermore, in light of the shared corporate structure of ownership, management and business operation, the Transferor Company and the Transferee Company are affirmed as Group Companies, overseen by identical management teams comprising common directors and shareholders. Notably, the Transferor Company functions as a Subsidiary of the Transferee Company. Both entities operate within the hospitality sector, unified under the prominent brand identity of MAYFAIR Hotels & Resorts.

Therefore, considering the consolidated ownership structure and shared business objectives, the prevailing legal framework should not pose any impediment to this proposed amalgamation.

7.2 *With reference to paragraph No. 2(iii) of the said objections/observations:*

Provisions of Section 234 of the Companies Act, 2013 and Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 permits amalgamations between companies registered under the Companies Act, 2013 and foreign companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government.

In the instant case, the Petitioner/Transferor Company being incorporated under the Registration of Companies (Sikkim) Act, 1961 and being placed outside the ambit of the Companies Act, 2013, it won't be a stretch to extend applicability of the afore-said provisions of Section 234 and Rule 25A to it.





NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P (CAA)/1/GB/2024
Connected With
CA (CAA) No. 5/GB/2023

Further, sub-rule (2) of Rule 24 says that the tribunal may pass any direction(s) or order or dispense with any procedure prescribed by these rules in pursuance of the object of the provisions for implementation of the scheme of arrangement or compromise or restructuring or otherwise practicable except on those matters specifically provided in the act.

Additionally, Rule 11 of the National Company Law Tribunal Rules, 2016 say that: Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

7.3 *With reference to paragraph No. 2(iv) of the said objections/observations:*

This Tribunal Bench at Guwahati does have jurisdiction over the State of Sikkim and the Act provides ample power to this Tribunal to adjudicate on the instant matter. The same could be verified from the NCLT website Citizen's Charter and the Ministry of Corporate affairs Notification No. 1340 dated 1st June 2016.

Further, the Petitioner is not violating Article 371F of the Constitution as there is no transfer of any asset out of the state of Sikkim. Even rents, rates and taxes will be paid to the appropriate authorities in Sikkim and consequently there will be no loss of revenue to the Government of Sikkim. Moreover, it was submitted that there will no loss of employment of people of Sikkim due to this amalgamation. The status of the hotel unit will remain the same except the accounting treatment permitted under the law of the nation.

8. Heard submissions made by the Ld. Counsel appearing for the Petitioner Company and Ld. Counsel Mr. D.J. Kapil appearing on behalf of Law and Parliamentary Department, Government of Sikkim.
9. On the last date of hearing, the Ld. Counsel for the Petitioner asserted that this Bench has jurisdiction over Sikkim and the Act empowers the Tribunal to adjudicate on the matter. Further, the Petitioner is not violating Article 371F of the Constitution as there





NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P (CAA)/1/GB/2024
Connected With
CA (CAA) No. 5/GB/2023

is no transfer of assets out of Sikkim and all financial obligations, including rents, rates, and taxes, will be duly remitted to the appropriate authorities in Sikkim, thereby ensuring no loss of revenue to the Government of Sikkim. Additionally, it was emphasized that the proposed amalgamation will not result in any loss of employment for the people of Sikkim. The status of the hotel unit will remain unchanged, with the only modification being the accounting treatment permitted under the law. The Ld. Counsel Mr. D.J. Kapil appearing on behalf of Law and Parliamentary Department also submitted that the Department has no objection to the scheme and this Tribunal may decide the matter as it deems fit.

10. Upon perusing the records and considering the approval accorded by the members and creditors of the Petitioner Company to the proposed Scheme, the report of the Law & Parliamentary Affairs Department, Government of Sikkim, and submissions made by the Petitioner Company and Law and Parliamentary Department, Government of Sikkim; there appears to be no impediment in sanctioning the present Scheme. **Accordingly, we allow the petition and make the following orders:**

- 10.1 The Scheme of Amalgamation be sanctioned by this National Company Law Tribunal to be binding with effect from **appointed date i.e. 01.04.2023**, on the Transferor Company, its shareholders, and all concerned;
- 10.2 All the property, rights and powers of the Transferor Company, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;
- 10.3 All the debts, liabilities, duties and obligations of the Transferor Company be transferred from the said Appointed Date, without further act or deed to the





NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P (CAA)/1/GB/2024
Connected With
CA (CAA) No. 5/GB/2023

Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;

- 10.4 The Transferee Company shall be entitled, wherever necessary and pursuant to the provisions of this Scheme, to file or revise their financial statements, and other statutory returns, and shall have the right to claim refunds, advance tax credits, credits for Minimum Alternate Tax, tax deducted at source receivable, carry forward of losses and unabsorbed depreciation, deductions, tax holiday benefits, deferred tax deductions or any other credits and/or set off of all amounts paid by the Transferor Companies or the Transferee Company under the relevant laws relating to Income Tax, Value Added Tax, Service Tax, Central Sales Tax, Goods and Service Tax or any other tax, as may be required consequent to the implementation of the Scheme. All taxes (including but not limited to advance tax, self-assessment tax, tax deducted at source, minimum alternate tax credits, securities transaction tax, interest, penalty etc.) payable by or refundable to the Transferor Company, including all or any refunds or claims shall be treated as the tax liability or refunds/ claims, as the case may be, of the Transferee Company, and any tax incentives, advantages, privileges, exemptions, credits, holidays, remissions, reductions, etc., as would have been available to Transferor Company, shall pursuant to the Scheme becoming effective, be available to the Transferee Company. All and any credits or entitlements to set off taxes and duties such as GST and Income Tax by whatever name called to the extent available to the Transferor Company shall also be transferred to and vest in the Transferee company as if it were of the Transferor Company;
- 10.5 The Transferee Company do without further application issue and allot to the shareholders of the Transferor Company, the shares in the Transferee Company to which they are entitled in terms of the Scheme;





NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P (CAA)/1/GB/2024
Connected With
CA (CAA) No. 5/GB/2023

- 10.6 All proceedings and/or suits and/ or appeals now pending by or against the Transferor Company shall be continued by or against the Transferee Company; however, if any suit, writ petition, investigation appeal, criminal or other proceedings of whatsoever nature is pending against the petitioner Company or entities associated with petitioner Company, their directors, shareholders, employees etc., the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer of business of the Transferor Company or because of anything contained in the scheme, but the proceeding shall continue, prosecuted and enforced by or against the Transferee Company/Transferor Company entities etc. in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Company and their associated entities, directors, shareholders, employees etc. as if the Scheme had not been made.
- 10.7 All the employees of the Transferor Company in Service, if any, on the date immediately preceding the date on which the scheme takes effect, i.e., the effective date shall become the employees of the Transferee Company on such date without any break or interruption in service and upon terms and conditions not less favorable than those subsisting in concerned Transferor Company(ies) on the said date;
- 10.8 With effect from the Appointed Date and up to and including the Effective Date, all legal, arbitration, and tax assessment proceedings/ appeals of whatsoever nature by or against the Transferor Company pending and/or arising on or after the Appointed Date shall be continued and/or enforced by or against the Transferee Company;
- 10.9 The Transferor Company shall within 30 days after the date of the order to be made herein cause a certified copy thereof to be delivered to the Secretary, Law Department, Government of Sikkim;





NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P (CAA)/1/GB/2024
Connected With
CA (CAA) No. 5/GB/2023

- 10.10 The Transferor Company shall be dissolved without winding up from the date of submission of the certified copy of this order with the Law Department, Government of Sikkim;
- 10.11 While approving the Scheme as above, we further clarify that this order should not be construed as an order in any granting exemption from payment of stamp duty, taxes including income tax, GST etc. or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.
- 10.12 After dissolution of the Transferor Company, the fee paid by the Transferor Company on their Authorized Share Capital to be set off against the fee payable by the Transferee Company on its authorized share capital subsequent to the amalgamation;
- 10.13 Any person interested shall be at liberty to apply to this National Company Law Tribunal in the above matter for any directions that may be necessary.
11. Notwithstanding the above, if there is any deficiency found, or violation committed of any enactment, statutory rules or regulation, the sanction granted by this Tribunal to the scheme will not come in the way of action being taken in accordance with law, against the concerned persons, directors and official of the petitioners.
12. In the event, the Petitioner supplies legible computerized printout of the Scheme in acceptable form to the department, the department will append such computerized printout, upon verification to the certified copy of the order without insisting on a hand-written copy thereof.
13. **Company Petition (CAA) NO. 1/GB/2024 connected with Company Application (CAA) NO. 5/GB/2023 stands disposed-off with the aforesaid directions.**





**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**C.P (CAA)/1/GB/2024
Connected With
CA (CAA) No. 5/GB/2023**

14. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
15. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
16. File be consigned to records.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)

Signed this on 3rd day of June, 2024

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Shatabdi Paul Choudhury

Dy REGISTRAR/ASST. REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

DY NO. *152/NCCT/GB*
DATE *2/7/24*

