

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
IA No. 943 of 2019 in
Company Appeal (AT) No. 208 of 2018

IN THE MATTER OF:

M/s. 63 Moons Technologies Ltd. & Others **...Appellants**

Versus

Union of India & Ors. **...Respondents**

Present:

For Appellant : **Mr. S.N. Mookherjee, Sr. Advocate with Mr. Abhijeet Sinha, Mr. Prateek Gupta, Mr. Mohit Advani, Ms. Priyanka, Ms. Madhur Mahajan, Mr. Saikat Sarkar, Advocates**

For Respondents: **Ms. Pinky Anand, Ld. ASG, Sr. Advocate, Mr. Nagachandran, Ms. Meenakshi, Ms. Snidha Mehra, Mr. Anoop, Mr. Joel, Advocates**

ORDER

22.07.2019 – An Interlocutory Application was filed by the Appellant – ‘M/s. 63 Moons Technologies Ltd.’ to allow to sell the shares in ‘Atom Technologies Ltd.’ which belongs to the Appellant - ‘M/s. 63 Moons Technologies Ltd.’

2. On 10th January, 2019 without expressing any opinion with regard to the prayer made in the Interlocutory Application, we were of the view that the Committee headed by Hon’ble Mr. Justice J.P. Mathur (Retd.) Judge of the Hon’ble Supreme Court should re-consider the prayer at first instance and may decide the issue whereinafter if so required, this Appellate Tribunal may consider the prayer for interim relief.contd.

3. In spite of the aforesaid order, passed on 10th January, 2019, we find that the 'Committee headed by Hon'ble Mr. Justice J.P. Mathur (Retd.) Judge of the Hon'ble Supreme Court could not give any opinion in the absence of any expert advice.

4. In the aforesaid background, we asked as to why the Appellant - 'M/s. 63 Moons Technologies Ltd.' be not allowed to sell the shares in 'Atom Technologies Ltd.' which belongs to the Appellant as it is informed that the price of the same may come down in future.

5. Learned counsel for Union of India was also asked whether there is any objection with regard to aforesaid sale of the shares.

6. The affidavit has been filed in reply by Union of India wherein the following statement has been made: -

"4. That the sale of shares in question and the valuation thereof are based on documents supplied by the management of Appellant / Applicant Company, of which the Government of India has neither any knowledge nor in a position to verify the authenticity and genuineness thereof. Hence, the Central Government is not in a position to form any opinion on the proposed sale in the absence of management control of Respondent No. 1 company (Appellant / Applicant in the IA).

5. That the Respondent No. 1 company (Appellant/Applicant in the IA) has not indicated any

specific purpose for which the funds received from the sale of shares will be applied. Thus, if the sale of shares is permitted by this Hon'ble Appellate Tribunal, the proceeds may be directed to be deposited in a fixed deposit by the Respondent No. 1 company (Appellant/Applicant in the IA) and they may be directed to seek permission of this Hon'ble Appellate Tribunal before spending such sum or part thereof.

6. That it is prayed that the Hon'ble Appellate Tribunal may decide the Application keeping in view the submissions at Paragraphs 4 and 5 hereinabove.”

7. On 17th July, 2019, learned counsel appearing on behalf of the Appellant submitted that in view of the stand taken by Union of India, the Appellant may be allowed to sell the shares in 'Atom Technologies Ltd.'

8. This Appellate Tribunal observed that the Appellant may file an affidavit giving terms and conditions of the undertaking, as the Appellant intends to give, if the Appellate Tribunal allows the Appellant to sell Company's share in 'Atom Technologies Ltd.'

9. Pursuant to the aforesaid order, an undertaking has been given on behalf of the Appellant, relevant portion of which is as follows: -

“3. In the event of the sale of shareholding of the Appellant in Atom Technologies Ltd. as approved in the meeting of the Board of Directors held on 10th June, 2019 and which has

been approved by the members of the Appellant effective 18 June 2019 taking place upon approval of this Hon'ble Tribunal, the Appellant undertakes to this Hon'ble Tribunal as follows:

- a. The sale shall be made in accordance with law as directed by the Order of this Hon'ble Tribunal dated 28 May 2019.*
- b. In accordance with the requirements of law, the Bombay Stock Exchange and the National Stock Exchange shall be intimated of such sale in compliance of Regulation 30 of the SEBI Listing Obligation; and Disclosure Requirements) Regulations 2015.*
- c. The sale consideration shall be in accordance with the pricing guidelines prescribed by the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017.*
- d. The sale proceeds when received by the Appellant shall be invested in appropriate interest bearing accounts.*
- e. Such sale proceeds can only be utilized by the Applicant for day to day operations of the Applicant upon obtaining leave of the Committee appointed by the Orders dated 24 June 2016 and 25 June 2016 as continued*

by this Hon'ble Tribunal vide Order dated 27 June 2018 passed in Company Appeal (AT) No. 192 of 2018 (titled Union of India V. 63 moons technologies limited & Ors.), and as further continued by this Hon'ble Tribunal on 3 July 2019, in the captioned Appeal.

4. The statements made hereinabove are true and correct. No material fact has been concealed.”

10. In view of the aforesaid undertaking given by the Appellant, the Board of Directors and Company Secretary of 'M/s. 63 Moons Technologies Ltd. and others' (Appellants), we allow the Appellant(s) to take steps for sale of shares of the Appellant in 'Atom Technologies Ltd.' in accordance with law and undertaking as given above.

11. The sale proceeds of the aforestated shares by the Appellant should be invested immediately in appropriate interest bearing accounts.

13. It is made clear that the sale proceeds cannot be utilised for any purpose without prior permission of the 'Committee headed by Hon'ble Mr. Justice J.P. Mathur (Retd.) Judge of the Hon'ble Supreme Court.

14. After exhausting the money of the Company available for day to day operation, if further money is required to be generated for day to day functioning, with the permission of the 'Committee headed by Hon'ble Mr.

Justice J.P. Mathur (Retd.) Judge of the Hon'ble Supreme Court, they may utilise the amount or part of the amount for day to day operation of the Appellant company.

IA No. 943 of 2019 stands disposed of with the aforesaid observations and directions.

List all these appeal(s) along with other analogous appeal(s) on **22nd August, 2019 at 2.00 P.M.** on the top of the list.

The appeal(s) may be disposed of on the next date.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

ss/gc