

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 323 of 2017

IN THE MATTER OF :

**Avenir Finvest & Leasing Private Limited
& Ors.**

... Appellants

Versus

The Regional Director (Northern Region) & Anr.

... Respondents

**Present: For Appellants : Shri Ashish Aggarwal and Shri Gurcharan
Singh, Advocates**

ORDER

08.11.2017 This appeal has been preferred by the appellants-Transferor Companies (Appellants Nos. 1 to 3) and the Transferee Company (Appellant No. 4) against order dated 11th August, 2017 passed by the National Company Law Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'Tribunal') in Company Petition No. 1152 of 2016, whereby and whereunder the Company Petition filed under Sections 391 and 394 of the Companies Act, 1956 for approval of scheme of merger/amalgamation has been rejected.

2. The brief facts of the case is that the appellants, originally moved before the Hon'ble High Court of Delhi by filing application under Sections 391 and 397 of the Companies Act, 1956 read with Companies (Court) Rules, 1959 for approval of the scheme of amalgamation. The Hon'ble High Court issued notice of second motion to the Registrar of Companies, Regional Director and the Official Liquidator, but in view of Central

Government's Notification dated 7th December, 2016 issued under Clause (c) of sub-Section (1) of Section 434 of the Companies Act, 2013, the case was transferred to the Tribunal.

3. By the impugned order, the Tribunal, taking into consideration the stand taken by the Registrar of Companies; Regional Director (Northern Region) and Reserve Bank of India rejected the scheme of amalgamation on the ground that the Transferee Company is a Non-Banking Financial Company ('NBFC' for short) but is performing NBFC's activities illegally without the permission of the Reserve Bank of India.

4. Learned counsel appearing on behalf of the appellants submitted that the Tribunal wrongly held that the Transferee Company is a Non-Banking Financial Company. According to appellant, the Transferee Company being not a Non-Banking Financial Company is not required to be registered with the Reserve Bank of India nor required to obtain any prior approval.

5. From the record, we find that the Registrar of Companies, at Paragraph 31 of his report, as quoted by the Regional Director, Northern Region, raised following objections:

"That Deponent states that the Registrar of Companies at para 31 of his report has observed as under:

a. It has been observed from the petition that the Board of Directors of all Companies have approved the proposed Scheme of Amalgamation in their Board meetings held on 30.06.2016. Accordingly, in terms of the provisions of Section 117(1) r/w 179 (3) of the Companies Act, 2013, all the Companies are required to file such resolution (eform MGT-14) with this office within thirty days of passing the resolution whereas none of the above company has filed such resolution so far thereby prima facie violated the provisions of section 117(1) of the Companies Act, 2013.

The Deponent states that pursuant to notification dated 05.06.2015, Private companies are exempted from compliance of provisions of section 117(3)(g) of the Companies Act, 2013.

b. The objects clause of all the Transferor Companies reflects NBFC activities however there is no mention in the scheme/petition whether the Company is registered as NBFC with RBI or not. However, it has been observed from the Balance Sheet and profit and loss A/c filed by the Transferor Companies on MCA 21 Portal that there is no financial income in the Transferor companies since last two years in terms of section 45-1A of the RBI Act, 1934.

In respect of Transferee Company the following has been the observation:

Company	Total Assets (netted off by intangible assets)	Financial Assets	%	Gross income	Income from financial Assets	%

*As per Balance Sheet and profit & loss account as on
31.03.2015*

Transferee Co.	42,60,95,336	Non current investment	39,26,85,030	92	43,15,625	Revenue from dividend income	25,15,625	58
		Stock in trade(in shares)	1,26,50,850	3				
		Cash & Bank Balance	23,79,223	0.6				

The company will be treated as a non-banking financial company (NBFC) if its financial assets are more than 50 per cent of its total assets (netted off by intangible assets) and income from financial assets is more than 50 per cent of the gross income. Both these tests are required to be satisfied as the determinant factor for principal business of a company.”

6. The Tribunal noticed that the financial assets of the Transferee Company constitute more than 50% of their total assets and income from the financial assets constitute more than 50% of the total gross income. As per the MCA21 portal, the paid-up issued and subscribed capital of the Transferee Company is Rs. 1,62,20,200/-. However, the Transferee

Company has shown its paid-up issued and subscribed capital as Rs.5,68,79,400/- in the scheme. For the aforesaid reason, the Companies were asked to make necessary compliance of capitals structure of the Company.

7. In the rejoinder affidavit, the appellants have taken a plea that the objection that 'MCA21 portal' reflects the paid-up capital of the Transferee Company is different as per the scheme, is not based on record. The 'MCA21 portal' of the Transferee Company's master data shows that the paid-up capital is Rs. 5,68,79,400/- and as such, there is no discrepancy in the issued subscribed and paid-up capital of the Company as alleged. The appellants have also taken a plea that the Transferee Company is not a Non-Banking Financial Company (NBFC). However, on perusal of the report of the Regional Director and letter forwarded to the Reserve Bank of India dated 28th April, 2017, it is clear that the "Signature Global (India) Private Limited", namely, the Transferee Company is carrying NBFC's activities which, according to the Reserve Bank of India, is illegal activity, as no permission of the Reserve Bank of India has been taken.

8. In view of the specific plea taken by the Reserve Bank of India and brought to the notice of the Tribunal by both Registrar of Companies and Regional Director, Northern Region, we are not inclined to interfere with the impugned order dated 11th August, 2017.

9. In the absence of any merit, the appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

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