

Hinduja Estates Private Limited Vs

Court: National Company Law Tribunal, Mumbai Bench, Court II

Date of Decision: Jan. 13, 2023

Acts Referred: Companies Act, 2013 " Section 230, 230(1), 230(3)(i), 230(3), 230(5), 230(6), 232, 232(3)(i), 232(6) Income Tax Act, 1961 " Section 2(1B)

Hon'ble Judges: P. N. Deshmukh, Member (J); Shyam Babu Gautam, Member (T)

Bench: Division Bench

Advocate: Parita Dave, Vidhi Dhanuka, Rupa Sutar

Final Decision: Disposed Of

Judgement

Clause

No.", "Regional Director Report / Observations dated January 02, 2023", "Response from the Petitioner Companies filed

vide Rejoinder Affidavit

dated January 02, 2023",,,

2 (a), "In, , compliance, , of, , AS-14, , (IND, , AS-103),, , the Petitioner,

Companies, shall, pass, such, accounting entries which are necessary in

connection with the scheme to comply with other applicable Accounting Standards

such as AS-5 (IND AS-8) etc.", "As, , regards, , the, , observations

made, at, paragraph, 2, (a),, the

Petitioner, Companies, hereby undertake,

that, in, compliance of, AS-14, (IND, AS-

103),, the Petitioner, , , Companies, , ,

shall pass, such, accounting, entries

which, , , , are, , , necessary, , , ,

in connection with the Scheme to comply, ,

with, , all, , applicable Accounting Standards

such as AS-5, (IND, AS-8), etc., to, the

extent applicable.",,,

2 (b), "As per Definition of the Scheme,

“Appointed Date” means, April 01, 2021, or such other date, as may be directed, or approved, by the National Company Law Tribunal, or any other appropriate authority; and

“Effective Date” means the date on which certified copies of the order passed by the National Company Law Tribunal [NCLT] is filed with the Registrar of Companies, Maharashtra at Mumbai.

Any reference in this scheme to “upon the Scheme becoming effective” or “effectiveness” of the Scheme, or “date of coming into effect of this Scheme” shall also mean the effective date.

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013, states that the Scheme under this Section shall clearly indicate an appointed date from which it shall be effective and the Scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

The Petitioners may be asked to comply with the requirements as clarified, vide circular, no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.", "As regards the observations made at paragraph 2 (b), the Petitioner

Companies confirm that the Appointed Date, i.e. April 01, 2021 as mentioned in the Scheme, is in compliance with the Section 232(6) of the Companies Act, 2013 and the Scheme shall take effect from such Appointed Date. Further, the Petitioner, Companies undertakes to comply with the requirements, clarified, vide circular, No.7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs. The

Petitioner, , , , Companies submit, , , ,
that, , , , the, , , , Company Scheme
Application was filed on, , , March, , , 17, , , 2022, , ,
whereas the Appointed Date mentioned in, , , the, , ,
Scheme, , , is, , , April , , , 01, , , 2021. , , The, , ,
Appointed, , , date, , , as fixed, , , in, , , the, , ,
Scheme, , , precedes the, , , , date, , , , of, , , , ,
filing, , , , of, , , , the Application and therefore,
the Appointed, , , , Date, , , , is, , , , not, , , , ante
dated beyond a year and hence,
present, , , , , , , Scheme, , , , , , , ,
is, , , , , , , in compliance, , , , , , , , , ,
, , , , with, , , , , , , , , , , the requirements, , ,
of, , , Circular, , , No. F.No.7/12/2019/CL-
I, , , , , , , dated 21.08.2019, , , , ,
issued, , , , , by, , , , , the Ministry of Corporate
Affairs. " , , ,

2 (c), "The, , , , Hon'ble, , , , Tribunal, , , , may, , , , , , , kindly, , , , , , , seek, , , , , , ,
the undertaking, , , that, , , this, , , Scheme , , , is, , , approved, , , by, , , the requisite
majority of members and creditors as per Section 230(6) of the Act in meetings duly
held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the
Act and the Minutes thereof are duly placed before the Tribunal. " , , "As, , , , regards, , , , the, , , , , observations
made, , , at, , , paragraph, , , 2, , , (c), , , the
Petitioner, , , Companies, , , submit that, , , there, , ,
are, , , no, , , secured, , , and unsecured creditors in
both the Petitioner, , , , , , Companies. , , , , The
Petitioner, , , , , , , Companies, , , , , , , , also
submit, , , that, , , the, , , Scheme, , , has been, , , , ,
duly, , , , approved, , , , by, , , , , the members, , , , ,
of, , , , the, , , , , respective Companies, , , at, , ,
their, , , respective" , , ,
 , , , "meetings, , , held, , , on, , , August, , , 16, , , 2022, , , in, , ,

accordance with the Order pronounced on

July 15, 2022, passed in, ,

Company Scheme, Application No. 107

of 2022." ,,,

2 (d), "The Petitioner, Company, states that, the Transferee Company shall be

in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this

regards, the, the, petitioner, company, shall, ensure

compliance of all the provisions of Income Tax Act and Rules thereunder." "As regards, the, observations

made, at, paragraph 2, (d), the

Transferee, , , , , , , , , , , , , , , , ,

Company undertakes to comply with all

applicable, provisions, under the,

Income Tax Act, 1961, to the extent

applicable." ,,,

2 (e), "Petitioner, company, may, be, directed, to, submit, an undertaking

stating the name of Sectorial regulator of, the, petitioner, company, and,

also, undertake, that prior, notice, has, been, served, to, sectorial,

regulator and all requirements of the concern regulator, if any has been complied

with." "As regards, the, observations

made, at, paragraph 2, (e), the

Petitioner, , , , , , , , , , , , , , , , ,

Companies undertake to, comply, with, the

directions, of, the, concerned

sectorial, , , , , , , , , , , , , , , , ,

regulator, , , , , , , , , , , , , , , , ,

applicable." ,,,

Date of

Allotment

ent", "Number

of

Allottees", "No. of

shares

allotted", "No min

al valu

e per

share

(in Rs.)", "Premium

per share

(in Rs.)", "Total

premium

collected (in

Rs.)

19/03/

2013", "Rabna

Holdings

Limited", "2,50,000", 10., 1200, "30,00,00,000

TOTAL,, "2,50,000",,,, "30,00,00,000