

NCLAT dismissed minority shareholder's appeal challenging Valuation Report & Fairness Opinion in Amalgamation Scheme

Case Details:

1. Case Name: Arvind Aggarwal Vs Trinetra Cements Ltd.
2. Order passed by Justice S. J. Mukhopadhaya (Chairperson, NCLAT) and Mr. Balvinder Singh, Member (Technical, NCLAT).
3. Order dated September 12, 2017.

Facts of the case:

1. Scheme of Arrangement for Amalgamation '1st Respondent - Transferor No. 1 Company' (Trinetra Cements Ltd.) and '2nd Respondent-Transferor No. 2 Company' (Trishul Concrete Products Ltd.) with '3rd Respondent - Transferee Company' (The India Cements Ltd.) was filed before the High Court of Madras, which after first motion stood transferred to the Tribunal, Chennai Bench, at the stage of second motion;
2. Appellants (holding 2.37% of total shareholding, 'Minority Shareholders') in 1st Respondent – Transferor No. 1 Company filed objections under Rule 34 of the Companies (Court) Rules, 1959 challenging the valuation arrived at by the valuer on the ground that it was unfair and non-transparent;
3. NCLT rejected the modification of scheme of amalgamation, as sought for by Appellants and approved the 'Scheme of Amalgamation' with direction to Transferor Companies and Transferee Company (1st & 2nd Respondents and 3rd Respondent) to move before the Registrar of Companies;
4. On appeal, the Appellants submitted that NCLT failed to appreciate that the valuer could not work in tandem with the Merchant Banker providing fairness report of valuation. Both Valuer and Merchant Banker were required to work independently to ensure transparency.

Final Decision and its basis:

1. NCLAT dismissed the appeal filed the minority shareholder;

2. NCLAT rejected Appellant's objection that multiple steps for the 'Scheme' taken on a single day render the Reports invalid. NCLAT ruled that "Validity of one report or other report can be looked into if specific illegality is brought to the notice of the High Court/ Tribunal.... It is a usual practice by companies across India that the Reports are provided to the Board for approval on the same day";
3. NCLAT rejected Appellant's contention of non-compliance with SEBI Circulars, ruled that all documents required under the law as provided in Companies Act, 1956 and Clause 24(6) of the Listing Agreement and SEBI Circular were placed;
4. NCLAT held that the Appellant has failed to show any irregularity in the Valuer's valuation.

SEBI: Obligation under SEBI Act to redress the investors' grievances is 'mandatory', penalizes listed Co. for non-redressal of grievances

Case Details:

1. Case Name: In respect of JSW Steel Limited,
2. Order passed by Ms. Rachana Anand, Adjudicating Officer, SEBI.
3. Order dated August 31, 2018

Facts of the case & Contentions of the Company:

1. Complaint against JSW Steel Ltd ('Noticee') was filed as it failed to take appropriate steps for redressal of the investor complaints. Noticee had filed Action Taken Report in the SEBI Complaints Redress System ('SCORES'), however it failed to take appropriate steps for redressal of the investor complaints;
2. It was observed that one investor complaint was pending against the Noticee as on March 25, 2015. A Show Cause Notice was served on Noticee, requiring the Noticee to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on the Noticee u/s 15C of SEBI Act for the violations alleged to have been committed by the Noticee;
3. Noticee submitted that one pending complaint



is a case of fraud where the complainant, bought physical shares off market from one Mr. Jaichand Shah who had got possession of the shares but was not the rightful owner of the same and had sold the shares to the complainant. When the complainant lodged the shares for transfer, the R&T agent refused to transfer the shares and returned the original Transfer deed and copy of share certificate to the complainant by letter dated February 9, 2010 requesting him to approach the seller for settlement.

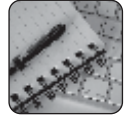
- 4 Noticee submitted that, however, the complainant instead of approaching the seller for settlement chose to pursue the matter with the Company through SEBI and has in the past lodged several complaints with SEBI which has been disposed of by SEBI.
- 5 Noticee stated that in the instant case the Company first filed the ATR on November 14, 2014 and has been constantly filing ATRs in respect of the said complaint thereafter. The ATRs were filed on February 17, 2015, March 18, 2015, March 31, 2015 and May 18, 2015.
- 6 Noticee submitted that in an attempt to close the complaint once and for all, a meeting with the complainant and the Company was called by SEBI on October 28, 2015 at SEBI office but the complainant did not attend the meeting. Thereafter several attempts were made to get the complainant to attend the meeting by SEBI;
- 7 Finally, on January 11, 2016, the complainant attended the meeting. The matter was discussed at SEBI office in the presence of the complainant, Karvy officials from Hyderabad and officials of the Company and SEBI. The Company & Karvy officials produced various documentary evidence to SEBI and the Complainant including the application copy of the genuine shareholder in the IPO. The complainant appeared to be convinced with the submissions of the company.
- 8 Accordingly, the complainant was advised to settle the matter with the seller. Further, in line with the request of the complainant the company by letter dated Jan. 12, 2016 provided

a copy of the IPO application of the investor (with signature, father name of the applicant masked) for the subject shares. Accordingly, final ATR was filed on Jan. 12, 2016 and SEBI disposed of the case on Jan. 22, 2016;

- 9 Noticee submitted that taking into account the circumstances of the case, it may be seen that the Company had taken appropriate steps for redressal of the complaint though for some time the Company was left with no option but to file ATR.

Final Decision and its basis:

- 1 SEBI imposed penalty of Rs. 2.5 lakh on the Noticee for failing to redress investor grievances / complaints;
- 2 SEBI opined that “Noticee being a Listed Co. has not taken heed of pending investor complaint nor redressed pending investor complaint satisfactorily even after repeated complaints by complainant for the same complaint and it has only filed Action Taken Report ('ATR') w.r.t. to complaints”;
- 3 SEBI observed that Noticee has not placed on record any evidence on steps taken by it to redress the complaint;
- 4 SEBI noted from the reply of Noticee that complainant was filing same complaint in SCORES from 2011, 2012, 2014 and 2015, opines that “It is evident that if the Noticee would have been serious at all in speedy redressal of investor complaints it would have shown / given the documents way back in 2011 which it had shown to the complainant only after SEBI calling a meeting with the complainant and the Noticee together and the complainant would not have complained again”;
- 5 SEBI opined that “Listed Company is expected to comply with the extant regulatory and statutory requirements. It is a settled position that the obligation under the SEBI Act to redress the investors' grievances is mandatory.... I hold that by not redressing the grievances of investors within the time prescribed, Noticee failed to comply with its statutory obligation and,



therefore, the charge of violation of section 15C of the SEBI Act stands established against the Noticee”;

- 6 SEBI further stated that it is a deliberate act of non-co-operation by Noticee for non redressal of investor grievances within the prescribed time limits, opined that “By such failure, Noticee has conducted in a manner which is detrimental to the interest of the investors in the securities market”;
- 7 On the SCORES mechanism and listed company's responsibilities, SEBI stated that “It is the duty of SEBI to ensure speedy resolution of investor

grievances and to further the cause, SEBI has come out with SCORES which is a centralized web based complaints redress system that enable the investors to lodge and follow up their complaint from any location. It is of utmost importance that every listed company assigns high priority to investor grievances and takes all necessary steps to redress the complaints received from investors at the earliest”.

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