
(2023) 03 NCLT CK 0074
In the National Company Law Tribunal
Case No : CA (CAA)/290/MB-IV/2022
Hamburg Sud India Private Limited Vs

Date of Decision : 30-03-2023

Acts Referred:

Companies Act, 2013 — Section 230, 230(1)(a), 230(1)(b), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2023) 03 NCLT CK 0074

Hon'ble Judges : Kishore Vemulapalli, Member (J); Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Hemant Sethi, Tanaya Sethi, Devanshi Sethi

Final Decision : Disposed Of

Judgement

Prabhat Kumar, Member (Technical)

1. This Bench is convened via Video Conferencing.
2. That the present Scheme of Amalgamation is presented under sections 232 read with Section 230 of the Companies Act, 2013 for the merger of Hamburg Sud India Private Limited with Maersk Line India Private Limited and their respective Shareholders ("the Scheme").
3. The Board of Directors of the Applicant Companies in their respective meetings held on 24th November 2022 have approved the proposed Scheme. The Appointed Date of the Scheme is 1st April 2023.
4. That the respective Applicant Companies are engaged in the business of providing shipping agency services in India to their principal.
5. The proposed Scheme will be beneficial to the Applicant Companies, their respective Shareholders, Creditors, Employees and other Stakeholders. The rationale for the Scheme is as follow:

The following benefits will accrue pursuant to the Scheme:

- i. Consolidation of businesses of the Transferor Company and Transferee

Company;

ii. Reduction in number of companies and regulatory compliances thereof;

iii. Streamlining the holding structure;

iv. Ease of management;

v. Reduction of operating and administrative costs; and

vi. Leveraging on synergies on consolidation.

6. Upon the Scheme becoming effective and in consideration of the transfer and vesting of the Transferor Company (inclusive of all assets and liabilities thereof), into and with the Transferee Company by operation of law, the Transferee Company shall, without any further application or deed, issue and allot:

"472 (Four Hundred and Seventy-Two) equity shares of the Transferee Company of INR 10 each for every "1000 (One Thousand) equity shares of the Transferor Company of INR 10 each, fully paid up."

7. The Authorized, Issued, Subscribed and Paid-up Capital of the First Applicant Company/ Transferor Company as on 31st March, 2022 is as under:

Share Capital

Amount in INR

Authorised Share Capital:

10,00,000 equity shares of Rs 10/- each

1,00,00,000/-

Issued, Subscribed and Paid-up Capital:

4,27,000 equity shares of Rs 10/- each

42,70,000/-

8. The Authorised, Issued, Subscribed and Paid-up Capital of the Second Applicant Company/ Transferee Company as on 31st March, 2022 is as under:

Share Capital

Amounts in INR

Authorised Share Capital:

10,00,000, Equity shares of Rs 10/- each

1,00,00,000/-

Issued, Subscribed and Paid-up Capital:

9,10,000 equity shares of Rs 10/- each

91,00,000/-

9. The financial details/ summary of the First Applicant Company/ Transferor Company as on 31st October, 2022 is as under:

Year

Revenue

Profit/(Loss) before Tax

2021-22

23,51,12,000/-

1,90,03,000/-

2022-23 upto

31.10.2022

12,53,49,913/-

1,17,80,786/-

10. The financial details/ summary of the Second Applicant Company/ Transferee Company as on 31st October, 2022 is as under:

Year

Revenue

Profit/(Loss) before Tax

2021-22

1,71,47,00,000/-

15,34,00,000/-

2022-23 upto 31.10.2021

1,23,23,23,437/-

10,98,66,097/-

11. That there are 2 (Two) Equity Shareholders in the First Applicant Company and Second Applicant Company and that they have obtained the Consent Affidavits from all the Equity Shareholders of the Applicant Companies. In view of the above fact that all the Equity Shareholders of the respective Applicant Companies have given their Consent Affidavits, the meetings of the Equity Shareholders of the respective Applicant Companies are hereby dispensed with.

12. As on 31st October 2022, there are no Secured Creditors in either of the Applicant Companies. Therefore, the question of convening and holding the meeting of Secured Creditors of the respective Applicant Companies does not

arise.

13. As on 31st October, 2022 there are 6 (six) identified Unsecured Creditors amounting to Rs. 12,02,640/- in the First Applicant Company and there are 46 (Forty-Six) identified Unsecured Creditors amounting to Rs. 6,41,83,796/- in the Second Applicant Company. The respective Applicant Companies have obtained a certificate from Chartered Accountant certifying the list of Creditors.

14. The Learned Counsel for the Applicant Companies submits that, as far as the Unsecured Creditors of the Applicant Companies are concerned, the present Scheme is an arrangement between the Applicant Companies and their respective Shareholders as contemplated under Section 230(1)(b) of the Companies Act, 2013 and not in accordance with the provisions of Section 230(1)(a) of the Companies Act 2013, as there is no Compromise and/or Arrangement with the Creditors, as no sacrifice is called for. The rights of the Creditors will not be affected as the assets of the Transferee Company post sanctioning the Scheme will be sufficient to pay off all the Creditors in the ordinary course of business. Further, the Applicant Companies undertakes to issue individual notices to all its Unsecured Creditors, with the direction that they may submit their representation, if any, to the Tribunal within 30 days of receipt of notice. The said notices to be sent either by the Registered Post-AD/ Speed Post/ Hand Delivery and by E-mails (whose mails are available with the respective Applicant Companies). In view of above and the fact that the Applicant Companies have undertaken to serve individual notices to its concerned Unsecured Creditors of the respective Applicant Companies as mentioned above, the meeting of the Unsecured Creditors of respective Applicant Companies are hereby dispensed with.

15. That the Applicant Companies are directed to serve notices along with copy of Scheme upon the-

(i) Central Government through the office of Regional Director, Western Region, Mumbai;

(ii) Jurisdictional Registrar of Companies;

(iii) Income Tax Authority within whose jurisdiction the respective Applicant Companies are assessed to tax i.e. for First Applicant Company having PAN: AACCH3333E at Circle 3(1)(1), Aaykar Bhawan, Mumbai; for Second Applicant Company having PAN: AAHCM0698N at Central Circle 4(3), Air India Building, Mumbai; and the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3rd Floor, Aaykar Bhawan, Mahrishi Karve Road, Mumbai - 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];

(iv) Jurisdictional GST Authority(s) (proper officer), within whose jurisdiction such companies are assessed to tax under GST law;

(v) Ministry of Corporate Affairs;

(vi) Any other Sectoral/ Regulatory Authorities relevant to the Petitioner Companies or their business.

under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

16. The Transferor Company is also directed to serve the Copy of Scheme upon Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17. The Notice shall be served through by Registered Post-AD/ Speed Post/ Hand Delivery and email along with copy of scheme and state that "If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme". It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.

18. The Applicant Companies will submit –

a. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.

b. List of pending IBC cases, if any, along with all other litigation pending against the Applicant Companies having material impact on the proposed Scheme.

c. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.

19. In case of Shareholder(s) other than individuals, the Petitioner Companies shall file Board Resolution recording the fact of consent and the person who is authorized to give consent for waiver of the meeting along with extract of minutes of relevant meeting.

20. The Petitioner Companies shall determine the Consideration under the Proposed Scheme on the basis of actual financial results of the Petitioner Companies as on appointed date i.e. 1.4.2023 and file the valuation report substantiating such consideration. In case, there is any change in the consideration under the scheme, the Petitioner Companies shall serve a copy of scheme afresh upon all noticee, highlighting the changes effected therein distinctively.

21. That the Applicant Companies shall file affidavit of service in and compliance of serving the notices to all 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.

22. Order accordingly.