

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

37

C.S.P. No. 484/(MAH)/2017

CORAM:

Present:

SHRI B.S.V. PRAKASH KUMAR
MEMBER (J)

SHRI V. NALLASENAPATHY
MEMBER (T)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 06.12.2017

NAME OF THE PARTIES: M/s. Tata Chemicals Limited.

SECTION OF THE COMPANIES ACT: 391 to 394 of the Companies Act 1956
and 230 to 232 of the Companies Act 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
	Darius J. Khambata		
	Chirag Mody		
	Molla Hasan		
	Himanshu Tembe 1/b AZB & Partners (P) (GM & P. dotted)		

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ORDER

CSP 484/230-232/NCLT/MB/MAH/2017

An Objector, namely Mr. Mangalbhai Patel filed objections stating that the resolution passed by the Shareholders with a majority of 62.14% is not in compliance with sub-section (6) of Section 230 of the Companies Act, 2013, because section 230 (6) of the Act mandates 3/4th majority in value of the members to pass a resolution to approve any scheme falling under scheme envisaged in section 230 (1) of the Act; that the company has not despatched notices to the workmen with details stating that the company has provided provision to the workmen; that the Book value of Babrala Plant has been shown as ₹529 crores whereas in the Balance Sheet, the same has been shown as ₹586, therefore, the Scheme should not be granted. Another objection he has raised is that when Right Issue was issued in 1996, the funds were raised through issuing PCDs and NCDs to the workmen, some of it was used towards capital cost of the fertilizer project at Babrala, he therefore says the interest of the workers would be jeopardized in case this plant has been demerged from the Applicant Company herein.

On the objections raised by the Objector, the Petitioner counsel stated that this Objector has no requisite qualification to raise objection before this Bench under proviso to sub-section (4) of Section 230 of the Companies Act, 2013, because he doesn't have even one percent shareholding in the company, therefore he cannot raise objection for his shareholding is less than 10% cap given in the proviso to section 230 (4) of the Act. As to other objection raised by the objector in respect to other workmen, the company says that if really the workmen have any issue they have to come forward raising their objection but not by them on behalf of them. The company has already provided provision to the workmen in the transferee company on par with other workmen of transferee company. As to the objection not sending notices to shareholders, it is not mentioned that notices were not sent to the shareholders, the only objection is the details of the scheme have not been sent to the shareholders,

workmen. Since this objector can't raise any objection over the grievance of somebody else, we don't find any merit in this objection.

As to $\frac{3}{4}$ value of the shareholders' voting, the objection is that the company has not attained $\frac{3}{4}$ th voting out of total shareholding, to which, the petitioner correctly said that u/s 230(6) of the Act, the value of shareholding shall not be less than $\frac{3}{4}$ th of the value of the shareholders attended to the meeting, not otherwise. If that is the case, no resolution would be passed by any company to get approval to Scheme because in the section itself it has been categorically mentioned voting percentage has to be taken into consideration out of the voting given in the meeting held. This is the practice that happened under Companies Act, 1956 and the same has been mentioned here saying that value of shareholders has been taken into consideration at the meeting held in pursuance of the Scheme proposed before the Shareholders meeting. The voting in favour of the resolution is above 99% shareholding out of more than 62% of the total shareholding of the company.

Therefore, the Counsel submits that if the interpretation proposed by the Objector is to be adhered to, it would be impossible to pass any resolution in respect to any Scheme. We agreed with the argument of the petitioner counsel, because it has been mentioned that $\frac{3}{4}$ th majority shall be out the shareholding voted at the meeting, not otherwise.

As to the discrepancies of Valuation in the Balance Sheet and the Scheme envisaged herein, the Counsel has stated that irrespective of the value shown in the Scheme, this asset has been sold for ₹4670 crores which is almost four times to the Book Value of the undertaking, therefore this objection need not be even looked into. Besides this, the Counsel has further stated that the Valuation shown in the Balance Sheet is inclusive of some other asset along with Babrala Plant, therefore, as on the date of 31.3.2017, the value of the Asset was shown as ₹529 crores on calculation of depreciation that has been taken place.

The Petitioner Counsel has further stated that the value of the asset before scheme is ₹6146.88 crores and post scheme net worth will go to ₹7081.06, which is many times to the book value, therefore, this Objection over highlighting seemingly

variation of around ₹50crores to the book value has no meaning when the value of the undertaking is four times to the book value

On perusal of the contentions of the parties, it appears Objector has only 0.00037% of the total shareholdings of the company, which is not even 1% of the shareholding of the company, hence he cannot raise any objection before this bench, otherwise also having not noticed any merit in the objections of the objector, we hereby dismissed the objections raised by the objector.

List this matter for hearing on 7.12.2017.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)