

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CP (CAA) No.58/NCLT/AHM/2018 in
CA (CAA) No.105/NCLT/AHM/2017

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.08.2018**


Name of the Company: Indian Commodity Exchange Ltd.

Section of the Companies Act: Section 230-232 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Dharmishta Raval	Advocate	Petitioner	<u>Dharmishta Raval</u>
2.				

ORDER

Advocate Mrs. Dharmishta Raval is present for the petitioner.

The Order is pronounced in the open court, vide separate sheet. The petition is allowed. ² Company 


MANORAMA KUMARI
MEMBER JUDICIAL


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

Dated this the 27th day of August, 2018

**C.P. (CAA) NO.57/NCLT/AHM/2018
WITH
C.P. (CAA) NO.58/NCLT/AHM/2018**

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

**C.P. (CAA) NO.57/NCLT/AHM/2018
WITH
C.P. (CAA) NO.58/NCLT/AHM/2018**

In the matter of:

National Multi Commodity Exchange of India Limited
A Company incorporated under the
Provisions of Companies Act, 1956
Having its registered office at
Office No.4, 4th Floor,
H.K. House, Behind Jivabhai Chambers,
Ashram Road, Ahmedabad-380 009.Petitioner
(Transferor Company)

AND

Indian Commodity Exchange Limited
A Company incorporated under the
Provisions of Companies Act, 1956
And having its Registered Office at
1st Floor, Office - 109,
Nodh No.-1158 to 63/65/9,
Hat Faliyu, Mahidharpura,
Surat-395003. Petitioner
(Transferee Company)

Order delivered on 27th August, 2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member(Judicial)
Hon'ble Ms. Manorama Kumari, Member (Judicial)**

Appearance:

Mr. Saurabh Soparkar, Ld. Senior Advocate along with Advocate
Ms. D.N. Raval along with PCS Mr. Mahesh C. Gupta present for
the Petitioner Companies.
PCS Mr. Hitesh Buch present for the Objector.

COMMON ORDER

[Per se : Hon'ble Ms. Manorama Kumari, Member (J)]

1. These petitions under Sections 230-232 of the
Companies Act, 2013 have been filed seeking for

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sanction of the proposed Scheme of Amalgamation of National Multi-Commodity Exchange of India Limited with Indian Commodity Exchange Limited and their respective Shareholders and Creditors.

2. It is stated by the Petitioner Companies that both the petitioners are deemed recognized stock exchanges under the Securities Contract (Regulation) Act, 1956 providing online screen based derivative contracts for permitted commodities. The Petitioner Companies are also registered with Securities Exchange Board of India (SEBI).
3. The Petitioner Company of C.P. (CAA) No.57/NCLT/AHM/2018 viz. National Multi-Commodity Exchange of India Limited, the Transferor Company, filed Company Application being CA (CAA) No. 97/NCLT/AHM/2017 before this Tribunal seeking directions for convening and holding the meetings of Equity Shareholders and Unsecured Creditors for the purpose of considering and if thought fit, approving, with or without modification, a Scheme of Amalgamation of National Multi-Commodity Exchange of India Limited with Indian Commodity Exchange Limited.
4. The Petitioner Company of C.P. (CAA) No.58/NCLT/AHM/2018 i.e. Indian Commodity Exchange Limited, the Transferee Company also filed Company Application being CA (CAA) No. 105/NCLT/AHM/2017 before this Tribunal seeking dispensation of the meetings of Secured Creditors and Unsecured Creditors, while seeking directions to convene and hold meeting of Equity Shareholders for the purpose of considering and if thought fit, approving, with or without modification, a Scheme of Amalgamation of National Multi-Commodity Exchange

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of India Limited with Indian Commodity Exchange Limited.

5. During pendency of the aforementioned applications, Neptune Overseas Limited (NOL), a shareholder filed a purshis dated 10.10.2017 claiming to be a shareholder of the Petitioner Transferor Company. Along with the purshis, NOL filed a copy of the order made by the Hon'ble Supreme Court giving liberty to NOL to raise all issues before this Tribunal. NOL, had earlier filed an IA No: 53586 of 2017 before the Hon'ble Supreme Court in pending Special Leave Petitions, wherein NOL challenged to an order dated 9.2.2012 of the Hon'ble High Court of Gujarat in Letters Patent Appeal No. 1039 of 2011 and other orders. The Hon'ble Supreme Court was pleased not to entertain the IA No. 53586 of 2017 while giving liberty to Neptune Overseas Limited to raise all issues which NOL wishes to raise before this Tribunal. This Tribunal, taking into consideration the order made by the Hon'ble Supreme Court and in view of the fact that voting rights of Neptune Overseas Limited have been extinguished during the pendency of the petitions before the Hon'ble Supreme Court, permitted Neptune Overseas Limited to file objections before this Tribunal. Accordingly, Neptune Overseas Limited(NOL) filed its objections before this Tribunal. The Petitioner Transferor Company – NMCE also filed its response to counter the objections raised by NOL.
6. By an order dated 31.1.2018 made in CA (CAA) No.97 of 2017, this Tribunal disposed of the objections filed by the Objector NOL while giving liberty to the objector viz. Neptune Overseas Limited to raise all the objections in respect of the Scheme of Merger of NMCE with ICEX in

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the petition seeking sanction of the Scheme. The relevant para of the Order dated 31.01.2018 is reproduced below:

“34..The Objector NOL is also given liberty to raise all the objections in respect of the Scheme of merger of NMCE with ICEX in the petition seeking sanction of the Scheme, if any, is filed, subject to order of the Honourable Supreme Court in the pending SLPs. The objections are disposed of accordingly....”

7. By an order dated 21.2.2018 in CA (CAA) No. 9757/NCLT/AHM/2018, this Tribunal gave directions to convene and hold the meetings of Equity Shareholders and Unsecured Creditors on 5th April, 2018 at 12.00 noon and 2.30 p.m. respectively at Office No. 4, 4th Floor, H.K. House, Behind Jivabhai Chambers, Ahmedabad-380009, Gujarat for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme. This Tribunal appointed Hon'ble Mr. Justice Kamal Mehta, a former Judge of the Hon'ble High Court of Gujarat as the chairperson for the meetings. This Tribunal also directed issuance of notices to (i) Central Government through Regional Director, (ii) Registrar of Companies, Gujarat, (iii) Income Tax Authorities, (iv) Securities and Exchange Board of India (SEBI) and (v) Official Liquidator calling for the representation/objection, if any, to be made by them, be made within a period of 30 days from the date of receipt of such notice. This Tribunal also directed publication of advertisement in English Daily "Indian Express" and in Gujarati Daily "Gujarat Samachar".

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8. It is stated by the **Petitioner Transferor Company** that in pursuance to the order dated 21.2.2018 of this Tribunal, the Petitioner Transferor Company sent notices to the Equity Shareholders and Unsecured Creditors for convening and holding of the meetings. The notices were also sent to the statutory authorities. The Chairperson also published advertisement in the English Daily "Indian Express" and in Gujarati Daily "Gujarat Samachar".
9. It is further stated by the **Petitioner Transferor Company** that meetings of the Equity Shareholders and Unsecured Creditors were held on 5.4.2018. As per the Chairman's Report qua Equity Shareholders, it was reported that the Scheme has been approved by the shareholders holding more than 75% of the total number of shares of the company. The Chairman Report qua unsecured creditors also revealed that the Scheme has been approved unanimously.
10. By an order dated 21.2.2018 made in CA (CAA) No. 105/NCLT/AHM/2017 filed by the **Petitioner Transferee Company**, this Tribunal gave directions to convene and hold the meeting of Equity Shareholders on 6th April, 2018 at 11.30 a.m. at 1st Floor, Office -109, Nodh No. - 1158 to 63/65/9, Hat Faliyu, Mahidharpura, Surat 395003, Gujarat for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme. This Tribunal also directed issuance of notices to (i) Central Government through Regional Director, (ii) Registrar of Companies, Gujarat, (iii) Income Tax Authorities, and (iv) Securities and Exchange Board of India (SEBI), inviting the representation/objection, if any, to be made by them, be made within a period of 30 days from the date of receipt

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of such notice. This Tribunal also directed publication of advertisement in English Daily "Financial Express" and in Gujarati Daily "Gujarat Samachar" for convening and holding the meeting of Equity Shareholders as stated above. This Tribunal appointed Shri Manish Jain, Advocate as the Chairperson of the meeting and Shri Ganesha S. Shetty, the Practicing Company Secretary as the Scrutinizer for the meeting of the Equity Shareholders of the Petitioner Transferee Company.

11. It is further stated by the Petitioner Transferee Company that in pursuance to the order dated 21.2.2018, the petitioner Transferee Company sent notices to the Equity shareholders and the statutory authorities for convening and holding the meeting. Publication of the advertisements were also made by the Petitioner Transferee Company. The meeting of the Equity Shareholders was held on 6.4.2018. As per the Chairman Report, the Scheme was approved unanimously by the Equity Shareholders of the Petitioner Transferee Company.
12. In the meanwhile, the objector challenged the orders dated 31.1.2018 and 21.2.2018 made by this Tribunal before Hon'ble NCLAT by way of Company Appeal No.90-91 of 2018. By an order dated 2.4.2018, Hon'ble NCLAT ordered that during the pendency of the appeal, if any decision is taken by the respondents or the NCLT, that will be subject to the decision of the appeal. By further order dated 9.5.2018, the Hon'ble NCLAT, while adjourning the appeal observed that this Tribunal will consider all the objections including the objections raised by the Neptune Overseas Limited and also the objections which are the subject matter of the Appeal, uninfluenced by the observations made in the orders dated 31.1.2018 and 21.2.2018 by this Tribunal.

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13. The petitioners filed Petitions being CP(CAA) No. 57/NCLT/AHM/2018 and CP(CAA) No. 58/NCLT/AHM/2018 before this Tribunal seeking sanction of the Scheme. The Regional Director filed his common representation before this Tribunal. The Official Liquidator also filed his representation in respect of the petition filed by the NMCE.
14. By two separate orders dated 26.4.2018, both the petitions came to be admitted and were ordered to be fixed on 13.6.2018 for hearing. Both the petitioners were directed to advertise notice of hearing of petitions in English Daily "Indian Express" and Gujarati Daily "Gujarat Samachar". Notices were ordered to be issued to the Regional Director, Registrar of Companies, Income Tax Authorities and the Official Liquidator (in case of the Transferor Company) informing the date of hearing.
15. It is stated by the Petitioner Companies that pursuant to the orders dated 26.4.2018 passed by the Tribunal in both the petitions, the Petitioner Companies published the notice of hearing of the petitions in English Daily "Indian Express" and in Gujarati Daily "Gujarat Samachar" in Ahmedabad/ Surat Editions as per the directions of this Tribunal. The notices in respect of hearing of both the Company Petitions were also served upon the aforesaid authorities as per the directions contained in the order dated 26.4.2018 and to that effect, the Petitioner Companies filed affidavit confirming that advertisement of next date of hearing has been published in English Daily "Indian Express" and in Gujarati Daily "Gujarat Samachar" in Ahmedabad/ Surat Editions as per the directions of this Tribunal and the notices have been served upon the statutory authorities.

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16. In response to the common representation of the Regional Director and the Official Liquidator, NMCE filed its affidavit dated 11.6.2018. In response to the observations made by the Regional Director in respect of the funds raised through the Securities Premium Account, it is submitted by the Petitioner Transferor Company that all the tax issues in respect of the said account will be met and dealt with in accordance with law. It is also stated in the affidavit that the said Petitioner Transfer Company will comply with the provisions of the Income Tax Act to the extent they are applicable. The Petitioner Transferor Company NMCE also stated that the question as to compliance with minimum networth requirement as required by circular dated 26.11.2015 of SEBI does not arise in so far as the Petitioner Transferor Company is concerned. It was also stated by the Petitioner Transferor Company that Petitioner Transferee Company is in compliance and post merger also, the Transferee Company shall be in compliance of requirements of the SEBI Circular.
17. In response to the observations of the Official Liquidator, it is submitted by the Petitioner Transferor Company that the Petitioner Transferee Company undertakes to preserve the books of account, papers of the Petitioner Transferor Company, as per the provisions of the Companies Act, 2013 and shall also ensure statutory compliance of all the applicable laws and that the Company will not be absolved of any statutory liability.
18. The Petitioner Transferor Company also made a reference to a letter dated 29.11.2017 of SEBI which observed that upon dissolution, the recognition granted to NMCE by the FMC and the Government of India would be inoperative. It is stated in the affidavit filed by

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the Petitioner Transferor Company that all the contracts which are currently being traded on the platform of the Transferor Company will be traded on the platform of the Transferee Company from the date of sanction of the Scheme. It is further stated that in view of the stipulations of SEBI contained in the aforementioned letter, the Peitioner Companies have agreed to insert clause 2.9.2 in the Scheme, a reference of which is made in Para 11 of the affidavit dated 11.6.2018.

19. Pursuant to the order dated 9.5.2018 made by Hon'ble NCLAT, the objector Neptune Overseas Limited filed objections dated 4.6.2018. NMCE filed its further affidavit dated 12.6.2018 in response to the objections. Neptune Overseas Limited filed its rejoinder through an affidavit dated 18.6.2018.
20. During the course of proceedings of hearing on 13.06.2018 in the matter of CP 57 of 2018, Petitioner Companies drew the attention of this Tribunal to the order dated 9.5.2018 passed by the Hon'ble NCLAT, New Delhi in pending appeal No. 91/18 expecting this Tribunal to consider all objections including the objections raised by the Appellant and including objections which are subject matter of the appeal pending. This Tribunal required the parties to produce the copy of Memo of appeal pending before the Hon'ble NCLAT.
21. By a separate order dated 13.6.2018 made in CP 58 of 2018, this Tribunal recorded the presence of Assistant Director, Enforcement Directorate before this Tribunal. The Petitioner Company was directed to supply complete set of the petition to the Enforcement Directorate to enable ED to file their objections/ comments before the next date of hearing.

Answer

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22. On 19.6.2018, the Tribunal observed during the proceedings of hearing that Special Public Prosecutor on behalf of Enforcement Directorate has submitted its comments to the proposed Scheme. The order also recorded that the objector has filed an IA with this Tribunal seeking adjournment in the matter until 3.7.2018 relying upon an order dated 29.5.2018 made by the Appellate Tribunal under the PMLA, New Delhi. This Tribunal, while considering the order dated 9.5.2018 made by the Hon'ble NCLAT, observed that the objector may bring to the notice of Hon'ble NCLAT, the order made by the Appellate Tribunal, PMLA and seek appropriate directions.
23. The petitions along with the objections were posted for hearing on 25.6.2018. On the said date, the objector was directed to produce a copy of the application filed by him before Hon'ble NCLAT. After the copy of the application was produced, this Tribunal adjourned the matter to 2.7.2018 with an observation that the objector may seek appropriate direction from Hon'ble NCLAT by the next date. It was made clear that this Tribunal is duty bound to proceed as per the directions of Hon'ble NCLAT as contained in the order dated 9.5.2018 until it is modified. In the meanwhile, an affidavit dated 23.6.2018, on behalf of the Petitioner Transferor Company NMCE was filed before this Tribunal pointing out that there is great urgency in seeking sanction to the Scheme of Amalgamation because of directions of SEBI. The Petitioner Transferor Company NMCE placed on record various communications addressed by SEBI to NMCE suggesting that SEBI is contemplating stringent regulatory actions against NMCE, if there is any delay in the merger of NMCE with ICEL.

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24. On 2.7.2018, the objector informed this Tribunal that no orders are made by the Hon'ble NCLAT on the application filed by the Objector. The Petitioner Companies requested for hearing in view of the urgency in the matter and so also in view of the order dated 9.5.2018 made by the Hon'ble NCLAT, New Delhi.
25. The objector Neptune Overseas Limited has raised several objections. Learned PCS for the Objector referred to the contents of the objections as also the contents of the rejoinder affidavit filed on 18.6.2018. It is submitted by him that the proposed Scheme is not in the interest of the shareholders, creditors and other stakeholders of the Petitioner Transferor Company NMCE. It is submitted by him that there are many other viable and prudent options available to NMCE to increase its net worth such as issue of bonus shares to the existing shareholders, rights issue, IPO, etc. It is submitted that proposed Scheme will reduce the shareholding of the Ojbector and his litigation would become ineffective and the Objector further submitted that even the Punjab National Bank, with shareholding of 8.12% has also objected to the Scheme. The Objector has further submitted that the Chairman has not verified the attendance slip and that the resolution is not passed by 75% of the shareholders. The Objector has further submitted that he was not allowed to vote and that the Transferee Company is a loss making company and the valuation does not justify the swap ratio. A reference was also made to a challenge made by Neptune Overseas Limited to the transfer of shares effected by the Enforcement Directorate before the Appellate Tribunal under the PMLA. It is submitted that an appeal is pending before the Appellate Tribunal, PMLA. It is also submitted that an application filed by the objector against the Enforcement Directorate

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alleging contempt is coming up for hearing before the Appellate Tribunal, PMLA, New Delhi. Attention of this Tribunal was also invited to the order dated 29.5.2018 passed by Appellate Tribunal, PMLA.

26. Per contra, the Learned Counsel appearing for NMCE and ICEX submitted that the objector has no locus to file the objections. Attention of this Tribunal was invited to the provision contained in the proviso to sub-section (4) of Section 230 of the Companies Act, 2013. It was submitted that the Objector claims to be holding 57,68,464 shares of the petitioner NMCE which according to the petitioner aggregate to 30.18%. It was further submitted by the Petitioner Companies that in the proceedings initiated by the Enforcement Directorate under the provisions of PMLA, 2002, 46,42,629 equity shares are attached by the Enforcement Directorate. Subsequently, the shares are also transferred to the Enforcement Directorate. It was also submitted by the Petitioner Companies that in view of the order dated 23.7.2011 made by the Forward Market Commission which operates even as on this date, the Objector has no voting rights in respect of any shares held/ claimed by it. As per the order of the FMC, the Objector is declared to be not a "fit and proper person". As per the norms and guidelines of FMC dated 6.5.2014, which are statutory and mandatory, any person who ceases to be a "fit and proper person" also ceases to have any voting rights on the shares held by him/her. The norms also stipulate that in the event any person ceases to be a "fit and proper person" by an order made by FMC, such person shall forthwith divest his/her shareholding. The norms further stipulate that pending the divestment of shares, the voting rights shall

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stand extinguished. These guidelines are also consistent with Regulation 19 of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporation) Regulations 2012 (SCRA Regulations, 2012). **As such, the Petitioner Companies have submitted that objector has lost all the voting rights on its entire shareholding in the Petitioner Transferor Company - NMCE,** in view of the order dated 23.07.2011 of the Forward Market Commission.

27. Without prejudice to this contention, it is also urged on behalf of the Petitioner Companies that the proposed Scheme of Merger is in the interest of the shareholders of both the petitioner Exchanges. It is further submitted that the Scheme has been approved by the shareholders and the creditors with more than the statutory majority. It is also submitted that the SEBI has also approved the Scheme and has given its no objection. It is further submitted by the Petitioner Companies that as per Regulation 14(1) of the Securities Contract (Regulation) (Stock Exchange and Clearing Corporations) Regulations 2012, read with revised norms applicable to Commodity Exchange dated 6.5.2014 issued by the Forward Market Commission, it is obligatory for a recognized Commodity Exchange to have a minimum net worth of Rs. 100 Crores. It is submitted that NMCE could not achieve net worth criteria on its own despite making concerted efforts to raise fresh capital as no investor came forward to invest in NMCE due to the various irregularities committed by Shri Kailash Gupta (NOL) as enumerated in the final order of FMC. NMCE was also advised by SEBI to meet with the net worth requirements failing which NMCE may be held liable and penalized including exit from the business.

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28. It is also submitted by the Petitioner Companies that majority of the shares held in NMCE are by the Central Ware Housing Corporation (29.70%), Punjab National Bank (8.12%), Gujarat Agro Industries Corporation Limited (5.47%), National Agricultural Cooperative Marketing Federation of India Limited (3.92%), etc. It is also submitted that the board of directors of the Exchange consist of several former civil servants and the Exchange is managed by a professional team of directors. It is also submitted by the Petitioner Companies that though the objector has filed an appeal before Securities Appellate Tribunal challenging the order made by Forward Market Commission, there is no order of stay made by SAT.
29. It is submitted by the Petitioner Companies that 75% of the shareholders present and voting have approved the resolution. Therefore, the Petitioner Companies urged that this Tribunal should not have any reason to doubt the genuineness and accuracy of the affidavit filed by the Chairman, Mr. Justice Kamal Mehta (Retd.). It is submitted that the Chairman has also recorded his reasons as to why the Objector was not permitted to vote at the meeting. It is also submitted that the Scheme has been entered into keeping in mind the commercial interests of the Exchanges and also the fact that the merger will enable both the Exchanges to comply with the regulatory requirements.
30. It is further submitted by the Petitioner Companies that there is no adverse representation received from the office of Regional Director or the Official Liquidator against the sanction of the Scheme. There is no adverse representation received from public at large either. The comments of Enforcement Directorate are also not against the sanction of the Scheme. It was thus urged

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that this Tribunal may reject the objections and sanction the Scheme.

31. During the course of hearing, the Petitioner Companies have informed this Tribunal that besides the present petition and the appeal pending before the Hon'ble NCLAT, one appeal is pending before SAT and some appeals are pending before the Appellate Tribunal, PMLA. It is also reported that there is no stay order made by SAT until this date and that the order of FMC dated 23.7.2011 continues to operate.
32. The arguments of all the parties were heard and judgment was reserved by order dated 2.7.2018. The parties were directed to inform this Tribunal about any order that may be made by the Hon'ble NCLAT on 3.7.2018.
33. On 3.7.2018, the Hon'ble NCLAT adjourned the matter to 20.7.2018 after observing that the matter has been heard by this Tribunal and the order has been reserved. A petition was filed before this Tribunal placing on record a copy of the order dated 3.7.2018 made by Hon'ble NCLAT.
34. In the meanwhile, both the parties produced a copy of the order dated 10.7.2018 made by Appellate Tribunal, PMLA before this Tribunal. It is evident that this order is made on an application filed by the objector against the Enforcement Directorate alleging breach of order of status quo dated 28.11.2017. By this order dated 10.07.2018, the Appellate Tribunal, PMLA directed the Enforcement Directorate to re-transfer back the equity shares of the objector to the extent of 33,45,729 equity shares. Para 27 and 28 of the said order dated 10.7.2018 reads as under:-

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“27. In light of above, I direct the respondent to re-transfer back the equity shares of appellant which are the subject matter of the present appeal to the demat account of the appellants forthwith.

28. The above said order shall have no bearing in other proceedings in authorities. The present order is pertaining to the subject matter of present appeal only. I am not concerned as whether the appellant be allowed or not be allowed to exercise its voting rights as same is not in the domain of this Tribunal. The said aspect is being dealt with by other Court.”

35. The objector Neptune Overseas Limited has filed I.A. No. 262 of 2018 with this Tribunal with prayer to re-hear the Company Petition No.57 of 2018 in light of the order dated 10.7.2018 made by Appellate Tribunal under PMLA and accordingly, the matter was reserved for rehearing.
36. I.A. No. 262 of 2018 came to be listed on 19.7.2018 before this Tribunal. This Tribunal after considering the order dated 10.7.2018 passed by Hon'ble Appellate Tribunal, PMLA, observed that the matter needs reconsideration and it requires to be heard denovo. This Tribunal accordingly directed to list the matter on 26.7.2018 along with main petitions being CP No.57 and 58 of 2018.
37. On 20.7.2018, when the matter was listed before Hon'ble NCLAT, Hon'ble NCLAT was pleased to adjourn the matter to 10.8.2018 after considering that this Tribunal, in view of subsequent development and the order passed by PMLA Appellate Tribunal, has fixed the date as 26.7.2018 for rehearing/further hearing of the petition. The Hon'ble NCLAT observed that this Tribunal will hear the matter on limited issue on which the matter was remanded and deliver its judgment at an early date. Accordingly, the Hon'ble NCLAT directed to

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list the matter for orders on 10.8.2018 and the parties were directed to inform about the development on the matter.

38. The petitions were taken up for hearing on 26.7.2018. Learned PCS Shri Hitesh Buch for the objector and Learned Senior Counsel Shri Navin Pahwa for NMCE and Learned Senior Counsel Shri Saurabh Soparkar for ICEX are heard. Learned PCS for the objector submitted that in view of the order made by the Appellate Tribunal, PMLA, the aforementioned shares are ordered to be re-transferred to the depository participant. It was submitted that the objector therefore has right to maintain its objections to the Scheme. On the other hand, Learned Senior Counsels appearing for the petitioner companies submitted that the order made by Appellate Tribunal, PMLA does not alter the position as to non-existence of voting rights on the subject shares. The objector does not have any voting rights on the shares in question. It is also submitted that the order of FMC by virtue of which voting rights cease to exist operate even as on this date. It is further submitted that the objector is raising frivolous objections against sanction of the Scheme. The Scheme is in the interest of the Company and all its stake holders. The Scheme is also in the public interest. All the class of persons including the shareholders and creditors, as applicable, have approved the Scheme of Amalgamation in both the Companies. The Regional Director in his report, barring some observations which are duly responded, has not objected to the Scheme. The objections taken by the objector are already replied by the petitioner company by detailed affidavits. The Learned Counsels for the petitioners have also placed reliance on the judgment of Hon'ble Supreme Court in the case of Miheer H. Mafatlal vs. Mafatlal Industries Limited, reported at

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1997 (1) SCC 579. Attention of this Tribunal is invited to the following observations of the Hon'ble Supreme Court in Miheer H. Mafatlal (Supra):-

"In view of the aforesaid settled legal position, therefore, the scope and ambit of the jurisdiction of the Company Court has clearly got earmarked. The following broad contours of such jurisdiction have emerged :

1. *The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meeting as contemplated by Section 391(1) (a) have been held.*
2. *That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required Section 391 sub-section (2).*
3. *That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just fair to the class as whole so as to legitimately blind even the dissenting members of that class.*
4. *That all the necessary material indicated by Section 391(1)(a) is placed before the voters at the concerned meetings as contemplated by Section 391 sub-Section (1).*
5. *That all the requisite material contemplated by the provision of sub-Section (2) of Section 391 of the Act is placed before the Court by the concerned applicant seeking sanction for such a scheme and the Court gets satisfied about the same.*
6. *That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view of to*

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satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.

7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent.
8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.
9. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.

The aforesaid parameters of the scope and ambit of the jurisdiction of the Company Court which is called upon to sanction a Scheme of Compromise and Arrangement are not exhaustive but only broadly illustrative of the contours of the Court's jurisdiction."

39. Before this Tribunal could proceed with considering the Scheme, the learned counsel for the Petitioner Companies has produced a copy of the order dated

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9.8.2018 made by the **Division Bench of Hon'ble High Court of Gujarat in R/FIRST APPEAL NO. 3154 of 2018. With CIVIL APPLICATION NO. 1 of 2018** filed by the Enforcement Directorate. This Appeal was directed against the order dated 10.7.2018 made by Appellate Tribunal, PMLA. A perusal of the order made by the Hon'ble High Court suggests that order dated 10.07.2018 made by Appellate Tribunal, PMLA is stayed on a further condition that the Enforcement Directorate shall also maintain status quo with respect to the shares in question.

40. On perusal of the petitions filed by the Petitioner Companies along with Scheme of Arrangement in the nature of amalgamation of NMCE with ICEX and also the perusal of the objections so filed by the Objector and the replies/response submitted on behalf of the NMCE and also on perusal of the contents of the objections contained in the Memo of Company Appeal pending before the Hon'ble NCLAT and also the arguments advanced by the Ld. PCS and the Ld. Counsels for the Petitioner Companies, we have come to the following findings.
41. It is noted that the Scheme is approved by more than statutory majority of the shareholders and creditors of both the Companies. It is also revealed that the Scheme is essentially proposed to meet with the networth requirements stipulated under the SEBI Regulations. Both the Petitioner Companies are recognized Stock Exchanges dealing in commodity derivatives. It is also not in dispute that the objector Neptune Overseas Limited does not have any voting rights in respect of any shares held by it. All the voting rights have stood extinguished by virtue of the order dated 23.7.2011

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made by FMC read with the guidelines issued by FMC
read with the relevant SCRA Regulations 2012.

42. It was also noted by this Tribunal that though the Objector has filed appeal challenging the order made by Forward Market Commission before SAT, it is reported that there is no stay granted by SAT until this date. The shares are attached by the Enforcement Directorate on the ground that the shares are proceeds of crime. The Appellate Tribunal under PMLA has also observed in Para 28 that the order dated 10.7.2018 made by it shall have no bearing in other proceedings. This order has since been stayed by the Hon'ble High Court of Gujarat. Even otherwise, the Appellate Tribunal had also observed that it had no concern as to whether the Neptune Overseas Limited be allowed or not be allowed to exercise its voting rights as the same is not within the domain of the said Tribunal as the said aspect is being dealt with by other Courts. This Tribunal also considered the objections along with the response on behalf of NMCE. The Tribunal also perused the objections raised in the pending Company Appeal.
43. Under the circumstances, this Tribunal is also of the view that objections that NMCE has other options to enhance the capital or that the Scheme is not in the interest of the shareholders is not justified. The Board of Directors and the shareholders of both the companies in their commercial wisdom have proposed and approved the Scheme of Amalgamation. SEBI being the Regulator has also approved the Scheme of Amalgamation. In fact, it is one of the contentions on behalf of the Petitioner Companies that the Scheme of Arrangement is being proposed to comply with certain guidelines issued by the Government of India as also the regulations made by SEBI and the proposed Scheme

would help the Petitioner Commodity Exchanges to meet with the net worth criteria under the SEBI regulations. It is also brought on record that the merger would bring about better business synergies which would ultimately be in the interest of shareholders and other stakeholders of both the Exchanges.

44. This Tribunal has also considered that the shares are under attachment and there are no voting rights. The order made by Appellate Tribunal, PMLA is also stayed by the Hon'ble High Court. The objections taken by the Objector in the pending Company Appeal is essentially on the status of the shares over which the appellant claims ownership which fact is evident in the orders made by the FMC, the Appellate Tribunal, PMLA and the Hon'ble High Court.
45. Even assuming the Objector has voting right in respect of disputed shares i.e. 30.18%, then even, it is in the paramount interest of the Company as well as considering the public interest involved, the Objector cannot be allowed to stall the sanction of the Scheme, when majority of the shareholders and the creditors have supported/consented to the Scheme. Under the facts and circumstances as discussed above and considering all the relevant aspects put forward by both the Petitioner Companies, this Bench is of the opinion that the objections are liable to be rejected. The Tribunal finds that the Scheme of Amalgamation proposed by the Petitioner Companies is in the interest of the Petitioners and all its stakeholders. The Scheme is valid. The shareholders and the creditors of both the Companies, in their commercial wisdom, have decided to enter into the arrangement of amalgamation. This Tribunal cannot substitute its wisdom with the commercial wisdom of shareholders and creditors of

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petitioner companies. The objections taken by the Objector even otherwise do not suggest that the Scheme is illegal or prohibited by law. On the contrary, it appears that the Scheme is proposed so as to ensure compliance with the SEBI regulations and other guidelines issued by the Government of India. SEBI being the regulator has also issued directions to seek expeditious sanction to the Scheme.


46. In the facts and circumstances, this Tribunal is of the considered opinion that sanction of the Scheme will be in the interest of the Petitioner Companies and in the interest of all the stakeholders. This Tribunal therefore deems it fit to grant sanction to the Scheme while rejecting the objections of the Objector.
47. In the result, the objections filed by the objector NOL are rejected. The Company Petition Nos. 57 of 2018 and 58 of 2018 are allowed. The Scheme of Amalgamation is sanctioned subject to addition of Clause 2.9.2 as mentioned in Para 11 of the affidavit dated 11.6.2018 filed on behalf of the Petitioner Transferor Company. So far as the comments of Enforcement Directorate are concerned, this Tribunal finds that it is not appropriate to make any observations in this order in view of the pendency of appeal pending before the Appellate Tribunal, PMLA.
48. It is however made clear that this order of sanction of the Scheme is subject to decisions made by the higher forums.
49. Filing and issuance of drawn up orders are dispensed with. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal

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shall issue the certified copy of this order along with the Scheme immediately.

50. In view of the disposal of the Company Petitions, I.A. No. 262 is also disposed.


Ms. Manorama Kumari,
Member (Judicial)


Harihar Prakash Chaturvedi,
Member (Judicial)

LCT