

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT III

34. C.P.(CAA)/104/MB/2022

IN

C.A.(CAA)/8/MB/2022

CORAM: SH. H. V. SUBBA RAO, MEMBER (J)

MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **05.01.2023**

NAME OF THE PARTIES: Se Shipping India Private Limited.

SECTION 230-232 OF COMPANIES ACT, 2013

ORDER

Mr. Hemant Sethi, counsel for the Petitioner and Ms. Rupa Sutar, representative of Regional Director, are present through virtual hearing.

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Heard both sides and the above Company Petition **is allowed. Detail order would follow:**

Sd/-
MADHU SINHA
Member (Technical)
//SGP//

Sd/-
H. V. SUBBA RAO
Member (Judicial)

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In the matter of the Companies Act, 2013

AND

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

AND

*In the matter of Scheme of Amalgamation
by Absorption of SE Shipping India Private
Limited (‘First Petitioner Company’ or the
‘Transferor Company’) and Samanvaya
Holdings Private Limited (‘Second
Petitioner Company’ or the ‘Transferee
Company’) and their respective
Shareholders (the ‘Scheme’ or ‘this
Scheme’)*

SE Shipping India Private Limited, }

CIN No: U61100MH2009FTC191616 }

... First Petitioner Company / Transferor Company

Samanvaya Holdings Private Limited }

CIN No: U65993PN2005PTC020434 }

...Second Petitioner Company / Transferee Company

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*First Petitioner Company and Second Petitioner Company are collectively
referred as the "Petitioner Companies".*

Order pronounced on: 5th January 2023

Coram:

Hon'ble Shri H.V. Subha Rao : **Member (Judicial)**
Hon'ble Smt. Madhu Sinha : **Member (Technical)**

Appearances (via videoconferencing):

For the Petitioner(s): Mr Hemant Sethi, Ms. Devanshi Sethi, i/b. Hemant Sethi & Co.,

For the Regional Director: Authorized Representative of Regional Director MCA
(Western Regional), Mumbai

Order

1. The Court is convened by videoconference today.
2. Heard the learned counsel for the Petitioner Companies. No objection has come before the Tribunal to oppose the Petition nor any party has controverted any averments made in the Petition.

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3. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ('Act') and in the matter of Scheme involving amalgamation by Absorption of SE Shipping India Private Limited (the 'First Petitioner Company' or the 'Transferor Company') and Samanvaya Holdings Private Limited (the 'Second Petitioner Company' or the 'Transferee Company') and their respective Shareholders (the 'Scheme' or 'this Scheme').
4. Learned Counsel for the Petitioner Companies further submits that the First Petitioner Company is engaged in the business of providing shipping support services and the Second Petitioner Company is engaged in the business of wind power generation.
5. Learned Counsel for the Petitioner Companies further submits that the First Petitioner Company is a wholly owned subsidiary of the Second Petitioner Company and the entire share capital of the First Petitioner Company is owned and controlled by the Second Petitioner Company and its nominees.
6. Learned Counsel for the Petitioner Companies further submits that the management of the Petitioner Companies believe that amalgamation of the First Petitioner Company with the Second Petitioner Company would have, inter alia, the following benefits:
 - a. The amalgamation will enable appropriate value consolidation of the Petitioner Transferor Company and the Petitioner Transferee Company with pooling and more efficient utilization of their resources, greater economies of scale, reduction in overheads and other expenses and improvement in various operating parameters.
 - b. Further, cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business

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processes, elimination of duplication and rationalization of administrative expenses and greater efficiency can be achieved in cash management by the combined entity which can be deployed more effectively to fund organic and inorganic growth opportunities.

c. The proposed merger will also help in reduction of legal entities, thereby optimizing the cost of compliance and administration by avoiding duplication of cost and efforts.

7. The Petitioner Companies have approved the Scheme by passing Board Resolutions dated 24th November 2021 and have approached the Tribunal for sanction of the Scheme. The Appointed Date for the scheme is 1st April 2021.
8. Learned Counsel for the Petitioner Companies submits that the Petition has been filed in consonance with the order dated 10th February 2022, passed by this Tribunal in CA(CAA)/08/MB/2022.
9. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per directions of the Tribunal.
10. The Regional Director has filed a Report dated 3rd June 2022 ('Report') praying that this Tribunal may pass such orders, as it thinks fit, save and except as stated in paragraph IV (a) to (j). In response to the observation made by the Regional Director, the Petitioner Companies have also given necessary undertakings and clarification vide their rejoinder affidavit dated 15th December 2022. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

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| Sr. No. | RD Report/Observations | Response of the Petitioner Companies |
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| a) | <i>In compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection this scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.</i> | <i>With reference to Para IV (a) of the RD Report, the Petitioner Companies undertakes to pass such accounting entries that comply with the applicable accounting standards.</i> |
| b) | <i>The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or arrangement. Further, approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the Issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).</i> | <i>With reference to Para IV (b) of the RD Report, it is submitted that the directions under the RD Report have been duly complied with.</i> |

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| c) | <p><i>Petitioner Company have to undertake to comply with section 232(3(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.</i></p> <p><i>The Transferee Company shall pay the balance / difference amount of the fees and stamp duty on its increasing Authorised share capital.</i></p> | <p><i>With reference to Para IV (c) of the RD Report, the Petitioner Companies undertakes to pay the difference of the amount of fees payable on account of enhanced authorized capital, if any, and undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013.</i></p> |
| d) | <p><i>The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petitioner are one & same and there is discrepancy or deviation.</i></p> | <p><i>With reference to Para IV (d) of the RD Report, the Petitioner Companies undertakes that the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one and the same and there is no discrepancy or deviation.</i></p> |

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| e) | <p><i>As per Definition of the Scheme,</i></p> <p><i>"Appointed Date" means the 1st day of April, 2021 or such other date as may be approved by the NCLT.</i></p> <p><i>"Effective Date" means the date on which authenticated / certified copy(ies) of the Order of the NCLT sanctioning this Scheme is filed by the Transferor Company and the Transferee Company with the respective Registrar of Companies. Reference in this Scheme to the date "upon the Scheme becoming effective" or "effectiveness of the Scheme" shall mean the Appointed Date subject to fulfilment of conditions under Clause 19 of this Scheme.</i></p> | <p><i>With reference to Para IV (e) of the RD Report, the Petitioner Companies undertakes to comply with the requirements of the "appointed date" vide circular no. F. No. 7/12/2019/CL-1 wherein the appointed date may precede the date of filing of the application for scheme and a justification should be specifically brought out if the appointed date is beyond a year from the date of filing. It is submitted that the application was filed on 16/12/2021 with the appointed date of 01/04/2021, which is antedated but not more than one year from the date of filing. It is therefore submitted that the Appointed date is in compliance with the requirements of circular no. F. No. 7/12/2019/CL-1 dated 21/08/2019 issued by the Ministry of Corporate Affairs.</i></p> |
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| | <p><i>“Record Date” means the date to be fixed by the Board of Directors the Transferor Company or a committee thereof, in consultation with the Transferee Company, for the purpose of determining the members of the Transferor Company to whom new shares in the Transferee Company will be allotted under the Scheme.</i></p> <p><i>“Transition period” means period starting from the date immediately after the Appointed Date till the last of the date to which all the conditions stipulated in Clause 19 of this Scheme are fulfilled.</i></p> <p><i>The Appointed Date is 01.04.2021 which is antedated more than one years which needs to be changed.</i></p> <p><i>Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. NO. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p> |
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| f) | <p><i>Clause 10 of the Scheme</i></p> <p>ACCOUNTING TREATMENT</p> <p><i>Upon the Scheme becoming effective, the amalgamation of the Transferor Company into the Transferee Company shall be accounted as per 'the pooling of interests method' in accordance with the Accounting Standard 14 - 'Accounting for Amalgamations' as notified under section 133 of the Companies Act, 2013. The accounting treatment in the books of Transferor Company and/ or Transferee Company Shall be in accordance with this clause.</i></p> <p><i>The assets and liabilities acquired pursuant to merger will be recorded in the books of the Transferee Company at their existing carrying amounts.</i></p> | <p><i>With reference Para IV(f) of the RD Report, the Petitioner Companies undertakes to comply that the surplus/deficit will be adjusted to capital reserve account and such reserves will not be available for distribution of dividend.</i></p> |
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| | <p><i>The identity of the reserves of the Transferee Company shall be preserved and they shall appear in the financial statements of the Transferee Company in the same form in which they appeared in the financial statements of the Transferor Company.</i></p> <p><i>The difference between the consideration and the net assets acquired shall be adjusted in Capital Reserve in the books of the Transferee Company.</i></p> <p><i>To the extent that there are inter-company loans, deposits, obligations, balances or other outstanding including any interest thereon, as between the Transferor Company and the Transferee Company, the obligations in respect thereof shall come to an end and there shall be no liability in that behalf and</i></p> | |
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| | <p><i>corresponding effect shall be given in the books of account and records of the Transferee Company for the reduction of such assets or liabilities as the case may be. All transactions entered between the Transferor Company and the Transferee Company, shall stand cancelled.</i></p> <p><i>The carrying amount of investments held by the Transferee Company in the Transferor Company in the share capital of the Transferor Company shall stand cancelled pursuant to amalgamation.</i></p> <p><i>Upon the Scheme coming into effect, the accounts of the Transferee Company, as on the Appointed Date shall be reconstructed with the terms of this Scheme.</i></p> | |
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| | <p><i>In case of any difference in accounting policy between the Transferor Company and the Transferee Company, the accounting policies followed by the Transferee Company will prevail and such difference shall be quantified and adjusted in the financial statements of the Transferee Company prior to the amalgamation.</i></p> <p><i>All costs and expenses incurred in connection with the Scheme and to put it into operations and any other expenses or charges attributable to the implementation of the Scheme shall be debited to the Statement of Profit and Loss of the Transferee Company.</i></p> <p><i>In addition, the Transferee Company shall pass such accounting entries, as may be necessary, in connection with the Scheme, to comply with any of the applicable Accounting Standards.</i></p> <p><i>No Goodwill gets created pursuant to this Scheme.</i></p> | |
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| | <p><i>Petitioner Companies have to undertake that the surplus / deficit shall be adjusted to Capital Reserve Account.</i></p> <p><i>Further Petitioner Companies undertake that reserves shall not be available for distribution of dividend.</i></p> | |
| g) | <p><i>Petitioner Companies shall undertake to comply with the directions of Income tax department, if so required.</i></p> | <p><i>With reference to Para IV(g) of the RD Report, the Petitioner Companies undertake to comply with the directions of Income Tax Department, if required.</i></p> |
| h) | <p><i>Petitioner Companies shall undertake comply with the directions of the concerned sectoral Regulatory, if so required.</i></p> | <p><i>With reference to Para IV(h) of the RD Report, the Petitioner Companies undertake to comply with the directions of the concerned sectoral Regulatory, if required.</i></p> |
| i) | <p><i>Petitioner Companies have not mentioned treatment of employees clause in the scheme, hence Petitioner Companies shall undertake to define the treatment of employees of Transferor Company after effect of scheme of merger by absorption.</i></p> | <p><i>With reference to Para IV(i) of the RD Report, the Petitioner Companies undertakes that the employees of the Transferor Company are also transferred to the Transferee Company after the effect of scheme of merger by absorption in accordance with clause 7 of the Scheme of Amalgamation.</i></p> |

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| j) | <p>STATUS OF ROC REPORT:-</p> <p><i>ROC, Mumbai Report dated 07.04.2022 has interalia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection and no complaints pending against Petitioner Companies.</i></p> <p><i>Further mentioned that</i></p> <ol style="list-style-type: none"><i>1. Form CAA-2 and explanatory statement not enclosed with the Form CAA-3.</i> <i>2. Interest of the Creditor should be protected.</i> <i>3. AS per the provisions of Section 232(3)(i) of the Companies Act, 2013, where the transferor Company is</i> | <p><i>With reference to Para IV (j) (1) of the RD Report containing observations of ROC Mumbai, it is submitted that filing of Form CAA-2 and Explanatory statement was not required since the requirement of all the creditors' or members' meeting for the purpose of this Scheme of Amalgamation was dispensed with.</i></p> <p><i>With reference to Para IV (j) (2) of the RD Report containing observations of ROC Mumbai, the Petitioner Companies undertakes that the interest of the Creditors is protected.</i></p> <p><i>With reference to Para IV (j) (3) of the RD Report containing observations of ROC Mumbai, requests to kindly refer point 5 of the affidavit.</i></p> |
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| | <p><i>dissolved, the fee, if any, paid by the transferor Company on its authorized capital shall be set-off against any fees payable by the Transferee company subsequent on its authorized capital the amalgamation. Therefore, remaining fee, if any after setting-off the fees already paid by the transferor company on its authorized capital, has to be paid by the transferee Company on the increased authorised capital subsequent to the amalgamation.</i></p> <p><i>Hon'ble Tribunal may consider the observations pointed out by ROC Mumbai their report and Petitioner Companies shall undertake to submit reply on each observation pointed out by the ROC.</i></p> <p><i>ROC Pune Report dated 05.05.2022 has interalia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection and no complaints pending against Petitioner Companies.</i></p> |
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| | <i>Hon'ble Tribunal may consider the observations pointed out by ROC, Pune in their report and Petitioner Companies shall undertake to submit reply to each observation pointed out by the ROC.</i> | |
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11. The Observations made by the Regional Director have been explained and the clarifications and undertakings given by the Petitioner Companies have been explained in above table. The Ld. Authorized representative for the Regional Director Ms. Rupa Sutar appeared in person and reported that most of the observations made by the Regional Director are routine in nature, and the Regional Director has no serious objection for approving the above Scheme. The clarifications and undertakings given by the Petitioner Companies in response to the said Report are accepted by this Tribunal.

12. The Official Liquidator has filed his report dated, 8th June 2022 inter alia, stating therein that the affairs of the First Petitioner Company have been conducted in a proper manner and that the First Petitioner Company may be ordered to be dissolved, without winding-up, by the Tribunal.

13. 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.

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14. The Learned Counsel for the Petitioner Companies submits that First Petitioner Company is wholly owned subsidiary of Second Petitioner Company, and upon the Scheme becoming effective, all the equity shares, as held by the Second Petitioner Company in the First Petitioner Company, shall stand cancelled and extinguished. Therefore, upon coming into effect of the Scheme, in consideration of the amalgamation of the First Petitioner Company with and into Second Petitioner Company, there will be no issue and allotment of shares as consideration by the Second Petitioner Company to the shareholders of the First Petitioner Company.

15. Since all the requisite statutory compliances have been fulfilled, CP(CAA)/104/2022 filed by the Petitioner Companies is made absolute in terms of prayer clauses of the said Company Scheme Petition.

16. The Scheme is sanctioned hereby, and the Appointed Date of the scheme is opening business hours of 1st April 2021.

17. The Petitioner Companies are directed to file a certified copy of this Order along with the copy of Scheme with the concerned Registrar of Companies, electronically in e-form INC-28 within 30 (thirty) days from the date of receipt of the Order, duly certified by the designated Registrar of this Tribunal. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.

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18. The Petitioner Companies shall lodge a copy of this Order along with the Scheme duly certified by the Deputy Director or the Assistant Registrar, National Company Law Tribunal, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within a period of 60 (sixty) working days from the date of the receipt of the certified Order from the Registry of this Tribunal.
19. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the Deputy Director or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.
20. Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
21. Any concerned authorities are at liberty to approach this Tribunal for any further clarification, as may be necessary.
22. Ordered accordingly.

Sd/-
Madhu Sinha
Member(Technical)

Sd/-
H.V. Subba Rao
Member(Judicial)