

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.A. (CAA) No.24/BB/2021
U/Ss 230 to 232 of the Companies Act, 2013

In the matter of

1. M/s. Wabtec India Transportation Pvt Ltd

6th Floor of the South West Tower No.18,
ITC Green Centre, Banaswadi Main Road,
Maruthiseva Nagar,
Bengaluru – 560 005

... Applicant Company No.1/
Transferor Company

2. M/s. Ge Global Sourcing India Pvt Ltd

6th Floor of the South West Tower No.18,
ITC Green Centre, Banaswadi Main Road,
Maruthiseva Nagar,
Bengaluru – 560 005

... Applicant Company No.2/
Transferee Company

Pronouncement of Order: 13th May, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant Companies : Mr. Arjun Perikal

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.A. (CAA) No.24/BB/2021 is filed by M/s. Wabtec India Transportation Private Limited and M/s. Ge Global Sourcing India Private Limited ('Applicant Companies') under Sections 230 to 232 of the Companies Act, 2013, by inter alia seeking to dispense with the meetings of the Equity Shareholders and Unsecured Creditors of the Applicant Companies.



2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:

(1) **M/s. Wabtec India Transportation Private Limited**

(hereinafter referred to as Applicant Company No.1/'Transferor Company No.1') was incorporated, under the 2013 Act, in the state of West Bengal on 20th July, 2015 as a private limited company with the Registrar of Companies, Kolkata having CIN: U35122WB2015FTC207145 and registered office of the Transferor Company was shifted from 48A Taratalla Road, Kolkata -700066 to C1 44/173 Paharpur Road, Kolkata -700066 on 01.01.2016. On 04.03.2012 the Transferor Company was shifted to 6th Floor of the South West Tower No.18, ITC Green Centre, Banaswadi Main Road, Maruthiseva Nagar, Bengaluru- 560 005, Karnataka with CIN changed to U35122KA2015FTC144910. Its Authorised Share Capital is Rs.2,00,00,000/- divided into 20,00,000 Equity Shares of Rs.10/- each and the Issued, Subscribed and Paid-up Capital is Rs. 2,00,00,000/- divided into 20,00,000 Equity Shares of Rs.10/- each. The Transferor Company is *inter-alia* engaged to carry on the business of developing, manufacturing, marketing, selling and repairing of products for use in railways, automobiles etc.

(2) M/s. Tambakad & Goil, Chartered Accountants, have issued a Certificate dated 04.03.2021 by certifying that there are 02 (Two) Equity Shareholders in Transferor Company as on 16.12.2020, viz., M/s. Transportation IP Holdings, LLC holding 19,99,999 Equity Shares and M/s. Wabtec Transportation Global Holdings, LLC holding 01 Equity Share. Accordingly, Mr. Suresh Narayan, Authorized Representative of M/s. Transportation IP Holdings, LLC has filed an Affidavit dated 30.12.2020 by *inter alia* stating that they are Equity Shareholder holding 19,99,999 Equity Shares in the Transferor



Company and has no objection for the dispensation of the meeting of the Equity Shareholders. Similarly, another Equity Shareholder has also filed its Affidavit with similar declaration for the proposed Scheme of Amalgamation.

- (3) M/s. Tambakad & Goil, Chartered Accountants, have issued a Certificate dated 04.03.2021 by certifying that there are 46 (Forty Six) Unsecured Creditors in Transferor Company as on 21.11.2020 viz., M/s. Faiveley Transport India Ltd due amounting to Rs.68,17,34,556/-, M/s. Intrans Engineering Ltd due amounting to Rs.4,51,57,537/-, M/s. Wabtec Corporation due amounting to Rs.1,82,40,569 etc. Accordingly, Mr. Rohit Haldia, Authorised Representative of M/s. Faiveley Transport India Ltd has filed an affidavit dated 17.12.2020 *inter-alia* stating that they are Unsecured Creditor of the Transferor Company has no objection for the dispensation of the meeting of the Unsecured Creditors. Similarly other 3, except 42 Unsecured Creditors has also filed their Affidavit with similar declaration for the proposed Scheme of Amalgamation. Further, the said Chartered Accountants, have issued another Certificate dated 04.03.2021 by certifying that there are no Secured Creditors in Transferor Company as on 21.11.2020.
- (4) **M/s. GE Global Sourcing India Private Limited** (hereinafter referred to as Applicant Company No.2/Transferee Company) was incorporated on 3^{1st} December, 1999, under the Companies Act, 1956, as a private limited company with the Registrar of Companies, Mumbai with CIN: U74999MH1999PTC123416 having registered office of the Transferee Company was shifted from the State of Maharashtra to the NCT of Delhi. Thereafter, the registered office of the Transferee Company was shifted to 6th Floor of the South West Tower No.18, ITC Green Centre, , Banaswadi Main Road, Maruthiseva Nagar, Bengaluru- 560 005 on 180.01.2021 having CIN: U74999KA1999PTC143212. Its



Authorised Share Capital is Rs.3,50,00,00,000/- divided into 35,00,00,000 Equity Shares of Rs.10/- each and the Issued, Subscribed and Paid-up Capital is Rs.46,08,35,300/- divided into 4,60,83,530 Equity Shares of Rs.10/- each. The Transferee Company *inter alia* engaged to carry on business of providing engineering, sourcing & IT services in relation to the infrastructure projects in India including but not limited to supply of rail locomotive etc.

- (5) M/s. Tambakad & Goil, Chartered Accountants, have issued a Certificate dated 25.01.2021 by certifying that there are 02 (Two) Equity Shareholders in Transferee Company as on 21.11.2020, viz., M/s. Wabtec Transportation Global Holdings, LLC holding 4,60,83,529 Equity Shares and M/s. Transportation IP Holdings, LLC holding 01 Equity Share. Accordingly, Mr. Suresh Narayan, Authorized Representative of M/s. M/s. Wabtec Transportation Global Holdings, LLC has filed an Affidavit dated 07.01.2021 by *inter-alia* stating that they are Equity Shareholder holding 4,60,83,529 Equity Shares in the Transferee Company and has no objection for the dispensation of the meeting of the Equity Shareholders. Similarly, another Equity Shareholder has also filed its Affidavit with similar declaration for the proposed Scheme of Amalgamation.
- (6) M/s. Tambakad & Goil, Chartered Accountants, have issued a Certificate dated 25.01.2021 by certifying that there is 271 (Two Hundred and Seventy One) Unsecured Creditors in Transferee Company as on 21.11.2020 viz., M/s. Wabtec Transportation Systems, LLC due amounting to Rs.1,24,43,32,962/-, M/s. GE Diesel Locomotive Private Limited due amounting to Rs.38,71,66,554/-, M/s. SFO Technologies Private Limited due amounting to Rs.16,91,34,982/- etc. Accordingly, Mr. Rohit Haldia, Authorised Representative of M/s. Faiveley Transport

India Ltd has filed an affidavit dated 17.12.2020 *inter-alia* stating that they are Unsecured Creditor of the Transferee Company and has no objection for the dispensation of the meeting of the Unsecured Creditors. Similarly other 48, except 222 Unsecured Creditors has filed their Affidavit with similar declaration for the proposed Scheme of Amalgamation. Further, the said Chartered Accountants, have issued another Certificate dated 25.01.2021 by certifying that there are no Secured Creditors in Transferor Company as on 21.11.2020.

- (7) The Board of Directors of the Applicant Companies in its respective meeting held on 01st December, 2020, have approved and adopted the Scheme of Amalgamation.
- (8) Further, M/s. Lodha & Co., Chartered Accountants, the Statutory Auditors of the Transferee Company, has issued a Certificate dated 05th March, 2021 by *inter alia* stating that the accounting treatment contained in clause 5.1 of the aforesaid proposed Scheme is in conformity with the applicable IAS notifies by the Companies (Indian Accounting Standards) Rules, 2015, and Companies (Indian Accounting Standards) Amendment Rules, 2016 (IND AS), the Generally Accepted Accounting Principle in India.
- (9) The rationale for the Scheme *inter-alia* streamlining the Corporate structure of the Transferor Company and the Transferee Company by reducing the number of legal entities which will provide several benefits including focused management in a single amalgamated entity, seamless implementation of policy changes, reducing the multiplicity of legal and regulatory compliances, rationalizing costs and also help to enhance the efficiently and control of the Transferor Company and Transferee Company etc.
- (10) It is further stated that no investigations, proceedings are pending against the Applicant Companies under the provisions



of Section 206 to 229 or any other provisions of the Companies Act, 2013 or the provisions of the Companies Act, 1956.

3. Heard Mr. Arjun Perikal, learned counsel for the Applicant Companies. We have carefully perused the pleadings of the party, extant provisions of the Companies Act, 2013, the Rules made thereunder and the Law on the issue.
4. Mr. Arjun Perikal, learned Counsel for the Applicant Companies, while pointing out various averments made in the Company Application, has further submitted that the Scheme in question is made in the best interests of the Applicant Companies, and their respective Shareholders & Creditors. The Chartered Accountant, after verifying the records of the Companies, have duly certified the existing Equity Shareholders and Unsecured Creditors of the Applicant Companies.
5. As stated supra, the Companies has followed extant provisions of Companies Act in framing the Scheme in question, which are duly approved by the Board of Directors of the Companies involved. The Statutory Auditors/Chartered Accountants of the Companies have also issued respective Certificates by inter-alia certifying the details of shareholders, creditors, and compliance of accounting treatment as prescribed U/s 133 of the Companies Act, 2013 with reference to the Scheme in question. The Applicant Companies have prima facie disclosed all the material facts relating to the Scheme in question and filed necessary documents along with the Application. Therefore, we are convinced with the case as made out by the Applicants so as to grant relief as sought for, by dispensing with the meeting of Equity Shareholders and Unsecured Creditors of the Applicant Companies.
6. In the result, **C.A. (CAA) No.24/BB/2021** is disposed of with the following directions:



- (i) Convening and holding of the meetings of the Equity Shareholders of all the Applicant Companies, are hereby provisionally dispensed with;
- (ii) Convening and holding of the meeting of the Unsecured Creditor of the Applicant Companies is hereby provisionally dispensed with;
- (iii) The Applicant Companies are directed to issue paper notification one in English language "The Hindu" and one in Vernacular language "Udayavani" about the dispensation of the meetings by this Tribunal, within a period of 10(Ten) days from the date of receipt of copy of this Order;
- (iv) Any party, aggrieved by this Order, is entitled to file miscellaneous application, in the instant Company Application, by seeking appropriate direction(s).
- (v) The Company is permitted to file necessary Company Petition for the sanction of Scheme of Arrangement in question, after following extant provisions of law.
- (vi) We make it clear that this order is passed provisionally basing on averments made in the instant Application and is subject to further scrutiny of facts at the time of considering scheme for approval at second stage and it is also subject to challenge by aggrieved Party.
- (vii) The Applicant Companies are directed to carry out publication of this order, one in vernacular and another in National languages as expeditiously as possible.
- (viii) Consequently, CA No. 23 of 2021 is dismissed as infructuous.



ASHUTOSH CHANDRA
MEMBER, TECHNICAL



RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL