(2023) 03 NCLT CK 0011

In the National Company Law Tribunal

Case No : CSP C.P. (CAA)/8/MB/C-I/2023 CONNECTED WITH CSA NO. C.A. (CAA) /184/MB/C-I/2022

United Seamless Tubulaar Private Limited Vs

Date of Decision : 03-03-2023

Acts Referred:

Companies Act, 2013 — Section 90, 230, 230(5), 232, 232(3)(i), 232(6)
Income Tax Act, 1961 — Section 2(1B)

Citation : (2023) 03 NCLT CK 0011

Hon'ble Judges : H.V. Subba Rao, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Harsh Ruparelia, Rupa Sutar

Final Decision : Disposed Of

Judgement

H. V. Subba Rao, Member (Judicial)

1. Heard the Authorized Representative for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.

2. The sanction of this Tribunal is sought under section 230-232 and other applicable provisions of the Companies Act, 2013 ('Act') in the matter of Scheme of Amalgamation for merger of United Seamless Tubulaar Private Limited ("USTPL" or the "Transferor Company" or the "First Petitioner Company") with and into Maharashtra Seamless Limited ("MSL" or the Transferee Company" or the "Second Petitioner Company") and their respective Shareholders ("the Scheme" or "this Scheme").

3. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ('Act') in the matter of Scheme of Amalgamation for merger of United Seamless Tubulaar Private Limited ("USTPL" or the "Transferor Company" or the "First Petitioner Company") with and into Maharashtra Seamless Limited ("MSL" or the "Transferee Company" or

the “Second Petitioner Company”) and their respective Shareholders (“the Scheme” or “this Scheme”).

4. The Authorized Representative for the Applicant Companies submits that First Petitioner Company is primarily engaged in the business of seamless pipes like gas cylinder, large diameter thin wall, high alloyed OCTG, thick wall mechanical pipes, Large diameter hydraulic cylinder pipes.

5. The Authorized Representative for the Applicant Companies submits that Second Petitioner Company is engaged in the business of manufacturing of seamless pipes & tubes and wide product range using the CPE technology. MSL also engaged in the ERW pipe category and also started coated facility. The Company has also diversified into renewable power generation and rig operations.

6. The Authorised Representative for the Petitioner Companies submits that the Board of Directors of the First Petitioner Company and the

Second Petitioner Company vide their resolution dated 16th June 2022, approved the Scheme of Amalgamation of USTPL with and into MSL and their respective Shareholders. The Appointed Date of the Scheme is 1st October 2021.

7. The Authorized Representative for the Petitioner Companies submits that the companies under this Scheme are part of same group. The First Petitioner Company is a wholly owned subsidiary of Second Petitioner Company. The rationale for amalgamation of First Petitioner Company with Second Petitioner Company is as under:

The amalgamation of the First Petitioner Company with Second Petitioner Company would inter-alia have the following benefits:

i. The amalgamation will result in the consolidation of the business operations undertaken by the Transferor Company and Transferee Company and will create various operational synergies in the com-bined business operations

ii. The amalgamation would facilitate increase in Combined Revenue due to availability of bigger basket of product mix as the combined entity would be able to offer complete range of alloy steel grades

iii. The amalgamation will facilitate consolidation of various depart-ments like Finance, admin, Human Resources, Procurement, etc. leading to time and cost efficiencies

iv. The amalgamation would help in using technology of both the com-panies in a single entity thereby leading to higher yield and reduce process cost

v. The amalgamation would help in combining the product range and quicken the supply / delivery of various products by usage of com-bined supply chain of both the companies, leading to better satisfac-tion of customer demand

vi. The amalgamation will facilitate combining the raw material re-quirements of both the companies thereby resulting in better nego-tiating possibilities with suppliers and overall cost reduction

vii. The amalgamation will facilitate submitting of single bid by com-bined entity for various tenders leading to cost and time efficiencies

viii. The amalgamation will facilitate combining the banking facilities of both the entities leading to efficiencies

ix. Together both companies will be successful in unlocking tremen-dous value in terms of Marketing, Earnings, Cost reduction and Re-source optimisation

x. The amalgamation will result in reduction of the companies leading to reduction in compliance requirements, overheads, administra-tive, managerial and other expenditure and optimal utilisation of various resources due to consolidation of activities

xi. The scheme shall be beneficial and in interests of the shareholders and creditors of the Transferor Company and the Transferee Com-pany and all concerned.

8. The Authorized Representative for the Petitioner Companies submits that the Company Scheme Petition has been filed in consonance with the order dated 16th December 2022, passed by this Hon’ble Tribunal in C.A.(CAA) / 184 / MB / 2022. Further the meetings of the shareholders and creditors of the Petitioner Companies were dispensed with by the Hon’ble Tribunal vide order dated 16th December 2022 in C.A. (CAA)/ 184 / MB/2022.

9. The Authorized Representative for the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per directions of the Hon’ble Tribunal. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.

10. The Authorized Representative for the Petitioner Companies states that the shares of the Second Petitioner Company is listed on BSE Limited and National Stock Exchange of India Limited. The equity shares of the First Petitioner Company are not listed on any stock exchange in India. The First Petitioner Company is a wholly-owned subsidiary of the Second Petitioner Company.

11. The Regional Director, Western Region on behalf of the Central Government has filed its Report dated 21st February 2023 (‘Report’) praying that this Tribunal may pass such orders as it thinks fit and proper in the facts and merits of the case The observations of the Central Government on the Scheme are submitted as paragraph 2 (a) to (g) of the Report. In response to the observation made by the Central Government, the Petitioner Companies have also given necessary undertakings and clarification vide their rejoinder affidavit dated 22nd February 2023. The observations made by the Central Government and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Para No.

Observations as per the re- port of the Central Govern- ment dated 21st February 2023

Response of the Peti- tioner Companies

2

(a)

"(a) In compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such ac- counting entries which are neces- sary in connection with the scheme to comply with other ap- plicable Accounting Standards such as AS-5(IND AS-8) etc."

Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2 (a) of the report is concerned, the Petitioner Companies undertakes that in addition to compliance of AS-14 (IND AS-103) and gener- ally accepted accounting prin- ciples, the Petitioner Compa- nies undertakes to pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8), etc., if applicable for ac- counting of the Scheme.

2

(b)

(b) As per Definition of the Scheme,

"Appointed Date" means 1st Oc- tober 2021, or such other date as may be fixed or approved by the National Company Law Tribu- nal at Mumbai or such other competent Authorities; And

1.7 "Effective Date" means the date on which the certified or au- thenticated copies of the order sanctioning this Scheme, passed by the National Company Law Tribunal, Mumbai Bench are filed with the Registrar of Com- panies, Maharashtra at Mum- bai, having jurisdiction over the Transferor Company and the Transferee Company;

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly in- dicate an appointed date from which it shall be effective and the

scheme shall be deemed to be ef- fective from such date and not at a date subsequent to the ap- pointed date. However, this as- pect may be decided by the Hon'ble Tribunal taking into ac- count its inherent powers.

The Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the

Minis- try of Corporate Affairs.

Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2 (b) of the report is concerned, the Petitioner Companies undertakes that the Appointed Date was fixed as 1st day of October 2021, as mentioned in Clause 1.5 of Definitions of the Scheme, which is in compliance with Section 232(6) of the Compa- nies Act, 2013 and the same shall be deemed to be effective from such Appointed Date. The same therefore, meets the requirements clarified vide cir- cular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Min- istry of Corporate Affairs. Fur- ther, the Petitioner Companies undertakes to comply with the requirements clarified vide cir- cular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Min- istry of Corporate Affairs.

2

(c)

“(c) The Hon’ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.”

Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2 (c) of the report is concerned, the Petitioner Companies hereby states the meeting of the members and creditors were dispensed with by the Hon’ble Tribunal, in ac- cordance with directions of this Hon’ble Tribunal in Com- pany Scheme Application No.

C.A. (CAA) / 184 / MB / 2022 dated 16th December 2022. The Petitioner Compa- nies have complied with direc- tions issued by this Hon’ble Tribunal in C.A. (CAA) / 184

/ MB / 2022.

2

(d)

“(d) The Petitioner Company states that the Transferee Com- pany shall be in compliance with provisions of Section 2(1B) of the

Income Tax Act, 1961. In this re- gards, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder;”

Apropos the observation of the Regional. Director, Western Region, Mumbai, as stated in paragraph 2 (d) of the Report is concerned, it is submitted that

the Petitioner Companies have drawn up the Scheme to com- ply with the conditions laid down under the provisions of Section 2(1B) of the Income-tax Act, 1961 in relation to “amalgamation” or “merger”. The Petitioner Companies hereby undertakes to comply with conditions laid down un- der Section 2(1B) of the In- come-tax Act, 1961 read with Income-tax Rules, 1962, as may be applicable with respect to the present Scheme.

2 (e)

“(e) Petitioner Company have to undertake to comply with Sec- tion 232(3)(i) of Companies Act, 2013, where the transferor com- pany is dissolved, the fee and stamp duty paid by the transferor company on its authorised capi- tal shall be set-off against fees and stamp duty payable by the trans- feree company on its authorised capital subsequent to amalgama- tion and therefore, petitioners to undertake that the transferee company shall pay the difference of fees and stamp duty.”

Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2 (e) is concerned, the Petitioner Companies sub-mits that the setting off of fees paid by the Transferor Com- pany on its Authorised Share Capital shall be accordance with provisions of section 232(3)(i) of the Companies Act, 2013 for payment of dif-ferential RoC fees, if any on the increased authorised share capital. The aggregate author- ised share capital of the Trans- feree Company shall automati- cally stand increased to that ef- fect by simply filing the requi- site e-form INC-28 with the rel- evant Registrar of Companies without any further act, instru- ment or deed on the part of Transferee Company. Further,

in the event of any increase in

the authorised share capital of Transferor Company and/ or Transferee Company before the Effective Date, such in- crease shall be given effect to while aggregating the author- ised share capital of the Trans- feree Company.

2 (f)

“(f) It is observed that trans- feree company is a listed com- pany, therefore, petitioner com- pany may be directed to place on record, the proof of disclosure of present scheme to NSE and BSE, as required under SEBI regula- tion and comply with NSE & BSE observations in the matter.”

Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2 (f) of the Report is concerned, the Second Peti-tioner Company, being a com- pany listed on stock exchanges submits that the Second Peti- tioner Company in accordance with the applicable SEBI Regulations and Listing Agree- ments have disclosed the Scheme to the BSE Limited ('BSE') and the National Stock Exchange of India Limited ('NSE'). The copy of the letters filed with BSE and NSE are annexed as Exhibit 'H1' and 'H2' to the Company Scheme Petition. The Scheme provides for amalgamation of a wholly- owned subsidiary with its Holding Company; hence, the Second Petitioner Company has made all adequate disclo- sures in accordance with SEBI Regulations read with applica- ble Circulars framed in this re- gard. Without prejudice to the above, the Second Petitioner Company has also served no-

tices upon BSE, NSE and

SEBI, under Section 230(5) of the Companies Act, 2013. The Second Petitioner Company undertakes to comply with di- rections of BSE and NSE, if is- sued and applicable in this re- gard.

2 (g)

"(g) That on examination of the report of the Registrar of Companies, Mumbai dated 17.02.2023 (Annexed as Annex- ure A-1) that all the Petitioner Companies fall within the juris- diction of ROC, Mumbai. It is submitted that there is no com- plaint is pending against the pe- titioner Companies and /or there is no representation regarding the proposed scheme of Amalgama- tion has been received against the Petitioner Companies. Further, the petitioner companies have filed Financial Statements up to 31.03.2022 further observations in ROC report are as under:-

Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2 (g) of the Report is concerned, the contents thereof are correct factual ob- servations and thus, does not require any response. Further, the First Petitioner Company confirm, that they have filed AOC-4 and MGT-7 up to 31.03.2022.

As far as the observation of the Regional Director, as stated in paragraph 2(g) is concerned, the Petitioner Companies, hereby further submit the fol-

lowing:

i. That the ROC Mumbai in his report dated 17.02.2023 has stated that no Inquiry, in- spection, investigation & prosecu- tion is pending against the sub- ject applicant companies.

ii. As per the provisions of Section 232(3)(i) of the Compa- nies Act, 2013, where the trans- feror company is dissolved, the

fee, if any, paid by the transferor

company on its authorised capi- tal shall be set-off against any fees payable by the Transferee Com- pany on its authorised capital subsequent to the amalgamation. Therefore, remaining fees, if any after setting-off the fees already paid by the transferor company on its authorised capital, must be paid by the transferee company on the amalgamation.

iii. May be decided on its

merits.”

(i) So far as the observation of the ROC in paragraph 2(g)(i) of the Report is con- cerned, the contents thereof are correct factual observations and thus, does not require any response.

(ii) So far as the observation of the ROC in paragraph

2(g)(ii) of the Report is con- cerned, the Petitioner Compa- nies submits that the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be accord- ance with provisions of section 232(3)(i) of the Companies Act, 2013 for payment of dif- ferential RoC fees, if any on the increased authorised share capital. The aggregate author- ised share capital of the Trans- feree Company shall automati- cally stand increased to that ef- fect by simply filing the requi- site e-form INC-28 with the rel- evant Registrar of Companies without any further act, instru- ment or deed on the part of Transferee Company. Further, in the event of any increase in the authorised share capital of Transferor Company and/ or Transferee Company before the Effective Date, such in- crease shall be given effect to while aggregating the author- ised share capital of the Trans- feree Company.

12. The observations made by the Regional Director, Western Region on behalf of the Central Government are enlisted herein in Para 11 above along with response of the Petitioner Companies on the observations of the Regional Director, Western Region filed vide affidavit of the Petitioner Companies dated 22nd February 2023. The clarifications and undertakings given by the Petitioner Companies in Para 11 above are accepted by this Tribunal.

13. The Official Liquidator, High Court, Bombay has filed its report dated 10th February 2023, inter alia, stating therein that the affairs of the First Petitioner Company have been conducted in a proper manner and that the First Petitioner Company may be ordered to be dissolved without winding up by the Tribunal.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

15. The Authorized representative for the Petitioner Companies submits that the entire issued, subscribed and paid-up share capital of the First Petitioner Company is held by the Second Petitioner Company (along with its Nominees). Accordingly, pursuant to this Scheme, no shares of the Second Petitioner Company shall be issued and allotted in respect of shares held by it in the First Petitioner Company. Upon the Scheme becoming effective, the entire share capital of the First Petitioner Company shall be cancelled and extinguished

without any further act, deed or instruments as an integral part of this Scheme.

16. Since all the requisite statutory compliances have been fulfilled, C.P. (CAA) / 8 / MB / 2023 connected with C.A. (CAA) / 184 / MB / 2022 filed by the Petitioner Companies is made absolute in terms of prayer clauses of the said Company Scheme Petition.

17. The Scheme annexed at Exhibit D to the Company Scheme Petition is hereby sanctioned, and the Appointed Date of the scheme is 1st October 2021. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/ Trade Creditors, Employees and/or any other stakeholders concerned.

18. The Petitioner Companies are directed to file a certified copy of this Order along with the copy of Scheme with the concerned Registrar of Companies, electronically in e-form INC-28 within 30 days from the date of receipt of the Order duly certified by the designated Registrar of this Tribunal. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.

19. The Petitioner Companies shall lodge a copy of this Order along with the Scheme duly certified by designated Registrar of this Tribunal, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within a period of 60 working days from the date of the receipt of the certified copy of the Order from the Registry of this Tribunal.

20. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the designated Registrar of this Tribunal.

21. Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

22. Any concerned authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.

23. Ordered accordingly. Thus, the Company Scheme Petition with C.P. (CAA) /8/ MB/C-I/2023 in C.A. (CAA) /184/MB/C-I/2022 shall stand to be disposed-of.