

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 95 of 2019

IN THE MATTER OF:

Shri Ravinder Kumar Magoo,
S/o Late Sh C.L. Mangoo,
R/o C-49, Sector 7
Noida, UP
Vs

Appellant

1. M/S AMA India Enterprise Pvt. Ltd.
H.No.999/1,
St No.4, Punjab Mata Nagar,
Pakhawal Road,
Ludhiana 141002

Mr Alessandro Malavolti,
S/o Mr. Luciano Malavolti,
R/o San Martino in Rio (RE),
PZA Della Porta 3, San Martino in rio

Correspondence address in India:
St No.4, Punjab Mata Nagar,
Pakhawal Road,
Luchiana 141002 Punjab India

Respondent

For Appellant: Mr. Rakesh Kumar and MR. Ankit Sharma, Advocates
for Respondent.

For Respondents: Mr. NPS Chawla, Mr Aaryan Sharma, Mr. Suresh Kant,
Advocates for appellant.

And

Company Appeal (AT) No. 103 of 2019

IN THE MATTER OF:

M/S AMA India Enterprise Pvt. Ltd.
Village Bhama Kalan, Kohara
to Machhiwara Road,
District Ludhiana 141113

Appellant

Vs

1. Shri Ravinder Kumar Magoo,
S/o Late Sh C.L. Mangoo,

R/o C-49, Sector 7
Noida, UP

2. Mr Alessandro Malavolti,
S/o Mr. Luciano Malavolti,
R/o San Martino in Rio (RE),
PZA Della Porta 3,
San Martino in rio

Correspondence address in India:
Village Bhama Kalan, Kohara to
Machhiwara Road,
Distt. Ludhiana 141113

Respondent

For Appellant: Mr. NPS Chawla, Mr Aaryan Sharma, Mr. Suresh Kant, Advocates for appellant.

For Respondents: Mr. Rakesh Kumar and MR. Ankit Sharma, Advocates for Respondent.

J U D G M E N T
(11th February, 2020)

Mr. Balvinder Singh, Member (Technical)

1. The present set of 2 appeals has been preferred by Shri Ravinder Kumar Magoo (hereinafter referred to as 'Appellant') and M/S AMA India Enterprise Pvt. Ltd. (hereinafter referred to as 'Respondent No.1') & Mr. Alessandro Malavolti (hereinafter referred to as 'Respondent No.2') against each other. Appellant in Company Appeal (AT) no. 95/2019 is partly challenging the para 17, 27 and 33 of the impugned judgement, dated 21.01.2019 passed by NCLT, Chandigarh Bench in CA No. 133/C-11/2015 [RT CA No. 04/CHD/PB/2017] in CP NO. 89(ND)/2009 (Decided Matter) which is as under:

- a) Modify the paragraph No.17, 27 and 33 of the Impugned Order 21.1.2019 passed by the Ld NCLT, Chandigarh Bench, Chandigarh in CA No.133/C-II/2015 RT CA No.04/CHD/Pb/2017 in CP No.89(ND)/2009 titled as "Shri Ravinder Kumar Magoo Vs M/s AMA

India Enterprises Private Ltd & Anr” with the effect that the share price of the appellant be restored back to Rs.26.07 per share as per the valuation report of the value rated 5th February, 2016.

2. Whereas the Appellant in Company Appeal (AT) No.103/2019 is challenging the above impugned judgment as a whole.

3. The brief facts of the case are that the Respondent No. 1, M/s AMA India Enterprises Pvt Ltd, was incorporated on 26th day of February, 1999 (with the 50% shareholding of Respondent No. 2 and 25% shareholding of the appellant(original petitioner) and 25% shareholding of one other partner, namely Mr Mahinder Kumar Chopra), having its registered office at H.No. 999/1, ST. No. 4, Punjab Mata Mandir, Pakhowal Road, Ludhiana-141002 Punjab, India with an authorised share capital of Rs.6,00,00,000/- (Rupees Six Crore only) divided into 60,00,000 (Sixty Lacs) Equity shares of Rs.10/- (Ten) each. The legally issued, subscribed and paid up capital is Rs.5,61,36,320/- (Rupees Five Crore Sixty One Lac Thirty Six Thousand Three Hundred and Twenty) divided into 56,13,632/- (Fifty Six Lacs Thirteen Thousand Six Hundred Thirty Two) Equity shares of Rs10/- (Ten) each. Respondent No. 2 is an Italian Citizen and was the CEO of Respondent No. 1 company. Respondent No. 2(Original Respondent No.2) with the Appellant(original petitioner) and Mr. Mahinder Kumar Chopra formed a Joint Venture Company in the form of Respondent No. 1 Company.

4. Appellant (original Petitioner in CP) filed Company Petition No. 89 of 2009 before erstwhile Company Law Board under Section 397, 398, 402 & 408 of the Companies Act, 1956 alleging oppression and mismanagement by the Respondent No. 2 in the Respondent No. 1 Company. The said petition was

disposed of by then the Ld. CLB vide order dated 2nd January 2015. In pursuance of the said order, then the Ld. CLB had directed to provide the exit to the appellant from the Respondent No. 1 company on fair valuation as on 31st March 2014. For valuation of the shares of the company M/s Seema Naresh Bansal & Associates (R-13 & R-14, LGF, Ansal Chamber-II, Bhikaji Cama Place, New Delhi) was appointed as valuer to value the shares on fair valuation within two months from the date of order made available to the parties.

5. Accordingly the aforesaid valuer had given its report on 16th April 2015. As per the said report, the following value has been ascertained by the valuer:

S. No.	Description	Amount as at 31.03.2014 audited, book value	Amount of valuation adjustment	Amount as adjusted fair value
A.	Tangible Assets	11353	7434	18787
	i) Factory Land			
	ii) Building	56844	--	56844
	iii) Plant & Machinery	12119	9603	21722
	iv) Other Tangible Assets	17968		17967

	Total of 'A'	98283	17037	115321
B	Other Non-Current Assets	1177	--	1177
C	Current Assets	121261	--	121261
D	Total Assets (A+B+C)	220721	17037	237758
E	Non-Current Liability	3719	--	3719
F	Current Liabilities	112084	--	112084
G	Total Liabilities (E+F)	115803	--	115803
H	Net Adjusted Assets (D-G)	104918	17037	121955
	Represented by:			
	Share Capital	56136	--	56136
	Reserves & Surplus	48782	--	48782
	Revaluation Reserves	--	17037	17037
I	Net Worth	104918	17037	121955

J	No. of Equity share of Rs.10/- each	5613.632		5613.632
	Value per share	18.689		21.725

The Control premium was also given by the valuer on the basis of the following:

“Control Premium:

In the present situation where the respondent i.e. majority shareholder is having 75% shareholding of the company. Since after transfer of 25% shares from the petitioner the entire shareholding will be in the hand of non-resident/foreign company, who is directly benefited by way of full control on the Indian entity. In this case where AMA SPA Italy who gives the specific orders, we have been intimated that the Indian Company is not having any pricing policy.

From the balance sheet analysis, it seems the Indian entity is working on a negligible profit. The Indian company has not readily available market in India, but AMA SPA Italy is a well-known company in its area and carrying a good reputation and ready market. It is also worth to mention here that the Indian company manufactured all of its products only for AMA SPA Italy, which will be owned by foreign promoters. It is also worth to mention in a transection where a holding company gave an open offer to a publically listed company Hindustan Liver Limited, with a premium of 21% (for increasing its stake to 75%).

In the present case it will be just and fair to assign/add a 20% control premium on the equity value arrived.

Thus the Equity share value comes to under Adjusted NAV is = (21.725 + 20%) i.e. Rs.26.07”

6. Both the Respondent No. 2 in CA No. 133/C-II/2015 and the appellant in its application dated 14.07.2015 filed the objections to the valuation report. The said valuer resubmitted his report on 12.10.2015. However, appellant had withdrawn the objections on 5th February 2016 on the condition that if Respondent No. 2 gives immediate payment at the arrived valuation price on the basis of valuation report.

7. The objection of the Respondent No. 2 in CA NO. 133/C-II/2015 was disposed of by the Hon'ble NCLT, Chandigarh by passing the impugned order dated 21.01.2019. The Hon'ble NCLT though has upheld the valuation report dated 12.10.2015 given by the valuer, but altered some of the valuation price in para 17, 27, and 33 of the impugned Order whereby share price was reduced from Rs.26.07 to Rs.21.483 per share.

8. Being aggrieved with the order appellants have filed this appeal.

9. It is stated by the appellant that he had the right in pursuance of the Joint Venture Agreement with respect to the affairs of Respondent No. 1 Company. That his position with respect to his 25% equity cannot be easily interfered with. Thus reduction of the control premium @20% in the valuation report was wrong.

10. The Appellant further stated that the provisions of Section 101 and section 232 of Companies Act, 2013 which provide that for taking certain decisions, the majority of 90% members are required in the company. The Respondent No. 1 company could not take such decisions without the consent of the appellant because he being the 25% equity shareholder.

11. The Appellant has also referred the ICAI Regulations on the share valuation which particularly refers that in case of having the controlling interest by the majority shareholders in the company, the controlling premium would be given. The said aspect has not been dealt with in the impugned Order. It has been further stated by the Appellant that in the year 2009, the Respondent No. 2 had given exit to Mr. Mahinder Kumar Chopra on the share value of Rs.4,51,59,084/- (Rupees Four Crores Fifty One Lakhs Fifty Nine Thousand and Eighty Four Only). Even in the year 2009 the offer was made to the appellant for USD 740000.

12. The Appellant referred to the Judgement passed by Ld. CLB of the Mumbai titled "Mr. Anup Bhaskaran Rana Vs, Faber - Castell Akiengesellschaft & Ors." In the said matter, the valuer had not granted the control premium while making the exit of the petitioner in the said petition. Then the Ld. CLB had given the control premium to the petitioner in the said matter in the similar circumstances.

13. Learned counsel for the appellant submits that the impugned order proceeds on an incorrect premise and the valuation adjustment from Rs.1,70,70,000/- (as per value report) to Rs.1,56,74,040/- on the base of cost inflation index of Income Tax Act, 1961, in reference to Notification No. 44/2017 dated 5th June 2017 of Central Board of Direct Taxes, Department

of Revenue, Ministry of Finance. It has taken into account the Cost Inflation Index for the FY 2013-14 is 220 and for FY 2014-15 is 240. The Hon'ble NCLT has failed to consider that as on 31st March 2015 in the valuation chart, there was a book value of Rs.22,07,21,000/- and the adjusted value was coming to Rs.23,77,58,000/-. The adjusted amount was of only Rs.1,70,37,000/-. The said difference was due to arriving the current market value of the assets. The Hon'ble Tribunal has arbitrarily reduced the said price from rs.1,70,37,000/- to Rs.1,56,74,040/-. The view of the Hon'ble NCLT is wrong in removing of the controlling premium of 20% from the arrived value price of Rs.26.07 per share, whereby the per shareholding has been reduced to Rs.21.483 per share. Ld. Counsel for the appellant also submits that NCLT has also erred in granting the interest of 12% w.e.f. 01.03.2016, as the rate should have been awarded @ 18% which the recognized statutory interest even under the various statute.

14. Respondents filed their reply and rebutted in brief as under: -

- a) Respondent stated that there are various discrepancies, objections regarding methodology and infirmities in valuation report including the apparent violation of the directions of the judgement.
- b) Learned counsel for the respondents stated that Hon'ble NCLT partly to the extent of not applying the control premium@20% is accordance with law & fact and circumstances of the present case and merits no interference. It is submitted that control premium is an amount that buyer is usually willing to pay over the value otherwise determined, in order to "acquire a controlling stake in the company", whereas in the

present factual matrix of the case the Respondent No. 2 already holds the controlling stake.

- c) It is further stated that the ICAI regulations on share valuation which inter-alia refers to the controlling interest held by the majority shareholders in the Company, has been duly adopted and applied in the present case. The said regulation deal with shares carrying 'controlling interest' and as already mentioned above, since the Respondent No. 2 already holds 75% shares of Respondent No.1, the controlling interest vests with respondent No. 2 without acquisition of 25% shares of the Appellant. It is further submitted that the said Regulations itself provides that controlling interest is involved where the shares to be valued constitute more than 50% of the equity shares of a closely held company however in the present case the Appellant holds only 25% shares of Respondent No. 1 Company.
- d) Respondent also stated that past transection which was undertaken between Respondent No. 2 and Mr Mahinder Kumar Chopra in the year 2008, has no relation whatsoever with the present valuation being conducted.
- e) Learned counsel for the Respondents submitted that Hon'ble NCLT had wrongly directed for the payment of interest as the amount must not only be owing but due to be paid. The right to claim interest will be dependent on the valuation report attaining finality. The amount became due and payable only when the impugned order was passed subject to the outcome of the present valuation report and therefore, the interest could not have been charged in retrospective manner.

Interest cannot be awarded to the Appellant especially when the Appellant has himself challenged the valuation report. Although the Appellant i.e. original petitioner claims to have withdrawn his objections to the valuation report, however, such withdrawal never became effective as the same was subject to the payment of the value as originally computed by the valuer. It is further submitted that in view of the matter being sub-judice as the Application challenging the original valuation filed by the Respondent had not been decided on merits before passing of the impugned order, thus no interest should have been awarded to the Appellant in the present case.

- f) Learned counsel for the Respondents further submitted that the valuer has wrongly applied the methodology for the purpose of final determination of the value per share as there is erroneous application of cost inflation index for reducing the value instead of determining the fair value of the equity shares of the Respondent No. 1 as on 31.03.2014. The respondent contended that value cannot be determined only on the basis of the NAV method, that too when the valuation is not being done on liquidation basis. There is no basis at all for linking the Cost Inflation Index method with valuation of equity shares of a company.
- g) It is contended on behalf of Respondents that the valuer has categorically stated in its report submitted with the Hon'ble NCLT that the said valuation report has been prepared in conformity with the Corporate Affairs Standard (CAS)-1 on Business Valuation issued by Institute of Chartered Accountant of India(ICAI). However, from a bare

perusal of the provisions of the said CAS-1, it is evident that the valuer has not followed the provisions of CAS-1, rather has apparently contradicted many provisions of CAS-1.

15. Heard learned counsel for the parties and perused the record. There can be no dispute with regard to the methodology adopted by the valuer in its valuation report. It is a well settled law that valuer being an expert, if honestly and in good faith fixes a value, then both the parties are bound by it because the parties have agreed to be bound by the decision of an expert valuer unless it is influenced by the fraud, collusion or partiality, that the result would be different. However, after going through the facts and circumstances of the particular case we have noticed that the calculation done by the valuer in its report can be relied upon except the valuation adjustment and control premium that was also given by the valuer to the Appellant. We note that the NCLT has rightly done the valuation adjustment. NCLT has rightly given his observations in para 17 of the Impugned Order that taking into consideration the increase in cost inflation index, NCLT consider it appropriate to reduce the valuation adjustment by 8%. Adverting to the facts of the instant case be it seen that the Hon'ble NCLT had rightly removed the control premium of 20% from the arrived value price of Rs.26.07 per share as Respondent No. 2 is already holding a controlling stake (i.e. 75%) in Respondent No. 1 Company. NCLT has also given his observations in para 27 of the impugned order which are as under:

“It is submitted that there is wrong application of control premium in the valuation report. It is submitted that control premium of 20% on the fair value has been added by the valuer which is not justified since control

premium is an amount that a buyer is usually willing to pay over the value otherwise determined, in order to acquire a controlling stake in the company. Xxxxx It is submitted that R-2 is already holding a control in stake (i.e.75%) in R1 company and by acquisition of the shares from the petitioner (i.e. 25%), R-2 would not acquire the control stake of the respondent company. Xxxxxx”

And by acquisition of the shares from the Appellant (original petitioner) (i.e. 25%) Respondent No. 2 would not acquire the control stake of the Respondent No. 1 company. We note that M/s AMA India Enterprises Private company, original Respondent No.1, is an Indian Company incorporated under the Companies Act and Mr. Alessandro Malavolti is a foreign national, therefore, the original Respondent No.1 company will purchase the shares of original petitioner and if the original Respondent No.2 is allowed to purchase then it requires the permission from RBI and it will also be violation of FEMA.

15. Learned counsel for the original petitioner has argued that NCLT has erred in granting the interest @ 12% from the date of 5.2.2016 as the rate should have been awarded @ 18% which the recognized statutory interest under various statute. We have considered this issue. We note that the rate of interest of 18% has to be the rate prevalent in the economy. These rate of interests have been successfully coming down in the last years whereas rate of 18% would be justified at one of time or 12% could be justified at another point of time. Seeing the overall scenario of the economy and the prevalent rate of interest in the market, we deem it appropriate that the rate of interest of 9% simple per annum is just and reasonable. Accordingly, we modify the impugned order to that extent.

16. In view of the foregoing discussions and observations we find no merit to interfere in the impugned order except the rate of interest as discussed in para 15. Respondent company will make payment of consideration to the appellant (Ravinder Kumar Magoo) alongwith interest within 30 days from the date of receipt of this order. No order as to cost.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr.Ashok Kumar Mishra)
Member (Technical)

New Delhi

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