

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.330 of 2018

[Arising out of order dated 30.08.2018 passed by National Company Law Tribunal, Mumbai Bench in CSA No.719 of 2018]

IN THE MATTER OF:

Pipeline Infrastructure Private Limited
Maker Maxity, 4th Avenue,
2nd Floor, Kala Nagar, BKC,
Mumbai – 400 041
Maharashtra

...Appellant

Versus

NIL

...Respondent

**For Appellants: Shri Ramji Srinivasan, Sr. Advocate with
Shri K.R. Sasiprabhu, Shri Ritin Rai, Shri Biju P. Raman,
Shri Amey Nabar, Mr. Bunmeet Singh Grover and
Shri Rohan Dhariwal, Advocates**

ORAL JUDGEMENT
05.10.2018

A.I.S. Cheema, J. : Heard learned Counsel for the Appellant. The Appeal is filed against findings and directions in para – 20 of Order pronounced on 30th August, 2018 and delivered on 05.09.2018 in CSA 719 of 2018 by National Company Law Tribunal, Mumbai Bench ('NCLT', in short). The said CSA has been filed under Section 230 of the Companies Act, 2013 ('new Act', in short) by the Appellant, a transferee Company. It is stated that the business of East West Pipeline Limited – transferor Company or demerged Company with regard to pipeline business would be hived off and merged with the present Appellant. For this purpose, the First Motion Application was filed

before the National Company Law Tribunal, Mumbai Bench. Submission is that while approving the First Motion, the learned NCLT gave Orders with regard to dispensing with the creditors' meeting and required the Appellant to call meeting of the equity shareholders. It is stated that in the course of the Order in para – 20, NCLT observed as under:-

“20. Having regard to registration of documentation is concerned, this scheme says that by virtue of this scheme whatever assets, including immovable assets, coming to the Resulting Company shall be deemed as transferred to and vested in Resulting Company, but this is not permissible under law because what all is to be transferred through scheme, the same shall take place as governed by Stamp Act and Registration Act of the respective State, likewise documentation for transfer of assets as per fiscal laws shall be complete before the copy of this scheme is placed before the Registrar of the Company.”

2. The grievance of the Learned Senior Counsel for the Appellant is that the recital in the Scheme on this count was and is as per settled law in this regard and could not be stated as not permissible under law. It is argued that Appellants do not have any grievance regarding paying of stamp duty under the concerned Stamp Act of the State of Maharashtra but by this paragraph – 20, what the NCLT is directing is not permissible. By such direction, NCLT is asking that after the scheme is approved, the Appellant would be required to get separate documents executed for transfer of the assets as per the fiscal laws. The learned Counsel has grievance regarding the last 3 lines which require that documentation for transfer would have to be done. The learned Counsel is saying that this paragraph of the NCLT deserves to be set aside keeping in view the provisions of Section 232 and 233 of the Companies Act,

2013. According to the Counsel when in the ultimate, if the scheme is approved, the amalgamation scheme sanctioned by the Court would itself be instrument, and transfer is effected by the Order of the Court.

3. Learned Counsel referred to Judgement in the matter of **“Hindustan Lever And Another versus State of Maharashtra And Another”** reported in (2004) 9 SCC 438. The learned Counsel submitted that this Judgement of the Hon’ble Supreme Court was no doubt under the similar provisions as existed in the Companies Act, 1956 (‘old Act’, in short) with regard to amalgamation and merger but ratio applies even after the new Act has come into force. It is stated that the Hon’ble Supreme Court dealt with similar issue and the ratio of the Judgement is that the Order issued by the NCLT accepting the sanction of scheme itself becomes an instrument of transfer and no separate documentation is required. Counsel referred to observations of Hon’ble Supreme Court in paragraphs – 9 and 15 of the Judgement. The Counsel referred to Section 2(g) and 2(l) of the Maharashtra Stamp Act, 1958 (‘Stamp Act’, in short) where the definition of “conveyance” includes such orders passed under the Companies Act. The Counsel referred to definitions of “Conveyance” and “Instrument” which are as under and reproduced in Appeal para – 8.K. :-

“Section 2(g) and 2(l) of the Maharashtra Stamp Act, 1958
are reproduced below:

“(g) “Conveyance” includes,—

...

(iv) every order made by the High Court under section 394 of the Companies Act, 1956 or every order made by the National Company Law Tribunal under sections 230 to 234 of the Companies Act, 2013 or every confirmation issued by the Central Government under sub-section (3) of section 233 of the Companies Act, 2013, in respect of the amalgamation, merger, demerger, arrangement or reconstruction of companies (including subsidiaries of parent company); and every order of the Reserve Bank of India under section 44A of the Banking Regulation Act, 1949, in respect of amalgamation or reconstruction of Banking Companies.

...

(l) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt;"

4. The learned Counsel submitted that similar provisions were noticed by Hon'ble Supreme Court in the matter of "Hindustan Lever" (Supra) as they stood then in para 4 and 14. Reference is made by Counsel to para 15 where it was observed:-

"15. This definition of instrument is not amended by Maharashtra Act 17 of 1993. The word "Instrument" is defined to mean, every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded, but does not include bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of shares, debenture proxy and receipt. The recital in the scheme of amalgamation as well as the order of the High Court under Section 394 of the Companies Act, declares, that, upon such order of High Court the undertaking of the transferor company shall stand transferred to the transferee company with all its movable, immovable and tangible assets to the transferee company without any further act or deed. Sub-section (3) of Section 394 provides that the certified copy of the Order of the Court has to be presented before the Registrar of companies

within thirty days for registration. And in default any officer of the company, who is in default, becomes liable to be punished and fined, which may extend up to Rs.500/-. Section 391 (3) provides that an order made by the court under sub-section (2) of Section 391 shall not have effect till a certified copy of the order has been filed with the Registrar. On presentation of the certified copy of order, the Registrar of the Company certifies that the transferor company stands amalgamated with the transferee company along with all its assets and liabilities. Thus the amalgamation scheme sanctioned by the Court would be an "instrument" within the meaning of Section 2(l). By the said "instrument" the properties are transferred from the transferor company to the transferee company, the basis of which is the compromise or arrangement arrived at between the two companies.”

Counsel further referred to para – 27. Hon’ble Supreme Court observed as under:-

“27. Section 394 (2) of the Companies Act, 1956 provides that the properties and liabilities of the transferor company stand transferred to the transferee company by virtue of an order of court. The statutory form of an order under Section 394 (2) of the Companies Act provides for three different schedules in order to incorporate therein the properties transferred. It would be useful to take notice of the statutory form of an order under Section 394 (2) of the Companies Act.”

The Judgement shows Form 42 under The Companies (Court) Rules, 1959 was then reproduced. Then paragraphs – 28 and 29 read as under:-

“28. The transfer of assets and liabilities takes effect by an order of the court. The order also provides for passing of consideration from the transferee company to the shareholders of the transferor company. The consideration for sale in a transaction like this is the shares. The share exchange ratio is decided on the basis of number of factors including the value of net assets of the transferor and transferee company. To arrive at this figure of net assets the liabilities have to be set off against

the gross value of the assets. The share value is fixed. The properties belong to the company and the company belongs to the shareholders. Once the shareholders of the transferee company receive the consideration it would be deemed as if the owner has received the consideration.”

“32. In view of the aforesaid discussion, we hold that the order passed by the Court under Section 394 of the Companies Act is based upon the compromise between two or more companies. Function of the Court while sanctioning the compromise or arrangement is limited to oversee that the compromise or arrangement arrived at is lawful and that the affairs of the company were not conducted in a manner prejudicial to the interest of its members or to public interest, that is to say, it should not be unfair or contrary to public policy or unconscionable. Once these things are satisfied the scheme has to be sanctioned as per the compromise arrived at between the parties. It is an instrument which transfers the properties and would fall within the definition of Section 2(l) of the Bombay Stamp Act which includes every document by which any right or liability is transferred. The State Legislature would have the jurisdiction to levy stamp duty under Entry 44, List III of the Seventh Schedule of the Constitution of India and prescribe rates of stamp duty under Entry 63, List II.”

5. On the basis of the above Judgement of the Hon’ble Supreme Court, it is argued and rightly so that the present para – 20 of the Impugned Order could not have been passed adding a requirement to go in for documentation for transfer of assets as per fiscal laws before copy of the scheme is placed before the Registrar of Companies.

6. Having gone through the material available on record and the above provisions pointed out by the learned Senior Counsel and Judgement referred, we do find that there is substance in the submissions. Reading the provisions of the new Act with the old Act and considering ratio of the Judgement of Hon’ble Supreme Court and Stamp Act, we do not think that

scheme approved by Order of Court would require any further documentation to be done for transfer of assets. The learned NCLT could not have directed separate documentation for transfer of assets before copy of the scheme is placed before the Registrar of Companies. The learned Counsel for the Appellant fairly submits that when the scheme is approved and the Orders approving scheme are passed, the Appellant would be paying the necessary stamp duty to the State treating the Orders of NCLT approving Scheme as the “instrument”.

7. For the reasons mentioned above, the Appeal is allowed. Para – 20 of the Impugned Order is set aside. The Appeal is disposed accordingly.

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

[Balvinder Singh]
Member (Technical)

/rs/sk