

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.414 of 2017

[Arising out of Order dated 18.09.2017 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad in CP No.298/2016 (CP (TCAA) No.23/HDB/2017)]

IN THE MATTER OF:

Sri Brunda Infrastructure Private Limited
Regd. Office at: 43-14-16,
T.S.N. Colony, Visakhapatnam – 530 016
Andhra Pradesh, Represented by its Director
K.J.D. Srinivas

...Appellant
(Original Petitioner)

Versus

1. Anil Kumar Ravuri
S/o. R. Rammohan Rao,
2. Mrs. Satyavani Ravuri
W/o. Mr. Anil Kumar,
Both R/o. 130 Finch Roach
Ringwood, New Jersey
U.S.A. 07456

Both are represented by their Power of
Attorney Mr. Brungi Vijay Kumar residing
At 12-19, Maruthi Nagar, Kothapet
Hyderabad – 500 035

...Respondents
(Original Respondents)

For Appellant: Shri K.R.D. Srinivas and Shri S.C. Das, Advocates

For Respondent: Shri Y. Suryanarayana, Advocate (Respondent Nos.1 & 2)

With

Company Appeal (AT) No.415 of 2017

[Arising out of Order dated 18.09.2017 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad in CP No.297/2016 (CP (TCAA) No.22/HDB/2017)]

IN THE MATTER OF:

Satya Prakash Hotels Private Limited
Redg. Office at: 14-41 P&T Colony,
Gaddiannaram, Dilsukhnagar, Hyderabad,
Telangana, India. Represented by its Director
Miriyala Surya Prakash

...Appellant
(Original Petitioner)

Versus

1. Anil Kumar Ravuri
S/o. R. Rammohan Rao,
2. Mrs. Satyavani Ravuri
W/o. Mr. Anil Kumar,

Both R/o. 130 Finch Roach
Ringwood, New Jersey
U.S.A. 07456

Both are represented by their Power of
Attorney Mr. Brungi Vijay Kumar residing
At 12-19, Maruthi Nagar, Kothapet
Hyderabad – 500 035

3. Sri. Karri Naga Ramchandra Reddy
S/o. Sessa Reddy, R/o. D.No.6-28,
Bodavari Street, G. Mamidada
East Godavari District, A.P.
4. Sri. Karri Sessa Reddy
S/o. Ramachandra Reddy
D.No.11-15-14, Acyutharamayya Street,
Ramaraopet, Kakinada,
East Godavari District. A.P

5. Nallamalli Veera Venkata Sathireddy,
S/o. late Bhaskar Reddy
R/o. D. No.1-27, D.R.K. Nagar
G. Mamidada, East Godavari, A.P.
6. Padala Gangireddy
S/o. Late Ammireddy
R/o. HIG – 128, VUDA Colony
Gajuwaka, Visakhapatnam District, A.P.
7. Routhu Srinivasa Rao
S/o. Veera Swami
D.No.11-106, Madyaveedi,
Bodavari Street,
G. Mamidala Pedapudi Mandal
East Godavari District A.P.
8. Nekkanti Prabhakar
S/o. Sivaram Prasad
R/o. D. No.2-26/3, Mogali Palem
Bandanapudi Siyaru, Kajuluru Mandal,
Maneru Post, East Godavari District A.P.
9. Pemonanaboina Rangarao,
S/o. Venkatarao,
R.o. D.No.1-68, Konda Gunturu Village,
Rajanagaram Mandal,
East Godavari District A.P.
10. Karri Manikyamba
W/o. Sessa Reddy
R/o. 11-15-14, Achutu Ramayya Street,
Ramaraopet, Kakinada,
East Godavari District A.P.

...Respondent Nos.1 to 10
(Original Respondent Nos.1 to 10)
11. Syndicate Bank,
Corporate Finance Branch,
Hyderabad rep. by its Chief Manager

...Respondent No.11

For Appellant: Shri K.R.D. Srinivas and Shri S.C. Das, Advocates

For Respondent: Shri Y. Suryanarayana, Advocate (Respondent Nos.1 & 2)

Shri Parnam Prabhakar, Advocate (Respondents 3 to 10)

Shri Rama Subba Raju and Shri V. Sudeer, Advocates (Respondent No.11)

J U D G E M E N T

(27th September, 2018)

A.I.S. Cheema, J. :

1. These two Appeals have been disposed by us on 27th September, 2018. We passed operative order dismissing both these Appeals with costs. We had in the record of proceedings of 27.09.2018 recorded that we are passing the operative order for reasons which are to follow.

2. We record our reasons as follows for dismissal of these 2 Appeals.

3. Company Appeal (AT) No.414 of 2017 is arising out of Impugned Order passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad passed in CP No.298 of 2016 (CP (TCAA) No.23/HDB/2017 passed on 18th September, 2017.

4. Company Appeal (AT) No.415 of 2017 arises out of Impugned Order dated 18.09.2017 in CP No.297 of 2016 (CP (TCAA) No.22/HDB/2017.

5. By the 2 Impugned Orders, the learned NCLT rejected the petitions which were filed by these 2 Appellants. The petitions had been basically initiated under Sections 391 and 394 of the Companies Act, 1956 ('old Act',

in brief) claiming that the Appellant - Sri Brunda Infrastructure Pvt. Ltd. is Transferee company and the Appellant - Satya Prakash Hotels Pvt. Ltd. is a Transferor company. Satya Prakash Hotels Pvt. Ltd. proposed to merge into Brunda Infrastructure. Scheme of Amalgamation was filed for sanction of NCLT.

6. We will refer to the litigation from the records of CP 415/2017 - Satya Prakash Hotels as the counsel for the Appellants has mainly argued the matter from the records of this Appeal. Even the NCLT passed reasoned order in Impugned Order of this Appeal and the Petition filed by Brunda Infrastructure came to be rejected as the petition moved for Satya Prakash Hotels was being rejected, with costs.

7. It has been argued for the Appellants and it appears from record that the two Companies initially filed First Motion Applications in the High Court of Judicature at Hyderabad. Copy of the Application in Satya Prakash Hotels is at Annexure – A-11. The Judges summons was sought to dispense with the convening of the meeting of equity shareholders of the Applicant Company - Satya Prakash Hotels. Satya Prakash Hotels claimed to be a private limited company. It gave particulars regarding its share capital and the objects of the Company which included purchase or otherwise acquire land, building, premises and to develop the same for carrying on business of hotel, etc. Particulars were given with regard to the transferee company - Brunda Infrastructure also and as regards its

position relating to share capital and its aims and objects. It was stated that the aims and objects included construction and development works. The two Companies pointed out in their separate applications moved before the High Court that they were mainly engaged in business of hotel, infrastructure and real estate and the transferor Company offered strong financial structure to transferee Company and their amalgamation will result in economy of scale and reduction of overhead, administrative and managerial expenditure. It was stated that Board of Directors of both the Companies in meeting held on 09.12.2015 had approved the scheme of amalgamation of the transferor and transferee Companies with effect from 1st April, 2015 subject to approval/consent of the Board.

8. Annexure – A-11 - CA 955/2016 which was filed before the High Court for Satya Prakash Hotels signed by Miriyala Surya Prakash as Director shows the Appellant mentioning in Para – 15 to 17 as under:-

“15. I respectfully submit that the applicant Company has availed secured loans from the Banks. The applicant company has approached Secured Creditors who have no objection to the proposed Scheme of Amalgamation. The Applicant Company has availed unsecured loans and copies of the No Objection letters received from the Unsecured Creditors are filed herewith as **Annexure – A6**. Even though the applicant company has not availed any loans, some persons claiming to be the unsecured creditors filed the winding up petitions before the Hon’ble court, against to applicant company which are pending.

16. I respectfully submit that there are only 4 equity shareholders who are interested in the scheme of amalgamation and given their no objections to the

proposed scheme of amalgamation. The consent given by shareholders to the proposed scheme of amalgamation by means of affidavits are filed herewith as **Annexure – 7**.

17. I respectfully submit that no investigations or proceedings are pending under Sec. 235, 237 or other provisions of the Companies Act or under any Act against the Transferor Companies or Transferee Company.”

9. Based on such assertions, the Hon’ble High Court passed common Order in the applications moved by these Companies which was CA 955 and 956 of 2016 and by Order dated 20th July, 2016 dispensed with the meeting of shareholders with reference to the Appellant - Satya Prakash Hotels. Observations of the Hon’ble High Court in Para – 5 of its Order were as under:-

“5. Insofar as Comp.A.No.955 of 2016 is concerned, there are only four shareholders, as per annexure –A7, and all the said shareholders have given their written consents under duly notarized affidavits filed at page Nos.139 to 143 consenting the scheme aforesaid. Since all the shareholders have given their consents, it is not necessary to direct convening and holding of the meeting of the shareholders. Hence, the meeting of the shareholders is dispensed with. It is also stated in paragraph 15 of the affidavit filed in support of the application that the applicant company had availed secured loans from the Banks and has approached the Secured Creditors who have no objection to the proposed scheme of Amalgamation. The transferor company had availed unsecured loans and the unsecured creditors have given their no objection letters which are appended as Annexure –A6. In view of that, no direction is necessary to be given with regard to convening and holding of meeting of secured and unsecured creditors.”

10. Thereafter, it appears that these Companies filed Second Motion Petition. If CA 415 of 2017 is seen, copy of the said CP 297/2016 is at Annexure – A-2 Page – 51. This Appellant in para – 15 of the Petition referred to the High Court dispensing with meeting of equity shareholders.

It was then stated in Para – 16 to 18 as under:-

“16. It respectfully submitted that the Petitioner Company has availed secured loans from the Banks. The Petitioner Company has approached Secured Creditors who have no objection to the proposed Scheme of Amalgamation. The Petitioner Company has availed unsecured loans and copies of the No Objection letters received from the Unsecured Creditors are filed herewith as **Annexure-A6**.

Even though the Petitioner Company has not availed any loans some persons claiming to be the Unsecured creditors filed the Winding up petitions before the Hon’ble Court against the Petitioner Company which are pending.

17. It is respectfully submitted that the Transferee Company has also filed similar application for dispensation of the meeting of the equity shareholders. This Hon’ble Court in Company Application No.956 of 2016 by Orders dated 20th July, 2016 has dispensed with the meeting of the equity shareholders of the Transferee Company.

18. I respectfully submit that no investigations or proceedings are pending under Sec.235, 237 or other provisions of the Companies Act or under any Act against the Transferor Companies or Transferee Company.”

11. It appears that such petitions filed in the High Court were transferred to NCLT and the matter came up before NCLT. In the NCLT, Respondents 1 and 2 appeared and filed CA 117/2017 for impleadment.

Order dated 05.07.2017 of NCLT (Annexure A-18 – Page 361) shows that these Respondents moved the NCLT claiming in the application that they were creditors of the Respondent Company, i.e. Satya Prakash Hotels Pvt. Ltd. and that they had financed an amount of Rs.8,15,95,181.60 paise. They claimed that the Company was trying to deprive them of their amounts by getting amalgamated. These Respondents pointed out the pendency of OS 1243/2015 from the file of VII Additional DJ, RR District. They also informed NCLT that Civil Court had vide Order dated 19.11.2015 directed the Respondents (i.e. Appellant) along with others to furnish security of immovable property. They also apprised NCLT about DRT proceedings having OA 1108/2016 initiated by Syndicate Bank for an amount of more than Rs.19 Crores. These Respondents apprised NCLT of CP No.302/2015 and other CP numbers of 2016 filed by certain persons to liquidate the Company. Considering these aspects, in the face of opposition from the Appellants, NCLT allowed the impleadment. NCLT observed in the Order that it was not correct to say that the loan taken by M/s. Satya Prakash Hotels Pvt. Ltd. represented by its Managing Director – M. Surya Prakash did not relate to the Company and that the loan had been taken in the personal capacity.

12. Respondents 3 to 10 then appear to have moved NCLT filing CA 137 of 2017 seeking impleadment. Copy of Order dated 28.07.2017 of NCLT is at Annexure A-19 (Page 365). It shows these Respondents pointing out that they had invested in the transferor Company huge amounts. They

claimed to have invested amounts in the Company ranging from Rs.10 Lakhs to 35 Lakhs. They claimed to be the creditors of the Company and that the Respondent Company had not discussed several material facts with regard to the petition and several winding up petitions which had been filed before the High Court. NCLT permitted even these Respondents to be impleaded.

13. It appears that when the Deputy Official Liquidator filed Report (Annexure – A-11) inter alia it reported as under:-

“(III). Consequently, this office has received an affidavit dated 22.12.2016 which was filed by the Syndicate Bank, Secured Creditor of the Petitioner Company before the Hon’ble High Court. As per their affidavit, the company outstanding liability is Rs.20,18,92,612/- as on 30.11.2016. The Bank has stated that they have objection for amalgamation and it is not in the interest of the Bank and the legal proceedings would be delayed on account of the scheme. Further, the Bank has prayed in the affidavit to reject the C.P.No.297/2016 filed by Petitioner Company to amalgamate with M/s. Sri Brunda Infrastructure Pvt. Ltd. In this regard, the Petitioner Company needs to clarify the stand taken by the Syndicate Bank.”

13.1 Syndicate Bank which was a secured creditor had not been made party in the proceeding in NCLT. In the Appeal, however, the Syndicate Bank has been shown by the Appellants as party Respondent No.11. Syndicate Bank has filed its Affidavit Diary No.4331 in NCLAT and pointed out in the Affidavit para – 2 as under:-

“2. That the Respondent Syndicate Bank has already proceeded under SARFAESI Act for recovery of the dues to the extent of Rs.12,99,35,497.49 by issuing a notice dated 21.09.2013 under Sec 13(2) and the SA No.162 of 2015 filed by the Borrower company is pending adjudication before the DRT, Vishakapatnam. The Bank has already taken symbolic possession of the secured asset under Sec. 13(4) of the said Act. The Answering Respondent Syndicate Bank has also filed O.A. 1108 of 2016 before the DRT, Hyderabad for an amount to the tune of Rs.19.44 crores and interest thereon.”

13.2 According to the Syndicate Bank when Notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (‘SARFAESI Act’, in brief) has been issued, there is prohibition to transfer by sale, lease or otherwise of the secured assets. The counsel for the Respondent No.11 referred to Sub Section (13) of Section 13 of the SARFAESI Act, which reads as under:-

“(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.”

14. The learned NCLT considering these aspects, observed in para – 22 of the Impugned Order as under:-

“22. Under para 16 of the present Company petition, it is falsely stated that the petitioner Company has not availed any loans, some persons claiming to be un-secured creditors have filed winding up petitions before the Hon’ble High Court and are

pending. It is further false stated under para 18, which reads as under:

“I respectfully submit that no investigations or proceedings are pending under section 235, 237 or other provisions of Companies Act, or under any Act against the Transferor Company or Transferee Company”

The above facts clearly show that the petitioner has come to the Tribunal with un-clean hands by suppressing several material facts relating to the issue in question, as detailed supra.”

It was further observed in para – 24 as follows:-

“24. The above facts clearly indicate that the petitioner Company has not only suppressed all the material facts relating to the issue in question, but also tried to abuse the process of law by insisting even now to allow the Company Petition when blatant suppression of material brought to the notice of Tribunal by the Respondent with supporting documents. Therefore, it is a fit case to not only to be rejected it but it should be imposed exemplary costs.”

14.1 Consequently, the learned NCLT rejected the petition of the Satya Prakash Hotels with costs and disposed of the Petition of Brunda Infrastructure rejecting the same also.

15. Going through the material on record which we have referred and which was taken note of by NCLT also, it is surprising that these Appellants still come forward to file these Appeals for amalgamation. In CA 415 of 2017, the Appeal tries to claim that the Secured Creditor for one or the other reason is not giving NOC in the amalgamation. It is claimed that

the apprehension of the Secured Creditor is misplaced. According to the Appellant, the Company and its Director have made several attempts to convince the Secured Creditor but the attempts have failed. It is claimed that there would be no loss to either parties if the amalgamation is permitted. As regards the other Respondents, the Appeal claims that although they did not lend any money to the Company and the amounts did not reflect in the accounts of the Company, they were making claims and had wrongly got themselves impleaded.

16. The learned Counsel for the Appellants submitted that the amounts which were being claimed to have been advanced by Respondent No.1 to 10 were to the Directors and not the Company and thus tried to justify not pointing out such Respondents as unsecured creditors in the application for permitting amalgamation. The Counsel argued that the Syndicate Bank had orally given No Objection and because of this, it was mentioned in the petition before NCLT that there was no objection of the Secured Creditor.

17. Looking to the documentary evidence as available on record and the admitted fact that Syndicate Bank had indeed moved DRT to proceed against this transferor Company and SARFAESI Act had been invoked in 2013, it is shocking to see the Appellant - Satya Prakash Hotels claiming in the Petition that it had approached Secured Creditors which have no objection to the proposed scheme of amalgamation. The learned Counsel

for the Appellants tried to submit that a Senior Officer of Syndicate Bank had orally given No Objection and because of that, such statement was made. When we asked the learned Counsel to show if any such stand was taken on record in NCLT or here in Appeal, he could not show. We are not convinced with any such baseless argument. The learned Counsel for Respondents 1 and 2 pointed out Section 230(9) of the Companies Act, 2013 which clearly provides that the Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety percent value, agree and confirm, by way of "affidavit", to the scheme of compromise or arrangement. Sub-Section (13) of Section 13 of the SARFAESI Act also refers to written consent of the secured creditor, and here are these Appellants trying to orally submit that there was oral consent given by the secured creditor and that too without any foundation in the record.

18. As regards other Respondents, it is quite clear from record that these Respondents had in fact initiated suit and liquidation proceedings even before the High Court was moved in First Motion in April, 2016 for initiating steps regarding amalgamation. The Appellant - Satya Prakash Hotels in its First Motion in a vague manner stated that though it has not availed any loans, some persons claiming to be unsecured creditors had filed winding up petitions before the Hon'ble High Court against the Company which was pending. It still went on in para - 17 of the First Motion to contradict itself and state that no investigations or proceedings

are pending under Section 235, 237 or other provisions of the Companies Act or under any Act against the transferor Companies or transferee Company. Such statement was clearly not true looking to the litigation which was pending. At the time of arguments, learned Counsel for the Appellants tried to show as to how the claims of Respondents 1 to 10 were not true. We have not allowed him to draw us in those details as we are not required to decide the truthfulness or otherwise of those claims. Fact is that proceedings were indeed pending and in the First and Second Motion also false statements were made. For the purpose of amalgamation of the Companies, it was necessary for the Appellants to truthfully put on record all the details. Instead, false statements were made and there was clearly an attempt to abuse the process of the Tribunal.

19. We do not find any substance in these Appeals. In spite of well-reasoned Impugned Orders which were based on record, these Appellants have filed these Appeals, which are totally baseless and the Appellants hardly have any arguments to support their claim that in the face of such documents and law, their amalgamation should be allowed to proceed.

20. Both the Appeals thus deserve to be dismissed imposing costs on both these Appellants.

21. For such reasons, we pass the operative order, as we did on

27.09.2018, and which reads as under:-

“Operative Order

Company Appeal (AT) No.414/2017 and Company Appeal (AT) No.415/2017 are both dismissed with Costs of Rs.1 Lakh in each of the Appeals to be paid by the respective Appellants to State through Ministry of Corporate Affairs.

Registry to inform ROC concerned.”

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

[Balvinder Singh]
Member (Technical)

/rs/nn