

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 383 and 384 of 2017

IN THE MATTER OF:

**1. Anuroop Builders & Development Pvt. Ltd.
1E, Jhandewalan Extension,
Naaz Cinema Complex,
New Delhi-110055**

**....Appellants
(1 to 6 Transferor
Companies)**

**2. Havard Builders & Developers Pvt. Ltd.
1E, Jhandewalan Extension,
Naaz Cinema Complex,
New Delhi-110055**

**3. Kambod Real Estates Pvt. Ltd.
15, Shivaji Marg
New Delhi-110015**

**4. Niabi Builders & Developers Pvt. Ltd.
15, Shivaji Marg
New Delhi-110015**

**5. Tatharaj Estates Pvt. Ltd.
15, Shivaji Marg
New Delhi-110015**

**6. Vismay Builders & Developers Pvt. Ltd.
1E, Jhandewalan Extension,
Naaz Cinema Complex,
New Delhi-110055**

With

**7. Dome Builders & Developers Pvt. Ltd.
1E, Jhandewalan Extension,
Naaz Cinema Complex,
New Delhi-110055**

**..... Appellant no. 7
(Transferee
Company)**

Vs

**1. Regional Director, Northern Region
Government of India, Paryava Bhawan
CGO Complex, Lodhi Road
New Delhi**

....Respondents

**2. Registrar of Companies
NCT of Delhi & Haryana
4th , IFCI Tower, 61, Nehru Place
New Delhi-110019**

Present:

For Appellants: Mr. Ravi Bassi and Mr. Sheel Kumar, Advocates.

For Respondents: C. Balooni, Company Prosecutor for R.D (NR)

ORDER

01.12.2017: 1) The Company Appeal 384 of 2017 is arising out of impugned order dated 21.08.2017 passed in CAA 86 (PB) 2017 connected with CA (CAA) 26(PB)/2017 by the National Company Law Tribunal, Special Bench, New Delhi (NCLT in Short).

2) The appellant had filed the said petition before the learned NCLT for amalgamation of 6 companies as mentioned in the memo of parties with Dome Builders & Developers Pvt. Ltd. The counsel for appellant is submitting that these 6 companies which are to be amalgamated with Dome Builders & Developers Pvt. Ltd. are closely held companies having common promoters. It is stated that the respondent no. 1 and 2 Regional Director, Northern Region and Registrar of Companies are formal parties. It is stated that Regional Director, Northern Region has already given no objection to the amalgamation in the NCLT.

3) The learned NCLT while considering the scheme of amalgamation referred to rule 6 of the Companies (Compromises, Arrangements and

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Amalgamations) Rules, 2016 and also referred to provisions of Section 232(2) of the Companies Act 2013 (Act-in brief) and observed in Para 11 to 13 as under:

“11. The above provisions of section 232(2) of the Act read with sub rule (3) of the Rule 6 clearly places an onus on the company to make a disclosure of all material particulars to enable the shareholders to make their decision in relation to the scheme proposed by the company. If that were so for the shareholders concerned, obviously to this Tribunal the duty cast on the companies should be equal, if not more when they are seeking sanction and thereby, seek the seal of approval of this Tribunal by the companies involved in the scheme.

12. More pertinently under section 232 (3) of the Act, the Tribunal is required to pass an order making provision for the matters specified therein including:

(a) XXX

(b) “the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person.”

(c) XXX

(d)XXX

13. From the above, it is evident that the Tribunal is required to pass an order while sanctioning the scheme inter-alia relating to the

allotment of shares in the Transferee Company in lieu of transfer by the Transferor Companies or in other words consideration and Share Exchange Ratio. Since the same has not been disclosed in the scheme or in the annexures or in the petition, we are forced to dismiss the petition for non-disclosure of material particulars.”

4) The appellants on finding that the valuation report was not on record has been held by the learned NCLT moved application for review/ recall of the judgment dated 21.08.2017 filing C.A. No. 295 (PB)/2017 in CA (CAA) 26(PB)/2017. The application for review/ recall has been rejected on 03.11.2017 & this order is impugned in Competition Appeal (AT) 383/2017. In this order dated 03.11.2017 the learned NCLT after hearing the Appellants observed in para 2:-

“The primary reason for the dismissal was on the basis that detailed disclosures as required to be made under the provisions of Companies Act, 2013 as well as the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity the Rules) have not been compiled with in as much as the share exchange ratio has not been disclosed in the Scheme of Amalgamation anywhere and if there is any, the same has not been indicated, as brought about in the order dated 21.08.2017. The Valuation Report on which reliance was placed had also been not produced before this Tribunal. In view of the elaborate order passed on merits in the Petition due to lack of material disclosures, the

Petition came to be dismissed after due consideration of provisions of law and the records which were available before this Tribunal at the time of disposal of the Petition.”

5) Before the learned NCLT the appellants claimed in application for review that the First Motion Application which was moved seeking directions of the Tribunal whether to convene or dispense with meetings, the necessary valuation report had been annexed. Against this, the learned NCLT observed as under:

“However, careful perusal of the First Motion Application discloses that no such valuation report has been annexed as contended by the Petitioner/ Applicant. It is also evident that a specific request letter has been moved on 22.08.2017/23.08.2017 to obtain certified copy of valuation report alleged to have been annexed by the Petitioners. It is pertinent to note the observations made by the Bench Officer to the following effect:

“As per record, page No. 180 to 186 are not placed in the Paper Book. CA (CAA) 26(PB)/2017 (First Motion) and CA (CAA) 86(PB)/2017, both the Paper Books have been checked.”

The above endorsement made by the Bench Officer dated 30.08.2017 is in response to Counsel for Applicant’s application for certified copy of valuation certificate dated 06.03.2017 which clearly affirms that no such valuation report as sought to be projected to

have been enclosed had indeed been enclosed for the consideration of this Tribunal. We are not standing on the technicalities of the matter. However, non-compliance with the provisions of Companies Act, 2013 along with Attendant Rules framed by the Central Government in relation to scheme of amalgamation has not been complied with by disclosing material facts and particulars before this Tribunal while seeking sanction of the scheme of amalgamation, as contemplated between the Applicant Companies, which is quite serious. Evaluation and fixing the exchange ratio based on the share valuation are material aspects and the entire scheme hinges on it and when the petitioners are seeking to evade from giving such material particulars it was incumbent on this Tribunal to come down heavily on such laxity or willful non-disclosure as the case may be.”

6) It was then observed by the NCLT that it was of the view that evaluation and fixing the exchange ratio based on the share valuation are material aspects and the entire scheme hinges on it and when the petitioners are seeking to evade from giving such material particulars it was incumbent on the Tribunal to come down heavily on such laxity or willful non-disclosure as the case may be. The Tribunal was of the view that considering the position of law & facts in relation to review or recall they were dismissing the application.

7) Aggrieved by both these orders, the present appeals have been filed.

8) We do not find that there is any error as such in both the impugned orders. At this stage, the learned counsel for the appellants is submitting that

in the matter already necessary steps have been taken to get the no objection of the Regional Director and Official Liquidator. The counsel is submitting that the appellants are willing to again go back to the shareholders as well as board of directors of all the companies which are to be amalgamated with Dome Builders & Developers Pvt. Ltd. and the appellants are willing to do the exercise again to the extent of getting no objection of the board of directors as well as consent of the shareholders circulating the valuation report, copy of which has been filed at Annexure A-2 in Company Appeal 383 of 2017. The counsel submits for the appellants are ready to do whatever compliances the learned NCLT may ask and makes the request for remand of the matter.

9) It appears to us that the appellants still have an option of initiating the whole exercise again even if the present petition has been disposed in the manner as done by NCLT. Still it would be more appropriate, in order to save time and avoidable difficulties to the parties by setting aside both the impugned order and remanding back the matter, with certain directions. We are considering remand also looking to the fact that although Bench Officer reported that pages 180 to 186 were not placed in the Paper Book (while appellants claimed they had filed Valuation Report), there is scope to say that claims of appellants were not baseless. After all, there is nothing to show Registry objecting earlier, that pages as mentioned are/ were not filed.

10) For such reasons the impugned orders in both these appeals are quashed and set aside. CA(CAA)86(PB)/2017 connected with CA(CAA)26(PB)/2017 is restored to the file of the National Company Law

Tribunal Special Bench, New Delhi. The Tribunal will give opportunity to the appellants to revert back to the board of directors and the shareholders as well as directors of companies which are to be amalgamated with Dome Builders & Developers Pvt. Ltd., as well as to Directors & shareholders of Dome Builders & Developers Pvt. Ltd. alongwith the valuation report and such other information as the learned NCLT may like to prescribe for the appellants to share with the board of directors, shareholders and creditors for amalgamation. It will be open for the learned NCLT to specify further and other compliances which it would like to insist upon the appellants to do for the purpose of amalgamation as sought by them.

11) These company appeals are disposed accordingly.

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

(Balvinder Singh)
Member (Technical)

sh/nn