

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-V

C.A.(CAA) / 96(MB) / 2024

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements And Amalgamations) Rules, 2016;

AND

In the matter of Scheme of Amalgamation of MOL Nippon India Ship Management Private Limited (“NISM” or the “First Transferor Company”) and MOL Shipping (India) Private Limited (“MOLSI” or the “Second Transferor Company”) with and into MOL (India) Private Limited (“MOL” or the “Transferee Company”) and their respective shareholders (‘Scheme’)

Details of Applicant Companies:

MOL NIPPON INDIA SHIP)

MANAGEMENT PRIVATE)

LIMITED, a company incorporated)

under the Companies Act, 2013, having)

its registered office at Unit No. 71, 7th)

Floor, Level 6, Kalpataru Square,)

Andheri (East), Mumbai – 400 059,)

Maharashtra.

)... FIRST APPLICANT COMPANY

[CIN: U61200MH2019FTC328310]

**MOL SHIPPING (INDIA) PRIVATE)
LIMITED,** a company incorporated)
under the Companies Act, 2013, having)
its registered office at Unit No. 71, 7th)
Floor, Level 6, Kalpataru Square,)
Andheri (East), Mumbai – 400 059,)
Maharashtra.)... **SECOND APPLICANT**
[CIN: U29130MH2008PTC416766] **COMPANY**

MOL (INDIA) PRIVATE LIMITED, a)
company incorporated under the)
Companies Act, 2013, having its)
registered office at Unit No. 71, 7th Floor,)
Level 6, Kalpataru Square, Andheri)
(East), Mumbai – 400 059) ... **THIRD APPLICANT**
[CIN: U61200MH2021FTC359633] **COMPANY**

(First Applicant Company, Second Applicant Company and Third Applicant Company are hereinafter together referred to as ‘**Applicant Companies**’)

Order dated:24.07.2024

CORAM:

Reeta Kohli

Hon’ble Member (Judicial)

Madhu Sinha

Hon’ble Member (Technical)

APPEARANCES:

For the Applicant Companies: CA Harsh C. Ruparelia, i/b A R C H and Associates, Professional for the Applicant Companies

ORDER

1. The Professional for the Applicant Companies submits that the present scheme is a Scheme of Amalgamation of MOL Nippon India Ship Management Private Limited (“First Transferor Company”) and MOL Shipping (India) Private Limited (“Second Transferor Company”) with MOL (India) Private Limited (“Transferee Company”) and their respective shareholders (“Scheme”) under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements And Amalgamations) Rules, 2016.

2. The Professional for the Applicant Companies submits that business of the Applicant Companies are as under:
 - a) The First Applicant Company was incorporated with its main objects to engage in the business of ship management of merchant ships as well as terminal operations, storing, handling, management of gases, LNG and other connected materials/products, transporting gas between terminal and handling of other similar projects in and around India.
 - b) The Second Applicant Company was incorporated with main objects to engage in the business of logistics and related services and has entered into an agency agreement with liners to act as “Agents for Ports” in India.
 - c) The Third Applicant Company is primarily engaged in the business of operations and chartering of fleets and also operates in the international and coastal voyages.

3. The Professional for the Applicant Companies submits that the Transferor Companies and the Transferee Company are part of the same group and engaged in similar line of business activities. The proposed amalgamation of Transferor Companies with the Transferee Company would result in the following benefits:
 - a. Simplification and rationalisation of corporate structure through consolidation;
 - b. Synergies arising out of consolidation of resources which will lead to efficiency in operations and other functions related to the businesses of the Companies;
 - c. Business and administrative synergies;
 - d. Avoid duplication of efforts; and
 - e. Reduction in multiplicity of legal and regulatory compliances, reduction in overheads, including administrative, managerial and other administrative costs.

4. The Professional for the Applicant Companies further submits that upon this Scheme becoming effective and upon merger of the First Transferor Company and the Second Transferor Company with Transferee Company in terms of this Scheme, the Transferee Company shall, without any application or deed, issue and allot its equity shares, credited as fully paid up, to the extent indicated below, to the shareholders of the First Transferor Company and the Second Transferor Company, whose names appear in the register of members of the First Transferor Company and the Second Transferor Company, respectively, or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of Transferee Company in the following manner, viz.:

“417 (Four Hundred Seventeen) Equity Shares of the Face Value of Rs.10/- each, fully paid-up of the Transferee Company to be issued for every 10 (Ten) Equity Shares of the Face Value of Rs. 100/- each, fully paid-up of the First Transferor Company”

“15 (Fifteen) Equity Shares of the Face Value of Rs.10/- each, fully paid-up of the Transferee Company to be issued for every 10 (Ten) Equity Shares of the Face Value of Rs. 10/- each, fully paid-up of the Second Transferor Company”

The copy of Share Swap Ratio Report issued by Registered Valuer – Securities or Financial Assets is annexed to the Company Scheme Application.

5. The Professional for the Applicant Companies submits that the Board of Directors of the respective Applicant Companies vide their resolution dated 14th May 2024 approved the Scheme of Amalgamation of MOL Nippon India Ship Management Private Limited (“First Transferor Company”) and MOL Shipping (India) Private Limited (“Second Transferor Company”) with MOL (India) Private Limited (“Transferee Company”) and their respective shareholders (“Scheme”). The Appointed Date for the purpose of the Scheme means 1st April 2024.
6. The Professional for the Applicant Companies submits that there are 2 (Two) equity shareholders holding 2,15,754 Equity Shares of Rs.100/- each in the First Applicant Company and that the First Applicant Company have procured the consent affidavits from all its equity shareholders, which are annexed to the Company Scheme Application.

7. The Professional for the Applicant Companies submits that there are 2 (Two) equity shareholders holding 1,08,57,140 Equity Shares of Rs.10/- each in the Second Applicant Company and that the Second Applicant Company have procured the consent affidavits from all its equity shareholders, which are annexed to the Company Scheme Application.
8. The Professional for the Applicant Companies submits that there are 3 (Three) equity shareholders (including nominee shareholder) holding 42,36,12,412 Equity Shares of Rs.10/- each in the Third Applicant Company and that the Third Applicant Company have procured the consent affidavits from all its equity shareholders, which are annexed to the Company Scheme Application.
9. In view of the facts that all the equity shareholders of the respective Applicant Companies have given their consent affidavits, the meetings of the equity shareholders of the Applicant Companies are hereby dispensed with.
10. The Professional for the Applicant Companies submits that as on 29th February 2024, there are no secured creditors in any of the Applicant Companies. Therefore, the question of holding the meeting or sending any notices to the secured creditors of the Applicant Companies does not arise. The copy of certificate of an Independent Chartered Accountant certifying No Secured Creditors of the Applicant Companies as on 29th February 2024 for each of the respective Applicant Companies, which are annexed to the Company Scheme Application.
11. The Professional for the Applicant Companies submits that as on 29th February 2024, there are 54 (Fifty-Four) unsecured creditors amounting to

INR 15,73,98,255/- (INR Fifteen Crores Seventy-Three Lakhs Ninety-Eight Thousand Two Hundred and Fifty-Five only) in the First Applicant Company; there are 51 (Fifty-One) unsecured creditors amounting to INR 90,08,660/- (INR Ninety Lakhs Eight Thousand Six Hundred and Sixty) in the Second Applicant Company; there are 163 (One Hundred Sixty-Three) unsecured creditors amounting to INR 1794,79,46,184/- (INR One Thousand Seven Hundred Ninety-Four Crores Seventy-Nine Lakhs Forty-Six Thousand and One Hundred Eighty-Four) in the Third Applicant Company. The copy of certificate of an Independent Chartered Accountant certifying list of unsecured creditors of the Applicant Companies as on 29th February 2024 for each of the respective Applicant Companies, which are annexed to the Company Scheme Application.

12. The Professional for the Applicant Companies further submits that:

- a) The First Applicant Company have procured the consent affidavits from its concerned unsecured creditors representing 90.74% in value of its Unsecured Creditors as on 29th February 2024, which are annexed to the Company Scheme Application.
- b) The Second Applicant Company have procured the consent affidavits from its concerned unsecured creditors representing 90% in value of its Unsecured Creditors as on 29th February 2024, which are annexed as to the Company Scheme Application.
- c) The Third Applicant Company have procured the consent affidavits from its concerned unsecured creditors representing 97.99% in value of its Unsecured Creditors as on 29th February 2024, which are annexed to the Company Scheme Application.

13. The Professional for the Applicant Companies submits that the present Scheme is an arrangement between the Applicant Companies and their shareholders as contemplated under section 230(1)(b) of the Companies

Act, 2013, as there is no compromise or arrangement with creditors as no sacrifice is called for. The rights of the creditors are not affected as all the creditors would be paid off in the ordinary course of business. The assets of the Applicant Companies will be sufficient to discharge its claims and further, proposed Scheme also does not involve any compromise or arrangement with any Unsecured Creditors of the Applicant Companies. Further, the Professional for the Applicant Companies submits that more than 90% in value of unsecured creditors have accorded their consent affidavits in writing to dispense with the meeting of the unsecured creditors and consenting to the Scheme. In view of the fact that there is no compromise or arrangement with the Unsecured Creditors of the Applicant Companies and the Applicant Companies having procured consent affidavits of more than 90% in value of Unsecured Creditors, this Bench directs dispensing with the meeting of the Unsecured Creditors of the Applicant Companies.

14. The Professional for the Applicant Companies submits that there are no inquiry, investigation or proceedings instituted or are pending under the Companies Act, 1956 / Companies Act, 2013 against the Applicant Companies or by any other regulatory authorities.
15. The Transferor Companies are directed to serve notices of present Application along with its enclosures upon:- (i) the Central Government through the office of Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai; (ii) Jurisdictional Registrar of Companies; (iii) concerned Income Tax Authority within whose jurisdiction the respective Transferor Companies are assessed to tax and the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3rd Floor, Aayakar Bhawan,

Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [Email: Mumbai.pccit@incometax.gov.in]; (iv) concerned GST Authority within whose jurisdiction the respective Transferor Companies are assessed to tax; (v) the Official Liquidator, High Court, Bombay; and (vi) any other Sectoral/ Regulatory Authorities relevant to the respective Transferor Companies or their business, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with a direction that they may, if they so wish, submit their representations, if any, within a period of thirty days (30) from the date of receipt of such notice, to the Tribunal with copy of such representations shall simultaneously be served upon the respective Transferor Applicant Companies failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme.

16. The Transferee Company is directed to serve notices of present Application along with its enclosures upon:- (i) the Central Government through the office of Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai; (ii) Jurisdictional Registrar of Companies; (iii) concerned Income Tax Authority within whose jurisdiction the Transferee Company are assessed to tax and the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [Email: Mumbai.pccit@incometax.gov.in]; (iv) concerned GST Authority within whose jurisdiction the Transferee Company is assessed to tax; and (v) any other Sectoral/ Regulatory Authorities relevant to the Transferee Company or their business, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and

Amalgamations) Rules, 2016 with a direction that they may, if they so wish, submit their representations, if any, within a period of thirty days (30) from the date of receipt of such notice, to the Tribunal with copy of such representations shall simultaneously be served upon the Transferee Company failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme.

17. The Professional for the Applicant Companies further clarifies that the Applicant Companies will file the Company Scheme Petition and comply with the provision of service of notices upon all the regulatory authorities and creditors (wherever applicable).

18. That the Applicant Companies to file an Affidavit of Service with this Tribunal for the service of notice to the regulatory authorities as stated above and do report to this Tribunal that the direction(s) regarding the issue of notices have been duly complied with. The Applicant Companies are also directed to include in the affidavit of service, proof of dispatch of documents sent to unsecured creditors of the Applicant Companies, wherever applicable or as directed hereinabove.

19. Ordered accordingly.

SD/-

Madhu Sinha

Hon'ble Member (T)

/Aakansha/

SD/-

Reeta Kohli

Hon'ble Member (J)