

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) No. 82 of 2021

[Arising out of order dated 17.02.2021 passed by the National Company Law Tribunal (Mumbai Bench-IV) in CA (CAA)/1157/MB-IV/2020]

IN THE MATTER OF:

Lasa Supergenerics Limited,

A company incorporated under the Companies Act, 2013 having its registered Office at C-105, MIDC Mahad, Mahad, Raigad-402301
CIN: L24233MH2016PLC274202

..... Appellant.

Versus

Harishree Aromatics & Chemicals Private Limited,

a company incorporated under the Companies Act, 1956 having its registered Office at Unit No. 705, Minera Estate A wing 02 Commercial Tower, Mulund Mumbai-400080,
Through its Director Mr. Omkar Herlekar
CIN: U24110MH1998PTC116369

..... Respondent.

Present:

For Appellant: **Mr. Krishnendu Datta, Sr. Advocate with Ms. Versha Himmat Singh, Mr. Gaurav Gadodia, Advocates.**
 CS Ashish O. Lalpuria.

For Respondent:- **Mr. Nitin Kumar, Mr. Gagan Gulati, Advocates.**

J U D G M E N T
(28th November, 2022)

Justice Anant Bijay Singh;

The present Appeal has been filed by the Appellant being aggrieved and dissatisfied by the order dated 17.02.2021 passed by the National Company Law Tribunal (Mumbai Bench-IV) in CA (CAA)/1157/MB-IV/2020 whereby and whereunder the Tribunal directed the Transferee Company i.e. Lasa Supergenerics Limited to obtain consent from the sole Secured Creditor before the final date of hearing.

2. The facts giving rise to this Appeal are as follows:

- i) The Applicant companies had filed a joint application on 09.12.2020 for appropriate directions to a Scheme of /amalgamation before the Tribunal for sanctioning a Scheme of Amalgamation under Section 230-232 of the Companies Act, 2013 between Harishree Aromatics and Chemicals Private Limited, The Transferor Company and Lasa Supergenerics Limited, the Transferee Company.
- ii) The Transferor Companies is engaged in the business of organic and inorganic chemicals, chemical compounds and other preparations including undertaking job work for manufacturing and processing of all kinds of chemicals, drugs, intermediates, pharmaceutical, fine chemicals, reagents, laboratory grade chemicals etc. The promoter of the Transferee Company is major shareholder, holding 96.21 % of the issued, subscribed and paid up equity share capital of the Transferor Company. The Transferee Company is engaged in the business as manufacturers of organic and inorganic chemicals and their by-

products, pharmaceuticals, drugs, intermediates, fine chemicals regents, laboratory grade chemicals, dye stuffs, dyes and colours, enzymes, derivatives, formulations, plastics, pesticides, pigments, varnishes, paints, agro-chemicals, petrochemicals, compound industrial and other preparations, processing of all kinds of chemicals, drugs, intermediates, pharmaceuticals, fine chemicals, reagents, laboratory grade chemicals and to provide consultancy services, contract research, feasibility studies, working out of process details and equipment specification, plant erection and commencement of new project on turn-key basis. The amalgamation of the Transferor Company with the Transferee Company will provide significant synergistic benefits, economies of scale, consolidation of finances and operational efficiencies as well as forward integration of the business of the Transferee Company. The amalgamation shall also add into the top line of the transferee company ultimately increasing shareholder value.

iii) The Transferor Company generates its major source of revenue from the job work it carries for the products of the Transferee Company. Further, the Transferor Company owns a number intellectual property rights in the form of patents in the field of processing of chemicals. The Transferee Company intends to integrate the operations of the Transferor Company with itself as a part of restructuring process by taking over the manufacturing unit along with its business know-how, market meach, all the tangible and intangible assets with no liability since the transferor company is free from debt except the liability owed to transferee company. The Amalgamated Company will have greater

efficiency in overall business including economies of scale, cash flow management of the amalgamated entity and unfettered access to cash flow generated by the combined business which can be deployed more efficiently for the purpose of development of businesses of the companies and their growth opportunities, eliminate inter corporate dependencies, minimize the administrative compliances, etc. resulting in maximisation of shareholders value.

iv) The Amalgamation will result in cost saving for the Transferor Company and the Transferee Company as they are engaged in the related and interdependent activity which is expected to result in higher net worth and cost savings for the Amalgamated Company. (vi) The Amalgamated Company will have the benefit of the combined resources of the Transferor Company and the Transferee Company i.e., market share, scale, efficiency, combined net-worth, combined employee base, reserves, investments, and other assets, manpower, consolidated pool of finances, including optimization of borrowing costs and administrative compliances related thereto, larger size, consolidation of operations, mitigating competition, future opportunities, etc. The Amalgamated Company would be in a position to carry on consolidated operations through optimum utilization of its resources and integrated production facilities. The Amalgamated Company would also have a larger net-worth base, and greater borrowing capacity since the assets held by transferor companies are free from all encumbrances, which would provide it a competitive edge over others, especially in view of the increasing competition due to liberalization and

globalization, which will be beneficial in more than one ways to the Transferor Company and the Transferee Company and their shareholders and creditors, as the Transferor Company and the Transferee Company plan to meet the competition in a more effective way by combining their asset base and operations. The Board of Directors of the Transferor Company and the Transferee Company are of the opinion that the amalgamation would motivate employees by providing better opportunities to scale up their performance with a corporate entity having large revenue base, resources, asset base etc which will provide impetus to corporate performance thereby enhancing overall shareholder value.

v) Further case is that the Appellant in its Application before the Tribunal had prayed for dispensation of meeting of its secured creditor in “para 28” read with “para c” of the Notice of Admission on the ground that the secured creditor will in no way be affected by the proposed Scheme of Amalgamation as the assets of the Appellant after the proposed amalgamation will be far more than its liabilities. The Appellant also stated that the Secured Creditor is not affected in any manner by the Scheme nor is there any compromise or arrangement envisaged in the Scheme under Section 230(l)(a) of the Companies Act, 2013. The Appellant further contended that the Scheme does not contemplate any variation in the rights of the Secured Creditor in any manner whatsoever and that upon the Scheme becoming effective, the Appellant shall continue with its existence and shall accordingly continue to meet the liabilities of its creditors as they arise in the normal course of business. In this regard, the Tribunal in its impugned order dated 17.02. 2021 agreed to the contention of the Appellant and

dispensed with the meeting of Secured Creditor. However, the Tribunal while dispensing with the meeting of the secured creditor, directed the Appellant to obtain NOC from the Secured Creditor before the final date of hearing which is the subject matter of challenge in the present Appeal. The Relevant para 16 of the Impugned Order is as follows:

“16. The Learned Authorised Representative submits that there are no Secured Creditors in the Transferor Company. The Learned Authorised Representative further submits that the Transferee Company has I (One) Secured Creditor with a total outstanding of Rs. 19,54,06,031/- (Rupees Nineteen Crore Fifty-Four Lakh Six Thousand Thirty One Only) as on 31.10.2020. Since the present scheme is in accordance with the provisions of section 230(1) (b) of the Companies Act 2013 and does not involve an arrangement with the creditors and there will be no diminution of the liability, the meeting of Secured creditor of Transferee Company be dispensed with. However, the Bench directs that consent from Secured Creditor be obtained before the final date of hearing.”

Submissions on behalf of the Appellant

3. The Ld. Sr. Counsel for the Appellant during the course of argument and in his memo of Appeal along with written submissions submitted that The Transferor and the Transferee companies are engaged in the business or organic and inorganic chemical compounds and other pharmaceutical and drugs. The promoter of the Transferee Company is a major shareholder, holding 96.21% of the issued, subscribed and paid-up equity share capital of the Transferor

company. The transfer will provide significant synergistic benefits, economies of scale, consolidated finances and operational efficiencies. The Authorized Capital of the Appellant Company is Rs. 50,00,00,000/- as on 31st March, 2020. The issued, subscribed and paid-up Capital of the Appellant Company is Rs. 40,67,26,680/- as on 31st March, 2020. The turnover of the Appellant has increased by 21% from Rs. 167.27 crores in the financial year 2019-21 to Rs. 202.38 crores for the financial year 2020-21. The Balance sheet of the Appellant Company as on 31st March, 2020 reflects a Net Worth of Rs. 141,46,55,000/- which has increased to Rs. 158, 91, 70,000/- at the end of financial year 31st March, 2021.

4. It is further submitted that the Tribunal ignored the settled legal position in the judicial precedents relied by the Appellant Company, that dispensation as well as the requirement of a consent/NOC is granted in the case of amalgamation where: (i) Net-worth of both companies is highly positive; (ii) Unsecured creditors are paid-off in the ordinary course of business; (iii) Scheme is not prejudicial to their interests as their liability is not proposed to be reduced or extinguished, and no sacrifice is called for because of which they are not parties to the scheme. The Appellant as well as the Respondent have sufficient and positive net-worth as on January 31, 2021, which indicate that there are sufficient assets to meet the respective liabilities of the Transferor and the Transferee, and the post-amalgamation net-worth of Appellant is highly positive and sufficient to meet the liabilities of both companies.

5. It is further submitted that in the following judgments which are hereunder, wherein dispensation has been granted by the Appellate Tribunal and also the Tribunal.

- *Company Appeal (AT) No. 19 of 2021 in the case of Ambuja Cements Limited, Judgment dated 06th April, 2021.*
- *C.A.(CAA)/ 66/(MB)/2021 in the case of Networth Portfolio and Finance Private Limited delivered by the National Company Law Tribunal, Mumbai, delivered by the Hon'ble National Company Law Tribunal, Mumbai vide Judgment dated 15th April, 2021.*
- *C.A.(CAA)/ 53/MB/2021 in the case of Gujarat Enviro Protection and Infrastructure Private Limited delivered by the National Company Law Tribunal, Mumbai, vide Judgment dated 15th April, 2021.*
- *C.A.(CAA)/1153/MB.IV/2021 in the matter of Bluebell Vanijya Private Limited delivered by the Hon'ble National Company Law Tribunal, Mumbai vide Judgment dated 16th February, 2021.*
- *C.A.(CAA)/1169/MB.IV/2020 in the matter of Poonam Roofing Products Private Limited delivered by the Hon'ble National Company Law Tribunal, Mumbai vide Judgment dated 17th February, 2021.*

6. It is further submitted that in view of the aforesaid cases, the Hon'ble Tribunal observed that the scheme did not involve any arrangement with creditors and that there will be no diminution of the liability towards the said secured creditors, thus the meeting of the secured creditor was dispensed with directions of individual notice to be served upon the secured creditors enclosing a copy of the scheme and with clear indication therein that objections if any, shall be filed before the Tribunal within thirty days from the date of receipt of the letter. The Appellant further places reliance of the judgment/order dated 28th

June, 2021 passed by this Appellate Tribunal in the matter of “**Mohit Agro Commodities Processing Pvt. Ltd in Company Appeal (AT) No. 59 of 2021**”.

Therefore, the Hon'ble Tribunal erred by directing the Appellant Company to obtain consent/NOC from the sole Secured Creditor in view of the fact that the rights of the said Secured Creditor are not getting affected in any manner by way of the proposed Scheme as no compromise is offered to any Secured or Unsecured Creditor of the Transferee Company and further that 96.21% of the shareholding of the Transferor Company is held by the promoter of the Transferee Company. Based on these submissions above the Appeal may be allowed.

Submissions on behalf of the Respondent

7. The Ld. Counsel for the Respondent during the course of argument and in his reply affidavit submitted that the Respondent is in agreement with the Appellant and supports the filing of Appeal filed against the direction of the Tribunal in its order dated 17th February, 2021 wherein the Tribunal in paragraph no. 10 has directed the present Appellant to procure no objection from the secured creditor on or before the date of the final hearing. The Respondent Company was a Joint Applicant along with the Appellant Company in the Company Application as filed before the Tribunal for Scheme of Amalgamation between HARISHREE AROMATICS AND CHEMICALS PRIVATE LIMITED, the Respondent Company and LASA SUPERGENERICS LIMITED, the Appellant Company.

8. It is further submitted that the Tribunal while passing the impugned order has not taken into consideration the facts that the Scheme was only under Section 230(1) which only affects the Equity Shareholders and therefore does not require a no objection from the secured creditor, in several matters the Tribunal dispensed with the meeting of the secured creditors and merely directed to give notice to the secured creditors without seeking no objection from them and the Respondent Company has no secured creditors and therefore it would not affect or diminish the right of the secured creditor of the Appellant. Further submitted that the Respondent Company supported the case of the Appellant Company

9. After hearing the parties, going through the pleadings made on behalf of the parties and in view of the judgment dated 28th June, 2021 passed by this very Bench in the case of **‘Mohit Agro Commodities Processing Pvt. Ltd’ in Company Appeal (AT) No. 59 of 2021**, wherein this Tribunal held in paragraphs 19, 20 and 21 which read as hereunder:

“19. We find force in the contention of the Learned Counsel appearing for the Appellants that there are no Creditors in the subsidiary Companies and that the ‘Transferee Company’ is the only Shareholder of the ‘Transferor Company’.

20. This Tribunal has placed reliance in ‘DLF Phase IV, Commercial Developers Limited and Ors.’ in Company Appeal (AT) No. 180 of 2019 and observed that the scheme would not prejudicially affect the Creditors or Shareholders of the Appellant Company when an Application is filed by the ‘Transferor Company’ or ‘Transferee Company’, a separate Application is not necessary and dispensed with the meeting of the equity Shareholders and Creditors of the Appellant

Company. At the cost of repetition, keeping in view that the financial position of the 'Transferee Company' is highly positive, the merger does not involve any compromise/arrangement with any Creditor of the Company, that there would be a positive net worth and Creditors would not be compromised, the Tribunal ought to have exercised the discretion in dispensing with the requirement of convening the meeting which would facilitate ease of doing business and save time and resources. To reiterate, we observe that the rights and liabilities of Secured and Unsecured Creditors were not getting affected in any manner by way of the proposed scheme as no new shares are being issued by the 'Transferor Company' and no compromise is offered to any Secured and Unsecured Creditors of the 'Transferee Company'. Therefore, we are of the considered view that when the 'Transferor and Transferee Company' involve a parent Company and a Wholly Owned Subsidiary the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors can be dispensed with as the facts of this case substantiate that the rights of the Equity Shareholders of the 'Transferee Company' are not being affected.

21. *For all the aforementioned reasons, we allow this Application and set aside the direction in respect of the Transferee Company issued by the NCLT, to convene the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors on 22.04.2021."*

10. In view of the ratio laid down in the aforesaid judgment, we allow the instant Appeal with modification of para 10 of the impugned order dated 17.02.2021 passed by the National Company Law Tribunal (Mumbai Bench-IV)

in CA (CAA)/1157/MB-IV/2020 to the extent that the secured creditor is hereby directed to raise objection, if any, to the Scheme within 30 days of the Notice of amalgamation before the NCLT failing which it shall be presumed that the said secured creditor has No Objection to the amalgamation. With this modification of para 10 of the impugned order, the instant Appeal is allowed.

11. Registry to upload the Judgment on the website of this Appellate Tribunal and send the copy of this Judgment to the National Company Law Tribunal (Mumbai Bench-IV), forthwith.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

New Delhi
28th November, 2022
R. Nath.