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COMPANY CASES

VOLUME 221 — 2020

[2020] 221 Comp Cas 1 (NCLT)

[BEFORE THE NATIONAL COMPANY LAW TRIBUNAL — KOCHI BENCH]

ABRAHAM V. MANI

v.

TRENDS POLYMER P. LTD. AND OTHERS

ASHOK KUMAR BORAH *(Judicial Member)*

June 10, 2020.

HF ▸ Applicant

OPPRESSION AND MISMANAGEMENT—PETITION FOR RELIEF—WITHDRAWAL OF PETITION—SETTLEMENT BETWEEN PARTIES PURSUANT TO MEDIATION—NO FURTHER ISSUES SURVIVING TO BE ADJUDICATED—PARTIES DIRECTED TO COMPLY WITH MEDIATION AGREEMENT MADE BETWEEN THEM—APPLICATION ALLOWED—COMPANIES ACT, 2013, ss. 241, 242.

In a petition filed under sections 59, 100, 241 to 244 of the Companies Act, 2013, the respondents filed a memorandum stating that the petitioner and respondents had settled the dispute between them amicably on specific terms drawn in the form of a mediation agreement :

Held, *that the matter could be amicably settled among the parties on the terms and conditions stated in the compromise and both parties had expressed their willingness to act accordingly. In view of the mediation agreement between the parties, no further issues survived to be adjudicated in the company petitions. The parties were directed to comply with the mediation agreement made between them.*

C. P. No. 60/KOB/2019 and T. C. P. No. 91/KOB/2019.

Jacob Mathew Manalil for the petitioner.

Mohan Pulickkal for the respondents.

ORDER

The order of the Bench was delivered by

ASHOK KUMAR BORAH ***(Judicial Member)***.—Since, common issues are involved in both the cases, they are disposed by a common order.

The company petitions C. P. No. 60/KOB/2019 and T. C. P. No. 91/KOB/2019 (hereinafter referred to as the petitions) were filed by Shri Abraham V. Mani, Varisseril Chackalackal House, Naliyampeedika, Sneha Nagar, Alangad, Ernakulam, Kerala-683 511 (hereinafter referred to as the "petitioner") against Trends Polymer P. Ltd., Kaninad, Puthencruz, Ernakulam, Kerala-682 301 (hereinafter referred to as company/respondent No. 1), Peter Jacob C., Managing Director, G-1, FACT Nagar, Thrippunithura, Ernakulam, Kerala-682 301 (hereinafter referred to as respondent No. 2), Annamma Peter, W/o. Peter Jacob C., G-1, FACT Nagar, Thrippunithura, Ernakulam, Kerala-682 301 (hereinafter referred to as respondent No. 3) before this Tribunal.

The brief facts of the petitions are :

1 In both the cases the petitioner is the first signatory to the memorandum of association of the company, and is one of the two promoters of the company, which was incorporated in the year 1994. The two promoters of the company were classmates at engineering college. The petitioner who was employed in USA arranged for the capital of the company and acted as the Chairman of the company. The petitioner returned to India in 1998 and he along with the second respondent managed the company. The first respondent-company is a profitable concern and its reserves and surplus (Rs. 195.8 lakhs) as on March 31, 2018 is more than three times of its capital (Rs. 59.6 lakhs).

2 Due to some personal reasons, the petitioner thought of exiting and in consultation with the second respondent thought of bringing in a third party to take over the company. A valuation done by the second respondent shows the net worth of the company at Rs. 950 lakhs. The valuation of a share comes to Rs. 159.34. Subsequently, the second respondent agreed to take the shares of the petitioner's family and friends at Rs. 75 per share. After sale of the part of the shares held by the petitioner and his wife, on part payment, the second respondent refused to pay balance amount or buy the remaining shares. Though the petitioner along with his relatives had held more than 80 per cent. of the shares, nothing has been done by him to cause imbalance in the power of equation or to harm the interests of the other promoter and there was properly balanced control of powers to both the promoters until recent manoeuvres.

As the petitioner has lost faith in the other promoter who is no more acting in good faith, the petitioner filed these company petitions to wound up on just and equitable ground, yet as it is likely to prejudicially affect the interest of the petitioner, he is seeking the alternate remedy under the Companies Act, 2013. 3

C. P. No. 60/KOB/2019

The petitioner filed the C. P. No. 60/KOB/2019 before this Bench on August 7, 2019 under sections 59, 100, 102, 115 and 241 to 244 of the Companies Act, 2013 and prayed for the following reliefs :

(i) To stay the proposal of annual general meeting to be held on August 16, 2019 or restrain the board from considering, discussing or passing resolution mentioned under items 4, 5, or 6 of the agenda of the annual general meeting.

(ii) To declare that the third respondent under section 100(2)(a) is not qualifies to present requisition for calling an extraordinary general meeting and the proceedings and resolutions passed in the extraordinary general meeting held on May 20, 2019 as null and void.

(iii) Pass an order directing the board of the first respondent to take immediate steps for sale of shares in terms of article 12 of the articles of association or invoke the powers under section 242(2)(b) and direct the respondent to purchase the shares of the petitioner for a fair value or permit sale to Paul P. John a non-member.

(iv) Direct the second respondent to discharge the liabilities towards the petitioner in terms of the memorandum of understanding failing which, the second respondent may be directed to reverse the transactions done in terms of the memorandum of understanding and return the shares transferred by the petitioner to the second respondent on return of the amount paid.

(v) To appoint an administrator to take charge of the affairs of the company so as to prevent any oppressive action from the second respondent and his relatives.

(vi) To pass such other order or orders deemed fit and proper in the premises and interest of justice.

T. C. P. No. 91/KOB/2019

The petitioner filed this petition before the National Company Law Tribunal, Chennai Bench on May 17, 2019 and the same was transferred to this Bench and numbered as T. C. P. No. 91/KOB/2019 and was taken up on September 27, 2019. The petition was filed under sections 59, 100, 241 to 244 of the Companies Act, 2013 read with 81, 119, 125, 126, 127 and

other relevant rules under the National Company Law Tribunal Rules, 2016 and for the following reliefs :

(i) To stay the proceedings of the proposed extraordinary general meeting to be held on May 20, 2019 under annexure A8.

(ii) To declare that the third respondent is not qualified to call for a requisition of the meeting under section 100(2)(a).

(iii) Direct the second respondent to discharge the liabilities towards the petitioner in terms of the memorandum of understanding, failing which, the second respondent may be directed to reverse the transactions done in terms of the memorandum of understanding and return the shares transferred by the petitioner to the second respondent on return of the amount paid.

(iv) Permit the petitioner to sell shares at a fair value to a non-member in case the second respondent is not ready to offer a reasonable price in accordance with the articles of association.

(v) Pass an order directing the second respondent to effectuate the transfer of shares lodged by the petitioner.

(vi) To appoint an administrator to take charge of the affairs of the company so as to prevent any oppressive action from the second respondent and his relatives.

(vii) To pass such other order or orders deemed fit and proper in the interest of justice.

4 On September 4, 2019 the learned counsel for the respondents in C. P. No. 60/KOB/2019 came out with an allegation that the petition itself is not maintainable. Subsequently on October 3, 2019 this Bench heard the learned counsels for both the parties specifically on the question of maintainability issue and pronounced an order on October 18, 2019 affirming that the company petition is maintainable under sections 241 and 242 of the Companies Act, 2013.

5 On February 25, 2020 learned counsel for both the parties submitted that the hon'ble High Court of Kerala has appointed a mediator to sort out the issue and mediation proceedings are underway. On June 5, 2020, learned counsel for the respondents has filed a memo stating that the petitioner and respondents, who are the parties in the mediation before the hon'ble High Court of Kerala settled the dispute between them amicably on specific terms drawn in the form of a mediation agreement. In the fifth paragraph of the mediation agreement, it is stated that :

> "5. Both the parties agree to withdraw all the civil and criminal and company cases filed against each other before the appropriate courts,

Tribunals, authorities within 15 days from the date of execution of this agreement".

6 On June 8, 2020 the counsel for the petitioner filed an application to withdraw the company petitions under rule 11 of the National Company Law Tribunal Rules. Today both the counsel appeared through video conferencing and acknowledged the same and submitted that both the parties shall comply with the mediation agreement.

7 I have perused the withdrawal application filed by the learned counsel for the petitioner. Learned counsel for the petitioner submitted that through prolonged mediation conducted at the hon'ble High Court of Kerala Mediation Centre, Kerala High Court, finally a compromise was arrived at on June 2, 2020. The matter can be amicably settled among the parties on the terms and conditions stated in the compromise and both parties have expressed their willingness to act accordingly.

8 In view of the mediation agreement between the petitioner and the respondents, this Tribunal is of the view that no further issues survive to be adjudicated in the above company petitions pending before this Bench. Taking note of the mediation agreement and withdrawal application filed by the petitioners and considering the facts stated above, I direct both the parties to comply with the mediation agreement made between them.

9 Accordingly, C. P. No. 60/KOB/2019 and T. C. P. No. 91/KOB/2019 stand disposed of as withdrawn. No order as to costs.

[2020] 221 Comp Cas 5 (NCLT)

[BEFORE THE NATIONAL COMPANY LAW TRIBUNAL — MUMBAI BENCH]

FIDELIS SECURITIES P. LTD., *In re*

V. K. RAJASEKHAR *(Judicial Member)* and
RAVIKUMAR DURAISAMY *(Technical Member)*

May 26, 2020.

HF ▸ Petitioner

COMPANY—REDUCTION OF SHARE CAPITAL—COMPANY NOT CARRYING ON ANY BUSINESS ACTIVITIES AND HAVING NO IMMEDIATE PLANS TO REVIVING DESIRED RESULTS—PAID-UP EQUITY SHARE CAPITAL NOT YIELDING RESULTS—REDUCTION TO BE ALLOWED—COMPANY TO COMPLY WITH STATUTORY PROCEDURES—COMPANIES ACT, 2013, S. 66.

The petitioner was not carrying on any business activities and had no immediate plans to revive, and the paid-up equity share capital of the

company was not yielding desired results. On a petition filed under section 66 of the Companies Act, 2013 read with the National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016 seeking approval for reduction of capital :

Held, *that the special resolution approving the capital reduction as approved by the shareholders in the general meeting held on February 26, 2018 was to be confirmed. The petitioner was to comply with all applicable laws and procedures in this regard.*

C. P. No. 405/66/MB/C-IV/2018.

Mahesh M. Darji instructed by *Nilesh Shah and Associates*, practising company secretary for the petitioner-company.

Ms. Rupa Sutar, Deputy Director for the Regional Director.

ORDER

The order of the Bench was delivered by

1 V. K. RAJASEKHAR ***(Judicial Member)***.—This is a petition filed under section 66 of the Companies Act, 2013 read with the National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016.

2 The petitioner seeks approval of this Tribunal for reduction of the existing issued, subscribed and paid-up equity share capital of the company from Rs. 2,02,00,000 (rupees two crores and two lakhs only) divided into 20,20,000 (twenty lakhs twenty thousand) equity shares of Rs. 10 (rupees ten only) each to Rs. 1,00,000 (rupees one lakh only) divided in to 10,000 (ten thousand) equity shares of Rs. 10 (rupees ten only) each, by proportionately paying off the excess share capital of Rs. 2,01,00,000 (rupees two crores one lakh only) divided into 20,10,000 (twenty lakhs ten thousand) fully paid-up equity shares of Rs. 10 (rupees ten only) each at par by utilising/applying the bank balance lying to the credit of the company (current as well as term deposit) since the equity share capital so reduced is in excess of the wants of the company.

Corporate history of the petitioner-company

3 The petitioner-company was registered on August 26, 1997 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. The corporate identity number (CIN) of the petitioner-company is U67120MH1997PTC110268.

4 The registered office of the petitioner-company is situated at No. 2, Lalgebi Darshan, Ground Floor, 63, Swastik Society, 4th N. S. Road, JVPD

Scheme, Vile Parle (W), Mumbai-400 056, in the State of Maharashtra. Therefore, this Tribunal has jurisdiction to deal with the present petition.

Enabling provision in the articles of association

Article 80 of the articles of association (AoA) of the petitioner-company empowers reduction of share capital by passing a special resolution. 5

Reasons for reduction

The petitioner-company is not carrying on any business activities and has no immediate plans to revive the same. Therefore, the paid-up equity share capital of the company is not yielding desired results. 6

The existing capital is, therefore, surplus to the requirements of the petitioner-company. 7

Procedural compliances

The reduction of share capital as described above has been approved by the shareholders by special resolution at their meeting held on February 26, 2018. 8

The reduction of share capital shall be made from the cash/bank balance (current as well as the term deposit) available with the company. 9

The petitioner-company has complied with all statutory requirements as per the directions of the Tribunal and it has filed the necessary affidavit on September 10, 2018 in the Tribunal. Moreover, the petitioner-company also undertakes to comply with the statutory requirements, if any under the Companies Act, 2013 and the Rules made thereunder, as may be applicable. 10

The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed a report dated November 19, 2018 ("report") stating therein that except for his observations in paragraph 7(a), there are no other observations. 11

The Regional Director's observations in paragraph 7(a) of his report are as follows : 12

> "The tax implication if any arising out of the proposal for reduction is subject to final decision of the Income-tax authorities. The approval of the company petition by this hon'ble court may not deter the Income-tax authority to scrutinise the tax return filed by the company after giving effect to the proposed reduction. The decision of the Income-tax authority is binding on the petitioner-company."

We have heard the learned authorised representative for the petitioner-company and perused the report of the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai. 13

14 There is no objection from any quarter regarding the reduction of share capital as contemplated by the petitioner-company.

15 Therefore, the present petition seeking approval for reduction of capital is allowed as follows :

(a) The special resolution approving the capital reduction as approved by the shareholders in the general meeting held on February 26, 2018 is hereby confirmed. The petitioner-company shall comply with all applicable laws and procedures in this regard.

(b) The petitioner-company shall comply with all the applicable provisions of the Income-tax Act, 1961 and all tax issues arising out of the application will be met and answered in accordance with law.

(c) The petitioner-company shall submit an affidavit before the Registrar of Companies, Maharashtra, Mumbai, that the interests of the creditors and all other stakeholders are protected under the scheme.

(d) The minute set forth in the schedule hereto is hereby approved.

(e) The certified copy of this order including the minute as approved be delivered to the Registrar of Companies, Maharashtra, Mumbai, within thirty days of receipt of this order.

(f) Paper publication confirming the reduction of share capital by this Tribunal be issued in the same newspapers in which publications were carried out earlier, within a period of thirty days from the date of this order.

Form of minute

"The paid-up equity share capital of Fidelis Securities P. Ltd., shall henceforth be reduced from Rs. 2,02,00,000 (rupees two crores and two lakhs only) divided into 20,20,000 (twenty lakhs and twenty thousand) equity shares of Rs. 10 (rupees ten only) each to Rs.1,00,000 (rupees one lakh only) divided into 10,000 (ten thousand) equity shares of Rs. 10 (rupees ten only) each by proportionately paying off the excess share capital of Rs. 2,01,00,000 (rupees two crores and one lakh only) divided into 20,10,000 (twenty lakhs ten thousand) fully paid-up equity shares of Rs. 10 (rupees ten only)."

[2020] 221 Comp Cas 9 (NCLT)

[BEFORE THE NATIONAL COMPANY LAW TRIBUNAL — CHANDIGARH BENCH]

F. M. HAMMERLE TEXTILES LTD., *In re*

AJAY KUMAR VATSAVAYI *(Judicial Member)* and
PRADEEP R. SETHI *(Technical Member)*

March 13, 2020.

HF ▸ Applicant

INSOLVENCY RESOLUTION—RESOLUTION PLAN—APPROVAL BY ADJUDICATING AUTHORITY—RESOLUTION PROFESSIONAL CERTIFYING THAT RESOLUTION PLAN COMPLIED WITH ALL PROVISIONS OF CODE AND REGULATIONS AND DID NOT CONTRAVENE ANY OF PROVISIONS OF LAW—RESOLUTION PLAN APPROVED BY COMMITTEE OF CREDITORS WITH 100 PER CENT. OF VOTING SHARE—DECISION TAKEN BY FINANCIAL CREDITORS FELL WITHIN AMBIT OF ITS COMMERCIAL AND BANKING WISDOM AND NOT TO BE INTERFERED WITH—PLAN AS APPROVED BY COMMITTEE OF CREDITORS TO BE APPROVED—INSOLVENCY AND BANKRUPTCY CODE, 2016, SS. 30, 31.

On an application by the resolution professional under section 30(6) of the Insolvency and Bankruptcy Code, 2016 seeking approval of the resolution plan dated January 25, 2018 and the amendment made on September 18, 2019 as submitted by the resolution applicant and approved by the committee of creditors :

Held, *allowing the application, that the resolution plan stated that upon the approval date, an interim monitoring committee would be constituted. The constitution of the committee was given in the plan. The terms of the plan and its implementation schedule was stated to be 90 days from the approval of the plan by the Adjudicating Authority. The resolution applicant would make full and final payment of Rs. 5,150 lakhs to the secured financial creditor out of which Rs. 500 lakhs would be deposited at the end of 30 days from the approval of the resolution plan and the balance Rs. 4,650 lakhs would be paid into an escrow account within 90 days from the approval of the resolution plan. The payment of Rs. 24.43 lakhs to the operational creditors was proposed to be made in priority over the secured and unsecured financial creditors. Payment of dues to the workmen and employees was proposed to be made within 30 days of approval of resolution plan by the Adjudicating Authority in the manner provided for in the resolution plan. The sources of funds were stated to be infusion of Rs. 1,700 lakhs towards equity to be issued*

by the corporate debtor within 30 days of the approval of the resolution plan ; infusion of funds to the tune of Rs. 233 lakhs by way of loans from friends or relatives or associates ; and Rs. 4,500 lakhs as term loan from a bank. Also, the resolution plan provided for Rs. 130 lakhs towards working capital requirement. The requirements under section 31(1) of the Code were satisfied. The resolution professional had certified that the resolution plan complied with all the provisions of the Code and Regulations and did not contravene any of the provisions of the law for the time being in force. The resolution professional had also certified that the resolution applicant had submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit the resolution plan and the contents of the affidavit were in order. The resolution professional had submitted that the resolution plan had been approved by the committee of creditors with 100 per cent. voting share in accordance with the provisions of the Code and the Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The decision taken by the financial creditors fell within the ambit of its commercial and banking wisdom and was therefore, not to be interfered with. Regulation 39(4) of the Regulations had been complied with. According to the terms of the process document issued by the resolution professional, a proposal performance guarantee to the tune of Rs. 1,00,00,000 was submitted by the resolution applicant. The plan as approved by the committee of creditors was to be approved in accordance with provisions of section 30(4) of the Code. The resolution so approved would be binding on the corporate debtor and its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

SASHIDHAR (K.) *v.* INDIAN OVERSEAS BANK [2019] 213 Comp Cas 356 (SC) *and* MAHARASHTRA SEAMLESS LTD. *v.* PADMANABHAN VENKATESH [2020] 9 Comp Cas-OL 683 (SC) *relied on*.

Cases referred to :

Andhra Bank *v.* F. M. Hammerle Textile Ltd. [2019] 5 Comp Cas-OL 450 (NCLAT) (para 11)

Maharashtra Seamless Ltd. *v.* Padmanabhan Venkatesh [2020] 9 Comp Cas-OL 683 (SC) (para 42)

Sashidhar (K.) *v.* Indian Overseas Bank [2019] 213 Comp Cas 356 (SC) (para 41)

C. A. No. 893 of 2019 in C. P. (IB) No. 30/Chd/Pb/2017 (admitted).

Yash Pal Gupta for the resolution professional.

Arun Saxena for the resolution applicant.

Abhay Gupta with *D. K. Gupta*, for the committee of creditors.

ORDER

The order of the Bench was delivered by

PRADEEP R. SETHI ***(Technical Member)***.—C. A. No. 893 of 2019 is filed by the resolution professional (RP) under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") seeking approval of the resolution plan dated January 25, 2018 and amendment made on September 18, 2019 as submitted by M/s. New Ram Traders. 1

It has been submitted that petition was filed by F. M. Hammerle Textiles Ltd. (corporate debtor) under section 10 of the Code for initiation of corporate insolvency resolution process (CIRP) and the same was admitted vide order dated June 27, 2017 and the CIRP of the corporate debtor was initiated. It is submitted that Mr. Mohan Lal Jain was appointed as the interim resolution professional (IRP) vide order dated June 27, 2017. 2

It is submitted that the IRP constituted the CoC consisting of State Bank of India being the sole member of the CoC as per the provisions of section 21 of the Code. 3

It is stated that in the first meeting of the CoC held on July 26, 2017 the IRP was sought to be replaced with Mr. Rajeev Goel who was appointed as RP vide order dated September 1, 2017. 4

The RP made a public announcement for invitation of expression of interest (EoI) by publishing Form G in *Economic Times* (all India edition) dated October 6, 2017. The last date for submission of EoI was fixed as October 20, 2017 which was further extended to November 6, 2017 by another advertisement on October 23, 2017. 5

The RP apprised the CoC that EoIs were received from 5 prospective resolution applicants. The RP also issued a process document dated December 12, 2017 for evaluation of the resolution plans which was amended two times vide addendums dated January 2, 2018 and January 23, 2018. 6

C. A. No. 219 of 2017 was filed by the RP under section 12(2) of the IBC, 2016 for extension of the CIRP time period by a further period of 90 days and the same was allowed vide order dated December 14, 2017. 7

8 It is submitted that the RP received resolution plans from 2 prospective resolution applicants, namely, M/s. New Ram Traders and Donear Industries Ltd., which were opened and presented to the CoC members in its meeting held on February 16, 2018. The prospective resolution applicants were suggested to modify and submit the revised resolution plan.

9 In the 7th meeting of CoC held on February 27, 2018 both the resolution plans were evaluated in terms of the resolution plan evaluation criteria formulated under the process document dated December 12, 2017 and after evaluation and negotiations, M/s. New Ram Traders was declared as "H1 resolution applicant" and the financial bid was revised from Rs. 42 crores to Rs. 45 crores. The resolution plan dated January 25, 2018 submitted by M/s. New Ram Traders was approved by the CoC members after voting in their 8th meeting held on March 15, 2018.

10 The applicant herein filed C. A. No. 97 of 2018 under section 30(6) of the Code for approval of the resolution plan dated January 25, 2018 submitted by M/s. New Ram Traders.

11 Further, it is submitted that C. A. No. 191 of 2017 was filed by Andhra Bank, a corporate guarantee holder seeking directions to the RP to accept their claims which was rejected by the IRP. The said application of Andhra Bank was dismissed vide order dated November 17, 2017 and the Andhra Bank filed an appeal bearing Company Appeal (AT) (Insolvency) No. 61 of 2018—(*Andhra Bank* v. *F. M. Hammerle Textile Ltd.* [2019] 5 Comp Cas-OL 450 (NCLAT)) before the hon'ble National Company Law Appellate Tribunal. The hon'ble National Company Law Appellate Tribunal vide its order dated May 4, 2018 directed this Tribunal to not pass any further orders under section 31 of the Code till the final adjudication of the said appeal. The hon'ble National Company Law Appellate Tribunal vide its order dated July 13, 2018—(*Andhra Bank* v. *F. M. Hammerle Textile Ltd.* [2019] 5 Comp Cas-OL 450 (NCLAT)) disposed of the said appeal of the Andhra Bank, inter alia, reconstituting the CoC with Andhra Bank as a member thereof, being the corporate guarantee holder and further directed that the applicant herein to place the approved resolution plan of New Ram Traders before the reconstituted CoC. However, the newly inducted Andhra Bank was only given power to object to the plan only if the same is not in compliance with section 30(2) of the Code.

12 In order to comply with the aforesaid directions of the hon'ble National Company Law Appellate Tribunal, C. A. No. 97 of 2018 was disposed of with liberty to file afresh, after compliance of the said order of the hon'ble National Company Law Appellate Tribunal. It is stated that the applicant herein admitted the claims of the corporate guarantee holders (CGH) of

the corporate debtor, i. e., State Bank of India, Andhra Bank, Allahabad Bank, Canara Bank, Bank of Maharashtra, Phoenix ARC P. Ltd. (assignor United Bank of India), Punjab and Sind Bank, Punjab National Bank, Bank of India, Bank of Baroda and Axis Bank Ltd., and the reconstituted CoC with induction of the CGHs as the new members.

13 In the 9th meeting the CoC held on August 16, 2018 the earlier approved resolution plan dated January 25, 2018 of M/s. New Ram Traders (the successful resolution applicant) was placed before the reconstituted CoC and after deliberations on resolution plan, the successful resolution applicant was given time to submit the revised plan. It is stated that the revised resolution plan was submitted on August 30, 2018 and after discussion in the CoC, another revised plan was submitted on September 24, 2018.

14 It is also stated that the resolution plan dated January 25, 2018 along with addendum dated November 9, 2018 was placed before the CoC in its 14th meeting held on November 17, 2018 wherein SBI rejected the said resolution plan and the resolution professional filed C. A. No. 587 of 2018 for liquidation of the corporate debtor.

15 It is stated that the successful resolution applicant filed an application bearing C. A. No. 607 of 2018 seeking extension of the CIRP period till January 3, 2019 and for direction to the CoC to consider the resolution plan submitted.

16 It was found that the directions of the hon'ble National Company Law Appellate Tribunal were that only if the resolution plan is not in accordance with section 30(2) then a valid objection can be raised by Andhra Bank who has been added as a member of the CoC otherwise the CoC will approve it having already found it to be viable and workable and that however, SBI did not approve the original resolution plan on the ground that the offer by the resolution applicant in the original resolution plan is much lower than the liquidation value of the corporate debtor.

17 Vide order dated September 17, 2019 in C. A. No. 607 of 2018, it was held in paragraph Nos. 21 and 22 as follows :

> "21. In view of these facts, we consider it reasonable to accept the contention of the resolution applicant that the CoC be directed to consider the resolution plan of the resolution applicant. As recorded in order dated August 30, 2019 SBI has conveyed its no objection for holding a fresh meeting to consider revised resolution plan by the resolution applicant.
>
> 22. We therefore, direct the resolution applicant to submit its final revised resolution plan to the RP within three days from today and

also direct the RP to convene a meeting of the CoC to consider the final revised resolution plan submitted by the resolution applicant. In accordance with section 30(5) of the Code, the resolution applicant be asked to attend the meeting of the CoC but shall not have right to vote at the meeting. The RP may convene the meeting of the CoC on such a date so as to ensure that a report on the decision of the CoC is conveyed to the AA within a period of 20 days from today."

18 It was also held in paragraph No. 27 thereof as follows :

"27. In the exceptional circumstances of this case and for the purpose of effectuating one of the main objectives of the Code of insolvency resolution, we direct that the period from the passing of the order by the hon'ble National Company Law Appellate Tribunal on July 13, 2018 till today be excluded so as to give one month for the completion of the process directed in paragraph 22 above and for consequential action by the RP for submitting appropriate application before the AA. In case no such application is received within one month from today, the AA will consider appropriate suo motu action."

19 The successful resolution applicant, i. e., M/s. New Ram Traders was directed to submit its final revised resolution plan within 3 days from the date of order and the RP was directed to convene a meeting of the CoC for consideration of the final plan. Further, exclusion of time was also granted as discussed above.

20 By virtue of the aforesaid order, the successful resolution applicant vide e-mail dated September 19, 2019 submitted the final revised resolution plan dated January 25, 2018 along with amendment made on September 18, 2019 (annexure RP20). The CoC in its 16th meeting held on September 23, 2019 approved the revised resolution plan dated January 25, 2018 (along with the amendment dated September 18, 2019) submitted by New Ram Traders by 100 per cent. voting share in favour of it. A copy of the letter of intent dated September 23, 2019 stated to be issued to the successful resolution applicant is attached as annexure RP22.

21 It has been prayed in the application that the resolution plan dated January 25, 2018 and the amendment made on September 18, 2019 as submitted by M/s. New Ram Traders be approved.

22 Vide order dated January 30, 2020 learned counsel for the RP was directed to file a descriptive Form H, copy of RFRP and the minutes of the CoC thereto along with copy of the performance guarantee, details regarding fair and liquidation value. The same was filed by way of affidavit dated February 13, 2020 (Diary No. 1287, dated February 17, 2020) stating therein

that the liquidation value of the assets of the corporate debtor as on June 27, 2017 as computed by the valuers was Rs. 6,657.53 lakhs and the tentative liquidation value computed on March 15, 2019 (as per directions of the Adjudicating Authority (AA) dated March 28, 2019) was arrived at Rs. 5,826.29 lakhs. Details regarding both the liquidation values are stated to be attached as annexures A1 and A2 of the affidavit respectively. It is stated that performance guarantee to the tune of Rs. 1 crore in accordance with the process document issued by the resolution professional was submitted. Copy of the performance guarantee is stated to be enclosed as annexure A4. Detailed descriptive Form H was filed as annexure A5.

23 In compliance of the order dated January 30, 2020 affidavits of the CoC (Diary No. 1319, dated February 18, 2020) and the resolution applicant along with his two sons (Diary No. 1336, dated February 18, 2020) were filed. The CoC in its affidavit has stated that the cost of earlier resolution plan was about Rs. 59.95 crores which was far less than liquidation value of Rs. 66.57 crores whereas the total cost of present resolution plan is Rs. 64.33 crores which is much close to the liquidation value of Rs. 66.57 crores. It is also stated that the tentative liquidation value worked out as per order dated March 28, 2019 is Rs. 58.37 crores and therefore, the current resolution plan approved by the CoC is much above the tentative liquidation value.

24 In the affidavit of the resolution applicant, it is stated that clause 8.3 has been mistakenly and inadvertently mentioned in the main paragraph VIII at page No. 197 of Company Application No. 893 of 2019. It was deposed that there is no such clause 8.3 in Part VIII of the resolution plan as there is no requirement to constitute a monitoring committee since the interim monitoring committee will continue till the disbursement as per the approved resolution plan. Further, it is stated that the CIRP cost considered in the successful resolution plan is Rs. 10,50,00,000 which was estimated as on March 31, 2019 and thereafter, the CIRP cost has increased substantially. The resolution applicant has undertaken to provide additional fund over and above Rs. 64,33,31,000 to make payment of any increase in the CIRP cost from the amount mentioned in the approved plan till the date of approval of such plan by this Tribunal. It is stated that in the initial plan submitted by the resolution applicant, the total amount offered was Rs. 59,92,00,000 and that the amount offered in the successful resolution plan is Rs. 64,33,31,000 and therefore, after considering the increased CIRP cost from April 1, 2019 till the date of approval of the resolution plan by this Tribunal, the amount paid under the resolution plan shall exceed the liquidation value.

25 The RP has filed a compliance certificate in Form H (annexure 5, Diary No. 1287, dated February 17, 2020). It is certified by the RP in paragraph 4 of Form H that the resolution plan complies with all the provisions of the Code, CIRP Regulations and does not contravene any of the provisions of law for the time being in force and that the resolution plan stands duly approved by 100 per cent. of the voting share of the financial creditors. It is also stated in paragraph 4(ii) of Form H that the affidavit of the successful resolution applicant regarding its eligibility under section 29A of the Code is in order.

26 Learned counsel for the RP submitted that as per Form H (annexure 5, Diary No. 1287, dated February 17, 2020) all the provisions of the Code and the Regulations were complied with and that the approval of the resolution plan was made by 100 per cent. voting share of the financial creditors in the meeting of the CoC held on September 23, 2019 and therefore, the resolution plan submitted by M/s. New Ram Traders may be approved.

27 We have carefully considered the submissions of learned counsel for the RP and learned counsel for the resolution applicant and CoC and have also perused the record.

28 The corporate debtor was incorporated on January 12, 2006 and as discussed above, the CIRP proceedings were initiated by an order delivered on June 27, 2017. The present application is filed for approval of the resolution plan submitted by M/s. New Ram Traders. The approval has been sought under the provisions of section 31(1) of the Code.

29 We may first of all state that the final details of the financial creditors, the distribution of voting share among them and the position of voting for the resolution plan is as under (paragraph No. 5 of Form H-annexure 5, Diary No. 1287, dated February 17, 2020) :

Sl. No.	*Name of creditor*	*Voting share (%)*	*Voting for resolution plan (voted for/dissented/abstained)*
1.	Jammu and Kashmir Bank	Nil	NA
2.	Corporation Bank	Nil	NA
3.	Canara Bank	Nil	NA
4.	Allahabad Bank	Nil	NA
5.	Bank of Maharashtra	Nil	NA
6.	Andhra Bank	Nil	NA
7.	State Bank of India	100%	100%
8.	Phoenix ARC P. Ltd. (assignor United Bank of India)	Nil	NA

9.	Punjab and Sindh Bank	Nil	NA
10.	Punjab National Bank	Nil	NA
11.	Bank of India	Nil	NA
12.	Bank of Baroda	Nil	NA
13.	Axis Bank	Nil	NA

The details of stakeholders under the resolution plan given in paragraph 7 of Form H (annexure 5, Diary No. 1287, dated February 17, 2020) is as follows : **30**

(Amount in Rs. lakh)

Sl. No.	*Category of stakeholder**	*Amount claimed*	*Amount admitted*	*Amount provided under the plan#*	*Amount provided to the amount claimed (%)*
1.	Dissenting secured financial creditors	NA	NA	NA	NA
2.	Other secured financial creditor	16,568.13	16,480.56	5,150	31.24
3.	Dissenting unsecured financial creditors	NA	NA	NA	NA
4.	Other unsecured financial creditors (corporate guarantee holders-admitted by RP in compliance of the National Company Law Appellate Tribunal order dated 13-7-2018)	57,465	57,465	58	0.1
5.	Claim of related party without any voting rights and not a part of CoC	2,895.18	2,895.18	Nil	0
6.	Operational creditors	4,978.07	977.16	24.43	2.5
	Government/Statutory dues			Will be paid in full, if any amount was due as on 27-6-2017	
	Employees, wages and salaries	29.46	20.88	20.88	100
	Total			5,253.31	

Amount provided over time under the resolution plan and includes estimated value of non-cash components. It is not NPV.

31 The compliance of the resolution plan has been given in paragraph No. 9 of Form H (supra) as follows :

Section of the Code/ Regulation No.	*Requirement with respect to resolution plan*	*Clause of resolution plan*	*Compliance (Yes/No)*	*Page No.*
25(2)(h)	Whether the resolution applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD ?	Clause II	Yes	164-168
Section 29A	Whether the resolution applicant is eligible to submit resolution plan as per final list of resolution professional or order, if any, of the Adjudicating Authority ?	Yes	Yes	239-250
Section 30(1)	Whether the resolution applicant has submitted an affidavit stating that it is eligible ?	Yes	Yes	239-250
Section 30(2)	Whether the resolution plan :			
	(a) provides for the payment of insolvency resolution process costs ?	Clause 11.1	Yes	214
	(b) provides for the payment of the debts of operational creditors ?	Clause 11.4	Yes	215
	(c) provides for the management of the affairs of the corporate debtor ?	Clause VII	Yes	190-196
	(d) provides for the implementation and supervision of the resolution plan ?	Clause VIII	Yes	197-198
	(e) contravenes any of the provisions of the law for the time being in force ?	Clause IV (A)(e)	Yes	172
Section 30(4)	Whether the resolution plan :			
	(a) is feasible and viable, according to the CoC ?	Yes	Yes	258-265
	(b) has been approved by the CoC with 66% voting share ?			

Section 31(1)	Whether the resolution plan has provisions for its effective implementation plan, according to the CoC ?	Yes	Yes	197-198
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board ?	—	The RP has conducted a transaction audit and there were no transactions for reporting. However, the timeline of one hundred and fifteenth day is not applicable on this particular case.	
Regulation 38(1)	Whether the resolution plan identifies specific sources of funds that will be used to pay the— (a) insolvency resolution process costs ? (b) liquidation value due to operational creditors ? (c) liquidation value due to dissenting financial creditors ?	Clause XI	Yes	213-216
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders ?	Clause IX	Yes	176 & 199-207
Regulation 38(2)	Whether the resolution plan provides : (a) the term of the plan and its implementation schedule ? (b) for the management and control of the business of the corporate debtor during its term ? (c) adequate means for supervising its implementation ?	 Clause VIII Clause VII Clause VIII	 Yes	 197-198 190-196 197-198
38(3)	Whether the resolution plan demonstrates that— (a) it addresses the cause of default ?	 Clause 7.7.1	 Yes	 192-217

	(b) it is feasible and viable ? (c) it has provisions for its effective implementation ? (d) it has provisions for approvals required and the timeline for the same ? (e) the resolution applicant has the capability to implement the resolution plan ?	Annexure I Clause VIII No such approvals required clause II		 197-198 164
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him ?		No, as there were no such transactions which required reporting.	

32 Section 30(2)(b) as substituted by Act No. 26 of 2019 with effect from August 6, 2019 is as follows :

"(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53 ; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority ;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force ; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan ;"

33 It is observed that the total admitted claim due to the operational creditors is Rs. 977.16 lakhs. The liquidation value given in Form H is Rs. 66,57,53,000. However, the dues of the financial creditors are much more than this value. Therefore, nothing is payable to the operational creditors in the event of liquidation and the amount to be distributed between operational creditors in the event of liquidation, if distributed in order of priority in section 53(1) of the Code would be NIL. However, the RA proposes to offer 2.5 per cent. of the admitted amount (on pro rata basis) for payment against dues for the operational creditors and the said payment will be made to the operational creditors in priority over the payment to secured and unsecured financial creditors. Hence, the amount offered to operational creditors is Rs. 24.43 lakhs. Further, there are no dissenting financial creditors as the resolution plan has been approved by 100 per cent. voting share of the financial creditors.

34 The approval of the resolution plan has been sought under section 31(1) of the Code, reading as follows :

"(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan :

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."

35 The conditions provided for in section 31(1) of the Code for approval of resolution plan are therefore :

(a) The resolution plan is approved by the CoC under section 30(4) of the Code ;

(b) The resolution plan so approved meets the requirements as referred to in section 30(2) of the Code ;

(c) The resolution plan has provisions for its effective implementation.

The satisfaction of the conditions is discussed below.

36 It is submitted by the RP that the resolution plan has been approved by a vote of 100 per cent. of voting share of the financial creditor and therefore, the conditions provided for by section 30(4) of the Code are satisfied.

37 The provisions of section 30(2) of the Code are as follows :

"(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor ;

(b) section 30(2)(b) provisions have been extracted above and may be seen ;

(c) provides for the management of the affairs of the corporate debtor after approval of the resolution plan ;

(d) the implementation and supervision of the resolution plan ;

(e) does not contravene any of the provisions of the law for the time being in force ;

(f) confirms to such other requirements as may be specified by the Board."

38 The compliance of section 30(2) of the Code is given in paragraph No. 9 of Form H (supra). The same is being further examined as under :

Section 30(2)(a) : The resolution plan provides for the payment of Rs. 1,050 lakhs as CIRP cost (estimated till March 31, 2019) which will be first made in priority to all other creditors of the corporate debtor. It is also stated that the resolution applicant undertakes that any incremental CIRP cost till the date of approval of the plan by the AA will be paid in full and in priority before making any payments to other creditors.

Section 30(2)(b) : It is stated in Form H that the average liquidation value of the corporate debtor is Rs. 66,57,53,000. It is further stated that as the debts of financial creditors are higher than liquidation value as estimated by resolution applicant, there is no amount left as such for payment to operational creditors in the event of liquidation of the corporate debtor. The amount of dues of operational creditors as admitted by the RP is Rs. 977.16 lakhs. However, the RA proposes to offer 2.5 per cent. of the admitted amount (on pro rata basis) for payment against dues for

operational creditors and the said payment will be made to the operational creditors in priority over the payment to secured and unsecured financial creditors. Hence, the amount offered to operational creditors is Rs. 24.43 lakhs.

Further, it is stated in the resolution plan that the RA proposes to pay 0.1 per cent. of Rs. 574.65 crores (the total admitted claim of the corporate guarantee) i. e., Rs. 0.58 crore in full and final settlement within 30 days of the approval of the plan. The resolution plan provides payment of Rs. 20.88 lakhs towards 100 per cent. of dues of workmen.

Section 30(2)(c) and (d) : The resolution plan provides complete and detailed plan for management of the affairs of the corporate debtor (page 190 of the application). As per paragraph VII of the resolution plan and upon the AA approval, the corporate debtor will be managed by the interim monitoring committee (IMC) which will comprise of one person appointed by the financial creditor and one person appointed by RA. The tenure of the IMC will be for a maximum period of 90 days and will be dissolved on completion of payments made towards CIRP cost and towards different class of persons. Further, it is stated in the resolution plan that the RA will retain all the employees of the corporate debtor but the board of directors and key managerial personnel of the corporate debtor will be reconstituted and appointed. As mentioned in paragraph 7.2 of the plan, the board of directors of the resolution applicant will consist of Mr. Shirishkumar Ramkrishna Sonavane, Mr. Kunal Sonavane and Mr. Rohit Sonavane. It is also stated in paragraph 7.3 of the plan that Mr. Sanjeev Sinha will be the CEO of the CD.

Section 30(2)(e) : In Form H (supra) (paragraph No. 4), the RP has certified that the resolution plan complies with the provisions of the Code and Regulations and does not contravene any of the provisions of law for the time being in force.

We are now examining the compliance of the proviso to section 31(1) of **39**
the Code that the resolution plan has provisions for its effective implementation. The resolution plan states that upon the National Company Law Tribunal approval date, an interim monitoring committee will be constituted. The constitution of the committee is given in paragraph No. VIII of the plan. The terms of the plan and its implementation schedule is stated to be 90 days from the approval of the plan by the Adjudicating Authority. The RA will make full and final payment of Rs. 5,150 lakhs to secured financial creditor, i. e., SBI out of which Rs. 500 lakhs will be deposited at the end of 30 days from the approval of the resolution plan and the balance Rs. 4,650 lakhs will be paid in an escrow account within 90

days from the approval of the resolution plan. The payment of Rs. 24.43 lakhs to the operational creditors is proposed to be made in priority over secured and unsecured financial creditors. Payment of dues to workmen and employees is proposed to be made within 30 days of approval of resolution plan by the AA in the manner provided for in paragraph 11.2 of the resolution plan.

40 The sources of funds are stated to be infusion of Rs. 1,700 lakhs towards equity to be issued by the corporate debtor within 30 days of the approval of the resolution plan ; infusion of funds to the tune of Rs. 233 lakhs by way of loans from friends/relatives/associates ; and Rs. 4,500 lakhs as term loan from bank (Bharat Corporation Bank). Also, the resolution plan provides for Rs. 130 lakhs towards working capital requirement.

41 We have discussed above that the requirements under section 31(1) of the Code are satisfied in the present case. In paragraph No. 4 of Form H (supra) the RP has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The RP has also certified that the resolution applicant New Ram Traders has submitted affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The RP has submitted that the resolution plan has been approved by the CoC with 100 per cent. voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations. It has been held in paragraph 42 of *K. Sashidhar* v. *Indian Overseas Bank* (Civil Appeal No. 10673 of 2018, dated February 5, 2019) [2019] 213 Comp Cas 356 (SC), by the hon'ble Supreme Court, inter alia, that no corresponding provision has been envisaged by the Legislature to empower the resolution professional, the Adjudicating Authority (National Company Law Tribunal) or for that matter the Appellate Authority (National Company Law Appellate Tribunal), to reverse the "commercial decision" of the CoC. It was also held that whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority. In view of the above discussion, the decision taken by the financial creditors falls within the ambit of its commercial and banking wisdom and is therefore, not being interfered with.

42 We may add that in the case of *Maharashtra Seamless Ltd.* v. *Padmanabhan Venkatesh* [2020] 9 Comp Cas-OL 683 (SC), in Civil Appeal

No. 4242 of 2019, it has been held in paragraph 26 thereof that : "No provision in the Code or Regulations has been brought to our notice under which the bid of any resolution applicant has to match liquidation value arrived at in the manner provided in clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 . . .".

In view of the above discussion, the decision taken by the financial creditors falls within the ambit of its commercial and banking wisdom and is therefore, not being interfered with. **43**

We shall now discuss the requirements of regulation 39(4) of the Regulations. It can be observed that as per the terms of the process document dated December 12, 2017 issued by RP, a proposal performance guarantee (PPG) to the tune of Rs. 1,00,00,000 was submitted by the resolution applicant. Copy of the minutes wherein the request for the resolution plan was approved, a copy of the RFRP and the performance guarantee is attached as annexure 4 (colly) of affidavit filed vide Diary No. 1287, dated February 17, 2020. As per Amendment No. 3, dated November 19, 2019 the validity of the bank guarantee is presently May 16, 2020 and the claim expiry date is June 16, 2020. It is thereby submitted that the requirements of performance security under regulation 39(4) of the Regulations read with regulation 36B(4A) of the Regulations are complied with. **44**

On the basis of discussion made above and in view of the provisions of section 30(4) of the Code, we approve the resolution plan submitted by M/s. New Ram Traders as approved by the CoC. The resolution so approved shall be binding on the corporate debtor and its employees, members, creditors (including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed), guarantors and other stakeholders involved in the resolution plan. **45**

Under the provisions of section 31(3) of the Code, we also direct as under : **46**

(a) The moratorium order passed by the Adjudicating Authority under section 14 of the Code on June 27, 2017 shall cease to have effect ; and

(b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

C. A. No. 893 of 2019 is disposed of. **47**

Pronounced in the open court.

[2020] 221 Comp Cas 26 (NCLT)

[BEFORE THE NATIONAL COMPANY LAW TRIBUNAL — CHENNAI BENCH]

M. MUTHUKARUPPAN[1]

v.

MADRAS RACE CLUB

CH. MOHD. SHARIEF TARIQ *(Judicial Member)* and
ANIL KUMAR (B.) *(Technical Member)*

September 24, 2019.

HF ▸ Directions

ANNUAL GENERAL MEETING—MEETING NOT HELD SINCE CORRECT LIST OF MEMBERS NOT AUDITED—ENQUIRY CONDUCTED—REGISTER OF MEMBERS TO BE RECTIFIED BY REMOVING PERSONS ENTERED WITHOUT SUFFICIENT CAUSE—NOTICE TO BE GIVEN TO GENUINE MEMBERS—DIRECTIONS GIVEN—COMPANIES ACT, 2013, s. 97.

On a petition filed under section 97 of the Companies Act, 2013 read with rule 74 of the National Company Law Tribunal Rules, 2016 for calling of the annual general meeting for consideration of financial statements, appointment of members of the committee of management, appointment of statutory auditors :

Held, *that the respondent-club had defaulted in holding the annual general meetings as it had taken a decision to conduct an audit to determine the correct list of members, to whom the notice was to be issued for holding the annual general meetings. It was open to the club to rectify its register of members without seeking an order from the Tribunal provided the names of the persons claiming to be members had been entered into the register "without sufficient cause". The objectors had not complied with the basic requirements for becoming members of the club, and could not be treated as such on the basis of the bills, receipt of payments made towards the facilities enjoyed in the club, account statement held with the club, reminder letter sent for payment of bills, or the notices issued by the club. The objectors had no right to enjoy any of the facilities of the club and take part in the annual general meetings on extraneous pleas. The names of hundreds of persons had been entered in the register of members of the club "without sufficient cause" and their names needed to be removed from the register of members before any notice was issued to genuine members of the club for participation in the annual general meetings. The club was to rectify the register by removal of the names*

1. This order has been modified by the National Company Law Appellate Tribunal : see [2020] 221 Comp Cas 51 (NCLAT) *infra*.—Ed.

of 635 persons from the register of members of the club, within the time as prescribed under section 59(2), before issuance of the notice to the genuine members of the club for holding the annual general meetings. [Direction given to conduct annual general meetings for the years 2015-16, 2016-17, 2017-18 and 2018-19 within a period of two months from the date of the order].

Cases referred to :

Anantalakshmi Ammal (A.) *v.* Indian Trades and Investments Ltd. [1952] 22 Comp Cas 324 (Mad) (para 11)

Biva Pyne (Smt.) *v.* Pyne Properties P. Ltd. [2010] 153 Comp Cas 49 (CLB) (para 41)

Canara Bank *v.* Nuclear Power Corporation of India Ltd. [1995] 84 Comp Cas 70 (SC) (para 39)

Dwarakanath Reddy (D.) *v.* Chaitanya Bharathi Educational Society [2007] 6 SCC 130 (para 44)

Michaels *v.* Harley House (Marylebone) Ltd. Ch. [1996] M. 6178 (para 43)

Reese River Silver Mining Co. Ltd. *v.* Smith [1869] LR 4 HL 64 (para 43)

State of Jharkhand *v.* Ambay Cements [2004] 5 CTC 515 (SC) (para 39)

C. P. No. 31 of 2017 with C. A. No. 196 of 2017 with I. A. No. 244 of 2018.

AR. Raamanathan for the petitioner.

Shankaranarayanan, Senior Counsel for *Ms. Preeti Mohan* and *Ms. Pavitra Venkateswaran* for the respondent.

Dwarakesh Prabhakaran, K. Maheshwaran, K. Harishankar, C. Subramanian, Cibi Vishnu, Abhinav Parthasarathy, A. Malath Devapriyam, E. Veda Bagath Singh, J. Raja Rao, T. Mohan, R. Ravindra Ram and *R. Baskaran* for the noticees.

Subbiah in-person.

ORDER

The order of the Bench was delivered by

Ch. Mohd. Sharief Tariq ***(Judicial Member)***—Company Petition No. 31 of 2017 has been filed by the petitioner in his capacity as member of the respondent-company under section 97 of the Companies Act, 2013 read with rule 74 of the National Company Law Tribunal Rules, 2016. The petitioner has claimed to be a member of the respondent-company, viz., 1

Madras Race Club (MRC) (also referred as Club) since 1998, having membership number : CMM093.

Facts of the case :

2 The respondent-company was incorporated on October 13, 1922 under section 26 of the then Indian Companies Act, 1913, having its registered office at post box No. 2639, Race Course Road, Guindy, Chennai, Tamil Nadu-600 032.

3 As per the memorandum of association of the respondent-company, it is a non-profit making company and does not have any share capital. As per the master data of the company available on the website of the Ministry of Corporate Affairs, the company has 7,417 club members. It has been alleged that the respondent-company has not convened annual general meeting(s) as prescribed by the law.

Contentions of the petitioner :

4 The petitioner has submitted that as per the master data available on the website on the Ministry of Corporate Affairs (MCA), the last annual general meeting of MRC for the financial year 2014-15, was held on September 22, 2015. Pursuant to section 96 of the Act, the annual general meeting of MRC for the financial year 2015-16 ought to have been held on or before September 30, 2016 (i. e., within six months of the end of the financial year 2015-16 on March 31, 2016).

5 The petitioner has submitted that the respondent-company had applied to the Registrar of Companies, Chennai, for extension of time for holding of the annual general meeting for the financial year 2015-16. Based on the application submitted by the respondent-company, the Registrar of Companies extended the time for convening the annual general meeting till December 31, 2016. However, even the extended time granted by the Registrar of Companies has expired on December 31, 2016 and yet the respondent-company has not convened the annual general meeting of its members in accordance with section 96 of the Act. The petitioner has submitted that no further extension of time can be accorded by the Registrar of Companies for convening of annual general meeting of the respondent-company, under the provisions of the Act.

6 The petitioner has further submitted that failure by a company to convene its annual general meeting in accordance with the provisions of law, is prejudicial to the members of the company.

7 The petitioner has submitted that section 129 of the Act requires every company to place its financial statements for the financial year before the annual general meeting. The members of the company are required to

examine, approve and adopt the financial statements placed at the annual general meeting ; and in case of any objections, the members are entitled not to adopt the financial statements prepared by the company. The applicant has submitted that the respondent-company is a non-profit company and its income is nearly Rs. 100 crores per year. Hence, it is necessary for the members to know the manner in which the income has been spent.

8 The petitioner has further submitted that under section 137 of the Act there requires a copy of such financial statements, as adopted by the members of the company to be filed with the Registrar of Companies within 30 days of the date of the annual general meeting. Furthermore, important matters such as appointment of statutory auditors and election of members of the committee of management of the company are required to be transacted at the annual general meeting.

9 The petitioner has submitted that section 189 of the Act requires the company to place its register of contracts showing details of contracts executed by directors of the company in which such directors are interested, before the annual general meeting for inspection by members of the company. The above rights enable the members of respondent-company to reassure themselves of the continuing financial well-being of the company and keep a check on the affairs of company and its management.

10 The petitioner has submitted that failure by a company to convene its annual general meeting is also an offence punishable under law. The continuing refusal of MRC to convene the annual general meeting has raised serious concerns over the corporate governance and financial well-being of MRC. Furthermore, it reveals steadfast refusal of the incumbent management to comply with the provisions of the Companies Act, 2013.

11 The petitioner has submitted that section 97 of the Act states that if any default is made in holding the annual general meeting of a company under section 96 of the Act, the National Company Law Tribunal may, notwithstanding anything contained in the Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient. Besides this, the petitioner has submitted that the committee of member of the club consist of sixteen members, out of which four are ex officio members nominated by the Government, who are high ranking officials and twelve are elected members. As per article 27 of the articles of association of the club, at the ordinary meeting in every year one third of the elected member of the committee of the management or, if their number is not three or a multiple of three then the number nearest to one third shall retire from office. In

view of this, as per the submissions of the petitioner, 12 elected members should have retired and the present committee of the club had become functus officio. Counsel for the petitioner has relied upon the ruling of the hon'ble High Court of Madras given in *A. Anantalakshmi Ammal* v. *Indian Trades and Investments Ltd.* reported in [1952] 22 Comp Cas 324 (Mad) ; AIR 1953 Mad 467. On the issue raised by the petitioner, the respondent/ club has given plausible explanation in their reply, which is noted under paragraph No. 23 hereinbelow.

12 Having stated as above, the petitioners have prayed as follows :

(i) That directions be issued by the hon'ble Tribunal for calling of the annual general meeting of MRC in accordance with section 97 of the Companies Act, 2013, for consideration of financial statements, appointment of members of the committee of management, appointment of statutory auditors and other matters as required in terms of the Act and the articles of association of MRC ; and

(ii) That any other ancillary or consequential directions be made as the hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case.

Counter filed by the respondent/MRC :

13 The respondent-company has filed counter stating that the respondent-company has two categories of members, namely, (i) stand members ; and (ii) club members. In terms of article 52 of the articles of the club, it is only the club members who can vote at an annual general meeting of the club.

14 The respondent has submitted that, in the year 2016, it came to their notice that there were several irregularities and discrepancies in the membership database of the club. Therefore, they solicited the services of M/s. Brahmayya and Co., chartered accountants to carry out a special audit, whose report would disclose the facts necessary to determine the real status of membership of the club, and the list of persons who had been validly inducted and validly continue as members. This would be particularly relevant to determine the list of persons who would be entitled to receive notice of an annual general meeting, attend the same and vote thereat.

15 The respondent has submitted the last annual general meeting of the club was held on September 22, 2015 and in terms of section 96(1), the respondent was required to hold its annual general meeting on or before September 30, 2016. But in the background of the audit exercise which had commenced, but not been completed, the club through its officer addressed the Registrar of Companies and sought for an extension of time in terms of the proviso to section 96(1) to hold the annual general meeting,

which was considered by the Registrar of Companies and vide a letter dated September 1, 2016 the Registrar of Companies extended time, and permitted the club to hold its annual general meeting on or before December 31, 2016.

16 The respondent submitted that the committee bona fide believed that the exercise of the investigation and special audit would be completed well within time, and would enable the club to determine its list of genuine members and hold its annual general meeting within the extended time permitted by the Registrar of Companies. However, the club received from M/s. Brahmayya and Co., a letter dated December 1, 2016 stating that the exercise undertaken by them would take some more time to be completed. They sought for more time to complete their assignment while expressing their difficulty in quantifying the number of days required.

17 The respondent further submitted that in view of the letter received from Brahmayya and Co., the committee of the club held a meeting on December 2, 2016. At this meeting, the committee resolved that they were unable to fix the date for the annual general meeting, given the circumstances and the extension of time sought for by Brahmayya and Co.

18 The respondent has submitted that since the respondent-club was not in a position to conduct the annual general meeting, as the determination of the list of members entitled to attend the same and exercise their vote, would depend on the outcome of the special audit, they approached the hon'ble High Court of Madras, vide C. S. No. 972 of 2016. In the suit, the final reliefs sought for include, inter alia a decree :

> "(a) Declaring that the plaintiff club is entitled to hold its annual general meeting for the present year after the report of the special audit becomes available to the club ;
>
> (b) Consequently issuing appropriate directions for the calling and holding of the annual general meeting of the plaintiff club, pursuant to the report of the special audit."

19 The hon'ble High Court granted interim injunction restraining the Registrar of Companies, from treating the non-holding of the annual general meeting, as a default and taking any steps against the club and/or its officials in this regard. The respondent has contended that as seen from this position, the very issue of the holding of the annual general meeting of the respondent is the subject-matter of the suit before the High Court.

20 The respondent has submitted that the audit report was compiled and submitted to the respondent club sometime in January 2017, during the pendency of proceedings before the hon'ble High Court of Madras. The summary of the findings of the report is as below :

"(a) The report noted that there were 6 procedures to be followed for a person to be inducted to membership, which the auditors had examined compliance of. These included :

(i) availability of application forms ; (ii) name on the member's list for election ; (iii) election by more than 7 members in a ballot ; (iv) name in the declaration letter signed by the additional secretary ; (v) receipt of entrance fee ; and (vi) letter to Guindy Lodge from Members' section.

(b) The report classified the non-compliances into 3 categories : (i) those who had fully complied with all procedures ; (ii) those who had complied in part, with one or more of the procedures ; and (iii) those who had not complied with any of the procedures.

(c) The report found that out of a total of 924 persons, who had purported to become club Members during the period 2000-15, a mere 53 were found to have complied with all procedures. Shockingly, a total of 277 persons were identified as those who had not complied with any of the procedures. A total of 594 members have been identified as people who have partly complied with the procedures set out, in varying combinations. In this regard, it is relevant to note that a mere 285 members out of the total of 924 members, have paid the entrance fee for the purpose of being admitted to the membership of the club. A mere 281 out of the total are persons who have signed and filed an application form for admission to membership.

(d) The report also sets out data by dividing the categories of members into those who are 'active' and those who are 'temporarily suspended', i. e., persons whose usage has been suspended pursuant to their defaults in payment of subscription and charges, and following their being posted in terms of the articles."

21 The respondent/MRC has submitted that it had made a submission before the hon'ble High Court that a person of repute, integrity and high standing such as a retired judge of the hon'ble court could, if the court thinks fit, be appointed to examine the findings contained in the report, and supervise the entire process of conduct of the annual general meeting. This was however, seriously opposed by a third party who sought to intervene in the said proceedings, claiming to be a member.

22 The respondent/MRC has contended that non-holding of the annual general meeting by a company is "prejudicial" to the members, is without basis or substance in the facts of the present case. The annual general meeting has not been held for valid and genuine reasons. In fact, it is the holding of an annual general meeting, without determining the list of

genuine members, who would be entitled to attend the same, that would be contrary to the interest of members, and prejudicial to them. If the petitioner is a member genuinely concerned with the welfare of the club, he would support the club's decision to conduct an audit, and also await the determination of the correct list of members. With regard to the requirements of section 129 of the Act, to place the financial statements at the annual general meeting, obviously this will be fulfilled at the time the annual general meeting is convened and held. It is however relevant to point out that the accounts have been duly audited, approved, adopted and filed with the Registrar of Companies.

23 The respondent/MRC has submitted that as per section 152 of the Act, only two-third of the members thereof who will be liable to retire by rotation, only one-third of the two-third will in fact retire, and that too, only at the time of holding of the annual general meeting. Consequently, there is presently a valid and legal committee in place, which comprises 4 Government nominees, who are high ranking officials. This is apart from the others, who are all pre-eminent persons of repute from various sections of society. There is therefore a credible and strong Committee that is more than sufficient to ensure compliances, as also the interest of the club. In fact, it is this Committee which took the decision of cleaning up the membership base, in the interest of the club. The respondent has further submitted that the petitioner while referring to section 189(4), deliberately failed to refer section 189(3) in terms of which the register is kept at the registered office, and is open to inspection within the framework thereof by members. The respondent has submitted that if the petitioner had genuinely been interested, he could have taken recourse to such right.

24 The respondent has submitted that the reference to concern on corporate governance and financial well-being are completely without basis, made causally and without an ounce of substantiation or evidence. The respondent contended that there is no default whatsoever in the present case, therefore, the question of section 97 being invoked, does not arise.

Proceedings before the National Company Law Tribunal :

25 It is noted that this Tribunal vide order dated May 25, 2017 had directed the respondent/MRC to issue a fresh notice to all 924 members mentioned in the audit report of the independent auditor and clear 15 days' time was provided for filing their response along with the documents as proof of membership. On August 4, 2017 the respondent has filed a memo stating that while 924 is the total number of persons, whose membership status had been examined by the independent auditor, out of this, 53 persons had been found to have complied with all procedures, and consequently the

issue of notices to them would not arise. Out of the balance 871 persons, notice was being issued to those persons reflected in the audit report, into two categories, i. e., (i) Not having submitted an application form to be admitted to membership ; (ii) Not having paid the requisite entrance fees. In fact, notice had been issued individually to 640 persons whose names featured against one or both these categories in the report of the auditor. Out of total 640 noticees, only 320 persons responded thereto.

26 The respondent/MRC has placed on record the replies received and suggested that there is a requirement of an independent person to scrutinise the records and to decide the issue in relation to the genuineness of members. This Tribunal on August 29, 2017 appointed the hon'ble justice (Retd.) Mr. K. P. Sivasubramaniam to determine the genuineness of membership of the club and enlist the members whose names could find place in the register of members for the purpose of giving notice for annual general meeting. On November 15, 2017 the retired hon'ble justice Mr. K. P. Sivasubrarnaniam submitted his report. Paragraph 17 of the report deals with the availability of the records and the same is extracted below for the sake of convenience :

> "17. I have also been furnished with a volume of entry of fees/ receipts, annexed herewith as volume No. I, which contains all the details of the payments made by the members towards EF which is ledger extract. That has been the basis of the scrutiny by the ICA as well as other related accounts. The ICA have given a very detailed and thorough analysis of the related accounts and their report is very extensive covering all possible manner of checking and cross checking of accounts in the matter of payment of EF. Volume I (entry of fees/ receipts) does not contain statement of accounts relating to the accounts of individual members after becoming a member such as in relation to the annual subscription paid by them and payment towards charges payable to the club for the utilization of the facilities of the club. There is a facility of a lodge, a restaurant and other facilities at Guindy Lodge which is part of the club and the actual expenses incurred by the individual member in utilizing the facility are separately accounted as well as payment of the annual subscription. The scope of this enquiry does not concern them and it is restricted to the payment of EF alone and the accounts/details furnished under Volume I are exhaustive and no part of it is missing nor can be described as incomplete."

Paragraph 27 of the report says that mandatory process had not been followed properly after 2012. The paragraph is extracted below for the sake of convenience : **27**

> "27. Perusal of the records shows that these mandatory processes had not been followed properly after 2012 from when no election had been conducted at all. This is also an issue which will have effect on the enrolment of member. Though the requirements are mandatory, when it comes to the question of disqualifying a member it has to be seen whether the mistake was due to him or of the club not following the procedure. When once the member has filed his application and has been called upon to remit the entrance fee and the subscription and if the same is complied with, the member cannot be faulted if the club had not complied with the procedure of election as specified under clauses 6 to 12. Though this circumstance may become relevant for a particular issue as would be discussed below, non-compliance of the procedure of election/balloting (by the office of the club) alone cannot result in disqualifying a member, if he had properly paid the EF and subscription."

The conclusion of the report submitted by the hon'ble justice Mr. K. P. Sivasubramaniam is as follows : **28**

> "49. A club is an association of willing persons and entry as a Member is not on the basis of any right but subject to the member satisfying the requirements of the association such as undergoing a process of election, payment of entrance, subscription fee, etc., it is for the club to decide whether a person is desirable and fit to be enrolled as a fellow member which is decided in the process of election. Mere long usage of the club cannot vest any adverse rights against the club when the entry itself is void. It is true that such a large scale irregularity involving 635 members would not have been possible without the knowledge of the higher authorities of the club. However, the scope of this enquiry is not to be equated to a police complaint or investigation to find out who are all responsible for this unpleasant episode which would include the beneficiaries (members) also who had become members contrary to the rules of the association. Nor am I assigned to find out who are those persons. The enquiry is limited to the fact situation as to whether the enrolment of the concerned members was in accordance with the Rules of the Association. As pointed out above, 635 members (annexure No. 14) have not complied with the basic mandatory requirement of the election process and the payment of entrance fee. It may also be of some relevance to note that

notice to 640 members evoked response only from 50 per cent. of them. For the second notice to the said 50 per cent. for oral enquiry, only 75 members responded some of them by representatives. Many who had appeared in the enquiry fumbled and contradicted themselves and admitted not paying EF. It is true that a small number of them may not have received the notices for whatever reason. For which they have to blame themselves and some may not have been in town on the dates of enquiry. But they were entitled to reply in writing. However, the numerical statistics of the response do not inspire confidence in their defence.

50. As regards their entitlement to continue or not as members in the background of the above facts and whether they are entitled to take part in the annual general meeting, are all matters for the National Company Law Tribunal or any court where any proceeding may be pending, to decide."

Response of the respondent/MRC to the report submitted by the hon'ble justice (Retd.) Mr. K. P. Sivasubramaniam :

29 In response to the report of the hon'ble justice Mr. K. P. Sivasubramaniam, the respondent has filed an affidavit stating therein that both the independent audit as well as the process carried out by the learned judge has come to the conclusion that these 635 persons are clearly in default and have been enjoying the club's facilities merely on the strength of a membership number, without even satisfying the basic requirement of payment of entrance fees. The respondent has submitted that these persons cannot in any event, be treated as members for the purpose of issue of notices for the annual general meeting, or for any other purpose.

30 The respondent has further submitted that while re-examining its records, in the background of the process that was being undertaken by the learned judge, it has been also discovered that in addition to the persons covered in the report of the independent auditor, there are 21 other persons who are also in default of payment of entrance fees for admission, and in respect of whom, no entries of any payment whatsoever have been found in the ledgers maintained by the club. It is submitted by the respondent that such persons have also been posted for non-payment of their monthly usage bills, in terms of article 22 of the article of the club.

31 On December 13, 2017 this Tribunal ordered to convene the annual general meeting of the respondent-company and appointed Mr. R. Ramakrishnan as chairman of the annual general meeting and the hon'ble justice Mr. K. P. Sivasubramaniam as independent observer. In the meantime, the order dated December 13, 2017 was challenged before the hon'ble

National Company Law Appellate Tribunal. The hon'ble National Company Law Appellate Tribunal vide its order dated April 3, 2018 has set aside the order passed by this Tribunal. The relevant portion of order of the National Company Law Appellate Tribunal is extracted below :

> "5. It is a settled law that the court or the Tribunal cannot pass an interim order, which amounts to grant of final relief without deciding the main case on the merit. In this case as the interim order dated December 13, 2017 passed by Tribunal amounts to grant of final relief, we set aside the said order. In the effect all consequential order(s) passed by the Tribunal are declared illegal.
>
> 6. The case is remitted to the Tribunal to decide the case on merit after notice to the parties who may be affected. If the report submitted by the hon'ble retired judge of the Madras High Court is accepted, in such case the persons, who have been shown to have not complied with the requirements and if are debarred from taking part in the annual general meeting be given notice if necessary by paper publication. The appeal stands disposed of with aforesaid observations and directions. No costs."

Based on the direction of the hon'ble National Company Law Appellate **32**
Tribunal, this Tribunal vide order dated March 13, 2018 directed the respondent/MRC to issue private notice to the affected persons and cause paper publications. Further, this authority vide its order dated August 30, 2018 directed counsels appearing on behalf of objectors to file vakalath along with the lists of the members giving details thereof and objections, if any. Pursuant to the direction, the followings counsels filed vakalath and objections :

Sl. No.	*Name of counsels*	*No. of objectors*
1.	J. Raja Rao	73
2.	E. Veda Bagath Singh	41
3.	D. Prabhakaran	27
4.	CIBI Vishnu	17
5.	R. Baskaran	14
6.	Shree Law Service	2
7.	A. Parthasarathy	2
8.	Malath Devapriyan	1
9.	R. Ravindra Ram	1
10.	Subbiah-CMS-189 (in person)	1
	Total	179

33 A total number of 179 intervenors/objectors in response to the notice issued have filed their objections. It is seen that pertinently, all of these have uniformly adopted one of the various stands. The summary of objections raised by the objectors and replies thereto given by the respondent/ MRC are as follows :

(i) The intervenors' state that they hold membership card and their names are there in the list of members that has been filed with the MCA in annual return Form MGT-7 on November 27, 2017.

(ii) Learned senior counsel for the respondent has submitted that MRC discovered that various club members enrolled after the year 2000, despite holding membership cards and enjoying facility for years, are not valid and lawful members. Therefore, the intervenors' attempt to rely on their membership card to prove compliance with the admission requirements is of no avail or effect, as several persons while not being admitted to membership, have been carrying such cards, and purporting to use the facilities of the club.

(ii) The intervenors' state that they have paid the entrance fee (EF) by cash.

(iv) Learned senior counsel for the respondent has that the submitted intervenors have not produced a single document that shows the payment of EF, including, inter alia, any of the documents that were by way of illustration listed by the hon'ble justice Mr. K. P. Sivasubramaniam in his report or sought for by the club in its first notice sent on August 1, 2017. The respondent has further submitted that there is a bald assertion that the EF was paid by cash, evidently because such persons are not in a position to provide any evidence of payment of EF. Notably, the intervenors have not provided any further details about such cash payment as claimed, such as, the person to whom the payment was made, under what circumstances and on what date. The respondent has further submitted that there is no proof of having complied with the membership requirements and validly receiving club membership.

(v) The intervenors' claim that their names are included in the register of members and returns filed by the club.

(vi) Learned senior counsel for the respondent has submitted that owing to the pendency of the issue relating to the validity of membership of its club Members database, before the courts and this hon'ble Tribunal, MRC is not in a position to take any action to rectify or update the statutory fillings and returns. The intervenors cannot rely on these provisional fillings to prove compliance with admission requirements.

(vii) The intervenors' claim that they have been enjoying the benefits of club for years. The club is therefore legally stopped from cancelling their membership at this stage.

(viii) Learned senior counsel for the respondent has contended that no legal estoppel will operate against MRC. The MRC as well as the members are bound by the articles of association of the club. Since the intervenors have not demonstrated their compliance with these articles, MRC is legally bound to take action, and cannot be bound by any principle of estoppel in this regard.

(ix) The intervenors' claim that they cannot be removed as members except as provided under the articles of association/bye-laws.

(x) Learned senior counsel for the respondent has submitted that when the intervenors did not even lawfully become members of MRC as per its articles of association and memorandum of association in the first place, the question of removing them as provided under the articles of association/bye-laws does not arise. The intervenors cannot be seen to rely on provisions of articles of association to argue that the present proceeding is unlawful, when they did not comply with its provisions to begin with.

(xi) The intervenors' state that there is no provision under the Companies Act for expelling member after having admitted such membership in statutory filings.

(xii) Learned senior counsel for the respondent has submitted that the intervenors' so called membership is not legal since inception. Thus, the treatment given to the intervenors, or their recognition in statutory filings is irrelevant. The MRC and its members are bound by the provisions of the articles of association/memorandum of association and the Companies Act ; and only those persons who have shown to have validly become members by following procedure laid down in the articles of association and memorandum of association can be said to be members.

(xiii) Intervenors' claim that choosing the year 2001 for regularizing membership is arbitrary and EF cannot be the yardstick to determine membership.

(xiv) Learned senior counsel for the respondent has submitted that the period starting from 2001 is not an arbitrary criterion to assess the validity of club membership. On a preliminary examination, it was found that a large part of the irregularities in club membership arose during this period, which is the reason it was chosen. Further, the reports prepared by Brahmayya and Co., and the hon'ble justice Mr. K. P. Sivasubramaniain reinforce this position. Bhrammaya's report states that the total number of

club members stands at 1,245 members. Out of which 924 were inducted allegedly between 2000 and 2015.

(xv) Further, learned senior counsel for the respondent has submitted that EF is a fundamental criterion to determine if a person acquired membership lawfully. This criterion cannot be dismissed simply because a member is finding it difficult to advance evidence on this aspect. This is the basic criteria across institutions and bodies that accept members.

(xvi) Intervenors' claim that the present action of MRC is barred by limitation.

(xvii) Learned senior counsel for the respondent has submitted that MRC is not making any claim or instituting proceedings, therefore there is no question of limitation applying. Independent of this, when these persons have not validly become members in the first place, the question of any action being barred by limitation, does not even arise.

(xviii) Intervenors' claim that the members cannot be removed from the rolls merely because MRC is not in a position to find documents relating to their membership.

(xix) Learned senior counsel for the respondent has submitted that the report of the hon'ble justice K. P. Sivasubramaniam clearly finds that the records of the club are complete, and provides an opportunity for persons to establish their claim to membership by providing relevant documents such as copy of application for membership, and proof of payment of EF. MRC has discharged its burden of proof by showing that there is no record of payment of the EF. Now, the onus is on the intervenor to prove that they complied with the club membership requirements at the relevant time.

(xx) Intervenors' claim that members admitted after 2012 have been allowed to participate in annual general meetings although their admission itself may be improper as commented by the hon'ble justice Sivasubramaniam.

(xxi) Learned senior counsel for the respondent has submitted that the intervenors while referring to paragraph 27 of the hon'ble justice K. P. Sivasubramaniam's report have clearly misquoted and misrepresented its contents. The report states that the mandatory process that ought to be followed by the club for inducting club members may not have been done properly after year 2012. However, the validity of the membership has been assessed by the hon'ble justice Sivasubramaniarn only on the parameters that they ought to have complied with and were responsible for. No member has been judged on the basis of the formalities the club was supposed

to comply with. Therefore, it is incorrect to state that the members who have been improperly admitted after 2012 have been allowed to participate in annual general meetings.

(xxii) Intervenors' state that the hon'ble justice K. P. Sivasubramaniam did not conduct independent investigation but relied on Brahmayya's report.

(xxiii) Learned senior counsel for the respondent has submitted that Brahmayya is a highly reputed independent accounting firm which was enlisted to carry out the audit of the members. Based on an independent and detailed review of all relevant records they came out with a comprehensive report. Although the said report alone could have been relied upon to take further action, MRC agreed to the suggestion that fell from this hon'ble Bench for the appointment of a Commissioner to further review the case and afford the affected parties an opportunity to present their case. Even, after being given multiple opportunities to submit relevant documents and present their case, the intervenors have been unsuccessful in establishing the validity of their membership.

(xxiv) Intervenors state that no opportunity to present case given and members terminated based on the hon'ble justice K. P. Sivasubramaniam's report.

(xxv) Learned senior counsel for the respondent has submitted that it is not true that opportunity to represent their case was not given to the intervenors. All the members were served a notice to produce the relevant documents to prove the validity of their membership and that too twice. This was succeeded by a personal hearing that was organised by the hon'ble justice Sivasubramaniam.

(xxvi) Intervenors state that the National Company Law Tribunal is not empowered to hold that certain members are not entitled to participate in the annual general meeting under section 97 of the Companies Act, 2013, investigate unconnected issue or appoint the hon'ble justice Sivasubramaniarn to determine rights of members.

(xxvii) Learned senior counsel for the respondent has submitted that the National Company Law Tribunal is bound by the remand order of the National Company Law Appellate Tribunal, and it is not open to the intervenors who have appeared before this Tribunal pursuant to the saine, to seek to either contend contrary to the remand order, or beyond its ambit. The respondent has further submitted that if it is the intervenor's case that the enquiry into the correctness of the membership and the appointment of a commissioner are outside the scope of the present proceedings, they are free to initiate separate proceedings of their own.

(xxviii) Intervenors' state that the term of all the 12 elected members of management committee has expired and therefore this scrutiny, and any other action taken by the management is illegal.

(xxix) Learned senior counsel for the respondent has submitted that management committee is validly constituted and operating. The requirement of retirement of directors by rotation would not arise in the light of the interim relief granted by the High Court of Madras and the pendency of the issue of holding annual general meetings for successive years before this hon'ble Tribunal. In any event, it is not the present management committee which has arrived at its own findings of the validity of membership of various persons, but in fact the conclusion of a special audit, coupled with an enquiry carried out at the directions of the National Company Law Tribunal and by the National Company Law Tribunal having appointed the Commissioner-hon'ble justice Mr. K. P. Sivasubramaniam.

(xxx) Intervenors' state that the letter issued by MRC on January 18, 2018 does not survive because of the orders of the National Company Law Appellate Tribunal. Since the noticees have been using the MRC facilities for several years and because of the letter dated January 18, 2019 having no effect, the noticees should be allowed to use the MRC facilities until the petition is finally decided.

(xxxi) Learned senior counsel for the respondent has submitted that the intervenors have not made out prima facie case for the grant of any interim relief in respect of enjoying the club membership/facilities. Ex facie these persons have been using membership without complying with any of the requirements, and knowingly so. In light of such wilful violation of requirements set out in the articles of association/memorandum of association, the intervenors are not entitled to any interim relief.

(xxxii) One of the intervenor claims to have paid EF of INR 75,000 towards stand membership by cheque No. 022016 drawn on Andhra Bank, Chennai on March 8, 2000. He claims to have been issued club membership during 2015 as he had been a long standing member. There is no mention of any amounts being paid for this upgrade.

(xxxiii) Learned senior counsel for the respondent has submitted that payment of EF at the time of receiving stand membership is irrelevant in proving the validity of club membership. While being upgraded to club membership, every member is required to pay the difference in EF between stand and club membership. This intervenor has provided no proof of having validly acquired club membership.

(xxxiv) Some of the intervenors have produced the bills, receipt of payments made towards the facilities enjoyed in the club, account

statement held with the club, reminder letter sent for payment of bills, the notices issued by MRC after the commencement of the National Company Law Tribunal proceedings and responses sent to it and other general correspondence sent by MRC.

(xxxv) Learned senior counsel for the respondent has submitted that the judicial enquiry conducted by the hon'ble justice K. P. Sivasubramaniam is based on the criteria that the parties be given an opportunity to substantiate with records their claims of payment of EF. The respondent has submitted that it is pertinent to note that the intervenors, despite making assertions, have not, till date, been able to provide a single shred of evidence of proof of payment.

34 During the pendency of the main company petition, the respondent/ Madras Race Club has filed C. A. No. 196 of 2017, seeking appropriate directions with respect to the convening and holding of the annual general meeting, for the year 2016-17 and I. A. No. 244 of 2018, seeking appropriate directions with respect to the convening and holding of the annual general meeting, for the year 2017-18. Therefore, C. P. No. 31 of 2017, C. A. No. 196 of 2017 and I. A. No. 244 of 2018 wherein a direction to respondent/MRC for convening and holding the annual general meetings for the years 2015-16, 2016-17 and 2017-18 is sought, are taken together for passing a common order. It is noted that annual general meeting of respondent/MRC is also due for the year 2018-19.

35 Further, five objectors have also filed an application No. M. A. No. 292 of 2018 with the prayer to permit the applicants to use the facilities at Madras Race Club as hitherto enjoyed by them prior to January 18, 2018 pending decision of the eligibility of the applicants to take part in annual general meeting to be decided by this hon'ble Tribunal. They also prayed to implead them in the main company petition in the light of the order dated April 3, 2018 passed by the hon'ble Appellate Tribunal. This Tribunal vide order dated September 12, 2019 has allowed prayer (b) made in M. A. No. 292 of 2018 and arrayed the applicants as the respondents in C. P. No. 31 of 2017. However, the other prayers made in the MA were declined.

36 It is noted that the respondent/MRC has appointed Brahmayya and Co., for conducting audit and submitting the report pertaining to the persons 924 in numbers, who have not complied with the procedure prescribed under the articles of association for being enrolled as member of the club. The report filed by the auditor confirmed that out of 924 persons, only 285 persons have complied with the requirements in proper manner to become the members of the club, and 639 have not complied with the basic requirement of payment of the EF. Thereafter, one more individual Mr.

Mavila Narayanan Nambiar was not found to have complied with the requirements, as he paid only part of fixed EF. By keeping the same in view, 640 members including Mr. Mavila Narayanan Nambiar were given notice on August 1, 2017 to furnish the documents as follows :

(i) Copy of the application form submitted to the club while becoming a member ;

(ii) Official receipt from the MRC acknowledging the money paid for the entrance fees ; and

(iii) Official letter received from MRC acknowledging and confirming the membership.

Out of 640 members, about 320 have sent their respective replies within the stipulated time limit. Thereafter, through an independent person, viz., the hon'ble justice Mr. K. P. Sivasubramaniam, who was appointed by this Tribunal, as mentioned in the preceding paragraphs, an inquiry has been conducted after issuance of the notice to the affected persons, who have already submitted their replies to the club, and found four of them to have complied with the requirements, whose names are stated as below :

1. Mr. Ashwaini Kumar Kamdar (CMA 100)
2. Mr. Bharath Kumar Kamdar (CMB 005)
3. Mr. Harish Vasanji (CMH 014)
4. Mr. Sarath Vasanji (CMS 183)

37 Besides the above, Mr. Mavila Narayanan Nambiar (CMM 110) has clarified that balance of sum of Rs. 25,000 had already been paid in the name of his friend Mr. Josh Methews, who was an erstwhile member and the amount stood transferred in his favour. Consequently, five members were found to have completed the requirements to become the members of the club and the remaining 635 members were found to have not complied with the basic mandatory requirements for becoming members, whose names are found in annexure 14 to the report of the hon'ble justice K. P. Sivasubramaniam.

38 As mentioned in the preceding paragraphs, this Tribunal in the light of the direction of the hon'ble National Company Law Appellate Tribunal has directed the respondent/MRC to send individual notices to the affected persons claiming to be the members of the club and to publish the notice in the newspapers. The respondent/MRC has complied with the directions given and pursuant to that, 179 person filed objections either by himself or through their counsels. Their objections have been considered along with the replies given by the respondent/MRC. However, none of the intervenors/objectors has brought on record any admissible documentary

evidence to substantiate his claim for having become the member of the club by satisfying the mandatory requirements including payment of entrance fees. Therefore, for the reasons stated above, the report that has been filed by the hon'ble justice Mr. K. P. Sivasubramaniam is accepted.

It is further noted that counsels for the objectors have, inter alia, raised **39** the issue that the names of their clients are mentioned in the register of the club. Therefore, the respondent/MRC cannot rectify the register of members without taking recourse to the provision of section 59 of the Companies Act, 2013 which provides that if the name of any person "without sufficient cause" is entered into register of its members, the company may file appeal in such form as prescribed, to the Tribunal for seeking an order for rectification of the register. In support of the their submissions counsels for intervenors'/objectors have adopted the arguments of Mr. Cibi Vishnu (advocate), who has referred to the ruling of the apex court given in *Canara Bank* v. *Nuclear Power Corporation of India Ltd.* [1995] 84 Comp Cas 70 (SC) ; [1995] (Supp) 3 SCC 81. The relevant paragraph of which is extracted as below (page 95 of 84 Comp Cas) :

> "Now, under section 111 of the Companies Act as amended with effect from May 31, 1991 the Company Law Board performs the functions that were theretofore performed by courts of civil judicature under section 155. It is *empowered to make orders directing rectification of the company register*, as to damages, costs and incidental and consequential orders. It may decide any question relating to the title of any person who is a party before it to have his name entered upon the company's register, and any question which is necessary or expedient to decide. It may make interim orders." (emphasis[1] supplied)

Besides above, learned counsel Mr. Cibi Vishnu has relied upon the judgment of the Supreme Court given in *State of Jharkhand* v. *Ambay Cements* [2004] 5 CTC 515 (SC). The relevant paragraph of which is extracted as below :

> 27. Whenever the statute prescribes that a particular act is done in a particular manner and also lays down that failure to comply with the said requirement leads to serve consequences, such requirement would be mandatory. It is the cardinal rule of the interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is *penal* in character, it *must be strictly construed* and followed. Since the

1. Here printed in italics.

requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance of the same must result in cancelling the concession made in favour of the grantee the respondent herein." (emphasis[1] supplied)

The ratio laid down in *Canara Bank* v. *Nuclear Power Corporation of India Ltd.* [1995] 84 Comp Cas 70 (SC) ; [1995] (Supp) 3 SCC 81 is an admitted legal position. However, a reference to *State of Jharkhand* v. *Ambay Cements* [2004] 5 CTC 515 (SC) is misplaced, because in the said case the hon'ble apex court was dealing with the exemptions provided under taxing statute and it was held that taxing statute should be construed strictly. But in the case on hand this Tribunal is not dealing with taxing statute. Therefore, reference to the above case is not helpful to the intervenors'/objectors. Since a reference is made to the provisions of section 59 of the Companies Act. Therefore, for the sake of convenience the provisions of sub-sections (1) and (2) of section 59 are extracted below :

"59. *Rectification of register of members.*—(1) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

(2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved."

40 In the light of the above, the legal issue that arises for the consideration of this Tribunal is as follows :

"Whether the respondent/MRC is legally entitled to remove the names of the members, from the register of members, entered without sufficient cause ?"

1. Here printed in italics.

The objection(s) of the intervenors'/objectors whose names are stated to **41**
have been entered in the register of members of the club "without sufficient cause" have already been noted above. Learned senior counsel for the respondent/MRC has already given the plausible reply in preceding paragraphs. However, in support of respondent/MRC's reply, learned senior counsel has referred to the judgment given by the Company Law Board, Kolkata Bench in the matter of *Smt. Biva Pyne* v. *Pyne Properties P. Ltd.* reported in [2009] SCC Online 46 (CLB) ; [2010] 153 Comp Cas 49 (CLB), wherein the Company Law Board held that there is no bar in a company altering its register of members provided it is with sufficient cause. The relevant portion of the order is extracted below (page 59 of 153 Comp Cas) :

> "In other words, it appears to me that there is no bar in a company altering its register of members provided it is with sufficient cause. If a company has to first take recourse to law for altering its register of members as contended by Shri Sarkar, even then, the court has to perforce examine whether the alteration sought is with sufficient cause and the court cannot simply hold that since the alteration was without recourse to law, the alteration was illegal or invalid."

Learned senior counsel for the respondent/MRC has also made a ref- **42**
erence to the *Halsbury's Laws of England,* Fourth edition, Volume 7, paragraph 306, page 176, which states that "where after the name of any person was entered in the register ; it was found that the allotment to him was illegal and void or that the entry was for any other reason invalid and there was no dispute about the matter, the board of directors itself could rectify the register and there was no need to apply to the court for rectification. The section, it may be noted, requires that only in cases where, without sufficient cause, the name of any person is entered in or omitted from the register, the person aggrieved or any member of the company or the company may apply to the court for rectification. Where there was sufficient cause for rectifying any mistake or omission, and 'if there is no dispute, and if the circumstances are such that the court would order rectification' the board of directors may itself effect the necessary corrections".

Learned senior counsel for the respondent further relied upon the judg- **43**
ment given in the case of *Michaels* v. *Harley House (Marylebone) Ltd.* Ch. [1996] M. 6178, wherein it was held that "if it is or becomes plain that an entry is mistaken, it is open to the company to rectify it without an order of the court, and the company should do so : see *Reese River Silver Mining Co. Ltd.* v. *Smith* [1869] LR 4 HL 64, 81. It is understandable, and appropriate, that the error should not have been rectified pending the current proceedings, but in my view it can and should now be corrected to show

that Frogmore became a shareholder on March 25, not March 24, and even in the absence of that being done I am entitled to proceed on the basis of the facts as proved, albeit inconsistent with the entry in the register".

44 Learned counsel for the respondent has also referred to a judgment of the hon'ble Supreme Court given in *D. Dwarakanath Reddy* v. *Chaitanya Bharathi Educational Society* [2007] 6 SCC 130, wherein the hon'ble apex court has held as under :

> "The plea that the appellants were all throughout treated by the Society as promoter-members and they had worked for all these years which is established from various photographs, reports, etc., is of no consequence. If the appellants had not been legally admitted as Patron Members, they could not be treated as such and cannot get benefit on the basis of photographs, reports, functions, etc."

45 In the light of the cases referred hereinabove, it is well-settled legal position that it is open to the club to rectify its register of members without seeking an order from this Tribunal provided the names of the persons claiming to be the Members have been entered into the register "without sufficient cause". Here it is fully established that the intervenors'/objectors have not complied with the basic requirements for becoming the members of the club, they could not be treated as such on the basis of the bills, receipt of payments made towards the facilities enjoyed in the club, account statement held with the club, reminder letter sent for payment of bills, the notices issued by the MRC. In short, the objectors have no right to enjoy any of the facilities of the club and take part in the annual general meetings on extraneous pleas. Therefore, the plea taken by the intervenors'/objectors is devoid of merits and stands rejected. Hence, the question framed under paragraph 40 hereinabove, is decided in favour of the club and against the intervenors'/objectors.

46 However, in the facts and circumstances of the case, this Tribunal cannot lose sight of the real controversy involved in the matter, i. e., the names of hundreds of persons have been entered in the register of members of respondent/MRC "without sufficient cause" and their names need to be removed from the register of members before any notice is issued to genuine members of the club for participation in the annual general meetings. It is noted that in order to determine the genuineness of the membership of the persons, whose names are entered in the register of members "without sufficient cause", three enquiries have been conducted, i. e., first, by M/s. Brahmayya and Co., second, by the hon'ble justice Mr. P. K. Sivasubramaniam, and third, by this Tribunal.

In all the above enquiries conducted, 635 persons failed to prove the genuineness of their membership, as detailed above. The prayer made in the present application is for seeking direction to respondent/MRC for holding the annual general meetings, on the ground that the club defaulted in holding the annual general meetings under section 96 of the Companies Act, 2013. However, the respondent/MRC has contended that the annual general meetings could not be held for valid and genuine reason, as the club has taken a decision to conduct an audit to determine the correct list of members, to whom the notice is to be issued for holding the annual general meetings. Thus, in the given circumstances, it is necessary to put the controversy at rest before giving any direction to the club for holding the annual general meetings, which are due since 2016. Now, in order to regulate the affairs of the company/club the legal recourse open to this Tribunal is only to invoke the provisions of section 59 of the Companies Act, 2013, which confers power on this Tribunal to direct the respondent/MRC to remove the names of the persons entered in the register of members "without sufficient cause" so as to rectify the register of members of the company/club. **47**

In the light of above, the present application is also treated as an application/appeal under section 59 of the Companies Act, 2013 and the respondent/MRC is hereby directed to rectify the register by removal of the names of 635 persons from the register of members of the club, as shown in annexure 14 to the report of the hon'ble justice (Retd.) Mr. P. K. Sivasubramaniam, within the time as prescribed under section 59(2), before issuance of the notice to the genuine members of the club for holding the annual general meetings. **48**

After having concluded as above, this Tribunal has noted that the respondent/MRC has defaulted in holding the annual general meetings of the company for the reasons stated in their reply. Therefore, in exercise of the powers conferred under section 97 of the Companies Act, 2013, this Tribunal hereby directs the Madras Race Club/company to conduct annual general meetings for the years 2015-16, 2016-17, 2017-18 and 2018-19 within a period of two months from the date of this order. **49**

The agenda for ordinary business to be transacted in the annual general meetings of the Madras Race Club for the years 2015 to 2018, inter alia, will provide for : (i) Adoption of account of each of the financial years ; and (ii) Appointment/reappointment of auditors. However, for the annual general meeting for the year 2018-19 in addition to the agenda items Nos. (i) and (ii) as noted above, there shall be agenda No. (iii), which shall provide for **50**

"the appointment of members to the committee, in place of those who retire by rotation".

51 As has been suggested during the course of hearing, the hon'ble justice Mr. R. S. Ramanathan (Retd.) judge of the hon'ble High Court of Madras is hereby appointed as the Chairman for conducting all the annual general meetings, for which notice shall be issued by him providing a time period of 21 + 2 days prior to the date(s) to be fixed by him for holding the annual general meetings. The notice shall be issued to individual members through registered post with acknowledgment due. In addition to this, notice may also be sent through e-mail provided the e-mail addresses of the members are available with the club. The notice shall also be published in newspapers, i. e., one in English preferably in *The Hindu* (All India edition) and another in vernacular *Dina Thanthi* (Tamil Nadu edition). The Chairman shall appoint two scrutinizers as prescribed and the quorum is fixed at 200 (members). In case the quorum is not complete at the designated time, the annual general meeting(s) will be adjourned for half an hour, thereafter the member(s) of the company present in person or by proxy shall be deemed to constitute the quorum for the purpose of the annual general meeting(s). The company shall make available all the facilities for voting as prescribed, the intimation of which shall be given to the members in advance as prescribed. The Chairman is at liberty to fix his and scrutinizers' remunerations and the club shall pay the same.

52 Accordingly, C. P. No. 31 of 2017, C. A. No. 196 of 2017 and I. A. No. 244 of 2018 are allowed. There is no order as to costs.

53 The order is pronounced in the open court.

[2020] 221 Comp Cas 51 (NCLAT)

[BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL — NEW DELHI]

1. DINESH PUJAR AND OTHERS

(Company Appeal (AT) No. 367 of 2019)

2. R. D. RAMASAMY AND ANOTHER

(Company Appeal (AT) No. 332 of 2019)

v.

MADRAS RACE CLUB AND ANOTHER

JARAT KUMAR JAIN J. ***(Judicial Member),***
BALVINDER SINGH and
DR. ASHOK KUMAR MISHRA ***(Technical Members)***

May 29, 2020.

HF ▸ Observations

CLUB—ANNUAL GENERAL MEETING—REPORT BY CHARTERED ACCOUNTANT AND SCRUTINY REPORT BY RETIRED JUDGE IDENTIFYING GENUINE MEMBERS—DIRECTION TO CONDUCT MEETING AFTER ISSUE NOTICE TO GENUINE MEMBERS—PROPER—COMPANIES ACT, 2013, S. 97.

The Tribunal directed the issue of notices to persons who were identified as being in default in the chartered accountants' report and for conduct of a further independent enquiry by a retired judge to determine the genuineness of the members of the respondent-club. By the report 5 persons out of 640 were identified as genuine members. Thereafter the Tribunal passed an order directing the club to conduct the annual general meeting of 2016 to 2019 by issuing notice only to the genuine members. On appeal :

Held, *that the annual general meeting 2018-19 was to additionally consider, inter alia, the issue of payment of entrance fees with interest at the bank fixed deposit rate for the years of delay in payment. In order to have a clarity, the annual general meeting was to be held for the years 2015-16, 2016-17, 2017-18 and 2018-19 within a period of next two months from the date of the order based on the genuineness of the members as identified by the independent auditors' report, followed by the scrutiny report of the retired judge.*

Order of the National Company Law Tribunal in MUTHUKARUPPAN (M.) *v.* MADRAS RACE CLUB [2020] 221 Comp Cas 26 (NCLT) *modified*.

MUTHUKARUPPAN (M.) *v.* MADRAS RACE CLUB [2020] 221 Comp Cas 26 (NCLT) (para 1) *referred to*.

Company Appeal (AT) Nos. 367 and 332 of 2019.

D. Sreenivasan with *G. A. Ananda Selvam* and *Ms. G. Kanimozhi*, Advocates, for the petitioners.

Murali Raghavan, Senior Advocate, with *Ajith S. Ranganathan*, *Ms. Preeti Mohan* and *Rohit Rajershi*, Advocates, for the respondents.

JUDGMENT

The judgment of the Appellate Tribunal was delivered by

1 DR. ASHOK KUMAR MISHRA ***(Technical Member)***.—The above stated appeals are arising from the order of the National Company Law Tribunal, Chennai Bench ("for short the Tribunal") dated September 24, 2019—(*M. Muthukaruppan* v. *Madras Race Club* [2020] 221 Comp Cas 26 (NCLT)).

2 The impugned order dated September 24, 2019 passed in C. P. No. 31 of 2017 with C. A. No. 196 of 2017 with I. A. No. 244 of 2018 against the respondent club, i. e., Madras Race Club. This is a detailed order directing apart from other issues the following :

(i) Directed the respondent club to convene and hold its annual general meeting for the years ending 2016 to 2019, the Bench also appointed the hon'ble justice R. S. Ramanathan (retired judge of the hon'ble High Court of Madras) as the independent chairman for conducting all annual general meetings after issuing relevant notice in accordance with the Companies Act both by way of registered post with acknowledgment due and also by e-mail. The notice shall be published in newspaper in English in *Hindu* and in vernacular, i. e., Tamil (*Dina Thanthi*).

(ii) The Bench has also directed that the chairman shall appoint two scrutinisers and also be fix the quorum at 200 members. In case the quorum is not completed at the designated time, the "annual general meetings" will be adjourned for half an hour, thereafter, the members of the company present shall be deemed to constitute the quorum.

(iii) Although, the petition was filed in the National Company Law Tribunal under section 97 of the Companies Act to convene the annual general meeting of the company for consideration of financial statements, appointment of members of the committee of management, appointment of statutory auditors and other matters as required in terms of the Companies Act, and articles of association of the Madras Race Club and also to provide any ancillary or consequential directions as Tribunal deems fit.

3 This National Company Law Appellate Tribunal in Company Appeal (AT) Nos. 71 and 87 of 2018 vide its order dated April 3, 2018 remanded the matter to the National Company Law Tribunal, Chennai Bench to decide the case on merit after notice to the parties who may be affected. It

was also stated that if the report submitted by the hon'ble justice K. P. Sivasubramaniyan a retired judge of the hon'ble Madras High Court, who has been appointed by the National Company Law Tribunal to conduct an enquiry, if his report is accepted, in such case the persons who have been shown to have not complied with the requirements and if they are debarred from taking part in the annual general meeting be given notice, if necessary by paper publication. Pursuant to the said direction notices were issued by the Madras Race Club in accordance with the directions of the Bench, publication affected in newspapers, a total of 179 persons sought to intervene in the proceedings before the Tribunal. It was also submitted that these 179 persons who even chose to intervene after several notices affected by the club pursuant to the proceedings pending before the National Company Law Tribunal and who in fact advance their objections and were heard by the National Company Law Tribunal. Hence, the question of any individual who were not an intervener before the National Company Law Tribunal seeking to challenge the impugned order does not arise. However, in the second appeal a total of 8 (eight) persons were not even intervener during the hearings before the National Company Law Tribunal and these persons do not even have the necessary standing to file the second appeal to establish their claims to membership. This itself is sufficient to dismiss the application.

4 It was stated by the appellant that Madras Race Club ("for short MRC") has two set of members club members and stand members. Only club members have the right to vote at annual general meeting and the present appeal relates to rights of the club members.

5 The appellants have also stated that they came to know in the year 2016 that there were several irregularities and discrepancy in the membership data base of the club. There are 1,200 club members approximately out of which 924 members were admitted between 2000 to 2015.

6 It is pertinent to mention that Madras Race Club was incorporated as a "not for profit company" under section 26 of the Companies Act, 2013 and as per its objects contained in its memorandum and articles of association, Madras Race Club has to utilities its profit and other incomes for promoting its objects. The affairs of MRC is managed by management committee comprising of 12 members and they are liable to retire by rotation. However, to serve the public interest the Government of Tamil Nadu had appointed 4 management committee members who shall not retire by rotation.

7 The appellants have submitted that they were issued a club membership card signed by additional secretary of MRC and have paid annual subscription and other charges.

8 The appellants have also submitted that out of 635 club members who are ordered to be removed from the registered of the members by MRC were issued identity card with distinctive memberships number by MRC, have paid annual subscription for 10 to 15 years, annual usage charges, proportionate electricity and water charges, etc., and their names were included in list of members filed with Registrar of Companies and they were entitled to participate and vote in at annual general meeting.

9 The MRC had commissioned a special investigation audit by an independent auditor, viz., Brahmayya and Co., chartered accountant in the year 2016 ; this was done in order to recover the dues and large number of irregularities observed in MRC. Thereafter, the National Company Law Tribunal, Chennai directed that notices issued to the person who were identified as being in default in chartered accountant report and also appointed the hon'ble justice K. P. Siva Subramaniyan a retired judge of the hon'ble Madras High Court to conduct a further independent enquiry to determine the genuineness of the members of the MRC. The hon'ble justice K. P. Siva Subramaniyan a retired judge of the hon'ble Madras High Court identified 5 person out of 640 as genuine members and thereafter the National Company Law Tribunal passed the order directed the annual general meeting be held by issuing notice only to the genuine members then this Appellate Tribunal in Company Appeal (AT) No. 71 of 2018 dated April 3, 2018 for limited purpose of issuing notice to those person aggrieved by the report of the learned retired judge. It is also observed that the cut off year 2000 to 2015 is based on independent auditors report. It is also observed that out of total membership of 1,245, 924 members were allegedly admitted during this period from the audit report and from the enquiry conducted by the hon'ble justice K. P. Siva Subramaniyan a retired judge of the hon'ble Madras High Court. It is very clear that these 635 have not paid the entrance fee.

10 On the intervention of the National Company Law Appellate Tribunal, MRC was agreeable to offer the appellants in both the company appeals as stand member but they refused.

11 Hence, we agree with the order of the National Company Law Tribunal, Chennai with an amendment that let the annual general meeting 2018-19 to additionally consider also, inter alia, the issue of paying entrance fees along with interest at State Bank of India fixed deposit rate for the years of delay in payment. In order to have a clarity that the annual general

meeting be held for the years 2015-16, 2016-17, 2017-18 and 2018-19 within a period of next two months from the date of this order based on the genuineness of the members as identified by independent auditors report, followed by the scrutiny the hon'ble justice K. P. Siva Subramaniyan a retired judge of the hon'ble Madras High Court. Hence, we uphold the order of the National Company Law Tribunal with above modifications.

[2020] 221 Comp Cas 55 (NCLT)

[Before the National Company Law Tribunal — Guwahati Bench]

PUNJAB NATIONAL BANK

v.

SHREE SAI PRAKASH ALLOYS LTD. (No. 1)

Hari Venkata Subba Rao ***(Judicial Member)*** and
Ashutosh Chandra ***(Technical Member)***

August 23, 2019.

HF ▸ Respondent

Insolvency resolution—Petition by financial creditor—Corporate debtor seeking stay of pronouncement of order on ground writ petition pending before High Court—No stay granted by High Court—Absence of specific order to Tribunal—Pronouncement of orders justified—Insolvency and Bankruptcy Code, 2016, s. 60(5).

The corporate debtor filed an application seeking stay of pronouncement of the order in the company petition on the ground that it had preferred a writ petition, wherein the High Court had ordered the parties to maintain status quo in the matter :

Held, *dismissing the application, that the High Court in its order had merely directed the petitioner to serve a copy of the writ petition by hand to the branch manager of the financial creditor and intimate him about the pendency of the writ petition and the next date of hearing. While ordering notice to the bank in the writ petition, the High Court had directed both the parties in the writ petition to maintain status quo. The order did not contain any direction to the Tribunal in this regard. The corporate debtor was conscious of the fact that the Tribunal might pass final orders in all the matters of the group companies relating to the corporate debtor at any time after August 20,*

2019. In the absence of such specific order to the Tribunal, pronouncement of the final orders was justified.

I. A. No. 58 of 2019 in C. P. (IB) No. 24/GB/2019.

K. K. Nandi for the financial creditor.

Mukesh Sharma for the corporate debtor.

ORDER

1 Heard both the sides in I. A. No. 58 of 2019 in C. P. (IB) No. 24/GB/2019. The above application is filed by the respondent/corporate debtor to stay the pronouncement of the order in the main company petition on the ground that the respondent/corporate debtor has preferred a writ petition bearing No. 6029 of 2019, wherein the hon'ble Gauhati High Court has passed the following order :

> "The petitioner to serve a copy of the writ petition by hand upon the Branch Manager, Punjab National Bank, Guwahati Branch, intimating him about the pendency of this proceeding and the next date fixed in the matter, so as to enable the bank to appear before this court on the next date.
>
> Till August 26, 2019, parties to maintain status quo in the matter."

2 The learned advocate appearing for the respondent/financial creditor vehemently opposed the above application contending that the corporate debtor already filed another writ petition before the hon'ble High Court of Meghalaya at Shillong and withdrawn the same and suppressing the above fact once again filed the above referred writ petition before the Principal Bench of the hon'ble Gauhati High Court.

3 Before dealing with the above application, it is important to mention here that the arguments in the above company petition were heard by this Tribunal on August 14, 2019 and the matter was reserved for orders. The learned advocate appearing for the corporate debtor submitted before this Tribunal on August 14, 2019 that the corporate debtor is once again approaching the highest authority of the financial creditor/bank for a settlement on August 16, 2019 and requested to adjourn the matter. In view of the above submission this Tribunal assured both the parties that this Tribunal will not pass orders before August 20, 2019 and both the parties are at liberty to inform this Tribunal on or before August 20, 2019 about the outcome of the compromise. It was also clarified that if nothing is heard from either of the parties before August 20, 2019 orders will be pronounced in the above company petition at any time after August 20, 2019 as the corporate debtor did not raise any serious legal pleas in opposing the main company petition except saying that the bank has unilaterally cancelled the one-time settlement proposal.

Accordingly, orders were made ready and, therefore, the matter is listed today for pronouncement of the orders. The corporate debtor knowing very well about the above position appears to have filed the above writ petition on August 19, 2019. 4

We have carefully perused the order passed by the hon'ble Gauhati High Court. The hon'ble Gauhati High Court in its order merely directed the petitioner to serve copy of the writ petition by hand to the Branch Manager of the financial creditor and intimate him about the pendency of the writ petition and the next date of hearing. While ordering the said notice to the respondent-bank in the above writ petition, the hon'ble High Court directed both the parties in the writ petition to maintain status quo. The said order does not contain any direction to this Tribunal in this regard. The corporate debtor is conscious of the fact that this Tribunal may pass final orders in all the matters of the group companies relating to the corporate debtor at any time after August 20, 2019. 5

In the absence of such specific order to this Tribunal, this Tribunal is of the considered opinion that pronouncement of the orders by the Tribunal is justified in the light of the above facts and circumstances. 6

For the reasons stated above, there are no merits in the above application filed by the corporate debtor and accordingly, the same is rejected and the orders in the main company petition is pronounced. 7

[2020] 221 Comp Cas 57 (NCLT)

[Before the National Company Law Tribunal — Guwahati Bench]

PUNJAB NATIONAL BANK[1]

v.

SHREE SAI PRAKASH ALLOYS P. LTD. (No. 2)

Hari Venkata Subba Rao ***(Judicial Member)*** and
Ashutosh Chandra ***(Technical Member)***

August 23, 2019.

HF ▸ Petitioner

Insolvency resolution—Petition by financial creditor—Debt and default established—Contentions pertaining to one-time settlement not relevant—Petition admitted—Insolvency and Bankruptcy Code, 2016, s. 7.

1. This order has been reversed and matter remanded in National Company Law Appellate Tribunal : See [2020] 221 Comp Cas 62 (NCLAT) *infra*—Ed.

A petition filed by the financial creditor under section 7 of the Insolvency and Bankruptcy Code, 2016 was challenged by the corporate debtor, inter alia, contending that the financial creditor had unilaterally cancelled the one-time settlement even though it was entitled to charge interest for the delayed period and that the corporate debtor company was engaged in mining operations and due to slow down of business in the mining industries, it was not in a position to honour the one-time settlement proposal and the promoter directors were not in a position to raise any funds :

Held, *admitting the petition, that all the submissions of the corporate debtor were beyond the scope of enquiry in an application under section 7 of the Code when once the corporate debtor had admitted the default. Even otherwise the corporate debtor gained a lot of time on the pretext of settlement and also by filing the writ petition before the High Court. The corporate debtor had defaulted in making payment towards the liability to the financial creditor. The petition was complete and was to be admitted.*

I. A. No. 46 of 2019 in C. P. (IB) No. 24/GB/2019.

K. K. Nandi for the financial creditor.

Amit Pareek, company secretary for the corporate debtor.

ORDER

1 This application is filed by the Punjab National Bank (hereinafter called as "financial creditor") against the respondent/corporate debtor M/s. Shree Sai Prakash Alloys P. Ltd., under section 7 of the Insolvency and Bankruptcy Code, 2016 for an order of insolvency resolution.

2 The brief facts of the application are that the applicant-bank has sanctioned credit facilities to a tune of Rs. 58,29,00,000 (rupees fifty eight crores twenty nine lakhs only) on different dates from April 26, 2004 to July 25, 2014 to the corporate debtor on execution of security documents as well as creation of security interest against hypothecated and mortgage properties belonging to the corporate debtor. Subsequently, the account was declared as NPA on account of default committed by the corporate debtor on May 12, 2015 and an amount of Rs. 84,46,17,450.68 (rupees eighty four crores forty six lakhs seventeen thousand four hundred fifty and paise sixty eight only) became due and payable as on February 20, 2018. As there was no response from the corporate debtor, the financial creditor having no other alternative filed the above application for an order of insolvency resolution.

3 After filing the above application, the corporate debtor approached the financial creditor for settlement under one-time settlement and despite entering into a settlement, failed to honour the terms and conditions of the one-time settlement except paying a meagre amount of Rs. 7,00,00,000

(rupees seven crores only). The corporate debtor also filed an interim application bearing I. A. No. 46 of 2019 for dismissal of the above application on the ground that the main company application has become infructuous on account of the one-time settlement entered into between the parties. As the corporate debtor failed to comply all the terms and conditions of the one-time settlement proposal, the financial creditor cancelled the one-time settlement proposal and pressed for disposal of the above application. This Tribunal vide its Roznama order dated August 6, 2019 directed both parties to get ready for arguments in both the IA as well as main company petition as this Tribunal is not inclined towards piece-meal disposal of matters. Thus, arguments in both the IA as well as the main company petition were heard on August 14, 2019 and the matter was reserved for orders.

Mr. Amit Pareek, learned PCS who appeared on behalf of the corporate debtor on the date of final hearing on August 14, 2019 did not raise any serious objections in allowing the above petition except once again submitting that the financial creditor has unilaterally cancelled the one-time settlement even though they are entitled to charge interest for the delayed period. He has further submitted that the corporate debtor company is engaged in mining operations and due to slow down of business in the mining industries, they are not in a position to honour the one-time settlement proposal and the promoter directors are not in a position to raise any funds even if the above company petition is allowed by this Tribunal. **4**

All the above submissions made by the learned PCS on behalf of the corporate debtor are beyond the scope of enquiry in an application under section 7 of the Code when once the corporate debtor admits the default. Even otherwise the corporate debtor gained so much time on the pretext of settlement and also by filing writ petition before the hon'ble High Court of Meghalaya at Shillong and it is high time we put an end to this matter. **5**

This Adjudicating Authority having satisfied itself with the fact that the corporate debtor defaulted in making payment towards the liability to the petitioner, the company petition deserves to be admitted. **6**

This Adjudicating Authority on perusal of the documents filed by the creditor, is of the view that the corporate debtor defaulted in repaying the loan. The financial creditor also furnished the name of the insolvency resolution professional to act as interim resolution professional and there being no disciplinary proceeding pending against him, the application under subsection (2) of section 7 of the Code is taken as complete and accordingly this Bench hereby admit the company petition by dismissing the interim application filed by the corporate debtor in I. A. No. 46 of 2019 by passing the following orders : **7**

ORDER

(i) The petition filed by the financial creditor under section 7 of the Insolvency and Bankruptcy Code, 2016 is hereby admitted for initiating the corporate insolvency resolution process in respect of M/s. Shree Sai Prakash Alloys P. Ltd.

(ii) We hereby declare a moratorium and public announcement in accordance with sections 13 and 15 of the IBC, 2016.

(iii) The moratorium is declared for the purposes referred to in section 14 of the Insolvency and Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15. The public announcement referred to in clause (b) of sub-section (1) of section 15 of the Insolvency and Bankruptcy Code, 2016 shall be made immediately.

(iv) Moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 prohibits the following :

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority ;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein ;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) ;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

(vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

(viii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the

resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

(ix) Necessary public announcement as per section 15 of the IBC, 2016 may be made.

(x) Mr. Anil Agarvval, AAA Insolvency Professionals LLP, 15F, Anil Roy Road, 2nd Floor, Kolkata-700 029, Registration No. IBBI/IPA-001/IP-P00270/2017-18/10514, e-mail : *anilagarwal@aaainsolvency.com* is hereby appointed as interim resolution professional for ascertaining the particulars of creditors and convening a meeting of committee of creditors for evolving a resolution plan.

(xi) The interim resolution professional should convene a meeting of the committee of creditors and submit the resolution passed by the committee of creditors and shall identify the prospective resolution applicant as per rules.

(xii) The registry is hereby directed under section 7(7)(a) of the I and B Code, 2016 to communicate the order to the operational creditor, the corporate debtor and to the interim resolution professional by speed post as well as through e-mail.

(xiii) The interim resolution professional is directed to strictly comply with the model timeline for CIRP as provided under regulation 40A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities. **8**

———————

[2020] 221 Comp Cas 62 (NCLAT)

[BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL — NEW DELHI]

SANDEEP KUMAR BHAGAT

v.

PUNJAB NATIONAL BANK

VENUGOPAL (M.) J. ***(Judicial Member)*, V. P. SINGH** and **SHREESHA MERLA** ***(Technical Members)***

June 18, 2020.

HF ▸ Appellant/Remanded

INSOLVENCY RESOLUTION—PETITION BY FINANCIAL CREDITOR—INSOLVENCY RESOLUTION PROFESSIONAL—FAILURE BY PROPOSED INSOLVENCY RESOLUTION PROFESSIONAL TO SUBMIT DECLARATION THAT NO DISCIPLINARY PROCEEDINGS PENDING AGAINST HIM—PETITION NOT COMPLETE—ADJUDICATING AUTHORITY OUGHT TO HAVE GIVEN NOTICE TO PETITIONER TO RECTIFY DEFECT—INSOLVENCY AND BANKRUPTCY CODE, 2016, s. 7(5).

INSOLVENCY RESOLUTION—PETITION BY FINANCIAL CREDITOR—LIMITATION—ACKNOWLEDGMENT OF DEBT—ACKNOWLEDGMENT WITHIN THREE YEARS OF DEFAULT—PETITION FILED WITHIN THREE YEARS OF SUCH ACKNOWLEDGMENT—WITHIN LIMITATION—INSOLVENCY AND BANKRUPTCY CODE, 2016, s. 7—LIMITATION ACT, 1963, s. 18, art. 137.

INSOLVENCY RESOLUTION—PETITION BY FINANCIAL CREDITOR—ADMISSION OF PETITION—STATUS QUO ORDER BY HIGH COURT—ACCEPTANCE OF SUBSTANTIAL AMOUNTS BY FINANCIAL CREDITOR UNDER ONE-TIME SETTLEMENT SCHEME AND FOR RENEWAL OF PROPOSAL AFTER REVOCATION OF SETTLEMENT—PARTIES TO BE GIVEN ONE OPPORTUNITY TO SETTLE—ADMISSION ORDER SET ASIDE—MATTER REMANDED TO ADJUDICATING AUTHORITY TO GRANT ONE MORE OPPORTUNITY TO PARTIES TO SETTLE DUES—INSOLVENCY AND BANKRUPTCY CODE, 2016, s. 7.

On an appeal by the director of the corporate debtor against an order admitting a petition filed by the financial creditor under section 7 of the Insolvency and Bankruptcy Code, 2016 :

Held, *(i) that the proposed insolvency resolution professional had not given a declaration that no disciplinary proceedings were pending against him. The declaration was not in the prescribed form 2 under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Therefore, in terms of the first proviso to section 7(5) of the Code, the*

Adjudicating Authority should have issued notice to the petitioner to rectify the application within seven days. The Adjudicating Authority had not taken into consideration the statutory provision of sub-section (5)(a) of section 7 of the Code and passed the admission order.

(ii) That the date of default was shown as May 12, 2015. In terms of article 137 of the Schedule to the Limitation Act, 1963, the limitation period of three years was available to the petitioner. But before expiration of the limitation period on March 3, 2018 the corporate debtor submitted an acknowledgment of debt in writing and promise to clear the dues at the earliest possible. In addition to this, the corporate debtor had also submitted a one-time settlement proposal which was later on accepted by the financial creditor. The one-time proposal was submitted by the corporate debtor for all the three companies on December 27, 2018. Thus, it was clear that a fresh period of limitation started after the acknowledgment of the debt by the corporate debtor and the petition was filed within the extended period of limitation on account of section 18 of the Act. Therefore, the petition was not time-barred.

(iii) That the High Court by an order dated August 19, 2019 had directed the parties to maintain status quo till August 26, 2019. However, the Adjudicating Authority, without taking the status quo order of the High Court into account had passed the order of admission on August 23, 2019.

(iv) That after acceptance of the one-time settlement proposal for settling the dues of all the three companies Rs. 60 crores, the creditor had received substantial amounts from the corporate debtor. After making default in payment in accordance with the settlement order the corporate debtor had paid rupees one crore to the creditor for renewing the one-time settlement. The creditor thereafter had revoked the offer to renew the settlement. Considering the prevailing economic scenario of the country and downfall in every business activity, it would be fit and proper to provide one more opportunity to the parties for considering the one-time settlement proposal in a fair, just, objective and dispassionate manner. The matter was to be remanded to the Adjudicating Authority to pass an order afresh. [Clarification that the Adjudicating Authority should provide one more opportunity for the parties to consider the renewal of the one-time settlement and in the event of renewal of the one-time settlement, the opportunity may be utilised by the parties in right earnest, of course in true letter and spirit.]

Order of the National Company Law Tribunal in Punjab National Bank *v.* Shree Sai Prakash Alloys P. Ltd. (No. 2) [2020] 221 Comp Cas 57 (NCLT) *reversed and matter remanded.*

PUNJAB NATIONAL BANK *v.* SHREE SAI PRAKASH ALLOYS P. LTD. (No. 2) [2020] 221 Comp Cas 57 (NCLT) (para 1) *referred to.*

Company Appeal (AT) (Insolvency) No. 1003 of 2019.

Saurabh Jain, Nishant Das and *Ms. Bhavishya Singh*, Advocates, for the appellant.

Ms. Jainikr Mohan Advocate, for the respondent.

ORDER

The order of the Appellate Tribunal was delivered by

1 V. P. SINGH ***(Technical Member)***.—This appeal emanates from the impugned order dated August 23, 2019—(*Punjab National Bank* v. *Shree Sai Prakash Alloys P. Ltd. (No. 2)* [2020] 221 Comp Cas 57 (NCLT)), passed by the Adjudicating Authority/National Company Law Tribunal, Guwahati Bench, Guwahati in Company Petition (I. B.) No. 24/GB/2019, whereby the Adjudicating Authority has admitted the application under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short the "I and B Code") and appointed the interim resolution professional. The parties are represented by their original status in the company petition for the sake of convenience.

2 These brief facts of the case are as follows :

The appellant is the suspended director of the corporate debtor Shree Sai Prakash Alloys P. Ltd. which availed certain credit facility from the respondent-bank from time-to-time in 2014. The alleged default occurred on May 12, 2015.

3 It is contended that the respondent-bank/financial creditor had filed an application before the Adjudicating Authority (National Company Law Tribunal), Guwahati Bench under section 7 of the Insolvency and Bankruptcy Code claiming amount of Rs. 84,46,17,450.68. The petition was filed on May 19, 2018 and date of default as mentioned in the application is May 12, 2015. Therefore, as per respondents own admission, the petition is filed beyond a period of three years.

4 The appellant contends that during the pendency of the petition respondent-bank entered into an OTS. However, the respondent-bank did not withdraw the petition and suddenly on July 29, 2019, issued a letter asking them to deposit the balance amount as per terms of the OTS. But later on, another notice about the revocation of OTS was sent on July 31, 2019. The corporate debtor received the said letter on August 7, 2019.

5 The appellant pleaded that the respondent-bank has not given a reasonable time to the corporate debtor and has acted arbitrarily ; that during

consideration of OTS, the appellant on behalf of all the three companies handed over rupees one crore to the respondent-bank on August 19, 2019, as part payment against the OTS. By accepting the part consideration in connection with the OTS, the respondent-bank has taken the settlement ; the petition is barred by limitation as per section 238A of the Code, read with article 137 of the Limitation Act, 1963 ; the particulars of Form 2 are incomplete. Therefore, the application filed under section 7 of the Code could not have been admitted ; the applicant has failed to satisfy the compliance of section 7(5)(a) of the Code ; Paragraph VI of Form 2 is not proper and cannot be treated as a valid declaration ; the hon'ble Guwahati High Court in Writ Petition (C) No. 6029 of 2019 has directed parties to maintain status quo. Therefore, the Tribunal should have waited for further orders of the Guwahati High Court ; the OTS cannot be treated as an admission of liability.

6 The appellant contended that the learned Adjudicating Authority has failed to consider that the petition is barred by the Limitation Act. The loan was sanctioned in 2004, various enhancements are up to June 11, 2012, and alleged restructuring happened in July 25, 2014, whereas the petition was filed on or after July 9, 2018. Therefore, the claim of the respondent-bank is hopelessly time-barred.

7 The respondent contends that the appellant is ex-director of three companies, namely, Shree Sai Prakash Alloys P. Ltd., Shree Sai Rolling Mills (India) P. Ltd., and Shree Sai Smelters (India) Ltd. Since all the companies failed to maintain financial discipline, their accounts were classified as NPA on March 31, 2015. Since all the three companies were unable to regularize their accounts despite several requests, the bank was forced to approach the National Company Law Tribunal, Guwahati Bench by filing an application C. P. (I. B.) No. 24/GB/2019 under section 7 of the Code.

8 The appellant admitted the liabilities of all the three companies by submitting a consolidated OTS for an amount of Rs. 60 crores, which was approved by the bank on December 27, 2018. The same was also accepted by the appellant on January 10, 2019. However, the appellant failed to adhere to the terms and conditions of the OTS. As such, the bank revoked the OTS on July 31, 2019 and the same was also conveyed to the appellant.

9 It is further contended that during the pendency of the appeal, the appellant again approached the respondent-bank for the revival of the OTS by tendering cheque of Rs. 1 crore as part payment towards OTS on October 10, 2019. Since the offered amount was too low, and the appellant had earlier failed to comply with the terms and conditions of the OTS ; therefore, the bank did not consider the OTS again.

10 The respondent-bank has admitted in the written submissions, "that the appellant admitted the liabilities of all the three companies by submitting a consolidated OTS for an amount of Rs. 60 crores with the respondent-bank which was sanctioned by the bank on December 27, 2018. The same was also accepted by the appellant on January 10, 2019. However, the appellant failed to adhere to the terms and conditions of the OTS. As such, the competent authority of the bank revoked the OTS on July 31, 2019 and the same was also conveyed to the appellant".

11 It is further stated in the written submissions of the respondent "that during the pendency of the present proceedings, the appellant again approached the respondent-bank for the revival of earlier OTS by tendering a cheque for Rs. 1 crore as partial payment of OTS on October 10, 2019. Since the amount offered was on a lower side, and the appellant had failed to comply the earlier terms and conditions of OTS, the competent authority of bank did not deem it fit to consider it again. The said decision was conveyed by the respondent-bank vide their letter dated October 16, 2019".

12 Based on the above submissions, it is undisputed that the consolidated amount of Rs. 60 crores was offered by the appellant for the outstanding dues of all the three companies through OTS and this offer was accepted by the Bank on December 27, 2018. It is also admitted fact that during the pendency of appeal, again the appellant made an offer to abide terms of earlier OTS. The appellant paid Rs. 1 crore as part of OTS on October 10, 2019 and this amount was accepted by respondent.

13 It is also apparent after the revocation of OTS, the appellant during the pendency of the appeal made a second attempt to renew the OTS. In response to this, the appellant made a payment of Rs. 1 crore, which was accepted by the bank. By taking of Rs. 1 crore in response to earlier OTS, it is clear that the respondent-bank agreed to renew the terms of OTS.

14 In all these appeals different companies are involved, but the directors of the suspended boards are common, and the appellant as director of the suspended board of all the three companies has challenged the admission order. In all these matters, similar orders have been passed on October 23, 2019, admitting section 7 of the Insolvency and Bankruptcy Code, 2016.

15 We have heard the arguments of the learned counsel for the parties and perused the records.

16 Learned counsel for the appellant emphasized on the non-compliance of the provision of section 7(5)(a) of the Insolvency and Bankruptcy Code, 2016 :

"Section 7(5) of the Insolvency and Bankruptcy Code is as under :

7. (5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application ; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application :

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

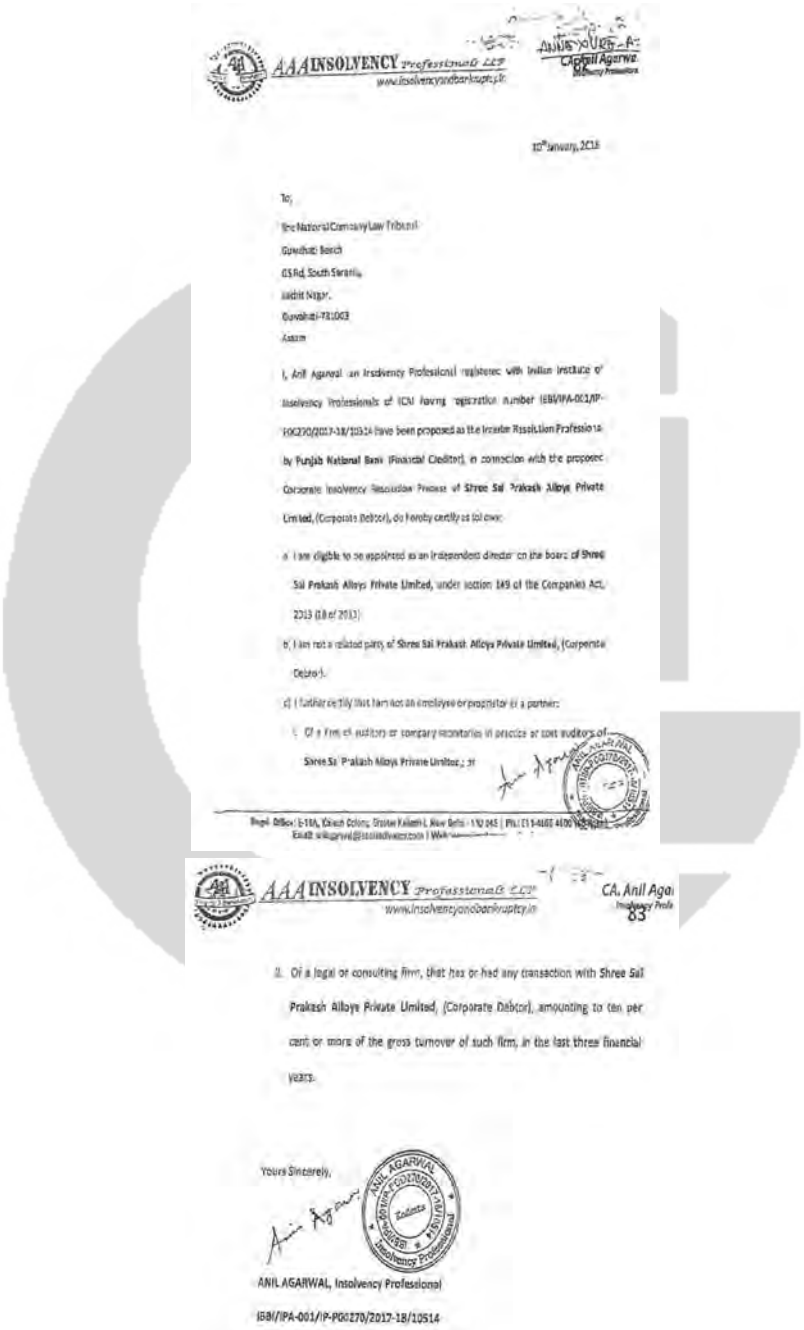
(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor ;

(b) the order under clause (b) of sub-section (5) to the financial creditor,

within seven days of admission or rejection of such application, as the case may be."

Section 7(5)(a) provides that where the Adjudicating Authority is satisfied that the default has occurred and the application under sub-section (2) is complete and no disciplinary proceeding pending against the proposed resolution professional, it may, order, admits such application.

Therefore, a petition under section 7 can be admitted by the Adjudicating Authority if it is complete and satisfies the parameters as laid down in section 7(5)(a) of the Code. In this case, the appellant alleges that Form 2 prescribed under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which was filed along with the application, copy of which is annexure A3 annexed with the appeal, is not proper. The photostat copy of annexure A3 is as under :



AAA INSOLVENCY Professionals LLP
www.insolvencyandbankruptcy.in

10th January, 2019

To,
The National Company Law Tribunal
Guwahati Bench
GS Rd, South Sarania,
Jalukbari Nagar,
Guwahati-781013
Assam

I, Anil Agarwal an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00270/2017-18/10514 have been proposed as the Interim Resolution Professional by Punjab National Bank (Financial Creditor), in connection with the proposed Corporate Insolvency Resolution Process of Shree Sai Prakash Alloys Private Limited, (Corporate Debtor), do hereby certify as follows:

a. I am eligible to be appointed as an Independent director on the board of Shree Sai Prakash Alloys Private Limited, under section 149 of the Companies Act, 2013 (18 of 2013)

b. I am not a related party, of Shree Sai Prakash Alloys Private Limited, (Corporate Debtor).

c) I further certify that I am not an employee or proprietor or a partner:

i. Of a firm of auditors or company secretaries in practice or cost auditors of Shree Sai Prakash Alloys Private Limited; or

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CA. Anil Agarwal
Insolvency Profe

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ii. Of a legal or consulting firm, that has or had any transaction with Shree Sai Prakash Alloys Private Limited, (Corporate Debtor), amounting to ten per cent or more of the gross turnover of such firm, in the last three financial years.

Yours Sincerely,

ANIL AGARWAL, Insolvency Professional
IBBI/IPA-001/IP-P00270/2017-18/10514

On perusal of the declaration by the proposed insolvency resolution professional, it appears that the proposed IRP Mr. Anil Agarwal has not given declaration that no disciplinary proceeding is pending against him. It is also evident that the declaration of proposed insolvency resolution professional, annexure A3, is not in prescribed Form 2 under the Adjudicating Authority Rules. Therefore, as per the first proviso to section 7(5) of the Code, the Adjudicating Authority should have issued notice to the applicant/petitioner to rectify the application within seven days. But in the instant case, the Adjudicating Authority has not taken into consideration the statutory provision of sub-section (5)(a) of section 7 of the Code and passed the admission order.

17 Learned counsel for the appellant further emphasizes that the Adjudicating Authority has failed to appreciate that the hon'ble Guwahati High Court in Writ Petition (C) No. 6029 of 2019 is seized of the matter and had directed the parties to maintain status quo. A copy of the order of hon'ble High Court, annexure A8, is annexed with the petition, which shows that the above writ petition, which was filed on behalf of all the three companies, the hon'ble High Court had passed the order of status quo. Copy of order above dated August 19, 2019 of the hon'ble High Court is as under :

> "After hearing the arguments advanced by Mr. Choudhury, I am of the view that before passing any further order in the matter, the respondent-bank must be heard.
>
> In the view of the above, registry to list this case on August 26, 2019 for motion as a fixed item.
>
> The petitioner to serve a copy of the writ petition by hand upon the Branch Manager, Punjab National Bank, Guwahati Branch, intimating him about the pendency of this proceeding and the next date fixed in the matter, so as to enable the Bank to appear before this court on the next date.
>
> Till August 26, 2019, parties to maintain status quo in the matter."

18 In the impugned order, the Adjudicating Authority has mentioned that the corporate debtor gained so much time on the pretext of settlement and also by filing a writ petition before the hon'ble High Court of Meghalaya at Shillong and it is high time to put an end to this matter.

19 It is undisputed that by order of the hon'ble High Court dated August 19, 2019, parties were directed to maintain status quo till August 26, 2019. However, the Adjudicating Authority, without taking the status quo of the High Court, passed the order of admission on August 23, 2019.

20 The appellant contends that the petition is barred by the Limitation Act. The loan is sanctioned in 2004, various enhancement up to June 11, 2012, and alleged restructuring happened on July 25, 2014, whereas the petition was filed on July 9, 2018. Therefore, the claim of the respondent-bank is time-barred. In this connection it is further contended by the appellant that date of default as shown in Form 1 is May 12, 2015 and petition is filed on July 9, 2018. Therefore, on this basis petition is time barred.

21 It is important to mention that the appellant has annexed a letter annexure A4 dated March 3, 2018, wherein it is stated that :

> "Now, by arranging fund from our friends and relatives as well as taking materials on job work basis. We have started operation of the plant, market is also improving and accordingly, we have submitted proposal from one-time settlement of debt. We are already negotiations with some investors, who will bring in money and run the plant jointly with us immediately after OTS and also support in repaying the OTS amount.
>
> *. . . Moreover, we are trying our level best to settle and clear your banks dues at the earliest possible. We have already submitted OTS proposal*." (verbatim[1] copy)

22 The above acknowledgment of debt dated March 3, 2018. Section 18 of the Limitation Act provides that : "Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, any acknowledgment or liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed".

23 Admittedly, in this case date of default is shown as May 12, 2015. As per article 137 of the Limitation Act, the limitation period of three years was available to the applicant. But before the expiration of limitation period on March 3, 2018, the corporate debtor submitted an acknowledgment of debt in writing and promise to clear the dues at the earliest possible. In addition to this, the corporate debtor had also submitted OTS proposal which was later on accepted by the Bank. The respondent-bank has accepted that account of the applicant-companies classified the bank approved NPA on March 31, 2015 and OTS submitted by the corporate debtor for all the three companies on December 27, 2018. Thus, it is clear that a fresh period of limitation started after the acknowledgment of the debt by the corporate debtor and the petition was filed within the extended period of limitation

1. Here printed in italics.

on account of section 18 of the Limitation Act. Therefore, it is a petition is not time-barred.

24 It is on record that on the day petition was admitted there was status quo order by the hon'ble High Court and which was in the knowledge of the Adjudicating Authority. But the Adjudicating Authority admitted the petition by the impugned order dated August 23, 2019. Learned counsel for the appellant exercise on the respondent's letter dated July 29, 2019 which is at page 99 of the paper book. This letter shows that the bank has addressed a letter to the directors of all the three companies informing that :

> "As per the terms of the conditions of above OTS, you have to deposit Rs. 3 crores as up front, Rs. 3 crores immediately after receiving of sanction letter and minimum of Rs. 1.50 crores in each month. But it is a matter of concern that after lapse of more than six months, you have deposited Rs. 6.79 crores against due amount of Rs. 16.50 crores till July 2019."

25 It is also clear from the letter mentioned above that the OTS proposal dated August 6, 2018 of Rs. 60 crores in group account was accepted by the bank on December 27, 2018 and the corporate debtor has paid Rs. 6.79 crores in furtherance of the OTS. It is also on record that the respondent-bank has further accepted a sum of rupees one crore on August 21, 2019 regarding renewal of OTS. The cheque dated August 21, 2019 was encashed by the bank even after revocation of the OTS during pendency of section 7 of the application.

26 On perusal of the record it is apparent that after acceptance of OTS for settling the dues of all the three companies Rs. 60 crores, the bank has received substantial amount from the corporate debtor. It is also clear that after making default in payment as per terms of OTS the corporate debtor further paid rupees one crore to the bank for renewing the OTS. The bank even after accepting after rupees one crore revoked the offer to renew the OTS. Considering the present/prevailing economic scenario of the country and downfall/slump in every business activity, we deem it fit and proper to provide one more opportunity to the parties for considering the OTS (one-time proposal) in a fair, just, objective and dispassionate manner.

27 On perusal of the record that it is also evident that there is no proper compliance under section 7(5)(a) of the Insolvency and Bankruptcy Code, but this defect in the application is curable defect which can be rectified. It is also on record that the admission order was passed even after the status quo order of the hon'ble High Court.

28 In the circumstances, as stated above this Tribunal allows the instant appeal by setting aside the impugned order and matter is remanded back

to the Adjudicating Authority to pass an order afresh, after providing an opportunity to the opposite party in the light of the directions given in the body of the judgment. However, it is also made clear that the Adjudicating Authority should provide one more opportunity for the parties to consider the renewal of OTS and in the event of renewal of OTS, the said opportunity may be utilised by the parties in right earnest, of course in true letter and spirit. The parties are directed to appear before the Adjudicating Authority (National Company Law Tribunal, Guwahati Bench) on dated June 29, 2020. No order as to costs.

[2020] 221 Comp Cas 72 (NCLT)

[BEFORE THE NATIONAL COMPANY LAW TRIBUNAL — MUMBAI BENCH]

ATLAS COPCO (INDIA) LTD. AND OTHERS, *In re*[1]

M. K. SHRAWAT *(Judicial Member)* and
CHANDRA BHAN SINGH *(Technical Member)*

December 10, 2019.

HF ▶ Directions/Petitioner

SHARE CAPITAL—REDUCTION OF SHARE CAPITAL—ARTICLES OF ASSOCIATION PERMITS REDUCTION OF SHARE CAPITAL—VALUATION FAIR—COMPANY UNDERTAKING TO COMPLY WITH DIRECTIONS—DIRECTIONS GIVEN—COMPANIES ACT, 2013, S. 66.

The board of directors of the petitioner-company at their meeting held on September 18, 2018 deemed it appropriate to reduce its equity share capital by cancelling and extinguishing the shares of the non-promoters who constitute about 3.68 per cent. of the total shareholders in the company. In the extraordinary general meeting held on October 25, 2018, all except 37 shareholders representing 34,476 equity shares, i. e., representing about 0.15 per cent. of the total equity shares, voted for approving the proposed reduction by the company. The company undertook that if any of the objecting shareholders did not want to part with the shares, the company would not insist on their to do so. On a petition filed under section 66 of the Companies Act, 2013 :

Held, *that it was not fair or permissible for those who purchased or transferred the share after the conclusion of the October 25, 2018 extraordinary general meeting to raise any objections against the proposed reduction given*

1. This order has been affirmed in National Company Law Appellate Tribunal : See [2020] 221 Comp Cas 82 (NCLAT) *infra*—Ed.

that they were fully aware of the decision of the company and its shareholders prior to becoming shareholders of the company. Those shareholders who did not attend the extraordinary general meeting of October 25, 2018 of the company could not raise objections against the proposed reduction at this stage before the Tribunal. It was unfair for the shareholders who voted for reduction in share capital in the extraordinary general meeting of October 25, 2018 to raise objection now. There was no patent unfairness in the valuation report obtained by the company. The proposed capital reduction had been approved by a majority of the non-promoter public shareholders. The company was to publish the notices about registration of the order and the minutes of reduction by the Registrar of Companies. [Directions given].

CADBURY INDIA LTD., *In re* [2014] SCC Online Bom 4934, MIHEER H. MAFATLAL *v.* MAFATLAL INDUSTRIES LTD. [1996] 87 Comp Cas 792 (SC), RECKITT BENCKISER (INDIA) LTD., *In re* [2005] 122 DLT 612 *and* SANDVIK ASIA LTD. *v.* BHARAT KUMAR PADAMSI [2009] 151 Comp Cas 251 (Bom) *relied on*.

Cases referred to :

Cadbury India Ltd., *In re* [2014] SCC Online Bom 4934 (para 16)

Denver Hotel Co., *In re* [1893] 1 Ch D 495 (para 15)

Miheer H. Mafatlal *v*. Mafatlal Industries Ltd. [1996] 87 Comp Cas 792 (SC) (para 14)

Reckitt Benckiser (India) Ltd., *In re* [2005] 122 DLT 612 (paras 11, 15)

Sandvik Asia Ltd. *v.* Bharat Kumar Padamsi [2009] 151 Comp Cas 251 (Bom) (para 16)

C. P. No. 4475 of 2018 and Miscellaneous Application No. 3857 of 2019.

Darius J. Khambatta, Senior Counsel along with *Hemant Sethi* instructed by *Hemant Sethi and Co.* for the petitioner.

Hemant Sethi instructed by *Hemant Sethi and Co.* for the respondent in M. A. No. 3857 of 2019.

Gaurav Joshi Senior Counsel along with *Manik Joshi, Mantul Bajpai* instructed by *Crawford Bayley and Co.* for the objector.

Rahul Sarda along with *Mrs. Manik Joshi* along with *Mantul Bajpai* instructed by *Crawford Bayley and Co.* for the Intervener/applicant in M. A. No. 3857 of 2019.

ORDER

The order of the Bench was delivered by

1 CHANDRA BHAN SINGH *(Technical Member)*—The learned senior counsel for the petitioner-company submits that article 8 of the articles of association of the petitioner-company empowers the petitioner-company to reduce its share capital in any manner authorized by law from time-to-time by passing a special resolution.

2 The applicant-company is primarily engaged in the business of manufacturing and selling industrial gas and air compressors, vacuum solutions, industrial tools and solutions, mobile air, tools, power, pumps and light towers.

3 The learned senior counsel for the petitioner-company submits that the equity shares of the petitioner-company were delisted from BSE Limited and Pune Stock Exchange Limited in May, 2011 under the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009. Post the delisting, the investment made by the non-promoter public shareholders of the petitioner-company are locked and these shareholders do not have an opportunity to liquidate their shareholding or realize their investment from the petitioner-company. Various non-promoter public shareholders have also requested the petitioner-company to provide them an exit opportunity. The learned senior counsel for the petitioner-company further submits that the company petition was filed for providing the non-promoter public shareholders an opportunity to liquidate their shareholding at a fair and equitable price.

4 The learned senior counsel for the petitioner-company submits that the board of directors of the petitioner-company at their meeting held on September 18, 2018 have deemed it appropriate to reduce its equity share capital by cancelling and extinguishing the shares of the non-promoters who constitute about 3.68 per cent. of the total shareholders in the company. The learned senior counsel for the petitioner-company further submits that the petitioner-company have passed a special resolution on October 25, 2018 whereby the shareholders had approved the reduction in the issued, subscribed and paid-up equity share capital of the petitioner-company by cancelling and extinguishing the equity shares held by the non-promoter in the company. Consequent to the reduction, the issued, subscribed and paid-up equity share capital of the petitioner-company would get reduced from Rs. 22,56,15,640 (Indian rupees twenty two crores fifty six lakhs fifteen thousand six hundred and forty only) comprising 22,561,564 fully paid up equity shares of Rs. 10 (Indian rupees ten only) each to Rs. 21,73,19,510 (Indian rupees twenty one crores seventy three lakhs nineteen thousand

five hundred and ten only), comprising of 2,17,31,951 fully paid-up equity shares of Rs. 10 (Indian rupees ten only) each. This reduction as mentioned above will be effected by cancelling and extinguishing 3.68 per cent. of the total issued, subscribed and paid-up equity share capital of the petitioner-company comprising 8,29,613 issued, subscribed and fully paid-up equity shares of Rs. 10 (Indian rupees ten only) each which are held by the non-promoter public shareholders of the petitioner-company.

5 The Regional Director, Western Region, Mumbai in his report dated September 11, 2019 has made certain observations with relation to the proposed reduction of share capital of the petitioner-company. These observations made by the Regional Director, are reproduced as under :

> "(a) Applicant to submit an affidavit to the effect that the interest of the creditors and all stakeholders and Government Revenue are protected as well as statutory dues are paid off.
>
> (b) The tax implication if any arising out of the proposal for reduction is subject to final decision of Income-tax authorities. The approval of the company petition by this hon'ble court may not deter the Income-tax authority to scrutinize the tax return filed by the company after giving effect to the proposed reduction. The decision of the Income-tax authority is binding on the petitioner-company."

6 In regard to the above observations made in the report of Regional Director, the petitioner-company through its learned senior counsel undertakes to submit that the interest of the creditors and all the stakeholders and Government Revenue are protected as well as all undisputed statutory dues that are due and payable as of date have been paid off.

7 Similarly, with regards to the report of the Regional Director, the petitioner-company through its learned senior counsel undertakes to comply with all the applicable provisions of the Income-tax Act, 1961 and all tax issues arising out of the petition will be met and answered in accordance with law.

8 The Regional Director's report also mentions that there are no complaints received against the petitioner-company/scheme of reduction but there are six SRN reflected on the MCA portal in relation to some complaint for which the status is unknown. The petitioner-company through its learned senior counsel undertakes to address and deal with these complaints in accordance with applicable law.

9 In the extraordinary general meeting held on October 25, 2018, all except 37 shareholders representing 34,476 equity shares (the "objecting shareholders") i. e., representing about 0.15 per cent. of the total equity

shares have voted for approving the proposed reduction by the petitioner-company.

10 Out of the 37 objecting shareholders only 4 shareholders (i. e., Mr. Janak Mathuradas, Mr. Arun Kejriwal, Mr. Monish Bhandari and Oswal Trading Co. P. Ltd.) have filed an objection to the proposed reduction by the petitioner-company before this Tribunal. However, the petitioner-company through its learned senior counsel has undertaken that if any of the objecting shareholders mentioned above do not want to part with the shares, then the petitioner-company shall not insist on them to do so. The petitioner will furnish (via, e-mail or courier (where e-mail id is not available)) a copy of this Bench's order to each of the objecting shareholders within 15 (fifteen) days from the date on which the same is made available to the petitioner-company. Each objecting shareholder shall within 15 (fifteen) days from receipt of the order inform the petitioner-company, in writing, if they would like to participate in the said reduction or continue holding shares in the petitioner-company. In the event the objecting shareholders of the extraordinary general meeting held on October 25, 2018 do not respond within 15 days of the communication of this Bench's order it shall be presumed that the objecting shareholder intends to participate in the said reduction.

11 In carrying out the selective reduction of share capital the petitioner-company has relied on the judgment of the hon'ble High Court of Delhi in *Reckitt Benckiser (India) Ltd., In re* [2005] 122 DLT 612 wherein it was held that :

> "During the course of hearing 2 persons also joined the objector. Statement was made by learned counsel for the petitioner that if these objectors do not want to part with their equities, the company shall not insist upon the same. In view of this statement, in fact, nothing survive in the objections, as the objections are not going to be affected by the proposed reduction of share capital, because their share would remain intact and they would continue to be the shareholders. After all, on the exit offers given by the Lancaster earlier, many shareholders sold their shares to Lancaster. Out of the shareholders left now, if others who have not come forward and objected to the move of the petitioner inference can be drawn that they have no objection to part with their shares at the offered rates and, Therefore, if the share capital held by them is reduced, the objectors cannot have any grievance as far as others are concerned as their rights are protected."

In view of the undertaking provided by the petitioner-company, this Bench is inclined to follow the same approach as the learned judge in *Reckitt Benckiser (India) Ltd., In re* [2005] 122 DLT 612 and hold that nothing survives in the objections filed by Mr. Janak Mathuradas, Mr. Arun Kejriwal, Mr. Monish Bhandari and Oswal Trading Co. P. Ltd. as they have been given an option to retain their shares and continue as shareholders of the petitioner-company.

Here a question also arises that whether the offer price being offered by **12** the petitioner to the 37 shareholders (who declines to accept the exit offer) is fair and equitable. In this regard, it was brought out before the Bench that after utilizing different valuation method, an average fair equity value of Rs. 1,854 per share was arrived at by the valuers of the petitioner-company. In addition to this a premium of Rs. 246 per share was added by the petitioner-company to the fair value of each share. Thus, improving the value to Rs. 2,100 per share. Against this Janak Mathuradas and other shareholders without giving much cogent reasons and based on some valuation method have mentioned that the price offered per share is on the lower side and also mentioned that it is against the spirit of section 66 of the Companies Act.

In addition to the above, 46 other shareholders of the petitioner-com- **13** pany have also filed an affidavit before this Tribunal supporting the objections raised by Mr. Janak Mathuradas against the proposed reduction. Also, there is an M. A. No. 3857 of 2019 in C. P. No. 4475 of 2018 supporting Mr. Janak Mathuradas.

These shareholders fall in mainly three categories. The treatment of **14** these categories are as under :

(a) Those who purchased/transferred the share after the conclusion of the October 25, 2018 extraordinary general meeting :

The persons who became shareholders of the petitioner-company by buying it shares after the conclusion of the extraordinary general meeting were well aware that the petitioner-company was in the process of undertaking the proposed reduction and the same had already been approved by the requisite majority of the shareholders at the extraordinary general meeting. Therefore, it is not fair or permissible for them to raise any objections against the proposed reduction given that they were fully aware of the decision of the petitioner-company and its shareholders prior to becoming shareholders of the petitioner-company.

(b) Those who did not attend the extraordinary general meeting of October 25, 2018 of the petitioner-company :

As regards the position of shareholders who did not attend the extra-ordinary general meeting the observations of the hon'ble Supreme Court of India in *Miheer H. Mafatlal* v. *Mafatlal Industries Ltd.* [1996] 87 Comp Cas 792 (SC) ; AIR 1997 SC 506, are most relevant (page 829 of 87 Comp Cas) :

> "If he was feeling that the scheme was unfair to him or was not going to protect his interest as a shareholder in the respondent-company, nothing prevented him from remaining present and voicing his grievance before the general body of equity shareholders and to apprise them of the alleged pernicious effects of the scheme. It is, therefore, too late in the day for him to contend that the scheme was unfair to him . . ."

Accordingly, these shareholders also cannot raise objections against the proposed reduction at this stage before this Tribunal.

(c) Those who voted for reduction in share capital in the extraordinary general meeting of October 25, 2018 but now are opposing it :

Certain shareholders who had voted in favour of the proposed reduction at the extraordinary general meeting have also filed an affidavit supporting Mr. Janak Mathuradas' objections against the proposed reduction. In some cases, these shareholders have also acquired additional shares of the petitioner-company after the extraordinary general meeting. It is unfair for these shareholders to raise objection to the proposed reduction.

15 The learned senior counsel appearing on behalf of Mr. Janak Mathuradas contended that the proposed reduction is unfair. However, these contentions no longer survive in view of the undertaking provided by the petitioner-company to allow Mr. Mathuradas to continue as a shareholder. However, it would be worthwhile to refer to a relevant judgment of the hon'ble Delhi High Court in a similar case in *Reckitt Benckiser India Ltd., In re* [2005] 122 DLT 612. It was held by the hon'ble Delhi High Court in paragraph No. 21 as follows :

> "21. The principles, which can be distilled from the aforesaid judicial dicta, are summarised as under :
>
> (i) The question of reduction of share capital is treated as matter of domestic concern, i. e., it is the decision of the majority which prevails.
>
> (ii) If majority by special resolution decides to reduce share capital of the company, it has also right to decide as to how this reduction should be carried into effect.

(iii) While reducing the share capital company can decide to extinguish some of its shares without dealing in the same manner as with all other shares of the same class. Consequently, it is purely a domestic matter and is to be decided as to whether each member shall have his share proportionately reduced, or whether some members shall retain their shares unreduced, the shares of others being extinguished totally, receiving a just equivalent.

(iv) The company limited by shares is permitted to reduce its share capital in any manner, meaning thereby a selective reduction is permissible within the framework of law (see *Denver Hotel Co., In re* [1893] 1 Ch D 495.

(v) When the matter comes to the court, before confirming the proposed reduction the court has to be satisfied that (i) there is no unfair or inequitable transaction, and (ii) all the creditors entitled to object to the reduction have either consented or been paid or secured."

16 As regards the contentions in relation to the valuation report obtained by the petitioner-company, the principles set out by the hon'ble Bombay High Court in *Cadbury India Ltd., In re* [2014] SCC Online Bom 4934 and *Sandvik Asia Ltd.* v. *Bharat Kumar Padamsi* [2009] 151 Comp Cas 251 (Bom) ; [2009] SCC Online Bom 541 are relevant :

In *Cadbury India Ltd., In re* [2014] SCC Online Bom 4934 the following general principles have been set out in paragraph No. 7 :

"*7. General Principles*

7.1.5 Before a court can decline sanction to a scheme on account of a valuation, an objector to the scheme must first show that the valuation is ex-facie unreasonable, i. e., so unreasonable that it cannot on the face of it be accepted. That unreasonableness must exist on the face of the valuation : one so apparent that 'he who runs can read'. To upset a valuation, a wrong approach must be demonstrated clearly and unequivocally, and the result must be plainly invidious. A plausible rationale provided by a valuer is not be readily discarded merely because an objector has a different point of view.

7.1.6 In considering an application for sanction will ask itself if, at a minimum, these tests are met : Is a fair and reasonable value being offered to the minority shareholders ? Have the majority of non-promoter shareholders voted in favour of the resolution ? Can it be said, on reading a valuation as any fair-minded and reasonable person would do, and without microscopic scrutiny, that the valuation is so

egregiously wrong that the judicial conscience will not permit it ? Has the valuer gone so far off-track that the results his valuation returns cannot but be wrong ?

7.1.7 A court called upon to sanction such a scheme is not bound by the ipse dixit of a majority. It must weigh the scheme and look at it from all angles. It must see whether the scheme is fair, just and reasonable, not unconscionable and is not contrary to any provisions of law and it does not violate any public policy. But it must also balance the commercial wisdom of the shareholders expressed at a properly convened meeting against the desires and fancies of the few. The court will take into account, but not be bound by, the views of the majority. In particular, the court will see what the views are of most of the non-promoter (minority) shareholders at the meeting. If the bulk of them have voted in favour, the court will not lightly disregard this expression of an informed view, one that lies in the domain of corporate strategy and commercial wisdom . . .

7.1.9 The sanctioning court has no power or jurisdiction to exercise any appellate functions over the scheme. It is not a valuer. It does not have the necessary skills or expertise. It cannot substitute its own opinion for that of the shareholders. Its jurisdiction is peripheral and supervisory, not appellate. The court is not 'a carping critic, a hair-splitting expert, a meticulous accountant or a fastidious counsel ; the effort is not to emphasize the loopholes, technical mistakes and accounting errors'.

7.1.10 Valuation is not an exact science. Far from it. It is always and only an estimation, a best judgment assessment. The fact that a particular estimation might not catch an objector's fancy is no ground to discredit it. All valuations proceed on assumptions. To dislodge a valuation, it must be shown that those assumptions are such as could never have been made, and that they are so patently erroneous that the end result itself could not but be wrong, unfair and unreasonable. The court must not venture into the realm of convoluted analysis, extrapolation, and taking on itself an accounting burden that is no part of its remit or expertise, and no part of a statutory obligation. In particular, the court must guard against the seductiveness of a proposition that suffers from the fallacy of the undistributed middle : all x is z ; some y is z ; ergo, all y is z. The errors and consequent unreasonableness must be shown to be patent and self-evident.

7.1.11 It is impossible to say which of several available valuation models are 'best' or most appropriate. In a given case, the CCM

method may be more accurate ; in another, the DCF model. There are yet others. No valuation is to be disregarded merely because it has used one or the other of various methods. It must be shown that the chosen method of valuation is such as has resulted in an artificially depressed or contrived valuation well below what a fair-minded person may consider reasonable."

17 In the present case, we have found no patent unfairness in the valuation report obtained by the petitioner-company. The proposed capital reduction has in fact also been approved by a majority of the non-promoter public shareholders. Therefore, this contention is also not accepted.

18 The learned senior counsel appearing on behalf of the petitioner-company further submits that the petitioner-company has complied with all the statutory requirements as per the directions of the Tribunal and they have filed necessary affidavit of service. The learned senior counsel further submits that the petitioner-company has sufficient liquidity through its investments. The learned counsel had submitted a copy of the balance-sheet of M/s. Atlas Copco (India) Ltd. where in as on September 30, 2019 a total investment of Rs. 2,702.27 million is reflected which will be used for the reduction of share capital. This is sufficient for the purpose of the proposed reduction of the share capital of about Rs. 2,013 million.

19 The petitioner-company to publish the notices about registration of order and minutes of reduction by the concerned Registrar of Companies Mumbai, Maharashtra in two newspapers namely i. e., *"Financial Express"* Mumbai edition in English language and translation thereof in *"Loksatta"* in Marathi language both having circulation in Mumbai within 30 days of registration. The petitioner-company undertakes to file certified/authenticated copy of the order and form of minutes duly certified by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai Bench with the Registrar of Companies within 30 days of receipt of this order.

20 Application for the reduction of share capital allowed subject to the directions given herein above. All concerned regulatory authorities to act on production of certified copy of this order to be issued by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

21 In view of the above, Miscellaneous Application No. 3857 of 2019 in C.P. No. 4475 of 2018 is not allowed and is disposed off in the above terms. Ordered accordingly.

Form of minutes

"The existing issued, subscribed and paid up equity share capital of Atlas Copco (India) Ltd., of Rs. 22,56,15,640 (Indian rupees twenty

two crores fifty six lakhs fifteen thousand six hundred and forty only) consisting of 22,561,564 fully paid up equity shares of Rs. 10 each, is reduced to the extent of equity shares not exceeding 8,29,613 issued, subscribed and fully paid up equity shares of Rs. 10 each held by the non- promoter public shareholders of Atlas Copco (India) Ltd. ('non-promoter shareholders'). After this reduction the issued, subscribed and paid-up equity share capital of Atlas Copco (India) Ltd., will be not exceeding Rs. 2,17,31,951 fully paid-up equity shares of Rs. 10 each."

[2020] 221 Comp Cas 82 (NCLAT)

[BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL — NEW DELHI]

JAYSHREE DAMANI AND ANOTHER

v.

ATLAS COPCO (INDIA) LTD.

(and connected appeals)

JARAT KUMAR JAIN J. ***(Judicial Member),***
BALVINDER SINGH and
DR. ASHOK KUMAR MISHRA ***(Technical Members)***

June 3, 2020.

HF ▸ Respondent

SHARE CAPITAL—REDUCTION OF SHARE CAPITAL—SPECIAL RESOLUTION APPROVING REDUCTION PASSED IN EXTRAORDINARY GENERAL MEETING OF COMPANY—TRIBUNAL APPROVING REDUCTION SUBJECT TO DIRECTION GIVEN—MODIFICATION DIRECTED BY TRIBUNAL RATIFIED BY BOARD OF DIRECTORS—PROPER—COMPANIES ACT, 2013, S. 66.

A special resolution was passed on October 25, 2018 by the shareholders of the respondent-company whereby the shareholding of the company would get reduced from 22,561,564 fully paid-up shares of Rs. 10 each to 2,17,31,951 fully paid-up shares of Rs. 10 each. The application for the reduction of share capital was allowed by the Tribunal. On appeal :

Held, *dismissing the appeal, that the company had stated that the shareholders who had voted against the resolution could continue to hold the shares of the company. The special resolution specifically provided that the reduction was being approved by the shareholders subject to any terms, modifications or conditions that the Tribunal might impose and the board of directors of the*

company might agree. The Tribunal had given directions and it had been approved by the board of directors of the company. The company had sought approval of the reduction of share capital and the objectors had objected to the scheme and the modification had been done. The same modification had been ratified by the board of directors. The directions issued by the Tribunal and modification proposed by the board of directors were the practical method to ensure that the shareholders who wanted to retain their shares were able to do so which did prejudice them. The board had already approved the terms of the order, ratified all actions and steps taken for procuring and implementing the order and also caused a copy of the order to be filed with the Registrar of Companies. The company had done its duty as per statutory requirements by intimating their shareholders, and if the shareholder had not attended the extraordinary general meeting it was their will but they had to go with decision taken in the matter.

Order of the National Company Law Tribunal in ATLAS COPCO (INDIA) LTD., *In re* [2020] 221 Comp Cas 72 (NCLT) *affirmed.*

ATLAS COPCO (INDIA) LTD., *In re* [2020] 221 Comp Cas 72 (NCLT) (para 1) *referred to.*

Company Appeals (A. T.) Nos. 365, 366 of 2019, 24, 27 to 30 of 2020.

Abhijeet Sinha, Mahesh Agarwal, Mantul Bajpai, Divyanshu Chandiramani, M. R. Saikat Sarkar, Advocates for the appellant in Company Appeal (A. T.) No. 365 of 2019.

Sudipto Sarkar, Senior Advocate, *Mahesh Agarwal, Mantul Bajpai, Divyanshu Chandiramani,* Advocates for the appellant in Company Appeal (A. T.) No. 366 of 2019.

Shikhil Suri, Shiv Kumar Suri, Ms. Nikita Thapar, Vinati Bhola and *Ms. Shilpa Jaini*, Advocates, for the appellant in Company Appeal (A. T.) No. 24 of 2020.

Amit Singh Chadha, Senior Advocate, with *Pranjit Bhattacharya*, Advocate for the appellant in Company Appeal (A. T.) No. 27 of 2020.

Abhijit Singh, Pranjit Bhattacharya and *Saikat Sarkar,* Advocates for the appellant in Company Appeal (A. T.) No. 28 of 2020.

Pranjit Bhattacharya, Advocate for the appellant in Company Appeal (A. T.) No. 29 of 2020.

Sudipto Sarkar, Senior Advocate and *Pranjit Bhattacharya*, Advocate for the appellant in Company Appeal (A. T.) No. 30 of 2020.

A. S. Chandiok, Senior Advocate with *Hemant Sethi, Gaurav Sethi, Ms. Shweta, Ms. Neelam Deol* and *Shruti Sharma*, Advocates for the respondent in Company Appeal (A. T.) Nos. 365 and 366 of 2019.

Hemant Sethi and *Gaurav Sethi* for the respondent in Company Appeal (A. T.) Nos. 24, 27 to 30 of 2020.

JUDGMENT

The judgment of the Appellate Tribunal was delivered by

1 BALVINDER SINGH ***(Technical Member)***.—The present seven appeals have been preferred by the appellants under section 421 of the Companies Act, 2013 against the order dated December 10, 2019—(*Atlas Copco (India) Ltd., In re* [2020] 221 Comp Cas 72 (NCLT)) passed by the National Company Law Tribunal, Bench II, Mumbai, in Company Petition No. 4475 of 2018.

2 The brief facts of the case are that the respondent-company is a company incorporated under the provisions of the Companies Act, 1956 carrying the business of manufacturing and selling industrial gas and air compressors, vacuum solutions, industrial tools and solutions, mobile airs, tools, power pumps and light towers. The issued, subscribed and paid-up share capital of the respondent-company before filing the company petition before the National Company Law Tribunal was Rs. 22,56,15,640 comprising of 22,561,564 equity shares of Rs. 10 each. 96.32 per cent. shares of the company were held by the holding company, viz., Atlas Copco AB and the remaining 3.68 per cent. shares were held by public shareholders and group companies of the respondent-company. The shares of the respondent-company were listed on BSE and Pune Stock Exchange. In May, 2011 the equity shares of the respondent-company were delisted from the Bombay and Pune Stock Exchange.

3 The respondent-company issued a notice dated September 18, 2018 to its shareholders convening an extraordinary general meeting on October 25, 2018 to consider a special resolution approving reduction of the paid-up equity share capital held by the public shareholders and extinguishing their entire shareholding in the respondent-company. The special resolution was passed on October 25, 2018 by the shareholders whereby the shareholding of the company would get reduced from 22,561,564 fully paid up shares of Rs. 10 each to 2,17,31,951 fully paid-up shares of Rs. 10 each.

4 In the extraordinary general meeting held on October 25, 2018 all except 37 shareholders representing 34,476 equity shares (the objecting shareholders), i. e., representing about 0.15 per cent. of the total equity shares have voted for approving the proposed reduction of the respondent-company.

After getting approval from the shareholders the respondent-company filed Company Petition No. 4475 of 2018 before the National Company Law Tribunal, Mumbai for getting its approval under section 66 of the Companies Act, 2013 and the Rules framed thereunder and reduction of equity share capital of the respondent-company.

5 Before the National Company Law Tribunal, Mumbai, out of 37 shareholders, only 4 shareholders namely : (1) Mr. Janak Mathuradas, (2) Mr. Arun Kejriwal, (3) Mr. Monish Bhandari, and (4) Oswal Trading Co. P. Ltd. filed an objection to the proposed reduction before the National Company Law Tribunal, Mumbai. The respondent-company gave price of Rs. 2,100 per share, offering the objectors to exit. The respondent-company had obtained a fair equity value of Rs. 1,854 per share given by M/s. BSR and Associates LLP, after utilizinag different valuation methods. The company added premium of Rs. 246 per share to the fair value of each share thereby improving the value to Rs. 2,100 per share. The appellant had mentioned that the price offered per share is on the lower side and also station that it is against the spirit of section 66 of the Companies Act. 46 other shareholders of the respondent-company also filed objections supporting the objections raised by Mr. Janak Mathuradas against the proposed reduction stating that the reduction is unfair. Their main objection was that the proposed reduction is unfair.

6 The respondent-company stated that the objections of the appellants no longer survive as the respondent-company has given an undertaking that the appellants can continue as a shareholder.

7 After hearing the parties the National Company Law Tribunal, Mumbai passed the following order (page 81 of 221 Comp Cas) :

> "Application for the reduction of share capital allowed subject to the directions given hereinabove. All concerned regulatory authorities to act on production of certified copy of this order . . ."

8 Being aggrieved by the said impugned order the appellants have preferred the present appeal by challenging the impugned order.

Company Appeal (A. T.) No. 365 of 2019.

9 The appellants stated that appellant Nos. 1 and 2 hold 3703 and 1761 equity shares of the respondent-company. The appellants stated that the company issued a notice dated September 18, 2018 to its shareholders convening an extraordinary general meeting on October 25, 2018 to consider a special resolution in reduction of capital of the company and that such reduction be effected by cancelling and extinguishing 3.68 per cent. of the total issued, subscribed and paid-up equity share capital of the company non-promoter shares which are held by the public shareholders. The

appellants stated that on perusal of the explanatory statement under section 102 of the Act, there was no option available to any minority or public shareholder to exercise the option of remaining a shareholder. The appellants stated that in other words the resolution proposed and the explanatory statement of reduction of share capital was mandatory for all minority or public shareholders. The appellants stated that they were opposed to their shareholding being compulsorily extinguished as also to the value of Rs. 2,100 per equity share. The appellants stated that they hold only 5464 equity shares and 96.32 per cent. of the total share capital is held by the respondent-company, they realised that the appellants will be outvoted despite genuine concerns regarding reduction and extinguishment and value offered to each shareholder. Therefore, the appellants did not attend the extraordinary general meeting held on October 25, 2018. The appellants stated that the meeting was held and several minority or public shareholders voiced their concern against the capital reduction and voted against the resolution. The appellants stated that the resolution was passed and the respondent filed company petition for approval before the National Company Law Tribunal, Mumbai. The appellants further stated that they came to know that one Mr. Janak Mathuradas filed objections to the company petition before the National Company Law Tribunal, Mumbai, therefore, the appellants by duly sworn affidavits October 11, 2019 duly supported that objections filed by Mr. Janak Mathuradas. The appellants stated that the company has stated that the respondent shall unconditionally permit such minority or public shareholders who had attended the extraordinary general meeting and voted against the resolution to remain shareholders of the company but since the appellants had voted in favour of the resolution, they were precluded from objecting the company petition before the National Company Law Tribunal and the option to remain shareholders shall not be extended to them. The appellants stated that they filed Miscellaneous Application No. 3869 of 2019 and 3911 of 2019 before the National Company Law Tribunal, Mumbai pointing out that the appellants did not attend the extraordinary general meeting and hence the question of voting in favour of the resolution did not arise.

10 Reply on behalf of the respondents have been filed. The respondent stated that the appellants through the electronic voting facility made available by the respondent to its shareholders prior to extraordinary general meeting, voted in favour of the resolution approving the said reduction. The respondent further stated that Mr. Sanjay Damani, husband of appellant No. 1 and father of appellant No. 2, attended the extraordinary general meeting held on October 25, 2019 and recorded his presence at the

extraordinary general meeting by signing the attendance slip. The respondent has stated that the certificate issued by scrutinizer and the attendance slip is placed herewith. The respondent stated that the appellants and their family members substantially increased their shareholding in the respondent-company after fully knowing the resolution passed in the extraordinary general meeting on October 25, 2018. The respondent stated that the appellants and his family members had acquired/purchased more than 7000 shares approx. post October 25, 2018. The respondent stated that the appellant has not disclosed at which price they have purchased these 7000 shares. The respondent stated that Sanjay Damani is a professional stock broker and is selling the respondents shares on his own website at a price of INR. 2,125 per share while at the same time alleging that the respondent's offer price of INR. 2,100 is grossly undervalued. The respondent submitted that the appellants have themselves admitted themselves decided to object the said reduction only on October 11, 2019 almost a year after the resolution. The respondent stated that Mr. Janak Mathuradas sent an e-mail dated October 7, 2019 to the appellants and the other public shareholders to support his objections before the National Company Law Tribunal, Mumbai. The respondent stated the appellants are falsely alleging that the respondent has modified the resolution passed in the extraordinary general meeting by an undertaking in the affidavit November 8, 2019 filed by the respondent. The respondent stated that the said undertaking was filed at the directions of the National Company Law Tribunal, Mumbai and there has been no modification of the resolution. The respondent further stated that who want to participate in the said reduction and have not appealed against the impugned order, they are approaching the company for release of payment but the respondent-company is unable to release in view of the stay on the implementation of impugned order. The respondent further state that the respondent is also facing financial losses and the company has transferred the consideration amount to a separate non-interest being bank account as of date. The respondent stated that they have already filed certified copy of the impugned order with the Registrar of Companies and a certificate confirming registration of the impugned order has also been issued by the Registrar of Companies, Pune on December 27, 2019.

In the rejoinder filed by the appellant, the appellant stated that the **11** respondent has no answer to the ground raised that had the option of retaining shares been part of the explanatory statement to the notice convening the extraordinary general meeting, the minority shareholders would have voted differently. The appellant further stated that the respondent has

not disputed the fact that the actual undertaking dated November 8, 2019 was substantially and materially different from the undertaking expressed by the respondent before the National Company Law Tribunal. The appellant stated that the resolution can be modified only by the shareholders after taking a conscious decision taking into consideration all the relevant and important aspects of the resolution affecting their rights. The appellant stated that a special resolution cannot be amended without giving sufficient notice to all the shareholders for the amendment. The appellant stated that there is no power granted to the National Company Law Tribunal or the board of directors to modify/amend the resolution. The appellant stated that at the time of passing of the resolution the shareholders did not have any information regarding the future modification which the respondent will propose, the modification cannot take place. The appellant stated that the alleged certificate issued by the scrutinizer is incorrect. The appellant stated that the appellants herein have not voted in favour of the resolution by electronic voting or any other means. The appellant stated that this certificate has been made on the request of the respondent. The appellant stated that had the appellants known that voting against the resolution would entitle them to retain the shares, the appellants would have voted against the resolution.

Company Appeal (A. T.) No. 366 of 2019

12 The appellant stated that he holds 1,372 equity shares since its incorporation. The appellant stated that the company issued a notice dated September 18, 2018 to its shareholders convening an extraordinary general meeting on October 25, 2018 to consider a special resolution in reduction of capital of the company and that such reduction be effected by cancelling and extinguishing 3.68 per cent. of the total issued, subscribed and paid-up equity share capital of the company non-promoter shares which are held by the public shareholders. The appellant stated that on perusal of the explanatory statement under section 102 of the Act, there was no option available to any minority or public shareholder to exercise the option of remaining a shareholder. The appellant stated that in other words the resolution proposed and the explanatory statement of reduction of share capital was mandatory for all minority or public shareholders. The appellant stated that he attended the extraordinary general meeting held on October 25, 2018. The appellant stated that the meeting was held and several minority or public shareholders voiced their concern against the capital reduction and voted against the resolution. The appellant stated that he voted against the resolution. The appellant stated that the resolution was passed and the respondent filed company petition for approval before the National

Company Law Tribunal, Mumbai. The appellant stated that during the extraordinary general meeting the appellant requested for copies of the valuation report as well as the fairness opinion procured by the respondent in support of the valuation of Rs. 1,854 per equity share sought to be assigned to the equity shares of the respondent. The appellants stated that the respondent required the appellant to sign a "confidentiality and hold harmless letter" before providing the documents on the ground that the said documents were confidential in nature. The appellant stated that he filed objections to the company petition filed by the respondent under section 66 of the Act for sanction of resolution for capital reduction passed at the extraordinary general meeting. The appellant stated that the valuation issued by the BSR and Associates LLP dated September 14, 2018. The date for valuation is taken as March 31, 2018 which is much prior to the date of valuation report. The appellant stated that prior to valuation, i. e., in November, 2017 the mining and excavation business of the respondent was hived off to another company, namely, Epiroc Mining India Ltd. The appellant stated that the scheme as confirmed is unfair and inequitable and in any case does not provide for a fair value for the share capital which is sought to be reduced by confirmation of the scheme. The appellant stated that the scheme was confirmed in respect of 8,29,613 issued subscribed and fully paid-up equity shares of Rs. 10 each held by the non-promoter public shareholders of the respondent-company but at the time hearing of the petition it was suggested that the shares of dissenting shareholders that were opposed to the scheme would not be the subject-matter of reduction, yet the minutes which form part of the impugned order refers to the entirety of the share capital held by the minority shareholders of the respondent and the words "not exceeding" have been added. The appellant stated that when a resolution is passed by the shareholders it can only be modified by the shareholders in a legally convened general meeting. The appellant stated that the respondent-company cannot by way of an affidavit filed in court seek to modify the resolution. The appellant stated that the respondent's suggestion that any modification to the resolution was suggested by the Tribunal is incorrect. The modification was sought by the respondent-company. The changes that were proposed by the company to resolution are factual in nature. The appellant stated that the company under the garb of modification by the Tribunal itself purported to modify the resolution for the benefit and interest of its promoters. The appellant stated that the Tribunal is vested with the responsibility of protecting the minority shareholders from oppression of majority promoter shareholders in the matters of reduction of share capital. The appellant

stated that as per section 188 of the Act only the meeting of the affected parties, i. e., the non-promoter minority shareholders should have been conducted and the special resolution for reduction of share capital should have been put to vote. The appellant stated that an option to remain with the company was never disclosed to its shareholders before the extra-ordinary general meeting. The appellant stated that valuation report issued by valuer is admitted based only on the information provided by the company and valuer has admittedly not even independently verified or checked the accuracy or timelines of the same. The valuer has not done necessary due diligence. The appellant stated that the business plan, assumptions and other information relied in the valuation report are not even placed before the National Company Law Tribunal so as to enable it to verify the reasonableness of the assumptions. The appellant stated that the valuer has even ignored the anticipated enhanced revenues and operational efficiency which the company expects to derive. The appellant stated that due to the amendment in 2019 to the Income-tax Act, 1961 corporate tax rates have been reduced, however, the valuation proceeds on the basis of old rates. The fair market value of shares of the company needs to be determined after taking into account the provisions for taxation applicable as on date. The appellant has stated that the appellant had the shares independently valued at Rs. 3,627 per share as against the valuation of Rs. 1,854.

13 In reply on behalf of the respondents, the respondent stated that the appellant hold 885 shares of the respondent-company and is attempting to override the collective wisdom and decision taken by the National Company Law Tribunal and 99.84 per cent. of the shareholders as well as the majority of the non-promoter. The respondent stated that the appellant has admitted that the appellant can choose not to participate in the said reduction and continue to retain his shares in the respondent as per the impugned order and the respondent's letter dated December 13, 2019 if he feels that the said reduction is unfair or prejudicial to his interest. The respondent stated that the appellant did not even intimate the respondent regarding the filing of the said appeal and a copy of the said appeal was only delivered to the respondent on December 26, 2019 and obtained ex parte stay on December 20, 2019 from the hon'ble Appellate Tribunal. The respondent further stated that there has been no modification of the resolution at the extraordinary general meeting and the acceptance of the undertaking by the Tribunal is just one of the terms and conditions subject to which the hon'ble Tribunal has approved the said reduction in accordance with section 66(3) of the Act. The respondent further stated that who want to participate in the said reduction and have not appealed against the

impugned order, they are approaching the company for release of payment but the respondent-company is unable to release in view of the stay on the implementation of impugned order. The respondent further stated that the respondent is also facing financial losses and the company has transferred the consideration amount to a separate non-interest being bank account as of date. The respondent stated that they have already filed certified copy of the impugned order with the Registrar of Companies and a certificate confirming registration of the impugned order has also been issued by the Registrar of Companies, Pune on December 27, 2019. The respondent stated that the appellant is well known for and has extensive history of objecting to all capital reduction schemes undertaken by companies in which he is a shareholder. The respondent stated that the appellant follows a set pattern of placing a frivolous and biased valuation report before the courts to cast doubts and aspersions on the valuation exercise conducted by the company and then raises the same frivolous and baseless allegations to challenge the legality of the capital reduction process despite being well aware of judicial precedents to the contrary. The respondent stated that the appellant sent an e-mail to other shareholders, after obtaining register of members of the respondent from the Registrar of Companies, requesting them to support his objections before the National Company Law Tribunal, Mumbai. The respondent stated that section 66 does not distinguish between the promoter and public shareholding or require a separate meeting of any class of shareholders to be convened as sought by the appellants. The respondent stated that once a notice has been duly served on the parties and they choose not to attend or vote at the meeting it must be presumed that they have no objection the scheme and have given their implied consent thereto. The respondent stated that they have received various requests and e-mail from public shareholders requesting for an exist. The respondent stated that the National Company Law Tribunal has been vested with wide substantive powers under section 66(3) of the Act whereby it can make an order approving reduction of share capital on such terms and conditions as it may deem fit. The respondent stated that this power has been reiterated under rule 6 of the Reduction Rules and also finds mention in form RSC-6 thereby fortifying the fact that the National Company Law Tribunal's powers are wide and substantive. The respondent stated that vide board resolution dated September 18, 2018, the company secretary was granted authority to furnish undertaking affidavit as directed by the National Company Law Tribunal, Mumbai. The respondent stated that the mining and rock excavation equipment business was

demerged into Epiroc Mining India Ltd. in November, 2017 and the shareholders were issued shares at a 1 : 1 ratio of Epiroc as part of the demerger.

14 The rejoinder has been filed by the appellant. The appellant stated that the respondent has no answer to the ground raised that had the option of retaining shares been part of the explanatory statement to the notice convening the extraordinary general meeting, the minority shareholders would have voted differently. The appellant further stated that the respondent has not disputed the fact that the actual undertaking dated November 8, 2019 was substantially and materially different from the undertaking expressed by the respondent before the National Company Law Tribunal. The appellant stated that the resolution can be modified only by the shareholders after taking a conscious decision taking into consideration all the relevant and important aspects of the resolution affecting their rights. The appellant stated that a special resolution cannot be amended without giving sufficient notice to all the shareholders for the amendment. The appellant stated that there is no power granted to the National Company Law Tribunal or board of directors to modify/amend the resolution. The appellant stated that at the time of passing of the resolution the shareholders did not have any information regarding the future modification which the respondent will propose, the modification cannot take place. The appellant further stated that it is wrong that the appellant is attempting to override the collective wisdom of the decision of 99.84 per cent. of the shareholders. The appellant stated that majority of the shareholding of the respondent-company are held by Atlas Copco AB, who has voted in favour of the resolution. The appellant stated that the challenge before this Appellate Tribunal is on the patent incorrectness and manifest unfairness in the valuation arrived by the valuer at the instance of the respondent-company. The appellant stated that it is wrong that the valuation report put up by him is frivolous or biased.

15 In all other five appeals namely, Company Appeal (A. T.) Nos. 24, 27, 28, 29 and 30 of 2020 the facts, grounds, prayer are similar as are in Company Appeal (A. T.) No. 366 of 2019. The only difference is that in one appeal the appellant acquired/shares after the resolution was passed ; in another appeal the appellant did not attend the meeting to cast their votes ; in another appeal the appellant voted against the resolution for some shares and for some shares the appellant did not vote and in other case the appellant cast invalid votes. But the relief sought in these appeals are similar as sought in the earlier appeal. The following reliefs have been sought in the present appeals :

(a) The hon'ble Tribunal be pleased to quash and set aside the impugned order dated December 10, 2019 and be further pleased to reject the petition for capital reduction of the respondent.

(b) The hon'ble Tribunal be pleased to appoint an independent valuer to value the shares of the respondent for the purpose of the selective capital reduction and after consideration of the report of such independent valuer, this hon'ble Tribunal be further pleased to pass such orders as this hon'ble Tribunal deems fit.

(c) That without prejudice to prayer (a) above and in the alternative to prayer clause (b), this hon'ble Tribunal be pleased to direct the respondent to extend the option to continue as shareholders to all minority or public shareholders including the appellants.

(d) Pending the hearing and final disposal of the appeal, the effect, implementation and operation of the impugned order dated December 10, 2019 be stayed ;

(e) Ad interim reliefs, costs ; etc.

16 We have heard the learned counsel for the parties and perused the record.

17 Before we proceed further we want to place undisputed facts. It is correct that the respondent-company was a listed company and later on the equity shares of the respondent-company were delisted from BSE Ltd. and Pune Stock Exchange in May, 2011. Post the delisting, the investment made by the non-promoter public shareholders of the respondent-company are locked and these shareholders do not have an opportunity to liquidate their shareholding or realize their investment easily in the respondent-company. Various non-promoter public shareholders approached the respondent-company to provide them an exit route. Considering the request, the respondent-company convened a extraordinary general meeting on October 25, 2018 wherein the shareholders of the company had approved the reduction in the issued, subscribed and paid-up equity share capital of the respondent-company by cancelling and extinguishing 3.68 per cent. equity shares held by non-promoter in the company.

18 In the extraordinary general meeting, all except 37 shareholders representing 34,476 equity shares have voted for approving the proposed reduction by the respondent-company. Out of 37 objecting shareholders only 4 shareholders, namely, Mr. Janak Mathuradas, Mr. Arun Kejriwal, Mr. Monish Bhandari and Oswal Trading Co. P. Ltd. filed objection to the proposed reduction before the National Company Law Tribunal, Mumbai. Out of

these 4, only Mr. Janak Mathuradas filed company appeal challenging the order of the National Company Law Tribunal, Mumbai.

19 Other 6, namely, Mr. Arun Kejriwal, Mr. Jayshree Damani Mr. Sanjay Asher, Mr. Jawahr Jagatsinh Merchant, Mr. Deep Janak, Mr. Sudhir Haribhai Patel have also filed company appeal challenging the order of the National Company Law Tribunal.

20 Learned counsel for the appellants in Company Appeal (A. T.) No. 365 of 2019 has argued that the appellants did not attend the extraordinary general meeting dated October 25, 2018 for reduction of share capital and did not voted in favour of resolution. Learned counsel for the appellants further argued that they vide e-mail dated November 25, 2019 and reminder dated November 27, 2019 called upon the respondent to provide evidence in this regard but respondent-company neglected to provide any such details.

21 Learned counsel for the respondent argued that the report submitted by Mr. Shalesh Indapurkar and Associates, Company Secretaries, who was appointed to scrutinize the e-voting process and ballot process in relation to the propose capital reduction has submitted his report which states that voting period commenced from October 20, 2018 (9 a.m.) till October 24, 2018 (5 p.m.) and the shareholders who have voted in favour of the proposed capital reduction considered and approved at the extra general meeting includes the name of Mrs. Jayshree Sanjay Damani holding 1892 shares and Ms. Yashita Sanjay Damani 261 shares at the time. Learned counsel for the respondent also argued and shown attendance slip duly signed by Sanjay Damani who attended the meeting on behalf of Yashita Damani.

22 We have considered the submission of the parties on this issue and perused annexure 1 and annexure-2 at pages 11 to 13 of counter affidavit filed by the respondent. We note that attendance slip has been duly signed by Sanjay Damani who attended meeting on behalf of his daughter Yashita Damani. In this attendance slip it is clearly mentioned number of shares held is 261. We also perused letter dated December 3, 2019 issued by Scrutinizer. The said letter clearly states that Mrs. Jayshree Sanjay Damani holding 1892 shares and Ms. Yashita Sanjay Damani holding 261 shares voted in favour of the proposed capital reduction through e-voting. Therefore, we are satisfied that the meeting was attended and voting was done through e-voting in favour of the resolution by the appellants.

23 Learned counsel for the appellant in Company Appeal (A. T.) No. 28 of 2020 argued that he is holding 500 shares in demat form and did not

attend the extraordinary general meeting held on October 25, 2018 for consideration of the proposed resolution for reduction of share capital.

Learned counsel for the respondent argued that the appellants admit- **24**
tedly acquired/purchases share only in May, 2019, i. e., after 7 months after extraordinary general meeting and he was fully aware of the reduction. Learned counsel for the respondent argued that when the appellants were not holding any share as on October 25, 2018 how he can attend the meeting.

We have considered the submissions of the parties. We have gone **25**
through at paragraph 7(vii) of the appeal filed by the appellants wherein it is stated : "It is solely due to this reason that the appellant did not attend the extra general meeting held on October 25, 2018 for consideration of the proposed resolution for reduction of share capital". We have also perused page No. 343 of Company Appeal (A. T.) No. 366 of 2019 wherein the status of shareholders who have filed an affidavit in support is given which is part of the National Company Law Tribunal. We are satisfied that the argument of appellant has no force as he purchased/acquired the shares in May 2019 knowing fully well that the reduction in shareholding has been approved in the extraordinary general meeting on October 25, 2018.

Similarly, we have perused the record in the other company appeals also **26**
and we noticed that in Company Appeal (A. T.) No. 366 of 2019, the appellant has 885 shares held at the extraordinary general meeting and voted against for all shares. In Company Appeal (A. T.) No. 24 of 2020, the appellants have 18,434 shares at the time of the extraordinary general meeting and he voted against for 17,858 shares and did not vote for 576 shares. In Company Appeal (A. T.) No. 27 of 2020 the appellant has 348 shares and voted against for all shares. In Company Appeal (A. T.) No. 29 of 2020 the appellant voted against 219 shares and cast an invalid votes for 594 shares.

Learned counsel for the appellants argued that they are the minority **27**
shareholders and have opposed the scheme but despite such opposition the scheme has been approved on a valuation report dated September 14, 2018 and the date of valuation is taken as March 31, 2018. Learned counsel for the appellants further argued that prior to valuation, in November 2017 the mining and excavation business of the respondent was hived off to another company, namely, Epiroc Mining Ltd. Learned counsel for the appellant further argued that an independent valuer. Learned counsel further argued that the valuation is on lower side as he got done the valuation from Jayesh Desai and Co. which has valued Rs. 3,627 as against the respondent valuation of Rs. 2,100 per share.

28 Learned counsel for the respondent argued that the appellant has deliberately concealed the fact when the mining and excavation business of the respondent was hived off to another company, the respondent had issued share at a 1 : 1 ratio of Epiroc as part of the demerger. Learned counsel for the respondent argued that section 66 does not require the company to undertake any valuation exercise for implementing a capital reduction unlike section 230 and other provisions of the Act. Learned counsel for the respondent argued that it is settled law that under section 66 it is for the appellant to establish that the valuation obtained by the respondent is unreasonable and perverse and in absence thereof the respondents' valuation has to be accepted by the court. Learned counsel for the respondent argued that some of the appellants or their family members have acquired 7,734 shares post the extraordinary general meeting and deliberately suppressed the purchase price of per share. Learned counsel for the respondent argued that the father/husband of the appellants in C. A. No. 365 of 2019 is a professional stock broker and is selling the respondents shares on his own website at a price of INR 2,125 per share and alleging that the respondents' offer price of Rs. 2,100 is grossly undervalued.

29 We note that the mining business and other business of the respondent-company was hived off and the shares at a 1 : 1 ratio were issued. The appellant has not touched this argument that the shares were issued. However, demergers involve issue of shares of new company to existing shareholders and it is not a relevant issue for purpose of this appeal.

30 We also note that at the time of arguments a pamphlet was given by the respondent to prove that Mr. Sanjay Damani, husband and father of appellants in Company Appeal (A. T.) No. 365 of 2019 is offering respondents' share at a price of Rs. 2,125. We also note that the actual price of share is determined by the market but as the shares are already delisted, therefore, the respondent has got the valuation of shares for the benefit of minority shareholders. We also note from the record that various shareholders are approaching to respondent for surrendering their shares in lieu of consideration. Further the respondent has also clarified that the shareholders who has voted against the resolution can hold the shares for which the respondent has filed an affidavit before the National Company Law Tribunal, Mumbai and also argued before this Tribunal.

31 We note that to ensure fairness a fair play of the share purchase is necessary. The company appointed M/s. BSR and Associates LLP to do the valuation of share of the company. The company also added valuation taking into consideration the past performance as well as future projection by expert.

COMPANY CASES

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(STATUTES)

Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2020

Notification No. FEMA 23(R)/(3)/2020-RB, dated 31st March, 2020[1].

In exercise of the powers conferred by clause (a) of sub-section (1), sub-section (3) of section 7 and clause (b) of sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 (Notification No. FEMA 23(R)/2015-RB, dated January 12, 2016) (hereinafter referred to as "the Principal Regulations"), namely :—

1. Short title and commencement.—These Regulations may be called the **Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2020.**

2. In the Principal Regulations, in regulation 9, in sub-regulation (1) and sub-regulation (2)(a), for the words "nine months", the words "nine months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time-to-time" shall be substituted. Similarly, in sub-regulation (1)(a), for the words "fifteen months", the words "fifteen months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time-to-time" shall be substituted.

3. In regulation 9(1)(b), for the words "period of nine months or fifteen months, as the case may be", the words "said period" shall be substituted.

4. In proviso to regulation 9(2)(a), for the words "period of nine months", the words "said period" shall be substituted.

[ADVT. III/4/Exty./529/19]

1. Gaz. of India, Extry. No. 141, dated 31-3-2020, Pt. III, sec. 4.

Securities and Exchange Board of India (Foreign Portfolio Investors) (Amendment) Regulations, 2020

Notification No. SEBI/LAD-NRO/GN/2020/09, dated 7th April, 2020[1].

In exercise of the powers conferred by sub-section (1) of section 30 read with sub-section (1) of section 11, clause (ba) of sub-section (2) of section 11 and sub-sections (1) and (1A) of section 12 of the Securities and Exchange Board of India Act, 1992, and under section 25 of the Depositories Act, 1996, the Securities and Exchange Board of India hereby, makes the following regulations, to further amend the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, namely :—

(1) These regulations may be called the **Securities and Exchange Board of India (Foreign Portfolio Investors) (Amendment) Regulations, 2020.**

(2) They shall come into force on the date of their publication in the Official Gazette.

(3) In the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019—

(I) In regulation 5, in clause (a), in sub-clause (iv), after the words "member countries" and before the words "which are", the words and symbol ", or from any country specified by the Central Government by an order or by way of an agreement or treaty with other sovereign Governments," shall be inserted.

[ADVT.-III/4/Exty./01/2020]

Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2020

Notification No. S. O. 1278(E), dated 22nd April, 2020[2].

In exercise of the powers conferred by clauses (aa) and (ab) of sub-section (2) of section 46 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby makes the following rules further to amend the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, namely :—

1. Short title and commencement.—(1) These rules may be called the **Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2020.**

1. Gaz. of India, Extry. No. 145, dt. 7-4-2020, Pt. III, sec. 4.
2. Gaz. of India, Extry. No. 1135, dt. 22-4-2020, Pt. II, sec. 3(ii).

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, in rule 6, in clause (a), for the provisos, the following provisos shall be substituted namely :—

"Provided that an entity of a country, which shares land border with India or the beneficial owner of an investment into India who is situated in or is a citizen of any such country, shall invest only with the Government approval :

Provided further that, a citizen of Pakistan or an entity incorporated in Pakistan shall invest only under the Government route, in sectors or activities other than defence, space, atomic energy and such other sectors or activities prohibited for foreign investment :

Provided also that in the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction or purview of the above provisos, such subsequent change in beneficial ownership shall also require Government approval."

[F. No. 01/05/EM/2019-Part (1)]

Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2020

Notification No. S. O. 1374(E), dated 27th April, 2020[1].

In exercise of the powers conferred by clauses (aa) and (ab) of sub-section (2) of section 46 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby makes the following rules further to amend the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, namely :—

1. Short title and commencement.—(1) These rules may be called the **Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2020.**

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (hereinafter referred to as the principal rules), in rule 7, the *Explanation* shall be omitted.

1. Gaz. of India, Extry. No. 1227, dt. 27-4-2020, Pt. II, sec. 3(ii).

3. In the principal rules, after rule 7, the following rule shall be inserted, namely :—

"7A. *Acquisition after renunciation of rights.*—A person resident outside India who has acquired a right from a person resident in India who has renounced it may acquire equity instruments (other than share warrants) against the said rights as per pricing guidelines specified under rule 21 of these rules."

4. In the principal rules, in Schedule 1, in the Table,—

(i) against serial number 15.3.1, in the entries under column (2), under sub-heading "Note", in serial number (3), after the words "first store", the words "or start of online retail, whichever is earlier" shall be inserted.

(ii) serial number F.8.1, for the entries in column (2), under the heading "Sector/Activity", the following entry shall be substituted, namely :—

"Insurance Company"

(iii) for serial number F.8.2 and the entries relating thereto, the following serial number and entries shall be substituted, namely :—

(1)	*(2)*	*(3)*	*(4)*
"F.8.2	Intermediaries or insurance intermediaries including insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, surveyors and loss assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India from time to time.	100%	Automatic"

(iv) after serial number F.8.2 as so substituted, the following serial number and entries shall be inserted, namely :—

(1)	*(2)*
"F.8.3	*Other conditions*
	(a) No Indian Insurance Company shall allow the aggregate holdings by way of total foreign investment in its equity shares by foreign investors, including portfolio investors, to exceed forty-nine per cent. of the paid-up equity capital of such Indian Insurance Company. (b) The foreign investment up to forty-nine per cent. of the total paid-up equity of the Indian Insurance Company shall be allowed on the automatic route subject to approval or verification by the Insurance Regulatory and Development Authority of India.

	(c) Foreign investment in this sector shall be subject to compliance with the provisions of the Insurance Act, 1938 and the condition that Companies receiving FDI shall obtain necessary license or approval from the Insurance Regulatory and Development Authority of India for undertaking insurance and related activities. (d) An Indian Insurance company shall ensure that its ownership and control remains at all times in the hands of resident Indian entities as determined by Department of Financial Services or Insurance Regulatory and Development Authority of India as per the rules or regulation issued by them from time-to-time. (e) Foreign portfolio investment in an Indian Insurance company shall be governed by the provisions contained in Chapter-IV, rule 10 and rule 11 read with Schedule-II of these rules and provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014. (f) Any increase in foreign investment in an Indian Insurance company shall be in accordance with the pricing guidelines specified in these rules. (g) The foreign equity investment cap of 100 per cent. shall apply on the same terms as above to insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, surveyors and loss assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India from time-to-time. However, the condition of Indian owned and controlled, as specified in clause (d) above, shall not be applicable to Intermediaries and Insurance Intermediaries and composition of the board of directors and key management persons shall be as specified by the concerned regulators from time-to-time. (h) The foreign direct investment proposals shall be allowed under the automatic route subject to verification by the Authority and the foreign investment in intermediaries or insurance intermediaries shall be governed by the same terms as provided under rules 7 and 8 of the Indian Insurance Companies (Foreign Investment) Rules, 2015, as amended from time-to-time : Provided that where an entity like a bank, whose primary business is outside the insurance area, is allowed by the Authority to function as an insurance intermediary, the foreign equity investment caps applicable in that sector shall continue to apply, subject to the condition that the revenues of such entities from the primary (non-insurance related) business must remain above 50 per cent. of their total revenues in any financial year. (i) The insurance intermediary that has majority shareholding of foreign investors shall undertake the following : (i) be incorporated as a limited company under the provisions of the Companies Act, 2013 ; (ii) at least one from among the chairman of the board of directors or the chief executive officer or principal officer or managing director of the insurance intermediary shall be a resident Indian citizen ; (iii) shall take prior permission of the Authority for repatriating dividend ;

	(iv) shall bring in the latest technological, managerial and other skills ; (v) shall not make payments to the foreign group or promoter or subsidiary or interconnected or associate entities beyond what is necessary or permitted by the Authority ; (vi) shall make disclosures in the formats to be specified by the Authority of all payments made to its group or promoter or subsidiary or interconnected or associate entities ; (vii) composition of the board of directors and key management persons shall be as specified by the concerned regulators ; (j) The other condition under the heading 'Banking-Private Sector' specified against serial number F.2.1 shall be applicable in respect of bank promoted insurance companies. (k) Terms 'Control', 'Equity Share Capital', 'Foreign Direct Investment' (FDI), 'Foreign Investors', 'Foreign Portfolio Investment', 'Indian Insurance Company', 'Indian Company', 'Indian Control of an Indian Insurance Company', 'Indian Ownership', 'Non-resident Entity', 'Public Financial Institution', 'Resident Indian Citizen', 'Total Foreign Investment' will have the same meaning as provided in Notification No. G. S. R. 115(E), dated 19th February, 2015 issued by Department of Financial Services and regulations issued by Insurance Regulatory and Development Authority of India from time_to_time."

(v) In the principal rules, in Schedule II, for the entries in clause (iii) of sub-paragraph (a) of paragraph 1, the following entries shall be substituted, namely :—

"The FPIs investing in breach of the prescribed limit shall have the option of divesting their holdings within five trading days from the date of settlement of the trades causing the breach. In case the FPI chooses not to divest, then the entire investment in the company by such FPI and its investor group shall be considered as investment under Foreign Direct Investment (FDI) and the FPI and its investor group shall not make further portfolio investment in the company concerned. The FPI, through its designated custodian, shall bring the same to the notice of the depositories as well as the concerned company for effecting necessary changes in their records, within seven trading days from the date of settlement of the trades causing the breach. The divestment of holdings by the FPI and the reclassification of FPI investment as FDI shall be subject to further conditions, if any, specified by the Securities and Exchange Board of India and the Reserve Bank in this regard. The breach of the said aggregate or sectoral limit on account of such acquisition for the period between the acquisition and sale or conversion to FDI within the prescribed time, shall not be reckoned as a contravention under these rules.".

[F. No. 01/05/EM/2019]

Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020

Notification No. G. S. R. 268(E), dated 29th April, 2020[1].

In exercise of the powers conferred by section 149 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely :—

1. (1) These rules may be called the **Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020.**

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 6, in sub-rule (1), in clause (a), for the words "five months" the words "seven months" shall be substituted.

[F. No. 8/4/2018-CL-I-Part I]

Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2020

Notification No. SEBI/LAD-NRO/GN/2020/011, dated 8th May, 2020[2].

In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 and the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018, namely :—

1. These regulations may be called the **Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2020.**

2. They shall come into force on June 1, 2020.

3. Amendments to Securities and Exchange Board of India (Stock Brokers) Regulations, 1992.—In the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992,—

I. In Schedule V, in Part B, in clause 3, after sub-clause (1), the following shall be inserted, namely,—

1. Gaz. of India, Extry. No. 209, dt. 29-4-2020, Pt. II, sec. 3(i).
2. Gaz. of India, Extry. No. 167, dt. 8-5-2020, Pt. III, sec. 4.

"(1A) Every stock broker in cash segment, equity derivatives segment, currency derivatives segment, interest rate derivatives segment and commodity derivatives segment (other than agri commodity derivative) liable to pay fees as a percentage of their turnover as specified at sub-clause (1) shall, for the period June 1, 2020 to March 31, 2021, pay only 50 per cent. (fifty per cent.) of fees as calculated therein, including for off-market transactions undertaken by them."

4. Amendments to Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.—In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018,—

I. In schedule III, after the existing table in clause 2(a), the following table shall be inserted for the period from June 1, 2020 to December 31, 2020, namely,—

"Size of the issue, including intended retention of over subscription	*Amount/Rate of fees*	*Amount/Rate of fees for filing within one year after expiry of SEBI observation letter*
Less than or equal to ten crore rupees.	A flat charge of fifty thousand rupees (50,000).	A flat charge of twenty-five thousand rupees (25,000).
More than ten crore rupees, but less than or equal to five thousand crore rupees.	0.05 per cent. of the issue size.	0.025 per cent. of the issue size.
More than five thousand crore rupees.	Two crores fifty lakhs rupees (2,50,00,000) plus 0.0125 per cent. of the portion of the issue size in excess of five thousand crore rupees (5000,00,00,000).	One crore twenty-five lakhs rupees (1,25,00,000) plus 0.00625 per cent. of the portion of the issue size in excess of five thousand crore rupees (5000,00,00,000)."

II. In schedule III, after the existing table in clause 2(b), the following table shall be inserted for the period from June 1, 2020 to December 31, 2020, namely,—

"Size of the issue, including intended retention of over-subscription	*Amount/Rate of fees*	*Amount/Rate of fees for filing within one year after expiry of SEBI observation letter*
Less than or equal to ten crore rupees[#]	A flat charge of twenty-five thousand rupees (25,000)	A flat charge of twelve thousand five hundred rupees (12,500).

More than ten crore rupees#	0.025 per cent. of the issue size.	0.0125 per cent. of the issue size.
#to be read as twenty-five crores with effect from April 21, 2020"		

5. Amendments to Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018.—In the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018,—

I. In schedule V, after the existing table, the following table shall be inserted for the period from June 1, 2020 to December 31, 2020, namely,—

"Offer size	*Fee (rupees)*
Less than or equal to rupees ten crore	2,50,000
More than rupees ten crore but less than or equal to rupees one thousand crore	0.25 per cent of the offer size
More than rupees one thousand crore	2,50,00,000 plus 0.0625 per cent. of the portion of offer size in excess of rupees one thousand crore"

[ADVT.-III/4/Exty./23/2020-21]

Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 : Notification under regulation 12 : Renewal of recognition of stock exchange

I

Notification No. SEBI/LAD-NRO/GN/2020/12, dated 20th May, 2020[1].

The Securities and Exchange Board of India, having considered the application for grant of renewal of recognition under regulation 12 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 by **NSE IFSC Clearing Corporation Ltd.** (NICCL), Unit No. 1202, Brigade International Financial Centre, 12th Floor, Building No. 14-A, Block No. 14, Zone 1, GIFT SEZ, GIFT CITY Gandhinagar-328 355, Gujarat and being satisfied that it would be in the interest of the trade, in the interest of securities market and also in the public interest so to do, hereby grants, in exercise of the powers conferred by section 4 read with sub-section (4) of section 8A of the Securities Contracts (Regulation) Act, 1956, recognition to the said clearing corporation for one year, commencing on 29th day of May, 2020 and ending on 28th

1. Gaz. of India, Extry. No. 177, dt. 20-5-2020, Pt. II, sec. 4.

day of May, 2021 subject to the conditions stated hereinbelow or as may be prescribed or imposed hereafter :

• The clearing corporation shall comply with conditions specified by SEBI from time-to-time.

[ADVT.-III/4/Exty./33/2020-21]

II

Notification No. SEBI/LAD-NRO/GN/2020/13, dated 20th May, 2020[1].

The Securities and Exchange Board of India, having considered the application for grant of renewal of recognition under regulation 12 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 by **NSE IFSC Ltd.** having its registered office at Unit No. 1201, Brigade International Financial Centre, 12th Floor, Block No. 14, Road 1-C, Zone-1, GIFT SEZ, District Gandhinagar-382 355 and being satisfied that it would be in the interest of the trade, in the interest of securities market and also in the public interest so to do, hereby grants, in exercise of the powers conferred under section 4 of the Securities Contracts (Regulation) Act, 1956, renewal of recognition to the said stock exchange for a period of one year commencing on 29th day of May, 2020 and ending on 28th day of May, 2021 subject to the conditions stated hereinbelow or as may be prescribed or imposed hereafter :

• The exchange shall comply with conditions specified by SEBI from time-to-time.

[ADVT.-III/4/Exty./34/2020-21]

Companies Act, 2013 : Notification under section 467(1) : Amendment to Schedule VII

Notification No. G. S. R. 313(E), dated 26th May, 2020[2].

In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further amendment to Schedule VII of the said Act, namely :—

In Schedule VII, item (viii), after the words "Prime Minister's National Relief Fund", the words "or Prime Minister's Citizen Assistance

1. Gaz. of India, Extry. No. 178, dt. 20-5-2020, Pt. III, sec. 4.
2. Gaz. of India, Extry. No. 238, dt. 26-5-2020, Pt. II, sec. 3(i).

and Relief in Emergency Situations Fund (PM CARES Fund)" shall be inserted.

2. This notification shall be deemed to have come into force on 28th March, 2020.

[F. No. 13/18/2019-CSR]

Companies (Share Capital and Debentures) Amendment Rules, 2020

Notification No. G. S. R. 372(E), dated 5th June, 2020[1].

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely :—

1. Short title and commencement.—(1) These rules may be called the **Companies (Share Capital and Debentures) Amendment Rules, 2020.**

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Share Capital and Debentures) Rules, 2014 (herein after referred to as the said rules), in rule 8, in sub-rule (4), in the second proviso,—

(i) for the letters, figures, brackets and words "G. S. R. 180(E), dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion" , the letters, figures, brackets, and words "G. S. R. 127(E), dated 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade" shall be substituted ;

(ii) for the words "five years" the words, "ten years" shall be substituted.

3. In the said rules, in rule 18, in sub-rule (7), in clause (b), for sub-clause (v), following sub-clause shall be substituted, namely :—

"(v) In case a company is covered in item (A) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), it shall on or before 30th day of April in each year, in respect of debentures issued by such a company, investor deposit, as the case may be, a sum which shall not be less than fifteen per cent., of the amount of its debentures maturing during the year, ending on 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi) :

1. Gaz. of India, Extry. No. 291, dt. 12-6-2020, Pt. II, sec. 3(i).

Provided that the amount remaining invested or deposited, as the case may be, shall not any time fall below fifteen per cent. of the amount of the debentures maturing during the year ending on 31st day of March of that year".

[F. No. 01/04/2013-CL-V-Part-IV]

Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2020

Notification No. SEBI/LAD-NRO/GN/2020/14, dated 16th June, 2020[1].

In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, namely :—

1. These regulations may be called the **Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2020.**

2. They shall come into force on the date of their publication in the Official Gazette.

3. In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011,—

(I) In regulation 3, in sub-regulation (2), the following new proviso shall be inserted before the existing provisos, namely—

"Provided that the acquisition beyond five per cent. but up to ten per cent. of the voting rights in the target company shall be permitted for the financial year 2020-21 only in respect of acquisition by a promoter pursuant to preferential issue of equity shares by the target company."

(II) In regulation 6, in sub-regulation (1), the following shall be inserted after the first proviso, namely,—

"The relaxation from the first proviso is granted till March 31, 2021."

[ADVT.III/4/Exty./55/2020-21]

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1. Gaz. of India, Extry. No. 199, dt. 16-6-2020, Pt. III, sec. 4.

Securities and Exchange Board of India (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2020

Notification No. SEBI/LAD-NRO/GN/2020/15, dated 16th June, 2020[1].

In exercise of the powers conferred under section 30 read with sections 11 and 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014, namely :—

1. These regulations may be called the **Securities and Exchange Board of India (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2020.**

2. They shall come into force on the date of their publication in the Official Gazette.

3. In the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014,—

(I) In regulation 2, in sub-regulation (1),—

(a) after clause (sa), the following a new clause shall be inserted, namely,—

"(sb) 'inducted sponsor' means any company or LLP or body corporate which has been inducted as a sponsor in accordance with sub-regulation (7) of regulation 22"

(b) in clause (zz), the words "and shall include an inducted sponsor" shall be inserted after the word "Board".

(c) in clause (zza), the following new sub-clauses shall be inserted after sub-clause (e), namely,—

"(f) an insurance company registered with the Insurance Regulatory and Development Authority of India ;

(g) a mutual fund."

(II) After regulation 7, the following new regulation shall be inserted, namely,—

"7A. *De-classification of the status of sponsor.*—(1) De-classification of the status of a sponsor(s) of an InvIT whose units have been listed on the stock exchanges for a period of three years shall be permitted upon receipt of an application from the InvIT and subject to compliance with the following conditions :

1. Gaz. of India, Extry. No. 200, dt. 16-6-2020, Pt. III, sec. 4.

(a) The unit holding of such sponsor and its associates taken together does not exceed 10 per cent. of the outstanding units of the InvIT ;

(b) The investment manager of the InvIT is not an entity controlled by such sponsor or its associates ;

(c) Approval of unit holders has been obtained in accordance with sub-regulation (4) of regulation (22)."

(III) In regulation 14,—

(a) in sub-regulation (2), after clause (d), the following new clause shall be inserted, namely,—

"(da) maximum subscription from any investor other than sponsor(s), its related parties and its associates, in initial offer shall not be more than 25 per cent. of the total unit capital ;"

(b) in sub-regulation (4), after clause (c), the following new clause shall be inserted, namely,—

"(ca) maximum subscription from any investor other than sponsor(s), its related parties and its associates, in initial offer shall not be more than 25 per cent. of the total unit capital ;"

(IV) In regulation 16,—

(a) in sub-regulation (7), in clause (a), the words and symbols ",each holding not more than twenty-five per cent. of the units of the InvIT" shall be omitted.

(b) in sub-regulation (7), in clause (b), the words and symbols ",each holding not more than twenty-five per cent. of the units of the InvIT" shall be omitted.

(V) In regulation 22,—

(a) in sub-regulation (4), after clause (f), a new clause shall be inserted, namely,—

"(fa) de-classification of the status of sponsor ;"

(b) in sub-regulation (5), the proviso under clause (f) shall be omitted.

(c) after sub-regulation (5B), the following new sub-regulation shall be inserted, namely,—

"(5C) No person, other than sponsor(s), its related parties and its associates, shall acquire units of an InvIT which taken together with units held by such person and by persons acting in concert with such person in such InvIT, exceeds twenty-five per cent. of the value of outstanding InvIT units unless approval from seventy-five per cent. of the unit holders by

value excluding the value of units held by parties related to the transaction, is obtained :

Provided that if the required approval is not received, the person acquiring the units shall provide an exit option to the dissenting unit holders to the extent and in the manner as may be specified by the Board."

(d) after sub-regulation (6), the following new sub-regulation shall be inserted, namely,—

"(7) In case of any change in sponsor or inducted sponsor or change in control of sponsor or inducted sponsor,—

(a) prior to such change, approval from seventy-five per cent. of the unit holders by value excluding the value of units held by parties related to the transaction shall be obtained ;

(b) if the required approval is not received,—

(i) in case of change of sponsor or inducted sponsor, the proposed inducted sponsor shall provide the dissenting unit holders an option to exit by buying their units in the manner specified by the Board ;

(ii) in case of change in control of the sponsor or inducted sponsor, the said sponsor or inducted sponsor shall provide the dissenting unit holders an option to exit by buying their units in the manner specified by the Board ;

Explanation.—Change in sponsor or inducted sponsor shall mean any change due to entry of a new sponsor with or without exit of an existing sponsor."

[ADVT.-III/4/Exty./56/2020-21]

Securities and Exchange Board of India (Real Estate Investment Trusts) (Second Amendment) Regulations, 2020

Notification No. SEBI/LAD-NRO/GN/2020/16, dated 16th June, 2020[1].

In exercise of the powers conferred under section 30 read with sections 11 and 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014, namely :—

1. Gaz. of India, Extry. No. 201, dt. 16-6-2020, Pt. III, sec. 4, p. 5.

1. These regulations may be called the **Securities and Exchange Board of India (Real Estate Investment Trusts) (Second Amendment) Regulations, 2020.**

2. They shall come into force on the date of their publication in the Official Gazette.

3. In the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014,—

(I) In regulation 2, in sub-regulation (1),—

(a) after clause (qa), a new clause (qaa) shall be inserted, namely,—

"(qaa) 'inducted sponsor' means any person who has been inducted as a sponsor in accordance with sub-regulation (8) of regulation 22."

(b) in clause (zc), the words and symbols "re-designated" shall be substituted with the word "inducted".

(c) clause (zl) shall be omitted.

(d) in clause (zt), the words "and shall include an inducted sponsor ;" shall be inserted after the word "Board".

(e) in clause (ztb), following new sub-clauses shall be inserted after sub-clause (e), namely,—

"(f) an insurance company registered with the Insurance Regulatory and Development Authority of India ;

(g) a mutual fund."

(II) After regulation 7, the following new regulation shall be inserted, namely,—

"7A. *De-classification of the status of sponsor.*—(1) De-classification of the status of a sponsor(s) of a REIT whose units have been listed on the stock exchanges for a period of three years shall be permitted upon receipt of an application from the REIT and subject to compliance with the following conditions :

(a) The unit holding of such sponsor and its associates taken together does not exceed 10 per cent. of the outstanding units of the REIT ;

(b) The manager of the REIT is not an entity controlled by such sponsor or its associates ;

(c) The sponsor or its associates are not fugitive economic offender ;

(d) Approval of unit holders has been obtained in accordance with sub-regulation (5) of regulation 22."

(III) In regulation 11,—

(a) in sub-regulation (3), clause (b) and clause (c) shall be omitted.