IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Company Petition No.214 of 2015 (O&M) connected with
Company Petition No.199 of 2015
Date of Decision: 11.04.2016

IN THE MATTER OF:

Scheme of Amalgamation:

CSAV Group (India) Limited

. . . . Petitioner/Transferor Company

With

Hapag-Lloyd Global Services Private Limited

. . . . Transferee Company

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Deepak Suri, Advocate,
for the petitioner/company.

Mr.Deepak Aggarwal, Advocate, with
Mr.Manjit Singh, Dy. Official Liquidator.

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RAKESH KUMAR JAIN, J.

This petition is filed under Section 391 & 394 of the Companies Act, 1956 [for short 'the Act'], duly supported by an affidavit of the petitioner, seeking sanction of the Scheme of Amalgamation (Annexure P-1) [for short 'the Scheme'].

The main objects of the petitioner/Transferor Company and the Transferee Company are detailed in their respective Memorandum and Articles of Association, which are annexed with the petition as Annexures P-5 and P-9 respectively.

The Registered Office of the petitioner-Transferor Company is situated at Gurgaon, Haryana and of the Transferee Company is at Thane (W), Maharashtra.

The Board of Directors of the petitioner- Transferor Company and Transferee Company have approved the Scheme in their respective meetings held on 17.9.2015 and 08.07.2015 respectively.

Earlier, the petitioner Transferor Company had approached this Court by way of Company Petition No.199 of 2015 and vide order passed on 6.11.2015 therein, holding of meetings of the Equity Shareholders and Compulsory Convertible Redeemable Preference Shareholders of the petitioner/Transferor Company were dispensed with and the first motion petition was disposed of accordingly.

Notice of the present petition was issued on 7.12.2015 to the Regional Director, Ministry of Corporate Affairs, Noida and the Official Liquidator and was also ordered to be published in the newspapers, namely, 'Indian Express' (English) and 'Jansatta' (Hindi) both Delhi/NCR Edition as well as in the official gazette of Government of India and was also ordered to be uploaded on the official website of the Official Liquidator. The said order has been complied with and the affidavit of Publication has been placed on record.

Pursuant thereto, report by way of an affidavit of A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, dated 01.03.2016 has been placed on record, in which it is averred in Para No.9 and 11 as under: -

> *"9. That the deponent states that the Registrar of Companies, Delhi & Haryana vide 31 of the report, ROC has stated that it has been observed from the petition that the Board of Directors*

of the Transferor has approved the proposed Scheme of Amalgamation in their Board meeting held on 17.9.2015. Accordingly, in terms of the provisions of Section 117(3) r/w 179(3) of the Companies Act, 2013, the company is required to file such resolution (eform MGT-14) with ROC office within thirty days of passing the resolution whereas none of the above company has filed such resolution so far thereby prima facie violated the provisions of Section 117(3) of the Companies Act, 2013.

11. that the deponent states that the Hon'ble Court may direct the Petitioner Company falling within the jurisdiction of this Hon'ble Court to comply with the provisions of the Accounting Standard 14 related to "the pooling of interests method" as prescribed under Section 211(3C) of the Companies Act, 1956 and under Section 133 of the Companies Act, 2013 as stated in Clause 10 of the Scheme of Amalgamation. In this regard it is submitted that certificate from the Chartered Accountant as required has not been enclosed. Though the Petitioner Company has enclosed as undertaking of the Director w.r.t. the compliance with applicable Accounting Standards."

As regards the objection raised in para No.9 & 11 of the affidavit of the Regional Director, Bindu Sharma authorized signatory and Director of the petitioner-Transferor Company has made the following averments in para No.2 & 3 of her affidavit dated 11.3.2016: -

> *"2. That the Board of the Transferor Company at its Board meeting held on 17.9.2015 approved the Scheme of amalgamation. Accordingly, in terms of the Section 117(3) read with Section 179(3) of the Companies Act, 2013, the Transferor Company has filed such resolution (e form MGT-14) with the Registrar of Companies on 16.2.2016. Copy of the said Form and challan of payment of efiling fees is enclosed herewith as Annexure A-1 (Colly).*
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> *"3. That as per Clause 10.1.1 of the scheme, the transferee shall follow "the pooling of interests method" referred to in Accounting Standard 14/accounting for amalgamation issued by the Institute of Chartered Accountants of India. The petitioner undertakes to comply with the Accounting Standard 14 as prescribed in Clause 10 of the Scheme of Amalgamation. The transferee company had also filed the undertaking by one of its Director with reference to the compliance with the applicable Accounting Standards with the Regional Director, copy of the same is enclosed herewith as Annexure A-2. It is further submitted that certificate from the Chartered Accountant is not required nor is it mandatory by law regarding Accounting Standard 14."*

The above stated explanation submitted by the Director-cum-authorised signatory of the Transferor Company meets with the queries raised by the Regional Director.

The Official Liquidator in its report dated 7.4.2016 has submitted that in view of the observations of Chartered Accountant, the affairs of the Petitioner/Transferor Company have not been conducted in a manner prejudicial to the interest of its members, creditors or to public interest. However, in para 5 of the report of the Official Liquidator, it is averred as under: -

> *"That the company complied with the provisions of transfer pricing/companies Act and service tax for the translations with related parties. However, transfer pricing matter is under litigation for the AY 2010-11 and Amount involved is Rs.1,33,14,930/-.*

In this regard, learned counsel for the petitioner/Transferor Company has pointed out para 5.2 of the Scheme, which reads as under: -

> *"All tax assessment proceedings/appeals of whatsoever nature by or against the Transferor Company pending and/or arising at the Appointed Date and relating to the Transferor Company shall be continued and/or enforced until the Effective Date by the Transferor Company. In the event of the Transferor Company failing to continue or enforce any proceeding/appeal, the same may be continued or enforced by the Transferee Company, at the cost of the Transferee*

> *Company. As and from the Effective date, the tax proceedings shall be continued and enforced by or against the Transferee Company in the same manner and to the same extent as would or might have been continued and enforced by or against the Transferor Company."*

Learned counsel for the petitioner-Company has also submitted that the Bombay High Court has already sanctioned the Scheme of Amalgamation filed by the Transferee Company vide order dated 18.3.2016 passed in Company Scheme Petition No.38 of 2016.

It is further submitted by counsel for the petitioner-Company that there are no investigation proceedings against the Transferor Company under Sections 235 to 251 of the Act.

For the reasones mentioned hereinabove and on the consideration of all the relevant facts and the procedural requirements contemplated under Sections 391 & 394 of the Act and the relevant Rules and on due consideration of the report of the Regional Director Northern, Ministry of Corporate Affairs, New Delhi and Official Liquidator, the Scheme of Amalgamation is hereby sanctioned and as a result thereof, the assets and liabilities of the Transferor Company shall stand vested in the Transferee Company and the Transferor Company shall be dissolved without being wound up. The Transferee Company shall comply with the procedural requirement as per the Accounting Standard 14 related to "the pooling of interests method" as prescribed under Section 211(3C) of the Companies Act, 1956 and under Section 133 of the Companies Act, 2013 as stated in Clause 10 of the Scheme of Amalgamation and shall also abide by the result of the pending litigation for the Assessment Year 2010-11 and the transfer pricing matter in case it is decided against the company.

The Scheme shall be binding on the Transferor and Transferee Companies, their respective shareholders, creditors and all concerned.

Let formal order of sanction of the Scheme be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt of the same.

A notice of the order be published in the newspapers, namely, Indian Express (English), Jansatta (Hindi) both Delhi/NCR Edition and in the official gazette of Government of Haryana.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Learned counsel for the petitioner-Transferor Company states that the Transferor Company would voluntarily deposit a sum of ₹50,000/- in the Common Pool Fund Account of the Official Liquidator within four weeks. The statement is accepted.

Disposed of accordingly.

(RAKESH KUMAR JAIN)
11.04.2016 **JUDGE**
Vivek