S.No.4

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
20-11-2026 After Court-II

IA (CA)150/2026
in CP (CAA) No.30/230/HDB/2026
u/s 230 of Companies Act

IN THE MATTER OF:
M/s. Basai Steels & Power Pvt Ltd. - Transferor Co.
M/s. A-ONE Gold Pipes & Tubes Pvt Ltd. - Transferor Co. - 2,
and M/s A- One Steels India Ltd. – Transferee Co. **…Petitioner/s**

C O R A M:
SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

O R D E R

CP (CAA) No. 30/230/HDB/2026

Orders pronounced, recorded vide separate sheets. In the result, this Petition is allowed.

IA (CA) 150/2026

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed as not maintainable.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Apoorva/Vinod

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1

I.A. (CAA) No.150/2026
IN
C.P.(CAA)No.30/230/HDB/2026

Under Rule 11 of NCLT Rules, 2016

IN THE MATTER OF SCHEME OF AMALGAMATION BETWEEN

M/s BASAI STEELS AND POWER PRIVATE LIMITED
(TRANSFEROR COMPANY - 1)

AND

M/s A-ONE GOLD PIPES AND TUBES PRIVATE LIMITED
(TRANSFEROR COMPANY - 2

AND

M/s A-ONE STEELS INDIA LIMITED
(TRANSFEREE COMPANY)

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

BETWEEN:

Mr. K. Ravi Shankar,
S/o K. Madhav Rao,
Aged about 68 years,
Flat No.303, Surekha Towers,
Ashok Nagar, Ramachandrapuram,
Medak, Telangana – 502 032.

... Applicant / Shareholder

V/s

1. **M/s Basai Steels and Power Pvt. Ltd.,**
Having Registered Office at
Plot No.42, Sy.No.258/1,
Shapur Nagar, Main Road,
Opp. Raithu Bazar, IDA Jeedimetla,
Hyderabad – 500 066.

... Respondent - 1 /
Transferor Company – 1

2. **M/s A-One Steels India Limited,**
(Formerly known as M/s A-One Steel & Alloys Pvt Ltd)
Having Registered Office at
A-One House No.326, CQAL Layout,
Ward No.06M Sahakar Nagar,
Bengaluru – 560 092,
Karnataka.

... Respondent - 2 /
Transferee Company

Date of order: 20.11.2026

CORAM

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Shri Sanjay Puri, Hon'ble Member (Technical)

Appearance:

For Applicant : Shri Dr. S. V. Rama Krishna, Advocate

For Respondent : Shri G. M. Ganapathi, PCS

O R D E R

1. The present Application, styled as an "Application filed under Rule- 11 of NCLT Rules, 2016 regarding Scheme of Amalgamation and seeking directions for fair valuation of shares of Respondent-1", has been filed on 10.09.2026 by Mr. K. Ravi Shankar, a shareholder of Respondent-1, M/s Basai Steels and Power Pvt. Ltd. ("BSPPL" / "R-1"), in the Company Petition seeking sanction of the Scheme of Amalgamation of BSPPL and M/s A-One Gold Pipes & Tubes Pvt. Ltd. with M/s A-One Steels India Ltd. ("AOSIL" / "R-2").

2. The Applicant claims to hold 10,03,50,000 equity shares of BSPPL, comprising original allotted shares of 16,00,000 and 9,87,50,000 number of shares got through valid transfer of shares, constituting 8.5% of the current paid up capital of R-1. Proof of transfer, duly reflected in the share transfer documents along with PAS-3, is filed as **Annexure-A1** (colly).

3. The Applicant submits that the share exchange ratio of 1:413 under the Scheme is grossly and hopelessly inadequate and is based on a questionable and flawed Valuation Report. The ratio is set out in the Notice dated 19.05.2026, issued by "the questioned Director, Mr. Pardeep Garg", convening the meeting of equity shareholders of BSPPL held on 27.06.2026 (**Annexure-A2**).

4. It is contended that the Scheme contains several untrue, false and misleading statements and has been structured by taking advantage of the majority shareholding of AOSIL in BSPPL, resulting in a "hopelessly one-sided share exchange ratio". According to the

Applicant, BSPPL has much higher asset value, a larger paid-up capital and is a debt-free company, whereas AOSIL has availed a loan of Rs 100 crores from Bajaj Finance and does not have assets of comparable value of its own, except for certain subsidiaries of medium-level value.

5. It is alleged that the value of BSPPL has been taken into consideration for increasing the alleged intrinsic value of AOSIL, and that even the main plant and machinery of R-1 is shown as if it were an asset of R-2 even before the Scheme takes effect, thereby loading upwards the value of the Transferee Company and undervaluing, "on a different formula", the shares of the Transferor Company-1. This is termed "a willful wrong valuation".

6. The Applicant disputes the valuation in Annexure-IV to the Scheme (**Annexure-A3**), contending that the valuations of the three companies are arbitrary, unscientific and inconsistent without any uniform or consistent methodology. It is pointed out as "particularly shocking" that a Rs 1 share of BSPPL has been valued at Rs 0.8767, whereas a Rs 10 share of AOSIL has been valued at "a whopping" Rs 362.07, though AOSIL has no worthwhile valuable assets of its own.

7. The Applicant alleges that a serious fraud has been committed in the process of valuation and formulation of the Scheme by deliberately undervaluing the shares of Transferor Company-1 and placing an abnormally high value on the shares of the Transferee Company, which tramples upon the legitimate rights and interests of the

shareholders of BSPPL and gives rise to serious and substantial grounds to suspect fraud and manipulation.

8. It is alleged that the Scheme was not advertised in prominent newspapers and that the first-stage publications were in "obscure and unknown small newspapers having no worthwhile circulation with the oblique motive of avoiding the public knowledge" of the Scheme. The Applicant's email dated 13.08.2026 requesting a copy of the advertisement went unanswered (**Annexure-A4**).

9. The Applicant further contends that "the scheme" behind the Scheme of Amalgamation is to oust the territorial jurisdictions of this Bench and of the Regional Director and Registrar of Companies at Hyderabad. The Regional Director (SER) Hyderabad, by order dated 25.06.2026, rejected R-1's proposal to shift its registered office from Hyderabad to Bengaluru (**Annexure-A5**). The Scheme is described as "the clear stratagem to short circuit the existing pending cases" under Section 241 of the Companies Act, 2013 and under the IBC, 2016, and it is urged that Section 230 "cannot be used to obviate and short circuit corporate justice".

10. The Scheme is said to have been designed with the ulterior object of depriving the shareholders of BSPPL of their legitimate and legal rights and of transferring the valuable assets and properties of BSPPL to AOSIL for a grossly inadequate consideration, and to be against public interest in view of pending proceedings at Hyderabad. The Scheme is said to be "tainted by mala fides" and an abuse of the process of law, and liable to be rejected.

11. As an "alternative temporary measure", without prejudice, the Applicant seeks a direction to R-1 and R-2 to rework on uniform, scientific and transparent manner of share exchange ratio through another independent and competent Registered Valuer.

12. The Applicant thus prays that this Tribunal to:

    (i) Direct R-1 and R-2 to get afresh Share Exchange Ratio properly valued by an independent Registered Valuer and consequently not to approve or keep on hold the present Scheme of Amalgamation in its present form until a proper valuation has been done to the satisfaction of this Tribunal; and

    (ii) Pass such other orders as may be proper.

COUNTER OF RESPONDENT-1 (R-1)

13. The R-1 submits that the IA is not maintainable either in law or in facts and is liable to be dismissed in limine, with costs, as the Applicant admittedly does not satisfy the mandatory statutory threshold prescribed under the proviso to Section 230(4), which permits objections only by persons holding not less than 10% of the shareholding or creditors with not less than 5% of total outstanding debt. The requirement is stated to be mandatory and to go to the very locus of an objector.

14. Reliance is placed on ***Quantum Mutual Fund***[1], holding that the words "shall" followed by "only" manifest the legislative intent to restrict objections; ***Tejo Ratna Kongara***[2], holding that an objector with less than 10% had no locus; and ***Jatinder Singh Ahuja***[3], read with ***Pooja Rai***[4]. The case of ***Ankit Mittal***[5], is said not to dilute the requirement but merely to recognise the Tribunal's supervisory jurisdiction to examine whether a Scheme is lawful, fair and conscionable.

15. It is submitted that even on his own pleaded case of 8.5%, the Applicant admittedly falls below the mandatory statutory threshold of 10%, and "on this ground alone" lacks locus. The Applicant "cannot circumvent this statutory bar by invoking Rule 11 of the NCLT Rules, 2016", it is asserted.

16. Without prejudice, R-1 states that as per the Register of Members and the Auditor's Certificate dated 14.03.2026, the Applicant holds **only 16,00,000 equity shares, i.e., approximately 0.14%,** and that in his own Proxy Forms and attendance records for the AGM dated 29.12.2025 he declared his holding as 16,00,000 shares (**Annexure R-1**). The claim to the additional 9,87,50,000 shares is "already disputed" in CP No. 35/241/HDB/2025, which has not been disclosed.

[1] Quantum Mutual Fund & Ors. v. ICICI Securities Ltd. & Anr., CA (AT) Nos. 333 & 334 of 2024 (NCLAT, 10.03.2025),
[2] Tejo Ratna Kongara v. Indiabulls Real Estate Ltd. & Ors., CA (AT) Nos. 120/2023 & 215-216/2023 (NCLAT, 07.01.2025)
[3] Jatinder Singh Ahuja & Ors. v. Tata Steel Ltd. & Ors., CA (AT) No. 132 of 2021
[4] Pooja Rai & Ors. v. Tata Steel BSL Ltd. & Ors., CA (AT) Nos. 150 & 151 of 2021 (NCLAT, 05.10.2023)
[5] Ankit Mittal v. Ankita Pratisthan Ltd. & Ors., 2019 SCC OnLine NCLAT 847,

17. The claimed acquisition rests on a "purported Board approval dated 17.12.2024", the minutes of which the Applicant relied upon in CP No. 35/241/HDB/2025 but "consciously omitted" in this IA. The minutes are said to contain "an objective chronological impossibility": they record the appointment of Mr. Rakesh Jallan on 17.12.2024, whereas his DIN was allotted only on 19.12.2024 and Form DIR-12 records his appointment on 20.12.2024 (**Annexure R-2**).

18. The alleged transferor, Mr. Vishal Jain (Proprietor of M/s Prem Enterprises and a Director of R-1), lodged a complaint dated 24.07.2025 (Crime No. 0242/2025, Kodigehalli Police Station) stating that the shares "were neither sold nor transferred" and that no consideration was received. In his voluntary statement dated 01.11.2025 the Applicant is stated to have said that he was not present at the purported Board Meeting; Mr. Arun Kumar Chitgopkar stated (13.09.2025) that no Board Meeting was held on 17.12.2024. A charge-sheet dated 16.12.2025 has been filed, inter alia, against the Applicant, with prima facie findings that documents of a meeting which had not taken place were created and signatures were allegedly forged (**Annexure R-3**). No proof of payment of consideration has been produced.

19. It is further pointed out that the Applicant's own Securities Transfer Forms record consideration of Rs 2,96,25,000 for 9,87,50,000 shares, i.e., Rs 0.30 per share, while he now calls a valuation of Rs 0.8767 per share grossly inadequate, which is a "fundamentally

inconsistent position". Relying on ***Prestige Lights***[6], R-1 contends that the Applicant has not approached the Tribunal with full and candid disclosure and has come "with unclean hands".

20. According to R-1, the ratio of 1:413 has been determined by an independent Registered Valuer on the basis of relative fair values. R-2's existing 78.14% holding in R-1 (92,13,50,000 shares) shall stand cancelled and attracts no allotment; the ratio applies only to the other shareholders of R-1, and the allegation that the Scheme confers unfair benefit on R-2 by reason of its majority is misconceived.

21. R-2 is described as a substantial and profitable operating company, with revenue from operations of approx. Rs 3,004.30 crore and PAT of approx. Rs 46.72 crore in FY 2024-25, and Rs 3,396.09 crore and Rs 110.96 crore respectively in FY 2025-26; whereas R-1 is a loss-making company (loss of approx. Rs 5.40 crore in FY 2024-25) whose value lies principally in its assets. Hence R-2 was valued on DCF / Sum-of-the-Parts and R-1 on Adjusted Net Asset Value. Insistence on a uniform methodology is said to be misconceived for businesses with materially different profiles.

22. R-1's land, buildings and plant and machinery were considered in R-1's own valuation and have not been treated as owned assets of R-2; the Valuation Report expressly excludes the standalone fair value of R-1 from R-2's surplus assets thereby avoiding duplication. R-2's borrowings, including from Bajaj Finance, have been deducted.

[6] Prestige Lights Ltd. v. State Bank of India, (2007) 8 SCC 449

Transferor Company-2 is a wholly owned subsidiary of R-2 and no shares are issued for it. Face value does not determine fair value; R-1 has 1,17,91,50,000 shares of Rs 1 each against 6,94,65,270 shares of Rs 10 each of R-2.

23. Reliance is placed on ***Hindustan Lever Employees' Union***[7], and ***Miheer H. Mafatlal***[8], that valuation is a technical exercise, the Tribunal does not sit in appeal over it, and will not substitute its view where the ratio has been fixed by experts and accepted by the requisite majority; and on ***Quantum Mutual Fund*** and ***Tejo Ratna Kongara*** (appeal dismissed by the Supreme Court on 10.02.2025 in Civil Appeal No. 2260 of 2025) that valuation "is not an exact science".

24. As per R-1, the allegations of fraud and manipulation are "bald, vague and unsupported by any material particulars". The Applicant "has not established any specific computational error, material omission, fraud or demonstrable infirmity", and "mere dissatisfaction with the result of an expert valuation" cannot justify appointment of a second valuer.

25. On the issue of Publication, it is stated by R-1, that pursuant to the First Motion order dated 11.05.2026, notice of the meetings was published on 23.05.2026 in "The South India Times" (English) and "Saakshyam" (Telugu), as recorded by the Chairperson in Form CAA-4, and notices were sent through CDSL on 22.05.2026. Pursuant

[7] Hindustan Lever Employees' Union v. Hindustan Lever Ltd., 1995 Supp (1) SCC 499
[8] Miheer H. Mafatlal v. Mafatlal Industries Ltd., (1997) 1 SCC 579

to the Second Motion order dated 20.07.2026, the Petition was advertised on 27.08.2026 in the same newspapers. The Applicant's email of 13.08.2026 preceded that publication. Twenty One (21) shareholders holding 1,02,00,99,000 shares voted through remote e-voting and **100% of votes cast were in favour**; 91.14% in value of unsecured creditors who voted approved the Scheme.

26. According to R-1, the Scheme has a bona fide commercial and operational rationale: R-1 underwent CIRP and its Resolution Plan was approved on 13.04.2018; R-2 holds 78.14% of R-1; both plants are adjacent at Bellary; and the amalgamation is for operational integration and consolidation. The RD(SER)'s order (stated by R-1 to be dated 30.06.2026) rejected the shifting of registered office under Rule 30(9) of the Companies (Incorporation) Rules, 2014, owing to an investigation under Section 210(1)(a) & (c) into Bharat Infra Exports & Imports Ltd. and seven other companies including R-1; this restriction "does not constitute a corresponding prohibition" against a Scheme under Sections 230-232.

27. The pending investigation and proceedings (including under Sections 241-242 and those arising out of CP(IB) No. 77/09/HDB/2017) have been disclosed; Clause 5.9 of the Scheme and the First Motion order provide for their continuation against R-2; and Sections 230(2)(a), 232(3)(c), 239 and 240 preserve records and liabilities. Reliance is placed on ***Anil Goel, Liquidator***[9], ***Sesa Industries Ltd***[10]. ***MEL Windmills***[11], and UltraTech

[9] Anil Goel, Liquidator of Birla Cotsyn (NCLT Mumbai, 09.01.2025)
[10] Sesa Industries Ltd. v. Krishna H. Bajaj, (2011) 3 SCC 218
[11] MEL Windmills Pvt. Ltd. v. Mineral Enterprises Ltd., 2019 SCC OnLine NCLAT 900

Nathdwara Cement[12]. It is claimed that CP No. 35/241/HDB/2025 was filed by the Applicant, who was "acting in alignment with the erstwhile promoter group" and was removed as Director at the EGM held on 30.07.2025.

28. On the issue of Public interest it is stated, that the Scheme is not a sale of individual assets of R-1 for cash consideration; minority shareholders are not cashed out but receive shares of R-2, which has filed a Red Herring Prospectus for its proposed IPO. R-2 has incurred capital expenditure of approx. Rs. 201.89 crore at the Bellary plant of R-1 over and above the Resolution Plan. Relying on ***63 Moons Technologies***[13], R-1 submits that public interest cannot rest upon "the individual or private grievance of a particular stakeholder".

29. Accordingly, R-1 prays that the IA may be:

    (i) Dismissed "as non-maintainable under the proviso to Section 230(4);

    (ii) Without prejudice, dismissed on merits; and

    (iii) That costs be imposed on the Applicant for suppression of material facts and abuse of process.

REJOINDER OF THE APPLICANT

30. In his Rejoinder, the Applicant states that "prima facie" he has no objection for the Scheme of Amalgamation except the valuation of shares of BSPPL, which is grossly undervalued and the Valuation

[12] UltraTech Nathdwara Cement Ltd. (NCLT Kolkata, 03.04.2024)
[13] 63 Moons Technologies Ltd. v. Union of India, (2019) 18 SCC 401

Report "totally biased, arbitrary, patently wrong on face of it". The remedy sought is said to be "in rem and not in personam", as "crores of shares valuation is at stake".

31. Relying on the J.J. Irani Committee Report dated 31.05.2005 (Chapter VI, paras 8.1-8.4; Annexure-AA1), the Applicant submits that the 10% threshold was intended to curb "frivolous objections" by shareholders with "miniscule shareholdings" aimed at stalling schemes, under the "mischief rule", and is not an absolute bar for shareholders with genuine grievances. Hence "shall" in Section 230(4) "may be read as 'may'", as is done in Section 422 of the Act.

32. Reliance is placed on ***Patil Automation***[14] quoting ***Babu Ram Upadhya***[15] that "*shall*" is prima facie mandatory but the Court may ascertain the real intention of the legislature having regard to, above all, "*whether the object of the legislation will be defeated or furthered*". The Applicant submits that his application is "not frivolous nor miniscule" and that otherwise the shareholders of Transferor Company-1 "would be left with no remedy".

33. Drawing an analogy with Section 244, which empowers the Tribunal to waive the threshold for applications under Section 241, both being remedies "in rem", and with Section 151 CPC, the Applicant contends that the Tribunal has inherent power under Rule 11 of NCLT Rules, 2016 to waive 10% requirement u/s 230(4). Under the 1956 Act there was no such restriction and even a single

[14] Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd., (2022) 10 SCC 1, para 33
[15] Babu Ram Upadhya (AIR 1961 SC 751)

shareholder's objection could be examined on merits. Less than 10% cannot be considered as 'miniscule' when the paid-up capital is huge. The Applicant states that he is filing separate application seeking waiver of the 10% requirement.

34. It is claimed that the legal heirs of late Shri Gopal Agarwal, promoter-shareholder holding 2,96,50,000 shares, have given their "consent" by affidavit dated 23.10.2026 to join the Applicant and "also wish to implead". The combined holding is furnished below:

Mr. K. Ravi Shankar	10,03,50,000 shares
Legal heirs of late Shri Gopal Agarwal	2,96,50,000 shares
Total	**13,00,00,000 shares**
Total paid-up capital of R-1	1,17,91,50,000 shares
Percentage	**11.02%**

35. The Counter is said to be "unauthorised", as Mr. Pardeep Garg's appointment as Additional Director is questioned in separate proceedings and there is no Board resolution authorising him. A shareholder may give proxy for "any number of shares" out of his holding. Discrepancies in the Board minutes are described as "typos" which are "matters of corrections".

36. The criminal case is described as "false and cooked up", engineered by the unauthorized Director using the name of Mr. Vishal Jain. The Applicant states that the shares were transferred in consideration of advances aggregating Rs. 1,37,00,000 paid by RTGS to Mr. Vishal Jain between 16.05.2018 and 14.06.2019 (Union Bank of India statement, Annexure-AA4). The Applicant alleges that the police

took away the original share certificates and transfer forms under threat and coercion and extracted the voluntary statement of 01.11.2025. Inconsistencies are pointed out in the FIR: offence period shown as 17/12/2025 to 23/07/2025, and place of occurrence shown as A-One House, Bengaluru (R-2's office). It is urged that without final adjudication by appropriate Court, the question of any different shareholding "does not arise"

37. Relying on the approved Resolution Plan, it is stated that R-1 has an integrated steel plant on 163.82 acres of freehold land at Bellary with fixed assets and CWIP of Rs 24,638.16 lakhs as on 31.03.2016, and its own valuation report dated 16.10.2024 shows plant and machinery at a fair market value of Rs 18,667 lakhs.

38. As per the applicant, the Scheme Valuation Report shows land at only 25 acres (Rs 3,000.72 lakhs) instead of 163.82 acres, an undervalue of Rs 166.59 crore, and plant and machinery at Rs 4,190.08 (stated as "crore"), against Rs 18,667 lakhs, an undervalue of Rs 14,477 lakhs. On the Applicant's computation, the correct value is Rs 39,409.70 lakhs, i.e., Rs 3.3422 per share as against Rs 0.8767.

39. AOSIL is said to have no major steel manufacturing unit, its revenues coming from the 9-year lease (2017) of R-1's plant. It is also said to have failed to bring in funds under the Resolution Plan and to have made false statements in its Red Herring Prospectus. The Valuation Report dated 14.03.2026 gives no fixed assets, land, plant and machinery or net block for R-2, so there is "no comparison".

40. The Applicant reiterates that several proceedings for oppression and mismanagement and for failure to implement the Resolution Plan are pending, and that the RD(SER) rejected the shifting of registered office by order dated 25.06.2026. The statements in the Counter are termed "false, incorrect, and perjurious". It is urged that this Tribunal, as "the sole guardian and custodian of law", should keep the Scheme in abeyance until valuations are "fairly done by two Registered Independent Valuers appointed by this Tribunal".

FINDINGS & DECISION

41. We have heard Dr. S. V. Rama Krishna, Advocate and Shri G. K. Ganapathi, PCS and perused the entire records. The following issues arise for consideration:

(a) Whether the Applicant, who on his own pleaded case holds 8.5% of the paid-up share capital of R-1, has the locus to object to the Scheme in view of the proviso to Section 230(4) of the Act?

(b) Whether the threshold in the proviso to Section 230(4) is directory, or can be waived or relaxed by this Tribunal in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016?

(c) Whether the Applicant can meet the threshold by adding the shareholding of the legal heirs of late Shri Gopal Agarwal on the strength of a consent affidavit filed with the Rejoinder?

(d) If the Application is not maintainable, what is the effect on the grievances raised as to valuation and the share exchange ratio?

42. Section 230(4) of the Act, insofar as relevant, reads:

> *"(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:*
>
> *Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent of the shareholding or having outstanding debt amounting to not less than five per cent of the total outstanding debt as per the latest audited financial statement."*

43. The proviso is expressed in negative and restrictive terms. The words "shall be made only by" limit the class of persons who may object to a compromise or arrangement to those meeting the prescribed threshold. The Hon'ble NCLAT has consistently treated this requirement as a condition of locus, including in ***Quantum Mutual Fund***[16] (supra), where the appeal was held not maintainable at the instance of objectors who did not meet the threshold. As per the Hon'ble NCLAT:

> ***35.*** *Lastly after examining the scheme we also need to find the entitlement of the appellants to object the scheme. The appellants, i.e., Quantum Mutual Fund (Quantum) does not meet the minimum*

[16] Quantum Mutual Fund v. ICICI Securities Ltd., (2025) 255 Comp Cas 453 : 2025 SCC OnLine NCLAT 503 at page 475

threshold of 10 per cent shareholding required to be entitled to object to a scheme, prescribed under the proviso to section 230(4) of the Act. As on March 20, 2024 (being the cut-off date under the scheme), and Quantum held 2,86,992 shares of ICICI Securities shares, i.e., 0.08 per cent. shareholding. Now, section 230(4) of the Act is a mandatory provision, and the usage of the word "shall" followed by the word "only" in the proviso to section 230(4) reflects the legislative intent to mandatorily exclude all such person who do not meet the threshold prescribed. Notably, the erstwhile Companies Act, 1956 did not provide for a threshold for objecting to a scheme. Subsequently, the report of the expert committee on company law dated May 31, 2005 observed that shareholders holding miniscule shareholding raised frivolous objections with the objective of stalling the implementation of a scheme which was otherwise approved by the requisite majority of shareholders. Accordingly, the threshold in proviso to section 230(4) was introduced to prohibit objectors like the appellants from stalling the scheme.

36. *Hence, as has been correctly held by the learned National Company Law Tribunal, the appellants are not entitled to object to the scheme and not entitled to maintain an appeal as an "aggrieved person". Consequently, in view of proviso to section 230(4) too, the present appeal is also not maintainable at the instance of the appellants. Notably, the scheme has been approved by 93.82 per cent of equity shareholders and 71.89 per cent of public shareholders. The appellants who hold merely 0.08 per cent shareholding are depriving the majority shareholders of the benefits of the scheme by filing frivolous objections and derailing its implementation. This militates the very principle of shareholder democracy.*

44. Although the Application is styled as one under Rule 11 and is described as seeking "directions for fair valuation", its substance is an objection to the Scheme. The pleadings attack the share exchange ratio, allege fraud and mala fides, and say the Scheme "deserves to be rejected". The prayer is that the Scheme may not be approved or may be kept on hold. The label given to an application does not change its character. An application whose object and effect is to stall or alter the sanction of a Scheme is an "objection to the compromise or arrangement" within the meaning of the proviso, and the Applicant must satisfy the threshold.

45. The Applicant has himself pleaded, in paragraph 1.1 of the Application and again in the Rejoinder, that his holding constitutes 8.5% of the paid-up capital of R-1. On his own showing, therefore, he falls short of the 10% threshold. R-1 disputes even this and states that the Applicant holds only about 0.14%. The entitlement to the 9,87,50,000 shares is the subject of CP No. 35/241/HDB/2025 and of criminal proceedings. It is neither necessary nor appropriate for us to decide that dispute in this Application. Even if the Applicant's claim is taken at its face value, he does not meet the statutory requirement.

46. The objection raised in the Rejoinder to the authority of Mr. Pardeep Garg to file R-1's reply also does not help the Applicant. The bar in the proviso to Section 230(4) is statutory. This Tribunal must examine its own jurisdiction to entertain an objection whether or not the bar is pleaded by a Respondent. Issue (a) is answered against the Applicant.

47. Coming to the issue (b), whether the threshold is directory or can be waived under Rule 11, the Applicant relies on ***Patil Automation*** (supra), which quotes, at para 33, the principles laid down in ***Babu Ram Upadhya*** (supra). Under those principles, the word "shall" is prima facie mandatory, and the Court may ascertain the real intention of the legislature from the scope and design of the statute and the consequences of construing it one way or the other, and above all "whether the object of the legislation will be defeated or furthered". We note that in *Patil Automation* itself, the Hon'ble Supreme Court applied these principles and held Section 12A of the Commercial Courts Act, 2015 to be mandatory.

48. Applying the same principles, we are unable to read the proviso to Section 230(4) as directory, as it does not merely say "shall". It says the objection "shall be made only by" persons of a defined class. Words of exclusion of this kind leave little room to read the provision as directory.

49. The legislative history relied upon by the Applicant also points the other way. The J.J. Irani Committee noted that, under the earlier regime, shareholders with minuscule holdings had made frivolous objections to stall schemes. It recommended a specific provision putting a limit on who could object. Parliament accepted that recommendation and fixed an objective threshold in the proviso. The provision thus departs deliberately from the position under Sections 391-394 of the Companies Act, 1956. Reading the threshold down would undo the very change Parliament made.

50. Further, where Parliament intended to allow this Tribunal to relax shareholding threshold, it said so expressly. The proviso to Section 244(1) empowers the Tribunal to waive the requirements for an application under Section 241. No such power is given in Section 230(4). The Applicant's reliance on Section 244 therefore cuts against him: the presence of a waiver power in one provision and its absence in the other must be taken as deliberate. Section 422 of the Act, which deals with expeditious disposal of matters, is not comparable. It governs the Tribunal's own timelines and itself provides for extension. It does not define who may invoke the Tribunal's jurisdiction.

51. The threshold fixed in section 230(4) is an objective threshold, which is fixed it as a percentage of the shareholding. The absolute number of shares held, however large, does not change the test. The submission that ten crore shares cannot be called "miniscule" cannot be accepted.

52. The characterisation of the remedy as one "in rem" does not alter the position. The proviso regulates who may object. It makes no exception based on the nature of the relief sought. Nor can Rule 11 of the NCLT Rules, 2016 be invoked to dispense with the threshold. Rule 11 provides that "nothing in these rules" shall limit or affect the inherent powers of the Tribunal. It saves the Tribunal's inherent powers against the Rules; it does not confer power to override the Act. It is well settled that inherent powers may be exercised only where there is no express provision, and cannot be exercised in

conflict with an express statutory provision. The Hon'ble Supreme Court, in ***GLAS Trust Company LLC***[17], held that

> *"....'inherent powers' cannot be used to subvert legal provisions, which exhaustively provide for a procedure. To permit NCLAT to circumvent this detailed procedure by invoking its inherent powers under Rule 11 would run contrary to the carefully crafted procedure for withdrawal."*

The proviso to Section 230(4) is such an express provision. Waiving it under Rule 11 would amount to doing indirectly what the statute does not permit directly. Issue (b) is also answered against the Applicant.

53. The plea of aggregation is raised for the first time in the Rejoinder. The legal heirs of late Shri Gopal Agarwal are not parties to this Application. No application for their impleadment has been filed, and none of them has filed an objection to the Scheme. A consent affidavit annexed to a Rejoinder does not make them parties, and an objection cannot be made by one person on the strength of another's consent. Maintainability has to be judged with reference to the Application as filed. A defect in locus that exists at the inception cannot be cured by a new case set up in the Rejoinder.

54. Further, the figure of 11.02% is reached only by including the 9,87,50,000 shares whose transfer to the Applicant is disputed. Leaving those shares aside, the holding of the Applicant and the legal heirs together would be about 2.65%. The plea of aggregation

[17] GLAS Trust Company LLC v. BYJU Raveendran & Ors., 2024 INSC 811

therefore rests on the very claim that is under dispute. The Applicant's own statement that he is "filing separate application seeking waiver of the 10% requirement", which has not in fact been filed, shows that he is aware that he does not meet the threshold. Issue (c) is answered against the Applicant.

55. Coming to the issue (d) about the effect on the grievances as to valuation, since the Applicant lacks locus to object, we do not go into the merits of his contentions on valuation, publication, the alleged ouster of jurisdiction, or the disputed shareholding, and express no opinion on them. The prayer for a direction for a fresh valuation by another Registered Valuer, and for keeping the Scheme on hold, is part of the objection itself and must fail with it.

In view of the above the present Application is dismissed as not maintainable.[18]

Sd/-
(SANJAY PURI)
Member (Technical)

Sd/-
(RAJEEV BHARDWAJ)
Member (Judicial)

Saida

[18] Nothing in this order shall be construed as an expression of opinion on the merits of the valuation or share exchange ratio, on the Applicant's claim to the 9,87,50,000 shares, or on CP No. 35/241/HDB/2025 or any criminal proceedings, all of which shall be decided on their own merits.