

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

**TP/97/CAA/2017
TP/98/CAA/2017
[C.P. 160&161 of 2016]**

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation of

M/s. Shal Trans Private Limited
(Transferor Company)

With

M/s. Sea Hawk Lines Private Limited
(Transferee Company)

Order delivered on: 06.10.2017

Coram:

Ch. Mohd Sharief Tariq, Member (J)

S. Vijayaraghavan, Member (T)

For the Petitioners: Shri A. Narayanan, Advocate

ORDER

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

1. Under consideration are two Company Petitions filed under the provisions of erstwhile the Companies Act, 1956 which have been transferred from the Hon'ble High Court of Madras to this Tribunal pursuant to the Companies (Transfer of Pending Proceedings) Rules, 2016 and renumbered as TP(HC)/97&98/CAA/2017. The purpose of the Company Petitions is to obtain sanction of the Scheme of Amalgamation (in short, '**Scheme**') by virtue of which M/s. Shal Trans Private Limited (hereinafter referred to as '**Transferor Company**') is proposed to be merged, amalgamated and vested with

M/s. Sea Hawk Lines Private Limited (hereinafter referred to as 'Transferee Company') as a going concern.

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

Particular	Authorised Capital	Issued, S&P Capital	Share-holders	Secured Creditors	Unsecured Creditors
Transferor Company	Rs. 2,00,00,000	Rs. 1,25,00,000	2	Nil	-
Transferee Company	Rs. 1,25,00,000	Rs. 36,00,200	3	1	-

3. The Transferor Company and the Transferee Company are Private Limited Companies and the Transferor Company is a subsidiary of the Transferee Company by control of share capital. Both the companies are operating in the business of transport facilities having its registered office at Old No. 60, New No. 123, Linghi Chetty Street, Chennai-600001 and the Board of Directors of the petitioner companies vide its resolution dated 09.06.2015 have approved the said scheme of Amalgamation.

4. The Hon'ble Madras High Court vide its order dated 03.03.2016, in CA 223 of 2016 and CA 224 of 2016 dispensed with the convening and holding of the meeting of the equity shareholders of the transferor company and the transferee company respectively. There is no secured creditor in the transferor company and there is one secured creditor in the transferee company and the company has produced the

No Objection Certificate from the said secured creditor. Also, both the companies have produced two certificates from R. Krishna Kumar & Associates, Chartered Accountants wherein it has been mentioned that the transferor company has borrowed interest free loan of Rs. 93,97,732/- by way of unsecured loan from the transferee company and the transferee company has borrowed an amount of Rs. 50,828/- by way of unsecured loan from the transferor company. In said certificates, it is further confirmed that there are no other unsecured credit. The petitioner companies complied with all the orders passed by the Hon'ble High Court and this Bench.

5. Shri A. Narayanan, the learned counsel appearing for the Petitioner Companies submitted that the rationale 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, RBI 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 18.10.2016 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 clause 9.1 of the subject 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 31st August, 2017 submitted that M/s. Annamalai Associates, Chartered Accountants (**Auditor**) appointed by the Hon'ble Madras High Court vide its order dated 28.04.2016 in CP No. 160 of 2016, have scrutinized the books and accounts of the Transferor Company. The

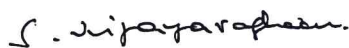
said Auditor has broadly reviewed and observed that the Transferor Company has maintained and written up all the statutory books in accordance with normally accepted accounting principles and fulfilled the requirements of the Companies Act, 2013 and also the affairs of the company have not been conducted in a manner prejudicial to the interest of its members, creditors or the public. The OL further submits that under Clause 9 of Part- II of the proposed scheme, the interest of all the workmen and employees in the service of the Transferor Company are safeguarded. It is further submitted that as per Clause 10 of Part- II of the said scheme, the equity shares held by the transferee company in the transferor company shall be delivered up and cancelled. Further, in terms of Clauses 3 & 4 of this scheme, the transferee company shall without any further application or deed, issue at par and allot to every entitled member of the transferor company, holding fully paid up equity shares in the transferor company in proportion of one equity share of Rs. 10/- each credited fully paid up for every 10 equity shares of Rs. 10/- each fully paid up and held by the shareholders in the transferor company. The OL submitted that the petition may be decided appropriately.

10. 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, 2015.

- 11.** 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.
- 12.** 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.
- 13.** 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.

14. 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.
15. 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, Chennai.
16. 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.
17. 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.
18. Accordingly, the Scheme stands sanctioned and TP(HC)/97&98CAA/2017 stands disposed of.



(S. Vijayaraghavan)
Member (T)


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

RLS