

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) Nos. 842-843 of 2020

In the matter of:

Lifestyle Magazines Pvt. Ltd. & Anr.

....Appellants

Present:

Appellant: Ms. Megha Aggarwal, Mr. Abhimanyu Garg, Advocates.

ORDER

(Through Virtual Mode)

09.12.2020: Appellants- 'Lifestyle Magazines Pvt. Ltd.' (Transferor Company) and 'Jindal Diamonds Pvt. Ltd.' (Transferee Company) are aggrieved of the order dated 19th June, 2020 passed by the National Company Law Tribunal ("Tribunal" for short), Special Bench at New Delhi, by virtue whereof the Tribunal declined to dispense with the meeting of the shareholders/ members of the transferor and the transferee companies seeking amalgamation. The Appellants sought to invoke the inherent powers of the Tribunal but the application seeking exercise of inherent powers came to be disallowed in so far as prayer for dispensation of shareholders meeting is concerned. Aggrieved thereof the Appellants are before us assailing both the orders passed by the Tribunal.

Contd/-.....

2. After hearing Ms. Megha Aggarwal, Advocate representing the Appellants, we find that since there are no secured or unsecured creditors in the Appellant Companies, hence question of convening their meeting would not arise. All the shareholders viz. two in the transferor company and three of the transferee company had consented to and approved the Scheme of Amalgamation. It also comes to fore that the transferor and transferee companies are closely held Private Limited Companies and all the shareholders of both the Companies have given their No Objection Certificates (NOC) by way of Affidavit. Such NOC in the form of Affidavits have been placed on record of the Tribunal.

3. It is pointed out by the learned counsel for the Appellant that the shareholders of the transferor and transferee companies are its Directors who have already given their NOC and thus convening meeting of the shareholders would only result in subjecting the Appellants to heavy financial burden, which in the face of financial difficulties already faced by transferor company will compound difficulty and hardship faced by it for its survival.

4. Learned counsel for the Appellants has referred to two judgments of this Appellate Tribunal, one rendered in ***“DLF Phase-IV Commercial Developers Limited & Ors. with DLF Ltd. Company Appeal (AT) No. 180/2019”*** and the other in ***“Alovera Tradelink Private Limited & Ors. with Ostwal Physchem (India) Ltd.- Company Appeal (AT) No. 178 of 2019”***, to buttress its point that by swearing affidavit in the nature of NOC by the shareholders, compliance is

made with the requirements to consider and approve the Scheme of Amalgamation which warrants dispensing with the convening of the meeting of the shareholders of the transferor and transferee companies.

5. Having regard to the factual position as emerging from the record, the submissions made on behalf of the Appellants and the judicial precedents, we are convinced that it is a fit case for intervention by this Appellate Tribunal as a case for dispensing with the convening of the meetings of the shareholders of the transferor and transferee companies is made out. We accordingly allow the appeal and set aside the impugned order to the extent of directions passed in regard to convening of the meeting of the shareholders of the Appellant Companies. The matter stands remanded back to the Tribunal for considering the Scheme of Amalgamation of transferor and transferee companies in accordance with the provisions of law without insisting upon convening of the meeting of the shareholders of the transferor and transferee companies.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Anant Bijay Singh]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

AR/g