

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.253 of 2018

[Arising out of orders dated 17.11.2017 and 13.07.2018 passed by National Company Law Tribunal, New Delhi Bench in Company Application No. CAA 178(ND)/2017]

IN THE MATTER OF:

Amalgamation of (A) Qanna Trading Private Limited, (B) Zara Trading Private Limited, (C) Ambee Conbuild Private Limited, (D) Parelkar Infotech Private Limited, (E) Felicia Conbuild Private Limited, (F) Wilona Buildcon Private Limited, (G) Akira Infotech Private Limited, (H) Valora Trading Private Limited, (I) Siddhant Conbuild Private Limited (All being Transferor Companies) with A R L Trading Private Limited (Transferee Company)

AND

1. Ambee Conbuild Private Limited
Flat No.412, Naurang House, 21
K.G. Marg, New Delhi – 110 001

2. Parelkar Infotech Private Limited
Flat No.412, Naurang House, 21
K.G. Marg, New Delhi – 110 001

3. Felicia Conbuild Private Limited
B-6/98, Basement, Safdurjung Enclave,
New Delhi – 110029

4. Wilona Buildcon Private Limited
B-6/98, Basement, Safdurjung Enclave,
New Delhi – 110029

5. Akira Infotech Private Limited
Shop No.17, CSC, Pocket A,
Sukhdev Vihar, New Delhi – 110025

6. Valora Trading Private Limited
Shop No.17, CSC, Pocket A,
Sukhdev Vihar, New Delhi – 110025

7. Siddhant Conbuild Private Limited
312, Wegmans House, 21,
Veer Savarkar Block,
Shakarpur, Delhi – 110 092

...Appellants

Present: Shri Manoj Kumar Garg, Advocate for the Appellants

ORAL JUDGEMENT

29.08.2018

A.I.S. Cheema, J. : Heard learned counsel for the Appellants. This appeal is at that stage of admission. The transferor companies (9 numbers) proposed to merge with the transferee company, i.e. ARL Trading Private Limited and for this purpose, transferor companies and transferee company jointly filed First Motion Application under Section 230(1) and 232 of the Companies Act, 2013 before the National Company Law Tribunal, Delhi. They sought Orders/directions to dispense with convening and holding of meetings of equity shareholders, preference shareholders and unsecured creditors of the transferor companies and transferee companies, it is stated. The counsel submits that the Tribunal by Order dated 17.11.2017, dispensed with the convening of meeting of equity shareholders and unsecured creditors of all the companies but further, directed the Appellants to convene the meetings of its preference shareholders. The Appellants filed CA 88/C-III(ND)/2017 requesting the Tribunal to modify the Order dated 17.11.2017 but the request was declined and hence this appeal.

2. In the First Motion Application, the prayers made (and which is relevant here) were as under:-

“In the light of above stated facts and circumstances, it is most respectfully prayed that this Hon’ble Tribunal may graciously be please to:

- (a) Pass Orders/directions dispensing with convening, holding and conducting of the meetings of Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies;
- (b) Alternate to prayer made in paragraph (a) above, pass Orders/directions, directing the Applicant Companies to issue notices to convene, hold and conduct separate meetings of Equity Shareholders, Secured and Unsecured Creditors of the Applicant Companies;”

3. The learned NCLT after hearing the counsel for the Appellants passed Orders dated 17.11.2017 and the portion which has troubled the Appellants is as under:-

C) In relation to Transferor Companies No.3 to 9:

(i) With respect to Preference shareholders:

Meeting of the Preference shareholders of the Transferor Companies No.3 to 9 is directed to be held at 10.00 AM at their respective registered offices on 21st and 22nd December, 2017 with the following time schedules subject to the notice of meeting being issued.

Applicant Companies	Time	Date
Applicant No.3	10.00 AM	21 st December, 2017
Applicant No.4	11.00 AM	21 st December, 2017
Applicant No.5	12.30 Noon	21 st December, 2017

Applicant No.6	1.30 PM	21 st December, 2017
Applicant No.7	3.00 PM	21 st December, 2017
Applicant No.8	10.00 AM	22 nd December, 2017
Applicant No.9	11.30 AM	22 nd December, 2017

The quorum for the meeting of the Preference shareholders shall be 20% in value in terms.”

4. When such Orders were passed, it is stated that the Appellants again moved NCLT with application vide CA 88/C-III(ND)/2017. The learned counsel points out copy of the same at page 213 in this Appeal in which the prayer (relevant here) was as under:-

“PRAYER

In the light of the above stated facts and circumstances, it is most humbly prayed that this Hon’ble Tribunal may graciously be pleased to:

- (a) modify/alter the Order dated 17.11.2017 passed by this Hon’ble Tribunal vis-à-vis the meetings of Preference Shareholders of the Transferor/applicant Company No.3 to Transferor Company No.9 to such extent and effect so as to pass orders/directions dispensing with convening, holding and conducting of the meetings of Preference Shareholders of the Third Applicant/Transferor Company No.3 to Ninth Applicant/Transferor Company No.9; and
- (b) dispense with the convening, holding and conducting of meetings of Preference Shareholders of Transferor Company No.3 to Transferor Company No.9; and/or”

5. The grievance of the learned counsel for the Appellants is that in the prayer made in the First Motion Application, the Appellants had requested for dispensing with convening, holding and conducting of the meetings of shareholders and thus according to the counsel, the word “shareholders” would include equity shareholders as well as preferential shareholders and thus, the NCLT should have dispensed with the calling of meetings of preferential shareholders. He states that there are total 7 preferential shareholders in the different Companies and the Appellants have already taken their Affidavits.

6. We have gone through the Impugned Order and find that the NCLT has considered the grievances which are being made by the Appellants before us and recorded reasons and discarded the request made by the Appellants to modify the earlier Orders. The learned NCLT Observed:-

“3. It is seen that consistently including in paragraph 41 as well as in the prayer clause (b) (c) only equity shareholders have been mentioned along with secured creditors and unsecured creditors in the main application and it is seen that the preference shareholders have been omitted. However, at the time of making submissions in relation to the instant application, Ld. Counsel for the applicants wants this Tribunal to construe that the shareholders as given in prayer clause (a) is inclusive of both equity shareholders as well as preference shareholders and hence this application.

4. We do not find any merit in the contention of the Ld. Counsel for the applicants. In the pleadings as contained in the application there should be consistency and that it should not be paradoxical with the prayer portion of relief as sought for by the applicants. It is quite evident throughout the application as seen above, in the main application it has been specifically stated only as equity shareholders and in the circumstances this Tribunal construed shareholders to mean only in relation to equity

shareholders for which dispensation is sought for or for dispensing with the meeting of equity shareholders from whom the consent affidavits have been obtained and produced. Further even at the time of oral submissions in the main application the same was not broached. However, now by virtue of this application as already stated after the issue of order dated 17.11.2017 the applicants want to construe and dispense with the meeting of the preference shareholders and for which suitable directions have already been issued while passing orders in the main application. From the records of the Tribunal, it is seen that only subsequent to the passing of order dated 17.11.2017, Board Resolution in relation to the corporate entities which have been holding these preference shares have been filed and the same was not available at the time of passing of order dated 17.11.2017. Thus, taking into consideration the above, we are not inclined to allow this application and in the circumstances, this application stands dismissed and let the meeting of the preference shareholders as directed to be convened vide order dated 17.11.2017 be convened. However, the date of the meeting of preference shareholders of Applicants/Transferor Companies 3 to 9 stands modified and to be read in the order dated 17.11.2017 as 31.08.2018 instead of 21.12.2017, with a view to these applicant companies to comply with the order dated 17.11.2017 in relation to convening and holding of the meetings of the preference shareholders, as ordered vide order dated 17.11.2017. This application stands disposed of with the above directions.”

7. Considering the reasons recorded by the NCLT, we find them justified. Again the fact that the First Motion Application itself makes alternative prayers of dispensing or alternatively calling the meetings and the NCLT has granted the alternative prayer, reading the First Motion as a whole, to call Meeting of preferential shareholders, fault cannot be found. Even if the Affidavits are taken, it would still be discretion of NCLT looking to the nature of the litigation to take a decision and it can still direct calling for meeting to be held of a particular class of shareholders.

8. We do not find any reason to interfere with the Impugned Order.
Admission of the appeal is declined.

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

[Balvinder Singh]
Member (Technical)

/rs/nn