

37

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO 613 OF 2017

IN

CSA NO 350 OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013.

AND

In the matter of Scheme of Arrangement amongst APL Agencies India Private Limited and APL (India) Private Limited and CMA CGM East & South India Private Limited and CMA CGM Global (India) Private Limited and NOL Properties (India) Private Limited and CMA CGM Agencies (India) Private Limited and their respective shareholders

CMA CGM Global (India) Private Limited.....First Petitioner Company

CMA CGM Agencies (India) Private Limited...Second Petitioner Company

Order delivered on 28th September 2017

Coram:

Hon'ble **B.S.V Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner (s): Mr. Hemant Sethi i/b Hemant Sethi & Co. Advocates for Petitioners

Per: V. Nallasenapathy, Member (T)

ORDER

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of the Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement amongst APL Agencies India Private Limited and APL (India) Private Limited and CMA CGM East & South India Private Limited and CMA CGM Global (India) Private Limited and NOL Properties (India) Private Limited and CMA CGM Agencies (India) Private Limited and their respective shareholders.

3. The learned Counsel for the Petitioners further submits that the First Petitioner Company was formed to carry out business in accordance with the objects mentioned in its Memorandum of Association, however, it is currently not undertaking any business operations and is thereby proposed to be merged with the Transferee Company in order to simplify the group structure, streamline compliances and other related benefits. The Second Petitioner Company is *inter-alia* engaged in the business of providing agency support services in respect of the transportation services offered by its principals.

4. The Counsel for the Petitioners further submits the rationale for the Scheme is that the arrangement would result in the following benefits to the Transferee Company and the shareholders of the Transferor Companies and the Transferee Company:

- a. *In light of the global acquisition of APL group by the CMA CGM group there has been a change in global management and after a detailed review of the group's overall operations and in line with the overall group's objectives, it is considered desirable to consolidate the group's Indian operations into one flagship entity so as to result in a simplified corporate structure, eliminate cross holdings and reduce regulatory compliances and costs.*
- b. *The proposed amalgamation will help eliminate operational interdependence and cross linkages between Transferee Company and the Transferor Companies (as defined hereinafter) and given the similar and complimentary nature of business activities of the Transferee Company and the Transferor Companies (as defined hereinafter) it is commercially desirable to consolidate the operations of the Transferor Companies (as defined hereinafter) with the Transferee Company. The Transferee Company is the CMA CGM group's flagship entity in India and the management desires to retain its name.*
- c. *Besides economies of scale and other cost reductions, the proposed amalgamation would provide synergistic benefits by combining complementary businesses and operations of Transferee Company and the Transferor Companies (as defined hereinafter). Consolidation of the Indian operations shall inter-alia result in elimination of the inter-company transactions and better and timely reporting of the Indian operations to the group.*
- d. *The proposed amalgamation will provide greater functional integration at various levels of the organization such as operations, information technology, human resources, finance, legal and general management leading to optimum utilization of resources and an efficient organization structure capable of responding swiftly to volatile and rapidly changing market scenarios.*
- e. *Furthermore, the proposed amalgamation will also facilitate achievement of*

greater management focus and control over the consolidated business operations of the group in India.

Accordingly the Scheme is considered desirable, and to be in interest of companies (i.e. Transferor Companies and the Transferee Company), their respective shareholders and other stakeholders (including employees) and would benefit all the stakeholders at large.

5. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in Company Summons for Directions.
7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes 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 is accepted.
8. The Regional Director has filed his report dated 13th September 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:
 - (a) *The Registered office of Transferor Company 1, Transferor Company 2, Transferor Company 3 and Transferor Company 5 are situated in the State of Tamil Nadu ie. Outside of the jurisdiction of NCLT of this Tribunal and falls within the jurisdiction of NCLT of Chennai. Accordingly, similar approval be obtained by the Transferor Company 1, Transferor Company 2, Transferor Company 3 and Transferor Company 5 from Hon'ble NCLT at Chennai.*
 - (b) *As per existing practice, the Petitioner Companies are required to serve notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the Company vide letter dated 08.05.2017 has served a copy of company scheme application No. 350 of 2017 along with relevant orders etc.*

Further this Directorate has also issued a reminder on 04.09.2017 to IT Department.

- (c) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner company.*
 - (d) In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc;*
 - (e) As per clause 1.4 Definitions of the Scheme , "Appointed Date" means the 1st day of February 2017 or such other date as may be fixed by the jurisdictional NCLT or any other appropriate authority . In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st February 2017.*
9. In so far as observations made in paragraph (IV (a) of the Regional Director is concerned, the Counsel for the Petitioners submit that the Transferor Company 1, Transferor Company 2, Transferor Company 3 and Transferor Company 5, the Petitions have been filed before the NCLT, Chennai Bench and the same are pending for hearing and final disposal.
10. In so far as observations made in paragraphs IV (b) & (c) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
11. In so far as observations made in paragraph IV (d) of the Report of Regional Director are concerned, the Transferee Company through its Counsel undertake that IND AS is not applicable on the Transferor Companies and the Transferee Company as the net worth of the Transferor Companies and Transferee Company does not exceed the applicable threshold ie the net worth of the Petitioner Companies is less than INR 250 Crores. Further, the Transferee Company undertakes through its counsel

that it shall comply with AS -14 and pass such accounting entries in connection with the Scheme to comply with any other Accounting Standards as may be applicable.

12. In so far as observations made in paragraph IV (e) of the Report of Regional Director are concerned, the Petitioners through their Counsel confirm that in terms of provisions of section 232(6) of the Companies Act, 2013 the Appointed Date will be 1st February 2017.
13. The observations made by the Regional Director have been explained by the Petitioners in paragraphs 9 to 12 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
14. The Official Liquidator has filed his report dated 24th August 2017 inter alia, stating therein that the affairs of CMA CGM Global (India) Private Limited has been conducted in a proper manner and that the same may be ordered to be dissolved.
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.
16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 613 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the Petition.
17. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, 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 receipt of the order.
18. Petitioner Companies are 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, within 30 days from the date of receipt of the order along with the scheme.

19. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Transferor Company to pay sum of Rs. 25,000 /- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of Order.
20. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V Prakash Kumar, Member (J)