IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 924 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 835 OF 2015

CSAV Group Agencies India Limited

………. Petitioner / Transferor Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of CSAV Group Agencies India Limitedwith Hapag-Lloyd India Private Limited and their Respective Shareholders and Creditors

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner.

Mr. Pranil K. Sonawane i/b Valani i/b Mr. A. A. Ansari, for Regional Director .

Mr. Vinod Sharma Official Liquidator.

CORAM: G.S.Patel, J

DATE: 18th March, 2016

1. Heard the learned counsel for the Petitioners. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation of CSAV Group Agencies India Limited with Hapag-Lloyd India Private Limited and their Respective Shareholders and Creditors.

3. Learned Counsel for the Transferor Company and the Transferee Company are engaged in the business of an agency of shipping line, freight forwarding and freight broking.

4. The rationale for the amalgamation is that the Petitioner Company and the Transferee Company are part of same group of companies. Consolidation of the Petitioner Company into the Transferee Company pursuant to this Scheme would result in achieving operational and managerial efficiency, management focus and enhanced flexibility, simplification of group structure and bringing synergy in operations and optimum utilization of common resources.

5. The Petitioner Company and the Transferee Company had approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petitions filed by the Petitioner Company.

6. Learned Advocate for the Petitioner further states that since the Petitioner/Transferor Company is wholly owned subsidiary of the Transferee Company and all the shares of the Transferor Company are presently held by the Transferee Company along with its nominees after the Scheme being sanctioned, no new shares are required to be issued to the members of the Transferor Company

by the Transferee Company and there would be no reorganization of the share capital in the Transferee Company and also in view of the judgment of this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by the Transferee Company was dispensed with, by order dated 30th October, 2015 passed in Company Summons for Directions Nos. 835 of 2015.

7. The learned counsel for the Petitioner Company states that Petitioner Company have complied with all directions passed in Company Summons for Direction and that the Scheme has been filed in consonance with the orders passed in Company summons for Direction.

8. Counsel appearing on behalf of the Petitioner has stated that the Petitioner Company have complied with all requirements as per directions of this Court and have filed necessary Affidavit of compliance in the Court. Moreover, Petitioner Company undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Company are accepted.

9. The Official Liquidator has filed his report on 14th March 2016 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved without being wound up.

10. The Regional Director has filed an Affidavit on 29th February, 2016 stating therein that save and except as stated in paragraph 6(a), 6(b) and 6(c) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6(a), 6(b) and 6(c) of the said affidavit, it is stated that:

(a) *With reference to clause 10.1.4 of the scheme, it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and deficit if any arising shall be debited to goodwill account of Transferee Company.*

(b) *Clause 10.2 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the Compliance of Accounting Standard-14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting standard such as AS-5 etc.*

(c) *That the deponent further submits that the tax issue if any arising out of this scheme shall be subject to final decision of the Income Tax Authority and approval of the Scheme by Hon'ble High Court may not deter the Income Tax authority to scrutinize the tax returns filed by the Petitioner Company after giving effect to amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Company.*

11. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Petitioner Company through their Counsel undertakes that surplus if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and deficit if any arising shall be debited to goodwill account of Transferee Company.

12. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Petitioner Company undertakes it shall pass such accounting entries which are necessary in connection with the Scheme of Arrangement and to comply with any other applicable accounting standards.

13. As far as observations made in paragraph 6(c) of Affidavit of the Regional Director is concerned, the Petitioner Company submits that the Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.

14. The Learned Counsel appearing for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertaking given by the Petitioner Company. The said undertaking given by Petitioner Company is accepted.

15. 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.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition filed by the Petitioner Company are made absolute in terms of prayer clause (a) of the Petition.

17. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

18. The Petitioner Company to lodge a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court, Bombay, with the concerned Superintendent of Stamps, for the

purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.

19. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay.

20. Costs to be paid within four weeks from today.

21. Filing and issuance of the drawn up order is dispensed with.

22. All concerned regulatory authorities to act on a copy of this order along with the modified Scheme duly authenticated by the Company Registrar, High Court, Bombay.

(**G.S.PATEL, J)**

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

Uploaded by: Shankar Gawde, Stenographer