

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, CHENNAI**

**CP/170, 171, 172 & 173/CAA/2017  
[CA/61, 62, 63 & 64/CAA/2017]**

**Under Section 230 to 232 of the Companies Act, 2013**

**In the matter of Scheme of Amalgamation and Arrangement of**

**M/s. APL (INDIA) PRIVATE LIMITED  
(Transferor Company-1)**

**AND**

**M/s. APL AGENCIES INDIA PRIVATE LIMITED  
(Transferor Company-2)**

**AND**

**M/s. CMA CGM EAST & SOUTH INDIA PRIVATE  
LIMITED  
(Transferor Company-3)**

**AND**

**M/s. CMA CGM GLOBAL (INDIA) PRIVATE LIMITED  
(Transferor Company-4)**

**AND**

**M/s. NOL PROPERTIES (INDIA) PRIVATE LIMITED  
(Transferor Company-5)**

**With**

**M/s. CMA CGM AGENCIES (INDIA) PRIVATE LIMITED  
(Transferee Company)**

**Order delivered on: 15.11.2017**

**Coram:**

**CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)**

**S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

**For the Petitioner(s) : Mr. Pawan Jhabakh, Advocate**

**Mr. Abishek Raman, Advocate**

**Mr. Chandra Prakash, Advocate** 

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## ORDER

**Per: CH. MOHD SHARIEF TARIQ, MEMBER (J)**

1. Under consideration are four Company Petitions No. CP/170/CAA/2017, CP/171/CAA/2017, CP/172/CAA/2017 & CP/173/CAA/2017 filed under section 230 of the companies Act, 2013 r/w the companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The purpose of the company petitions is to obtain sanction of the scheme of Arrangement (in Short, '**Scheme**') for Amalgamation by virtue of which M/s. APL (India) Private Limited (hereafter referred to as '**Transferor Company-1**'), APL Agencies India Private Limited (hereafter referred to as '**Transferor Company-2**'), CMA CGM East & South India Private Limited (hereafter referred to as '**Transferor Company-3**'), CMA CGM Global (India) Private Limited (hereafter referred to as '**Transferor Company-4**'), NOL Properties (India) Private Limited (hereafter referred to as '**Transferor Company-5**') are proposed to be merged, amalgamated and vested in M/s. CMA CGM Agencies (India) Private Limited (hereafter referred to as '**Transferee Company**') as a going concern. However, the Transferor Company-4 and the Transferee Company are registered with ROC, Mumbai, Maharastra State and fall within the jurisdiction of NCLT, Mumbai.

2. The Details of Share Capital, Shareholders, Secured &Unsecured Creditors of the Companies are as under:

Particulars	Authorised Capital	Issued, S&P Capital	No. of Equity Share-holders	No. of Secured Creditors	No. of Un-secured Creditors
Transferor Company-1	Rs.1,00,00,000	Rs.96,30,000	2	Nil	95
Transferor Company-2	Rs.4,25,00,000	Rs.1,01,00,150	2	Nil	Nil
Transferor Company-3	Rs.40,00,000	Rs.40,00,000	2	Nil	1
Transferor Company-5	Rs.5,00,000	Rs.5,00,000	2	Nil	1

3. The Transferor Company -1 is a Private Limited Company, having its registered office at New No.8 (Old No.15), 2<sup>nd</sup> Floor, Whannels Road, Egmore, Chennai-600008. It is a wholly owned subsidiary of Transferee Company and is *inter-alla*, engaged in providing shipping agency support services. The Transferor Company -2 is a Private Limited Company, having its registered office at New No.8 (Old No.15), 2<sup>nd</sup> Floor, Whannels Road, Egmore, Chennai-600008. It is a wholly owned subsidiary of 1<sup>st</sup> Transferor Company and is *inter-alla*, engaged in business of support and functional assistance in the discharge of human resource, finance information technology etc. The Transferor Company -3 is a Private




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Limited Company, having its registered office at No. 2, 9<sup>th</sup> Lane, Dr. Radhakrishna Salai, Mylapore, Chennai-600004. It is a wholly owned subsidiary of 1<sup>st</sup> Transferor Company and not undertaking any business.

4. The Transferor Company-4 have its registered offices at Maharashtra State.


The Board of Directors of Petitioner Companies vide its resolution dated 3<sup>rd</sup> Day of March, 2017 approved the said scheme of Arrangement. The Transferee Company is a Private Limited Company, having registered office at No.219, 2<sup>nd</sup> floor, Metro House, Mangaldas Road, Maharashtra-411001. It is engaged in the business of providing agency support services in respect of Transportation Services offered by its principals CMA CGM (a company duly registered under the laws of France) and ANL Singapore Pte Ltd (a company duly registered under the laws of Singapore) as going concern.

5. Mr. Pawan Jhabakh, learned counsel appearing for the Petitioner

Companies submitted that the rationale and circumstances that have necessitated the proposed scheme are that the amalgamation will be global acquisition, there have 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 consolidates the group's Indian operations into one flagship entity so as to result in simplified corporate structure, eliminate cross holdings and regulatory compliances and costs. And also 

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provide synergistic linkages besides economics in costs and other benefits, by combining similar business and operations of Transferee and the Transferor companies which would be beneficial to all stakeholders.

6. The learned counsel further submits that no investigation proceedings are pending under section 235 to 251 of the Companies Act, 1956 or under the Companies Act, 2013 against the Petitioner Companies.
7. The Regional Director, Southern Region (In short, '**RD**') in the Report Affidavit (for brevity, '**Report**') dated 05.09.2017 submitted that Clause 6.1 and 16.1 of the scheme provide for the protection of the interest of the employees of the Transferor Companies. It is further submitted that the Transferor Companies No.1 3 & 5 are regular in filing its statutory returns and the Transferor Company No.2 has filed the annual return and balance sheet up to 31.03.2015 only. No Prosecution filed, no complaints pending and no inspection or investigation is pending against Transferor Companies. It is further stated that Transferor Companies No. 1, 2, 3 & 5 seek dissolution without winding up. However, the RD has decided not to make any objection to the Scheme.
8. The Official Liquidator (In short, '**OL**') in his report dated 02.11.2017, submitted that as per this bench ordered dated 06.06.2017. The Official Liquidator has nominated M/s. R. Ravi & R. Vaidhyanathan., Chartered 

Accountants (Auditor), Chennai who is one of the empanelled auditor by the Hon'ble High Court of Madras to look into the composite Scheme of Amalgamation and to scrutinize the books and accounts of the Transferor Companies. The Auditor has broadly reviewed, observed and submitted his report that the Clause 6.1 of Part-IV of the proposed scheme, the interest of all staff, workmen and employees in the service of the Transferor Companies is safeguarded. As per the Clause 13.1 of the Part-III & 23.1 of Part-IV of the said scheme, upon Merger-1 & 2 coming into effect and upon the vesting of Transferor Companies ( Inclusive of all assets and liabilities of the thereof as defined) into and with Transferee Company in accordance with Clause 5 & 15 of the scheme, the Transferee Company shall not pay any consideration to the Transferor Companies or to its shareholders, as Transferor Companies are wholly owned subsidiaries of the Transferee Company, and accordingly , no shares shall be issued and allotted by the Transferee Company either to itself or to any of its nominees holding shares in the Transferor Companies.

- 8/ 9. The OL further submits that there are some disputes with the income tax department <sup>but</sup> ~~that~~ the same will continue even after merger through the scheme of arrangement. The Transferor Companies have been fairly regular in remitting the dues under the Employees Provident fund Act and Employees State Insurance Act. It is further stated that the Transferor




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Companies have maintained and written up all the statutory books in accordance with normally accepted accounting principle, and also not come across any act of misfeasance by any person who took part in the promotion or formation of the Transferor Companies. It has been stated that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to the interest of its members or to public interest.

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 1<sup>st</sup> February, 2017.

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 Petitions are allowed and the scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on the members, creditors and shareholders.

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- 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 Applicant Companies Transferor 1, 2, 3 & 5 shall be dissolved without winding up from the date of filing of the certified copy of this order with the concerned Registrar of Companies.
- 16.** Upon receiving the certified copy of this order, the ROC, Chennai is directed to send all documents relating to the Transferor Companies to the Transferee Company, so that the files relating to the Transferor Companies 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 14<sup>th</sup> December, 2016.

18. Accordingly, the Scheme stands sanctioned, and CP/170, 171, 172 & 173/CAA/2017 stands <sup>h</sup>disposed of.

S. Vijayaraghvan.  
(S. VIJAYARAGHAVAN)  
MEMBER (T)

  
(CH. MOHD SHARIEF TARIQ)  
MEMBER (J)

TJS