

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 04 of 2018

IN THE MATTER OF:

**Mega Corporation Ltd.
108, First Floor, Taimoor Nagar,
Opp. New Friends Colony
New Delhi-110025**

...Appellant

Vs

Nil.

....Respondent

Present:

**For Appellant: Mr. Mukesh Sukhija, Advocate.
 Ms. Pooja Bhatia, Company Secretary in practice.**

For Respondent: None.

ORDER

31.01.2018: Heard learned counsel for the appellant. The present appeal has been filed against the orders passed by the National Company Law Tribunal, Bench III, New Delhi in C.P.CA (CAA)-120/ND/2017. The appellant along with Mega Airways Limited filed an application u/s 230-232 of the Companies Act, 2013 (Act-in brief) read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Mega Airways Limited was arrayed as the transferor applicant company and the present appellant was arrayed as transferee Applicant Company. The Scheme of Arrangement by way of amalgamation was placed before the NCLT. The applicants before NCLT made following prayers:

“(i) Dispense with convening the meeting of Shareholders and unsecured creditors of the Applicant Transferor Company.

(ii) Dispense with convening the meeting of Shareholders and unsecured creditors of the Applicant Transferee Company.

(iii) Allow the Applicant Companies to make Petition u/s 230, 232 of the Companies Act, 2013 for approval of the Scheme of Amalgamation of Mega Airways Limited with Mega Corporation Limited.

(iv) Direct service of notice of this Application on (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Delhi and Haryana, New Delhi; (c) the Official Liquidator, Ministry of Corporate Affairs, New Delhi; (d) the Income Tax Department, New Delhi; (e) the Bombay Stock Exchange; and (f) the Reserve Bank of India.”

2. The learned NCLT considered the application which was filed and heard the counsel for applicants. NCLT considered the shareholders Mega Airways has. It took note of the fact that the Transferee Company is a listed company in the Bombay Stock Exchange and there were 4752 Equity Shareholders. It was claimed before NCLT that order of dispensation of the meetings for the purpose of obtaining approval of the proposed Scheme of Amalgamation should be granted on the basis that the Scheme of Amalgamation was between holding

company and its wholly owned subsidiary. It was stated before NCLT and is being argued before us also that there is no allotment of shares contemplating in the Scheme of Amalgamation and that the accounting treatment as contemplated in the Scheme is by way of pooling of interests method which has been certified by the statutory auditors. It is being claimed that even though Transferee Company is listed company in view of the Scheme of Amalgamation contemplated between holding company and its subsidiary, the meetings as contemplated under the provisions of the Companies Act, 2013 can be dispensed with.

3. The NCLT heard the applicants which included the present appellant and found that it was not satisfied with the submissions made. It appears that the NCLT discussed Section 233. The application before NCLT was u/s 230 & 232. If the applicants in the face of Section 233(14) chose Section 232, NCLT could rightly ask calling of meeting. The NCLT also considered the provisions of Section 230-232 under which the applicants had moved the NCLT and considered the arguments which were raised before it and observed in Para 11 and 12 of its Judgment as under:

“11. However, in the instant case the same is not the position and the Transferee Company is a widely held Public Company, whose shares are also listed. The decision cited by the Applicants Counsel, of the Hon’ble NCLT, Bombay in Re: Housing Development Finance Corporation Ltd. & Ors. in CSA No. 243 of 2017 can be distinguished

in view of Section 233 of the Companies Act, 2013 and its elucidation in relation to scope and amplitude as above.

12. Thus in relation to dispensation of the meetings of shareholders and unsecured creditors of the Transferee Company the same being a widely held listed company having 4752 shareholders and with 18 unsecured creditors from whom consents have not been obtained and produced, this Tribunal is not willing to accede to the request of the applicant companies for dispensation of the meetings of shareholders and unsecured creditors of the Transferee Company. It is required to be noted that only when the meetings, be it the shareholders or creditors, when called, convened and held, gives rise to exchange of information, between the company and its shareholders and other stakeholders of the companies which is sine quo non for effective Corporate Governance, particularly in relation to the Scheme as the one contemplated herein even when it is between a holding and wholly owned subsidiary. It is also to be seen that even in the simplified procedure prescribed under Section 233 of the Act the meetings of shareholders have not been dispended with and this Tribunal, hence is of the view, particularly in relation to Transferee Company, being a widely held public company sought for, is not to be granted and hence in relation to Transferee Company, the meeting of the shareholders and Unsecured Creditors

is directed to be convened and for this purpose following directions are issued.”

After making observations as above the learned NCLT gave directions regarding holding of the meetings.

4. The present appeal has been filed against such judgment and order. The learned counsel for the appellant has reiterated the submissions which was raised before NCLT and also relied on judgment in the matter of HDFC passed in Company Scheme Application no. 243 of 2017 by NCLT Mumbai Bench on 24th September, 2017. Copy of the same has been filed at page 475 in the present appeal. The learned counsel referred to various paragraphs of the judgment to submit that emphasis is on protecting the rights of members/creditors of the Companies involved in mergers and amalgamations and as long as mergers and amalgamations have no bearing internally on creditors/ members of respective companies calling of meeting of the creditors or members is not necessary. It is argued that sub-section 14 of Section 233 itself permits the parties to opt for procedure u/s 232 and NCLT cannot insist that they should have proceeded u/s 233 of the Act.

5. We have perused the judgment in the matter of HDFC being relied on. It was a judgment of the NCLT having two members. It was cited before NCLT New Delhi also and in spite of the same, NCLT recorded that meetings would be necessary in the present matter.

6. We find that Section 233 referred to initially by NCLT has a speedier process but if appellant keeping in view sub-section (14), preferred to resort to Section 232 the applicants cannot be faulted with. Only thing is that, then they have to go through the procedure as u/s 232 of the Act. Section 232 gives powers to NCLT to consider & decide calling of meeting of creditors etc. Appellant cannot claim “dispensing” meetings as a right.

7. When it is a question of merger and the provisions require and give discretion to the NCLT with regard to calling of meetings, it is a discretion to be exercised judiciously by NCLT. NCLT is duty bound to follow procedure laid down by law. The NCLT recorded reasons why it finds that calling of the meetings is necessary and we do not find that the reasons recorded are arbitrary. The Law provides and the NCLT has exercised discretion that the meetings are required to be called. We do not wish to substitute our discretion over the discretion exercised by the NCLT. We do not find any substance in the appeal. The appeal is rejected.

8. The appellant is given liberty to move NCLT to request resetting of the schedule and dates specified in the operative order as it appears that certain steps were to be taken on 29th January, 2018 and the said date has passed.

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

(Balvinder Singh)
Member (Technical)

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