

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.244 of 2018

[Arising out of orders dated 12th June, 2018 passed by National Company Law Tribunal, Mumbai Bench, Mumbai in Company Scheme Petition No.1099 of 2017 connected with Company Scheme Application No.914 of 2017]

IN THE MATTER OF:

1. Sajjan India Ltd.
Matulya Centre,
A, 2 Ground Floor,
Senapati Bapat Marg,
Lower Parel,
Mumbai 400 013
...Appellant No.1

2. Sajjan Speciality Limited
Matulya Centre,
A, 2 Ground Floor,
Senapati Bapat Marg,
Lower Parel,
Mumbai 400 013
...Appellant No.2

3. Agrasen Impex Private Limited
Matulya Centre,
A, 2 Ground Floor,
Senapati Bapat Marg,
Lower Parel,
Mumbai 400 013
...Appellant No.3

4. Agrasen Dyes and Intermediates Pvt. Ltd.
Matulya Centre,
A, 2 Ground Floor,
Senapati Bapat Marg,
Lower Parel,
Mumbai 400 013
...Appellant No.4

Versus

The Registrar of Companies, Mumbai
100 Everest Marine Drive,
Mumbai – 400 002

...Respondent

Present: Shri Virender Ganda, Sr. Advocate with Ms. Aastha Trivedi and Shri M.P. Shorawala, Advocates for the Appellants

None for the Respondent

ORAL JUDGEMENT

20.08.2018

A.I.S. Cheema, J. : By orders dated 27.07.2018, the Appellant was permitted to substitute the Respondent by deleting Registrar of NCLT and substituting Registrar of Companies. The Appellants have done so. The Appellants have filed proof of service of the appeal on the Registrar of Company. None is present.

2. With consent of counsel for Appellant, we have heard the Appeal finally. The Appellant Nos.2 to 4 are Transferor Companies who are to merge with the Appellant No.1 transferee company. Counsel for Appellants states that the Appellants 2 to 4 are wholly owned subsidiaries of the Appellant No.1 and transferee Company holds all the shares of the Appellants 2 to 4.

3. The Impugned Order shows that the scheme of merger by absorption as proposed by the Appellant was wholly accepted by the National Company Law Tribunal, Mumbai Bench, except with regard to changing the appointed date of the scheme. The NCLT found that the scheme of merger by absorption appeared to be fair and reasonable and did not violate any provisions of law and was not contrary to the public policy. It gave certain directions in para - 12. In para - 12(M), (N) and (O), it was observed and directed as under:-

“m) As far as the appointed date of the Scheme is concerned, it is pertinent to place on record certain

facts. During the hearing it is noticed that, all the Transferor Companies had either returned their lease hold lands to the Lessor or had transferred their rights over those lands to the third parties. For the transfer of Rights, the Transferor Companies have received certain amount of **Consideration**. Further, it is also noticed that, the Scheme under consideration has proposed 1st April, 2017 as Appointed Date of the Scheme. That means after sanction of the Scheme by this Bench the Transferor Companies will be dissolved w.e.f. 01.04.2017. But interestingly, it has come to knowledge that the said Transfer of Rights over Lease hold Lands are executed after the Appointed Date of the Scheme i.e. 01.04.2017. Since, the transferor Companies have received the said consideration after the proposed Appointed Date from the said Transaction: it may be out of the purview of the Income Tax Authorities. As the Appointed Date which is proposed is 01.04.2017 and transactions have occurred after this date, hence, in my humble opinion, sanctioning of this Scheme with the same Appointed Date, will deter the Income Tax Authorities to scrutinize the Tax Liabilities of the Transferor Companies.

- n) **Hence, not to dilute the rights of the Income Tax Authorities, this Bench hereby orders that, the Appointed date of the Scheme shall be 1st April, 2018 instead of 1st April, 2017. Rest of the Scheme remains unaltered.**
- o) The Scheme is sanctioned hereby with the above directions.”

4. Counsel for the Appellant is referring to para – 6 of the scheme which reads as under:-

“6. Conduct of Business during the Interim Period

With effect from Appointed Date and up to and including the Effective Date:

- (a) the Transferor Companies shall carry on and shall be deemed to have carried on all its business and activities as hitherto and shall hold and stand possessed of and shall be

deemed to have held and stood possessed of the Undertaking on account of, and in trust for, the Transferee Company.

- (b) the Transferor Companies shall carry on its business and activities with reasonable diligence and business prudence and shall not, undertake any additional financial commitments of any nature whatsoever, borrow any amounts nor incur any other liabilities or expenditure, issue any additional guarantees, indemnities, letters of comfort or commitments either for itself or on behalf of its subsidiaries or group companies of any third party, or alienate, charge, mortgage or encumber the Undertaking, without the prior written consent of the Transferee Company.”

5. Counsel for Appellants makes statement for Appellants that whatever are the liabilities of Transferor Companies Appellants 2 to 4 payable to authorities including Income Tax Authorities would be liabilities of the transferee company - Appellant No.1. Even if the Appellants 2 to 4 have done any transaction pending the petition, the same were done in trust of Appellant No.1 and are binding on Appellant No.1 for all purposes.

5.1 We accept the statement. Counsel submits that the learned NCLT should not have changed the appointed date of the scheme from 1st April, 2017 to 1st April, 2018.

6. Having heard the learned counsel for the Appellants and the submissions as mentioned above, and accepting the statement at Bar, overruling the observation at “m”, we do find that the direction (n) of the Impugned Order needs to be deleted. We direct accordingly.

7. We hold that the appointed date of the scheme shall remain 1st April, 2017 as proposed by the Appellant. We make it clear that the Income Tax Authorities would not be hindered in any manner due to this scheme of merger. They would be at liberty to proceed against Appellant No.1 – the transferee Company for Income Tax liabilities of Transferor Companies, irrespective of the appointed date of the scheme, in accordance with law and if there is any difficulty, and need arises, as per law, they would be at liberty to proceed even against the erstwhile persons, members/directors of Appellants 2 to 4, holding them also liable.

8. The appeal is disposed of accordingly.

No Order as to costs.

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

[Balvinder Singh]
Member (Technical)

/rs/nn