

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I), CHANDIGARH**

CP (CAA) No. 46/Chd/Hry/2023
(2nd Motion)

Under Sections 230-232 and other applicable provisions of the of Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016

IN THE MATTER OF COMPOSITE SCHEME OF AMALGAMATION AMONGST:

ESCORTS KUBOTA LIMITED

CIN: L74899HR1944PLC039088

PAN: AAACE0074B [DCIT Circle 7(1), New Delhi]

having its registered office at

15/5, Mathura Road, Faridabad-121003, Haryana

Through its Authorised Representative Mr. Satyendra Chauhan

....Petitioner Company 1/ Amalgamated Company

AND

ESCORTS KUBOTA INDIA PRIVATE LIMITED

CIN: U34300HR2019FTC078790

PAN: AAFCE3923J [Circle 1(3), Faridabad, Haryana]

having its registered office at

18/4, Mathura Road, Faridabad-121007, Haryana

Through its Authorised Representative Mr. Prosenjit Roy

....Petitioner Company 2 / Amalgamating Company No.1

AND

KUBOTA AGRICULTURAL MACHINERY INDIA PRIVATE LIMITED

CIN: U29210HR2008FTC093295

PAN: AADCK5472E [Corp Circle 4(1) Chennai]

having its registered office at

18/4, Mathura Road, Faridabad-121007, Haryana

Through its Authorised Representative Ms. Kumud Maheshwari

....Petitioner Company 3/ Amalgamating Company No.2

Order delivered on: 21.08.2024

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)

Present:-

For the Petitioner Companies: Ms. Munisha Gandhi, Senior Advocate
Mr. Vaibhav Sharma, Advocate
Ms. Salina Chalana, Advocate
For the Income Tax : Mr. Yogesh Putney, Senior Standing Counsel
Department

Per: Mr. Harnam Singh Thakur, Member (Judicial)
Mr. Umesh Kumar Shukla, Member (Technical)

ORDER

This is a Joint Second Motion Company Petition filed by the Petitioner Companies, namely; **Escorts Kubota Limited** (hereinafter referred to as the "Petitioner Company No.1" or "Amalgamated Company"), **Escorts Kubota India Private Limited** (hereinafter referred to as the "Petitioner Company No.2" or "Amalgamating Company No.1") and **Kubota Agricultural Machinery India Private Limited** (hereinafter referred to as the "Petitioner Company No.3" or "Amalgamating Company No.2") under Sections 230-232 of Companies Act, 2013 (hereinafter referred to as the "Act") and other applicable provisions of the Act read with the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 (hereinafter referred to as the "Rules") in relation to the sanctioning of the Composite Scheme of Arrangement amongst the Petitioner Companies and their respective Shareholders and Creditors (hereinafter referred to as the "Scheme"). The said Scheme is attached as Annexure P1 of the application.

2. In Second Motion Company Petition, the Petitioner Companies have also prayed for directions to issue the notices to the statutory authorities/ regulators seeking their

representations on the Scheme and to publish the notice of hearing of the Petition in the newspapers.

3. The Petitioner Companies had filed First Motion Application bearing No.CA(CAA)35/Chd/Hry/2023 before this Tribunal seeking directions for dispensing/ convening of the meetings of the Equity Shareholders/ Unsecured Creditors of the Applicant Companies. The said Application was disposed of vide Order dated 16.10.2023 dispensing with the requirement of the convening of the meetings of the Equity Shareholders of the Applicant Company No. 2 & 3, and Unsecured Creditors of Applicant Company No. 3. and to convene the meetings of Equity Shareholders of Applicant Company No.1 and Unsecured Creditors of Applicant Company No.1 & 2 with dispensation of the requirement of issuing individual notices to Unsecured Creditors having unsecured debt equal to or less than Rs.5,00,000.

4. In compliance of the directions issued by this Tribunal in the First Motion Application, the Chairperson, Alternate Chairperson and Scrutinizer of the meetings have filed their reports. As per Chairperson's Reports, the Equity Shareholders of Petitioner Company No.1, and Unsecured Creditors of Petitioner Company No. 1 & 2 have unanimously voted in favor of the resolution approving the Scheme.

5. In the Second Motion Petition, this Tribunal vide its Order dated 22.12.2023 fixed the date of hearing of the Petition on 23.02.2024 and gave the following directions:

- (i) The notice of hearing will be advertised in "Financial Express" (English) and "Jansatta" (Hindi), both Delhi NCR Editions not less than 10 days before the next date fixed for hearing.
- (ii) In addition to the above public notice, the Petitioner Companies shall serve the notice of the petition on the following Authorities namely, (i) Central

Government through Regional Director (Northern Region), Ministry of Corporate Affairs; New Delhi; (ii) concerned Registrar of Companies; (iii) Official Liquidator (iv) BSE (v) NSE and (vi) Jurisdictional Income Tax Authorities (vii) Securities Exchange Board of India along with copy of this petition by speed post immediately.

- (iii) The petitioner-companies shall at least 7 days before the date of hearing of the petition file an affidavit of service regarding newspaper publication with newspaper clippings as well as service of notices on the authorities specified above. Objections, if any, to the 'Scheme' contemplated by the authorities to whom notice has been given may be filed on or before the date of hearing fixed herein, failing which it will be considered that there is no objection to the approval of the 'Scheme' on the part of the authorities and this Tribunal will proceed in the matter, subject to other conditions being satisfied as may be applicable under the Companies Act, 2013 and relevant rules framed there under.
- (iv) The petitioner companies shall also file an affidavit stating the objections received from public pursuant to publication of notice of hearing in the newspapers.
- (v) The Registry shall also report before the date fixed as to whether any objection has been received to the proposed 'Scheme'.

6. The Petitioner Company 1, 2 and 3 have filed Affidavits of Compliance vide Diary Nos. 03955/3, 03955/4, 03955/5 respectively all dated 16.02.2024, wherein it has been deposed that the joint notice of hearing was published in "Financial Express" (English) (Country edition, which includes Delhi-NCR edition) and "Jansatta" (Hindi)

Delhi-NCR edition) on 03.02.2024. The copies of the newspapers clippings of the published notice of hearing have been attached as Annexure A-1 (Colly.) of the aforesaid affidavit. The Petitioner Company 1, 2 and 3 have also stated in the above Affidavits that notice of the petition was served on the authorities by speed post attaching the original speed post receipts along with tracking details for serving the notice as Annexure A-2 (Colly.) of the Affidavits.

7. The Petitioner Affidavits have also filed the Affidavits vide Diary Nos. 3955/8, 3955/9, 3955/10 respectively all dated 22.02.2024 stating that till date no objection to the Scheme has been received by the Petitioner Companies or the Advocate on behalf of the Petitioner Companies from the public, on any of the addresses, as mentioned in the notice of hearing.

8. Subsequently, it was noted from Annexure 16 of the Compliance Affidavit filed, vide Diary No. 02258/1 dated 20.11.2023, by the Petitioners that the Competition Commission of India (hereinafter referred to as the "CCI") in Suo Moto Case No.03 of 2012 found the Amalgamated Company regarding price fixing and bid rigging in a tender for supply of feed valves in contravention of Section 3(1) of the Competition Act, 2002, and directed the Amalgamated Company to cease and desist from the anti-competitive conduct and imposed a penalty of Rs.54.70 crore. The Amalgamated Company filed an appeal against the CCI order before the Competition Appellate Tribunal (hereinafter referred to as the "COMPAT") (Appeal No.13 of 2014), in which the COMPAT allowed the appeal and set aside the penalty imposed by the CCI. The CCI had filed an appeal (Civil Appeal No.5993 of 2016) against the order of the COMPAT in Appeal No. 13 of 2014, before the Supreme Court, where the matter is pending. In view of the above, the Petitioner Companies were directed to serve the

notice to CCI. The affidavit of service was filed by Petitioner Companies vide Dairy No. 03955/13 dated 15.05.2024.

9. In response to the notice of the Petition served on the above Authorities, the status of the replies/ objections received from them are as under:

9.1 Regional Director/ Registrar of Companies

9.1.1 The Regional Director (hereinafter referred to as the "RD"), vide Dairy No. 03955/01 dated 12.02.2024, has filed its report bearing No. 6/T-3/2023/9514 dated 05.02.2024 along with the report of the Registrar of Companies (hereinafter referred to as the "RoC") with certain observations. The Petitioner Companies, vide Dairy No. 03955/01 dated 12.02.2024, have submitted the response to the observations in the RD/ RoC report. The observations in RD/ RoC report and responses thereto by the Petitioner Companies has been summarised in Table below:s

Sl. No.	Observations in RD/ RoC report	Response by the Petitioner Companies
(i)	In case of Transferee Company an inquiry report dated 17.04.2023 u/s 208 was sent to the directorate proposing closure inquiry.	No response is required as the Amalgamated Company shall survive post-merger and would undertake necessary action, if and as required.
(ii)	In case of Transferee Company, auditor has stated in the audit report for the F.Y. 2022- 23 that the company has not paid certain statutory dues on account of dispute and the cases for the same are being pending before their respective authority.	The Amalgamated Company/ Transferee Company is currently involved in legal proceedings with authorities with respect to certain unresolved matters, which has resulted in purported outstanding liability. The Amalgamated Company has contested the demand with the authorities and submits that such liabilities/ dues would be discharged in case the issue is decided against the Amalgamated Company, subject to its right of appeal/revision.
(iii)	In case of Transferor Company, auditor has stated in the audit report for the F.Y. 2022- 23 that the company has not paid certain	The Petitioner Company 2 and 3, which are the Transferor Companies, are currently involved in legal proceedings with authorities with respect to certain unresolved matters, which has resulted in purported

Sl. No.	Observations in RD/ RoC report	Response by the Petitioner Companies
	<p>statutory dues on account of dispute and the cases for the same are being pending before their respective authority.</p>	<p>outstanding liability, details of which has been mentioned in <u>Annexure 2 (Colly)</u>. Additionally, as captured in clause 5.2(xviii) of the Scheme, upon the Scheme coming into effect on the Effective Date, the Amalgamated Company shall be responsible for all the legal, tax, quasi-judicial, administrative, regulatory or other proceedings initiated by or against the Amalgamating Companies. The Amalgamated Company also undertakes to handle all legal or other proceedings, which may be initiated against the Amalgamating Companies after the Effective Date in its own name and account and further undertakes to pay all amounts, including interest, penalties, damages etc., pursuant to such legal proceedings</p>
(iv)	<p>More than 10% equity shares of the Transferor companies are held by the other body corporates. However, no e-form BEN-2 has been filed with the RoC. Hence, the same may be clarified from the companies.</p>	<p>The Amalgamating Companies, i.e., Escorts Kubota India Private Limited and Kubota Agricultural Machinery India Private Limited are joint venture companies of the Escorts Kubota Limited with Kubota Corporation, Japan (Kubota Corporation), wherein Kubota Corporation and Escorts Kubota Limited hold 60% and 40% respectively, of the total paid up share capital of both the Amalgamating Companies. Additionally, Kubota Corporation is also the majority shareholder of Escorts Kubota Limited.</p> <p>For an individual shareholder to be considered to hold a right or entitlement indirectly in Petitioner Company 2 and Petitioner Company 3 through the body corporate viz., Kubota Corporation and Escorts Kubota Limited, they must hold majority stake in Kubota Corporation and Escorts Kubota Limited. Under the current scenario, no individual shareholder of Escorts Kubota Limited and Kubota Corporation fulfils the criteria of holding a majority stake in the aforementioned companies holding majority stake in any of the corporate shareholder of the aforementioned companies. Thus, no individual will be deemed a SBO for Petitioner Company 2 and Kubota Agricultural Machinery India Private Limited Petitioner Company 3.</p> <p>In view of the above arguments, the provisions of Section 90 of Companies Act, 2013 read with the Companies (Significant Beneficial Owners) Amendment Rules, 2019 shall not be applicable in relation to Petitioner Company 2 and Petitioner Company 3 and therefore, there was no requirement of Form No. BEN-2 by Petitioner Company 2 and Petitioner Company 3.</p>

Sl. No.	Observations in RD/ RoC report	Response by the Petitioner Companies
(v)	Transferee company may be directed to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 regarding fee payable of its revised Authorized Share Capital.	Para 10.1 of Part B of the Scheme provides that upon the Scheme coming into effect from the Effective Date, the authorized share capital of the Amalgamating Companies as on the Effective Date shall stand transferred to and be merged with the authorized share capital of the Amalgamated Company. The fee and/ or stamp duty, if any, paid by the Amalgamating Companies on their respective authorized share capital shall be deemed to have been so paid by the Amalgamated Company on the combined authorized share capital, and such fee and/or stamp duty, if any, paid by the Amalgamating Companies shall be set off against any fee payable by the Amalgamated Company on such increase in its authorized share capital, consequent to the amalgamation. The Amalgamated Company shall not be required to pay fee and/or stamp duty to the extent set off and accordingly, shall be required to pay only the balance fee and/or stamp duty, if any, in relation to combined authorized share capital after setting off the fee and/or stamp duty already paid by the Amalgamating Companies on their authorized share capital. Notwithstanding the aforesaid, the Petitioner Company 1 undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 in respect of fee payable on revised authorised share capital of the Petitioner Company 1, as required.

9.1.2 During the course of hearing dated 19.04.2024, Ld. Company Prosecutor, on instructions from RD/ ROC, has stated that the reply/ response submitted by the Petitioner Companies has been found satisfactory and after considering their reply/ response, there is no adverse observations of the RD/ RoC to the proposed scheme.

9.2 OFFICIAL LIQUIDATOR

9.2.1 The Official Liquidator (hereinafter referred to as the "OL") has filed his report vide Diary No. 03955/2 dated 06.02.2024 with certain observations. The Petitioner Companies, vide Dairy No. 03955/7 dated 22.02.2024, have submitted the response

to the observations in OL report. The observations in OL report and responses thereto by the Petitioner Companies has been summarised in Table below:

SI. No.	Observations in OL report	Response by the Petitioner Companies
Reduction of Share Capital	As per the Clause 3.1 of the Proposed Scheme, the Scheme involve the capital reduction, accordingly the Amalgamated Company should comply with the provisions of Section 66 of the Companies Act, 2013.	The proposed Scheme does not envisage any capital reduction of the Petitioner Companies. Post effectiveness of the Scheme, Amalgamating Company No. 1 and Amalgamating Company No. 2 shall be deemed to be wound-up. Therefore, the proposed scheme is not subject to the provisions of section 66 of the Companies Act, 2013. The clause 3.1 (iii) of the Proposed Scheme provides reference to earlier Scheme involving Capital Reduction of the issued and paid up share capital of the Amalgamated Company, the approval of which had already been granted by the NCLT vide its order dated 25.05.2023.
Pending Litigations before the Enforcement Directorate/ Other Authorities	As per the information provided by the Amalgamating Company 1 and 2, various litigations of Civil nature, criminal nature and other matter is pending before the various authorities including Enforcement Directorate, (details of which has been annexed with the report as Annexure R-1 and R-2).	Various litigation before different authorities/ courts is pending with respect to the Petitioner Companies and the scheme in question, does not in any manner effect any of the set pending litigation/ cases including ED investigation. As per the clause 5.2(xvii) of the Scheme, upon the scheme coming into effect, the Amalgamated Company shall be responsible for all legal, tax, quasi-judicial, administrative, and regulatory or other proceedings initiated by or against the Amalgamating Companies. With respect to the pending ED cases, there are currently 2 ED cases, which are pending against the Amalgamated Company since 2003, against which the Amalgamated Company has made its submissions before the relevant authorities. Further, all the liabilities/ dues would be discharged in case the issue is decided against the Amalgamated Company, subject to its right of appeal/ revision.
Foreign investment	As per the Clause 11.1 of the proposed Scheme, the Amalgamated Company will issue 1379492 Equity shares of face value Rs.10, to Kubota Corporation, Japan (a) 697674 (18000000/129*5) Equity Shares In lieu of Shareholding in Amalgamating Company 1 and (b) 681818	No fresh issuance of shares for cash consideration is happening in the present case, and the shares in question are only being issued in lieu of the shareholdings of the Kubota Corporation, Japan in Amalgamating Company No. 1 and 2, which is necessary on account of the fact that the said companies are being merged into Amalgamated Company. It is therefore clear that the shares are only being issued to an existing shareholder, and that also without payment of consideration in lieu of existing shareholding. Therefore,

SI. No.	Observations in OL report	Response by the Petitioner Companies
	(5/220*30000000) Equity Shares In lieu of Shareholding in Amalgamating Company 2. As the Kubota Corporation is registered in Japan, the Transferee Company should comply with the FEMA Regulation and Notice Should also be served to the FEMA.	there is no inflow or outflow of foreign capital on account of present scheme. Further, as per Clause 6.14 of RBI's Master Direction on Foreign Investment in India, in case of Amalgamation of two or more Indian Companies, the Amalgamated Company can issue its equity instruments to the existing Shareholder of the Amalgamating Companies, who are resident outside India under the automatic route without any prior permission of RBI. The Amalgamated Company would undertake the requisite filling with the Reserve Bank of India in relation to issuance of shares to Kubota, Japan and undertakes to fully comply with SEBI/ FEMA Regulations as applicable.

9.2.2 The OL filed the additional report vide Dairy No. 03955/11 dated 22.02.2024, wherein it is stated that the OL does not have any other further observations/objections to the proposed scheme.

9.2.3 During the course of hearing dated 19.04.2024, Ld. Counsel for OL, on instructions from the OL, has stated that the response submitted by the Petitioner Companies have been examined and found to be satisfactory and there are no adverse observations of the OL to the proposed scheme.

9.3 INCOME TAX DEPARTMENT

9.3.1 The Senior Standing Counsel for the Income Tax Department, vide Diary No. 03955/12 dated 05.03.2024, filed reports dated 06.02.2024 of Office of Assistant Commissioner of Income Tax, Circle 7(1), Delhi; 15.02.2024 of Office of Deputy Commissioner of Income Tax, Circle-I, Faridabad; and 21.02.2024 of Office of Assistant Commissioner of Income Tax, Corporate Circle 4(1), Chennai in respect of Amalgamated Company, Amalgamating Company No.1 and Amalgamating Company No.2 respectively, which have been summarised in Table below:

Company	Income Tax Report																				
Amalgamated Company	<p>3. In connection of the same, as per information available on ITD/ITBA/CPC portal of the department, the status of demand in respect of the said company is as under:-</p> <table border="1" data-bbox="427 304 1394 528"> <thead> <tr> <th>Name of the assessee company</th> <th>PAN</th> <th>Outstanding demand</th> <th>Pending proceedings</th> </tr> </thead> <tbody> <tr> <td>M/s Escorts Kubota Ltd.</td> <td>AAACE0074B</td> <td>2017-18: 1,10,10,500/- 2022-23 : 430/-</td> <td>As per ITBA, no proceedings are pending</td> </tr> </tbody> </table> <p>4. In view of the above, this office has No Objection regarding above cited arrangement of the companies.</p>	Name of the assessee company	PAN	Outstanding demand	Pending proceedings	M/s Escorts Kubota Ltd.	AAACE0074B	2017-18: 1,10,10,500/- 2022-23 : 430/-	As per ITBA, no proceedings are pending												
Name of the assessee company	PAN	Outstanding demand	Pending proceedings																		
M/s Escorts Kubota Ltd.	AAACE0074B	2017-18: 1,10,10,500/- 2022-23 : 430/-	As per ITBA, no proceedings are pending																		
Amalgamating Company No.1	<p>3. In connection of the same, as per information available on ITBA/CPC Portal and records of the department, the status of demand in respect of said company is NIL.</p> <p>4. In this connection, as per the latest ITR of the assessee company, details of Existing Tax Losses of Escorts Kubota India Pvt. Ltd (AAFCE3923J) as at 31st March 2023 is as under:</p> <p style="text-align: right;">(Figure in Cr.)</p> <table border="1" data-bbox="469 909 1401 1088"> <thead> <tr> <th>Description</th> <th>A.Y. 2021-22</th> <th>A.Y. 2022-23</th> <th>A.Y. 2023-24</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Unabsorbed Depreciation</td> <td>67.42</td> <td>29.84</td> <td>9.23</td> <td>106.49</td> </tr> <tr> <td>Business loss</td> <td>9.24</td> <td>47.28</td> <td>-</td> <td>56.52</td> </tr> <tr> <td>Total</td> <td>76.66</td> <td>77.12</td> <td>9.23</td> <td>163.01</td> </tr> </tbody> </table> <p>5. On perusal of the Scheme of amalgamation filed before the NCLT, Chandigarh provides under clause 5.2 (sub-clause-xiv) that the scheme coming into effect on the Effective date and with effect from the Appointed date, all taxes and duties of whatsoever description (including but not limited to all carry forward tax losses comprising of unabsorbed depreciation, advance tax payments, TDS, TCS, MAT, securities transaction tax, withholding tax banking cash transaction tax, taxes withheld/paid in foreign country, custom duty etc. including any interest, penalty, surcharge, and cess, if any, payable by or refundable to the Amalgamating Companies, shall be treated as the tax liability or refunds / claims, as the case may be, of the Amalgamated Company.</p> <p>Further, clause 7.7 of the scheme of amalgamation provides that the Scheme coming into effect on the Effective Date and with effect from the Appointed Date, all tax compliances under any tax laws by the Amalgamating Companies on or after the Appointed Date shall be deemed to be made by the Amalgamated Company.</p> <p>Further, clause 7.8 of the scheme of amalgamation provides that upon this Scheme becoming effective and with effect from the Appointed Date, all tax assessment proceedings and appeals of whatsoever nature by or against the Amalgamating Companies, pending and/or arising as at the Appointed Date and relating to the Amalgamating Companies, shall be continued and/enforced until the Effective Date as desired by the Amalgamated Company.</p> <p>In view of the above, this office has No Objection in matter of scheme of amalgamation of the company.</p>	Description	A.Y. 2021-22	A.Y. 2022-23	A.Y. 2023-24	Total	Unabsorbed Depreciation	67.42	29.84	9.23	106.49	Business loss	9.24	47.28	-	56.52	Total	76.66	77.12	9.23	163.01
Description	A.Y. 2021-22	A.Y. 2022-23	A.Y. 2023-24	Total																	
Unabsorbed Depreciation	67.42	29.84	9.23	106.49																	
Business loss	9.24	47.28	-	56.52																	
Total	76.66	77.12	9.23	163.01																	

Amalgamating
Company No.2

2. In connection of the same, as per information available on ITBA/CPC portal and records of the department, the status of demand in respect of the said company is as under:

Name of the assessee company & PAN	Assessment Year ('AY')	Outstanding demand (INR)	Pending proceedings
Kubota Agricultural Machinery India Private Limited (PAN: AADCK5472E)	2010-11	1,52,50,750	<ul style="list-style-type: none"> • Pending before the Madras High Court • Interim stay has been granted
	2011-12	1,57,00,430	<ul style="list-style-type: none"> • Pending before TPO. Order giving effect to TPO order is yet to be given
	2013-14	70,80,800	<ul style="list-style-type: none"> • Pending before ITAT • 50% of the tax demand has been paid for which conditional stay has been granted
	2014-15	6,78,04,048	<ul style="list-style-type: none"> • Pending before ITAT • 20% of the tax demand has been paid for which conditional stay has been granted
	2017-18	1,53,60,915	<ul style="list-style-type: none"> • Pending before CIT(A) • 20% of the tax demand has been paid for which conditional stay has been granted
	2021-22	11,95,870	<ul style="list-style-type: none"> • Pending before AO(NAFAC) REAC • Rectification petition has been filed against the assessment order

In view of the above, this office has **No Objection** in the matter of scheme of Amalgamation of the company.

9.3.2. In view of the 'No Objections' in the reports of the Income Tax Department, the Petitioner Companies have not submitted the response to the above reports of the Income Tax Department. During the course of hearing dated 19.04.2024, Ld. Senior Standing Counsel, on instructions from the Income Tax Department, has stated that there are no adverse observations of the Income Tax Department to the proposed Scheme.

9.4 SECURITIES EXCHANGE BOARD OF INDIA

9.4.1 No reply/ objection has been received.

9.5 BSE LIMITED

9.5.1 No reply/ objection has been received.

9.6 NSE Limited

9.6.1 No reply/ objection has been received.

9.7 CCI

9.7.1 The CCI filed its report, vide Special Diary No. 151 dated 04.06.2024 stating:

“2.....under the provisions of the Competition Act, 2002 ("Act"), a notice for combination is to be mandatorily given to Commission subject to meeting of thresholds, in terms of combined assets or combined turnover. Further, there are certain exemptions available for which notice may not normally be given to the Commission.

3. It is informed that as of date, the said matter has not been filed with the Commission under the provisions of the Act.

4. It is requested that before passing an appropriate order, the NCLT may seek an undertaking from the companies involved that approval of the Commission is not required for the said matters.”

9.7.2 The Petitioner Companies have filed additional affidavits vide Dairy No. 02114 dated 02.07.2024 in CA No. 145/2024, wherein it is stated that:

“3.....the proposed Scheme of Amalgamation amongst the Petitioner Companies is exempt from requiring approval from the Competition Commission of India (CCI) under the provisions of the Competition Act, 2002 read with the Combination Regulations. The grounds for this exemption are as follows:

- a) The proposed combination falls squarely within the exemption provided under Schedule I, Item 9 of the Combination Regulations, which states: "A merger or amalgamation of two enterprises where one of the enterprises has more than fifty per cent (50%) shares or voting rights of the other enterprise, and/or merger or amalgamation of enterprises in which more than fifty per cent (50%) shares or voting rights in each of such enterprises are held by enterprises) within the same group: Provided that the transaction does not result in transfer from joint control to sole control*
- b) In the present case, Kubota Corporation, Japan (the promoter entity) holds more than 50% shares and voting rights in all three Petitioner Companies. The promoter entity of Escorts Kubota Limited (Applicant Company No. 1/Transferee Company) i.e. Kubota Corporation (entity within the same group) owns more than 50% shares and voting rights in all the Applicant Companies. The same is duly reflected in the Shareholding pattern/list of equity shareholders, duly certified by a Chartered Accountant, for all the Applicant Companies annexed at Annexure A-5 (Vol. 8), Annexure A-12 (Vol. 11) and Annexure A-18 (Vol. 12), respectively.*

c) *Therefore, this is clearly a case of merger/amalgamation of enterprises in which more than 50% shares/voting rights in each enterprise are held by an enterprise within the same group (Kubota Corporation).*

d) *Further, this transaction does not result in any transfer from joint control to sole control. The control structure remains unchanged, with Kubota Corporation continuing to be the majority shareholder and controlling entity of all involved companies.*

4.....*In the present case, the proposed amalgamation is merely an internal restructuring within the same group of companies under common control. There is no change in ultimate control or market structure that could possibly reduce competition in any manner.*

5. *The exemption provided under Schedule I, Item 9 of the Combination Regulations recognizes that intra-group restructurings, like the present Scheme, do not alter the competitive landscape and therefore do not warrant scrutiny by the CCI. The policy underlying this exemption is that such internal reorganizations cannot possibly have any adverse effect on competition, as the ultimate controller remains the same.*

6. *The CCI recognises that requiring its approval for such intra-group restructurings would impose an unnecessary regulatory burden without any corresponding benefit to the competitive process or consumers. The exemption therefore sensibly allows businesses to reorganize their internal structures efficiently without being subjected to an approval process that serves no real purpose in such cases.*

7. *Even on analysing the competitive effects of this Scheme, there would be no appreciable adverse effect on competition:*

a. *There is no incremental market concentration resulting from this amalgamation, as the businesses are already under common control.*

b. *There is no elimination of a significant competitive force in the market.*

c. *There are no vertical foreclosure concerns as the vertical linkages already exist pre-combination.*

d. *The combination does not enhance the ability or incentive of the combined entity to engage in any anti-competitive conduct.*

8.*the proposed Scheme is exempt from requiring CCI approval by virtue of Schedule I, Item 9 of the Combination Regulations and therefore there exists no impediment in granting sanction of the Scheme in question”.*

10. The certificates of the respective Statutory Auditors of the Petitioner Companies confirming the compliance of the accounting treatment in the Composite Scheme of Amalgamation with the Accounting Standards issued under Section 133 of the Act have been annexed with the Petition as Annexure P-11 (Colly.).

11. We have heard the learned counsel for Petitioner Companies and respondents and perused the record carefully. Subject to the Petitioner Companies complying with the requirement of various laws including the rules, and regulations, permission is

hereby granted to the Scheme of Amalgamation proposed by the Petitioner Companies under Section 230 to 232 of the Companies Act, 2013. The sanctioned Scheme of Amalgamation shall be binding on both the Amalgamating Companies and Amalgamated Company (Petitioner Companies) and their Shareholders and Creditors. The Petitioner Companies shall remain bound to comply with all the statutory requirements in accordance with law.

12. Notwithstanding the submission that no investigation is pending against the petitioner company, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioners.

13. While approving the scheme as above, it is clarified that this order should not be construed as approval by any statutory authorities viz. RBI, CCI, SEBI, NSE, BSE etc. or any sectoral regulator; or construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges or payment, if any, due or required in accordance with law or in respect to any permission/ compliance with any other requirement, which may be specifically required under any law. Further, the approval of the scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961, or serve as any exemption or defense for the Petitioner Company against Tax Treatment in accordance with the provisions of the Income Tax Act, 1961 and the rules and regulations made there under.

14. Approval of the Scheme is also subject to the clearance by RBI in relation to issuance of shares to Kubota, Japan for compliance of SEBI/ FEMA Regulations as applicable.

15. This Tribunal do further order:

- (i) Upon the sanction becoming effective from the appointed date of amalgamation i.e. 01.04.2023, the Amalgamating Companies No.1 & 2 shall stand dissolved without undergoing the process of winding up;
- (ii) All the property, rights and powers of the Amalgamating Companies be transferred, without further act or deed, to the Amalgamated Company and accordingly, the same shall pursuant to Sections 230 & 232 of the Act, be transferred to and vested in the Amalgamated Company for all the estate and interest of the Amalgamating Companies, but subject nevertheless to all charges now affecting the same;
- (iii) All the liabilities and duties of the Amalgamating Companies be transferred, without further act or deed, to the Amalgamated Company and accordingly the same shall pursuant to Sections 230 to 232 of the Act, be transferred to and become the liabilities and duties of the Amalgamated Company;
- (iv) The authorized share capital of the Amalgamated Company, after the Scheme becoming effective, shall be in accordance with Section 232(3)(i) of the Companies Act, 2013 and the fee, if any, paid by the Amalgamating Companies on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the amalgamation;
- (v) The Amalgamated Company shall, without further application, allot to the existing members of the Amalgamating Companies, shares of Amalgamated Company to which they are entitled under the Scheme;

- (vi) All proceedings pending, if any, by or against the Amalgamating Companies be continued by or against the Amalgamated Company;
- (vii) All the employees of the Amalgamating Companies shall be deemed to have become the employees and the staff of the Amalgamated Company with effect from the Appointed Date, and shall stand transferred to the Amalgamated Company without any interruption of service and on the terms and conditions no less favourable than those on which they are engaged by the Amalgamating Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;
- (viii) All the tax liabilities and all the pending appeals and proceedings under the Income Tax Act, if pending against the Transferor Companies is transferred to the Transferee Company and shall be enforced and continued against the Transferee Company and all compliances under Income Tax Act, 1961 shall be made by Transferee Company after the Appointed Date. Further, the Income Tax department is permitted to retain its recourse for recovery in respect of demand and any other future liabilities of the Transferor Companies as well as the Transferee Company, in respect of the assets sought to be transferred under the proposed scheme.
- (ix) The Transferee Company will clear all the pending statutory dues after exercising all Appellate jurisdictions and as per final orders. The Scheme shall not come in the way of the statutory authorities to recover any of their

dues. All the contentions of the parties shall remain open before the relevant forum(s), where disputes are pending;

- (x) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary;

16. The Petitioner Company shall, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies for registration in prescribed form and on such certified copy being so delivered; the Transferor Companies shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Companies registered with him on the file relating to the said Transferee Company, and the files relating to the Transferor Companies and Transferee Company shall be consolidated accordingly, as the case may be

17. The certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

18. The Company Petition CP(CAA) No.46/Chd/Hry/2023 is allowed and disposed of accordingly.

Sd/-

Sd/-

(Umesh Kumar Shukla)
Member (Technical)

Harnam Singh Thakur)
Member (Judicial)

August 21, 2024
Tamanna