

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

**Company Appeal (AT) No.112 of 2017**

**IN THE MATTER OF:**

**iYogi Technical Services Pvt Ltd** **...Appellant**

**Vs**

**Union of India** **...Respondent**

**And**

**Company Appeal(AT) No.113 of 2017**

**iYogi Technical Services Pvt Ltd** **...Appellant**

**Vs**

**Union of India** **...Respondent**

**Present:** **Mr. S.N. Jha, Senior Advocate with Mr. Nakul Jain, Advocate for the appellant.**  
**Mr. Prasanta Varma, Sr. Central Govt Counsel, Mr. Sanjay Shorey, Joint Director Legal with Mr. Meghav Gupta, Company Prosecutor for Respondent No.1.**  
**Ms Aparna, Asstt. Registrar of Companies.**

**ORDER**

**22.05.2017-** This appeal has been preferred by the appellant, iYogi Technical Services Pvt Ltd against the order dated 9.2.2017 passed by the National Company Law Tribunal, Principal Bench (hereinafter referred to as the 'Tribunal') whereby and whereunder the Ld. Tribunal dismissed the application with following observations:-

*This is an application with a prayer for convening the meeting of secured/unsecured creditors as well as employees (past and present) of the applicant company in terms of order dated 25.10.2016 passed by Hon'ble High Court of Delhi in CA No.135/2016. According to the order passed by the*

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*Hon'ble Delhi High Court the dates of meetings were fixed. Accordingly the meetings of the secured creditors, statutory creditors, unsecured creditors were to be held on 26.12.2016 at 10 AM at Lemon Tree Premier Hotel, Gurgaon. The meeting of the employees of the applicant company was to be held on 27.12.2016 at 10 AM at the same venue. However, for various reasons mentioned in the application the time schedule of meetings could not be adhered to. An application thereafter was filed (CO.APPL.(M) 135/2016) before Hon'ble Delhi High Court.*

*However, by that time the provisions of the Companies Act, 2013 contained in Chapter XV concerning compromises, arrangements and amalgamations were enforced w.e.f. 7.12.2016 and the application was permitted to be withdrawn by the Hon'ble High Court vide order dated 06.01.2017 (Annexure E). The present petition has been filed by invoking the provisions of Section 391-394 of the Companies Act, 1956, read with Rule 6 & 9 of the Companies (Codes) Rules, 1959.*

*After hearing the learned counsel at some length we are of the view that the provisions of Section 230-233 and Section 235-240 of the Companies Act, 2013 have been notified on 7.12.2016. The instant petition has not been filed under the new dispensation and therefore cannot be entertained in the present form. Under the new regime there are variations if we study the details and it would be necessary to comply with all those requirements. The Rules framed there under known as the companies (Compromises, Arrangements and Amalgamation) Rules, 2016 enforced with effect from 15.12.2016 would also required to be complied with. Even the High Court in the order dated 06.01.2017 has observed that the applicant had applied to withdraw the application (CO.APPL.(M) 135/2016) with liberty to institute appropriate proceedings in accordance with law. However, petitioner has not complied with its own prayer made before the High Court.*

*In view of the above discussions CA(CAA)-09(PB)/2017 is dismissed. However, liberty is given to the petitioner to file a fresh application on the same cause of action, if so advised.*

Thereafter the appellant filed an application to review the order dated 9.2.2017 but as there is no mistake in said order, Tribunal rejected the review application.

The brief facts of the case is that the appellant preferred Company Appeal (M) No.135/2016 before the Hon'ble Delhi High Court under Section 391-394 of the Companies Act, 1956 in connection with the proposed Scheme of Compromises/Agreement with its creditors, as defined in the said scheme with specific prayer to consider the scheme as proposed by the applicant company for its revival and to convene, conduct and hold a meeting with its secured/unsecured creditors as well as employees (past and present) for approval of the said proposed Scheme.

The Hon'ble High Court, after having considered the application by its order dated 25<sup>th</sup> October, 2016 permitted the appellant/applicant to hold meeting of the secured creditors, statutory creditors, unsecured creditors and its employees on 26<sup>th</sup> December, 2016 and 27<sup>th</sup> December, 2016. While passing such order Hon'ble High Court granted protection under Section 391(6) of the Companies Act, 1956 by, inter alia, staying the winding up proceedings as already initiated at the instance of one of the creditors and is pending before the High Court. The said order of the Hon'ble High Court dated 25<sup>th</sup> October, 2016 was delivered on the appellant/applicant on 11.11.2016 whereinafter the appellant/applicant could not hold the meeting due to short of time to provide statutory notice which was to be given to all the members and creditors.

The appellant, thereafter, filed CA No.5128 of 2016 before the Hon'ble High Court inter alia praying therein for extention of time for convening of the said meetings as were originally schedule for 26<sup>th</sup> and 27<sup>th</sup> December, 2016. The petition was filed on 19<sup>th</sup> December, 2016 and was listed on 22.12.2016, when the Hon'ble High Court directed the counsel to file a better application explaining

the circumstances for not complying the orders, re-notifying the matter for 6.1.2017. In compliance with the Hon'ble High Court's order the appellant/applicant filed another application being Company Application No.29/2017 on 23<sup>rd</sup> December, 2016 inter alia explaining the circumstances and the reasons for delay in getting the publication carried out within the time. Both the Company application No.5128/2016 as well as Company Application No.29/2017 were listed for consideration before the Hon'ble High Court on 6.1.2017. In the meantime, pursuant to the provisions of the Companies Act, 2013 the Central Government issued a notification dated 7.12.2016 transferring, some of the cases from High Court to National Company Law Tribunal under Section 434(1)(c) of the Companies Act, 2013. The said notification has been doubted by this Appellate Tribunal in another appeal, as issued under Section 139 of the Insolvency & Bankruptcy Code, 2016.

It appears that because of such confusion the Leard Advocate appearing on behalf of the appellant on 6<sup>th</sup> January, 2017 sought "leave" of Hon'ble High Court to withdraw both the aforesaid applications with liberty to institute appropriate proceedings in accordance with law. After withdrawing the applications, fresh application were preferred by the appellant before the National Company Law Tribunal, Principal Bench with prayer for convening the meeting of secured/unsecured creditors as well as employees (past and present) of the applicant company in terms of order dated 25.10.2016 passed by Hon'ble High Court of Delhi in CA No.135/2016. Indirectly, modification/extension of time of the Hon'ble High Court was sought for.

The Learned Tribunal, Principal Bench after hearing the learned counsel for appellant at some length observed that as the provisions of Section 230-233, and Section 235-240 of the Companies Act, 2013 have been notified on 7.12.2016

and the petition has not been filed under the new dispensation, therefore, the petition cannot be entertained in the present form.

The Learned counsel appearing on behalf of the appellant/applicant submitted that in fact Hon'ble High Court suggested to withdraw the application and to move before the Hon'ble Tribunal, but we do not accept such submissions in view of language of the order dated 6.1.2017, which shows that the Learned counsel for the appellant sought permission to withdraw the application with liberty to institute appropriate proceedings in accordance with law.

Learned counsel appearing on behalf of the Central Government contended that first motion having initiated by the Hon'ble High Court under Section 391 of the Companies Act, 1956, the case should have treated be a pending proceeding before the Hon'ble High Court. Extention of any time as was sought for can be granted only by the Hon'ble High Court and not the Tribunal.

We have heard Learned counsel for appellant and the Learned counsel appearing on behalf of the Central Government. From the record it transpires that it is unfortunate case in which though the appellant was successful in getting favourable order on the first motion, with all bona fide motive when move for extention of time for convening of meetings of creditors etc. but in view of the notification dated 7<sup>th</sup> December, 2016 confusion took place which resulted withdrawal of the application by the learned counsel for the appellant.

On hearing the parties, we are of the opinion that the time granted by the Hon'ble High Court on 25<sup>th</sup> October, 2016, can be modified and time can be extended only by the Hon'ble High Court. However, in the peculiar facts and circumstances of the case and as the Tribunal has allowed the appellant to file fresh application on the same cause of action. Now, the appellant may move before the Hon'ble High Court and bring all facts as noticed above with a request to recall the orders dated 6.1.2017 etc passed by the Hon'ble High Court in

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Company Appeal No.5128/2016 and Company Appl. (M) 135/2016 with request to entertain the company applications as were preferred before it and to pass the appropriate order. With the above observations the appeals stand disposed of.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Mr. Balvinder Singh)  
Member (Technical)

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