

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

COMPANY JURISDICTION

+ **CP No.16 of 2008**

% **DATED 29.02.2008**

In the matter of
The Companies Act, 1956:

Scheme of Arrangement of:

Asians Hotels Limited ... **Petitioner/Transferor
Company**

with

Chillwinds Hotels Limited. ... **Petitioner/Transferee
Company no1**

AND

Vardhman Hotels Limited **Petitioner/Transferee
Company no2**

Through : Mr. Rajiv Nayyar, Sr. Advocate
with Mr. A. Das, Advocate
Mr. R.D. Kashyap, Dy. ROC
Ms. Manisha Tyagi, Advocate for
Official Liquidator

VIPIN SANGHI, J. (ORAL)

1. This is a petition under Sections 391-394 of the Companies Act, 1956 seeking sanction of the Scheme of Arrangement and Demerger between Asians Hotels Limited (Petitioner/transferor company) and Chillwinds Hotels Limited.(petitioner/transferee company no1) and Vardhman Hotels Limited (Petitioner/transferee Company no.2). The scheme proposes inter alia, the demerger and

vesting of two undertakings (as defined in the scheme), i.e. the Mumbai Undertaking and the Kolkata Undertaking of the petitioner company no1 into the petitioner company no.2 and petitioner company no3 respectively.

2. The Petitioner/Transferor company was incorporated on 13.11.1980. The Petitioner/transferee company no1 was incorporated on 8.1.2007 and the Petitioner/transferee company no2 was incorporated on 8.1.2007.

3. The registered office of the transferor company is situated at Bhikaji Kama Place, M.G.Marg, New Delhi and of transferee company no1 is at D-4, Qutub Hotel & Apartments, Shaheed Jeet Singh Marg, New Delhi-110016 and of transferee company no 2 is at 145, Tribhuvan Complex, Ishwar Nagar, Mathura Road, New Delhi-110065, thus, within the jurisdiction of this Court.

4. The authorized share capital of the Petitioner/Transferor company is Rs.70 crores divided into 4 crore equity shares of Rs. 10/- each and 3 crore preference shares of Rs.10/- each. The issued, subscribed and paid up equity share capital of the Petitioner/Transferor company is Rs.32,80,35,640/- divided into 2,28,03,564 equity shares of Rs. 10/- each and 1 crore 1% non-convertible redeemable preference shares of Rs.10/- each.

5. The authorized share capital of the Transferee company

no1 as on 30.06.2007 is Rs. 5 lacs divided into 50,000 equity shares of Rs. 10/- each. The issued, subscribed and paid up capital of the Petitioner/transferee company no.1 is Rs.5 lacs divided into 50,000 equity shares of Rs.10/- each.

6. The authorized share capital of the Transferee company no2 is Rs. 5 lacs divided into 50,000 equity shares of Rs. 10/- each. The issued, subscribed and paid up capital of the Petitioner/transferee company no.2 is Rs.5 lacs divided into 50,000 equity shares of Rs.10/- each.

7. The petitioner companies had filed Company Application (M) No. 153/2007 which was allowed by order dated 14.11. 2007. By the aforesaid order, the requirement of conducting statutory meetings of preference shareholders of transferor company and equity shareholders, secured and unsecured creditors of both the transferee companies was dispensed with. The meeting of equity shareholders secured and un-secured creditors of the transferor company was directed to be held.

8. The Transferor company was directed to convene the meeting of its equity shareholders at Regency Ballroom, Hyatt Regency Delhi, Bhikaji Kama Place, New Delhi – 110607 on 7th January 2008 at 10.30 a.m , for the purpose of considering and, if thought fit, approving the said Scheme of Arrangement.

9. Mr Pragyan Pradip Sharma, Advocate and Mr. Rajeev Saxena, Advocate were appointed as the Chairperson and the Alternate Chairperson respectively for the said meeting of equity shareholders of the Transferor company. The required quorum was fixed at 30 shareholders in number and 25% of the total shareholding in value. The Chairperson of the said meeting, in his report dated 11.01.2008, has reported that the meeting was attended by 560 shareholders in person/ through proxy/ authorised representatives, and that the said Scheme was approved by 524 shareholders representing 13,553,554 shares and opposed by 12 shareholders representing 183 shares. The copy of the Chairperson's report has been filed on record. Thus the proposed scheme was approved by equity shareholders representing nearly 99% in value of the shareholders present and voting at the said meeting.

10. The Transferor company was directed to convene the meeting of its unsecured creditors at Regency Ballroom, Hyatt Regency Delhi, Bhikaji Cama Place, New Delhi – 110607 on 7th January 2008 at 4 p.m , for the purpose of considering and, if thought fit, approving the said Scheme of Arrangement.

11. Mr Surya Kant, Advocate and Ms G.M Padma Priya, Advocate were appointed as the Chairperson and the Alternate Chairperson respectively for the said meeting of un-secured creditors of the Transferor company. The required quorum was fixed at 25 un secured creditors in number and 30% of the total unsecured debt in

value. The Chairperson of the said meeting, in his report dated 9.01.2008, has reported that the meeting was attended by 178 unsecured creditors in person/ through proxy/authorised representatives, entitled together to unsecured debt of Rs.159,59,97,916/-. And the said Scheme was approved by 171 unsecured creditors representing Rs.1,59,48,92,780/- constituting 99.94% in value of the total unsecured debt of the creditors present and voting, of the Transferor company and 4 unsecured creditors representing Rs.829,748/- voted against the scheme. The copy of the Chairperson's report has been filed on record.

12. The Transferor company was directed to convene the meeting of its secured creditors at Regency Ballroom, Hyatt Regency Delhi, Bhikaji Cama Place, New Delhi – 110607 on 7th January 2008 at 3 p.m, for the purpose of considering and, if thought fit, approving the said Scheme of Arrangement.

13. Mr Yogesh Kapur, Advocate and Ms Kiran Dharam, Advocate were appointed as the Chairperson and the Alternate Chairperson respectively for the said meeting of secured creditors of the Transferor company. The required quorum was fixed at 2 secured creditors in number and 15% of the total secured debt in value. The Chairperson of the said meeting, in his report dated 8.01.2008, has reported that the meeting was attended by 5 secured creditors in person/ through proxy/authorised representatives, entitled together to secured debt of Rs.155,83,81,763/-, of the Transferor company and

that the said Scheme was approved unanimously by all the 5 secured creditors. The copy of the Chairperson's report has been filed on record.

14. Vide order dated 15.01.2008, citations were directed to be published in "The Times Of India" (English edition) and "Nav Bharat Times" hindi edition), in terms of Companies (Court) Rules, 1959. An affidavit dated 13th February, 2008 has been filed by one Mr. Shiv Jatia, the authorized signatory of the petitioner companies about the publication of the citations in "The Times Of India " (English) and "Nav Bharat Times" (Hindi) on 12.02.2008. The said publication containing the said citations were also produced along with the affidavit.

15. Notices were issued to the Regional Director (Northern Region) vide order dated 15.01.2008. The report has also been filed by Shri Dhan Raj, Regional Director (Northern Region) by an affidavit, dated 22nd February 2008. The R.D has drawn the attention of this court towards the report of the chairperson wherein it is stated that in the meeting of the equity shareholders and the meeting of the unsecured creditors, there were 12 and 4 votes respectively, that were casted against the approval of the scheme of arrangement and another objection which is raised is that the shares of the transferor company are listed with NSE and BSE and their consent is received but subject to certain conditions. With regard to the first issue raised by the Regional Director the reports of the respective chairpersons of the meetings of the equity shareholders and the unsecured creditors,

states that the scheme was approved by more than 99% of the total value of the shareholding and unsecured debt of shareholders and unsecured creditors present and voting, thus this observation does not come in the way of the sanctioning of the scheme of arrangement. So far as the second issue is concerned, an affidavit by one Mr. Shiv Jatia, Managing Director of the petitioner company, has been filed on record stating that petitioner company undertakes to comply with the conditions as laid down by the BSE and NSE. In view of the aforesaid, this observation raised by the Regional Director does not survive.

16. There is no other legal impediment to sanction of the Scheme of arrangement which is annexed to the petition. Consequently, sanction is hereby granted to the Scheme of arrangement under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copies of this order be filed with the Registrar of Companies within five weeks. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty that is payable in accordance to law. The sanction shall become effective from the appointed date of arrangement, that is 1st April 2007.

17. The petition is disposed of in terms of the above order.

February 29, 2008

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**VIPIN SANGHI,
JUDGE**