

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

**Company Appeal (AT) No. 104 of 2019**

[Arising out of Order dated 24<sup>th</sup> January, 2018 passed by the National Company Law Tribunal, Ahmedabad Bench in I.A. No. 389 of 2018 in C.P. No. 69/241-242/NCLT/AHM/2017]

**IN THE MATTER OF:**

**1. Mr. Bharat P. Raut**

Flat No. 173, Tower C, Santwani LIC Colony,  
Off Devidas Lane, Borivli West,  
Mumbai – 400013.

**2. Bharat P. Raut (HUF)**

Flat No. 173, Tower C, Santwani LIC Colony,  
Off Devidas Lane, Borivli West,  
Mumbai – 400013.

**3. Mrs. Vidya B. Raut**

Flat No. 173, Tower C, Santwani LIC Colony,  
Off Devidas Lane, Borivli West,  
Mumbai – 400013.

**4. Mr. Manas B. Raut**

Flat No. 173, Tower C, Santwani LIC Colony,  
Off Devidas Lane, Borivli West,  
Mumbai – 400013.

**....Appellants**

**Vs**

**1. M/s Madhu Silica Private Limited**

Plot No. 147, GIDC Estate,  
Vill. Vartej,  
Bhavnagar - 364060.

**2. Mr. Rameshchandra V Shah,**

1899/A, Vasudha, Rupani Circle,  
Opp. Akash Ganga,  
Bhavnagar – 364001.

**3. Mr. Rameshchandra V Shah, (HUF)**

1899/A, Vasudha, Rupani Circle,  
Opp. Akash Ganga,  
Bhavnagar – 364001.

**4. Rameshchandra Shah Family Trust,**

1899/A, Vasudha, Rupani Circle,  
Opp. Akash Ganga,  
Bhavnagar – 364001.

**5. Mrs. Kalpna R. Shah,**

1899/A, Vasudha, Rupani Circle,  
Opp. Akash Ganga,  
Bhavnagar – 364001.

**6. Mr. Darshak Rameshchandra Shah,**

1899/A, Vasudha, Rupani Circle,  
Opp. Akash Ganga,  
Bhavnagar – 364001.

**7. Darshak Rameshchandra Shah, (HUF)**

1899/A, Vasudha, Rupani Circle,  
Opp. Akash Ganga,  
Bhavnagar – 364001.

**8. Mrs. Reena Darshak Shah,**

1899/A, Vasudha, Rupani Circle,  
Opp. Akash Ganga,  
Bhavnagar – 364001.

**9. Darshak Finstock Private Limited,**

Plot No. 147, GIDC Estate,  
Vill. Vartej,  
Bhavnagar – 364001.

**....Respondents**

**Present:**

**For Appellants:** Mr. Rahul Chitnis and Mr. Asditya Pande, Advocates.

**For Respondents:** Mr. Saurabh Kalia and Ms. Parika Thakral,  
Advocates. Mr. Kiran Shah, FCA.

## **J U D G M E N T**

### **BANSI LAL BHAT, J.**

This appeal is directed against disposal of I.A. No. 389 of 2018 preferred by the Appellants (Petitioners) during the pendency of C.P. No. 69/241-244/NCLT/AHM/2017 by the National Company Law Tribunal, Ahmedabad Bench (for short 'the Tribunal') by virtue whereof the Appellants' application for release of interim payment of Rs.5.95 Crore deposited by the Respondents towards the share price conversion in separate escrow account with HDFC Bank, Bhavnagar Branch with further prayer of directing the Respondents to provide Bank Guarantee for securing payment of balance amount of consideration pending disposal of I.A. No. 127/2017, came to be rejected as being not maintainable.

2. Heard learned counsel for the parties and perused the record.

3. It is not in controversy that the Appellants had filed the Company Petition under Section 241 r/w Section 244 of the Companies Act, 2013 (hereinafter referred to as the 'Act') with one of the prayers seeking prohibitory injunction against Respondents from effecting transfer of shares of the Appellants. It transpires that an exit offer had been made by the Respondents on 30<sup>th</sup> March, 2017. The parties appear to have reached an amicable settlement culminating in passing of order dated 12<sup>th</sup> October, 2017 by the Tribunal based on consent terms entered into between the parties. It is also not disputed that a Valuer was sought to be appointed in

regard to the valuation of business of Respondent No. 1 (Company), which shall be binding on all the parties and unassailable except on the ground of fraud. As agreed by the parties, no issues survived for the consideration of the Tribunal. However, the Company Petition was kept pending for the purpose of exchange of share/ consideration whereafter the Tribunal would dispose of the petition. It further appears that M/s Deloitte Touche Tohmatsu India LLP. Ahmedabad (hereinafter referred to as 'Deloitte') was appointed as an Independent Valuer for valuation of the Company. Valuation Report came to be submitted on 25<sup>th</sup> January, 2018. The Valuer estimated the valuation of the Company at Rs.18,76,10,00,000/- and the value of shares held by the Appellants at Rs.39,20,00,000/- The Appellants prayed before the Tribunal that since the order dated 12<sup>th</sup> October, 2017 passed by the Tribunal on the basis of Consent Terms amounted to a decree, the Appellants were entitled to get the amount deposited by the Respondents on the direction of the Tribunal as an interim measure towards share price consideration in separate escrow account with HDFC Bank, Bhavnagar Branch till final disposal of the matter. However, the Respondents resisted the application on the ground that they had filed I.A. No. 127 of 2018 challenging the report of Independent Valuer and subsequently filed another pursis for withdrawal of offer to acquire the shares of minority shareholders, which were pending consideration and without adjudication of the same no order could be passed for release of the sale consideration deposited by the Respondents in the Escrow Account.

4. The Tribunal, though noticed the factum of appointment of Independent Valuer on the basis of Consent Terms in terms of order dated 12<sup>th</sup> October, 2017 and the fact that the Respondents No. 1 to 4 had filed I.A. 127 of 2018 on 6<sup>th</sup> April, 2018 strongly objecting to the Valuation Report and alleged fraud played by the Independent Valuer in the report dated 21<sup>st</sup> January, 2018, undertook an elaborate exercise qua acquisition of shares of minority shareholders within the ambit of Section 236 of the Act. The course adopted by the Tribunal cannot be supported, moreso as it is on account of challenge thrown to the Valuation Report by Respondents followed by filing of pursis for withdrawal of offer to acquire the shares of the minority shareholders that the consent terms had not been acted upon and transfer of the minority shareholding has not been accomplished within the prescribed time frame. It is queer that Appellants have been deprived of the part payment of consideration lying in deposit in an Escrow Account without any fault attributed to them. There is nothing on record to even faintly suggest that the Appellants had resiled from the consent terms or taken any step which demonstrated unwillingness on their part to adhere to the Terms of Consent. The Valuation Report has admittedly been assailed by the Respondents on the alleged ground of fraud. While we do not want to express ourselves as regards the ground available to Respondents to challenge the Valuation Report, the fact that the Independent Valuer applied CCM Methodology and did not resort to other methodologies including NAV and CDF does not, in itself, affect the credit and worth of the Valuation Report. Many protocols may be available to an Expert in arriving at the fair value of shareholding. It is left to his discretion to adopt the methodology

which in his fair judgment is suitable in a given situation. However, this does not apply to the mandatory parameters and methodologies required to be employed in terms of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 applicable in the instant case. Non-application of appropriate methodology or even an error in application of proper methodology would not be an act of misdemeanor unless the same is influenced by any extraneous consideration. Of course the Independent Valuer was required to take into account the valuation parameters duly recognized under law and in practice as is customary and that he was to justify the valuation but the Tribunal ought not to have ignored the hardship encountered by the Independent Valuer, who had specifically stated in the report that the ignored methodologies were skipped due to want of information and necessary records. Once this explanation was offered, the Independent Valuer should have not been blamed for not applying all the methodologies.

5. It is not in controversy that Para IX of the Consent Terms recorded by the Tribunal in its order dated 12<sup>th</sup> October, 2017 specifically excluded any challenge to the Valuation of shares of Appellants in the Company carried out by the Independent Valuer other than in the event of fraud in such valuation. The Respondents application challenging the Valuation Report on the alleged ground of fraud is pending consideration before the Tribunal. Order dated 12<sup>th</sup> October, 2017 passed by the Tribunal while recording the Consent Terms clearly provides that the Consent Terms reached inter-se the parties to bring an end to the matters raised in the petition, in terms

whereof it was agreed that the shares held by the Appellants in the Company shall be purchased by the Respondents at a value determined by the Independent Valuer form part of the Consent Order of the Tribunal. This leaves no room for doubt that the Company Petition alleging oppression and mismanagement stands determined in terms of the consent order passed by the Tribunal with the Appellants holding less than 10% shareholding in the Company exiting the Company by transfer of shareholding for a fair value determined on the basis of Valuation Report drawn up by an Independent Valuer. Admittedly, Deloitte was one of the nominated valuers in the panel. Thus, we find force in the contention of the Appellants that the Consent Terms recorded by the Tribunal amount to a Consent Decree notwithstanding the fact that the Company Petition was kept pending for formal disposal after admitting the Valuation Report and follow up action. Since, part consideration admittedly stands deposited by the Respondents in an Escrow Account, there was no justification in withholding its release in favour of the Appellants. Of course, the Tribunal could have insisted upon simultaneous delivery of share certificates by the Appellants while releasing such part payment and made provision for the balance payment either by furnishing of Bank Guarantees or any other appropriate mode. Any infirmity in the Valuation Report, more so, when it was restricted to alleged fraud only in the context of non-application of proper methodology would not warrant withholding of the part consideration as any variation in the value of shares would not affect the Appellants right to claim/ recover the same.

6. For the foregoing reasons, we are of the considered opinion that the impugned order suffers from grave legal infirmity and same cannot be supported. We accordingly allow the appeal, set aside the impugned order and pass order in the following terms:-

- (i) Respondents to release the amount of Rs.5,95,00,000/- to the Appellants immediately against the share price.
- (ii) The Appellants are directed to handover the shares alongwith duly singed Transfer Forms to the Registry of the Tribunal (National Company Law Tribunal, Ahmedabad Bench).
- (iii) After the share price is determined and approved by the Tribunal, it will ensure that after differential amount towards purchase of shares has been paid, Shares are handed over to the Respondents.
- (iv) The Tribunal shall ensure that these directions are carried into effect with utmost expedition.

Appeal is allowed and disposed of in aforesaid terms.

[Justice Bansi Lal Bhat]  
Member (Judicial)

[Balvinder Singh]  
Member (Technical)

[Dr. Ashok Kumar Mishra]  
Member (Technical)

**NEW DELHI**

**29<sup>th</sup> November 2019**

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