NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

(APPELLATE JURISDICTION)

25.09.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)

JATINDRANATH SWAIN, MEMBER (TECHNICAL)

Company Appeal (AT) (CH) No.88/2026
(IA No.1224/2026)

In the matter of:

HINDUJA NATIONAL POWER CORPORATION LIMITED
CIN: U40109AP1994PLC126445
Registered Office: Palavalasa Village, Pedagantyada Mandal, Devada Post, Steel Plant Sub-Office, Visakhapatnam, Andhra Pradesh – 530 031.

GOCL CORPORATION LIMITED
CIN: L24292AP1961PLC126081
Registered Office: Plot Nos.63-66, AIE Industrial Park, Pedagantyada, Gajuwaka Village and Mandal, Visakhapatnam, Andhra Pradesh – 530 044. **...Appellants**

Vs

THE REGIONAL DIRECTOR, SOUTHEASTERN REGION DIRECTORATE
Ministry of Corporate Affairs, Government of India, Corporate Bhawan, 3rd Floor, BandlagudaNagole, Tattiannaram, Hyderabad, Telangana – 500 068.

THE REGISTRAR OF COMPANIES,
ANDHRA PRADESH
Ministry of Corporate Affairs, Government of India, 39-9-5, 1st and 2nd Floors, Kaustubh Elite, SVS Temple Street, Labbipet, M.G. Road (Bandar Road), Vijayawada – 520 010. **...Respondents**

(Arising out of Order dated 30.07.2026 passed by the National Company Law Tribunal, Amravati Bench in Company Scheme Application C.A.(C.A.A)/2/230/AMR/2026)

Present :

For Appellant : Mr. Srinath Sridevan, Senior Advocate
For Mr. Sriraman, Mr. AR Ramanathan &
Mr. Pranav Saigal, Advocates

JUDGMENT
(Hybrid Mode)

Per: Justice N. Seshasayee, Member (Judicial)

1. The present Appeal was preferred under Sec. 421 of the Companies Act, 2013, has been preferred by M/s. Hinduja National Power Corporation Limited (*1st Appellant/Transferor Company*) and M/s. GOCL Corporation Limited (2nd *Appellant/Transferee Company*) against the order dated 30.07.2026 passed by NCLT in first motion Company Scheme Application C.A. (C.A.A)/2/230/AMR/2026.

2. The Facts are:

    a) 1st Appellant, M/s. Hinduja National Power Corporation Limited (hereinafter referred to as HNPCL), is an unlisted public company incorporated on 16.03.1994, engaged in the business of thermal power generation, construction, operation, and transmission facilities. Its registered office is situated in Visakhapatnam, Andhra Pradesh.

b) The 2nd Appellant, GOCL Corporation Limited (hereinafter referred to as GOCL), is a listed public company incorporated on 20.04.1961, whose equity shares are listed on the BSE and NSE. It is engaged in manufacturing electronics, explosive devices, energetics, and real estate development, with its registered office also situated in Visakhapatnam, Andhra Pradesh.

c) The Appellants formulated a proposed Scheme of Merger by absorption under Sec. 230 to 232 of the Companies Act, 2013, which the Board of both the companies have approved on 15.12.2025, seeking the merger of HNPCL into GOCL and their respective shareholders. The key terms and structural parameters of the Scheme as approved by the respective Boards of Directors included the following aspects:

- Appointed Date: April 01.04.2025
- Share Exchange / Swap Ratio: GOCL shall issue and allot 206 fully paid-up equity shares of Rs. 2/- each for every 10,000 equity shares of Rs. 10/- each held in HNPCL.
- Being a listed entity, GOCL submitted the draft Scheme to Stock Exchanges and they obtained the Observation report of the SEBI only on 20.05.2026 and only thereafter they issued their respective observation letters with the BSE on 20.05.2026 and the NSE on 22.05.2026.

d) Following the receipt of the Stock Exchange clearance letters only in May, 2026, the appellants jointly filed the instant First Motion Scheme Application seeking appropriate directions of the tribunal for convening the shareholders' meeting and dispensation/directions regarding creditor meetings.

3. Vide its Order dated 30.07.2026, which is impugned in this appeal the NCLT, Amravati Bench dismissed the First Motion Application, principally on the following grounds:

   a) That the Appointed Date (being 01.04.2025) was fixed more than one year prior to the date of filing the application without providing adequate justification, in terms of MCA General Circular No. 09/2019 dated 21.08.2019.
   b) That there were certain discrepancies noted in the financial statements, annual reports, and documents filed along with the scheme application.
   c) That the application was filed belatedly before the Tribunal.

4. Learned Counsel appearing for the appellants submitted the following facts and contend that:

   a) Joint Additional Affidavit dated 28.07.2026, was filed before the NCLT specifically clarifying the financial statements and resolving all queries raised by the Bench. The perceived discrepancies arose solely because two distinct statutory financial timelines were being compared: the Audited Financials for the year ending on 31.03.2025, and the updated Provisional/Unaudited Financials for the Year ending 31.03.2026, compiled specifically for the Scheme Petition.

b) The MCA Circular No. 09/2019 is directory in nature and not legally binding to invalidate a scheme. Furthermore, legitimate commercial justifications exist for choosing 01.04.2025, as detailed in the Joint Additional Affidavit, which aligns with the financial objectives as agreed upon by the Boards on 15.12.2025.

c) There was no delay in filing the application before the NCLT. Under applicable SEBI circulars and regulations, GOCL being a listed company was legally required to obtain mandatory No-Objection Letters from Stock Exchanges before approaching the Tribunal. It was only after obtaining the Observation Letters from SEBI on 20.05.2026, the BSE on 20.05.2026 and NSE on 22.05.2026 have made available their respective observations, the appellants promptly instituted the Scheme Application on 22.06.2026.

d) Consent from the creditors is legally required at the final Company Scheme Petition (Second Motion) stage, and not at the initial First Motion stage. At any rate, as of 30.04.2026, GOCL had Nil secured creditors (prior dues having been satisfied on 22.01.2026 with a No-Dues Certificate issued on 10.02.2026) and HNPCL has 8 secured creditors, but HNPCL has formally undertaken to obtain and submit their NOCs/Consent Affidavits at the Second Motion Petition stage.

Turning to unsecured creditors, while HNPCL has 99 unsecured creditors, GOCL has 30 unsecured creditors. The proposed arrangement falls under Section 230(1)(b) of the Companies Act, 2013, and does not involve any compromise or arrangement with creditors under Section 230(1)(a) as no sacrifice is demanded.

e) The combined assets of the transferee Company post-merger will easily satisfy all liabilities in the ordinary course of business, justifying individual notices rather than convening formal meetings, in line with established precedent.

5. We carefully considered the submissions of the counsel for the appellants, and we may state that we are not in agreement with the tribunal below, not because the aspects which the tribunal has considered are beyond scrutiny, but because they were considered little too early. We may explain:

a) Any scheme of amalgamation has to go through two stages, and the first stage belongs entirely to the shareholders and the creditors. After all, the company belongs to the shareholders and they know it better what they need to have. And the creditors are taken into confidence, because their interest can neither be jeopardized nor be hijacked by the body of shareholders. Indeed, to compromise or to amalgamate or demerge is the business decision of the companies involved and therefore, it will be too premature a stage when tribunals may interfere with the process even before the shareholders and the creditors take a decision on the scheme of amalgamation.

b) Secondly, since one of the companies (GOCL) is a listed entity, necessarily the scheme requires to be shared with the regulators more particularly, the Stock Exchanges and the SEBI. And, since the first stage motion cannot be made unless it is accompanied by the observations of the Stock Exchanges (based on the SEBI's observations) as mandated by Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015, necessarily, the applicants cannot be blamed for waiting for their reports, which in the instant case was obtained by the applicants only in May 2026. The applicants thereafter have not lost any time in approaching the tribunal. Therefore, unless the delay can be attributed to the exclusive failure or default of the applicants which is not relatable to the time required by them to obtain the mandatory observations of the SEBI to the scheme of amalgamation, the same cannot be attributed to them.

c) Thirdly, even if there is any delay, still it will be advisable to leave it to the shareholders of the companies or their creditors to take a call on it, for except concerning itself with the public interest or the legalities of the scheme of amalgamation, the tribunal may not interfere with the commencing of the process of amalgamation. After all, if delay has affected the valuation, the shareholders and the creditors would be the first to take notice of it. And, if the shareholders or the creditors do not approve the scheme of amalgamation, where will the need for the tribunal or the other regulators be to pitch in?

d) It is true that the General Circular 9/2019 of the Ministry of Corporate Affairs, dated 21.08.2019 states that "*if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.*" What is contextually significant is that the Circular uses the expression, '*ante-dated*' and not delay, and therefore, what is required to be seen is whether the materials made available to indicate that the 'Appointed Date' is ante-dated. Even if it is construed as signifying merely delay in moving the tribunal with the First Stage Motion application more than a year from the 'Appointed Date', the Circular only requires that the same be explained in the very scheme. However, in the case of listed companies this may create a problem because when the scheme of amalgamation is first uploaded in the portal of the SEBI, no company can anticipate the time which the SEBI may require to make its report. Delay therefore will be an *ex post facto* and if it were to be incorporated in the scheme of amalgamation after its occurrence, then it possibly may have to go through a repeat of what has been done earlier, and necessarily it has to go through the scrutiny of the regulator again. And, the regulator cannot be insisted that it should come out with its report within a stipulated time either. Therefore, the working of the Circular has to be approached with the sensibilities required with the mind on the sensitivity of the market. Indeed, if it is only a question of explaining the delay, the same can even be gathered from the records of the tribunal. After all, ease of doing business is about least interference in the mechanics of free economy as defined and disciplined by regulatory laws, unhindered by excessive suspicion and doubts, caution and over vigilance. It is important to let the businessmen do their business. All those who are enjoined with regulatory responsibilities for ensuring the working of regulatory laws may have to realise that they are there to discipline the free flow of business and not to halt it. After all, economic status of the nation is evaluated not in terms of the restrictive intervention and interruptions made in the garb of working the regulatory laws, but by the contributions from the commercial activity of the country.

e) If the impugned order is sustained, it may only lead to commencement of the entire amalgamation process de novo and it will be a merely action replay of what has now happen. And, that cannot be avoided. However, since one of the companies is a listed company, the moment the scheme of amalgamation is hosted in the portal of SEBI, it will be in public domain and would have already affected the investors' psychology in a certain way. It has its own dynamics and play in the market. Any judicial fora therefore, need to be conscious that it's over anxiety at a stage when it is not required to be wasted may have an obstructive-effect on the ease of doing business by the companies.

6. The tribunal may have to wait for the second stage when it will also have the advantage of the regulators and the tax authorities, particularly income tax department, pitching in to aid its decision. If delay in filing the petition has affected the valuation, it also can be weighed during the second stage. For the present, the decision of the tribunal in dismissing the petition on the ground that it has raised is plainly unsustainable as it is one stage too early.

7. We accordingly allow the appeal, set aside the Order of the NCLT in C.A. (C.A.A)/2/230/AMR/2026, dated 30.07.2026. We require the NCLT to appoint the Chairman and Scrutinizers for the meetings, fix their remuneration and also a schedule for the meetings within a week from today, and at any rate not later than 05.10.2026. No costs.

[Justice N. Seshasayee]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

VG/MS/AK