

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**NEW DELHI**

**Company Appeal (AT) No. 124 of 2019**

**IN THE MATTER OF:**

1. Flipkart Logistics Pvt. Ltd.  
No. 111, Brigade Manae Court,  
1<sup>st</sup> Floor, Industrial Layout,  
Koramangala  
Bengaluru-560095.
2. Adiquity Technologies Pvt. Ltd.  
No. 111, Brigade Manae Court,  
1<sup>st</sup> Floor, Industrial Layout,  
Koramangala  
Bengaluru-560095.
3. Instakart Services Pvt. Ltd.  
No. 111, Brigade Manae Court,  
1<sup>st</sup> Floor, Industrial Layout,  
Koramangala  
Bengaluru-560095.

**...Appellants**

**Versus**

1. Regional Director, South East Region  
3<sup>rd</sup> floor, Corporate Bhavan,  
Bandlagunda Nagole, Tattiammaram,  
Hayat Nagar Nagole, Ranga Reddy District  
Hyderabad- 560068
2. Registrar Of Companies, Karnatka  
Kendriya Sadan,  
2<sup>nd</sup> Floor, E Wing, Koramangala,

Bengaluru- 560034  
3. Official Liquidator,  
12<sup>th</sup> Floor, Raheja Towers,  
Mahatma Gandhi Road,  
Bengaluru- 560001.

**...Respondents**

**Present:**

For Appellant: Mr. Krishnendu Dutta, Ms. Vishrutyi Sahni and Ms. Mehak Khuranna, Advocates.  
For Respondent: Mr. P.S. Singh, Advocate for Sr. Panel Counsel UOI for R-1 and R-2.

**ORDER**

**13.12.2019** The present appeal has been filed by the Appellants challenging the order date 16<sup>th</sup> January, 2019 passed by the National Company Law Tribunal (NCLT), Bengaluru Bench in C.P. (CAA) No. 07/BB/2018.

2. The Appellants Jointly filed petition for amalgamation u/s 230 to 232 of the Companies Act., 2013 of the present Appellant Nos. 1 and 2 as Transferor Companies with Appellant No. 3 as the Transferee Company.

3. The Scheme for sanction proposed has one “M/s. DSYN Technologies Private Limited” also as another Transferor Company which is in the jurisdiction of National Company Law Tribunal, Chandigarh Bench, for which separate petition has been filed in Jurisdictional NCLT at Chandigarh and, it is stated by the learned counsel for the appellant that, the same is pending awaiting result of the present appeal.

4. Learned counsel for the Appellants states that the matter had come up before the Bengaluru Bench within whose jurisdiction the present Appellants are situated. The first motion the petition was filed and the same was allowed wherein meeting of the Creditors of the Appellants were dispensed with.

5. It is stated that subsequently, second motion petition was filed in which the present impugned order dated 16<sup>th</sup> January, 2019 came to be passed.

It is stated that the Ld. Tribunal solely because there was an enquiry pending against group company "Flipkart Internet Private Limited" has rejected the Petition and consequently the Scheme of Amalgamation of the Appellants was not sanctioned.

It is stated that one of the group companies of the Appellants is undergoing an inquiry although the Appellants are not party to any such inquiry.

It is stated that the said group company, relating to which inquiry is going on is not party to Amalgamation and thus, according to the learned counsel for the Appellants the objection was unfounded.

6. The learned counsel for the Appellants has referred to para 12 and 13 of the impugned order which reads as under:-

*"12. After hearing the Counsel for the Petitioner Companies and considering the materials on record, it is observed that the Transferor Company No. 2, M/s. DSYN Technologies Private Limited is not registered with Registrar of Companies, Bengaluru and is subject to the jurisdiction of NCLT, Chandigarh bench. It is further noted that the Registrar of Companies has stated that the*

*report of the Ministry of Corporate Affairs regarding the enquiry of the group company, Flipkart Internet Private Limited will take some time. Hence, **we are of the opinion that the above scheme may be resubmitted after the report from the Ministry of Corporate Affairs is given and once the issue crystallises as it may be premature to allow the Scheme as of now.***

13. *Generally, it has been observed that companies which are undergoing restructuring, file the applications (whether joint or individual) together. In case a petition relating to one of the parties in another pending petition is filed, the said fact ought to be disclosed in the latter Petition. It is observed that the Petitioner Company No. 3/Transferee company has recently been involved in another amalgamation [C.P.(CAA) No. 25/BB/2018] wherein the present proceedings, which were pending at the time of filing of that Petition, were not disclosed in that Petition. It is seen that the lack of any mention of the pendency of other proceedings relating to the Transferee Company, which was simultaneously being heard before this Tribunal, is incongruent with the submissions made in the Petition."*

7. It is argued by the learned counsel for the Appellants that what is observed in the above paragraphs that the Registrar of Companies has stated that report of the Ministry of Corporate of Affairs regarding the enquiry of the

group company, Flipkart Internet Private Limited will take some time was no reason for the Tribunal to dispose of the matter saying the above scheme may be resubmitted after the report from the Ministry of Corporate Affairs take a decision.

8. Learned counsel states that impugned order shows in para 9 the observations of Regional Director and noted:-

*“The group company M/s Flipkart Internet Private Limited is under inquiry and all the petitioner companies are having related party transactions with the said entity. Hence, the Transferee Company be directed to give an undertaking that it shall get the offences arising out of inquiry compounded by filing necessary compounding applications or liable for prosecution for all the violations of the Transferor as well as Transferee Company.”*

9. The learned counsel for the Appellants states they had submitted before the Tribunal that the scheme takes care to ensure that liability of the Petitioner Companies to remain liable if the inquiry against Flipkart Internet Private Limited has findings proved against them but NCLT did not say any thing about it.

10. It is stated that the other reason, to reject the Petition was also not sustainable. The Tribunal found fault with the Appellants for not disclosing regarding proceeding relating to Flipkart Digital Media Private limited merging with the Appellant No. 3 Transferee Company.

11. Learned counsel states that at page 290 of the Appeal at Annexure- A 16 is the order, whereby merger of Flipkart Digital Media Private limited with the present Appellant No. 3 was approved.

12. Learned counsel for the Appellants further submits that the Appellants have already filed an undertaking before this Tribunal on behalf of the Transferee Company which would be the resultant company vide Dairy No. 13289 and relevant portion is as under:-

*“4. In response to the aforesaid observation of the Regional Director, the Appellants by way of an Affidavit dated 05-09-2018 have stated that the undertaking as required by the Regional Director is already present under clause 4(a) of the Scheme of Amalgamation between the Appellants. The response affidavit of the Appellants has been placed on record at **Annexure A-15** and the Scheme of Amalgamation between the Appellants is placed on record at **Annexure A-3**.*

*5. Without prejudice to the aforesaid, I state that the Appellant No. 3 being the Transferee Company herein specifically undertakes to file necessary applications for compounding or be liable for prosecution of violations, if any made out against Appellant herein, based on the outcome of the enquiry as against one of the group companies of the Appellants.”*

13. The learned counsel for the Respondent Nos. 1 and 2 submits that the Respondents did not have any objection for the Amalgamation, as the stand of the

Respondents is that the Transferee Company should give undertaking to remain liable for offences to the compounded or prosecution for any violations by the Transferor and Transferee Companies.

14. The learned counsel referred to portion of the counter affidavit filed by the Respondents, portion of which reads as follows :-

*“The enquiry report of M/s Flipkart Logistics Private Limited had been sent to the regional Director on 04/01/2019 for further direction and to take action against the Company based on the report and violation committed. Hence, a direction was sought to the petitioner company to give an undertaking that it shall get the offences compounded or face prosecution for the violation pointed out against the transferor and transferee companies.”*

15. Having heard learned counsel for both the sides, it appears to us that the reason recorded in paragraph Nos. 12 and 13 of the impugned order by the Ld. 'National Company Law Tribunal' cannot be maintained.

16. The enquiry was not against any of the Transferor of Transferee Companies. It was against Flipkart Internet Private Limited. The said Company is not subject matter of the scheme. Apart from this, the Appellants have given undertaking as mentioned above.

17. The other objection of the Ld. NCLT that information regarding one more Company Flipkart Digital Private Limited merging with the Transferee Company was not disclosed, is not such a big issue to non-suit the Appellants.

18. Learned counsel for both the sides agree that other than above two reasons recorded by the Ld. NCLT in decline the second motion, there was no other reason.

19. The learned counsel for the appellant has pointed out the application by way of second motion which was filed before the NCLT at Annexure- A 12 in which the relevant prayer was in para 29 of D & E which reads as under:-

*“D. That Scheme as annexed herewith and marked as Annexure-1, may kindly be sanctioned by this Hon'ble Tribunal, with or without modification(s), so as to be binding on said Petitioner Companies and their respective shareholders and creditors of Petitioner Companies and all concerned;*

*E. That Petitioner Company No. 1 and Petitioner Company No. 2 shall stand dissolved without following the process of winding up / liquidation on filing a certified copy of the order of this Hon'ble Tribunal with the ROC; AND/OR.....”*

20. In the present appeal the prayer is to set aside part of the impugned Judgment dated 16th January, 2019 rejecting the Scheme of Amalgamation of the Appellants and allow the scheme of amalgamation of the Appellants.

21(A) Going through the records and the considering the submissions made, we set aside the impugned order and allow the prayer of the Company Appeal. We sanction the Scheme proposed, as far as it relates to the Appellants with modification that the Appellants Nos. 1 to 3 shall be bound by the undertaking as given vide Diary No. 13289 relevant part of which is reproduced in para 15 Supra.



(B) We make it clear that the Appellant Nos. 1, 2 and 3, their Promoters and Directors and Shareholders shall remain responsible for any liability, if any, getting attracted against them due to the enquiry against “Flipkart Internet Pvt. Ltd.”.

(C) The Scheme as regards the Appellants will be treated as approved to the extent of the Amalgamation of the Appellant Nos. 1, 2 and 3. We remit the matter back to the Ld. NCLT and request to issue further formal order(s) required to be issued, within a month of receipt of copy of this Judgment and order.

The appeal is disposed of accordingly. No costs.

[Justice A.I.S. Cheema]  
Member (Judicial)

[V. P. Singh]  
Member (Technical)

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