

**In the National Company Law Tribunal
Division Bench, Chennai**

CP/99&100/CAA/2017

[C.A. 25 & 26 of 2016]

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation of

Kerry Logistics (India) Private Limited
(Transferor Company)

With

Kerry Indev Logistics Private Limited
(Transferee Company)

Order delivered on: 21.08.2017

Coram:

Ch. Mohd Sharief Tariq, Member (J)

S. Vijayaraghavan, Member (T)

For the Petitioners: Ms. Kavitha Surana, PCS

ORDER

Per: Ch. Mohd Sharief Tariq, Member (J)

1. Under consideration are two Company Petition nos. CP/99&100/CAA/2017 filed under section 230 of the Companies Act, 2013 r/w the Companies (Amalgamation, Arrangement and Amalgamation) Rules, 2016. The purpose of the Company Petitions is to obtain sanction of the Scheme of Amalgamation (in short, '**Scheme**') by virtue of which Kerry Logistics (India) Private Limited (hereinafter referred to as '**Transferor Company**') is proposed to be merged, amalgamated and vested in Kerry Indev Logistics Private Limited (hereinafter referred to as '**Transferee Company**') as a going concern.

2. The details of Share Capital, shareholders, Secured & Unsecured creditors of the Companies are as under:

Particular	Authorised Capital	Issued, S&P Capital	Equity Share-holders	Secured Creditors	Unsecured Creditors
Transferor Company	Rs. 5,00,000/-	Rs. 2,00,000/-	2	1	447
Transferee Company	Rs. 2,25,00,000/-	Rs. 1,48,28,900/-	3	5	950

3. The Transferor Company is a Private Limited Company and a wholly owned subsidiary of Kerry Freight Services (South Asia) Pte. Ltd. having its registered office at Old no. 12, New no. 23, R.T. Tower Josier Street, Thirumurthy Nagar, Nungambakkam, Chennai- 600034. The Transferee Company is a Private Limited Company engaged in the business of International freight forwarding, custom house agency service, warehousing etc. having registered office New no. 81, Old no. 41, Thambu (Chetty) street, Mannady, Chennai- 600001. The Board of Directors of petitioner companies vide its resolution dated 30.01.2017 approved the said scheme of Amalgamation.
4. This Bench vide its order dated 19.04.2017, in CA Nos. 25 & 26 of 2017 dispensed with the convening and holding of the meeting of the equity shareholders and directed to hold the meeting of unsecured creditors of the Transferor and Transferee Company respectively. The petitioner companies have produced affidavits of secured creditors consenting to the proposed scheme of amalgamation. The petitioner companies complied with all the orders passed by this bench.

5. Ms. Kavitha Surana, learned PCS appearing for the Petitioner Companies submitted that the rational and circumstances that have necessitated the proposed scheme are that the amalgamation will enable consolidation of the business of the two entities into one entity which will facilitate in focused growth, operational efficiency, resulting in more productive utilization of said resources and cost & operational efficiency which would be beneficial to all stakeholders. The learned counsel further submits that no investigation proceedings are pending against the Companies under the provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.
6. Learned Counsel for the Companies has further submitted that the equity shares of the Petitioner companies are not listed with the stock exchange, thus the Companies do not require any compliance of Listing Agreement or any SEBI Rules/regulations.
7. The notices were issued to the statutory authorities viz. Official Liquidator, Regional Director, RoC and Income Tax Authority as per the procedure prescribed. However, there has been no objection to the proposed scheme under reference.
8. The Regional Director, Southern Region (In short, 'RD') in the Report Affidavit (for brevity, '**Report**') dated 16.06.2017 submitted that as per records of ROC, Chennai, the Transferor Company is regular in filing its statutory returns and no investigation is pending against the company. It is further submitted that the Clause 7.2 of the scheme provides for the protection of the interest of the employees of the Transferor Company. The

RD has decided not to make any objection to the Scheme and submitted that the petition may be disposed of on merits.

9. The Official Liquidator (In short, 'OL') in its report dated 3rd August, 2017 submitted that M/s. K.S. Jagannathan & Co., Chartered Accountants (Auditor) appointed by this Bench vide its order dated 19.04.2017, have scrutinized the books and accounts of the Transferor Company. The said Auditor has broadly reviewed and observed that the Transferor Company has maintained and written up all the statutory books in accordance with normally accepted accounting principles and fulfilled the requirements of the Companies Act, 2013 and also the affairs of the company have not been conducted in a manner prejudicial to the interest of its members, creditors or the public. The OL further submits that under Clause 7.1 of Part- II of the proposed scheme, the interest of all the workmen and employees in the service of the Transferor Company is safeguarded.
10. However, the OL in its Para 8 has submitted that the Auditor has made certain observations that the paid up capital of the transferor company is Rs. 2,00,000/- and the entire capital is held by non-residents. The transferor company is a 100% subsidiary of a foreign company and there has been Foreign Direct Investment (FDI) into the Transferor Company as well as transfer of shares from resident Indian to non-resident at different points of time since the date of incorporation. It is stated that the transferor company has not been able to provide them with approval from the Reserve Bank of India (**RBI**) with respect to FDI into the Transferor Company. Also, in respect of transfer of shares from resident Indians to non-residents in three

instances, the Transferor Company has not been able to provide **Form FC-TRS** duly certified by bankers evidencing and approving the transfers. It is submitted that the allotment upon merger as contemplated may not be in order with relevant FEMA guidelines, if no approval has been obtained from RBI. Therefore, the OL submitted that the petition may be decided appropriately.

11. With regard to the above observation made by the OL, the learned PCS submitted that the Transferor Company has already replied to the OL vide its letter dated 30.07.2017. In the said letter, it has been stated that **FORM FC-TRS** were duly filed by the transferor company at appropriate times and the company has enclosed all three certified copies of **FORM FC-TRS** in the said letter sent to the OL. In relation to the FDI approval from the RBI, the learned PCS has produced an RBI letter dated 30.05.2017 whereby the RBI has given NO OBJECTION with regard to merger of the companies. In the said RBI letter, RBI has instructed the Transferor Company to ensure that post-merger, the resultant organisation structure by any means does not result in Foreign Direct Investment through Overseas Direct Investment and the company has further been instructed to adhere to FEMA regulations amended from time to time. The learned PCS further submitted that the petitioner company undertakes to comply with FEMA regulations as amended from time to time.


12. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the


proposed scheme is sanctioned. The said Scheme of Amalgamation will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner.

The Appointed date of the said Scheme is 1st April, 2016.

13. There is no additional requirement for any modification and the said Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under section 230 to 232 of the Companies Act, 2013. Taking into consideration the above facts, the Company Petition is allowed and the scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on the members, creditors and shareholders.
14. While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.
15. The Transferor Company is directed to comply with the directions given by the RBI in relation to compliance of FDI.
16. The Company to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

17. The Petitioner Companies shall file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
18. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies.
19. Upon receiving the certified copy of this order, the RoC, Chennai is directed to place all documents relating to the Transferor Company with that of the Transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.
20. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.
21. Accordingly, the Scheme stands sanctioned and CP/99&100/CAA/2017 stands disposed of.


(S. Vijayaraghavan)
Member (T)


(Ch. Mohd. Sharief Tariq)
Member (J)

RLS