

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No.119 of 2017

IN THE MATTER OF:

Avalokiteshwar Valinv Ltd & Ors

...Appellants

Vs

Regional Director, Northern Region, Ministry of Corporate Affairs,

...Respondent

Present: Mr. Jayant Shantaram Joshi, Advocate for the appellants.

ORDER

03.05.2017- The Appellant preferred an application before National Company Law Tribunal, Principal Bench, New Delhi for modification of the order dated 16th April, 2016, passed by the Hon'ble High Court of Delhi. The said order was passed in a petition under section 391 of Companies Act, 1956. National Company Law Tribunal, by impugned order dated 16th February, 2017, passed following orders:

“This is an application with a prayer for modification of the order dated 16.04.2015 passed by the Hon'ble High Court of Delhi. It is appropriate to mention that this is the final order passed on the second motion. In the application following prayers have been made:

- a) *The modified Scheme of arrangement as submitted and attached as Annexure C may be approved and/or*
- b) *The Hon'ble Court may be pleased to modify Para 4 of the order dated 16.04.2015 passed in the Company Petition no.13 of 2015 as under:*
 - i. *100 new ordinary equity shares shall be issued and allotted at par by the resulting company for every 246,4282 fully paid up equity shares of Rs.10/- each held in the Demerged Company No.1.*
 - ii. *100 new ordinary equity shares shall be issued and allotted, at par by the resulting company for every 894,493 fully paid up equity*

shares of Rs.10/- each held in the Demerged Company No.2 and/or

- c) Company be allowed to initiate necessary action to rectify the excess issue/credit of 3,446 shares.
- d) Pass such further and other orders as the court may deem fit in the circumstances of the present case may require.

The application has been ordered to be transferred to the Principal Bench of the NCLT vide order dated 18.01.2017 passed by Hon'ble High Court. It appears that the High Court was not posted with the fact that

the petitioner has requested for modification of para 4 of the order dated

16.04.2016 passed by the Hon'ble High Court. We are of the considered view that such an application would necessarily falls within the domain of the High Court as the NCLT would not be able to modify the order passed by the Hon'ble High Court. Accordingly, the application is sent back to the High Court for passing of appropriate orders. The Court Master s hall sent back the papers at the earliest."

2. Ld. Counsel appearing on behalf of the Appellant referred to Rule 3 framed in exercise of powers conferred under sub-sections (1) & (2) of section 434 of the Companies Act, 2013, (18 of 2013) read with sub-section (1) of section 239 of the Insolvency Bankruptcy Code, 2016 (31 of 2016) notified on 7th December, 2016, which reads as follows:

'3. Transfer of pending proceedings relating to cases other than Winding up.— All proceedings under the Act, including proceedings relating to arbitration, compromise, arrangements and reconstruction, other than proceedings relating to winding up on the date of coming into force of these Rules shall stand transferred to the Benches of the Tribunal exercising respective territorial jurisdiction: Provided that all those proceedings which are reserved for orders for allowing or otherwise of such proceedings shall not be transferred."

3. It is contended that under Rule 3, the case stands transferred to National Company Law Tribunal and therefore, it was well within the

jurisdiction of the Principal Bench of NCLT to modify the scheme earlier framed by the Hon'ble High Court.

4. In one of the case, the Appellate Tribunal has doubted the power of the Central Government in framing Rules under sub-section (1) of Section 239 of Insolvency and Bankruptcy Code, 2016, for transfer of petition under sub section (1) of section 434 of the Companies Act, 2013. However, we are not going to deliberate on such issue in this present appeal.

5. As we find that Hon'ble High Court has already passed a final order relating framing a scheme on 16th April, 2015, in Company Petition 13/2015 and thereby, passed final order, we agree with the observations made by the Tribunal that such order can be modified only by the Hon'ble High Court.

6. For the reasons aforesaid, we are not inclined to interfere with the impugned order dated 16.02.2017. The appeal stands disposed of with the aforesaid observations.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member(Technical)

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