

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH -V**

C.A. (CAA) / 31 / MB / 2024

In the matter of the Companies Act,
2013 (18 of 2013).

AND

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

AND

In the matter of the Scheme of Merger
of Cruiser Shipping and Agency Private
Limited (**'Transferor Company'**) with
James Mackintosh & Company Private
Limited (**'Transferee Company'**) and
their respective shareholders

Cruiser Shipping and Agency Private Limited)	
[CIN: U63090MH1995PTC086256],)	..Applicant Company 1
James Mackintosh & Company Private Limited [CIN: U63090MH1946PTC005367])	..Applicant Company 2

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

Order delivered on: 22.04.2024

Coram:

Ms. Reeta Kohli, Member (Judicial)

Ms. Madhu Sinha, Member (Technical)

Appearances:

For the Applicant(s): Mr. Nitin Gutka i/b ZADN & Associates,
Practicing Chartered Accountants

ORDER

1. Heard the Representative for the Applicant Companies.
2. The Representative for the Applicant Companies states that the present Scheme is a Scheme of Merger of Cruiser Shipping and Agency Private Limited (*Applicant Company 1 / Transferor Company*) with James Mackintosh & Company Private Limited (*Applicant Company 2 / Transferee Company*) and their respective shareholders (*hereinafter referred as to "Scheme"*).
3. The Representative for the Applicant Companies states that the Board of Directors of the Applicant Companies in their respective Board Meeting held on 13th February, 2024 have approved the Scheme. The Appointed Date fixed under the Scheme is 1st April, 2023.
4. The Representative for the Applicant Companies further states that the rationale for the Scheme of Merger is as follows:
 - a) All the shareholders / ultimate beneficial owners of the Transferor Company and the Transferee Company are part of the same family and promoter group which implies that both companies are owned and controlled by the same set of

- shareholders, either directly or indirectly.
- b) The merger shall result in the consolidation of entities within the same group and their resources; facilitating optimum utilization of such resources for future growth; avoiding duplication of efforts.
 - c) Consolidate and effectively manage the Transferor Company and the Transferee Company in a single unified entity by eliminating multiple entities.
 - d) Greater efficiency in the overall combined business entity, efficiency of cash flow management, and increased asset base for the purpose of development of businesses of the combined entity, enhancing their growth opportunities, and maximizing the shareholder's value;
 - e) The proposed amalgamation will optimise and eliminate the duplication in administrative and statutory compliances and related costs and multiple record keeping thus resulting in cost savings for the Companies.
5. The Authorised, Issued, Subscribed, and Paid-up Share Capital of the Transferor Company as on 31st March, 2023:

Particulars	Amount in
	Rs.

Authorised Share Capital	
9,900 Equity Shares of Rs.10/- each.	99,000
100 Preference Shares of Rs. 10/- each	1,000
TOTAL	1,00,000
Issued, Subscribed, and Paid-up Share Capital	
9,900 Equity Shares of Rs.10/- each.	99,000
100 Preference Shares of Rs. 10/- each fully paid up	1,000
TOTAL	1,00,000

Subsequent to 1st April 2023 there has been no change in either Authorized Share Capital or paid-up share capital in the Transferor Company. **The Transferee Company holds 4,900 equity shares and 100 preference shares of the Transferor Company.**

6. The Authorised, Issued, Subscribed, and Paid-up Share Capital of the Transferee Company as on 31st March, 2023:

Particulars	Amount in Rs.

Authorised Share Capital	
5,000 Equity Shares of Rs.100/- each.	5,00,000
TOTAL	5,00,000
Issued, Subscribed, and Paid-up Share Capital	
2,000 Equity Shares of Rs.100/- each fully paid up.	2,00,000
TOTAL	2,00,000

Subsequent to 1st April 2023 there has been no change in either Authorized Share Capital or paid-up share capital in the Transferee Company.

7. The Applicant Company 1 was incorporated to primarily carry on the business of agents for chartering of steamships and other vessels, the business of loading and discharging of vessels, and the purchase, hire and working of such vessels and of agents for procuring an arranging such purchase hire and working to establish and to carry on business as a ship chandler, manning of the ship crews, etc. Currently, the Transferor Company is inactive in commercial operations and exploring opportunities in line with its main object. The Applicant Company 2 was incorporated to primarily carry on the business of agents for

chartering of steamships and other vessels, the business of loading and discharging of vessels as stevedores and otherwise, and the purchase, hire and working of such vessels and of agents for procuring and arranging such purchase, hire and working and to establish to act as agents for liners and to enter into contracts for the carriage of passenger and goods. Currently, the Transferee Company is engaged in the business of shipping agency, and freight forwarding and customs clearance and acting as Protection and Indemnity Club correspondent.

8. The Representative for the Applicant Companies further submits that pursuant to the Scheme the Transferee Company is proposing to issue shares to the shareholders of the Transferor Company as per the below ratio:-

- a) *The equity shareholders of the Transferor Company (**other than the shares held by the Transferee Company**) shall be issued and allotted 1 (One) equity share of Rs. 100/- (Hundred) each, credited as fully paid up, of the Transferee Company for every 1000(One Thousand) equity share of the face value Rs.10/- (Ten) each held by them in the Transferor Company.*
- b) *There will be no issue of the preference shares as the entire preference shares capital is held by the Transferee Company.*

9. The Representative for the Applicant Companies further submits

that the pre and post-merger net worth of the Applicant Companies as per the certificate given by the respective statutory auditor as on the 31st March, 2023, which have been placed on record through the Joint Company Scheme Application are as follows:

Sr. No.	Applicant Company	Pre-Merger Net Worth (In INR)	Post-Merger Net Worth (in INR)
1.	Cruiser Shipping and Agency Private Limited	30,49,450	Not Applicable
2.	James Mackintosh & Company Private Limited	62,12,39,620	62,38,12,070

10. There are 3 (three) Equity Shareholders holding 9,900 Equity Shares of Rs. 10/- each in Applicant Company 1. All of the Equity Shareholders have filed affidavits consenting to the Scheme, which have been placed on record of the Joint Company Scheme Application. Therefore, the meeting of the Equity Shareholders of Applicant Company 1 is dispensed with.

11. There are 5 (five) Equity Shareholders holding 2,000 Equity Shares of Rs. 100/- each in Applicant Company 2. All the Equity Shareholders have filed affidavits consenting to the Scheme, which have been placed on record of the Joint Company Scheme

Application. Therefore, the meeting of the Equity Shareholders of Applicant Company 2 is dispensed with.

12. There is 1(One) Preference Shareholders holding 100 Preference Shares of Rs. 10/- each in Applicant Company 1. Sole Preference Shareholders has filed affidavit consenting to the Scheme, which have been placed on record of the Joint Company Scheme Application. Therefore, the meeting of the Preference Shareholders of Applicant Company 1 is dispensed with.

13. The Applicant Company 1 has no Secured Creditors as on 30th September, 2023, as per the certificate given by the statutory auditor, which has been placed on record, of the Joint Company Scheme Application. Therefore, the question of conducting a meeting of the Secured Creditors of Applicant Company 1 does not arise.

14. There is 1(One) Secured Creditors in the Applicant Company 2 of the value of Rs. 6,43,48,232/- as on 30th September, 2023 as per certificate given by Statutory Auditor, which has been placed on record, of the Joint Company Scheme Application. The Representative further submits that since the present Scheme is an arrangement between the Applicant Companies and its shareholders as contemplated in Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the

Companies Act, 2013, as there is no compromise or arrangement with creditors as it does not affect the rights and interests of the Secured Creditors of the Applicant Company 2. Further, there is no diminution of liability of any of the Secured Creditors of the Applicant Company 2 who will be paid off in the ordinary course of business. Pursuant to the Scheme, all assets of Applicant Company 1 will be transferred and vested in Applicant Company 2. There is no compromise and/or arrangement with the Secured Creditors of Applicant Company 2 as no sacrifice is called for. The Applicant Company 2 undertakes to obtain NOC from sole Secured Creditors and file before the final hearing of the Joint Company Scheme Petition.

15. That there are 2 (Two) Unsecured Creditors in the Applicant Company 1 of the value of Rs. 87,860/- (Rupees Eighty Seven Thousand Eight Hundred and Sixty only) as on 30th September, 2023 as per certificate given by Statutory Auditor, which has been placed on record, of the Joint Company Scheme Application. The Authorised Representative for the Applicant Companies further submits that the Applicant Company 1 has obtained Consent Affidavits in writing agreeing to the Scheme from all Unsecured Creditors of the Applicant Company 1 which have been placed on record, of the Joint Company Scheme

Application. Therefore, the convening and holding of the meeting of the Unsecured Creditors and sending notice to the Unsecured Creditors does not arise and is dispensed with.

16. There are 462 (Four Hundred Sixty Two) Unsecured Creditors in the Applicant Company 2 of the value of Rs. 52,82,49,810/- (Rupees Fifty-Two Crore Eighty Two Lakh Forty Nine Thousand Eight Hundred and Ten only) as on 30th September, 2023 as per certificate given by Statutory Auditor, which have been placed on record, of the Joint Company Scheme Application. These Unsecured Creditors are mainly in the nature of Trade Payables. The Representative further submits that since the present Scheme is an arrangement between the Applicant Companies and its shareholders as contemplated in Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013, as there is no compromise or arrangement with creditors as it does not affect the rights and interests of the Unsecured Creditors of the Applicant Company 2. Further, there is no diminution of liability of any of the Unsecured Creditors of the Applicant Company 2 who will be paid off in the ordinary course of business. Pursuant to the Scheme, all assets of Applicant Company 1 will be transferred and vested in Applicant Company 2. There is no compromise and/or arrangement with

the Unsecured Creditors of Applicant Company 2 as no sacrifice is called for. The Applicant Company 2 post-merger will be able to discharge the liabilities of both the Applicant Companies as its net worth post-merger is highly positive. In view of the above, the meeting of the Unsecured Creditors of the Applicant Company 2 is hereby dispensed with. However, this bench hereby directs the Applicant Company 2 to issue notice to each of its Unsecured Creditors as on **31st March, 2024**, by Registered Post-AD/Speed Post and through E-mail (to those Unsecured Creditors whose email addresses are duly registered with the Applicant Company 2), at their last known addresses as per the records of the Applicant Company 2. The notices issued to the Unsecured Creditors shall also state that representations, ***if any, in relation to the Scheme, may be submitted to this Hon'ble Tribunal within a period of 30 (thirty) days from the date of receipt of such notices***, with a copy thereof to the Applicant Company 2, failing which, it shall be presumed that they have no representations to make on the Scheme.

17. That the Applicant Companies are directed to serve notices along with a copy of the Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016

upon the-

- I. Central Government through the office of Regional Director, Western Region, Mumbai;
 - II. Jurisdictional Registrar of Companies;
 - III. Jurisdictional Income Tax Authority within whose jurisdiction the Applicant Company 1 assessment is made (mentioning the PAN: AAACC9910E at the following address: Deputy Commissioner of Income Tax, Circle 1(1)(1), Aayakar Bhavan, Maharshi Karve Road, New Marine Lines, Churchgate, Mumbai- 400 020;
 - IV. Jurisdictional Income Tax Authority within whose jurisdiction the Applicant Company 2 assessment is made (mentioning the PAN: AAACJ0988P at the following address: Deputy Commissioner of Income Tax, Circle 1(1)(1), Aayakar Bhavan, Maharshi Karve Road, New Marine Lines, Churchgate, Mumbai- 400 020; and
 - V. GST Departments.
18. The Transferor Company is also directed to serve the Copy of Scheme upon the Official Liquidator, High Court of Bombay, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

19. The Notice as directed shall be served through by Registered Post-AD/ Speed Post/ Hand Delivery and email along with a copy of the Scheme and state that ***“If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme”***. It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgment of the notice.

20. The Applicant Companies are to file an affidavit of service with the Registry proving dispatch of notices as stated above and report to this Tribunal that the directions have been duly complied with.

SD/-

MADHU SINHA
Member (Technical)

SD/-

REETA KOHLI
Member (Judicial)

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