(2022) 02 NCLT CK 0099

National Company Law Tribunal, Mumbai Bench, Court I

Case No: CP (CAA) 71/MB/2021 Connected with CA 35/2021 in CA (CAA) 1055/MB/2020

Air Works Livery Services Pvt Ltd		APPELLANT
	Vs	
Mahindra and Mahindra Limited		RESPONDENT

Date of Decision: Feb. 28, 2022

Acts Referred:
Companies Act, 2013 â€" Section 133, 230, 230(5), 232, 232(3)(i), 232(6)

Citation: (2022) 02 NCLT CK 0099

Hon'ble Judges: P. N. Deshmukh, Member J; K. K. Vohra, Member, T

Bench: Division Bench

Advocate: Rajeev K Goel, Rupa Sutar,

Final Decision: Disposed Of

Judgement

Para

IV",RD Observations,"Affidavit in Rejoinder dated 08.11.21 of the

Petitioner Companies

(a),"In addition to compliance of AS-14 (IND AS-103), the

PetitionerÃ, CompaniesÃ, shallÃ, passÃ, Ã, suchÃ,

accounting entriesÃ, whichÃ, areÃ, necessaryÃ, inÃ,

connectionÃ, withÃ, the schemeÃ, toÃ, complyÃ,

withÃ, otherÃ, applicableÃ, Accounting Standards

such as AS-5 (IND AS-8) etc.","With regard to the compliance of AS-14 or Ind

AS-103, Transferee Co will give effect of the

amalgamation in its books ofÃ, Ã,

Ã, Ã, accountsÃ, Ã, Ã, Ã, inÃ, Ã, Ã, Ã,

accordanceÃ, Ã, Ã, Ã, with accountingÃ,

prescribedÃ, underÃ, Ã¢â,¬Å“pooling of interestÃ¢â,¬â€‹

method in accordance with the principles laid

down in Appendix C ofÃ, Ã, IndianÃ, Ã,

AccountingÃ, Ã, StandardÃ, Ã, (Ind AS)Ã, Ã,

103Ã¢â,¬"BusinessÃ, Ã, CombinationsÃ, Ã, as

notifiedÃ, Ã, underÃ, Ã, SectionÃ, Ã, 133Ã, Ã,

ofÃ, Ã, the

CompaniesÃ, Act,Ã, 2013Ã, (theÃ, Act),Ã,

read

withÃ, Ã, Ã, Ã, Ã, Ã, Ã, theÃ, Ã, Ã, Ã, Ã, Ã, Ã,

CompaniesÃ, Ã, Ã, Ã, Ã, Ã, Ã, (Indian

AccountingÃ, Ã, Standard)Ã, Ã, Rules,Ã, Ã, Ã,

2015. PetitionersÃ, Ã, undertakeÃ, Ã, toÃ, Ã,

passÃ, Ã, such accounting entries to comply

with such accountingÃ, Ã, standardsÃ, Ã,

notifiedÃ, Ã, under Sec 133 of the Act as may

be applicable toÃ, theÃ, PetitionersÃ, suchÃ,

asÃ, AS-5Ã, orÃ, Ind

AS-8.

(b),"The Petitioners under provisions of section 230(5) of theÃ, CompaniesÃ, Act,Ã, 2013Ã, haveÃ, toÃ, serveÃ,

noticesÃ, to concerned authorities which are likely to","PetitionersÃ, Ã, confirmÃ, Ã, thatÃ, Ã, inÃ, Ã,

termsÃ, Ã, of provisions of section 230(5) of

the Act,

be affected by Amalgamation. Further, the approval of andÃ, inÃ, complianceÃ, withÃ, ordersÃ,",,

the scheme by this Tribunal may not deter such dated,,

authorities to deal with any of the issues arising after,,

14.10.2020,Ã, datedÃ, 02.03.21Ã, andÃ, dated",,

giving effect to the scheme. The decision of such,,

24.08.21,Ã, Ã, Ã, Ã, passedÃ, Ã, Ã, Ã,",,

Authorities is binding on the Ã, Petitioner Co(s).,,

inÃ, Ã, Ã, Ã, 1stÃ, Ã, Ã, Ã, Motion,,

Application,Ã, Ã, Ã, Ã, 2ndÃ, Ã, Ã, Ã,",,

andÃ, Ã, Ã, 3rdÃ, Ã, Ã, Ã, Motion,,

Petitions respectively, formal notices of",,

1st Motion Application and 2nd Motion,,

Petition have been sent to the following,,

StatutoryÃ, Authorities,Ã, alongÃ, withÃ, the",,

complete Paper Books:,,

i.Ã, Ã, RD,Ã, onÃ, 02.06.21Ã, Ã, Ã, throughÃ,",,

Speed,,

PostÃ, Ã, Ã, (ED405227807IN)Ã, Ã, andÃ, Ã, Ã,,,

on,,

02.09.2021Ã, Ã, Ã, throughÃ, Ã, Ã,,,

SpeedÃ, Ã, Ã, Post,,

(ED646719673IN);,,

ii.Ã, Ã, TheÃ, ROC,Ã, onÃ, Ã, Ã,",,

02.06.21Ã, Ã, Ã, through,,

SpeedÃ, PostÃ, (ED404885285IN)Ã, and,,

onÃ, 02.09.2021Ã, throughÃ, SpeedÃ, Post,,

(ED646719537IN);,,

iii.Ã, Ã, The OL, on 02.06.21 through Speed",,

PostÃ, Ã, Ã, (ED404885294IN)Ã, Ã, andÃ, Ã, Ã,,,

on,,

02.09.21Ã, Ã, Ã, Ã, throughÃ, Ã, Ã, Ã,,,

SpeedÃ, Ã, Ã, Ã, Post,,

(ED646719545IN);,,

M/sÃ, Ã, Ã, Ã, PRASSÃ, Ã, Ã, Ã, &Ã, Ã, Ã, Ã,,,

Associates,Ã, Ã, Ã, Ã, CA",,

appointed by the Tribunal to assist the,,

OL has also been served with the copies,,

ofÃ, theÃ, 1stÃ, motionÃ, ApplicationÃ,,,

andÃ, 2nd,,

motionÃ, PetitionÃ, onÃ, 03.06.21Ã, through,,

SpeedÃ, PostÃ, (ED405221061IN)Ã, andÃ, on,,

02.09.21Ã, Ã, Ã, Ã, Ã, Ã, throughÃ, Ã, Ã, Ã, Ã, Ã,,,

SpeedÃ, Ã, Ã, Ã, Ã, Ã, Post,,

(ED646719568IN).,,

iv.Ã, Ã, DGÃ, CivilÃ, Aviation,Ã, TechÃ,",,

Centre,",,

OppÃ, Ã, Ã, SafdarjungÃ, Ã, Ã, Airport,Ã, Ã, Ã,",,

New,,

DelhiÃ¢â,¬"110 003 on 03.06.21 through SpeedÃ,,,

PostÃ, (ED045220945IN)Ã, and onÃ, Ã,,,

02.09.21Ã, Ã, throughÃ, Ã, SpeedÃ, Ã, Post,,

(ED646719554IN);,,

v.Ã, Ã, IncomeÃ, TaxÃ, (IT)Ã, Department,Ã,",,

in the respective Ward of the IT Office where,,

the Applicant Companies are assessedÃ, Ã, Ã,,,

quotingÃ, Ã, Ã, theÃ, Ã, Ã, respective,,

PermanentÃ, Ã, Ã, Ã, Ã, Ã,,,

AccountÃ, Ã, Ã, Ã, Ã, Ã, Number (PAN) of each,,

Co, as under:",,

Air Works Livery Services Pvt Ltd,,

PAN: AAI CA 4187 D,,

IT Officer, Ward 2(1), C.R. Building,",,

I.P. Estate, New Delhi-110 095",,

DateÃ, ofÃ, submission:Ã, 21st Ã, Ã, June,Ã,",,

2021 through Speed Post (ED211289875IN),,

2ndÃ, Ã, September,Ã, Ã, 2021Ã, Ã,",,

throughÃ, Ã, Speed Post (ED755104874IN),, Air Works India (Engineering) Pvt Ltd,,

PAN: AAB CA 1069 P,,

Asstt Commr of IT, Circle 1(1)(1) Room 533,",,

Aayakar Bhawan, MumbaiÃ¢â‚¬"400 020",,

Date of submission,,

03.06.21Ã‚ Ã‚ Ã‚ Ã‚ Ã‚ Ã‚ throughÃ‚ Ã‚ Ã‚ Ã‚ Ã‚ Ã‚,,

SpeedÃ‚ Ã‚ Ã‚ Ã‚ Ã‚ Ã‚ Post (ED405221075IN),,

02.09.21Ã‚ Ã‚ Ã‚ Ã‚ Ã‚ Ã‚ throughÃ‚ Ã‚ Ã‚ Ã‚ Ã‚ Ã‚,,

SpeedÃ‚ Ã‚ Ã‚ Ã‚ Ã‚ Ã‚ Post (ED646719642IN),,

Further submitted that the approval of theÃ‚,,

presentÃ‚ SchemeÃ‚ willÃ‚ notÃ‚ deterÃ‚ any,,

statutoryÃ‚ authorityÃ‚ toÃ‚ dealÃ‚ withÃ‚,,

any issueÃ‚ Ã‚ thatÃ‚ Ã‚ mayÃ‚ Ã‚ ariseÃ‚ Ã‚,,

pursuantÃ‚ Ã‚ the present Scheme becoming,,

effective.,,

Petitioners do hereby undertake that the,,

Transferee Co. will comply with all the,,

(c),"The HonÃ¢â‚¬â„¢ble NCLT may kindly direct the

Petitioners toÃ‚ fileÃ‚ anÃ‚ AffidavitÃ‚ toÃ‚ theÃ‚

extentÃ‚ thatÃ‚ theÃ‚ Scheme enclosed to the Co

Application and the scheme enclosed toÃ‚ theÃ‚ CoÃ‚

PetitionÃ‚ areÃ‚ oneÃ‚ &Ã‚ sameÃ‚ andÃ‚ thereÃ‚ isÃ‚

no discrepancy or deviation.","With regard to the confirmation that the

Scheme enclosed to the CA and CP are one and same, we do hereby clarify and confirm

that the Scheme enclosed to the CA and CP are

one and the same and thatÃ, Ã, Ã, thereÃ, Ã, Ã,

isÃ, Ã, Ã, noÃ, Ã, Ã, discrepancyÃ, Ã, Ã, or

deviation.

(d),"As per definitions of the Scheme, Ã¢â‚¬Å“Appointed

DateÃ¢â‚¬â€‹ for the purpose of this Scheme means

commencement of business on 1st April, 2020, or such

other date as the HonÃ¢â‚¬â„¢ble NCLT or any other

competent authority may approve. Ã¢â‚¬Å“Effective

DateÃ¢â‚¬â€‹ means last of the dates on which the certified

copies of the Order(s) passed by the HonÃ¢â‚¬â„¢ble

NCLT, sanctioning the Scheme, are filed with theÃ,

concernedÃ, RegistrarÃ, ofÃ, Companies,Ã, MCA.Ã,

Any referencesÃ, inÃ, thisÃ, SchemeÃ, toÃ, Ã¢â‚¬Å“uponÃ,

thisÃ, Scheme becoming effectiveÃ¢â‚¬â€‹ or

Ã¢â‚¬Å“effectiveness of this SchemeÃ¢â‚¬â€‹ shall be a reference

to the Effective Date.

Further, the Petitioners may be asked to comply with

the requirements vide circular F.Ã, Ã, 7/12/2019/CL-1

dated 21.08.19 issued by MCA.","WeÃ, confirmÃ, thatÃ, theÃ, SchemeÃ,

contains definitionÃ, Ã, Ã, ofÃ, Ã, Ã, theÃ, Ã,

termÃ, Ã, Ã¢â‚¬Å“Appointed DateÃ¢â‚¬â€‹ being 1st

April, 2020 as a specific calendarÃ, dateÃ, whichÃ, isÃ, inÃ, compliance withÃ, Ã, Ã,

theÃ, Ã, Ã, requirementsÃ, Ã, Ã, ofÃ, Ã, Ã,

General CircularÃ, No.Ã, 9/2019Ã, issuedÃ,

byÃ, MCA. Further, the Transferee Co.

undertakes toÃ, Ã, Ã, Ã, complyÃ, Ã, Ã, Ã,

withÃ, Ã, Ã, Ã, allÃ, Ã, Ã, Ã, theÃ, Ã, Ã, Ã, other

requirements laid under said circular to theÃ,

extentÃ, applicable.Ã, TheÃ, Petitioners

confirm that the Scheme will take effect from

the Appointed Date as per Section 232(6) of

the Act.

(e),"Petitioner Co have to undertake to comply with

section 232(3)(i) of Companies Act, 2013, where the

transferor Co are dissolved, the fee, if any, paid by the

transferor Co on its authorized capital shall be set-off

against any feesÃ, payableÃ, byÃ, theÃ, transfereeÃ,

CoÃ, onÃ, itsÃ, authorized capital subsequent to the

amalgamation and therefore, petitioners to affirm that

they comply the provisions of the section.","Para 10.c ofÃ, the Scheme provides that inÃ,
Ã,

t/oÃ, Ã, sectionÃ, Ã, 232(3)(i)Ã, Ã, andÃ, Ã,

other applicableÃ, Ã, Ã, provisions,Ã, Ã, Ã,

ifÃ, Ã, Ã, any,Ã, Ã, Ã, the authorizedÃ, Ã, Ã, Ã,

shareÃ, Ã, Ã, Ã, capitalÃ, Ã, Ã, Ã, ofÃ, Ã, Ã, Ã,

the TransferorÃ, CoÃ, shallÃ, beÃ, addedÃ, toÃ, and shall form part of the authorized share capitalÃ, Ã, Ã, Ã, Ã, ofÃ, Ã, Ã, Ã, Ã, theÃ, Ã, Ã, Ã, Ã, TransfereeÃ, Ã, Ã, Ã, Ã, Co. Accordingly,Ã, Ã, Ã, theÃ, Ã, Ã, authorizedÃ, Ã, Ã, share capital of the Transferee Co. shall stand increased to the extent of the authorized share capital of the Transferor Co. as on theÃ, Ã, Ã, effectiveÃ, Ã, Ã, date.Ã, Ã, Ã, However,Ã, Ã, Ã, itÃ, Ã, Ã, is pertinentÃ, toÃ, noteÃ, thatÃ, ParaÃ, 10.cÃ, ofÃ, the SchemeÃ, Ã, Ã, clearlyÃ, Ã, Ã, providesÃ, Ã, Ã, thatÃ, Ã, Ã, the Transferee Co. will pay the balance fee andÃ, Ã, otherÃ, Ã, charges,Ã, Ã, ifÃ, Ã, any,Ã, Ã, onÃ, Ã, the aforesaidÃ, Ã, increaseÃ, Ã, inÃ, Ã, theÃ, Ã, authorized shareÃ, Ã, Ã, capitalÃ, Ã, Ã, afterÃ, Ã, Ã, deductingÃ, Ã, Ã, the aggregate fees and other charges, if any, paidÃ, byÃ, theÃ, TransferorÃ, CoÃ, onÃ, theÃ, pre-merger authorized share capital.

The Petitioners once again confirm that the Transferee Co will comply with the provisionsÃ, ofÃ, sectionÃ, 232(3)(i)Ã, ofÃ, the Act, and other applicable provisions, if

any,Ã, withÃ, regardÃ, toÃ, theÃ, paymentÃ,

of balanceÃ, feeÃ, onÃ, increaseÃ, ofÃ,

authorized capital subsequent to the sanction

of the Scheme.

(g),"ROC, Mumbai Report dated 27.07.2021 has inter alia

mentioned that there is no prosecution, no technical

scrutiny, no inspection, no inquiry and no Complaint

pending against the petitioner Companies.

Further mention that:

1.Ã, Ã, AsÃ, perÃ, theÃ, ClauseÃ, 9,Ã, itÃ, isÃ, statedÃ,

thatÃ, sinceÃ, the TransferorÃ, CoÃ, isÃ, aÃ, whollyÃ,

ownedÃ, subsidiaryÃ, ofÃ, the TransfereeÃ, Co,Ã, noÃ,

newÃ, shareÃ, willÃ, beÃ, issuedÃ, byÃ, the Transferee

Co pursuant to this Scheme.

2.Ã, Ã, TheÃ, applicantÃ, CompaniesÃ, haveÃ, notÃ,

filedÃ, e-form GNL-1 with the scheme on MCA portal

as required under the provision of the Companies Act

2013.","1.Ã, Ã, TheÃ, contentsÃ, ofÃ, paraÃ, g.Ã,

1.Ã, areÃ, a matter of record and need no

reply.

2.Ã, Ã, Requisite e-form Form GNL-1 were duly

filed by both the Petitioners as per the

following detail:

e-FormÃ, GNL-1Ã, forÃ, filingÃ, ofÃ,

NoticeÃ, of Application/SchemeÃ, Ã, ofÃ, Ã,

Arrangement alongÃ, Ã, Ã, withÃ, Ã, Ã,

FormÃ, Ã, Ã, CAA.3Ã, Ã, Ã, byÃ, Ã, Ã, the

PetitionerÃ, Ã, TransferorÃ, Ã, Co.Ã, Ã,

videÃ, Ã, SRN T32207201 dated 23.07.21.

e-FormÃ, GNL-1Ã, forÃ, filingÃ, ofÃ,

NoticeÃ, of Application/SchemeÃ, Ã, ofÃ, Ã,

Arrangement alongÃ, Ã, Ã, withÃ, Ã, Ã,

FormÃ, Ã, Ã, CAA.3Ã, Ã, Ã, byÃ, Ã, Ã, the

PetitionerÃ, Ã, TransfereeÃ, Ã, Co.Ã, Ã,

videÃ, Ã, SRN

T32207086 dated 23.07.2021