

IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI  
SINGLE BENCH (COURT-III)

No.CA-25/C-III/ND/2017  
In  
C.P. No.945 of 2015

SECTION : UNDER SECTION 230/232 OF THE COMPANIES ACT, 1956

In the matter of :

**CENTURION INFRASTRUCTURE PRIVATE LTD**

....PETITIONER

Registered under the Companies Act, 1956

Having registered office at :

682, Aggarwal Millennium Tower-II,  
Netaji Subhash Place, Pitampura,  
Delhi-110034.

AND

**GOGA BUILDERS PRIVATE LTD**

.. TRANSFEROR COMPANY NO.2/PETITIONER

AND

**SIGNATURE PORTFOLIO PRIVATE LTD**

.. TRANSFEROR COMPANY NO.3/PETITIONER

AND

**WHITE BROTHERS INFRASTRUCTURE PRIVATE LTD**

... TRANSFEREE COMPANY/PETITIONER

AND

Their respective Shareholders and Creditors.

Coram :

**R. VARADHARAJAN,**  
Hon'ble Member (Judicial)

**For the Petitioner /applicant**  
For the Regional Director (N)  
For the Official Liquidator

: Mr. Ashish Middha, Advocate  
: Mr. C. Balooni, Company Prosecutor  
: Dr. Ramesh Kumar, Advocate



ORDER

This is an Application filed by the petitioner companies under Section 230/232 of the Companies Act, 2013 for changing the appointed date from 01.4.2015 to 01.4.2016 for the reasons given in the Application seeking for change is that the Board of Directors of the Company, had thought it fit to change the appointed date in view of the fact that financial statements of the Company having been approved by the Board and the shareholders in the AGM held on 30.9.2016 of all the Companies and in view of the same with a reason to obviate the difficulties arising out of, consolidating the Balance Sheets, Financial Statements and annual Returns etc. for the period ending 31<sup>st</sup> March, 2016 of all the Companies, which are required to be re-filed with the Registrar of Companies, the change of date is sought for.

2. This Tribunal perused the Application and the reasons stated for change in the appointed date from 01.4.2015 to 01.4.2016. However, we do not find the reasons given by the Companies seeking for the change as sought for by the applicants in the Application. From the documents annexed to therein, it is seen that the 2<sup>nd</sup> Motion final order approving the Scheme of Amalgamation between the petitioner companies therein was approved by this Tribunal vide Order dated 26.5.2017.



3. Reference to the Scheme as approved by this Tribunal vide its Order dated 26.5.2017, Paragraph No.2 of the said Scheme shows under definition clause 'appointed date' has been defined as follows :

*"The appointed date means 1<sup>st</sup> day of April, 2015, being the date With effect from which the Scheme shall be applicable i.e. the date With effect from which the Transferor Company shall merge with the Transferee Company or any other date with the Hon'ble High Court Of Delhi directs or deems fit in the circumstances of the case and the Time taken in completion of formalities".*

4. Since the Petition is transferred case from the Hon'ble High Court of Delhi by virtue of Notification dated 15.12.2016, this Tribunal is required to be substituted for Hon'ble High Court of Delhi in the above definition Clause of the Scheme goes without saying. In this connection, reference to the provisions of Companies Act, 2013, under which this Tribunal is vested with the power and is required to sanction the Schemes contains a specific provision highlighting the importance of 'appointed date' contained in a Scheme and which is also required to be mandatorily specified in a Scheme for sanctioning of the Scheme and is contained in sub Section (6) of Section 232 as follows :

*232-6 . The Scheme under this Section shall clearly indicate the appointed date from which it shall be effective and the Scheme shall be deemed to be effective from such date and not a date, subsequent to the appointed date. The Act of 2013 specifically provides in case where the Scheme has specified the appointed date, such date shall be the*




*appointed date and not otherwise.*

5. Thus, the Act of 2013 specifically provides the Scheme to specify the appointed date and such date shall be the effective date in relation to the Scheme and not otherwise.

6. The above position of law has also been categorically brought forth by the Hon'ble NCLAT in the matter of MBSIT Institute Private Limited v. ROF Infrotech. and Housing (P) Limited in Company Appeal (AT)/194-2017 and the date fixed as appointed date of the Scheme cannot be change or modified even by this Tribunal without proper ground for such modifications in relation to the appointed date as specified in the Scheme. As already stated, we do not find any justifiable reason for modifying the appointed date as specified in the Scheme approved by this Tribunal vide its order dated 26.5.2017 and in the circumstances, this Tribunal rejects the Application seeking for a change of the appointed date as sought for in the Application.

Application is hence dismissed.

  
(R. VARADHARAJAN)  
MEMBER (JUDICIAL)

Surjit