

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

CP/143/CAA/2017

Under Sections 230 read with Section 232 of the
Companies Act, 2013, and other applicable provisions of
the Companies Act, 2013

In the matter of Scheme of Amalgamation and
Arrangement amongst

M/s. NTC Logistics India Private Limited
("The Demerged Company")

And

M/s. NTC Consultancy Services Private Limited
("The Resulting Company / The Amalgamating Company")

And

M/s. NTC Logistics Private Limited
("The Amalgamated Company")

And

Their Respective Shareholders.

Order passed on 19th of September, 2017

CORAM

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For Petitioner(s): Mr. K. Ramasamy & Mr. G.V.Mohan Kumar, Counsels

ORDER

Per : CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under consideration is a joint Company Petition No.143/CAA/2017 which has been filed under Section 230 read with Section 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013. The following Companies are part of the Scheme viz., M/s. NTC Logistics India Private Limited (the Demerged Company), M/s. NTC Consultancy Services Private Limited (the Resulting Company/The Amalgamating Company) and M/s. NTC Logistics Private Limited (the Amalgamated Company). The rationale of the Scheme *inter-alia* provides as under.

- i. Consolidation of the group's logistics business under one corporate entity;
- ii. Greater integration, financial strength and flexibility for the group, which will improve the financial position of the group's logistics business;

- iii. Greater efficiency in cash management of the logistics business, unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities, to further improve shareholder's value; and
- iv. Improved organizational capability and leadership, arising from the pooling of human capital that has the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry, etc.,

2. The Scheme provides for transfer of logistics business undertaking of the demerged company to the resulting company, for which the resulting company shall pay to the demerged company a lump sum cash consideration of Rs.23,52,10,017/- only, and staff, workmen and employees of the logistic business

undertaking of the demerged company in service on the effective date shall be deemed to have been staff, workmen, employees of the resulting company with effect from the appointed date. The Scheme also provides transfer of business and undertaking of the amalgamating company viz., M/s. NTC Consultancy Services Private Limited. to M/s. NTC Logistics Private Limited., under which the entire business and undertaking(s) of the Amalgamating Company, including all the debts, liabilities, losses, duties and obligations, including those arising on account of taxation laws other allied laws of the Amalgamating Company of every description and also including, without limitation, all the movable and immovable properties and assets, tangible and intangible assets of the Amalgamating Company comprising among others, all free hold land, leasehold land building, plants, etc., be transferred and/or deemed to be transferred to and vested in the Amalgamated Company, with effect from the appointed date.

3. The Scheme provides that in consideration for the amalgamation of the amalgamating company with the amalgamated company, the amalgamated company shall without any further application, act, instrument or deed, issue and allot equity shares, credited as fully paid-up, to the extent, i.e. 13,855 equity share in the amalgamated company of the face value of 10 (Rupees Ten Only) each credited as fully paid-up for every 1 (one) equity share of 10 (Rupees Ten Only) each credited as fully paid up for every 1 (one) equity share of 10 (Rupees Ten Only) each fully paid up held in the amalgamating company. On becoming the Scheme effective, the authorised share capital of the Amalgamated Company in terms of the Memorandum of Association and Articles of Association shall automatically stand enhanced without any further act, instrument, or deed on the part of the Amalgamated Company. The staff, workmen and employees of the Amalgamating Company in the service on the effective date shall be deemed to have, staff, workmen and

employees of the Amalgamated Company with effect from appointed date.

4. On becoming the Scheme effective, the accounting for the amalgamation would be done in accordance with the "Purchase Accounting Method" referred in Accounting Standard 14 – Accounting for Amalgamation (AS 14) issued by the Institute of Chartered Accountants of India and notified by the National Advisory Committee on Accounting Standards, MCA, as amended from time to time.

5. The Scheme also provides that the name of the demerged company vi., "NTC Logistics India Private Limited" shall get changed to "NTC Logistics Private Limited" and the name of the Amalgamated company shall be changed from "NTC Logistics Private Limited" to "NTC Logistics India Private Limited"

6. The report of the Official Liquidator and that of RD are also placed on record. The Official Liquidator observed that M/s. NTC Consultancy Services Pvt.

Ltd.,(Amalgamating Company) have not committed any misfeasance, diversion of funds, etc., attracting the provisions of Sections 542/543 of the Companies Act, 1956 or applicable provisions of the Companies Act, 2013 and that they have not acted against the interest of the Amalgamating Company, shareholders, or stake holders of the Amalgamating Company.

7. The Regional Director in its report have made few observations from Paras 7 to 12. Under Para 7, it has been stated that Key Managerial Personnel of one Company cannot automatically became Key Managerial Personnel of the other Company. In reply to this observation, the Petitioner company has filed an affidavit wherein under Para 2 it has been submitted that the Amalgamated Company shall comply with the provisions in relation to the appointment of the Key Managerial Personnel as prescribed under the Companies Act, 2013. Under Para 8, the Regional Director observed that the meeting of the Creditors was required to be dispensed with under Clause (9) of Sec.

230 of the Companies Act, 2013. In reply to this, the Petitioner company stated in the affidavit that the individual notices to all its Creditors were given, but only objection has been raised by M/s. Speedy Multi Moulds Limited, whose claim has been settled on 2nd June 2017, based on which 'No Objection Certificate' has been issued by the objector/creditor which is annexed to the affidavit. In relation to Para 9 of the observation of the Regional Director it has been submitted under Para 4 of the affidavit that the statement showing the details and value of assets and liabilities of the undertaking being transferred to the Transferee/Amalgamating Company is annexed with and marked as Annexure 'D' for the purpose of compliance as desired by the RD. In relation to Para 10 of the observation of the RD a doubt has been raised that as to how the huge amount will be paid as consideration by the Amalgamating Company to the demerged company. In this respect, para 5 of the affidavit shows that Amalgamated Company has sufficient resources to discharge the said consideration

for demerger, and shall utilise its resources to discharge the said consideration. Under Para 11 of the report of the Regional Director it has been observed that as per provisions of Sec. 2(19AA) of the Income Tax Act, 1961, the shareholders of the demerged Company should hold not less than 75% of shares Transferee/Amalgamating Company as otherwise the benefit of Section will not be available. In this connection it has been submitted in the affidavit that the Transferor/demerged Company, Transferee/Amalgamating Company or their shareholders shall not avail any exemption under the Income Tax Act, 1961 for a Demerger. It has further been stated that the Transferor/Demerger Company, Transferee/Amalgamating Company and their shareholders shall discharge their due taxes under the Income Tax Act, 1961, as applicable. It has also been observed by the RD in its report that the Scheme did not provide for dissolution of the Transferee/Amalgamating Company without winding up, so the Companies may be advised to amend the

Scheme accordingly and get the approval from the shareholders of the respective Companies. In this respect the counsel for the Applicant drew our attention towards the prayer made under Para 40(b) of the Petition which provides that the Second Petitioner Company may be dissolved without winding up. In view of it the observations that had been made by the RD seem to have been taken care of by the Petitioner Company by filing the affidavit which shall form part of the Scheme. Since the Companies under the Scheme of Amalgamation are private Companies, therefore, there is no requirement to make compliance with listing of Agreements or any SEBI Rules/Regulations. Accordingly the Scheme annexed to the Petition stands sanctioned, which shall be binding on members, creditors and shareholders, and the appointed date is 1st April, 2016.

8. 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 charged 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.

9. The companies 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.

10. 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.

11. The second Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this order with Registrar of Companies.

12. Upon receiving the certified copy of this order, the ROC, is directed place all documents relating to the second Transferor Company with that of the Transferee Company and the files relating to the second Transferor Company shall be consolidated with the files and records of the Transferee Company.

13. 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.

14. In view of the sanction of the Scheme, CP/143/CAA/2017 stand disposed of.

S. Vijayaraghavan

S.VIJAYARAGHAVAN,
MEMBER (TECHNICAL)

MS

CH. MOHD SHARIEF TARIQ

CH.MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)