

Company Appeal (AT) No. 162 of 2020

[Arising out of Order dated 13.02.2020 passed by the National Company Law Tribunal, Division Bench-I, Chennai in MA/102/2020 in CA/216 & 217/CAA/2018].

IN THE MATTER OF:

Scheme of Amalgamation of Arihant Unitech Realty Projects Limited With North Town Estates Private Limited

**M/s Arihant Unitech Realty Projects Limited,
CIN: U74899TN2005PLC123508
No. 3, Ganapathy Colony, 3rd Street,
Off. Cenotaph Road, Teynampet Chennai-600018.
Represented by its Director
Mr. Selvakumar Shanmugasundaram**

...Appellant

Versus

Nil

...Respondent

Present:

For Appellant: Mr. Shivam Narang, Advocate.

JUDGMENT

Venugopal M. J

The Appellant/unlisted Public Limited Company has preferred the instant Company Appeal as an 'Aggrieved Person', in respect of the order

dated 13.02.2020, passed by the National Company Law Tribunal, Division Bench-I, Chennai in MA/102/2020 in CA/216 & 217/CAA/2018, who had dismissed the petition for condonation of delay of 201 days filed by the Appellant/Petitioner/Transferor Company.

2. The National Company Law Tribunal, Division Bench -I, Chennai while passing the impugned order had among other things observed the following:

“... It is seen from the order that the meeting of the equity shareholders of the Transferor Company had to be convened on 23.05.2019 and the meeting of the Unsecured Creditors was to be held on 16.05.2019 and in relation to the Transferee Company the meeting of the equity shareholders was required to be convened on 23.05.2019 and those of the unsecured creditors on 16.05.2019.

Learned Counsel for the Applicants represent that the meetings of the shareholders and unsecured creditors of the Transferor and the Transferee

Companies were duly held, as directed and the reports of the Chairman have also been filed, as per the directions.

In relation to filing of the Company Petition, which was required to be filed within a period of seven days from the date of filing of the Chairman's reports, however, the same came to be filed only on 24.01.2020 for unavoidable causes resulting in delay of 201 days and in the circumstances this Application is filed seeking for condonation of delay in filing the Company Petition.

Perusal of the Application shows in paragraph '4', which is the cause/ reason as pointed out by the Counsel for the Applicant for the delay in filing the Petition. However, perusal of the circumstances resulting in the delay in filing the Company Petition has failed to clearly explain the delay caused in filing of the Company Petition. Further, we find that the reasons given there under cannot be considered as unavoidable causes etc."

and resultantly dismissed the petition without costs.

3. Assailing the validity, correctness and legality of the impugned order passed by the Tribunal, the Learned Counsel for the Appellant submits that the 'Appellant Company' and the 'Transferee Company' had duly complied with the directions of the Tribunal, in convening and holding meeting of equity shareholders and unsecured creditors. Further, in the said meetings, the 'Equity Shareholders' and 'Unsecured Creditors' of 'Transferor' and 'Transferee' Company unanimously approved the 'Resolution' approving the Scheme of Amalgamation.

4. It is the stand of the Appellant that the Chairman of the meeting of the 'Unsecured Creditors' and 'Equity Shareholders' had filed reports of respective meetings before the Tribunal, within the specified period. Also, that the 'Transferor' and 'Transferee' Company had served Notice of the Applications of the 'Statutory Authorities' for their 'Reports' as directed by the Tribunal, for consideration to sanction the scheme.

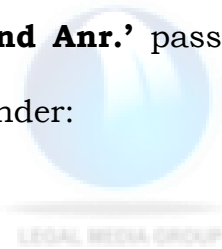
5. The Learned Counsel for the Appellant contends that the 'Scheme of Amalgamation' is in the final stage of consideration and if such delay was not condoned, it would cause a significant adverse impact on the business operations of the 'Transferor' as well as the 'Transferee' Company.

6. The prime plea of the Appellant is that the 'Scheme of Amalgamation' is formulated in the best interest of the Shareholders, Employees, Creditors and other Stakeholders of the 'Transferor' and 'Transferee' Company and as a result

thereof, they should not be deprived of the benefits under the scheme, if the delay in filing the petition was not condoned.

7. The Learned Counsel for the Appellant submits that the Tribunal had failed to appreciate the fact that the period of delay cannot be construed to measure the negligence on the part of the Appellant for the purpose of condoning the delay. Moreover, the Appellant was not inactive and was not negligent in taking steps for filing the Application for sanctioning of 'Scheme of Amalgamation'. That apart, there was no gross negligence on the part of the Appellant in filing the Petition before the Tribunal.

8. The Learned Counsel for the Appellant refers to the order dated 10.02.2016 in C.P 66 of 2015, in the matter of '**Sgpka Infratech Private Ltd. And Anr.**' passed by the Allahabad High Court, wherein it was observed as under:



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"...The delay in filing of the second motion petition is adequately explained and accordingly the same is condoned."

9. The Learned Counsel for the Appellant adverts to the order dated 03.10.2016 in CO.APPL.(M) 139/2016 of High Court of Delhi, in the matter of '**Nandos Services India Private Limited**' wherein in Co. Appl.3814/2016(Delay in Refiling) the condonation of delay in refiling the accompanying Company Application was allowed.

10. Yet another order dated 29.03.2017, passed in IA No. 5 of 2017 MC (C.PTN. No. 1 of 2016(CP No. 1 of 2014) i) passed by the 'National Company Law Tribunal', Guwahati Bench in 'Adhunik Cement Ltd.'(Petitioner) is relied on by the Learned Counsel for the Appellant to show that the delay of 441 days in preferring the connected restoration Application was condoned.

11. The Learned Counsel for the Appellant points out the order dated 01.01.2019 of NCLT, Mumbai Bench, in MA 1340/2018 in CA(CAA) 537/230-232/2018, wherein the delay of 22 days in filing Company Scheme Petition was allowed subject to the payment of Rs. 2000/- as cost, to be paid in the account

12. It is to be relevantly pointed out that in MA/102/2020 in CA/216 & 217/CAA/2018 in CP/ /CAA/ filed by the Appellant as Petitioner/Transferor Company (under Sections 230 to 232 of the Companies Act,2013 etc.) the main prayer was for the condonation of delay of 201 days in filing the connected Company Petition. As a matter of fact, at paragraph 4 of the Application it was averred as follows:

“...It is submission of the Applicant Companies that the delay in the filing of the Company Petition was not an act done wantonly by the Applicant Companies and was due to their pre-occupation with internal compliance and closure of audit/accounts. I state

that no prejudice or injustice would be caused to any of the stakeholders involved in the present scheme of amalgamation if the said delay were to be condoned by this Hon'ble Tribunal. I state that severe prejudice and injustice would be caused if this application is not allowed."

13. As regards the aspect of 'Condonation of Delay', the Tribunal is to adopt/take lenient/liberal view of course, based on the facts and circumstances of given case. Further, the very approach of the Tribunal ought to be pragmatic and justice oriented in the considered opinion of this Tribunal. Further, the Tribunal is to assess the 'due diligence' of parties craving for condonation. In fact, failure to adopt/resort to vigilance or extra vigilance by the concerned party ought not to be a ground for ousting it from 'Litigation.'

14. It is well settled principle in Law that if the 'explanation' offered does not smack of mala fide, utmost consideration must be given to a Litigant/Suitor to condone the delay.

15. As far as the present case is concerned, the Appellant/Petitioner/Transferor Company in MA/102/2020 in CA/216 & 217/CAA/2018 in CP/ /CAA/ at Paragraph No. 4 had come out with reasons that the delay in filing the Company Petition was not an act wantonly and that the delay was due to their pre-occupation with internal compliance and closure

of audit/accounts, and that the said reasons ascribed by the Appellant/Petitioner/Transferor Company do not smack of mala fide, as opined by this Tribunal. Viewed in that perspective, the observation of the NCLT, Division Bench-I, Chennai in the impugned order dated 13.02.2020 in MA/102/2020 in CA/216 & 217/CAA/2018, to the effect that the 'Perusal of the circumstances resulting in the delay in filing the Company Petition has failed to clearly explain the delay caused in filing of the Petition' etc. and finally dismissing the Application/Petition is clearly unsustainable in the eye of Law. Therefore, this Tribunal, to prevent an 'Aberration of Justice' and to 'Secure the Ends of Justice' interferes with the impugned order passed by the NCLT, Division Bench -I, Chennai and allows the instant Appeal by condoning the delay in question.

16. In fine, the present Appeal is allowed, but without Costs. The impugned order dated 13.02.2020, in MA/102/2020 in CA/216 & 217/CAA/2018 is set aside by this Tribunal, for the reasons assigned in this Appeal. Resultantly MA/102/2020 is allowed. IA No. 2309/2020 is closed with direction to the Appellant to file the certified copy of the impugned order dated 13.02.2020 of the NCLT, Division Bench -I, Chennai within three weeks from today.

[Justice Venugopal M.]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

NEW DELHI
5th November, 2020
SR