

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 171 of 2017

[Arising out of order dated 13th April, 2017 passed by the National Company Law Tribunal, Division Bench, Chennai in TP (HC)/CAA/4/2017, TP (HC)/CAA/5/2017 and TP(HC)/CAA/6/2017]

IN THE MATTER OF :

Arvind Aggarwal & Anr.

... Appellants

Versus

Trinetra Cements Ltd. & Ors.

... Respondents

Present: For Appellants : Shri Kapil Rustagi, Advocate

**For Respondents Nos. 1 & 3 : Shri Amit Sibal, Senior Advocate
with Shri T.K. Bhaskar, Shri Aditya Verma,
Shri Vikram Jain, Shri Aditya Gupta,
Advocates**

J U D G E M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by the Appellants against order dated 13th April, 2017 passed by the National Company Law Tribunal, Division Bench, Chennai (hereinafter referred to as 'Tribunal') in T.P. (HC)/CAA/ 4/2017, TP (HC)/CAA/5/2017 and TP(HC)/CAA/6/2017, whereby and whereunder the modification of scheme of amalgamation, as sought for by the Appellants has been rejected and the 'Scheme of Amalgamation' has been approved with direction to Transferor Companies and Transferee Company (1st & 2nd Respondents and 3rd

Respondent) to move before the Registrar of Companies ('ROC' for short) as per law with further direction to the ROC to prepare the order of sanction of the Scheme in the format prescribed under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

2. A Scheme of Arrangement for Amalgamation (hereinafter referred to as 'Scheme') of 'Trinetra Cement Limited' (hereinafter referred to as '1st Respondent – Transferor No. 1 Company') and 'Trishul Concrete Products Limited' (hereinafter referred to as '2nd Respondent-Transferor No. 2 Company') with 'The India Cements Limited' (hereinafter referred to as '3rd Respondent-Transferee Company') was filed before the Hon'ble High Court of Madras, which after first motion stood transferred to the Tribunal, Chennai Bench, at the stage of second motion.

3. The Appellants who claimed to be minority shareholders to the extent of 2.37% of total shareholding in the 1st Respondent-Transferor No. 1 Company (Trinetra Cement Limited) filed objections under Rule 34 of the Companies (Court) Rules, 1959 challenging the valuation arrived at by the Valuer on the ground that it was unfair and non-transparent.

4. The Appellants have also challenged the order on the ground of non-compliance of Securities Exchange Board of India (SEBI) Circulars dated 4th February, 2013 and 21st May, 2013, as per which, the

Valuation Report, Fairness Opinion and Audit Committee Report were required to be made. According to the Appellants, such requirements were carried out in a single day on 26th February, 2014.

5. It was further submitted that Valuation Report and the Fairness Opinion were not carried out independently since the Valuer and Merchant Banker were working in tandem in complete defiance of the Circulars issued by the statutory body (SEBI).

6. Learned counsel for the Appellants submitted that the Tribunal failed to appreciate that the Valuer cannot work in tandem with the Merchant Banker providing fairness report of valuation. Both the Valuer and Merchant Banker were required to work independently to ensure transparency.

7. Further, according to the Appellants, the capital advance of approximately Rs. 500 Crores was not considered. A sum of Rs. 969 Crores was deducted from the EV out of the total debt of Rs.1317 Crores as on 31st December, 2013, as was claimed by the 1st Respondent-Transferor No. 1 Company (Trinetra Cement Limited). According to the Appellants, this figure has been arrived at without any explanation. Further according to appellants, the Scheme in absence of fundamental documents cannot be approved as the unaudited balance-sheet for the

nine months as on 31st December, 2013 relied on and referred to by 1st Respondent-(Transferor No. 1 Company) was not on record.

8. According to the Appellants, the Tribunal also failed to consider that there are surplus land of 1st Respondent-(Transferor No. 1 Company -Trinetra Cement Limited). An allegation has also been made that the 'market deal of barring private equity' was not considered by Tribunal and the document i.e. balance sheet as on 31st December, 2013 has not been placed on record despite the fact that the same was relied on by the Respondents in their affidavit.

9. *Per contra*, according to the 1st and 2nd Respondents – (Transferors Nos. 1 and 3 Companies-'Trinetra Cement Limited' and 'The India Cements Limited', respectively, the objectors were not present, either in person or by proxy, during the shareholders' meeting held on 25th March, 2015, when no objection to the Scheme was raised by the shareholders and the resolutions were passed unanimously. According to Respondents, if the Appellants' concerns were *bonafide*, they should have used the opportunity during the meeting and could have raised grievance against the proposed scheme. Further, according to the Respondents, no objections were raised by Appellant before any authority. Although two of the objectors raised objections before the Tribunal, they are not the objectors before this Appellate Tribunal. However, the Appellants had not raised any such objection. According

to the Respondents, after the approval of Scheme of merger, the shareholding of the Appellants has increased five-fold from 0.4% to 2.37%, which corroborates that their so-called grievance is *malafide* and for other extraneous purposes.

10. Learned senior counsel appearing on behalf of the 1st and 3rd Respondents-Transferors Nos. 1 and 3 Companies while submitted that no objections were raised by the shareholders of 'Trinetra Cement Limited', it was submitted that belated objections of the Appellants could not have been taken into consideration after more than two years, as the decision was taken on 25th March, 2013 and as the scheme became effective on 28th April, 2017.

11. The results of the vote at the court-convened equity shareholders' meeting dated 25th March, 2015 was highlighted, to suggest that out of 126 equity shareholders, '124 voted in favour' and 'two abstained' from the meeting. Similarly, in the postal ballot/e-voting by non-promoters/public shareholders, 93.8% voted in favour of the merger.

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

13. We do not agree with the submission made on behalf of the Appellants that the multiple steps for the 'Scheme' taken on a single day (26th February, 2014 herein) will render the reports invalid. Validity

of one or other report can be looked into if specific illegality is brought to the notice of the Hon'ble High Court/Tribunal.

14. It was brought to the notice of the Tribunal that the Valuer started the valuation exercise on 16th February, 2014. The external institutions engaged for the purpose of providing the valuation and fairness opinions are all professionals and reputed institutions. It is usual practice by companies across India that the reports are provided to the Board for approval on the same day.

15. The Tribunal has noticed and we also find that there is full compliance of SEBI Circulars dated 4th February, 2013 and 21st May, 2013. Although the Appellants have raised allegation that unaudited/management accounts of the three Companies, upto 31st December, 2013 were not placed before the Tribunal, but we find that all documents required under the law as provided in the Companies Act, 1956 and Clause 24(f) of the Listing Agreement and Circulars of SEBI were placed.

16. Mere allegation made by the 'minority shareholders' (Appellants) that the valuation was not properly made will not hold good, till certain illegalities in the matter of valuation are highlighted. The Appellants, having failed to show any such illegality in the valuation made by the Valuer, on mere allegation it cannot be interfered with.

17. From the record, we find that 'Surplus Assets' of 'Trinetra Cement Limited' have not been valued separately because the Company has to be treated as 'going concern'. It was in this premises, the valuation of both 'Trinetra Cement Limited' and 'The India Cements Limited'- the 'Net Asset Value method was not used. 'Trinetra Cement Limited' and 'The India Cements Limited', both have power plants, mining leases etc. which are their business assets - adding the market value of business assets of the enterprise value would be grossly erroneous as the very cash flows are generated using those business assets.

18. In view of the aforesaid circumstances and as the reasoning given by the Tribunal is not perverse, we are not inclined to interfere with the impugned order.

19. In absence of any merit, the appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Balvinder Singh]
Member (Technical)

[Justice S.J. Mukhopadhaya]
Chairperson

NEW DELHI

12th September, 2017

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