

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 86 of 2019

[arising out of Order dated 17th December, 2018 by NCLT, Bengaluru Bench in CP (CAA) No. 20/BB/2018]

IN THE MATTER OF:

1. **Shriram Chits (Karnataka) Pvt. Ltd.**
2. **Shri Chits Private Limited**
3. **Shriram Chits (Maharashtra) Ltd.**
4. **Shriram Chits Tamil Nadu Private Limited** **...Appellants**

Vs.

Registrar of Co-operative Societies & Chits **...Respondent**

Present:

For Appellant : **Mr. Krishnendu Datta, Ms. Pooja M. Saigal and Mr. Akshay Gupta, Advocates**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Appellant – ‘Shriram Chits (Karnataka) Private Limited’ filed an application under Section 230 – 232 of the Companies Act, 2013 for amalgamation of the companies, details as given below, which has been disposed of by the National Company Law Tribunal, Bengaluru Bench, Bengaluru (**‘Tribunal’** for short) with the following observations:

“11. Heard Shri K. G. Raghavan, learned Senior Counsel appearing for the Petitioner. As stated supra, the object and business of the Company involved in the

Scheme relates to Chit Funds or Kuries and all similar kinds of schemes which encourage the habit of savings by affording all facilities for the purpose and more especially by opening Chit Savings, Thrift savings, and other deposit schemes in relation to trade or public, commercial and regular needs. Therefore, the ordinary public is involved in the business of the Company and the interest of those ordinary public has to be taken care of while sanctioning the scheme. It is not in dispute that the Tribunal is empowered to sanction the Scheme. However, cases like the present one where the business lies with ordinary public, it is necessary for the Company to take permission/approval from the appropriate authorities. In the instant case, Registrar of Chits is the concerned authority to examine the issue in light of the terms and conditions proposed in the Scheme. Therefore, in the interest of justice, we are not inclined to sanction the Scheme subject to condition that approval can be taken from the Registrar of Chits after the sanction of Scheme. Therefore, in the in the interest of justice, we are not inclined to sanction the Scheme subject to condition that approval can be taken from the Registrar of Chits after the sanction of the Scheme. Therefore, we

are not inclined to dispose of the instant Petition by granting liberty to the Petitioner to comply all observations/objections as raised by the Regional Director and the Registrar of Companies, especially the observations/objection with respect to approval of the Registrar of Chits in the interest of public/chit holders and thereafter file afresh.”

CASE OF THE APPELLANT :

The Appellant – ‘Shriram Chits (Karnataka) Private Limited’ filed an application under Section 230 – 232 of the Companies Act, 2013 seeking directions with regard to convening and holding of meeting of shareholders and the creditors of the company for the purpose of approving with or without modification, to obtain sanction of the Tribunal to the scheme of amalgamation, whereby Shriram Chits Private Limited (Transferor Company No. 1), Shriram Chits (Maharashtra) Ltd. (Transferor Company No. 2) and Shriram Chits Tamilnadu Private Limited (Transferor Company No. 3) were to be amalgamated with Shriram Chits (Karnataka) (hereinafter referred to as the Appellant/Transferee Company).

2. The Appellant sought dispensing of the meeting of the shareholders and creditors of the Transferee Company specifically stating that insofar as the subscribers to the chits were concerned they were not the creditors of the company and, therefore, a meeting of the subscribers was not required to be called to consider the scheme.

3. The Tribunal, Bengaluru Bench by its order dated 15th January, 2018 dispensed with the requirements of convening and holding the meeting of the equity shareholders in view of consent affidavits of the 2 shareholders who held 100% of the paid-up capital having been placed on record by way of an amendment application.

4. According to the Appellant it has no 'secured creditors' and the 'unsecured creditors' appearing in the books of the company as on 31st March, 2017, had been paid and as on 15th November, 2017, the said 'unsecured creditors', were no longer the creditors of the company.

5. Since the requirement of the holding and convening of meetings of the equity shareholders and creditors of the company, on 28th February, 2018 the Appellant filed the petition for sanction of the scheme of amalgamation under Sections 230 – 232 of the Companies Act, 2013 read with Companies (Compromise, Arrangements and Amalgamations) Rule, 2016. Notice was issued to the office of the Regional Director, Registrar of Companies, Official Liquidator, Income Tax Department and Reserve Bank of India. The Tribunal also directed for publication of the notices in 'English daily Newspaper' (the Hindu), Bangalore Edition and 'Udayavani, Kannada daily Newspaper', Bangalore Edition and ordered to list the matter for hearing.

6. The publications were effected on 25th April, 2018 editions aforesaid and the notices were served on the statutory bodies as per directions of the Tribunal.

7. In so far as the Transferor company No. 3 – 'Shriram Chits Tamil Nadu Private Limited' is concerned the scheme of amalgamation/merger of the 'Transferor Companies' with the 'Transferee Companies' was sanctioned by the Tribunal vide order dated 25th July, 2018.

8. The Regional Director/Registrar of Companies filed a detailed affidavit on 10th August, 2018 to the scheme wherein, *inter-alia*, the following stand was taken and the following observations was made :

“(7) ROC has observed that since the chit companies are controlled by registrar of chits of the concerned state, necessary approvals, may be obtained from the concerned authorities to the scheme in the interest of public/chit holders.

The petitioner company vide its email dated 25th of July 2018 has submitted that the company shall obtain all necessary approvals as required under law on sanctioning of the scheme, wherever applicable. The chit fund Act does not contemplate any requirement of prior approval. The clause no. 3.2.4 of the scheme takes care of all the agreements including the agreement entered into with the chit subscribers and as, the interest of the chit subscribers is adequately protected.

Hence this observation need not be pursued further.”

9. The Appellant Company filed an affidavit dated 28th August, 2018 in response to the affidavit of the Registrar of Companies / Regional Director. No objections was received by the Appellant from any party or persons in response to the public notice issued and a memorandum dated 26th September, 2018 was filed by the Appellant Company confirming the same.

10. The Appellant Company thereafter on 19th November, 2018 filed a memorandum before the Tribunal summarising the response/stand of the company with respect to each of the observations made by the Regional Director/Registrar of Companies.

11. The detailed affidavit was filed by the Appellant Company in response to the observations made by the Regional Director. The petition for sanction of the scheme was taken up by the Tribunal and on hearing the parties, the impugned order was passed by the Tribunal, Bengaluru Bench on 17th December, 2018 rejecting the scheme of amalgamation as observed aforesaid.

12. It is stated that insofar as the Transferor Company No. 1 (Shriram Chits Private Limited) and Transferor Company No. 2 (Shriram Chits (Maharashtra) Private Limited) are concerned, the scheme of amalgamation/merger with the Transferee Company was sanctioned by the National Company Law Tribunal, Hyderabad Bench vide order dated 13th February, 2019.

13. This Appellate Tribunal on hearing the Appellant noticed that the Appellant has followed all the procedure as prescribed under Section 230 – 232 of the Companies Act, 2013 and read with Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 and the Tribunal earlier, Chennai Bench sanctioned the scheme of amalgamation/merger of Transferor Company No. 3 (Shriram Chits Tamil Nadu Private Limited) with the Transferee Company (Appellant) by order dated 25th July, 2018 and also sanctioned the scheme of amalgamation/merger of the Transferor Company No. 1 (Shri Ram Chits Private Limited) and Transferor Company No. 2 (Shriram Chits (Maharashtra) Private Limited) with the Transferee Company i.e. Appellant (Shriram Chits (Karnataka) Private Limited) by order dated 13th February, 2019.

In spite of the same, it was not made clear as to why in spite of following all the procedure and no objection by any of the party, except the observation made by the Regional Director/Registrar of Companies, it was not made clear as to why and under which clause company is required to take permission / approval from the appropriate authority, we allowed the Appellant to implead 'Registrar of Chit Funds, Karnataka, Bangalore as party respondent to the appeal to know whether there is any requirement to take prior permission of Registrar of Chits for the purpose of amalgamation or merger scheme under Section 230 – 232 of the Companies Act, 2013.

14. Notices were issued to the 'Registrar of Co-operative Societies and Chits', Bangalore but in spite of the said notice 'Registrar of Co-operative Societies and Chits', Bangalore have not appeared nor brought on record any provision of law or circular or guidelines issued by the competent Authority to suggest that for merger of 'transferor companies' with 'transferee company', there is a need of prior permission from the chit funds.

15. The Tribunal has not shown any provision and also not record any ground while passing the impugned order dated 17th December, 2018. It is also not made clear as to how such stand has been taken by the Tribunal while earlier order of amalgamation as detailed above with regard to the Transferor Company and the Transferee Company (Appellant) has been approved.

16. In view of the aforesaid finding, we set aside the impugned order dated 17th December, 2018 and remit the matter to the Tribunal to pass appropriate order approving the scheme of amalgamation/merger under Section 230 -232 of the Companies Act, 2013 with such condition as required to be imposed in terms of any law including 'The Chit Funds Act, 1982', taking into

consideration the Appellant – Transferee Company otherwise fulfils the conditions and if so required may allow the Appellant/parties to take consent of the foreman and all the subscribers to the chits in terms of section 15 of the Chit Funds Act, 1982; approval of the registration of chits in terms of Section 19 of the Chit Funds Act, 1982 which prohibits persons from carrying on chit business in a new place of business without obtaining prior approval of the concern registry of chits. The Tribunal is expected to pass final order within three months from the receipt of the copy of this judgment.

The appeal is allowed with aforesaid observations and directions. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

New Delhi

3rd December, 2019

//ns//