

NATIONAL COMPANY LAW TRIBUNAL
DIVISIONAL BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 19/04/2017 AT 10.30 AM

PRESENT: SHRI K. ANANTHA PADMANABHA SWAMY, MEMBER-JUDICIAL
SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL

APPLICATION NUMBER :
PETITION NUMBER : CA/CAA/25,26/2017
NAME OF THE TRANSFEROR : KERRY LOGISTICS INDIA PVT LTD
NAME OF THE TRANSFERRE : KERRY INDEV LOGISTICS PVT LTD
UNDER SECTION : 230

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
REPRESENTATION BY WHOM			

1.	M. KAVITHA SURAN A	Practising company secretary Authorized Representative	<u>Antha</u>
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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

Arguments heard on 19.04.2017
Orders passed on 19.04.2017

CA/25/CAA/2017
and
CA/26/CAA/2017

(Under Section 230 of the Companies Act, 2013)
and

In the matter of Scheme of Amalgamation
of

M/s. Kerry Logistics (India) Pvt. Ltd. (Transferor)
With
M/s. Kerry Indev Logistics Pvt. Ltd. (Transferee)
And

Their Respective Shareholders and Creditors.

Applicant companies represented by : PCS Ms. M. Kavitha Surana

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ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ, MEMBERS (JUDICIAL)

ORDER

CH MOHD SHARIEF TARIQ, MEMBER(JUDICIAL) :- (ORAL)

1. Under consideration are application Nos. CA/25/CAA/2017 and CA/26/CAA/2017 which are pertaining to the proposed Scheme of Amalgamation. The transferor company is M/s. Kerry Logistics (India) Pvt. Ltd. and the transferee company is M/s. Kerry Indev Logistics Pvt. Ltd (formerly known as Indev Logistics Private Limited). The registered office of the transferor company is at old No.12, New No.23, R.T. Tower, Josier Street, Thirumurthy Nagar, Nungambakkam, Chennai – 600 034 and the transferee company is

situated at old No. 41, New No.81, Thambu (Chetty) Street, Mannady, Chennai – 600 001. The prayer made in both the applications pertains to one Scheme of Amalgamation. Therefore, we take both the applications together for disposal.

CA/25/CAA/2017

2. The prayer made in the application of the transferor company (M/s. Kerry Logistics (India) Pvt Ltd.) is to dispense with the convening, holding and conducting of the meeting of the equity shareholders and to grant approval for convening, holding and conducting of the meeting of the secured/unsecured creditors of the company by appointing the Chairman, fixing quorum, place of the meeting, newspaper advertisements etc., for passing the resolution to approve the Scheme of amalgamation. There are 2 equity shareholders in the transferor company. Both the shareholders are entities and they have deposed in their consent affidavits that they do agree for dispensing with convening, holding and conducting of the meeting of the shareholders and for the sanction/approval of the proposed Scheme of Amalgamation. The consent affidavits are placed at annexure 1 and 2 of the application. The requirement under law is fulfilled. We order to dispense with the meeting of equity shareholders of the transferor company.

3. It has been submitted that there is one secured creditor of the transferor company whose consent affidavit is not available and the counsel for the applicant undertakes to obtain the consent affidavit prior to the presentation of Petition for approval/sanction of the Scheme of Amalgamation.

4. In relation to the unsecured creditors, it has been submitted that there are 447 unsecured creditors in the transferor company. We direct for convening, holding and conducting of the meeting of the unsecured creditors. The meeting shall be held on 24.05.2017 at 10.30 a.m. in the registered office of the transferee company i.e. old No. 41, New No.81, Thambu (Chetty) Street, Mannady, Chennai – 600 001.

5. We appoint Mr. Xavier Britto, failing him, Mr. J. Sivasankaran as the Chairman of the meeting of the unsecured creditors of the transferor company. The quorum shall be 100 creditors present in person or by proxy. In case there is no quorum at the designated time of the meeting, then the meeting shall be adjourned by half an hour, and thereafter, the persons present for voting shall be deemed to constitute the quorum. Notice for the meeting shall be sent by the Chairman of the meeting by registered post or speed post or courier or e-mail or hand delivery at the last known addresses of the unsecured creditors at least one month before the date fixed for the meeting.

6. The publication of notice shall be made in the newspapers one in English “Financial Express” (All India Edition) and another in vernacular language “Malai Murasu” (Tamilnadu Edition) having wider circulation in the State of Tamilnadu, having not less than 30 days period before the date fixed for the meeting. The applicant company is directed to display the notice on the notice board at its registered office and the Registry is also directed to display the notice on the board of this Tribunal. The person who receives the notice

within one month from the date of receipt of notice can vote in the meeting either in person or through proxy or through postal ballot or through electronic means or the mode mentioned in the notice of the meeting to the adoption of the scheme of amalgamation.

7. The Chairman is directed to ensure the availability of all the necessary facilities for the purpose of voting in the meeting so that the proceedings of the meeting may take place in a just, free and fair manner.

8. The Chairman shall appoint one Scrutiniser for scrutiny of the votes cast by unsecured creditors, who shall submit the report to the Chairman. The Chairman shall file the report before this Bench within one week from the date the meeting is conducted. The Chairman of the meeting is at liberty to fix his remuneration as per the practice in vogue and the transferor company shall pay the same to him.

9. We are inclined to direct the Registry to issue notice to the Regional Director, Ministry of Corporate Affairs, ROC concerned, Income Tax Authorities, Reserve Bank of India. Since the applicant is a private company, there is no requirement to issue notices to SEBI, BSE, NSE and CCI. The authorities shall within the period of 30 days from the date of the receipt of the notice, make representation to this Bench. The copy of such representation shall simultaneously be sent to the applicant company and in case no representation is received within the stipulated period of 30 days by this Bench, it shall be presumed that the authorities have no representation to make on the proposed Schemed of Amalgamation.

10. We also direct the Registry to issue notice to the Official Liquidator in respect of the transferor company. The Official Liquidator shall appoint Chartered Accountant on his own for the purpose of preparation of the report which shall be submitted to this Bench within four weeks from the date the copy of this order is received.

CA/26/CAA/2017

11. M/s. Kerry Indev Logistics Pvt. Ltd., is the transferee company. The prayer made in the application of the transferee company is to dispense with the convening, holding and conducting of the meeting of the equity shareholders and to grant approval for convening, holding and conducting of the meeting of the secured and unsecured creditors of the company by appointing the Chairman, fixing quorum, place of the meeting, newspaper advertisements etc., for passing the resolution to approve the Scheme of Amalgamation. There are 3 equity shareholders in the transferee company. Two are individuals and one is entity, who have deposed in their separate consent affidavits that they do agree for dispensing with convening, holding and conducting of the meeting of the shareholders and for the sanction/approval of the proposed Scheme of Amalgamation. The consent affidavits are placed at annexure 3, 4 and 5 of the application. The requirement under law is fulfilled. We order to dispense with the meeting of equity shareholders of the transferee company.

12. It has been submitted that there are 5 secured creditors of the transferee company whose consent affidavits are not available and the counsel for the applicant undertakes to obtain the consent affidavits prior to the presentation of Petition for approval/sanction of the proposed Scheme of Amalgamation.

13. In relation to the unsecured creditors, it has been submitted that there are 915 unsecured creditors in the transferee company. We direct for convening, holding and conducting of the meeting of the unsecured creditors. The meeting shall be held on 24.05.2017 at 2.30 p.m at the registered office of the transferee company i.e. old No. 41, New No.81, Thambu (Chetty) Street, Mannady, Chennai – 600 001.

14. We appoint Mr. Xavier Britto, failing him, Mr. J. Sivasankaran as the Chairman of the meeting of unsecured creditors. The quorum shall be 100 creditors present in person or by proxy. In case there is no quorum at the designated time of the meeting, then the meeting shall be adjourned by half an hour, and thereafter, the persons present for voting shall be deemed to constitute the quorum. Notice for the meeting shall be sent by the Chairman of the meeting by registered post or speed post or courier or e-mail or hand delivery at the last known addresses of the creditors at least one month before the date fixed for the meeting.

15. The publication of notice shall be made in the newspapers one in English “Financial Express” (All India Edition) and another in vernacular language “Malai Murasu” (Tamilnadu Edition) having wider circulation in the State of Tamilnadu, having not less than 30

days period before the date fixed for the meeting. The applicant company is directed to display the notice on the notice board at its registered office and the Registry is also directed to display the notice on the board of this Tribunal. The person who receives the notice within one month from the date of receipt of notice can vote in the meeting either in person or through proxy or through postal ballot or through electronic means or the mode mentioned in the notice of the meeting to the adoption of the scheme of amalgamation.

16. The Chairman is directed to ensure the availability of all the necessary facilities for the purpose of voting in the meeting so that the proceedings of the meeting may take place in a just, free and fair manner.

17. The Chairman shall appoint one Scrutiniser for scrutiny of the votes cast by unsecured creditors, who shall submit the report to the Chairman. The Chairman shall file the report before this Bench within one week from the date the meeting is conducted. The Chairman of the meeting is at liberty to fix his remuneration as per the practice in vogue and the transferee company shall pay the same to him.

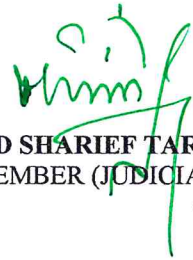
18. We are inclined to direct the Registry to issue notice to the Regional Director, Ministry of Corporate Affairs, ROC concerned, Income Tax Authorities, Reserve Bank of India. Since the applicant is a private company, there is no requirement to issue notices to SEBI, BSE, NSE and CCI. The authorities shall within the period of 30 days from the date of the receipt of the notice, make representation to this Bench. The copy of such representation shall

simultaneously be sent to the applicant company and in case no representation is received within the stipulated period of 30 days by this Bench, it shall be presumed that the authorities have no representation to make on the proposed Schemed of Amalgamation.

19. We direct the applicant companies to present the Petition within one week from the date the report of the Chairman is submitted to this Bench. Accordingly, the applications are disposed of.



ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)



CH. MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)