

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P (CAA) No. 48/BB/2017
U/S 230 to 232 of the Companies Act, 2013
Order Delivered on: 9th January, 2018

IN THE MATTER OF SCHEME OF AMALGAMATION
BETWEEN
DTDC E-COMMERCE LOGISTICS LIMITED
AND
DTDC EXPRESS LIMITED

Coram: 1. Hon'ble Shri RatakondaMurali, Member (Judicial)
2. Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

DTDC E-Commerce Logistics Limited

DTDC House, #3,
Victoria Road,
Bangalore -560 047

- 1stPetitioner/Transferor Company

DTDC Express Limited

DTDC House, #3,
Victoria Road,
Bangalore -560 047

- 2ndPetitioner/Transferee Company

Parties Present : 1) Mr. V.J. Achalanand
Advocate for the Petitioner Companies
2) Mrs. Prema Hatti, Advocate
Representative for the Registrar of Companies
3) Official Liquidator Represented by Assistant.

Per: Hon'ble Shri RatakondaMurali, Member (Judicial) – Author

Heard on: 08.09.2017, 23.10.2017, 14.11.2017, 15.12.2017

ORDER

These Company Petitions are filed on behalf of the Petitioner Companies under Section 230 and 232 of the Companies Act, 2013 praying to order for sanctioning the Scheme of Amalgamation whereby **DTDC E-Commerce Logistics Limited** (1stPetitioner / Transferor Company) being merged with **DTDC EXPRESS LIMITED** (2nd Petitioner

/Transferee Company) so has to be binding on all the Shareholders and the secured and unsecured creditors of the Petitioner Companies.

The averments made in the Company Petitions are briefly described hereunder:-

The Petitioner Companies seek an order for sanctioning the Scheme of Amalgamation of **DTDC E-COMMERCE LOGISTICS LIMITED** (1stPetitioner /Transferor Company) with **DTDE EXPRESS LIMITED**(2ndPetitioner /Transferee Company) as per the Scheme at **Annexure A** in the respective Company Petitions.

The 1stPetitioner / Transferor Company was incorporated on 30th July, 2012 under the name and style as '**DTDC E-Commerce Logistics Limited**' having its Registered office at DTDC House, #3, Victoria Road, Bangalore-560 047 and obtained Certificate of Incorporation vide bearing CIN No. **U63090KA2012PLC065080**.

The 1stPetitioner/Transferor Company's Objects as set out in its Memorandum of Association inter alia, as follows:

- i.) To establish, organize, manage, run, conduct, develop, handle, own, operate, and to do business as fleet carriers, transporters, in all its branches on land, air, water and space for transporting goods, articles, or things, on all routes and lines on National and International level subject to law in force through all sorts of carriers like trucks, lorries, coaches, tractors, haulers, motor buses, railways, tramways, aircrafts, hovercrafts, ships, vessels, boats, barges and so on whether propelled by petrol, diesel, electricity or any other form of power.
- ii.) To carry on the business as agents, distributors, merchants, importers, exporters, traders, contractors, warehousemen and to establish maintain, operate and run agency lines in goods, stores, consumables items durable merchandise, chattels effects of every kind and description in any place in the world and without any limitation to the above to carry on the business as selling Agents, Commission agents, Landing clearing and forwarding agents, Distributors and stockiest, or in any other capacity.
- iii.) To carry on the business of courier and cargo handlers, handle third party logistics, finished goods transportation, air cargo, and ground/surface cargo by land, rail, water and air, to handle goods and passengers within the country and outside the country and to carry on the business of warehousing.
- iv.) To own, manage, co-ordinate in developing an online platform for the purpose of enabling trading in different branded and unbranded products, to carry on the said business on cash on delivery basis, on Freight on delivery basis and to carry on all technology licensing

etc. and to give all types of logistics support in order to connect the buyer and he seller through the internet media.

The Copy of the Memorandum & Articles of Association of the Transferor Company is shown in **Annexure B**.

The Authorised share capital of the 1st Petitioner /Transferor Company as stated in the petition is Rs, 8,00,00,000/- divided in to 10,50,000 equity share of Rs, 10/- each and 69,50,000 preference share of Rs, 10/- each and issued subscribed and paid up share capital of Rs. 1,47,50,000/- divided in to 50,000 equity shares of Rs.10/- each fully paidup and 14,25,000 preference shares of Rs, 10/- each fully paid up.

The Copy of Audited Financials of the 1st Petitioner/ Transferor company as on 31st March, 2016 is shown in **Annexure C**.

The 2nd Petitioner /Transferee Company was incorporated on 26th July, 1990 as a Private Limited Company under the name and style as **DTDC Courier and Cargo Private Limited** and subsequently with effect from 14.12.2001 converted into public limited Company changing its name to DDTC Courier and Cargo Limited. Subsequently with effect from 3rd March, 2015 Changed its name to DTDC Express Limited vide CIN No. **U85110KA1990PLC011089**. The Registered office of the 2nd Petitioner /Transferee Company is situated at DTDC House, #3, Victoria Road, Bangalore-560 047.

The 2nd Petitioner/ Transferee Company's Objects is to acquire, operate, run or lease, Courier Services and Cargo Services, Road Transport Services, Water Transport Service, Air Service for passengers and/or goods. To act as agents for one or all such Services, to carry on business of Travel Agents, Tour Organizers as stated in the petition.

The Copy of Certificate of Incorporation, Memorandum & Articles of Association of the 2nd Petitioner/ Transferee Company is shown in **Annexure D**.

The Authorised share capital of the 2nd Petitioner /Transferee Company as stated in the petition is Rs, 21,00,00,000/- divided in to 2,10,00,000 equity share of Rs, 10/- each and issued subscribed and paid up share capital of Rs. 11,28,40,990 divided in to 1,12,84,099 equity shares of Rs.10/- each fully paid up.

The Copy of Audited Financials of the 2nd Petitioner/Transferee Company as on 31st March, 2016 is shown in **Annexure E**.

The Board of Directors of the 1st Petitioner/Transferor Company and 2nd Petitioner/Transferee Company have approved and adopted the Scheme of Arrangement at

its respective meeting held on 21st March, 2017. The copies of Board Resolution are shown in ANNEXURE – F, F-1.

That the 1st Petitioner/Transferor & 2nd Petitioner/Transferee Companies had filed Company Application No.(CAA) 24/BB/2017 before this Tribunal for dispensing with the convening the meetings of Preference Shareholders of the Applicant Company No.1 and direct that the meeting of Equity shareholders, Secured and Unsecured Creditors of the of the Petitioner Companies No. 1&2. This Tribunal vide its Order dated 31st May 2017 allowed the Company Application and directed that the meeting of Equity Shareholders, Secured creditors and Unsecured Creditors of the Transferor Company be held on 1st August, 2017 at 12:00 Noon, 11:00A.M and 3:00 P.M respectively and meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferee Company be held on 2nd August, 2017 at 12:00 Noon, 11:00A.M and 3:00 P.M respectively and dispensed with convening of meeting of the Preference Shareholders of Transferor Company. Copy of order passed by this Tribunal in CA(CAA)/24BB/17 is shown as Annexure-Q in CP(CAA)No.48/BB/17.

It is averred the Transferor Company and the Transferee Company filed joint petition bearing CP(CAA)No.48/BB/17 before this Tribunal on 10th August, 2017 for approving the scheme of Amalgamation.

This Tribunal vide order dated 8th September, 2017 in CP(CAA)No.48/BB/17 issued notice to Regional Director, Registrar of Companies, Income Tax Department and Official Liquidator and also directed to have an advertisement be published in the “The Hindu” and “Udayavani” newspapers stating that the next date of hearing of the present petition was on 23rd October, 2017. A Memo dated 7th August, 2017 has been filed at Annexure A1&A2 in CP(CAA)No.16/BB/17 and at Annexure A1 and A2 in CP(CAA)No.17/BB/17 respectively furnishing the newspaper publications.

The Registrar of Companies, Karnataka, Bangalore vide letter no's. ROCB/ Legal/65080 & 11089/230(5)/2017 dated 08.09.2017 wherein he has not made any observation and has stated that the Petition of the Companies may be decided on merits.

The Regional Director, Ministry of Corporate Affairs, South-East Region has filed affidavit dated 09th October, 2017 wherein he has stated that this Tribunal may dispose off the petition on merits.

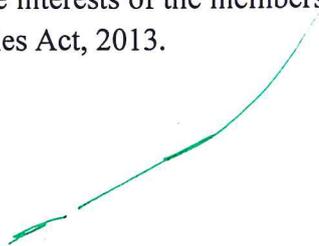
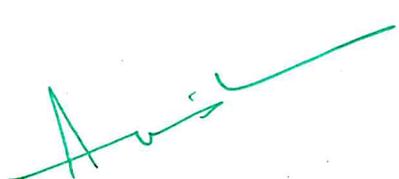
The office of the Addl. Commissioner of Income Tax vide letter dated 17th October, 2017 wherein has stated that the Office of Addl. Commissioner of Income Tax has no objection for the proposed amalgamation with respect to M/s.DTDC Express Limited.

The office of the Asst. Commissioner of Income Tax vide letter dated 27th November, 2017 wherein has stated that the assessee i.e., DTDC E-Commerce Logistics Ltd, has no outstanding tax dues to be paid as on date.

The Official Liquidator has filed a Report dated 29.11.2017 in OLR.No.191/17 stating that U.C. Bhandari & Co, Chartered Accountants has submitted Report dated 28.11.2017 which is marked as **Annexure A**, wherein the Chartered Accountant has concluded in his report as follows which is reproduced hereunder

- i.) "We have obtained all the information and explanation, which to the best of our knowledge and belief were necessary for the purpose of scrutiny of books and papers of Transferor Company.
- ii.) In our opinion proper books of accounts, papers, statutory registers, minutes and other related records as required by law have been kept by the Transferor Company so far as appears from our examinations".
- iii.) On scrutiny of books of accounts, papers, statutory registers and other related records of the company we are of the opinion that the affairs of the company have not been conducted in a manner prejudicial to the interest of the members of the Company or public interest as per section 232 of the Companies Act, 2013.

Thus relying on the Report dated 28.11.2017 of U.C. Bhandari & Co, Chartered Accountants, the Official Liquidator is of the Opinion that the Affairs of the Transferor Company have not been conducted in a manner prejudicial to the interests of the members of the Company or Public interest as per Section 232 of Companies Act, 2013.



The Counsel for the 1st Petitioner/Transferor Company has filed copy of Accounting Treatment Certificate dated 17.03.2017 of the Auditor stating that "Based on our examination and according to the information and explanations given to us we confirm that the accounting treatment contained in the aforesaid scheme is in compliance with the applicable Accounting Standard-14 Accounting for Amalgamation specified under section 133 of the Companies Act, 2013 r/w rule 7 of companies (Accounts) Rules, 2014 using the pooling of interest method. The Auditors Certificate on Accounting Treatment is shown in **Annexure H** in the Petition.

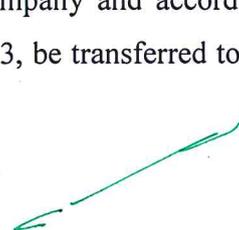
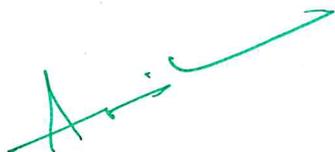
The Counsel for the 2nd Petitioner/Transferee Company has filed copy of Accounting Treatment Certificate dated 23.03.2017 of the Auditor stating that "Based on our examination and according to the information and explanations given to us we confirm that the accounting treatment contained in the aforesaid draft scheme is in compliance with the applicable Accounting Standard-14 Accounting for Amalgamation as prescribed under section 133 of the Companies Act, 2013 r/w rule 7 of companies (Accounts) Rules, 2014. The Auditors Certificate on Accounting Treatment is shown in **Annexure H-1** in the Petition.

After hearing the Counsel for the Petitioner Companies and considering the materials on record the Scheme appears to be fair, reasonable and is not detrimental against the Members or Creditors or contrary to public policy and the same can be approved,

THIS TRIBUNAL DO FURTHER ORDER

While Approving the Scheme, we make clear that this order should not be construed as an order in any way granting exemption from payment of Stamp Duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specially required under any law.

The Whole of the property, rights and powers of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and vest



in the transferee company for all the state and interest of the Petitioner/Transferor Company therein but subject nevertheless to all the charges now affecting the same; and

All the liabilities including taxes and charges, if any, and duties of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and

The tax implications, if any, arising out of the scheme is subject to final decision of Concerned Tax Authorities and the decision of the Concerned Tax Authorities shall be binding.

All the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company, if any; and

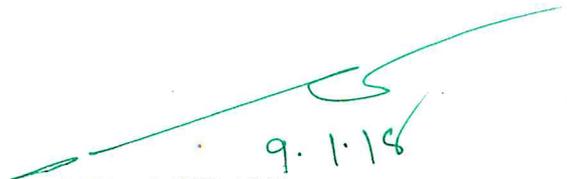
The Petitioner Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Amalgamation to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

The Scheme shall be effective from the appointed date as mentioned in the Scheme of Amalgamation i.e. 1st April, 2016.

The Transferor Company or its Authorised Signatories are directed that after the completion of the process of Amalgamation to handover the possession of the Books of Accounts and other relevant documents of the Transferor Company to the Transferee Company for the purpose of section 239 of the Companies Act, 2013.

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


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


9.1.16
(RATAKONDA MURALI)
MEMBER, JUDICIAL