

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.30 of 2018

[Arising out of Order dated 30.11.2017 passed by National Company Law Tribunal, Chennai Bench in CP/142/CAA/2017 connected with CA/ 77/CAA/2017]

IN THE MATTER OF:

1. K. J. Suwresh
S/o K. Jaganathan Naidu
...Appellant No.1

2. K. Lakshmisuthaa
W/o K.J. Suwresh
...Appellant No.2

Both are residing at
No. 171, L Street, "Dream Meadows"
Kundalahalli
Doddanekkundi
Bengaluru – 560 037

Versus

1. TeamLease Staffing Services Pvt. Ltd.
...Respondent No.1

2. TeamLease Services Ltd.
...Respondent No.2

Both having office at
No. 6, 3rd Floor, "C" Wing
Lakshmi Towers, BandraKurla Complex
Bandra East
Mumbai 400 051

with

Company Appeal (AT) No.167 of 2018

[Arising out of Order dated 16.11.2017 passed by National Company Law Tribunal, Mumbai Bench in CSP No.782 of 2017]

IN THE MATTER OF:

1. K. J. Suwresh
S/o K. Jaganathan Naidu,
No. 171, L Street, "Dream Meadows",
Kundalahalli, Doddanekkundi,
Bengaluru, Karnataka – 560 037
...Appellant No.1

2. K. Lakshmisuthaa
W/o K.J. Suwresh
No. 171, L Street, "Dream Meadows",
Kundalahalli, Doddanekkundi,
Bengaluru, Karnataka – 560 037
...Appellant No.2

Versus

1. M/s. Teamlease Staffing Services Pvt. Ltd.
Having office at No. 6, 3rd Floor,
"C" Wing, Lakshmi Towers,
Bandra Kurla Complex, Bandra – East,
Mumbai, Maharashtra - 400 051
...Respondent No.1

2. TeamLease Services Ltd.
Having office at No. 6, 3rd Floor,
"C" Wing, Lakshmi Towers,
Bandra Kurla Complex, Bandra – East,
Mumbai, Maharashtra - 400 051
...Respondent No.2

For Appellant: Shri Rana Mukherjee, Sr. Advocate with Shri Senthil Jagadeesan, Ms. Shruti Iyer, Ms. Sreoshi Chatterjee and Ms. Suriti Chaudhary, Advocates

For Respondent: Shri Goutham Shivshankar and Shri Murali Ananthashivam, Advocates

J U D G E M E N T
(24th October, 2018)

A.I.S. Cheema, J. :

1. Company Appeal 30/2018 has been filed against Impugned Order dated 30.11.2017 passed by National Company Law Tribunal ('NCLT', in short), Chennai Bench whereby the NCLT accepted the joint Petition of M/s. ASAP Info Systems Private Limited – Transferor Company No.1 and M/s. Nichepro Technologies Private Limited – Transferor Company No.2 and M/s. TeamLease Staffing Services Pvt. Ltd. – Transferee Company under Section 230 of the Companies Act, 2013. The Company Petition had been filed by these Companies with a scheme of amalgamation whereby the two transferor Companies were proposed to be merged and vested in the transferee Company. The Impugned Order has recorded the position as regards share capital, etc. of the transferor companies and that they were private limited Companies. The transferee company is private limited Company having its registered office at Mumbai. The Impugned Order refers to Order dated 12.06.2017 of the NCLT in CA 77/CAA/2017 dispensing with convening of holding of meeting of equity shareholders of the transferor Companies. The Impugned Order refers to the consent Affidavits by the secured and unsecured creditors. It noted that there were Affidavits of unsecured creditors of both Companies constituting more than 90% of the value of unsecured credit. The Impugned Order shows that paper publication had been done and Reports of Regional Director as well as Official Liquidator had been taken. Taking care of other

compliances required to be done for such amalgamation, the learned NCLT being satisfied accepted the scheme of amalgamation.

2. Company Appeal 167/2018 is arising out of Impugned Order dated 16th November, 2017 passed by the National Company Law Tribunal, Mumbai Bench in CSP No.782 of 2017 with reference to the same scheme of amalgamation referred above. Such Petition was filed at Mumbai in view of the fact that the transferee Company was situated at Mumbai. The Impugned Order shows that the NCLT at Mumbai also went through the required procedure for considering grant of permission for amalgamation and in para – 17 of the said Impugned Order, NCLT, Mumbai appears to have recorded with approval, the submission made before it by the Counsel for transferee Company that the amalgamation approved by the NCLT at Mumbai would be subject to sanction of the said scheme by National Company Law Tribunal, Chennai Bench.

2.1 This Appeal - CA 167/2018 came to be filed after the Company Appeal 30/2018 was filed as it was noticed that the NCLT at Mumbai also had approved the scheme.

3. The Appellants - K. J. Suwresh and K. Lakshmisuthaa have filed these Appeals claiming that they are aggrieved by these Orders of amalgamation permitted by NCLT at Mumbai and NCLT at Chennai, mainly on the basis that no Notice had been given to them. To put the case of the Appellants in a nutshell, their grievance is that they were holding 100% equity shares in the transferor Company No.1 - ASAP Info Systems

Private Limited and there was Share Purchase Agreement ('SPA', in short) dated 04.07.2016 between them and the transferee Company whereby the 100% shareholding was to be transferred by them to the transferee Company. Their grievance is that the payments were to be made by the transferee Company in tranches and after initial payment, there has been default. According to the learned Counsel for the Appellants, the Appellants ought to have been treated either as shareholder or creditors of the transferee Company and in either case they were entitled to Notice. It is claimed that no Notice was given to them and hence they are aggrieved by such amalgamation.

4. It has been argued for the Appellant that Appellants initially entered into a Term Sheet and later on, into a Share Purchase Agreement dated 04.07.2016 for sale of their 100% shareholding in the transferor Company No.1 in favour of the transferee Company referred to as purchaser in the agreement. The Appellant claimed that as per the SPA, Rs.7 Crore on the date of signing of SPA, i.e. 04.07.2016 and Rs.46,60,00,000/- (Forty Six Crore Sixty Lakhs) as first tranche payable between 04.07.2016 and 31.08.2016 was paid. According to the Appellants, regarding the second tranche, payment was made out of total 57 Crores paid. The Appellants received amount aggregating to Rs.56,95,00,000/- with balance Rs.5 Lakhs remaining. The Respondents are disputing this. With regard to 3rd tranche, it appears that there are requirements under the SPA linking the payment to criteria relating to

“EBITDA”. Admittedly, now the transferee Company has been taken by the Appellants to Arbitral Tribunal and the matter is pending before Arbitration as can be seen from Annexure R-3 in Diary No.6037 which is Reply of the Respondents in CA 167/2018. The Appellants claim that they have to receive Rs.10.05 Crores from the transferee Company and the transferor Company No.1 in which they were 100% shareholders has already been ordered to be wound up and stands amalgamated and thus according to the Appellants, they may be rendered remediless.

5. In CA 30/2018, the Appellants have made only the transferee Company as Respondent No.1 and Respondent No.2 arrayed is “TeamLease Services Limited” which is stated to be a subsidiary of Respondent No.1 transferee Company. The Respondents have filed Reply claiming it to be Objections. It is claimed by them that the amount of Rs.10.05 Crores as claimed by the Appellants is payable by the Respondents only on the fulfilment of the criteria relating to achievement of earnings before interest, tax, depreciation and amortization (EBITDA) in relation to the transferor Company No.1. The Respondents claim that the criteria was not achieved and so there is no question of such payment. We are not entering into those details regarding payments as it is subject matter of arbitration and not necessary to decide in the present Appeals. The Respondents have then submitted that the Appellants, although they are claiming that they should have been given Notice, had the necessary knowledge. The Objections or Reply of Respondents (Diary No.4006) has

copies of Affidavits of the Appellants at Annexure – 1 which they submitted with reference to same claim of amalgamation which had come up before NCLT, Chennai. The Affidavit of the Appellant No.1 at Page – 15 reads as under:-

“I, K.J. Suwresh son of Jaganatham Naidu aged about 49 years, currently residing at No-171 Dream Meadows, Kundalahalli, Marathalli Bangalore 560037 do hereby solemnly affirm and state on oath as follows:

1. I am the Director of Lakshmi Car Zone Private Limited which is a creditor of the Applicant Company 1 as at 22 March, 2017.

2. I submit that Lakshmi Car Zone Private Limited fully supports the said Scheme and any modification that may be made therein by the Hon’ble National Company Law Tribunal, Chennai Bench and Mumbai Bench whilst sanctioning the Scheme and every step that may be taken by the Applicant Company 1, its directors or authorised representatives for implementation of the said Scheme.

3. I submit that Lakshmi Car Zone Limited consents for the dispensation with the holding of the meeting of the creditors of the Applicant Company 1 as per provisions of the Companies Act, 2013.”

6. The Affidavit of the Appellant No.2 at Page – 16 reads as under:-

“I, Lakshmisuthaa Kilari daughter of Surya Babu, aged about 46 years, currently residing at No.101, Dream Meadows, Kundalahalli, Bangalore, Karnataka – 560037, do hereby solemnly affirm and state on oath as follows:

1. I am the creditor of the Applicant Company 1 as at 22nd March, 2017.

2. I fully support the said Scheme and any modification that may be made therein by the Hon’ble National Company Law Tribunal, Chennai Bench and

Mumbai Bench whilst sanctioning the Scheme and every step that may be taken by the Applicant Company 1, its directors or authorised representatives for implementation of the said Scheme.

3. I submit my consent for the dispensation with the holding of the meeting of the creditors of the Applicant Company 1 as per provisions of the Companies Act, 2013.”

6.1 The Appellant No.1 filed yet another similar Affidavit as creditor of Applicant Company No.1 - ASAP giving consent which is at Page – 17 with Annexure – 1 annexed to the Reply of Respondents (Diary No.4006). The Cause Title of these Affidavits clearly refers to the same transferor Company No.1, transferor Company No.2 and transferee Company giving their names and that the matter related to their Scheme of Amalgamation and application of Section 232 and Section 230 of the Companies Act.

7. The learned Counsel for the Respondents rightly submitted that with such Affidavits executed by the Appellants in May, 2017, on record, it is clear and apparent that the Appellants had knowledge. The Appellants clearly had knowledge and information regarding the scheme of amalgamation of these Companies and had given their No Objections, even if they relate to Appellant No.1 in capacity of Director of Lakshmi Car Zone Limited. We are not impressed by the arguments on behalf of the Appellants that they had different capacity as the 100% shareholders of the transferor Company No.1 which had entered into the Share Purchase Agreement and thus in that capacity Notice should have been given to them and their objections or no objections should have been taken. At the

time of arguments, Counsel for the Appellants accepted that Diary No.4167 shows that the audited balance sheet (Page – 42) as available was till 31.03.2016 and the Share Purchase Agreement was of subsequent date of 04.07.2016. Although it is argued that the Share Purchase Agreement being subsequent, the Auditors may not have known about the same and so did not refer, we find from the certified copy of record of proceedings before NCLT, Chennai filed with Diary No.4167 that the Official Liquidator in his Report para – 6 noted that the CA did record that there was change in management in the month of August, 2016 in respect of transferor Company No.1. Para – 4 of the Report of Official Liquidator shows that both the transferor Companies were wholly owned subsidiaries of transferee Company. What appears is that after the Appellants executed the SPA, they handed over their shares and admitted that they had resigned as Directors on 01.01.2017. In fact, the Appellants even approved the balance sheet of the transferor Company No.1, as on 31st March, 2016 by signing the same on 31.08.2016 as can be seen from Page – 66 of Diary No.4167 (Volume – 1). What appears after going through such documents is that the Appellants were clearly aware of the proceedings relating to the scheme of amalgamation and had no difficulties initially but it appears that, as their transaction based on SPA landed in difficulties and so, now they want to raise grievances to the scheme of amalgamation on the plea that Notice to them also was necessary. Going through the material on record, we do not find that there is any substance in the grievance raised by the Appellants. Dispute relating to SPA is before Arbitration and

Transferee Company is facing it. If Appellants had difficulty, they never went before NCLT to raise Objections although they knew about the amalgamation process going on. This being so, we are proceeding to reject both the Appeals.

8. For reasons mentioned above, CA 30/2018 as well as CA 167/2018 both the Appeals are rejected.

No orders as to costs.

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

[Balvinder Singh]
Member (Technical)

/rs/nn