

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME APPLICATION NO 350 (MAH) 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, a company	}
incorporated under the provisions of Companies Act, 1956	}
having its registered office at Tower 3, 8th Floor, India Bulls	}
Finance Center, Senapati Bapat Marg, Elphinstone Road (West),	}
Mumbai, Maharashtra – 400013	}
	}.....Applicant No1
	(Transferor Company 4)

CMA CGM Agencies (India) Private Limited, a company	}
incorporated under the provisions of Companies Act, 1956	}
having its registered office at 219, 2nd Floor, Metro House,	}
Mangaldas Road, Pune, Maharashtra- 411001.	}
	}....Applicant No.2
	(Transferee Company)

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

Coram: B.S.V. Prakash Kumar, Member (Judicial)

V. Nallasenapthy, Member (Technical)

Dated: 19th day of April 2017

MINUTES OF THE ORDER

1. The Counsel for the Applicants states that the present Scheme is an Arrangement amongst APL (India) Private Limited (“APL India”), APL Agencies India Private Limited (“APL Agencies”), CMA CGM East & South India Private Limited (“CCES”), CMA CGM Global (India) Private Limited (“CCGI” or Transferor

Company 4) and NOL Properties (India) Private Limited ("NOL Properties") (APL India, APL Agencies, CCES, CCGI and NOL Properties being collectively referred to as the "Transferor Companies") and CMA CGM Agencies (India) Private Limited ("CCAI" or "Transferee Company") and their respective shareholders ("Scheme"). This Scheme provides for the amalgamation of the Transferor Companies with and into Transferee Company.

2. The Counsel for the Applicants further submits that the First Applicant 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 Applicant Company is *inter-alia* engaged in the business of providing agency support services in respect of the transportation services offered by its principals.
3. The Counsel for the Applicants further submits the rationale for the Scheme is that the amalgamation 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.

4. That the meeting of the Equity Shareholders of the First Applicant Company be convened and held at its registered office at Tower 3, 8th Floor, India Bulls Finance Centre, Senapati Bapat Marg, Elphinstone Road (West), Mumbai, Maharashtra – 400013 on 8th June, 2017 at 10:00 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Arrangement amongst APL (India) Private Limited and APL Agencies 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.
5. That the meeting of the Equity Shareholders of the Second Applicant Company be convened and held at its corporate office at Tower 3, 8th Floor, India Bulls Finance Centre, Senapati Bapat Marg, Elphinstone Road (West), Mumbai, Maharashtra – 400013, on 8th June, 2017 at 11:00 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Arrangement amongst APL (India) Private Limited and APL Agencies 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.
6. The First and Second Applicant Company shall also give an option to the shareholders to vote through Postal Ballot.

7. That at least one (1) month before the said Meetings of the Equity Shareholders of the First and Second Applicant Company to be held as aforesaid, a notice convening the said Meetings at the place, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14th December, 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the First and the Second Applicant Company for the purpose of receiving such notices by email), addressed to each of the Shareholders of the First and the Second Applicant Company, at their last known address or email addresses as per the records of the concerned Applicant Company.
8. That at least one month before the meetings of the Shareholders of the First Applicant Company and Second Applicant Company to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the First and Second Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
9. That the Notice of the Meeting of the First Applicant Company shall be advertised in two local newspapers viz. "Free Press Journal" in English and "Navshakti" in Marathi, both circulated in Mumbai, not less thirty (30) days before the date fixed for the meeting.
10. That the Notice of the Meeting of the Second Applicant Company shall be advertised in two local newspapers viz. "Indian Express" in English and "Loksatta" in Marathi, both circulated in Pune, not less thirty (30) days before the date fixed for the meeting.
11. That Ms. Audrey Dolhen, Director of the First Applicant Company, and failing her, Mr. Rajiv Jethi shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the First Applicant Company to be held at Tower 3, 8th Floor,

India Bulls Finance Centre, Senapati Bapat Marg, Elphinstone Road (West), Mumbai, Maharashtra – 400013, on 8th June, 2017 at 10:00 A.M. or any adjournment or adjournments thereof.

12. That Ms. Audrey Dolhen, Director of the Second Applicant Company, and failing her, Mr. Rajiv Jethi shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Second Applicant Company to be held at Tower 3, 8th Floor, India Bulls Finance Centre, Senapati Bapat Marg, Elphinstone Road (West), Mumbai, Maharashtra – 400013, on 8th June, 2017 at 11:00 A.M. or any adjournment or adjournments thereof.
13. That the Chairman appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meetings referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise at the meetings or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).
14. That the quorum of the aforesaid meetings of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
15. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meetings, are filed with the First and Second Applicant Company at their respective Registered Office(s) at Tower 3, 8th Floor, India Bulls Finance Centre, Senapati Bapat Marg, Elphinstone Road (West), Mumbai, Maharashtra – 400013 and at 219, 2nd Floor, Metro House, Mangaldas Road, Pune, Maharashtra- 411001, not later than forty eight (48) hours before the aforesaid meetings.
16. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the First Applicant Company and Second Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.

17. That Mr. Nilesh Shah, Partner, M/s Nilesh Shah & Associates, and failing him Mr. Mahesh Darji and failing him Ms. Hetal Shah, practicing Company Secretary is hereby appointed as Scrutinizers of the meeting of the Equity Shareholders of the First Applicant Company proposed to be held on 8th June, 2017 at Tower 3, 8th Floor, India Bulls Finance Centre, Senapati Bapat Marg, Elphinstone Road (West), Mumbai, Maharashtra – 400013, at 10:00 A.M. and his remuneration is fixed as Rs. 12,500/- (Rupees Twelve Thousand and Five Hundred only).
18. That Mr. Nilesh Shah, Partner, M/s Nilesh Shah & Associates, and failing him Mr. Mahesh Darji and failing him Ms. Hetal Shah, practicing Company Secretary is hereby appointed as Scrutinizers of the meeting of the Equity Shareholders of the Second Applicant Company proposed to be held on 8th June, 2017 at Tower 3, 8th Floor, India Bulls Finance Centre, Senapati Bapat Marg, Elphinstone Road (West), Mumbai, Maharashtra – 400013, at 11:00 A.M. and his remuneration is fixed at Rs. 12,500/- (Rupees Twelve Thousand and Five Hundred only)
19. That the Chairman is directed to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and to report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
20. That the Chairman of the meetings is directed to report to this Tribunal, the results of the aforesaid meetings within thirty (30) days of the conclusion of the meetings.
21. The First Applicant Company and the Second Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First and Second Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, and (iii) Registrar of Companies, with a direction that they may submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant Company and Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
22. The First Applicant Company is also directed to serve notice along with copy of scheme upon Official Liquidator. M/s USM & Associates, Chartered Accounts are appointed to assist the Official Liquidator to scrutinize books of accounts of

the First Applicant Company for the last five (5) years. The Transferee Company to pay fees of Rs. 2,00,000/-.

23. The Counsel for the First Applicant Company submits that there are no Secured and Unsecured Creditors in the First Applicant Company, therefore the question of sending notices to the Secured and Unsecured Creditors does not arise.

24. The Counsel for the Second Applicant Company submits that there are no Secured Creditors in the Second Applicant Company, therefore the question of sending notices to the Secured Creditors does not arise. The Counsel for the Second Applicant Company further submits that since the Scheme is an arrangement between the Second Applicant Company and its shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. This bench hereby directs the Second Applicant Company to issue notice to all its Unsecured Creditors and Unsecured Debenture-holders with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Second Applicant Company.

25. The First Applicant Company and the Second Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, creditors, publication of notices in newspapers and to the regulatory authorities as stated in clause 21 and 22 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapthy, Member (T)

Sd/-

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