

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

(CAA)-399(PB)/2017

IN THE MATTER OF:

Hometrail Estate Pvt. Ltd. Applicant/petitioner

And

Hometrail Builtech Pvt. Ltd. Respondent

Order under Section 230-232 of the Companies Act

Order delivered on 13.09.2018

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR

Hon'ble President

Sh. S. K. MOHAPATRA,

Hon'ble Member (Technical)

For the Applicant/petitioners : Mr. P. Nagesh with Mr. Dhruv Gupta, Advs.

For the Income Tax Deptt.: Ms. Lakshmi Gurung,
Standing Counsel

For the OL : Mr. Rohit Saroj, Mr. Amish Tandon,
Standing Counsel

For RD(NR) Ms. Sonam Sharma, CP

ORDER

The objections by the Income Tax Department have been raised by filing a report on 13.08.2018. The aforesaid objections are reads as under:-

“4. The revenue department would like to submit following observations/comments/objections to protect the interest of revenue.

- i. The Income Tax Department has objection to the Scheme on the ground that the Scheme is intended to avoid taxes. Since, both the companies was incorporated on 21/04/2018, they have the common directors and they are aware of all the affairs/decisions/planning of both companies. M/s Hometrail Buildtech Pvt. Ltd. (Transferee Company) has accumulated huge losses since beginning and has never



shown the upward trend. This loss will be adjusted with the income of M/s Hometrail Estates Pvt. Ltd. (Transferor Company). This the whole planning behind the curtain to evade the tax and the ultimate effect of the scheme shall lead to tax avoidance.

Further, it is observed that as per the valuation report dated submitted by applicant vide annexure-12 dated 23rd January, 2017, the applicant has valued the equity share of the transferor company i.e. Hometrail Estate Pvt. Ltd. to be Rs. 113.34 at page no. 284. However, the same has been calculated at Rs. 61.86/- using Net Assets method from the balance sheet figures as on 31.12.2016 filed by the applicant in the same annexure.

In view of the above, it is stated that the Hon'ble Tribunal should not approve the proposed scheme.”

The objections have been explained by the affidavit filed on behalf of the applicant company No. 2 dated 04.09.2018. It has been explained. With regard to the first objections, the explanation has been tendered by citing judgment of the **Vodafone Infrastructure Limited and Ors [ilr (2013) 11 Delhi 1561]** and the scheme has to be subject to the aforesaid observation.

“c) Further, w.r.t. the issue of income tax objections to a scheme of amalgamation on grounds of tax planning/avoidance, the reliance has been placed on the judgment rendered in the case of **Vodafone Infrastructure Limited and Ors [ilr (2013) 11 Delhi 1561]** to state that a Scheme may be sanctioned whilst relegating the parties to the relevant fora to determine the issue of tax liability. The Income Tax




Department has not yet framed any assessment much less raising of demand. Further, once the assessment is framed, then its correctness would be decided by the appropriate fora, in accordance with law. Hence, it has been submitted that the said observations are *non-est* and premature.

- d) Also, relevant extracts of the decision of Hon'ble High Court in the case of **Department of Income Tax vs Vodafone Essar Gujarat Ltd (SLP No 29819/2012 (SC))** are as under:

"In short, the right of the Income Tax Department is kept intact to take out appropriate proceedings regarding recovery of any tax from the transferor or transferee company as the case may be and pending cases before the Tribunal shall not be affected in view of the sanction of the Scheme."

In respect of the objection No. 2, the method of valuation adopted by the applicant has been adopted by the Income Tax Department. We dispose of objections by the observing that it is always relevant to find out any lacuna which violate any provision providing for tax liability. The aforesaid protection is always granted which can be seen to various orders passed by this Tribunal. Accordingly, it shall be open to the Income Tax Department to raise any query or objections and the approval of the scheme by us would stand in the way of the relevant. Even otherwise undertaking by the respondent has been filed by filing affidavit of 04.09.2018.

Order reserved.


(M.M.KUMAR)
PRESIDENT


(S. K. MOHAPATRA)
MEMBER (TECHNICAL)