

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
TRANSFER COMPANY SCHEME PETITION NO.154 OF 2017
[HIGH COURT COMPANY SCHEME PETITION LODGING
NO. 892 OF 2016]
CONNECTED WITH
HIGH COURT TRANSFER COMPANY SUMMONS FOR DIRECTION
NO.903 OF 2016
USL Logistics Private LimitedPetitioner/ 1st Transferor Company
AND**

**TRANSFER COMPANY SCHEME PETITION NO.155 OF 2017
[HIGH COURT COMPANY SCHEME PETITION LODGING
NO. 893 OF 2016]
CONNECTED WITH
HIGH COURT TRANSFER COMPANY SUMMONS FOR
DIRECTION NO. 902 OF 2016
USL NMM Logistics Limited Petitioner / 2nd Transferor Company
AND**

**TRANSFER COMPANY SCHEME PETITION NO.156 OF 2017
[HIGH COURT COMPANY SCHEME PETITION LODGING NO. 894
OF 2016]
CONNECTED WITH
HIGH COURT TRANSFER COMPANY SUMMONS FOR DIRECTION
NO.904 OF 2016
USL Packaging Limited Petitioner / 3rd Transferor Company**

In the matter of Sections 230 to 233 of the
Companies Act, 2013 [filed under Section 391 to
394 of the Companies Act, 1956]

AND

In the matter of Scheme of Amalgamation
BETWEEN USL Logistics Private Limited, First
Transferor Company AND USL NMM Logistics
Limited, Second Transferor Company AND USL
Packaging Limited, Third Transferor

Company WITH United Shippers Limited,
Transferee Company.

Called for Hearing

Mr. Naser Ali Rizvi i/b Thakore Jariwala & Associates, Advocates for Petitioners.

Mr. Ramesh Gholap, Assistant Director for Regional Director in the Petitions.

Mr. R. Paula, Deputy Registrar of Companies in the Petitions.

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

: V. Nallasenapathy, Member (T)

Date : 8th June, 2017

1. Heard learned counsel for parties. No objector has come to oppose the Scheme nor has any party controverted any averments made in the Petitions.
2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 [now section 230 to 233 of the Companies Act 2013] to an arrangement embodied in the proposed Scheme of Amalgamation of USL LOGISTICS PRIVATE LIMITED (“the First Transferor Company”), USL NMM LOGISTICS LIMITED (“the Second Transferor Company”) and USL PACKAGING LIMITED (“the Third Transferor Company”) with UNITED SHIPPERS LIMITED (“the Transferee Company”).
3. The learned Advocate for the Petitioner Companies states that the Transferor Companies and Transferee Company are closely held companies and all the companies are part of the same group. USL Logistics Private Limited and USL NMM Logistics limited are engaged in the business of Logistics and USL Packaging Limited is engaged in the business of packaging and United Shippers Limited is engaged in

the business of shipping, i.e. all these four companies are engaged in shipping support businesses which cater to the shipping sector.

4. The Learned Advocate for the Petitioner Companies further states that all the three Transferor Companies are wholly owned subsidiaries of the Transferee Company and thus the major objective of the Scheme is Consolidation of businesses of the Transferor Companies into a single entity which would result in the business activities to be carried out with greater focus and specialization thus, leading to the objective of achieving sustained growth, enable the shareholders of United Shippers Limited to get direct participation in the businesses of its present wholly owned subsidiaries, simplified group and business structure, elimination of multiplicity of the companies leading to synergies in operations, achieving efficiencies and economies of scale and reduction in operational costs, overheads, administrative and other expenditure, to achieve size, scale, integration and greater financial strength and flexibility, higher long-term financial returns, financial managerial and technical resources will lead to increased competitive strength, cost reduction and efficiencies, productivity gains and logistic advantages, thereby significantly contributing to future growth, in meeting the funding through a common funding mechanism. This will result in effective management and utilization of funds for capital expenditure and working capital. The efficiencies generated through cash management of the merged entity and access to cash flow generated by the combined business can be deployed more efficiently to fund organic and inorganic growth opportunities and to maximize shareholders value.
5. The learned counsel appearing on behalf of the Petitioner Companies submits that by an order passed by the Hon'ble High Court of Bombay on 25th November, 2016 in Company Summons for Direction No. 902 of 2016, 903 of 2016 and 904 of 2016 the filing of a separate Company Summons for Direction and Company Scheme Petition in relation to the proposed Scheme by United Shippers Limited, the Transferee Company has been dispensed with as the Transferor Companies are wholly owned subsidiaries of the Transferee Company and no new shares will be

issued and that there will be no change in the capital structure of the Transferee company and that the scheme will not adversely affect the rights of members or creditors of the Transferee Company and in view of the judgment of this court in Mahaamba Investment Limited v/s IDI Limited (2001) Company Cases 105.

6. All the Transferor and Transferee Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which is annexed to the Company Scheme Petitions.
7. The Learned Advocate for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in Company Summons for Direction and seeks sanction to the said proposed Scheme of Amalgamation.
8. The Learned Advocate appearing on behalf of the Petitioners have stated that they have complied with all requirements as per directions of this Hon'ble Tribunal and they have filed necessary Affidavits of compliance in the Hon'ble Tribunal. Moreover, Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder. The said undertaking is accepted.
9. The Official Liquidator has filed his report on 1st May, 2017 stating therein that the Affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.
10. The Regional Director has filed his Report dated 2nd May 2017, *inter alia*, stating therein that save and except as stated in paragraphs IV (1) to (4) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In the paragraphs of the said Affidavit, the Regional Director has stated that :

“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT as under. -

- (1) 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 Court 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 Companies.”*
- (2) Certificate by the Company’s auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*

In this regard it is requested that Petitioner may be asked to submit the certificate

- (3) The Transferor Companies and the Transferee Company have submitted the proof of serving notice upon the Income Tax Authorities dated 17.03.2017, for comments. This Directorate has also issued a reminder letter to the Income Tax Department dated 01.05.2017*
- (4) Petitioner in clause 6.10 of the Scheme has inter alia mentioned that on or after the effective date, the name of the Transferee company shall stand changed to USL LOGISTICS LIMITED or such other name as may be desired by the Board of Directors of United Shippers Limited and made available for adoption and approved by the Registrar of companies, Maharashtra, Mumbai.*

It is submitted that in this regard the petitioner has to undertake to comply with the provisions of the companies Act, 2013 and file the prescribed form with the Registrar of Companies.

11. So far as the objection of the Regional Director as stated in paragraph IV (1) & (3) of his Affidavit is concerned, the Petitioner Companies submit that they have complied with the directions given by this Hon'ble Tribunal by giving notice to the concerned Income Tax Department, however the Income tax Department has not filed any representation as contemplated under Section 230 of the Companies Act 2013. The Learned Advocate further submits that the Petitioners are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
12. So far as the objection of the Regional Director as stated in paragraph IV(2) of his Affidavit is concerned, the Petitioner Companies confirmed that the scheme of amalgamation is in conformity with the Accounting Standard prescribed under Section 133 of the Companies Act, 2013 and the petitioner Companies have filed a certificate obtained from their respective Statutory auditors confirming that the Scheme of amalgamation is in conformity with the accounting standard prescribed under section 133 of the Companies Act, 2013 with this Hon'ble Tribunal.
13. So far as the objection of the Regional Director as stated in paragraph IV(4) of his Affidavit is concerned, the Petitioner Companies through their advocate undertakes to comply with the provisions of the Companies Act, 2013 and file prescribed form with the Registrar of Companies in respect of change of name as envisaged in the Scheme of amalgamation.
14. The observations made by the Regional Director have been explained by the Petitioner in paragraphs 11 to 13. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
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.

16. Since all the requisite statutory compliances have been fulfilled, the Transfer Company Scheme Petitions filed by the Petitioner Companies is made absolute in terms of prayer clauses (a) and (b).
17. The Petitioner Companies to lodge a copy of this order duly certified by the Deputy Director, National Company Law Board, Mumbai Bench with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 (sixty) days from the date of this order.
18. Petitioner Companies are directed to file/lodge a copy of this order and Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956/ 2013, whichever is applicable.
19. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.
20. All concerned regulatory authorities to act on copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Board, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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