

COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 180 of 2019

[Arising out of Order dated 7th June, 2019 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh in CA (CAA) No. 39/Chd/Hry/2018]

IN THE MATTER OF:

1. DLF Phase – IV Commercial

Developers Limited,

Having its registered office at
2nd Floor, DLF Gateway Tower,
R-Block, DLF City, Phase – III,
Gurugram - 122002. Haryana

**...Appellant No.1/
Transferor Company No.1**

2. DLF Real Estate Builders Limited,

Having its registered office at
2nd Floor, DLF Gateway Tower,
R-Block, DLF City, Phase – III,
Gurugram - 122002. Haryana

**...Appellant No.2/
Transferor Company No.2**

3. DLF Residential Builders Limited,

Having its registered office at
2nd Floor, DLF Gateway Tower,
R-Block, DLF City, Phase – III,
Gurugram - 122002. Haryana

**...Appellant No.3/
Transferor Company No.3**

4. DLF Utilities Limited,

Having its registered office at
3rd Floor, Shopping Mall,
Arjun Marg, DLF City, Phase – I,
Gurugram - 122002. Haryana

**...Appellant No.4/
Demerged Company**

5. DLF Limited,

Having its registered office at
3rd Floor, Shopping Mall,
Arjun Marg, DLF City, Phase – I,
Gurugram - 122002. Haryana

**...Appellant No.5/
Transferee Company**

Present: Dr. U. K. Chaudhary, Sr. Advocate with Mr. Naveen Dahiya, Ms. Manisha Chaudhary, Mr. Dhruv Gupta and Mr. Himanshu Handa, Advocates.

J U D G M E N T

BANSI LAL BHAT, J.

This appeal preferred under Section 421 of the Companies Act, 2013 (hereinafter referred to as the 'Act') arises out of declining of prayer seeking dispensation of meetings of Unsecured Creditors of Appellant No. 4 and Shareholders and Unsecured Creditors of Appellant No. 5 in terms of impugned order dated 7th June, 2019 passed by National Company Law Tribunal, Chandigarh Bench (hereinafter referred to as 'Tribunal'). It is urged that the proposed scheme of arrangement/ amalgamation is a scheme between wholly owned subsidiaries and their holding company. According to Appellants a first motion application was filed before the Tribunal seeking dispensation of meetings of Shareholders and creditors in view of the settled law on the subject followed by many benches of National Company Law Tribunal including a judgment of full bench of NCLT, Kolkata. It is the case of the Appellants that all these judgments filed by way of an affidavit dated 14th February, 2019 were brought to the notice of the Tribunal but the Tribunal ignored the same.

2. Learned counsel for Appellants submits that judicial discipline rendered it imperative upon the Tribunal to follow the judgment pronounced by another Bench on the same subject and not to pronounce a contrary judgment. He

relied upon a number of judgments including a three member bench judgment of NCLT, Kolkata rendered in T.A. No. 11/2017 praying for setting aside of the impugned order with further direction to the Tribunal to pass an order in accordance with law considering the judgments rendered by the Coordinate Benches.

3. Some of the Judgments of Coordinate Benches relied upon by the Appellants and stated to have been ignored by the Tribunal may briefly be adverted to:-

(i). In T.A. No. 11/2017 connected with C.A. No. 896/2016, the decision was rendered by the NCLT, Kolkata Bench in accordance with the majority view pronounced by the Third Member to whom matter was referred as there was difference of opinion between the two members of the division bench on certain points. The majority view, based on the settled case law, was that the requirement of convening the meetings of shareholders and creditors of the Company may be dispensed with if bench is satisfied in all respects. In that case both Applicant Companies had few shareholders all of whom had given their written consent and the Tribunal was of the view that there shall be positive net worth and the creditors were not compromised. Having regard for the same meeting of shareholders was dispensed with.

(ii). In CA(29)(PB)2017 decided on 11th July, 2017 by NCLT Special Bench, New Delhi meeting of Unsecured Creditors was dispensed with as there was no Unsecured Creditor and the Transferor Company was wholly owned subsidiary of the Transferee Company.

4. It is well settled that a Coordinate Bench is bound to follow the law enunciated by another Coordinate Bench and if it feels that the earlier view requires reconsideration, it may refer the matter to a larger bench for reconsideration. In '*Sub-Inspector Rooplal & Anr. Vs. Lt. Governor & Ors.*' reported in (2000) 1 SCC 644, the Hon'ble Apex Court, while dealing with the issue of overruling of an earlier judgment of a Coordinate Bench by the Tribunal, observed as under:-

"12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the

judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. ”

Hon'ble Apex Court in another case *reported in (2005) 2 SCC 59*, excerpts from para 16 whereof are reproduced, observed:-

“..... These being judgments of coordinate benches were binding on the Tribunal. Judicial discipline required that the Tribunal follow those judgments. If the Tribunal felt that

those judgments were not correct, it should have referred the case to a larger bench.”

5. After hearing learned counsel for Appellants we find that the Appellants DLF Phase IV Commercial Developers Ltd. (Transferor Company No. 1), DLF Real Estate Builders Ltd. (Transferor Company No. 2), DLF Residential Builders Ltd. (Transferor Company No.3) and DLF Utilities Ltd. (Demerged Company) are wholly owned subsidiaries of the Holding Company ‘DLF Ltd.’ (Transferee Company). The Appellant Companies proposed a scheme of arrangement interse them, under Section 230-232 of the Act and to achieve the said object filed first motion being CA NO. 39 before the Tribunal seeking directions for dispensation of the meetings of Shareholders, separate debenture holders, warrant holders, compulsorily convertible debenture (CCD) holders and Secured and Unsecured Creditors of the Appellant Companies. According to the case setup by Appellants, the proposed scheme would not result in any dilution in the shareholding of shareholders of Transferee Company, which has highly positive net worth. It appears that in regard to meetings of Unsecured Creditors of Appellant No. 4 (Demerged Company) and Shareholders, Secured and Unsecured Creditors of the Appellant No. 5 (Transferee Company) the Appellants submitted before the Tribunal that in view of settled legal position and various judicial precedents such meetings were not required to be held. The Appellants prayed for dispensation of meetings of their respective Shareholders and Creditors of Appellants No. 1 to 5 as also in respect of warrant holders and CCD holders of Appellant No. 5. It was the further case of

the Appellants that Shareholders of Appellant No. 1 to 4 had given written consent by way of affidavits. Same was the case with regard to Unsecured Creditors of Appellants No. 1 to 3 and Secured Debenture Holders, Warrant Holders and CCD Holders of Appellant No. 5. There were no Secured Creditors in Appellant No. 1 to 4. The Tribunal dispensed with these meetings to the extent of aforesaid stakeholders. However, the Tribunal, in terms of the impugned order declined to dispense with the meetings of Shareholders, Secured and Unsecured Creditors by holding that the consent affidavits of Unsecured Creditors in respect of Appellant No. 4 and Equity Shareholders and Secured and Unsecured Creditors have not been obtained. The relevant portion of the impugned order reads as under:-

“40. In view of the above, this Bench is of the view that such dispensation either in case of shareholders and creditors whether secured or unsecured creditors is not permissible under the provisions of Companies Act, 2013, specifically if read with Section 230(9) of the Act, which speaks only about creditors. Peculiar facts of the case are that the consent affidavits of unsecured creditors in respect of Applicant No. 4 and of equity shareholders, secured as well as unsecured creditors are not obtained. Therefore, it is hereby held that even the scheme is in respect of subsidiaries but merely on this ground, dispensation of meetings of shareholders, secured and unsecured creditors

cannot be dispensed with. Also, it is stated in the prayer clause of the application that in the alternate, the Tribunal may issue directions to convene the meetings of unsecured creditors of Applicant No. 4 and equity shareholders, secured and unsecured creditors of Applicant No. 5 and issue directions with regard to appointment of Chairperson, Alternate Chairperson and Scrutinizer as well as issue directions for publication.”

6. Learned counsel for the Appellants, while relying on the judgments of larger Benches and Coordinate Benches of the Tribunal stated to have been brought to the notice of the Tribunal vide additional affidavit dated 15th February, 2019 vide Diary No. 787/19 as also the law propounded by various Hon’ble High Courts, submitted that in similar circumstances meetings of Shareholders and Creditors were dispensed with. We have referred to some of these judgments and the legal position enunciated therein would warrant the conclusion that the impugned order is per incuriam. It is noticed elsewhere in this judgment that following of the judicial precedent and observing the judicial view propounded by a Coordinate Bench in compliance is a matter of judicial discipline and the only course open to a Coordinate Bench of equal strength taking a different view is to refer the matter to a larger Bench. This is the law of the land declared by the Hon’ble Apex Court and has to be observed and adhered to strictly.

7. Indisputably, the proposed scheme of amalgamation between the Holding Company and its Subsidiaries is regulated by provisions of Chapter XV of the Act, Section 230 thereof provides for passing of an order by the Tribunal directing convening of a meeting of the creditors or class of creditors, members or class of members, as the case may be. Sub-section 9 thereof vests discretion in the Tribunal to dispense with calling of a meeting of such creditors or classes thereof where such creditors or class of creditors, having atleast 90% value, agree and confirm, by way of affidavit to the scheme of compromise or arrangement. Admittedly, in the instant case dispensation in regard to holding of meeting qua Shareholders of Appellant Nos. 1 to 4 was sought on the basis of their written consent obtained by way of affidavits. Same was the case as regards Unsecured Creditors of Appellant Nos. 1 to 3 as also the Secured Debenture Holders, Warrant Holders and CCD Holders of Appellant No.5. As regards these, the Tribunal exercised its discretion and dispensed with calling of their meeting. There were no Secured Creditors of Appellant No. 1 to 4. The Tribunal while exercising its discretion as noticed hereinabove declined the first motion to the extent it related to directions for convening of meetings of Unsecured Creditors of Appellant No. 4 and Equity Shareholders and Secured and Unsecured Creditors of Appellant No. 5. This is stated to have been done despite the settled legal position and view taken by the Coordinate Benches which were binding on the Tribunal. The first motion by the Appellants before the Tribunal sought dispensation in regard to calling of meeting of Members and Creditors, etc. This being the very threshold stage and not the Stage envisaged for consideration of the scheme for amalgamation

by the Tribunal on merit, the Tribunal was required to exercise its discretion in accordance with the legal precedents and views adopted by the Coordinate Benches or Larger Benches. At least one case has been referred to and relied upon by learned counsel for Appellants where, on account of difference of opinion, between the Members of Division Bench of the Tribunal reference was made to the third Member and the case was decided as per majority view which, inter alia dispensed with the requirement of convening of meeting of members and creditors taking into account the considerations that there shall be positive net worth and creditors will not be compromised.

8. Keeping in view the foregoing and all relevant considerations as also the settled law on the subject, the impugned order falling within the purview of per incuriam cannot be supported. The Tribunal should have applied its mind in the light of judicial precedents brought to its notice by way of an affidavit, and in the event of the views expressed by the Coordinate or Larger Benches being squarely applicable, followed the same. Such application of mind being abysmally absent, the impugned order is unsustainable and has to be set aside to the extent it relates to directions for convening of the meetings of Unsecured Creditors of Appellant No. 4 and the meetings of the Equity Shareholders, Secured and Unsecured Creditors of Appellant No.5.

9. The appeal is allowed and the impugned order is set aside to the extent indicated hereinabove and directions passed thereunder. The matter is remanded to the Tribunal for fresh consideration of the first joint motion

application preferred by the Applicants/Appellants having regard to the settled position of law and the views and precedents of Coordinate or Larger Benches of the Tribunal. Any observations made in this order shall not be construed as an expression of opinion on the merits of the case.

A copy of this order be sent to the Tribunal for information.

[Justice Bansilal Bhat]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

NEW DELHI

19th August, 2019

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