

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 38 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 873 OF 2015

Hapag-Lloyd Global Services Private Limited

..... Petitioner/ Transferee 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 (India)
Limited with Hapag-Lloyd Global Services
Private Limited and their respective
shareholder and creditors

Called for Hearing

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

Ms. Nisha Valani i/b Mr. A. A. Ansari, for Regional Director.

CORAM: G.S.Patel, J

DATE: 18th March, 2016

1. Heard the learned counsel for the Petitioner Company. 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 (India) Limited ('Transferor Company) with Hapag-Lloyd

Global Services Private Limited ('Transferee Company') and their respective shareholder and creditors.

3. Learned Advocate for the Petitioner Company further states that the Transferee Company is engaged in the business of providing services connected to Business Process Outsourcing.
4. The rationale for the amalgamation is that the Transferor Company and the Transferee Company are part of the same group. Consolidation of the Petitioner 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 utilisation of common resources.
5. The Petitioner 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. 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 Company Scheme Petition has been filed in consonance with the orders passed in Company Summons for Direction and seeks sanction to the said proposed Scheme of Amalgamation.
7. Counsel appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Court and they 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 undertaking given by the Petitioner Company are accepted.

8. The Regional Director has filed an Affidavit on 14th March, 2016 stating therein that save and except as stated in paragraph 6 of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6 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. *The Registered Office of the Transferor Company is situated in the State of National Capital Territory of Delhi. Hence the present scheme of amalgamation between the Transferor and Transferee Company will be subject to the condition of obtaining similar approval from Hon'ble High Court of Delhi in respect of Transferor Company.*
- d. *Shareholders of Transferor Company are foreign body corporate. Hence for allotment of new shares to the shareholder of Transferor Company, the Transferee*

Company may be directed to comply with FEMA/RBI regulations as applicable in this regard.

e. 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.

9. 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.
10. 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 and to comply with any other applicable accounting standards.
11. As far as observations made in paragraph 6(c) of Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel state that the Transferor Company have filed similar petition before the Hon'ble High Court of Punjab & Haryana having jurisdiction over the Transferor Company for approving the said scheme and same is pending for final hearing.
12. As far as observations made in paragraph 6(d) of Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel state that while issuing new shares by the Transferee Company to the Shareholders of the Transferor Company, the

Transferee Company will comply with FEMA/RBI regulations as applicable in this regard.

13. As far as observations made in paragraph 6(e) 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. None of the parties concerned have come forward to oppose the Scheme in the court.
16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 38 of 2016, 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/- to the Regional Director, Western Region, Mumbai.
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 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