

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 78 of 2018

IN THE MATTER OF:

JAK Builders Pvt. Ltd. & Ors.

...Appellants

Present:

For Appellant : Mr. Sanjeev Kumar Kataria, Advocate

O R D E R

24.04.2018 M/s. Jak Builders Private Limited is Transferor Company-1 and M/s. Jaya Infra Private Limited is Transferor Company-2. M/s. Jak Group Private Limited is the 'Transferee Company'. Both the transferor companies - M/s. Jak Builders Private Limited and M/s. Jaya Infra Private Limited have its registered office at Gurgaon (Haryana) on the other hand M/s. Jak Group Private Limited has its registered office at Nehru Place, New Delhi. As they intended to get their scheme approved for merger, filed two separate applications both under Section 230-232 of the Companies Act, 2013, one before the National Company Law Tribunal, New Delhi Bench (hereinafter referred to as the 'NCLT, New Delhi') in Case No. CA (CAA)-65(ND)/2017 and another before the National Company Law Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the 'NCLT, Chandigarh') in Case No. CA(CAA) No. 19/Chd/Hry/2017. Two separate applications were filed as two of the Transferor Companies have registered office at Gurgaon, Haryana whereas the Transferee Company has its registered office

at New Delhi. The NCLT, New Delhi Bench by impugned order dated 17th November, 2017 dismissed the application as not maintainable in view of the lack of territorial jurisdiction. Other matter is pending before the NCLT, Chandigarh.

2. Learned counsel appearing on behalf of the appellants submits that once the NCLT, New Delhi rejected the application on the ground of lack of territorial jurisdiction, in such case the other case will also be dismissed by the NCLT, Chandigarh on the same ground as the 'Transferor' and 'Transferee' Companies are located in two different places.

3. The appellants have brought to the notice of this Appellate Tribunal the Notification dated 1st June, 2016 issued by the Central Government in exercise of the powers conferred under sub-section (1) of Section 419 of the Companies Act, 2013 whereunder the NCLT, Principal Bench, New Delhi Bench has been provided with the territorial jurisdiction in regard to State of Haryana, State of Rajasthan and Union Territory of Delhi. However, by a subsequent Notification dated 3rd February, 2017, the Notification dated 1st June, 2016 was modified and territorial jurisdiction of the State of Haryana has now been vested with NCLT, Chandigarh Bench.

4. The question arises for consideration is as to which Bench of the NCLT, where an application under Section 230-232 of the Companies Act, 2013 can be filed if the registered office of two companies are situated within the territorial jurisdiction of two different NCLT Benches.

5. The Central Government in exercise of the powers conferred by Section 469 of the Companies Act, 2013 frame Rules known as "The National Company

Law Tribunal Rules, 2016". Rule 16 relates to the power and functions of the President, NCLT which reads as follows :

- "16. Functions of the President.- In addition to the general powers provided in the Act and in these rules the President shall exercise the following powers, namely:-*
- (a) preside over the consideration of cases by the Tribunal;*
 - (b) direct the Registry in the performance of its functions;*
 - (c) prepare an annual report on the activities of the Tribunal;*
 - (d) **transfer any case from one Bench to other Bench when the circumstances so warrant;***
 - (e) to withdraw the work or case from the court of a member.*
 - (f) perform the functions entrusted to the President under these rules and such other powers as may be relevant to carry out his duties as head of the Tribunal while exercising the general superintendence and control over the administrative functions of the Members, Registrar, Secretary and other staff of the Tribunal."*

6. From clause (d) of Rule 16, we find that the Hon'ble President of the NCLT has power to transfer any case from one Bench to other Bench when the circumstances are so warranted. In view of such provision, we are of the view

that the cases in hand circumstances warrants that the President exercises his power under Rule 16(d) to transfer one of the case from one Bench to other Bench where other matter is pending including the cases where transferor and transferee companies are at different places of the country.

7. For the reasons aforesaid, we set aside the order dated 17th November, 2017 passed by the NCLT, New Delhi Bench in CA (CAA)-65(ND)/2017 with liberty to the appellant to file application before the Hon'ble President, NCLT, New Delhi to transfer one of the case either to Chandigarh Bench or the Bench at New Delhi for hearing of both the case by one of the Bench. The appeal stands disposed of with the aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc