

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERBAD BENCH, AT HYDERABAD.

1. CP (TCAA) No.47/HDB/2017
(Transferee Company)
2. CP (TCAA) No.48/HDB/2017
(Transferor Company No.1)
3. CP (TCAA) No.49/HDB/2017
(Transferor Company No.2)

In the Matter of
CONNECTED WITH THE COMPANY PETITION
Nos.384 of 2016, 385 of 2016 & 386 of 2016

&

COMPANY APPLICATION
Nos.1511 OF 2016, 1512 of 2016 & 1513 of 2016

IN THE MATTER OF THE COMPANIES ACT, 1956

AND

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

IN THE MATTER OF

SECTIONS 391 TO 394 OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF M/s KAVERI (INDIA) LIMITED
(Transferor Company No.1)

M/s SURANA SECURITIES LIMITED
(Transferor Company No.2)

AND

IN THE MATTER OF SCHEME OF AMALGAMATION
BETWEEN

M/s SURANA CABLES PRIVATE LIMITED
(Formerly known as Surana Steels Private Limited)

AND



1. M/s KAVERI (INDIA) LIMITED
2. M/s SURANA SECURITIES LILMITED

M/s SURANA CABLES PRIVATE LIMITED

Having its Regd. Office at 1-7-241/11/D,
Ramalaya, 3rd Floor, S.D. Road,
Secunderabad – 500 003, Telangana.

Represented by its

Director, Dipin Surana)Petitioner / Transferee Company.

Judgement delivered on: 13/7/2017

CORAM

Hon'ble Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDICIAL)

Hon'ble Mr. RAVIKUMAR DURAISAMY, MEMBER (TECHNICAL)



Counsels for Transferor Company

1 & 2 &

Transferee Company.

... Mr. Manoj Kumar Koyalkar
Ms. Kritika Sharma

Counsel for RD, SER.

... Mr. B. Appa Rao, CGSC

Counsel for O.L.

... Mr. Anil Kumar

Per: Ravikumar Duraisamy, Member (Technical)

JUDGEMENT

1. The Company Petition Nos.384, 385 & 386 of 2016 was filed by the Petitioners Company on 22.11.2016 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, under Sections 391 to 394 of the Companies Act, 1956 Subsequently, the said files were transferred from Hon'ble High Court to this Tribunal, hence, the NCLT, Hyderabad Bench taken up the case for its disposal.

2. The learned counsel for the Petitioners Company has stated that they have filed three company Applications in the Hon'ble High Court vide C.As No.1511, 1512 and 1513 of 2016 under Sections 391-394 of the Companies Act, 1956 for dispensing with the meeting of the shareholders as all shareholders have given consent to the Scheme of Amalgamation and the Hon'ble High Court vide Orders dated 07.11.2016, dispensed with the convening of shareholders meeting of the Company. The Hon'ble High Court also dispensed with meeting of Secured Creditors of petitioner companies as they do not have any Secured Creditors.

3. The Petitioner submits that M/s Kaveri (India) Limited (Transferor Company No.1) was incorporated as a Public Limited Company under the provisions of the Companies Act, 1956, pursuant to the Certificate of Incorporation granted on 16.10.1984 vide Corporate Identity No.U51909TG1984 PLC 031391, having its registered office at 1-7-241/11/D, Ramalaya, 3rd Floor, S.D. Road, Secunderabad – 500 003, Telangana State.
4. The Authorised Share Capital of the Petitioner / transferor Company No.1 is Rs.2,00,00,000/- (Rupees Two Crore only) divided into 20,00,000 (Twenty lakhs) Equity Shares of Rs.10/- (Rupees Ten) each and the issued, Subscribed and paid up Share Capital is Rs.1,92,00,000 (Rupees One Crore Ninety Two Lakhs only) divided into 19,20,000 (Nineteen Lakhs Twenty Thousand) Equity Shares of Rs.10/- (Rupees Ten) each fully paid up.



5. The Transferor Company No.2, M/s Surana Securities Limited was incorporated as a Public Limited Company under the provisions of the Companies Act, 1956 by the Registrar of Companies, Andhra Pradesh on 26.05.1993 and its Corporate Identity number is U67120TG1993PLC015805, having its Registered Office at 1-7-241/11/D, Ramalaya, 3rd Floor, S.D. Road, Secunderabad – 500 003, Telangana.
6. The Authorised Share Capital of the Petitioner / Transferor Company No.2 viz., Surana Securities Limited, is Rs.2,00,00,000/- (Rupees Two Crore only) as on 31.03.2016 divided into 20,00,000 (Twenty Lakhs) Equity Shares of Rs.10/- (Rupees ten) each and the Issued, Subscribed and paid up share capital is Rs.1,99,20,000/- (Rupees one Crore Ninety Nine Lakhs Twenty Thousand only) divided into 19,92,000 (Nineteen Lakhs Ninety Two Thousand only) Equity Shares of Rs. 10/- (Rupees Ten) each fully paid up.
7. The Petitioner/Transferee Company i.e, Surana Cables Private Limited (formerly known as Surana Steels Private Limited) was incorporated as a Private Limited Company under the provisions of the Companies Act 1956 on 13.12.1985 vide its Corporate Identity No.U28100TG1985PTC004563. The Registered Office is situated at 1-7-241/11/D, Ramalaya, 3rd Floor, S.D. Road, Secunderabad – 500 003, Telangana.
8. The Authorised Share Capital of the Transferee Company is Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) divided



into 15,00,000 (Fifteen Lakhs) Equity Shares of Rs.10/- (Rupees Ten) each and the Issued, Subscribed and paid up Share Capital is Rs.1,00,00,000 (One Crore) divided into 10,00,000 (Ten Lakhs) Equity Shares of Rs.10/- (Rupees Ten Only) each fully paid up.

9. The main objects of Transferor 1 & 2 Companies and the Transferee Company are to carry on business of exporters and importers of and dealers in goods, commodities and merchandise; to carry on all or any of the business of buyers, sellers, suppliers, traders, merchants; to finance the industrial enterprises, individual and other by way of leasing and advancing money; to acquire and hold sell and exchange and deal in shares, stocks, bonds or debentures or securities of any government or public authority or company and to finance industries, enterprises and subscribe to the capital of industrial undertaking and to undertake any business transaction or operation commonly carried on or undertake by capitalists, promoters, financiers and under writers; to carry on in India or elsewhere the business of manufacture, buy, sell, import, export, provide advisory, consultancy services etc.

10. The learned Counsel submitted that as per the order of the of Hon'ble High Court ,the Petitioners Company got published Newspaper advertisement of the 'Notice of Petition' in English Daily (Business Standard) and Telugu Newspaper (Andhra Bhoomi) on 24.12.2016, inviting objections for the proposed scheme of Amalgamation and fulfilled the requisite conditions.



11. Heard Mr. Manoj Kumar and Ms. Krithika Sharma, learned counsel on behalf of all the 3 Petitioners Company (two Transferor companies and Transferee Company). The counsel submitted that the present company Petitions have been filed praying for sanction and confirm the Scheme of Amalgamation so as to be binding on all the equity shareholders / Members, Creditors and employees of Two Transferor Companies and Transferee Company.
12. The details regarding the Profit and Loss Accounts and the shareholding of the transferor companies and transferee company was furnished in C.P. The Transferee Company proposes to acquire and take over all the Assets and Liabilities of Transferor-1 & 2 Companies, through the scheme of amalgamation under Section 391 to 394 of the Act.
13. The learned counsel for the petitioner companies further submits that no petition under Section 397 or 398 of the Act has been filed against the Petitioner Companies and there has been no material change in the affairs of the Petitioner Companies except what was done in the normal course of business; there are no proceedings pending under Section 235 to 251 of the Act, against the Transferor / Transferee Company. The Petitioner/Transferee Company has no Secured Creditors and unsecured creditors as on 31st March, 2016.
14. The Regional Director, SER (Central Government) submitted a report dated 10.03.2017 by Interalia stating that the Registrar of Companies, Hyderabad has reported that the Petitioner



Companies involved in the scheme of amalgamation are regular in filing the statutory returns and no complaints, no investigations and no inspections are pending against the Petitioner Companies.

15. The Regional Director, SER, in his report further stated that the Income Tax Officer, Ward 3(4), Hyderabad vide letters dated 17.02.2017 informed that there is an outstanding demand of Rs.38,477/- is pending in respect of Surana Securities Limited (Transferor Company No.2) and further informed that there is a loss of Rs.33,384/- which is to be carried forward to future years. The said Income Tax authority vide letter dated 17.02.2017 has informed that there is no outstanding demand pending in respect of M/s Surana Cables Private Limited (transferee company), however, there is a loss of Rs.9,80,474/- which is to be carried forward to future years.
16. Finally the Regional Director, SER submitted that the Scheme of Amalgamation along with the Petitions were examined and requested the Tribunal to consider the above submissions and to dispose off the petition on merits and pass such other order or orders as deemed fit and proper in the circumstances.
17. The Official Liquidator has submitted a report by Inter alia confirming the averments made by both the transferor companies in their petition and he did not oppose the scheme of amalgamation in question and submitted to the Tribunal to consider the scheme.



18. Subsequent to the transfer of the case from the Hon'ble High Court to the NCLT Hyderabad Bench, we have listed / posted the case on various dates i.e. on 02.02.2017, 14.02.2017, 22.02.2017, 14.03.2017. Though the case was reserved for orders on 14.03.2017, upon perusal of the entire records especially financials of the companies the Bench thought it fit to seek some vital clarification from the Petitioners Company. Accordingly the case was listed on 20.06.2017. however, none appeared for the Petitioners Company.
19. When the case was listed for hearing on 23.06.2017, the learned counsel for the petitioners company again sought time to clarify the points as sought by the Bench and the case was posted on 28.06.2017. When the matter was again listed on 28.06.2017, none appeared for the petitioners Company, and the case was subsequently listed on 04.07.2017.
20. On 04.07.2017 none appeared for the Petitioners Company. However a letter dated NIL stated to have been signed by Shri Manoj Kumar Koyalkar, authorised representative stating that authorisation is given to Ms U.K. Gayatri, Practicing Company Secretary, bearing Membership No.A39543 to represent on behalf of Shri Manoj Kumar Koyalkar.
21. It is a well-established fact that Company Secretary, who is appearing before the Tribunal, should have been properly authorised by the Board Resolution of respective company to appear. In the instant case Board Resolution authorised only three persons viz., (1) Dr. A.G. Ravindranath Reddy, Advocate; (2) Shri Manoj Kumar Koyalkar, Practicing Company Secretary



and (3) Ms. Kritika Sharma, Practicing Company Secretary. However, the said authorised Practicing Company Secretary Shri Manoj Kumar Koyalkar has authorised another Practicing Company Secretary without the knowledge of the said companies, without Board Resolution of Petitioners Company and posted the case to 05.07.2017 for dismissal and for non-prosecution of the case.

22. During the hearing held on 05.07.2017, wherein the counsels of the petitioners company pleaded for non-dismissal and again sought time to submit the business plan of the transferee company.

23. The Bench made the following observations based on the perusal of records made available and sought clarification for the same.

a) Turnover of two Transferor companies and Transferee Company is NIL as on 31.03.2016. In case of Transferee Company namely Surana Cables Private Limited turnover / revenue even for the previous year 31.03.2015 is NIL.

b) The employees' cost / salaries of Transferor company No.1 is only Rs.7,846/- and the Transferor Company No.2 is only Rs.13,587, Per Annum. It appears that all the three companies wherein the scheme of amalgamation is proposed do not have any permanent employees.

c) In the light of the above observation with regard to the functioning of all the three companies, the counsel was also advised to justify with regard to the rationale for Amalgamation proposed in the scheme



d) All the CPs were filed under Section 391 to 394 of Companies Act, 1956 whereas a memo of appearance submitted by the counsel of the petitioners company refers to section 230, 232 of Companies Act, 2013.

24. During the hearing held on 06.07.2017, the counsel submitted an Affidavit dated NIL signed by Shri Dipin Surana, Director of the Transferee Company clarifying the points sought by the Bench and the proposed business plan. However, when questioned about the business plan submitted by the transferee company also has the approval of both the Transferor Companies, the counsel stated that the business plan was not approved by the two transferor Companies.

25. Upon perusal of the Business Plan, it is noted that the Business Plan is dated 04.05.2017 and the income as on 31.03.2017 is shown as Rs.16.05 crores whereas the Profit & Loss Account for the last two Financial Years i.e., 31.03.2015 and 31.03.2016 shows revenue as rupees NIL.

26. Though the balance sheet of the transferee company for the last two years shows the turnover / revenue.as NIL as per the business plan submitted now, shows turnover of Rs.16.05 crores as on 31.03.2017 and Rs.17.66 Crores for 2018 etc, for the next five years.It appears that the business plan is not prepared by any professional agency/experts. The Income, expenses towards raw material, Profit and loss projected for the 5 years 2017-2021 is nothing but a simple addition of 10% over the base year / previous years. Therefore, we are of the



prima facie view that the business plan submitted by the transferee company is without any application of mind, practicality, business prudence, submitted in a casual way etc. It is also observed that the above said business plan was also not approved by the shareholders, directors of both the transferor companies.

27. Considering the above facts and circumstances and the business plan is not having proper approval of the shareholders and directors of the other two transferor companies, NIL turnover of all three petitioners company failed to satisfy the Bench regarding rationale for the scheme of amalgamation etc., we are of the considered view that the proposed scheme of amalgamation is not complete and we are satisfied that the Scheme of Amalgamation (SOA) is not in the public interest. The proposed scheme did not satisfy / justify many of the rationales submitted in the scheme, especially financial of all the companies i.e., NIL turnover, without any scientific business plan etc as discussed Supra. Therefore, we are not inclined to sanction / confirm the scheme of amalgamation amongst the two transferor companies and the transferee company as prayed for.

28. However, the petitioners company are at liberty to approach the Tribunal after complying with all the legal requirements, applicable provisions, satisfying the above clarifications sought by the Bench as discussed supra and other relevant details.



29. The Petitioners Company are also directed to issue a public notice in the same newspapers in which earlier newspaper publication was issued intimating about the status of the scheme in the interest of the public.

30. The Petitioners Company are also directed to file a copy of this Judgement with Registrar of Companies, Hyderabad.

31. No Order as to costs.



**RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)**



**RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)**

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.

*Order received by the
Registry on 25/7/2017*

**प्रमणित प्रति
CERTIFIED TRUE COPY**
केस संख्या
CASE NUMBER. C.P.(TCAA) No. 4748/19/
निर्णय का तारीख
DATE OF JUDGEMENT. 13/3/17 HDB/2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON. 25/7/17