

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) No. 48 of 2019**

**IN THE MATTER OF:**

**UFO Moviez India Ltd. & Anr.**

**.....Appellants**

**Vs.**

**Union of India,  
Ministry of Corporate Affairs,  
Through the Regional Director, Western Region**

**.....Respondent**

**Present :**

**For Appellant: Mr. Sudipto Sarkar, Senior Advocate with Ms. Sonali Mathur, Ms. Roopali Singh, Mr. Aman Sharma, Ms. Neeraja Balakrishnan, Advocates**

**For Respondents: Mr. Sanjay Shorey, Director, Mr. R.K. Tiwari, JD Mr. Balooni, AD for R-1**

**O R D E R**

**24.10.2019** - 'Qube Cinema Technologies Private Limited' ('QCTPL' for short) demerges business synergic with 'UFO Moviez India Ltd.' (Appellant herein), into 'QDCPL' businesses that are non-synergic were left behind in 'QCTPL'. Subsequently, MPL merged into 'QDCPL' resulting dissolution of 'MPL'. The Intellectual property rights of the demerged entity, 'QCTPL' would vest in 'QDCPL' along with the nil value intellectual property rights of 'MPL'. All shareholders in 'QCTPL' and 'MPL' were allotted shares in 'QDCPL' as a consideration for the demerger and merger above.

The 53.2% of the shareholders of 'QCTPL' did not wish to participate in the business that would have been demerged into 'QDCPL' and subsequently UFO. Accordingly, they were provided an opportunity to exit such business of 'QCTPL' as would have been demerged into 'QDCPL' and onwards. Accordingly, 'UFO Moviez' (Appellant herein) and New Investors were to purchase the shares of the Sellers through SPA. The SPA was not part of the scheme, and was only described (i) to ensure accurate representation of the post-merger shareholding structure of UFO; and (ii) disclose the relevant linkage and steps contemplated in relation to the entire transaction.

The effect was that 'QDCPL' merges into UFO; pursuant to which 'QDCPL' dissolves. UFO issues shares to the shareholders of 'QDCPL'.

'IPR' flowing from 'QCTPL' (through 'QDCPL') to 'UFO' is transferred to PJSA by way of a slump sale.

The aforesaid scheme was approved by all the parties to the Scheme, including by the shareholders of 'QCTPL' included the approval of shareholders of 'QCTPL' who would be provided an exit from 'QDCPL' pursuant to the scheme.

The decision relating to merger of 'QCTPL' with 'QDCPL' and 'MPL' by 'National Company Law Tribunal' (Chennai).

The 'UFO Moviez India Ltd.' (Appellant herein) (1<sup>st</sup> Appellant) and 'PJSA' (2<sup>nd</sup> Appellant herein) having its registered office at Mumbai filed a separate

Application for modification and 'Scheme of Merger' u/s 230-232 of the Companies Act, 2013 before 'National Company Law Tribunal', Mumbai.

Before the 'National Company Law Tribunal', Mumbai the Appellant(s) brought to their notice that all the procedures prescribed u/s 230 and 232 of the Companies Act, 2013 were followed. This was noticed by the 'National Company Law Tribunal' Mumbai. However, by impugned order dated 21<sup>st</sup> January, 2019, the 'National Company Law Tribunal' Mumbai rejected the Application of Merger on certain ground which was not required to be noticed for determination of merger u/s 230-232 of the Companies Act, 2013.

The said order is under challenge in these Appeals. Director (Legal & Prosecutor), Ministry of Corporate Affairs appearing on behalf of 'Union of India'. He accepts that the ground given for rejection in the impugned order dated 21<sup>st</sup> January, 2019 were uncalled for and the Tribunal was only required to notice all the requirements of Section 230-232 of Companies Act. The Tribunal was also required to follow the Accounting Standard for the treatment of shareholders. However, it is expected that such Issue was not raised and were not discussed by the 'National Company Law Tribunal'.

Mr. Sudipto Sarkar, Learned Counsel for the Appellant submits that even if the Appellate Tribunal allow 'Merger', it will not be given effect to, because of certain financial changes made during the pendency of the petition of this Appeal. It is to be re-worked and fresh date is to be notified after following the procedure.

In view of the stand taken by the parties and taking into consideration the facts of the case, we set aside the impugned order passed by the 'National Company Law Tribunal' Mumbai Bench.

If the Appellant Companies proceeds further, it should follow the procedure enshrined in Section 230-232 of the Companies Act, 2013 and other provisions as required to be followed under the Law including the permission from the Income Tax Department and requirement, if any, from SEBI and if procedure required to be followed under Accounting Standard so as to ensure that the shareholders do not suffer on 'Merger'.

The appeal is allowed with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Venugopal M.]  
Member (Judicial)

[Justice Jarat Kumar Jain]  
Member (Judicial)

ss/sk