
(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 " 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

Petitioner, Companies, shall, pass, , such,

accounting entries, which, are, necessary, in,

connection, with, the scheme, to, comply,

with, other, applicable, 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 of, , , accounts, , , in, , , accordance, , , with accounting, , prescribed, under, , "pooling of interest", method in accordance with the principles laid down in Appendix C of, , Indian, , Accounting, , Standard, , (Ind AS), , 103, "Business, , Combinations, , as notified, , under, , Section, , 133, , of, , the Companies, , Act, , 2013, , (the, , Act), , read with, , , , the, , , , Companies, , , , (Indian Accounting, , Standard), , Rules, , , 2015. Petitioners, , undertake, , to, , pass, , such accounting entries to comply with such accounting, , standards, , notified, , under Sec 133 of the Act as may be applicable to, , the, , Petitioners, , such, , as, , AS-5, , or, , Ind AS-8.

(b), "The Petitioners under provisions of section 230(5) of

the Companies Act, 2013, have to serve,

notices to concerned authorities which are likely to,"Petitioners, confirm, that,
in,

terms, of provisions of section 230(5) of

the Act,

be affected by Amalgamation. Further, the approval of and, in, compliance, with,
orders,",,

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

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

14.10.2020, dated, 02.03.21, and, dated",,,

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

24.08.21, , , , passed, , , ,",,,

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

in, , , , 1st, , , Motion,,

Application, , , , 2nd, , , ,",,,

and, , , , 3rd, , , Motion,,

Petitions respectively, formal notices of",,,

1st Motion Application and 2nd Motion,,

Petition have been sent to the following,,

Statutory, Authorities, along, with, the",,,

complete Paper Books:,,

i. , RD, on, 02.06.21, , , through",,,

Speed,,

Post, , , (ED405227807IN), , and, , ,,,

on,,

02.09.2021, through,

Speed, Post,

(ED646719673IN);

ii. The ROC, on,

02.06.21, through,

Speed, Post, (ED404885285IN) and,

on, 02.09.2021, through, Speed, Post,

(ED646719537IN);

iii. The OL, on 02.06.21 through Speed,

Post, (ED404885294IN) and,

on,

02.09.21, through,

Speed, Post,

(ED646719545IN);

M/s, PRASS &,

Associates, CA,

appointed by the Tribunal to assist the,

OL has also been served with the copies,

of, the 1st, motion, Application,

and, 2nd,

motion, Petition, on, 03.06.21, through,

Speed, Post, (ED405221061IN) and, on,

02.09.21, through,

Speed, 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),,,

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 that, there, is,

no discrepancy, or

deviation.

(d),"As per definitions of the Scheme, "Appointed

Date" for the purpose of this Scheme means

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

other date as the Hon'ble NCLT or any other

competent authority may approve. "Effective

Date" means last of the dates on which the certified

copies of the Order(s) passed by the Hon'ble

NCLT, sanctioning the Scheme, are filed with the,

concerned, Registrar, of, Companies, MCA.

Any references, in, this, Scheme, to, "upon,

this, Scheme becoming effective" or

"effectiveness of this Scheme" shall be a reference

to the Effective Date.

Further, the Petitioners may be asked to comply with

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

dated 21.08.19 issued by MCA.", "We, confirm, that, the, Scheme,

contains definition, of, the,

term, "Appointed Date" being 1st

April, 2020 as a specific calendar, date,

which, in, compliance with, ,
the, , requirements, of, ,
General Circular, No., 9/2019, issued,
by, MCA. Further, the Transferee Co.
undertakes to, , , , comply, , , ,
with, , , , all, , , , the, , , , other
requirements laid under said circular to the,
extent, applicable. The, 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 fees, payable, by, the, transferee,
Co, on, its, authorized capital subsequent to the
amalgamation and therefore, petitioners to affirm that
they comply the provisions of the section.", "Para 10.c of, the Scheme provides that in,
,

t/o, , section, , 232(3)(i), , and, ,
other applicable, , , provisions, , , ,
if, , , any, , , the authorized, , , ,
share, , , , capital, , , , of, , , ,
the Transferor, Co, shall, be, added,

to, and shall form part of the authorized share

capital, of,

the, Transferee, Co.

Accordingly, the,

authorized, share capital of the

Transferee Co. shall stand increased to the

extent of the authorized share capital of the

Transferor Co. as on the,

effective, date. However,

it, is pertinent, to, note, that,

Para, 10.c, of, the Scheme,

clearly, provides, that, the

Transferee Co. will pay the balance fee

and, other, charges, if,

any, on, the aforesaid,

increase, in, the, authorized

share, capital, after,

deducting, the aggregate fees and other

charges, if any, paid, by, the,

Transferor, Co, on, the, pre-

merger authorized share capital.

The Petitioners once again confirm that the

Transferee Co will comply with the

provisions, of, section, 232(3)(i), of,

the Act, and other applicable provisions, if
any, with regard to the payment
of balance fee on increase of
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. As per the Clause 9, it is stated,
that since the Transferor Co is a wholly
owned subsidiary of the Transferee Co, no
new share will be issued by the Transferee
Co pursuant to this Scheme.

2. The applicant Companies have not
filed e-form GNL-1 with the scheme on MCA portal
as required under the provision of the Companies Act
2013." 1. The contents of para g.

1. are a matter of record and need no
reply.

2. 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