

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**AT CHENNAI**

**(APPELLATE JURISDICTION)**

**Company Appeal (AT) (CH) (Ins) No. 337 / 2025**

**(With Defects)**

**In the matter of:**

**M/s. Samunnati Agri Value Chain Solutions Pvt. Ltd.**

(Formerly known as Samunnati Financial Intermediation & Services Pvt Ltd which acquired Samunnati Agro Solutions Pvt. Ltd. vide order in CP(CAA/58(CHE)/2022 Dated 23.12.2022), Represented by its Authorized Signatory, Mr. Vasudevan S, BaidHitech Park, 129-B, 8<sup>th</sup> Floor, ECR, Thiruvanmiyur, Chennai – 600 041

**.... Appellant**

**V**

**M/s. Nekkanti Sea Foods Ltd.**

D.No. 3-16/3, Ocean Drive Layout, Gudlavanipalem, Sagar Nagar, Vishakhapatnam, Andhra Pradesh India – 530 045

**.... Respondent**

**Present :**

For Appellant : Mr. Raja Shekar Rao Salvaji, Advocate

For Respondent : Mr. VVSN. Raju, Advocate

**J U D G M E N T**

**(Hybrid Mode)**

**Per : Justice Sharad Kumar Sharma, Member (Judicial):**

1. The defects as pointed out by the Registry, since not being very vital, the same would stand over-ruled.

2. We proceed to hear the Ld. Counsel for the Appellant on merits of the Company Appeal.

3. The Appellant, as pleaded by him is an Operational Creditor, who puts a challenge to the impugned order dated 24.04.2025, as it was rendered by the Ld. NCLT, Amaravati Bench in CP (IB) / 54 / 9 / AMR / 2024, whereby, by virtue of the impugned order, the Company Petition was dismissed holding it to be not maintainable, since the Company Petition was found to have been preferred by a Company, which at the relevant point of time, when the Company Petition was preferred i.e. on 19.09.2024, was non-existent in the eyes of law, owing to the order of merger approving the Scheme of Arrangement, that was passed on 23.12.2022.

4. The Ld. Counsel for the Appellant has argued that, the Company Petition would still be maintainable, at the behest of the Appellant with the nomenclature and under title of M/s. Samunnati Agro Solutions Private Limited, owing to the fact that, in the proceedings under Section 230-232 of the Companies Act, 2013, an order was passed on 23.12.2022, whereby pursuant to the joint application that was thus preferred by the Parties under the aforesaid provision, the Ld. Tribunal proceeded to approve the Scheme of Arrangement, as per the provisions contained under Section 230 to be read with Section 232 of the Companies Act, 2013, to be read with the provisions of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

5. In the proceedings of CP (CAA) / 58 (CHE) / 2022 that was preferred in CA (CAA) / 118 (CHE) / 2021, M/s. Samunnati Financial Intermediation & Services Private Limited (Petitioner No. 1), M/s. Samunnati Finance Private

Limited (Petitioner No. 2), M/s. Samunnati Agro Solutions Private Limited (Petitioner No. 3), had jointly prayed for approval of Scheme of Arrangement. After hearing the parties and going through the documents submitted, Ld. NCLT, Chennai – II, passed an order on 23.12.2022, approving the Scheme of Arrangement as proposed by them, as a result of which M/s. Samunnati Agro Solutions Private Limited, was amalgamated into M/s. Samunnati Financial Intermediation & Services Private Limited i.e. the Resultant Company.

6. This order of 23.12.2022 contained the following directions, as it was set down in Para 9 of the said order, which were to the effect that, all assets and the business undertakings of the 1<sup>st</sup> Petitioner Company, pursuant to the orders that was passed under Section 232 (3) of the Companies Act, 2013, without any further act would stand transferred and would be deemed to be transferred to the 2<sup>nd</sup> Petitioner Company in accordance with the terms of the Scheme. Relevant Para 9 is extracted hereunder:-

*9. THIS TRIBUNAL DO FURTHER ORDER:*

- i. That all properties, rights and interests of the business undertaking of the 1st Petitioner Company shall, pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the 2<sup>nd</sup> Petitioner Company in terms of the Scheme.*
- ii. That all properties, rights and interests of the 3rd Petitioner Company shall, pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the 1<sup>st</sup> Petitioner Company in terms of the Scheme.*

- iii. *That all the liabilities, powers, engagements, obligations and duties of the 1<sup>st</sup> Petitioner Company with respect to the its business undertaking shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the 2<sup>nd</sup> Petitioner Company in terms of the Scheme.*
- iv. *That all the liabilities, powers, engagements, obligations and duties of the 3<sup>rd</sup> Petitioner Company shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the 1<sup>st</sup> Petitioner Company in terms of the Scheme.*
- v. *That the Appointed date for the Scheme shall be the effective date of the scheme as mentioned in clause 2(iii) of Part - 1 of the Scheme, being as below.*
- vi. *The Effective date' shall mean the date on which the 2nd Petitioner Company is in receipt of the Final NBFC Licence or filing the copy of the order of Tribunal approving this Scheme with the jurisdictional Registrar of Companies, whichever is later.*
- vii. *That all proceedings now pending by or against the 3<sup>rd</sup> Petitioner Company be continued by or against the 1<sup>st</sup> Petitioner Company.*
- viii. *That all the employees / workmen of the 3<sup>rd</sup> Petitioner Company in service on the date immediately preceding the date on which the Scheme finally takes effect shall become the employees of the 1<sup>st</sup> Petitioner Company without any break or interruption in their service with all the benefits.*
- ix. *That all the employees / workmen of the business undertaking with respect to the 1st Petitioner Company in service on the date immediately preceding the date on which the Scheme finally takes effect shall become the employees of the 2<sup>nd</sup> Petitioner Company without any break or interruption in their service with all the benefits.*
- x. *That the 1<sup>st</sup> Petitioner Company do without any further assent / notice allot such number of shares as specified in clause -16 of Part - 3 of the Scheme.*
- xi. *Since the 3<sup>rd</sup> Petitioner Company is a wholly owned subsidiary of the 1<sup>st</sup> Petitioner Company, there shall be no issue of shares as consideration for the amalgamation of the 3<sup>rd</sup> Petitioner Company with the 1<sup>st</sup> Petitioner Company.*

- xii. That the 1<sup>st</sup> and 2<sup>nd</sup> Petitioner Companies shall file the revised Memorandum and Articles of Association with the jurisdictional Registrar of Companies.*
- xiii. That the Petitioner Companies, shall within thirty days of the date of receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the 3<sup>rd</sup> Petitioner Company shall be dissolved without winding up and the Registrar of Companies shall place all documents relating to the 3<sup>rd</sup> Petitioner Company registered with him on the file kept by him in relation to all the 1<sup>st</sup> Petitioner Company and the files relating to all the said companies shall be consolidated accordingly.*
- xiv. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.’’*

7. It is submitted that the 1<sup>st</sup> Petitioner Company i.e. Samunnati Financial Intermediation & Services Private Limited and the other two Co-Petitioner Companies had filed an Application under Section 230-232 of the Companies Act, 2013 in which the directions were issued by the Ld. Tribunal for holding / dispensation of meeting, vide order dated 29.03.2022, it has been observed in order dated 23.12.2022, that as per directions given in order dated 29.03.2022, it's first motion of meeting a decision was taken with regards to the respective categories of the Shareholders and the Members of the Company and accordingly, their Merger of the Shareholding Pattern too, the Chairperson has filed a report of the said Meeting(s) before the Registry vide SR No. 3102 of 10.05.2022, based on which, a Company Petition i.e., CP (CAA) / 58 (CHE) / 2022 in CA (CAA) / 118 (CHE) / 2021 that was filed on 13.05.2022. As per order dated 28.07.2022, the notices were directed to be issued to all the

Authorities, and it had also directed issuance of a publication in the Business Standard and a local paper called ``Dina Mani'', to bring the aspect of approval of the `Scheme of Arrangement as well as the Amalgamation of the Company' into the public knowledge, and were duly served.

8. The Ld. Tribunal has also directed to issue notice and as per the order of 29.03.2022, the information was also imparted to the Regional Director (Southern Region), Income Tax Department and such other Statutory Agencies, and has also obtained no objection certificates from all the Authorities as required prior to passing an order of amalgamation which was rendered by the Ld. Tribunal vide order dated 23.12.2022.

9. Based upon the aforesaid development, the Ld. Tribunal has observed that, since the Company Petition i.e. CP (IB) No. 54 / 2024 itself was preferred on 19.09.2024 (as per the payment receipt attached in the Appeal Book), the entity which was alleged to be holding a juristic authority and juristic existence to file the Company Petition, in fact was rather a non-existing entity, hence, the Petition was dismissed holding it to be not maintainable, as M/s. Samunnati Agro Solutions Private Limited, was not legally in existence at that point of time and there was no reservation of right reserved, to sue or be sued. Hence, no proceedings under Section 9 of I & B Code, 2016, could have been drawn by an entity, which did not have the juristic authority in the eyes of law, and vested authority to litigate as a juristic entity.

10. However, the Ld. Counsel for the Appellant, had submitted that, the observations that has been made in the impugned order dated 24.04.2025, would be untenable for the reason being that, M/s. Samunnati Agri Value Chain Solutions Private Limited i.e., the Operational Creditor herein, according to the Appellant, it did come into an existence by an order that was passed by Ld. NCLT on 04.03.2025 in IA (CA) / 15 (CHE) / 2025 as preferred in CP / (CAA) / 58 (CHE) / 2022.

11. The proceedings, which was held in the aforesaid IA (CA) / 15 (CHE) / 2025, will have no relevance, as it was argued to be simply dealing with the issue as to what would be the `effective date` as per Clause 2 (x) of the Scheme, as it stood approved by the orders of the Ld. NCLT and the implications and the observations contained in Para 9 (vi) of the Ld. NCLT order was with regards to the `effective date` that would mean, the date on which the Company is in receipt of the final NBFC Licence or filing the copy of the order of the approval granted by the Ld. Tribunal to the Scheme with the Jurisdictional Registrar of the Companies, whichever is later.

12. Mere order of condonation of delay Application, IA (CA) / 15 (CHE) / 2025 dated 04.03.2025, as it was rendered in CP / (CAA) / 58 / (CHE) / 2022, will not itself make the entity of M/s. Samunnati Agri Value Chain Solutions Private Limited, to be a Company being a juristic status, as according to their own accord, the Application under Section 9 of I & B Code, 2016, which was

preferred it was showing the Applicant, as to be the Operational Creditor, with description of M/s. Samunnati Agro Solutions Private Limited, which was a name in much distinction to M/s. Samunnati Agri Value Chain Solutions Private Limited, who is the Appellant in the present Company Appeal.

13. Even according to the Appellant's own showing, whatsoever the legal existence was provided, it was to M/s. Samunnati Agri Value Chain Solutions Private Limited, which is the case of the Appellant too, but, as on the date of institution of the proceedings under Section 9 of I & B Code, 2016, since it was filed by M/s. Samunnati Agro Solutions Private Limited, which was a non-existing company as it's existence did not persist in the eyes of law even much prior to the institution of the Application, having merged into the parent company as on 23.12.2022. The proceedings of the CP (IB) / 54 / 9 / AMR / 2024, would not be maintainable at the behest of the Appellant.

14. Hence, the dismissal of the Company Petition holding it to be not maintainable is an order, which is not suffering from any error of law or fact, because there is nothing on record brought by the Appellant to show that, to the contrary by the Appellant that, M/s. Samunnati Agro Solutions Private Limited was into an existence in the eyes of law at the time of the institution of Section 9 Application of I & B Code, 2016, which was filed on 19.09.2024.

15. Owing to the aforesaid fact, since the proceedings was drawn by a non-existing entity, it was not maintainable and the same has been rightly dismissed

by the Ld. Adjudicating Authority. Accordingly, the instant Company Appeal (AT) (CH) (INS) No. 337 / 2025, would stand dismissed.

16. All pending Interlocutory Applications, if any, would stand closed.

**[Justice Sharad Kumar Sharma]**  
**Member (Judicial)**

**[Jatindranath Swain]**  
**Member (Technical)**

02/04/2026

SR/MS/AK