

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A. No. 2986 of 2019 in
Company Appeal (AT) No. 175-176 of 2019

IN THE MATTER OF:

Volvo Group India Pvt. Ltd. & Anr.

...Appellants

Versus

**Regional Director (South-East region),
Ministry of Corporate Affairs**

...Respondent

Present:

**For Appellants: Mr. Ramji Srinivasan, Sr. Advocate with
Mr. Krishnendu Dutta, Mr. Saransh Jain, Ms. Sriparna
Dutta and Mr. Madhavam Sharma, Advocates
Ms. Sylona Mohapatra, Advocate**

**For Respondent: Mr. P.S. Singh, Sr. Advocate with Ms. Annu Singh,
Advocate**

O R D E R

24.09.2019:

1. I.A. No. 2986 of 2019 has been filed by the Appellants for withdrawal of the present appeal with liberty to re-approach this Appellate Tribunal, if required. The present appeal was filed against part of impugned orders (i) dated 28.03.2019 passed in C.P. (CAA) No. 67/BB/2018 and (ii) dated 27.05.2019 passed in I.A. No. 201 of 2019 in C.P. (CAA) No. 67/BB/2018, by the National Company Law Tribunal, Bengaluru Bench. In order dated 28.03.2019 while accepting the scheme of demerger the National Company Law Tribunal had directed in operative order para 12(8)(c) as under:

“Demerged Company to obtain No Objection Certificate from concerned Direct/ Indirect Tax Authorities as tax amount alleged to be due, in dispute, is over Rs. 1200 crores. In case No Objection Certificate cannot be produced, the Demerged Company shall provide Bank Guarantee to the Satisfaction of Concerned Department”

2. The appeal was filed and this Appellate Tribunal passed order on 04.07.2019 as under:

“O R D E R

04.07.2019 - *Having heard learned counsel for the Appellant and being satisfied with the ground, delay of 39 days in filing the appeal against the order dated 28th March, 2019 is hereby condoned. I.A. No. 2084 of 2019 stands disposed of.*

*Learned counsel for the Appellant is allowed to implead concerned ‘**Regional Director**’ **East Hyderabad** as party respondent. Necessary corrections be made in the cause title and paper book in the appeal by 5th July, 2019.*

Let notice be issued on newly impleaded respondent. Requisite along with process fee be filed by 5th July, 2019.

*Post the case for ‘admission’ on **8th August, 2019.***

Until further orders stay of implementation of the scheme in question. ”

3. Impugned order Para 12 (6) read as under:

“The Petitioner Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Arrangement to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016; and”

The National Company Law Tribunal vide order dated 27.05.2019 had extended the time with regard to the compliance as directed in para 12 (6) of impugned order dated 28.03.2019 till 31.07.2019. Para 12 (6) of impugned order was with regard to the petitioner companies filing the copy of the Scheme of Arrangement with Registrar of Companies. The learned counsel for the Appellant states that as per the impugned order para 12(8)(c) it was necessary to get No Objection Certificates from authorities and the applicant has succeeded in taking the No Objection Certificates from all the concerned authorities.

4. Para 1 to 6 of I.A. No. 2986 of 2019 filed for withdrawal read as under:

“1. That the instant appeal was filed by the Appellants being aggrieved by the impugned orders (i) dated 28.03.2019 passed in C.P. (CAA) No. 67/BB/2018 and (ii) dated 27.05.2019 passed in I.A. No. 201 of 2019 in C.P. (CAA) No. 67/BB/2018, by the Hon’ble National Company Law Tribunal, Bengaluru (henceforth,

'NCLT'). The contents of the present appeal may be treated as part and parcel of the present application.

2. It is submitted that while allowing the company petition by approving the scheme of arrangement between the appellants, Ld. NCLT had held in para 12(8)(c) of the impugned order dated 28.03.2019 that the acceptance of the scheme of arrangement between the Appellant No. 1 and the Appellant No. 2 and their respective shareholders and creditors (hereinafter referred to as 'scheme of arrangement'), can only be made effective **subject to the Appellant No. 1 obtaining no objection certificates** (the 'NOC') from the direct/indirect tax authorities. The said impugned order further required that in case, no objection certificates were not produced, the appellants were to provide bank guarantee(s) to the satisfaction of the tax authorities.

3. That being aggrieved by the above said observation, the appellants had preferred the present appeal, seeking set-aside of the above said condition contained in paragraph 12(8)(c) of the impugned order dated 28.03.2019, the said observation being without authority of law.

4. *It is submitted that before filing of the present appeal, the appellants had got NOC from the Deputy Commissioner of Income Tax with respect to its liabilities under the Income Tax Act and Rules and another NOC from the Office of the Assistant Commissioner of Central Tax with respect to its liabilities under the Central Goods and Services Tax Act, 2017, Central Excise Act, 1944, the Finance Act, 1994 and the respective Rules. The copies of the aforesaid NOCs had been produced along with the memorandum of appeal at Annexure A-6.*

5. *It is submitted that after filing of the present appeal and as on date, the appellants have got NOC from the Department of Revenue, Office of the Principal Commissioner of Customs, as well. In light thereof, the condition in the impugned order dated 28.03.2019, for production of NOCs from direct/ indirect tax authorities, stands satisfied. A copy of the NOC dated 23.08.2019 is annexed herewith as **Annexure A-1**.*

6. *It is submitted that in light of above and without prejudice to the rights and contentions of the appellants, the present application has been preferred by the appellants to seek permission of this Hon'ble Tribunal to withdraw the present appeal with liberty re-approach this Hon'ble Tribunal, if the need arises."*

5. The submission of the Learned Counsel for the Appellant is that they want to withdraw this appeal as all the necessary permissions had been obtained though it was not necessary and appeal had to be filed. Learned counsel submits that now the Appellant has taken the permissions but fear is that the ROC may now not entertain the appellant considering the time as given by the National Company Law Tribunal by its order dated 27.05.2019 has expired.

6. Considering above factors, as the appellant wants to withdraw the appeal, we permit the withdrawal. However, considering the apprehension expressed by the counsel for the Appellant, under Rule 15 r/w Rule 11 of National Company Law Appellate Tribunal Rules 2016, we extend the time for compliance as given in para 12 (6) of the impugned order dated 28.03.2019 till 15th November, 2019.

The appeal is disposed of accordingly.

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

[Kanthi Narahari]
Member (Technical)

sa/sk