

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 10 of 2018

IN THE MATTER OF :

**Hemendra Aran,
B 203, Lake Lurcerne,
Lake Homes, Near Gopal Sharma School,
Powai, Mumbai – 400 076.**

... Appellant-Original Petitioner

Versus

- 1. Aranca (Mumbai) Private Limited,
Having its registered office at :
201 & 301, 'B' Wing, 2nd and 3rd Floor,
Supreme Business Park, Hiranandani,
Powai, Mumbai – 400076.**
- 2. Christopher David Kingsman,
Kreuzbuchstrasse 22,
CH – 6045, Meggen, Switzerland.**
- 3. Neeraj Bhardwaj,
48, Osterley Road, Isleworth,
Middlesex TW74PN**
- 4. Madhusudan Rajagopalan,
Flat No. 142, Building 6A,
Kalpataru Estate, JV Link Road,
Andheri East,
Mumbai – 400 093.**
- 5. Greenwood Investment (Mauritius) Limited,
HarelMallac Global Services Ltd.
HarelMallac Building,
18 Edith Carvell Street,
Port Louis, Mauritius.**

**... ORIGINAL RESPONDENTS/
RESPONDENTS**

**Present: Shri Amar Dave, Shri B. Mithun Rao and Shri Rajesh Sehgal,
Advocates for the Appellant.**

**Shri Arun Kathpalia, Senior Advocate with Shri Puneet
Singh Bindra and Ms. Smriti Tewari, Advocates for
Respondents Nos. 1 to 3.**

Ms. Shilpa Gannani, Advocate for Respondent No. 4.

Shri Nakul Mohta and Shri Videh Vaish, Advocates for Respondent No. 5.

ORDER

19.02.2018 Heard learned counsel for the parties. The present appeal is filed against the impugned order dated 11th January, 2018 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai (hereinafter referred to as 'NCLT') in C.P. No. 755/(MAH)/2017. The appeal is against orders on interim stage.

2. The impugned order is a short order and may be reproduced as under:

“ORDER

CP 755/241-242/NCLT/MB/MAH2017

The Petitioner Counsel mentioned this Company Petition for stay of rights issue (slated to be closed 20.12.2017) on the ground that the Respondents ought not have proceeded with the rights issue for there being a Settlement Agreement in between the parties for auction of this company, he further says, if this rights issue is not stayed, the shareholding of the Petitioner will be further diluted causing economic loss to the petitioner.

On this submission, the Respondents Counsel has submitted that this rights issue has been proposed to clear loan payment insisted upon by RBL Bank, but not to dilute the Petitioner's shareholding, so that the

Company is not exposed to litigation, for this reason alone, the counsel says, they have proceeded to go with rights issue on the Board Resolution passed by the Company.

On perusal of the facts of the case, it appears that it is not the contention of the petitioner the rights issue has been proposed for a purpose other than making payment to the lender. The only contention raised is that ICICI Bank is ready and willing to provide loan so as to set off the liability payable to the lender. Looking at the Settlement Agreement entered between the parties, we have noticed that it has not been mentioned anywhere that the company is barred from proceeding with rights issue, therefore, it cannot be the contention of the Petitioner that by virtue of settlement agreement between the parties, the company is not supposed to go for rights issue. It appears on record that the petitioner has been shown as vacated the office of Director by operation of law therefore, his vacation of Director's office cannot be attributed as an act of Respondents. An audit report has been filed reflecting the petitioner entering into related party transaction. Moreover, the valuation of the share of the rights issue has been decided to subscribe at premium, henceforth the petitioner could not say that the rights issue has been taken out by the Respondents so

as to gain advantage in case the petitioner failed to subscribe to the issue. On the top of it, the Petitioner has been given opportunity to subscribe the shares whereby his inability to subscribe to the shares cannot become a ground for stay of the rights issue in progress. Since a necessity arisen for funding the company to clear the loan of RBL Bank, we are of the view that the company has gone for rights issue out of necessity, but not to oppress the petitioner.

In view of the reasons afore stated, this Bench hereby holds that R1 company can proceed with rights issue subject to the outcome of this Company Petition.

List the matter for hearing on 13.3.2018.”

3. The learned counsel for the appellant is submitting that the Appellant is Original Petitioner. During the pendency of the company petition the respondents have been allowed to proceed with rights issue which should not have been allowed. According to the counsel, letter dated 23rd November, 2017 (Volume – II at Page 338) which was made basis to create an emergency before the NCLT was really not such a matter for which the Respondents who had recently come into command of the Company should have been allowed to proceed with the rights issue. The learned counsel submitted that the bank had relied on terms mentioned in the sanction letter to recall the credit facility or alternatively for placing of additional FD as collateral. The learned counsel referred to the sanction

letter concerned which is dated 21st March, 2017 (Rejoinder –Annexure R-4 at Page 33) to submit that the conditions concerned were not of prior approval but only of intimation.

4. The learned counsel for Respondents Nos. 1 to 3, however, claims that the sum and substance of the letter from the bank was that it was withdrawing the credit facility or alternatively asking further for collateral security and thus the Company had a situation to meet. It was not necessary for the company to go in litigation with Bank.

5. It appears that Appellant was in command of the Company till the settlement agreement took place in June, 2017, copy of which is at Page 461 in Volume II. The Company Petition has been filed on 6th December, 2017. Looking to the impugned order concerned, it is apparent that given the facts, NCLT has taken a view to let the respondents proceed with the rights issue since it was of the view that the Company was required to clear the loan of RBL Bank. The order has, however, specified that Respondent No. 1 Company may proceed with the rights issue subject to the outcome of the Company Petition.

6. According to us, when the disputes between the parties are still open before the NCLT, and as it is being stated that after the impugned order, the rights issue have actually been issued also, it would not be appropriate to interfere,

7. The learned counsel for the appellant has pointed out change in the shareholding ratio of Respondent No. 1 Company by a Chart (Rejoinder Annexure R13 at Page 99). The learned counsel for appellant is submitting that it is necessary that Respondents Nos. 3 and 5 should not further

transfer the shares and they should not be further diluting the shareholding of Appellant in the Respondent No. 1 Company.

8. Learned counsel for Respondents Nos. 3 and 5 are submitting that there is no allegation that these respondents are intending to further transfer shares which have been recently issued pursuant to the rights issue and there are no grounds that they are taking any steps to further transfer the shares which they are holding. It is stated by the learned counsel that it is not the prayer of the appellant that the shareholding should not be diluted. Learned counsel added that wording used by the NCLT that “the rights issue permitted would be subject to the outcome of the company petition”, takes care of the situation.

9. Learned counsel for the appellant is submitting that there are other I.As also pending which need to be expeditiously decided by the NCLT.

10. Having gone through the matter and having heard the learned counsel for both sides and keeping in view the provisions in Section 422 of the Companies Act, 2013, we find no reason as to why the NCLT should not be directed to dispose off the company petition itself expeditiously. The IAs can also be taken up together while deciding the company petition. There would be no harm if the parties maintain the position of rights issues shareholding as at present till the disposal of the company petition.

10. We thus accordingly dispose of this appeal with a request to the learned NCLT to dispose the company petition itself expeditiously keeping in view the provisions of Section 422 of the Companies Act, 2013 and, at the same time, when disposing the company petition take up the Interim/Interlocutory Applications pending to dispose them with the

company petition. The parties shall maintain the present shareholding of the Company with regard to the impugned rights issue which have been issued after the impugned order dated 11th January, 2018. If there is an urgency to change such shareholding, the parties may move the NCLT for approval before changing the shareholding.

11. With the above directions, the appeal stands disposed of. There shall be no order as to costs.

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

[Balvinder Singh]
Member (Technical)

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