

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

**CP(CAA)No.193/230/HDB/2020  
IN  
CA (CAA) NO. 225/230/HDB/2019**

*Application under Section 230 to 232 and other applicable provisions  
of the Companies Act, 2013 read with Rule 15(1) of the Companies  
(Compromises, Arrangements & Amalgamations) Rules, 2016*

**IN THE MATTER OF**

**SHRI SHAKTI RESORTS AND HOTELS LIMITED**

**(TRANSFEROR COMPANY)**

**AND**

**SRI HAVISHA HOSPITALITY AND INFRASTRUCTURE LIMITED**

**(TRANSFeree COMPANY)**

**Havisha Hospitality And Infrastructure Limited**

Registered office at Venus Plaza,  
4th Floor, Begumpet,  
Hyderabad, Telangana 500016,  
India.



**... Petitioner /  
Transferee Company**

1. Registrar of Companies, Telangana  
2nd Floor, Corporate Bhawan,  
GSI Post, Tattiannaram Nagole, Bandlaguda  
Hyderabad - 500 068, Telangana.
2. Official Liquidator,  
1st Floor, Corporate Bhawan,  
GSI Post, Tattiannaram Nagole, Bandlaguda  
Hyderabad - 500 068, Telangana.
3. Regional Director, South East Region  
3rd Floor, Corporate Bhawan,  
GSI Post, Tattiannaram Nagole, Bandlaguda  
Hyderabad - 500 068, Telangana.
4. Office of Dy. Commissioner of Income Tax,  
Circle 16(2), IT Towers,

Masab Tank, A. C. Guards,  
Hyderabad – 500 004.

...Respondents

**Judgement dated:16.11.2021**

**Coram**

Hon'ble Dr. N.V.Rama Krishna Badarinath, Member (Judicial)  
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

**Appearance:**

For Petitioner : Shri A. Nagraj Kumar , Advocate.

For Regional Director: Shri K.Harish Reddy, CGSC.

For Official Liquidator: Mrs.Ananta Lakshmi.

Heard on: 03.11.2021

**PER - BENCH**

The present Company Petition bearing CP No. 93/230/HDB/2020 is filed by Sri Havisha Hospitality and Infrastructure Limited (Transferee Company) respectively, under Section 230-232 of the Companies Act, 2013 praying for the sanction of scheme of Amalgamation between Transferor Company and Transferee Company in terms of Scheme of arrangement of companies.

2. The Registered Office of the Petitioner Company is situated in the State of Telangana and therefore, it is within the jurisdiction of this Tribunal.
3. The Board of Directors of the Petitioner Company i.e Transferee Company in its Board Meeting held on 13<sup>th</sup> August, 2018 has approved the Scheme of Amalgamation with the appointed date being 1<sup>st</sup> April, 2018. The certified copy of Board Resolution of the Petitioner Company in approving the scheme is annexed to the Petition as Annexure-F.







4. It is averred that the Petitioner Company has filed an Application bearing No C.A (CAA) No. 225/230/HDB/2019 under section 230 to 232 and other Applicable provisions of the Companies Act, 2013 Read with Rule 15(1) of the Companies Rules, 2016 before this Hon'ble Tribunal. This Tribunal vide orders dated 31.10.2019 and 19.12.2019, directed the petitioner Companies to convene a meeting of the equity shareholders and the unsecured creditors of the Company. Copy of the order is enclosed to the petition as **Annexure-H**. As per the order meetings were conducted. Equity shareholders representing 99.98% of equity shares of the total equity shareholders voted in favour of the scheme. Unsecured creditors representing 99.16% of the total unsecured creditors of the company voted in favour of the scheme. Copies of the Affidavits filed by the chairpersons are enclosed to the petition as **Annexure-I**.
5. The Petitioner Company then filed the present Petition before this Tribunal seeking sanction of the Scheme with appointed date as 01.04.2018. This Tribunal vide its order dated 22.07.2020 ordered notice of the hearing of the Petition to be advertised in Daily Newspapers. Accordingly, the Petitioner Company published notice of hearing of the Petition in English Newspaper i.e. Financial Express and Telugu Newspaper i.e. Nava Telangana on 27.08.2020. Notice of hearing of the Petition was served on the Regional Director, MCA, Hyderabad, ROC and IT Department on 26.08.2020.
6. The Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad vide his Affidavit dated 6<sup>th</sup> November, 2020 has stated that he has examined the report of the Registrar of Companies, Hyderabad and stated that the case may be disposed of on merits while considering certain observations. The Petitioner Companies (Transferor and Transferee) have filed reply Affidavit dated 5<sup>th</sup> February, 2021 in response to the observations made by The Regional Director,



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South East Region, Ministry of Corporate Affairs, and Hyderabad where under the petitioner companies gave undertaking to appropriately comply the observations made therein. We have seen the undertaking affidavit given by Petitioner Companies.

<b>OBSERVATIONS - RD FIRST REPORT 06.11.2020</b>	<b>REPLY AFFIDAVIT GIVEN BY PETITIONER COMPANIES 05.02.2021</b>
<b>PARA 3 (a) TO (d) - PAGE 2 -</b> Tribunal may please to direct the petitioner company to preserve the books, comply with statutory laws, file Inc-28, revise the authorized capital -	It is submitted that the transferee Company undertakes to comply with the Applicable provisions and rules under the Companies Act, 2013 applicable to the Transferor Company.
<b>PARA 3(e)</b> Hon'ble Tribunal may please to direct the transferee company to state the reasons for mentioning the appointed as 01.04.2018.	It is submitted that the petitioner companies filed company application with the registry of Hon'ble Tribunal on 23 <sup>rd</sup> September, 2019 stating 01.04.2018 as appointed date which was approved by the Board of Directors. Further there was no changes.
<b>PARA 3(f)</b> Petitioner Companies have not appointed the Company Secretaries in the Companies. Hence the Tribunal may please to direct the petitioner companies to file adjudication application under Section 454 of the Companies Act, 2013 for violation of Section 203 of the Companies Act, 2013 before the scheme is allowed	It is submitted that Ms.Asfia Moin was working as Company Secretary of the Transferee Company till 04.03.2020 and taking care of secretarial services of Transferor Company as well, resigned from the services on personal grounds, and could not fill the vacancy due to Covid-19. Further Mr.Rahul Jain, was appointed as Company Secretary of Transferee Company on 23.11.2020.
<b>PARA 4 -</b> The Directorate's has issued a letter dated 25.09.2020, to Office of Income Tax Officer, Hyderabad, for comments/observations, however, till date no report in this matter has been received.	
<b>PARA 5 -</b> The Directorate's has issued a letter dated 15.09.2020, to the Securities Exchange Board of India(SEBI), Hyderabad, for comments/observations, however, till date no report in this matter has been received.	



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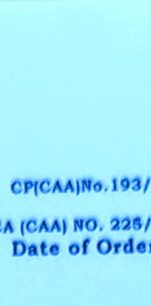
<p><b>PARA 6</b> Hon'ble Tribunal may direct the petitioner Companies to comply the observations pointed out by Official Liquidator before the Scheme is allowed.</p>	<p>It is submitted that reply has been filed to the Official Liquidator's observations.</p>
<p><b>PARA 7</b> Hon'ble Tribunal may please to direct the petitioner Company to comply with the provisions of FEMA/RBI.</p>	<p>It is submitted that transferee company undertakes to comply with the provisions of FEMA/RBI with reference to NRI and foreign Body Corporate shareholding in the Transferee Company.</p>
<p><b>PARA 8</b> Hon'ble Tribunal may be pleased to direct the petitioner transferor company to state clearly whether all the 20 shareholders were present in person or through proxy and also to furnish copy of the scrutinizers report.</p>	<p>It is submitted that the said meeting was attended personally and by proxy by Twenty equity shareholders in person. Copy of the Scrutinizer's report is enclosed to this Memo as Annexure-A2.</p>
<p><b>PARA 11</b> Hon'ble Tribunal may please to direct the petitioner Transferee Company to furnish the copies of NOC's/Consents of the 8 Secured Creditors.</p>	<p>It is submitted that loan pertains to eight open charges have been repaid in full and copies of NoC's issued by the respective Banks are enclosed to this memo as Annexure- A3.</p>
<p><b>PARA 14(a)</b> Based on the observation of the NSE&amp; BSE, The company should ensure that the Scheme shall be implemented only after seeking approval of the majority of the Public Shareholders.</p>	<p>It is submitted that the Company shall ensure that the Scheme shall be implemented only after seeking approval of the majority of the public shareholders through postal ballot and e-voting, is complied with.</p>
<p><b>PARA 14(b)</b> Hon'ble Tribunal may direct the petitioner transferee Company to furnish an undertaking regarding compliance of the said directions of NSE&amp;BSE.</p>	<p>It is submitted that transferee company undertakes to comply with the directions of NSE&amp;BSE.</p>
<p><b>PARA 14(c)</b> Transferee Company was advised that the observations of the SEBI/Stock Exchanges shall be incorporated in the petition to be filed before Hon'ble NCLT,</p>	<p>It is submitted that copies of NSE observation letter dated April 02. 2019 and BSE observation Letter dated March</p>



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<p>However, as directed petitioner transferee company has not mentioned the observations of SEBI in the petition.</p>	<p>26,2019 is enclosed to this Memo as Annexure-A4.</p>
<p><b>PARA 14(d)</b> Hon'ble Tribunal may direct the petitioner companies to comply with the observations made by the NSE&amp;BSE vide letters dated 02.04.2019 and 26.03.2019.</p>	<p>It is submitted that the transferee company has complied with the directions issued by the NSE&amp;BSE vide letters dated 02.04.2019&amp; 26.03.2019.</p>
<p><b>PARA 14(e)</b> Hon'ble Tribunal may direct the petitioner Transferee Company to furnish an undertaking that the company will pay the said dues as and when the demand arises from the respective authorities, as per rules.</p>	<p>It is submitted that transferee company undertakes to pay the dues, as per applicable laws, if any, arises out of dispute regarding customs duty pending before Hon'ble CEGAT.</p>
<p><b>PARA 14(f)</b> As per Para(vii) of Annexure to Independent Auditor's Report which was attached to the Balance Sheet of the Transferor Company as on 31.03.2017&amp; 31.03.2018 shows that there are certain dues pending before Appellate Dy. Commissioner(CT) amounting to Rs.6,94,000/- and Sales Tax Appellate Tribunal, Telangana amounting to Rs.7,35,000/-. Hon'ble Tribunal may please to direct the transferor Company to state whether the said dues were cleared by the Transferor Company, if so details of the same be called before the Scheme is allowed.</p>	<p>Petitioner Companies has filed the details of the three cases pending before STAT in his reply affidavit.</p>
<p><b>PARA 14(g)</b> Hon'ble Tribunal may please to direct the petitioner company to furnish the present status of the matter which is pending before the Hon'ble High Court by way of a certificate form the statutory Auditor of the Transferor Company along with supporting documents.</p>	<p>Petitioner companies has filed the certificate issued by the statutory Auditor of the Transferor Company, disclosing the status of appeal pending before Hon'ble High Court of Delhi, related to lease rent and cess on turnover payable to AAL, is enclosed as Annexure-A6.</p>

  
A. B. Rao



7. The Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad has filed additional affidavit dated 12<sup>th</sup> March, 2020 and stated the copy of the memo filed by the petitioner companies dated 05.02.2021 is examined and stated that the Hon'ble Tribunal may dispose of the case on merits while considering below two observations. Petitioner Companies filed an affidavit dated 26.03.2021, giving reply to the observation made by the Regional Director are mentioned below:

OBSERVATIONS	REPLY AFFIDAVIT
<p><b>PARA 3(e)</b> Hon'ble Tribunal may please to direct the petitioner companies to amend the appointed from 01.04.2018 to 01.04.2020</p>	<p>Petitioner companies undertake to comply with the orders of the Hon'ble Tribunal for changing the Appointed date to 01.04.2020 or any other date as the Hon'ble Tribunal may deems fit and proper.</p>
<p><b>PARA 3(f)</b> Hon'ble Tribunal may please to direct the petitioner companies to file adjudication Application under Section 454 of the Companies Act, 2013 for violation of Section 203 of the Companies Act, 2013 before the scheme is allowed</p>	<p>It is submitted that the said violation of Section 203 of the Company Act, 2013 is taken place due to force majeure and not intentional, the Transferee Company would not intend to seek adjudication under Section 454 of the Companies Act, 2013.</p>

The Official Liquidator has filed his report, OLR NO.27/2020 dated 04.11.2020 The observations pointed out at para 5 of the report and the comments offered by the Petitioner Companies on the report of Official Liquidator vide affidavit dated 05.03.2021 are mentioned against each.

S.No	Observations by Official Liquidator	Reply given by the Petitioner Company
5(a)	The observation with regard to change of appointed has been replaid by the petitioner companies.	
5(b)	Hon'ble Tribunal may please to direct the Transferee Company to submit an undertaking to this	It is submitted that Transferee company undertakes to the effect that the record date will be decided

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	Hon'ble Tribunal to the effect that the Record date would be decided and fixed as per SEBI Regulations.	and fixed as per SEBI Regulations, immediately after sanction of the Scheme of Arrangement.
5(c)	Hon'ble Tribunal may please to direct the Petitioner Companies to correct the clause 6.1 and 6.2 of Part B of the Scheme and submit the modified Scheme to the Hon'ble Tribunal	The transferee company submits that there is clerical mistake and to that effect a copy of modified Scheme of Arrangement is enclosed as Annexure-A1.
5(d)	Hon'ble Tribunal may please to direct the petitioner companies to amend heading under Clause 11 and Clause 11.1 and delete 11.3 and 11.6 of the Scheme to be in sync with 'pooling of Interest Method' of Accounting provided under AS-14 instead of 'Purchase Method' of Accounting.	<p>The transferee Company submits that in order to sync with the prevailing terms and conditions of 'pooling of Interest Method' of Accounting pursuant to AS-14 the transferee company decided to rectify the clerical mistake by replacing 'purchase method' with 'Pooling of Interest Method' and accordingly clause 11 is amended.</p> <p>Clause 11.1 of the Scheme of arrangement is amended by replacing the 'fair values' with book values'.</p> <p>Clause 11.3 and 11.6 of the Scheme of arrangement deleted accordingly.</p> <p>Copy of the modified Scheme of arrangement is enclosed as Annexure-A1.</p>



Further it is stated by the Official Liquidator that based on the information made available by the Petitioner/Transferor Companies, the affairs of the Transferor Companies appears to have not been conducted in a manner prejudicial to the interests of the members or to public interest.

9. Copy of the Valuation report issued by Akasam and Associates, Chartered Accountants, Hyderabad dated 22.01.2019 is annexed to the petitions.

"For every one (01) fully paid up equity share of Rs. 10/- each held in the Transferor Company - 7.52 fully paid

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up equity shares of Rs. 2/- each of the Transferee Company shall be issued and allotted in Transferee Company " (Hereinafter referred to as New Equity Shares. The swap ratio works out to 1.00 : 7.52).

10. M/s P.Suryanarayana& Co. Chartered Accountants have issued certificate dated 02.08.2019 to the effect that the accounting treatment specified in the proposed scheme of arrangement between the Petitioner/ transferee company and M/s Havisha Hospitality and Infrastructure Limited (transferee company) and their respective shareholders, pursuant to the provisions of sections 230 to 232 of the Companies Act, 2013 and approval by the respective Board of Directors, complies with the Accounting Standards prescribed under section 133 of the Act and other generally accepted accounting principles in India. A copy of said certificate issued by M/s P.Suryanarayana&Co. Chartered Accountants is annexed to the petitions. A copy of valuation report issued by independent chartered accountant and fairness report issued by Merchant Banker are enclosed as Annexure-E.

It is stated that there are no petitions under section 241 to 244 of the companies Act, 2013 filed against the Petitioner/transferee Company and there is no material change in the affairs of the Petitioner/ Transferee Company, except for what was done in the normal course of business. There are no proceedings pending under Section 210 to 227 of the Companies Act, 2013 against the Petitioner/Transferee Company.

12. **OBSERVATION**

We have heard the Learned Counsel appearing for the Petitioner Companies and perused the material papers on record. As regards to the observations pointed out by the Regional Director with regard to delay of 84 days in appointing the company secretary by the Transferee company, the petitioner company has stated that the said violation of



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Section 203 of the Company Act, 2013 is taken place due to force majeure and not intentional, and thus we are convinced with the explanation given by the Transferor Company. The Official liquidator had also raised an observation and asked to submit the modified scheme, for which the Petitioner Companies filed its reply by way of affidavit. After hearing the Counsel for the Petitioner Companies and considering the material on record, we are of the view the scheme is not opposed to public interest and the proposed Scheme is in the interests of the Transferor Company, the Transferee Company and their respective shareholders, employees, creditors and all persons concerned. Hence the scheme can be approved.

13.

**ORDER**

After hearing the Counsel for the Petitioner Companies and after considering the material on record, this Tribunal passed the following order:

A. The modified Scheme of Arrangement filed vide memo dated 05.03.2021 ( Annexure -A1) is hereby sanctioned with appointed date as 01.04.2020 and shall be binding on all the members, employees, creditors and all other stakeholders of the Petitioner Companies.

B. While Approving the Scheme, we made it clear that this order should not be construed as an order in anyway granting exemption from payment of Stamp Duty, taxes or any other charges, if any, payable in accordance with any law or in respect of any permission/compliance with any other requirement which may be specially required under any law.

C. The whole of the assets, property, rights and Liabilities of the Transferor Company shall be transferred without the requirement of any further act or deed to the Petitioner/Transferee Company.



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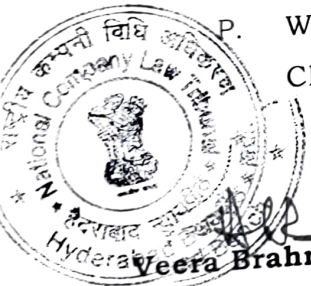
- D. We direct the Petitioner companies to comply with the observations pointed out by the Regional Director and Official Liquidator, if any.
- E. We direct the Petitioner Companies to preserve its books of accounts and papers and records and shall not be disposed of without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.
- F. We direct the Petitioner Companies to ensure statutory compliance of all applicable laws and also on sanctioning of the present Scheme the Petitioner Companies shall not be absolved for any of its statutory liability in any manner.
- G. Since the Transferor Company is a listed entity, Petitioner Companies are directed to comply all the observations pointed out by the SEBI, BSE&NSE.
- H. We direct the Petitioner Companies involved in the Scheme to comply with Rule 17 (2) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2013. The Petitioner Companies within 30 days after the date of receipt of certified copy of the order, shall cause certified copy to be delivered in Form INC-28 to the Registrar of Companies concerned for registration and on such certified copy being delivered, Registrar of Companies concerned shall take all necessary consequential action in respect of the Petitioner Companies. All the legal proceedings pending by or against the Transferor Company shall be continued by or against the Transferee Company.
- J. The tax implications, if any, arising out of the scheme is subject to final decision of Concerned Tax Authorities and the decision of the Concerned Tax Authorities shall be binding on the Transferee Company.
- K. The sanction of the Scheme by this Tribunal shall not forbid the revenue authority from taking appropriate recourse for recovering the existing and previous tax liabilities of the Transferor and Transferee Companies.



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CP(CAA)No.193/230/HDB/2020  
IN  
CA (CAA) NO. 225/230/HDB/2019  
Date of Order:16.11.2021

- L. We direct the Transferee Company to comply with the provisions of Section 2 (41) of the Companies Act, 2013.
- M. The Transferor Company shall be dissolved without going through the process of winding up.
- N. The Petitioner Companies shall until the completion of the Scheme of Amalgamation, file a statement in such form and within such time as prescribed with the Registrar every year duly certified by a Chartered Accountant or a Cost Accountant or a Company Secretary to the effect that the Scheme of Amalgamation is being complied with in accordance with the orders of the Tribunal as required under Section 232 (7) of the Companies Act, 2013.
- O. Any person shall be at the liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- P. With the above directions, the CP(CAA)No.193/230/HDB/2020 is disposed of.



*Veera Brahma Rao Arekapudi*  
Member (Technical)

*Dr.N.V.Ramakrishna Badrinath*  
Member (Judicial)

Pavani

*Pavani*  
Deputy Registrar / Assistant Registrar / Court Officer  
National Company Law Tribunal, Hyderabad Bench.

प्रमाणित प्रति  
CERTIFIED TRUE COPY  
केस नंबर (CP(CAA)No.193/230/HDB/2020)  
दिनांक 16/11/2021  
22/11/2021