

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

C.P.(CAA)/34/MB/2024
c/w C.A.(CAA)/290/MB/2022

In the matter of
Sections 230 to 232 of the Companies Act, 2013
and other applicable provisions of the Companies
Act, 2013

AND

In the matter of
Scheme of Amalgamation of

Hamburg Sud India Private Limited
[Transferor Company /
Petitioner Company-1]

with

Maersk Line India Private Limited
[Transferee Company /
Petitioner Company-2]

and

their respective shareholders.

Hamburg Sud India Private Limited
[CIN: U74900MH2010FTC199423]

... Petitioner Company-1/
Transferor Company

Maersk Line India Private Limited
[CIN: U63030MH2011FTC214311]

... Petitioner Company-2/
Transferee Company

(Hereinafter collectively referred to as 'the Applicant Companies')

Order pronounced on: **28.06.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (video conferencing):

For the Petitioners : Mr. Hemant Sethi *a/w* Ms. Tanaya
Sethi and Devanshi Sethi i/b Hemant
Sethi & Co., Advocates.

For the Regional Director (VC) : Mr. Tushar Wagh, Representative
of the Regional Director, MCA (WR),
Mumbai.

ORDER

1. This is a Company Scheme Petition filed on 23.11.2023 under Sections 230 to 232 of the Companies Act, 2013 seeking sanction of the Tribunal to the Scheme of Amalgamation of **Hamburg Sud India Private Limited** (Petitioner Company-1) with **Maersk Line India Private Limited** (Petitioner Company-2) and their respective shareholders.
2. The Counsel for the Petitioner Companies submits that the Board of Directors of the Petitioner Companies have approved the Scheme in their respective Board Meetings held on 24.11.2022. The Appointed Date is **01.04.2023**.
3. The Counsel for the Petitioner Companies further submits that the present Company Petition has been filed in consonance with the Order dated 30.03.2023 passed in C.A.(CAA)/290/MB/2022 by this Tribunal.

4. The Petitioner Companies are engaged in the business of providing shipping agency services in India to their principal.
5. The Counsel for the Petitioner Companies states that, by sanction of this Scheme of Amalgamation of Hamburg Sud India Private Limited ("Transferor Company") with Maersk Line India Private Limited ("Transferee Company"), the Petitioner Companies will be able to achieve the following rationale:
- Both the Transferor Company and Transferee Company are part of the same group with similar set of shareholders.
 - The Group has decided to restructure the business from 1st April, 2023 in India including integration of all business / employees / systems, etc. Considering this decision, the Company has considered 1st April, 2023 as their Appointed date.
 - Management of both the companies believe that it is in the best interest of all the stakeholders to consolidate the group companies.
 - The following benefits will accrue pursuant to the Scheme:
 - i. Consolidation of the Business of the Transferor Company and Transferee Company;
 - ii. Reduction in number of companies and regulatory compliances thereof;
 - iii. Streamlining the Holding Structure;
 - iv. Ease of Management;
 - v. Reduction in Operating and Administrative costs; and
 - vi. Leveraging on synergies of consolidation.

The proposed Scheme will be beneficial, advantageous and not prejudicial to the interests of the shareholders, creditors and other stakeholders of HSIPL and MLIPL.

6. The meetings of the shareholders and the creditors of the Petitioner Companies were dispensed with vide Order dated 30.03.2023 passed in C.A.(CAA) 290/MB/2022.

7. The Counsel for the Petitioner Companies submits that the Petitioner Companies have complied with all requirements as per directions of this Tribunal vide order dated 30.03.2023 in C.P(CAA)/290/MB/2022 and they have filed necessary affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory / regulatory requirements, if and to the extent applicable, as may be required under the Companies Act, 2013 and the Rules made thereunder to give effect to the Scheme.

8. **Consideration:**

The Counsel for Petitioner Companies submits that apart from the valuation report dated 22.11.2022 obtained while filing of Application, the Applicants obtained a revised valuation report dated 22.05.2023, specifying revised share exchange ratio (pursuant to directions mentioned in the order passed by this Tribunal), from registered valuer – D and P India Advisory Services LLP, having Registration No. IBBI/RV-E/05/2020/131. As per the revised Valuation Report, the Exchange Ratio is as under:

497 (Transferee) : 1000 (Transferor)

Accordingly, upon the Scheme becoming effective, the Transferee Company shall without any further application, issue and allot to the shareholders of the Transferor Company - ***“497 (Four Hundred and Ninety-Seven) equity shares of***

MLIPL of INR 10/- each for every 1000 (One thousand) equity shares of Hamburg of INR 10/- each, fully paid up”.

9. Heard the Counsel for the Petitioner Companies and the Representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition to the Scheme.
10. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report dated 08.05.2024. In response to the observation made by the RD in the said report, the Petitioner Companies have filed a reply in Affidavit cum rejoinder on 09.05.2024 and have given necessary clarifications and undertakings. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:-

Sr. No. Para	RD Report/Observations	Response of the Petitioner Companies
a)	<i>In compliance of AS-14 (IND-AS 103), the Transferor Companies 1,2 and Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with the applicable Accounting standards such as AS-5 (IND AS-8) etc</i>	As far as observations made in paragraph 2 (a) of the Report of Regional Director is concerned, the Transferee company provides that it shall pass such accounting entries which are necessary in connection with the scheme to comply with applicable accounting standards.
b)	<i>As per definition of the Scheme, 1.1 (b) “Appointed date” means the opening</i>	As far as observations made in paragraph 2 (b) of the Report of Regional Director

<p><i>business hours as on 1 April, 2023 or such other date(s) as maybe agreed by the respective Boards of the Transferor Company and the Transferee Company and approved by, or as directed or imposed by the Tribunal.</i></p> <p><i>1.1 (f) “Effective date” means the last of the dates on which the conditions mentioned in Clause 20 of this Scheme are complied with or are waived by the Board of the Transferor and Transferee Company. Any reference in this Scheme to the “date of coming into effect of this Scheme” or “upon the Scheme being effective” shall mean the Effective Date;</i></p> <p><i>In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states 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. However, this aspect maybe decided by the Hon’ble Tribunal taking into account its inherent powers.</i></p> <p><i>It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular No. F. No.</i></p>	<p>is concerned, the Petitioner companies hereby affirm that the Appointed Date mentioned in the Scheme i.e. 01st April 2023, is in compliance with the Circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs and the Scheme shall be effective from such date or a date as approved by the Hon’ble Tribunal in this regard.</p>
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	<i>7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i>	
c)	<i>The Transferor Company and Transferee company have to undertake to comply with section 232(3)(i) of the Companies Act, 2013, where the Transferor Company is dissolved, the fee and the stamp duty paid by the Transferor Company on its authorized share capital shall be set-off against the fees and stamp duty payable by the Transferee Company on its authorized share capital subsequent to amalgamation and therefore, petitioners to undertake that the Transferee Company shall pay the difference of fees and stamp duty.</i>	As far as observations made in paragraph 2 (c) of the Report of Regional Director is concerned, the Transferee Company undertakes to comply with section 232(3)(i) of the Companies Act, 2013, wherein pursuant to the dissolution of the Transferor Company, the fees, if any, paid by the Transferor Company on its Authorized Capital shall be set-off against any fees payable by the Transferee Company on its Authorized Capital pursuant to the Scheme of Merger. The same is also affirmed by Clause 15 (COMBINATION OF AUTHORISED SHARE CAPITAL) in the Scheme.
d)	<i>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the minutes thereof are duly placed before the Tribunal.</i>	As far as observations made in paragraph 2 (d) of the Report of Regional Director is concerned, the Petitioner Companies provide that vide NCLT order in C.A.(CAA)/290(MB)/2022 dated 30 th March 2023, the requirement of conducting meetings of the Equity Shareholders of the Petitioner Companies were dispensed with in view of the consent affidavits obtained from all the shareholders. Further, there are no secured creditors with both the Petitioner

		<p>Companies and accordingly there is no question of conducting meeting of the secured creditors. Further, the Petitioner Companies have already delivered notices of proposed merger via RPAD and email to all its unsecured creditors and no objections have been received yet. Further all such proof of notices have already been provided in Annexures with the Company Scheme Petition.</p>
e.	<p><i>The Transferor Company and the Transferee Company shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.</i></p>	<p>As far as observations made in paragraph 2 (e) of the Report of Regional Director is concerned, the Petitioner companies hereby undertake to comply with the directions of the concerned sectoral regulator, if any.</p>
f)	<p><i>The Hon'ble Tribunal may kindly direct the Transferor Company and the Transferee Company to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.</i></p>	<p>As far as observations made in paragraph 2 (f) of the Report of Regional Director is concerned, the Petitioner companies hereby affirm that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made except for clause 10.1 of the Scheme wherein vide NCLT order in C.A.(CAA)/290(MB)/2022 dated 30th March 2023, the Applicant Companies were required to undergo fresh valuation exercise basis actual financial results as</p>

		on 01 st April, 2023. Such revised scheme was freshly delivered to all unsecured creditors, regulatory authorities and tax authorities. Further, such revised valuation report, revised scheme and fresh notices have already been annexed in the Company Scheme Petition.								
g.	<i>Petitioner Companies shall undertake to comply with the directions of Income Tax department and GST department, if any.</i>	As far as observations made in paragraph 2 (g) of the Report of Regional Director is concerned, the Petitioner companies hereby undertake to comply with the directions of the concerned Income tax department and GST department, if any.								
h.	<i>The Transferee Company shall be in compliance with the provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the Transferor Company and the Transferee Company shall ensure compliance of all the provisions of Income Tax and Rules thereunder</i>	As far as observations made in paragraph 2 (h) of the Report of Regional Director is concerned, the Transferee Company hereby undertakes to comply with all the provisions mentioned in Section 2(1B) of the Income Tax Act, 1961 and the rules thereunder.								
i.	<p><i>It is observed from latest MGT-7 for the year ending 31.03.2022 filed by the Transferor Company that Transferor Company and Transferee Company has following body corporate shareholders having more than 10% shareholding, but Form BEN-2 has not been filed:-</i></p> <table border="1"> <thead> <tr> <th><i>Name of the</i></th> <th><i>Name of</i></th> <th><i>% of share</i></th> <th><i>Status of</i></th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	<i>Name of the</i>	<i>Name of</i>	<i>% of share</i>	<i>Status of</i>					As far as observations made in paragraph 2 (i) of the Report of Regional Director is concerned, the Petitioner companies states that as per Section 90 of the Companies Act, 2013, the Form BEN-2 has to be filed for giving declaration with respect to the significant beneficial owners of the
<i>Name of the</i>	<i>Name of</i>	<i>% of share</i>	<i>Status of</i>							

<i>Company</i>	<i>shareholder</i>	<i>holding</i>	<i>BEN-2</i>
<i>Hamburg Sud India Private Limited (Transferor Company)</i>	<i>Maersk Line Agency Holding A/S</i>	99.99 %	<i>Not filed</i>
<i>Maersk Line India Private Limited (Transferee Company)</i>	<i>Maersk Inter Holding B.V Netherlands</i>		<i>Not filed</i>

Therefore, the Transferor Company and the Transferee Company may be directed to clarify and comply with the same as required u/s. 90 of the Companies Act, 2013 r/w rules 2A, 3 and 4 of the Companies (Significant Beneficial Owners) Rules, 2019.

The Petitioner Companies is also required to file Form BEN-2 under proviso to Rule 8 of Companies (Significant Beneficial Owners) Rules, 2018 for its shareholders who are holders and the requirement is without any exception. Therefore, the

company, disclosing their interest in the company by way of shareholding or voting rights. Significant beneficial owners are such individual shareholders holding indirectly, or together with any direct holdings, not less than ten percent, of the shares or voting rights. Form BEN-2 has not been filed for Petitioner companies as there are no individual beneficial shareholders in both the Petitioner companies. The shareholding pattern of the Petitioner Companies along-with the shareholding pattern of parent company and the ultimate parent company in “**Annexure A**” of this rejoinder. Further, the Petitioner Companies hereby strive to highlight the fact that ultimate parent company is a listed company in Denmark and there are no individual beneficial shareholders. Further the Petitioner Companies undertake to comply with the provisions of Section 90 of the Companies Act, 2013 read with Companies Rules, 2018 as amended from time to time and make necessary filings with the Registrar of Companies.

	<i>Petitioner Companies may be asked to comply Section 90 of the Companies Act, 2013.</i>	
9.	<p><i>That on examination of the report of the Registrar of Companies, Mumbai dated 08.05.2024 for Petitioner Companies (Annexed as Annexure A-1) that the Petitioner Companies fall within the jurisdiction of ROC, Mumbai. It is submitted that no representation regarding the proposed scheme of Amalgamation has been received against the Transferor Company and the Transferee Company. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2022 further observations in ROC report are as under:-</i></p> <p><i>1.That the ROC Mumbai in his report dated 08.05.2024 has stated that no Inquiry, Investigations, Inspections & Prosecutions pending against the subject companies.</i></p> <p><i>2.That the ROC Mumbai in his report dated 08.05.2024 (copy enclosed) has pointed out issues in violation of section 89 and 90 of Companies Act, 2013 read with Rule 4 of Companies (Significant Beneficial Owners) Rules, 2018. The Petitioner Companies may please be directed to submit a reply on the observations reported by the ROC, Mumbai & decide</i></p>	<p>i. This is a factual finding which is not adverse.</p> <p>ii. As stated in above paragraphs, the Petitioner Companies do not have any significant individual beneficial owner and hence the requirement of filing Form BEN-1/BEN-2 was not applicable to the Petitioner Companies. Hence, the Petitioner Companies have not contravened the provisions of the Section 89 and 90 of the Companies Act, 2013.</p> <p>a. Vide NCLT order in C.A.(CAA)/290(MB)/2022 dated 30th March 2023, both the Petitioner Companies have already served notices of merger upon all its unsecured creditors. Further, Affidavit of Service has also been filed with the Hon'ble Tribunal in this regard.</p> <p>b. Both the Petitioner Companies have filed Form GNL-1 on 03rd May 2024 bearing SRN F95244802 in case of Transferor Company and SRN F95245171 in case of Transferee Company. The</p>

<p><i>the matter on merits of the case and if required, the Hon'ble Tribunal may direct the ROC, Mumbai to file a supplementary ROC report in light of companies reply. The ROC Mumbai further observations are as under:-</i></p> <p><i>a. Notices should be served to the unsecured creditors of the Applicant Companies and should obtain consent affidavits.</i></p> <p><i>b. Transferor and Transferee Company have not filed E-Form GNL-1.</i></p> <p><i>c. As per the provisions of Section 232(3)(i) of the Companies Act, 2013, where the Transferor Company is dissolved, the fee and the stamp duty paid by the Transferor Company on its authorized share capital shall be set-off against the fees and stamp duty payable by the Transferee Company on its authorized share capital subsequent to amalgamation. Therefore, remaining fee, if any, after setting-off the fees already paid by the Transferor Company on its authorized share capital, must be paid by the Transferee Company on the increased authorized capital subsequent to the amalgamation.</i></p> <p><i>d. Necessary stamp duty on transfer of</i></p>	<p>same are enclosed as Annexure B1 and Annexure B2 along with this rejoinder.</p> <p>c. The Transferee Company undertakes to comply with section 232(3)(i) of the Companies Act, 2013, wherein pursuant to the dissolution of the Transferor Company, the fees, if any, paid by the Transferor Company on its Authorized Capital shall be set-off against any fees payable by the Transferee Company on its Authorized Capital pursuant to the Scheme of Merger. The same is also affirmed by Clause 15 (COMBINATION OF AUTHORISED SHARE CAPITAL) in the Scheme.</p> <p>d. The Petitioner Companies hereby undertake to pay the required stamp duty arising on transfer of Property/ assets on account of the proposed merger.</p>
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	<p><i>Property/ Assets is to be paid to the respective Authorities before implementation of the Scheme.</i></p> <p><i>e. May be decided on merits.</i></p> <p><i>Transferor and Transferee Company may please be directed to submit reply on the above observations of jurisdictional ROC to enable Hon'ble NCLT to decide the matter on merits.</i></p>	
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11. The observations made by the Regional Director (RD), Western Region, Mumbai are enlisted hereinabove together with response of the Petitioner Company on the observations of the RD, which is also filed vide affidavit of the Petitioner Company. Mr. Tushar Wagh, Ld. Authorised Representative of the Regional Director during the course of final hearing submitted that they have no further objection to the Scheme.

12. The Official Liquidator has filed his report on 08.05.2024, inter alia stating therein the observations on the Scheme as stated in paragraph 5 and 6 of the said Report. In response to the observations made by the Official Liquidator, the Petitioner Companies have filed a reply in Affidavit cum rejoinder on 09.05.2024 and have given necessary clarifications and undertakings. The observations made by the Official Liquidator and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Sr. No. Para	OL Report/Observations	Response of the Petitioner Companies.
5	<p>With reference to clause No. 15.1 of the scheme it is stated that such clauses overrides the provision of Companies Act, 2013 namely Section 232(3)(i) which inter-alia provides that, 'if a company is dissolved the fee paid by such company on its Authorised Capital shall be set off against any fees payable by the transferee company on its Authorised Capital. Accordingly, clause No. 15.1 may be modified.</p>	<p>The Transferee Company undertakes to comply with section 232(3)(i) of the Companies Act, 2013, wherein pursuant to the dissolution of the Transferor Company, the fees, if any, paid by the Transferor Company on its Authorized Capital shall be set-off against any fees payable by the Transferee Company on its Authorized Capital pursuant to the Scheme of Merger. The same is also affirmed by Clause 15 (COMBINATION OF AUTHORISED SHARE CAPITAL) in the Scheme.</p>
6	<p>The Transferor Company in reply to queries of Official Liquidator has informed that there are several litigations pending before various Courts of India. The details of such cases are enclosed as per Annexure 'A'. Hon'ble Tribunal may be pleased to require the transferor company to explain that such litigations have no impact on dissolution of Transferor Company without winding up.</p>	<p>The scheme is a scheme of arrangement between the shareholders and no compromise has been called for the other stakeholders. Further all the legal proceedings pending with the Transferor Company shall stand automatically transferred and continued in the name of Transferee Company. The same is also affirmed by Clause 6 (Legal Proceedings) in the Scheme. Accordingly, such pending litigations have no impact on the dissolution of the Transferor Company.</p>

13. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.
15. Since all the requisite statutory compliances have been fulfilled, the Petition in C.P.(CAA)/34/MB/2024 filed by the Petitioner Companies is made absolute in terms of prayer clauses of the said Company Scheme Petition. Therefore, the Scheme is hereby **sanctioned**. This Bench further orders that -
 - i. The Appointed Date is fixed as **01.04.2023**.
 - ii. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Creditors and Employees.
 - iii. The Transferor Company will be dissolved, without winding up.
 - iv. All the assets and liabilities including taxes and charges, if any and duties of the respective Transferor Companies, shall pursuant to

Section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.

- v. The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in E-Form INC-28 within 30 days from the date of receipt of the Order from the Registry.
- vi. The Petitioner Companies are directed to file a certified copy of this order and the Scheme duly authenticated by the Deputy / Assistant Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, payable, if any, within 60 clear working days from the date of receipt of certified copy of the Order from the Registry of this Tribunal.
- vii. The Petitioner Companies shall comply with all the undertakings given by them.
- viii. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
- ix. All concerned regulatory authorities shall act on a copy of this Order along with the Scheme duly authenticated by the Registrar of this Tribunal.
- x. Any person or any Authority, whose interest is adversely affected, shall be at liberty to approach appropriate Forum or to take

appropriate action as permissible under law.

16. With the above directions, C.P.(CAA)/34/MB/2024 c/w CA(CAA)/290/MB/2022 is **allowed** and disposed of. File to be consigned to records.

Sd/-

Anu Jagmohan Singh
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)

28.06.2024/pvs/ak