

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) No. 179 of 2017**

**IN THE MATTER OF:**

**Quinn Finance Unlimited Company** **...Appellant**

**Vs.**

**Mack Soft Tech Pvt. Ltd.** **...Respondent**

**Present: For Appellant: - Mr. Arun Kathpalia, Senior Advocate with Mr. Swapnil Gupta and Mr. Jayant Mehta, Advocates.**

**For Respondent: - Mr. Dhruv Mehta, Senior Advocate with Ms. Ranjana Roy Gawai, Mr. Krishna Keshav and Mr. Vivek Kumar, Advocates.**

**ORDER**

**10.08.2017:** The appellant, a debenture holder filed an application under section 71 of the Companies Act, 2013 for redemption of Compulsorily Convertible Debentures (hereinafter referred to as "CCDs") with following reliefs: -

*"14.1. In view of the facts and circumstances mentioned hereinabove, the Applicant prays that his Hon'ble Tribunal may be pleased to:*

*(i) Direct the Respondent to redeem the CCDs forthwith by conversion of the CCDs into 14,36,57,955 equity shares of the Respondent having face value of INR 10 each and to take all necessary corporate actions required to give effect to such conversion and allotment in favour of the Applicant.*

(ii) *Direct the Respondent to pay to the Applicant all accruing coupon interest till the date of conversion, including:*

*(a) an amount of INR 12,74,96,437.10 (Rupees Twelve Crores Seventy-four Lakhs Ninety-Six Thousand Four Hundred and Thirty-Seven and Paisa ten) with interest thereon from 30 September 2015 till date of payment at the rate of 18% per annum.*

*(b) an amount of INR 24,49,36,817 (Rupees Twenty-Four Crores Forty-Nine Lakhs Thirty-Six Thousand Eight Hundred and Seventeen) with interest thereon from 30 September 2016 till date of payment at the rate of 18% per annum.”*

2. While asking for the same, details of the debentures and redemptions have been shown at paragraph 6.3 of the petition.

3. Within 30 days from the date of the completion of the pleadings, the appellant filed an application for amendment under Rule 155 of the National Company Law Tribunal Rules, 2016 (hereinafter referred to as “NCLT Rules”) for amendment of prayer by adding alternative relief and for amendment of some part of the pleadings, as quoted below: -

*“7. It is therefore, necessary in the interest of justice and for adjudicating the issues raised in the Section 71 Application for the Applicant to amend the Section 71 Application by adding the following pleadings:*

*(i) After Para 6.3 of the Application to inset the following Para 6.3A:*

*6.3 A. The Respondent has made clear its intention not to redeem the CCDs by conversion into shares even on the respective conversion dates stated above. On 24 November 2017, the Respondent shall fail to redeem the first tranche of CCDs issued for an amount of INR 8.60 Crores on their maturity date”*

*(ii) After Para 14.1 (i) to insert the following Para 14.1(i)(A):*

*“(i) A. In the alternative direct the Respondent to redeem the CCDs by conversion into equity shares of the Respondent on their conversion date as stated in Para 6.3 of the Application commencing with the conversion of CCDs representing a value on INR 8,66,80,000 into 86,68,000 equity shares of the Respondent having a face value of INR 10 each on 24 November 2017 and to take all necessary corporate actions required to give effect to such conversion and allotment in favour of the Applicant”*

4. The Tribunal is empowered to make necessary amendment “for the purpose of determining the real question or issue raised by or depending on such proceeding”, under Rule 155 of the NCLT Rules 2016, as quoted below: -

**“155. General power to amend.** - *The Tribunal may, within a period of thirty days from the date of completion of*

*pleadings, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.”*

5. However, on hearing the Ld. Counsel for the parties, the Tribunal by detailed impugned order dated 21<sup>st</sup> April, 2017 rejected the prayer with following observations: -

*“11. It is not the case of the petitioner that he came to know new issue/facts after filing the present company petition under Section 71 of the Companies Act, 2013, but it is his case that amendment is necessary because of the pleadings/defence taken in the reply filed by the respondents. **It is true that amendment of pleadings, as per law, can be permitted at any stage of a case but it should be permitted at a time well before pleadings of a case is settled by parties** and it should not cause any injustice/injury to other party and it does not alter basis of suit/case or introduce a new ground. As stated supra, the main case of the petitioner is that by virtue of DSSs/CCDs in question, the respondent is liable to pay interest apart from issue of equity shares by converting CCDs in question as mentioned in the CP/CA. the Learned counsel for the Respondent has rightly contended that when the main*

*petition itself is liable to be dismissed for the grounds raised therein, asking to alter/amend pleadings is not at all tenable and it would cause injustice to respondent. The applicant Company has failed to point out any tenable ground so as to allow it to amend the pleadings as sought and it cannot set up its case basing on contents of reply filed by other party. Therefore, Company Application in question is liable to be rejected.”*

6. Ld. Counsel for the appellant contended that it was a fit case for amendment for the purpose of grant of alternative relief. He also submitted that such alternative prayer was necessary to be made in view of the stand taken by respondent in its reply.

7. Ld. Counsel appearing on behalf of Respondent Company opposed the submissions and submitted that the cause of action as shown in the main petition will stand changed, if alternative relief is allowed. Referring to the amendment petition, Ld. Counsel for the Respondent Company further contended that certain allegations have been made by the appellant at paragraph 6.3 of the amendment application, as quoted above.

8. It is further contended that the debentures subscription agreement is forged and the application is premature, therefore, it is fit to be dismissed.

9. From the reasoning given by the Tribunal, we find that the Tribunal while accepting that the Tribunal has power to allow amendment of a petition observed "It is true that amendment of pleadings, as per law, can be permitted at any stage of a case but it should be permitted at a time well before pleadings of a case is settled by parties". The Tribunal also observed "Learned counsel for the Respondent has rightly contended that when the main petition itself is liable to be dismissed for the grounds raised therein, asking to alter/amend pleadings is not at all tenable and it would cause injustice to respondent".

10. From Rule-155, as quoted above, it is clear that the Tribunal has power to allow amendment "within a period of 30 days from the date of completion of pleading." Therefore, the Tribunal is wrong in holding that "the amendment should be permitted at a time well before pleading", which is against the prescribe procedure laid down by Rule-155.

11. Further, for a decision on the question, whether a petition for amendment is to be allowed or not, it is not open for the Tribunal to express its opinion on the merit of the case by accepting the submissions made on behalf of one or other party or to hold that 'it is fit case for dismissal'. Tribunal while observing so not only exceeded its jurisdiction by expressing its view prior to final hearing of the main petition. For the reason aforesaid the observation of Tribunal on merit is fit to be set aside.

12. Now the question arises, whether in terms of Rule 155, it was necessary and a fit case to amend the prayer for the purpose of

determining the real question or issue raised by the appellant. From the original prayer made by the appellant, we find that the appellant has already prayed to direct the respondent to redeem the CCDs forthwith by conversion of the CCDs into equity shares. In the alternative prayer, almost similar prayer has been made to direct the respondent to redeem the CCDs by conversion into equity shares on their maturity as pleaded at paragraph 6.3 of the application.

13. Even without any amendment, it is always open to the Tribunal to mould the prayer as made in a petition taking into consideration the prayer already made. The appellant having already prayed for redemption of CCDs, if alternative prayer is allowed, it would not change the substantive relief as sought for in the original petition.

14. So far as the objection of respondent that the cause of action is different or that it is premature or that amendment will take away the right of respondent to take the pleading of premature petition, such plea can be taken by respondent even during the final hearing. If the application originally filed by appellant was premature, it is always open to Tribunal to pass an appropriate order, either asking the parties to move at appropriate stage or to await till cause of action arises. The other objection, which Ld. Counsel for the respondent raised before this Appellate Tribunal can also be taken care, if such objections are raised during the hearing of the application.

15. In so far as inserting paragraph 6.3A of the amendment application is concerned, as the same related to alleged intention of the respondent

and has nothing to do in determining the real question or issue raised by or depending on such proceeding such portion of amendment as sought for cannot be allowed. In that view of the matter, while we uphold the part of the impugned order, so far as amendment of prayer as sought for paragraph 6.3A of the amendment petition and reject the application for appellant to that extent, but allow the prayer and set aside the part of the impugned judgment, in so far as it relates to amendment of relief by way of alternative relief, as sought for paragraph 14.1 (ii)(a), of the amendment petition. The impugned order dated 21<sup>st</sup> April, 2017 passed by Tribunal stands modified to the extent above.

16. It is made clear that we have not expressed any opinion with regard to merit of the case and/or the objections raised by the Ld. Counsel for the respondent. The respondent is allowed to take all objections before the Tribunal and appellant may suitably reply, based on pleadings already made. It is for the Tribunal to decide such objection at the time of final hearing independently without being influenced by any observations made in the impugned order or by this Appellate Tribunal.

17. The appeal stands disposed of with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Balvinder Singh)  
Member(Technical)