

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

TP(HC)/166/CAA/2017
(In CP/142/2014 connected with CA/186/2014)
TP(HC)/167/CAA/2017
(In CP/143/2014 connected with CA/201/2014)
TP(HC)/168/CAA/2017
(In CP/144/2014 connected with CA/187/2014)

**In the matter of the Companies Act, 1956
And
In the matter of Sections 391 to 394 of the Companies Act, 1956
And
In the matter of Scheme of Amalgamation between**

TTK PROTECTIVE DEVICES LIMITED
(Transferor Company No.1)
And
TSL TECHNO SERVICES LIMITED
(Transferor Company No.2)
With
TTK HEALTH CARE LIMITED
(Transferee Company)

Order delivered on: 14.12.2017

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**K. ANANTHA PADMANABHA SWAMY, MEMBER (J)
S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

*For the Petitioners: H.Karthik Seshadri & V.Hari Kumar for Iyer Thomas
Advocates*

Per: S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

ORDER

This is an application under Section 391(2) and Section 394 of the Companies Act, 1956 praying for dissolution without winding up of the Transferor Companies namely, TTK Protective Devices Limited and TSL Techno Services Limited

both situated at No.6 Cathedral Road, Chennai 600 086 (within the aforesaid jurisdiction).

In this case, the 1st stage of filing applications for conducting/dispensing with meeting of shareholders has been completed. The report of the chairman in cases where there was a meeting has also been filed along with the publication of notices in the newspapers. Notice to statutory authorities has also been issued as per orders of the Hon'ble High Court.

It is a case of merger or amalgamation involving a holding company and its subsidiary wholly owned by enterprises belonging to the same group and /or mergers or amalgamations involving subsidiaries wholly owned by enterprises belonging to the same group.

Such combinations are exempted from reporting under Regulation 4 of the Combination Regulations. An affidavit to this effect has also been submitted.

The Hon'ble High Court vide order dated 7th February 2014 regarding the scheme of amalgamation of Transferor Companies namely, TTK Protective Devices Limited and TSL Techno Services Limited with Transferee Company TTK Healthcare Limited has directed the OL to file a report under the

second proviso to Sub-section (1) of Section 394 of Companies Act, 1956 about the affairs of the transferor companies.

Pursuant to the said direction dated 7th February, 2014, the Official Liquidator appointed Mr. K.M.Mohandass & Co., Chartered Accountants, No.36 Sait Colony, 1st Street, Egmore, Chennai 600 008 for the purpose of thoroughly scrutinizing the books of records and other papers in accordance with Section 209 of the Companies Act, 1956 relating to transferor companies. The said Chartered Accountant submitted his report and on the basis of the same the Official Liquidator has duly filed his report dated 24/10/2017 before this Tribunal and has come to the conclusion that the affairs of the transferor companies, namely, TTK Protective Devices Limited and TSL Techno Services Limited have not been conducted in a manner prejudicial to the interest of their members or to public interest.

OL has stated that the transferor companies have already filed their duly audited Balance Sheet up to 31.03.2017 and hence the appointed date for the subject scheme should be 01.04.2017 instead of 01.04.2012, so as to give a true and fair view of the financial position of the Transferor Companies.

The OL has made some other points regarding the method of share valuation vide para 3 of their report. In the report it has

been stated that the valuation has been carried out on 30.04.2013 considering the projected cash flows of the transferor company No.1 commencing from the financial year 2012-13. In the absence of projections on which the valuation has been carried out it has been stated that the office of the OL are unable to comment whether the projections are realistic and achievable or achieved at least for the financial year 2012-13 that is date on which the valuations have been carried out. The Tribunal is of the view that there are various methods of valuation and the PCA would have adopted a method of valuation which is in consonance with the nature of the business operations and hence no further investigations are warranted at this stage. Hence, it is opined that no further directions are required to be issued by this Tribunal in this regard. This view is based on the verdict of the Hon'ble High court of Calcutta mentioned below:

In Bengal Tea Industries Ltd. v. Union of India
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT No. 108 of 2010
ACO No. 24 of 2010
CP No. 221 of 2009

Globsyn Infotech Limited
(formerly Synergy Log-in Systems Limited)
And

Globsyn Technologies Limited *Appellant*

In this case "the court observed that the proposed ratio of exchange was specifically placed before the members of the Transferor Company and was accepted. It was nobody's case that the majority of the shareholders of the Transferor Company had coerced the minority in any manner in accepting the said ratio of exchange. It was also not the case that the shareholders of the Transferor Company would not get anything in lieu of their shares of the Transferor Company. The court observed that if the contention of the Regional Director is 28 of 55 O/COMP/131/2013 JUDGMENT accepted, the shareholders of the Transferor Company would no doubt get a little more on the basis of a more favourable ratio. The court, however, was of the view that valuation is ultimately a matter of expert opinion. There are more than one method of valuation and a valuation would vary if different methods are adopted. The shares are the properties of the shareholders and they are the ultimate and the best judge of the value which they would put on their shares. There is no requirement in the Companies Act in such a case. The ratio of exchange has to be determined on a valuation made by a chartered accountant or an auditor though the court feels that in the best interest of all concerned and to prevent controversy a proper basis of valuation should be recorded. The court observed that in the event any shareholder of the Transferor Company had appeared before it and objected to the valuation on the basis of the ratio of exchange, the matter would have taken an entirely different complexion and it would have been inclined to probe further into the question of ratio of exchange to satisfy itself that the shareholders of the Transferor Company have not been treated unfairly. In the absence of any challenge from the shareholders of the Transferor Company who are primarily and exclusively interested on the question of the ratio of exchange, the court was not inclined to interfere in the matter at the instance of the Regional Director."

Vide para 3 it has been submitted that under Clause 5.1 of Part – II of the proposed scheme, the interest of all the staff, workmen and employees in the service of the Transferor Companies are safeguarded. The valuation of shares of the transferor company No.1 and the transferee company have been

done by M/s.SSPA & Co., Chartered Accountants, Mumbai vide their report dated 30.04.2013.

Vide para 4 of OL's report it has been stated that transferor company No.1 has availed export packing credit loan from Corporation Bank to the tune of Rs.19.00 crores secured by way of lien on fixed deposits and the balance outstanding as on 31.03.2011 was Rs.15.09 crores. In this connection it has been stated by the petitioner that the outstanding loan has been fully cleared and that the bank has issued no dues letter dt.07.07.2014 that as of 20.06.2014 the amounts have been fully repaid.

Vide para 6 of the OL's report it has been stated that the transferor companies have filed their Annual Accounts upto the financial year 2012-13 and have further stated that there were no complaints or allegations against the transferor companies. The report has also references about disputed income tax dues which are pending as on 31.03.2014 at various forums. Under the scheme of amalgamation the transferee companies will be liable for all the taxes and other dues of the transferor companies and hence no directions need to be given in this regard.

In the OLs report vide para 9 it has been suggested that the transferor companies may be directed to amend the appointed date from 01.04.2012 to 01.04.2017 for the benefit of

the stakeholders and for giving the clear picture about the financial position of the transferor companies.

This is a transferred petition from the Hon'ble High Court of Madras and at this juncture changing the appointed date will result in the application being heard de novo there will be changes during the intervening years with regard to shareholding, secured and unsecured credit etc. Hence, there will be no orders, for modifying the **appointed date**.

This view as per the opinion of the High court of Gujarat's verdict in

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION NO. 131 of 2013

In COMPANY APPLICATION NO. 108 of 2013

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VODAFONE WEST LTD....Petitioner(s) Versus.Respondent(s)

1.1 ".....learned counsel for the Petitioner Company submitted that the Appointed Date of 1st April 2012 has been accorded approval by the Board of Directors and the shareholders of the respective companies. The choice of Appointed Date is the prerogative of the 19 of 55 O/COMP/131/2013 JUDGMENT respective companies and approval has been granted to the present Scheme by incorporating the said Appointed Date. It was pointed out that the Board of Directors have approved the Scheme on 21.3.2013 and the equity shareholders approved the Scheme by letters dated 21.3.2013 and the Company Application No.108 of 2013 was sworn on 26.3.2013. It was submitted that, therefore, all matters and events with respect to approval of the Scheme by the Petitioner Company and its shareholders took place in the financial year 2012-13 and none of the shareholders or creditors of the Petitioner Company have raised any objection to the Appointed Date, accordingly, there is no justification for any change in the Appointed Date. It was submitted that the court would interfere with

the decision of the Board of Directors and shareholders only if it is such as would shock the conscience of the court. In the present case, 1st April 2013 is the logical Appointed Date. There is no question of confusion and hence, the decision of the shareholders should be accepted. In support of his submissions, the learned counsel placed reliance upon an unreported decision of a Division Bench of this court in Shree Balaji Cinevision (India) Private Limited rendered on 23.9.2009 in O.J. Appeal No.65 of 2009 wherein the court has observed that it agreed with the learned Company Judge that the Company Court has discretion to make modification in the proposed scheme of compromise, arrangement, etc. However, such discretion is required to be exercised for cogent reasons. The court found that the learned Company Judge had no reason to alter the Appointed Date proposed in the Scheme of Amalgamation. Reliance was also placed upon the judgment and order dated 2.9.2004 of the Bombay High Court in the case of Jindal Iron and Steel Company Limited v. Asst. Commissioner of Income-Tax, rendered in CA No.123 of 2004."

In this case, the new provision incorporated under the Companies Act 2013 is also of relevance. The relevant Section 232(6) stated that

"The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date."

ORDER

We have perused the documents annexed to the application and have heard the submissions made on behalf of the applicant and pass the following orders :

- a) TTK Protective Devices Limited and TSL Techno Services Limited (the Transferor Companies) be dissolved without winding up from the date of the filing of the


certified copy of this order with the Registrar of Companies, Chennai by the Transferor Companies.


- b) The Transferor Companies and the TTK Healthcare Limited (transferee Company) herein respectively do file a certified copy of this order with the Registrar of Companies, Chennai within 30 days from the date of the order to be made herein;
- c) The Registrar of Companies Chennai upon receiving such certified copy of this order be directed to place all documents relating to the Transferor Companies and registered with them on the file kept by office of ROC in relation to the Applicant Company and the files relating to the Transferor Companies and the Applicant Company shall be consolidated accordingly.
- d) The scheme of amalgamation as submitted by the applicants is sanctioned. The scheme will form part of this order.

There shall be no orders as to costs.

TP(HC)/166/CAA/2017, TP(HC)/167/CAA/2017,
TP(HC)/168/CAA/2017 in CP No.142/2014, CP No.143/2014,

CP No.144/2014 connected with CA No.186/2014, CA
201/2014, CA 187/2014 hereby stand disposed of.


(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)


(K.ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

/pb/ JAI