

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 194 of 2017

IN THE MATTER OF:

MBS IT Institute Pvt. Ltd.

...Appellant

Versus

ROF Infratech and Housing Pvt. Ltd.

...Respondent

Present:

**For Appellants : Shri Satwinder Singh and Shri N.P.S. Chawla,
Advocates**

**For Respondent : Shri Naval Kishore Jha, Senior Advocate assisted
by Shri C. Balooni, Advocate**

ORDER

25.07.2017 This appeal has been preferred by MBS IT Institute Private Limited (hereinafter referred to as the 'Transferor Company') and ROF Infratech and Housing Private Limited (hereinafter referred to as the 'Transferee Company') against the order dated 28th April, 2017 passed by the National Company Law Tribunal (hereinafter referred to as the 'Tribunal'), Principal Bench, New Delhi whereby the Tribunal, while sanctioning the Scheme of Amalgamation amongst the Transferor Company and the Transferee Company has given effect to the scheme from the date of impugned order dated 28th April, 2017.

2. The petition was filed by the Transferor Company – MBS IT Institute Private Limited (1st Petitioner Company) and ROF Infratech and Housing Private Limited – Transferee Company (2nd Petitioner Company) under Section 232 of the Companies Act, 2013 for merger and amalgamation of Transferor Company with the Transferee Company before the Hon'ble High Court of Delhi (under the erstwhile provisions).

Subsequently, Hon'ble High Court of Delhi passed order on 18th May, 2015 dispensing with the meetings which has followed by Notice of Company Petition No. 333 of 2015 moved by the appellant u/s 391 & 394 of the Companies Act, 1956 read with relevant rules of the Companies (Court) Rules, 1959 in connection with the scheme of amalgamation to the Regional Director and share depositors and public issues which were also carried out in newspapers 'Financial Express' (in English) and 'Jansatta' (in Hindi).

3. During the pendency of the joint petition provisions relating to compromises, arrangements and amalgamation were contemplated under Section 230-232 and notified on 15th December, 2016. In the meantime, after constitution of the Tribunal, the matter was transferred to the Tribunal. The objections and affidavits had already been filed against the scheme of amalgamation when the matter was pending before the Hon'ble High Court of Delhi

4. The Tribunal heard the learned counsel for the appellant and considered the representations made by the Regional Director, Northern Region, Ministry of Corporate Affairs vide representation dated 7th January, 2016. On examination of the said representation/affidavit of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi and taking into consideration letter dated 11th August, 2015 of the Principal Commissioner of Income Tax, New Delhi the Tribunal found that there is no demand outstanding against the amalgamation company. The Tribunal while approving the scheme of amalgamation annexed as Annexure A-1 of the Company Petition as well as the prayer made therein at (a) and (b) of the petition sanctioned the same and approved the scheme with the following orders:

"11. Subject to above, the scheme of amalgamation annexed as Annexure-A-1, to the Company Petition as well as the prayer made therein in prayer clauses (a) and (b) of the petition are sanctioned.

12. *While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically under any law.*

THIS TRIBUNAL DO FURTHER ORDER

- (1) *That all property, rights and powers of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 be transferred to and vest in the transferee company for all the estate and interest of the transferor company therein but subject nevertheless to all charges now affecting the same; and*
- (2) *That all the liabilities and duties of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and*
- (3) *That all proceedings now pending by or against the transferor company be continued by or against the transferee company; and*
- (4) *That the Transferee Company do without further application allot to such members of the Transferor Company, as have not given such notice of dissent, as is required by clause 15.1 of the SCHEME OF AMALGAMATION herein the shares in the transferee company to*

*which they are entitled under the said SCHEME OF AMALGAMATION;
and*

- (5) *That transferor company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the transferor company shall be dissolved and the Registrar of Companies shall place all documents relating to the transferor company and registered with him on the file kept by him in relation to the transferee company and the files relating to the said two companies shall be consolidated accordingly; and*
- (6) *That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.”*

5. The grievance of the appellant is that the Tribunal has given the modified date effective from the date of impugned order dated 28.04.2017 instead of appointed date which is 1st April, 2014. The reliance has also been placed on sub-section (6) of Section 232 of the Companies Act, 2013, which reads as follows:

“232. *Merger and amalgamation of companies.— (1) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—*

xx

xxx

xxxx

- (6) *The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the*

scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.”

6. Learned counsel appearing on behalf of the respondent – Regional Director, Northern Region accepted that in terms of sub-section (6) of Section 232, Scheme should have been effected from the appointed date which is 1st April, 2014. From the provisions of law, as quoted above, we also find that the scheme under Section 232 clearly indicate the appointed date from which date it is effective and the scheme would be deemed to be effective from such date and not from the subsequent date.

7. Paragraph 5 of the Scheme has been approved by the Tribunal provides the date of scheme coming into the effect as quoted below:

“5. ***Date of coming into effect:***

The Scheme set out herein in its present form or with any modifications(s) approved or imposed or directed by the Hon’ble High Court of any other appropriate authority shall come into legal operation from the Effective Date. Appointed Date, but the same shall become effective on and from the Effective Date.”

8. At paragraph 4.3, “appointed date” has been shown as 1st April, 2014 or such other date as may be fixed by the High Court of Delhi, as quoted below:

“4.3 **“Appointed Date”** means the First day of April, 2014 or such other date as may be fixed by the Hon’ble High Court of Delhi.”

9. The “effective date” has also been mentioned in the Scheme at paragraph 4.5, as quoted below:

*“4.5 **“Effective Date”** means the later of the dates on which certified copy of the order of the Hon’ble High Court of Delhi sanctioning this Scheme is filed with the Registrar of Companies, NCT of Delhi & Haryana by the Transferee Company and the Transferor Company, as required under the provisions of the Act. Any references in the Scheme to “upon the Scheme becoming effective” or “effectiveness of the Scheme” shall mean the “Effective Date”.”*

10. As the scheme at Annexure A1 has been approved by the Tribunal and the same stipulates ‘appointed date’ on 1st April, 2014 or from the date as may be fixed by the Hon’ble High Court (now Tribunal), we are of the view that grounds should be shown for postponing the date to a subsequent date, ‘appointed date’ 1st April, 2014 having mentioned in the scheme. In the present case the Tribunal has not shown any ground to shift the ‘appointed date’ to the date of disposal except that the case is three years old but such cannot be a ground to postpone the date from 1st April, 2014 to the date of judgment, on which the transferee company and the transferor company has no control but is dependent on fortuitous circumstances of the disposal of the case by the Hon’ble High Court / Tribunal, which has no nexus with ‘appointed date’ as stipulated in the scheme.

11. For the reasons aforesaid, we are of the view that in the present dates ‘appointed date’ should have been allowed as per approved scheme i.e. 1st April, 2014. However, for the purpose of giving effect to the scheme the ‘effective date’ should be treated and the ‘effective date’ will be the later of the dates on which certified copy of the order of the Tribunal sanctioning the scheme is filed by the transferee company and the transferor company with the Registrar of Companies,

NCT of Delhi & Haryana, as required under the provisions of the Act and paragraph 4.5 of the scheme.

12. In view of the observations as made above, we have no other option but to amend the part of the impugned order for approval of scheme dated 28th April, 2007 and order to treat 1st April, 2014 as the 'appointed date' and later on which certified copy of the Tribunal sanctioning the scheme is filed by the transferee company and the transferor company with the Registrar of Companies, NCT of Delhi & Haryana be treated to be 'effective date'. The impugned order dated 28th April, 2017 passed by the Tribunal in the matter of *MBS IT Institute Pvt. Limited vs. ROF Infratech and Housing Pvt. Limited* stands modified to the extent above. The transferee company and transferor company are allowed to approach Registrar of Companies, NCT of Delhi & Haryana/Regional Director, Northern Region, Ministry of Corporate Affairs along with the Scheme approved by the Tribunal and as modified by the Appellate Tribunal. The Competent Authority in its wisdom will do the needful in accordance with law and the order of approval passed by the Tribunal as modified by this order of the Appellate Tribunal. The appeal is disposed of with the aforesaid observations and actions. However, in the facts and circumstances, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)

/ns/