

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**Company Appeal (AT) No. 07 of 2019****IN THE MATTER OF:****The Regional Director (Eastern Region),
Ministry of Corporate Affairs.****...Appellant****Vs.****Camden Industries Limited and Ors.****...Respondents****Present: For Appellant: - Ms. Richa Kukreja, Joint Director.****For Respondents: - Mr. Mainak Bose and Mr. Nikhil
Jhunjunwala, Advocates.****O R D E R**

22.02.2019— An application under Sections 230 and 232 of the Companies Act, 2013 read with Companies (Compromise, Arrangement and Amalgamation) Rules 2016 was filed by ‘Camden Industries Limited’- (Transferor Company No.1); ‘Highgate Industries Limited’- (Transferor Company No.2) along with ‘Euston Industries Limited’- (Transferee Company) before the National Company Law Tribunal, Kolkata Bench (hereinafter referred to as “Tribunal”).

2. After following all the procedure, when the matter was taken up, the Petitioner Companies brought to the notice of the Tribunal that in terms of Section 230(7) of the Companies Act, 2013, the Statutory Auditor of the transferee company has certified that the Accounting Treatment is in conformity with the Accounting Standards under Section 133 of the

Companies Act, 2013. The copy of the said certificate was annexed along with the application.

3. It was further brought to the notice of the Tribunal that the exchange ratio of the shares of the Transferor Companies and the Transferee Company has been fixed at a fair and reasonable basis and the valuation of shares have been certified by the Statutory Auditor. In support of such plea the Valuation Report was enclosed. It was also pleaded that the Scheme of Arrangement for Amalgamation was also for the benefit of the Petitioner Companies and their shareholders, creditors, employees and all concerned.

4. The Appellant- Regional Director, Eastern Region, Ministry of Corporate Affairs, has raised one objection with regard to 'Camden Industries Limited' which according to him was functioning as 'NBFC' without necessary registration from the Reserve Bank of India under Section 451 A of the Reserve Bank of India Act, 1934. It is stated that instructions were also sought from the Income Tax Department but they have not received any reply. However, it is accepted that on the examination of the report, the Registrar of Companies has informed that there is no complain or objection filed against the proposed Scheme of Amalgamation.

5. Having noticed the aforesaid stand by the Regional Director and the stand taken by the Petitioners (Transferor Companies and the Transferee Company) and the report of the Official Liquidator dated 31st August, 2018, which is in support of the 'Camden Industries Limited' and

'Highgate Industries Limited', the Tribunal by impugned order dated 27th September, 2018 conditionally sanctioned the Scheme.

6. Learned counsel appearing on behalf of the Appellant reiterated that the 'Camden Industries Limited'- (Transferor Company No.1) was functioning as 'NBFC', without necessary registration from the Reserve Bank of India.

7. In reply to the same, the Respondents have taken specific plea as was taken before the Tribunal that the Transferor Company No.1 was primarily engaged in manufacturing business. The Transferor Company No.1 was never carried on any financial activities as its main business, which is not in dispute.

8. There is nothing on the record to suggest that the Transferor Company No.1 was engaged in or carrying on financial activities. In absence of any such report of any of the Competent Authority or complaint made by any party and all the reports being in support of the Transferor Companies, we find no reason to interfere with the impugned order. In absence of any merit, the appeal is dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

Ar/g