

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (CA) No. 26/JPR/2024
In CP(CAA) No. 1/230-232/JPR/2024
WITH CA (CAA) No. 7/ 230-232/JPR/2023

IN THE MATTER OF SCHEME OF AMALGAMATION OF

M/S SHRIRAM GI HOLDINGS PRIVATE LIMITED
(Transferor Company)

AND

M/S SHRIRAM GENERAL INSURANCE COMPANY LIMITED
(Applicant Company/ Transferee Company)

MEMO OF PARTIES

IA (CA) No. 26/JPR/2024

INCOME TAX DEPARTMENT,
Circle-7, Jaipur, through Income Tax
Officer

...Applicant

Versus

- 1. M/S SHRIRAM GI HOLDINGS PVT. LTD.**
Plot No. 4, Burkit Road, T. Nagar, Chennai-
Tamil Nadu
- 2. M/S SHRIRAM GENERAL INSURANCE
COMPANY LTD.**
E-8, EPIP, RIICO Industrial Area, Sitapura,
Jaipur (Rajasthan)

...Respondents





FOR APPLICANT(s) : Sandeep Pathak, Adv.
Jaya Pathak, Adv.
FOR RESPONDENT(s) : K.G. Raghavan, Sr. Adv.
Puneet Maheshwari, Adv.

Order Pronounced On: 17.05.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present Company Application bearing *IA (CA) No. 26/JPR/2024* has been filed on behalf of the *Income Tax Department* ('Applicant') under Rule 11 of the National Company Law Tribunal Rules, 2016 against *M/s Shriram GI Holdings Pvt. Ltd.* ('Transferor Company' / 'Respondent No. 1') and *M/s Shriram General Insurance Co. Ltd* ('Transferee Company' / 'Respondent No. 2') seeking production of audit report, balance-sheet and Profit & Loss account (as on 1.04.2023) of the Amalgamated entity.
2. Before proceeding further with the contentions of the Parties, it will be apposite to provide a brief background of the matter which is as follows:-
 - 2.1. For Amalgamation of *M/s Shriram GI Holdings Pvt. Ltd.* and *M/s Shriram General Insurance Co. Ltd*, an Application bearing *CA(CAA) No. 7/230-232/JPR/2023* was filed by the Transferee Company seeking dispensation of meeting of the equity shareholders along with creditors of the Transferee Company. The said application was allowed by this

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Tribunal *vide* its Order dated 22.11.2023, and the Transferee Company was directed to issue individual notices along with a copy of the Scheme to various authorities including the Applicant i.e., *Income Tax Authorities*.

- 2.2. Thereafter, the Transferee Company filed a second motion Petition before this Tribunal bearing no. *CP(CAA) No. 1/230-232/JPR/2024* on 02.01.2024 for fixing a date of hearing along with other consequential directions in terms of Sections 230-232 of the Companies Act, 2013. This Tribunal *vide* its Order dated 31.01.2024 fixed 13.03.2024 as the date of hearing and directed the authorities to file their objections to the Scheme, if any, before the fixed date of hearing i.e., 13.03.2024.
- 2.3. The Applicant i.e., *Income Tax Department*, filed its response to the Scheme of Amalgamation *vide* Diary No. 940/2024 dated 17.04.2024. The same has been replied to by the Transferee Company by filing a Reply Affidavit *vide* Diary No. 951/2024 dated 18.04.2024.
- 2.4. It is relevant to mention that the Transferee Company has filed its Memorandum of Association and Articles of Association *inter alia* delineating its object clauses with the Petition. Further, the Transferee Company has also filed a copy of its Audited Financial Statements for the year ending 31.03.2023 and the Financial Statements of the Transferor Company. An Affidavit is also on record wherein it is stated

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that the Transferor Company does not have any asset/investment except for its shareholding in the Transferee Company.

3. The Applicant has moved the present Application *vide* Diary No. 1090/2024 dated 30.04.2024 on the following set of facts:

3.1. The Transferor Company is registered with the Registrar of Companies, Chennai, and falls under the jurisdiction of the Income Tax Office, Ward No. 6(2), Chennai. Further, the Applicant i.e., *Income Tax Department*, Circle-7, Jaipur, has jurisdiction over the Transferee Company. This Tribunal is seized with the scheme of Amalgamation of the Transferor and the Transferee Company, and it is incumbent on all the relevant stakeholders including the Applicant to submit its objections and provide such assistance as may be necessary for just disposal of the Company Petition.

3.2. A perusal of the Petition reveals that the Transferee Company has not filed draft audit report, balance-sheet and P&L Account of the proposed Amalgamated Entity as on 01.04.2023 i.e., the effective and operative date of Amalgamation. The said documents are necessary to reconcile the audited accounts of the Transferor Company and the Transferee Company with the accounts of Amalgamated Entity.

3.3. The audited accounts of the Amalgamated Entity are necessary to ascertain the impact of amalgamation (Merger) over the Applicant. The

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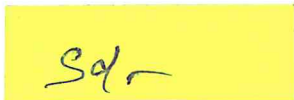
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aforesaid information is necessary to ascertain the liability that may accrue upon the Applicant post amalgamation. Thus, these documents are required to be produced before the Tribunal for just adjudication of the Scheme of Amalgamation. Further, the Transferor and the Transferee Company have filed their income tax returns for A.Y. 2023-24, thus, the said information can easily be provided by the Transferee Company.

4. The Transferee Company has filed its Reply Affidavit *vide* Diary No. 1101/2024 dated 30.04.2024 and made the following submissions:-

4.1. The instant Application has been filed belatedly for thwarting the approval of the Scheme of Amalgamation. The notices concerning the Amalgamation Scheme were served upon the Applicant on 06.12.2023 and 11.02.2024. Yet, the instant Application has been filed much after the expiry of the 30 days period from the date of the service of notice as prescribed under Section 230(5) of the Companies Act, 2013.

4.2. In relation to the documents sought by the Applicant, it was submitted that Section 230(2)(a) of the Companies Act, 2013 sets out the disclosure requirements for a scheme of Amalgamation. The Transferee Company has duly disclosed all the material facts as per the said Section. Further, Section 230(2)(a) does not provide for filing of

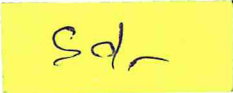


the draft audit report or balance sheet or P&L account of the Amalgamated entity.

4.3. The Transferor Company and the Transferee Company will have separate and independent balance sheets and P&L accounts till approval of the Scheme by the Tribunal. Thus, the issue of filing of combined accounts as on 01.04.2023 does not arise at this stage. Further, 01.04.2023 is only the suggested appointed date of the scheme and the effective date shall be the date of sanction of the scheme by the Tribunal. The Transferee Company placed reliance upon the Judgment of the Hon'ble Supreme Court in the matter of *Marshall Sons & Co. (India) Ltd. Vs. ITO (1997) 2 SCC 302* and Section 232(6) of the Companies Act, 2013 to contend that the effective date shall be the date of sanction of the Scheme.

4.4. It is submitted that the Scheme will have no adverse impact whatsoever upon the Department and the Scheme does not alter the existence of the Transferee Company. Further, the Amalgamation does not fasten any new liabilities upon the Transferee Company. Thus, the instant Application deserves to be dismissed.

4.5. Moreover, the Transferor Company is the holding company of the Transferee Company, and has no assets or businesses other than its



shareholding in the Transferee Company and the income derived from the same.

5. We have heard the Ld. Counsels for the parties and perused the averments made in the Application and Reply along with the documents available on record.
6. The instant Application has been filed seeking production of Books of Accounts as on 01.04.2023 of the Amalgamated entity. To adjudicate the issue at hand, it will be apposite to refer to Section 230(2) of the Companies Act, 2013 which reads as:-

“230(2) The Company or any other person, by whom an application is made under sub-section (1), shall disclose to the Tribunal by affidavit-

- (a) All material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;*
- (b) Reduction of share capital of the company, if any, included in the compromise or arrangement;*
- (c) Any scheme of corporate debt restructuring consented to by not less than seventy-five per cent of the secured creditors in value, including-*
 - (i) a creditor's responsibility statement in the prescribed form;*
 - (ii) safeguards for the protection of other secured and unsecured creditors;*
 - (iii) report by the auditor that the fund requirement of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;*

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- (iv) *Where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and*
- (v) *a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.”*

7. A perusal of the aforementioned Section reveals that the Companies Act, 2013 does not envisage filing of Books of Accounts of the Amalgamated entity for consideration of the Amalgamation scheme.
8. Further, on careful scrutiny of the scheme, it comes to light that the Amalgamation of the Transferor with the Transferee Company is to take place in compliance with the provisions of the Income Tax Act, 1961. The relevant extract of the Scheme is reproduced hereunder:-

“TREATMENT OF THE SCHEME FOR THE PURPOSE OF THE INCOME-TAX ACT, 1961

The provisions of Part III of this Scheme are drawn up to comply with the conditions relating to “Amalgamation” as specified under Section 2(1B) of the Income Tax Act, 1961. If any of the terms or provisions of the aforesaid Parts of this scheme is/are found or interpreted to be inconsistent with the provisions of Section 2(1B) of the Income Tax Act, 1961 at a later date including as a result of a retrospective amendment of law or for any other reason, the scheme shall stand modified accordingly, to the extent determined necessary to comply with the provisions of Section 2(1B) of the Income Tax Act, 1961. Such modifications will not however affect the other parts of the Scheme.”

9. In light of the observations made above, we are of the view that there is no statutory requirement for filing books of accounts of the amalgamated entity. Further, the Scheme in the instant case provides for compliance with

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the provisions of the Income Tax Act,1961. Thus, we are of the opinion that without there being any statutory requirement of filing the Books of Accounts of the Amalgamated entity, the same cannot be directed merely on the apprehension that the scheme might adversely affect the Income Tax Department.

In view of the foregoing, the instant Application bearing *IA(CA) No. 26/JPR/2024* stands rejected and disposed off.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**