

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 63 of 2020

In the matter of:

VFL Mercantile Pvt. Ltd. & Anr.

.....**Appellants**

Vs

NIL

.....**Respondent**

Present:

**For Appellants:-Ms. Shilpi Chowdhary and Mr. Jasdeep Singh Dhillon,
Advocates**

For Respondent:-None

ORDER

13.03.2020- It transpires that in CP (CAA) No. 108/NCLT/AHM/2019 in CA (CAA) No. 143/230-232/NCLT/AHM/2018, CA(CAA) No. 110/NCLT/AHM/2019 in CA (CAA) NO. 145/230-232/NCLT/AHM/2018, CP (CAA) No. 109 of 2019 in CA (CAA) No. 63/230-232/ NCLT/AHM/2018 and CP(CAA) No. 111/NCLT/AHM/2019 in CA (CAA) No. 146/230-232/NCLT/AHM/2018 on 18th December, 2019, the Hon'ble Member (Judicial) at Para 27 had observed the following:-

“It is further declared that the present Composite Scheme of Arrangement for Amalgamation of M/s. Raj Ratan Infracon Pvt. Ltd. (Transferor company No. 1), M/s Vijay Creations Pvt. Ltd. (Transferor Company No. 2), M/s VFL Mercantile Pvt. Ltd. (Transferor Company No. 3), with M/s Vishal Fashions Pvt. Ltd. (Transferee Company) stands approved and sanctioned and is having binding effect on all concerned, i.e., its shareholders, secured and unsecured creditors, coming under the Scheme.”

and ultimately disposed of the Company Petitions. It is also brought to the notice of this Tribunal that in CP (CAA) No. 108, 110, 109 and 111 of 2019 in CA (CAA) 143, 145, 63 and 146 of 2018. The Hon'ble Member (Technical) of the National Company Law Tribunal, Ahmadabad, Bench at Para 2 had observed the following:-

"2. It is also observed from the records available at MCA Portal that:-

- a. M/s. VFL Mercantile Pvt. Ltd. is originally incorporated as M/s MSL Management Consultants & Services Limited in the Jurisdiction of ROC- Hyderabad on 14.03.2000*
- b. Status of the Company is changed from public company to Private Limited Company vide dated 18.04.2006.*
- c. Thereafter the name of the Company is changed from M/s MSL Management Consultants & Services Pvt. Ltd. to M/s VFL Mercantile Pvt. Ltd. on 30.12.2008.*
- d. Later on M/s VFL Mercantile Pvt. Ltd. is converted into M/s. VFL Mercantile LLP on 08.03.2016.*
- e. Further, also shifted its registered office from ROC Hyderabad to ROC Ahmadabad on 27.10.2017.*
- f. Thereafter the said company again converted from LLP to Pvt. Company on 08.02.2019.*

Therefore, it is submitted by the Regional Director, North Western Region Ministry of Corporate Affairs that the Hon'ble NCLT may please not consider amalgamation of M/s. VFL Mercantile LLP into the transferee Company.

Observations made by the Regional Director are correct and their submissions not to allow a LLP to merge with a company needs to be accepted as because M/s VFL Mercantile Company is a LLP as on the appointed date of amalgamation and this Tribunal is having no discretion to allow a LLP to amalgamate with other Company. Moreover, the conduct of the company during the period from 14.03.2000 to 08.02.2019 is taken on record as observed from the MCA site, number of changes have taken place i.e. from Public Company to Pvt. Ltd. Company, the name change, then converted to LLP, Shifting the Regd. Office and again from LLP to Pvt. Company, then application of merger. Hence, I concur the view of the Regional Director and M/s. VFL Mercantile LLP is not to be allowed to be amalgamated with the transferring companies now: however, the VFL Mercantile LLP converted into a Pvt. Ltd. Company on 08.02.2019, may file a fresh petition for amalgamation with appointed date of amalgamation only on or after 08.02.2019, when it has become a company”.

Furthermore, the Hon’ble Member (Technical) of the National Company Law Tribunal, Ahmadabad, Bench in CP (CAA) No. 108, 110, 109 and 111 of 2019 in CA (CAA) No. 143, 145, 63 and 146 of 2018 on 18.12.2019 had observed the following: -

“If the Hon’ble Member(J) is of the opinion that the LLP is to be amalgamated with the Transferee Company, as applied then the petition along with related papers is required to be referred to the

President. NCLT Delhi for constitution of a Bench to decide. Whether a LLP can be amalgamated into a company under Section 232 of Companies Act, in spite of the disagreement of the Regional Director, North Western Region, MCA.”

In this connection, this Tribunal makes pertinent mention of Rule, 60 of the National Company Law Tribunal, Rules 2016 which reads as under:

“60. Matters relating to the judgements or orders of the Tribunal.

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(1) Once the final text of the judgment has been approved and adopted, the judgment shall be signed and dated by the President or the concerned Members or Member and the Registrar, and the Registrar, and shall contain the names of the Members who have taken part in the decision.

(2) Any Member differing as to the grounds upon which the judgment was based or some of its conclusions, or dissenting from the judgment, may append a separate or dissenting opinion.

(3) In case the members who have heard the case are equally divided in passing the order or judgment, then the President shall constitute a Bench as referred in sub-section (5) of section 419 of the Act.”

In view of the aforesaid Rule 60 of the National Company Law Tribunal Rules, 2016, and also because of the divergence of opinion between the two Hon'ble Members of the NCLT, Ahmadabad, Bench, the matter now is said to be pending before the Office of the Registry of the NCLT, Ahmadabad, Bench for constitution of a Bench to decide the subject matter in issue. Whether a LLP can be

amalgamated into a company under Section 232 of Companies Act, inspite of the disagreement of the Regional Director, North Western Region, MCA?. Viewed in that perspective, this Tribunal is of the considered opinion that the Present Appeal filed by the Appellant is per se not Maintainable in the eye of Law. When this legal position is brought attention of the Learned Counsel for the Appellant, at this stage, he sought permission from this Tribunal to withdraw the instant Appeal. Acceding to his request, the Present Appeal is dismissed as withdrawn, without costs. It is made clear in the event of Bench not being constituted till date, then it is open to the Appellant to move the Registrar of National Company Law Tribunal, Principal Bench, New Delhi for brining to the notice of the Hon'ble President of the National Company Law Tribunal, New Delhi, in the subject matter issue, within one week from today and to seek remedy for redressal of its grievance's at an early date.

**(Justice Venugopal M.)
Member (Judicial)**

**(V.P. Singh)
Member (Technical)**

**(Shreesha Merla)
Member (Technical)**

SC/NN