

**THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH-I**

In the matter of Petition u/s 221, 222, 241, 242, 246 r/w 339 of Companies Act,  
2013

**MA (CA) 1393 OF 2019  
IN  
CP (I&B) No. 277 OF 2018**

Mehmood Mahomedhusein Curmally

**...Applicant**

**Vs.**

Yes Bank Limited

**...Respondent**

**In the matter of**

C.P. No. (I&B)/277/MB/2018,

Union of India, Ministry of Corporate Affairs

**...Petitioner**

**Vs.**

Gitanjali Gems Ltd. & Ors.

**... Respondents**

***Order delivered on: 23.07.2024***

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice V.G. Bisht (Retd.)**  
Hon'ble Member (Judicial)

***Appearances:***

For the Applicant : Adv. Rahul Lakhiani a/w Adv. Dhanshree  
Gaikaowari  
For the Respondent No. 7 : Adv. Mohammed Varawala i/b Adv.  
Rubina Khan  
For the Respondent No. 80 : Adv. Shyam Kapadia a/w Adv. Bharat Jain  
For the Union of India : Adv. Aditya Sikka a/w Adv. Onshi

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**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. The present Miscellaneous Application MA (CA) 1393 of 2019 is filed in Company Petition CP No. 277 of 2017 by the Mr. Mehmood Mahomedhussein Curmally in the matter of M/s Gitanjali Gems Ltd. & Ors. seeking following relief;
  - a) *That this Hon'ble Tribunal be pleased to clarify, confirm and/or declare that the Order dated 23.02.2018 (Annexure 'R' hereto), does not apply to the monies (i.e. Escrow Amount) deposited in the Escrow Account bearing No. 008266200001430 with the Yes Bank Limited, the Respondent herein;*
  - b) *That, in the alternative to prayer (a), should this Hon'ble Tribunal determine that the Order dated 23.02.2018, inter-alia attaching assets of Respondent No. 7, is applicable to the Escrow Account, this Hon'ble Tribunal be pleased to pass an Order vacating the attachment in so far as it relates to the Escrow Amount/Escrow Account in Escrow Account bearing no. 008266200001430 with the Yes Bank;*
  - c) *For interim and/or ad-interim reliefs in terms of prayer (a) and/or (b) above;*
  - d) *For costs of the present Application;*
  - e) *For such further and other reliefs as the nature and circumstances of the case may require.*
2. The Applicant is erstwhile shareholder and director of Rhythm House Private Limited and had vide a Share Purchase Agreement dated

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15.05.2017, alongwith other the then shareholders of the Company had sold their entire shareholding to Firestar Diamond International Private Limited (i.e., Respondent No. 7 to the above Company Petition). As per the terms of the Share Purchase Agreement, an amount of INR 3,00,00,000/- (Indian Rupees Three Crores) ("Escrow Amount"), forming part of the total consideration of INR 32,00,00,000/- (Indian Rupees Thirty-Two Crores) ("Total Consideration") payable by Respondent No. 7 (to the Company Petition) to the Former Shareholders, was deposited with the Respondent herein as an Escrow Agent. The agreement of even date entered into with the Escrow Agent specified that the said Escrow Amount of Rs.3,00,00,000/- was to be kept in fixed deposits for a limited period and the interest accruing on the fixed deposits was to be paid to the Applicant annually.

3. During 27.06.2017 to 04.07.2017, the Respondent No.7 deposited the Escrow Amount in 6 (six) fixed deposits in the name of the Applicant herein, with Yes Bank Ltd., which were to mature on 31 March, 2018, and to be renewed immediately thereafter as per the terms of the Share Purchase Agreement read with the Escrow Agreement.
4. On 11.07.2017, the Applicant herein received an email from a representative of the Respondent Bank herein confirming the details of the fixed deposits in his name.
5. During 27.02.2016 and 01.08.2017, the Deputy Commissioner of Income Tax has already assessed the income of the company for the Assessment Years 2015-16 and 2016-17. For the Assessment Year 2015-16, the Income Tax Department accepted the taxes paid by the Company as correct and passed consequent orders whereas for the Assessment Year 2016-17, the Income Tax Department has issued a refund of Rs. 83,347/- and as such, there are unlikely to be any further claims against the Company for the period prior to the "Closing Date" of the transaction.

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6. On 16.03.2018, pursuant to the investigation initiated inter-alia against Respondent No. 11 to the above Company Petition and his group of companies, the Applicant herein received a letter from the Serious Fraud Investigation Office (SFIO) of the Ministry of Corporate Affairs, incorrectly addressed to the Applicant in his capacity as Director of the Company, requesting for various details pertaining to the Company. On 26.03.2018, the Applicant responded to the aforesaid letter dated 16th March, 2018, by which the Applicant inter-alia informed the SFIO of the execution of the Share Purchase Agreement and the change in directorship and shareholding of the Company pursuant thereto.
7. On 19.04.2018, the Applicant addressed a letter to Respondent No. 7 inter- alia requesting it to intimate the Respondent of any objection it might have to renewal of the aforesaid 6 fixed deposits. However, no response was received by the Applicant to the said letter. To the best of the Applicant's knowledge, Respondent No. 7 has not intimated the Respondent herein of any objections. Another letter dated 20.04.2018 was sent stating that as per Clause 6.6 of the Escrow Agreement, any refund from the tax authorities was to be deposited by Respondent No. 7 in the Escrow Account. However, despite such a refund having been issued on 28th August, 2017, the same had remained unpaid. Accordingly, by the said letter the Applicant called upon Respondent No. 7 to remedy the situation by taking steps to initiate re-issue of the refund by the tax authorities and deposit of the same in the Escrow Account.
8. Pursuant to follow up vide letter dated 26.4.2018, 6.6.2018, 5.12.2018 and 2.1.2019 for renewal of expired Fixed Deposits, the Respondent Yes Bank finally replied to the Applicant's Advocates' aforesaid letters, inter-alia informing the Applicant that the Escrow Account was under attachment pursuant to an Order dated 23rd February, 2018, passed by

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this in the above Company Petition and expressed its apparent inability to renew the aforesaid fixed deposits.

9. This Tribunal had passed an interim order dated 23.2.2018 in C.P. 277/2017 injuncting the Respondent No. 1 to 68 named therein from removal, transfer or disposal of funds, assets and properties of the entities and individuals mentioned above until further orders.
10. The Applicant herein, other erstwhile shareholders of Rhythm House Private Limited and Rhythm House Private Limited are not parties to the Company Petition, however Firestaty Diamond International Private Limited, who purchased the shares of Rhythm House Private Limited from the applicant and other erstwhile shareholders, is arrayed as Party Respondent No. 7 in the Company Petition 277/2017.
11. It is case of the Applicant that the Escrow amount (purportedly attached vide the Interim Order) was part of the Total Consideration payable by Respondent No. 7. As is clear from a conjoint reading of the clauses of the Share Purchase Agreement along with the Escrow Agreement, a part of the Total Consideration was parked in the Escrow Account only to safeguard Respondent no. 7 against any claims/demands (as defined in the Share Purchase Agreement and Escrow Agreement) raised upon the Company for statutory liabilities relating to the period prior to purchase of the Company's shares by Respondent No. 7. The Escrow account continues to remain in force. In the event any such claims/demands being raised pursuant to an Assessment by Government Authorities, the Escrow Agent (i.e., Respondent herein) may release funds from the Escrow account in accordance with the terms of the Escrow Agreement. In event of no claims/demands being raised upon the Company for the period prior to the sale/transfer of its shares to Respondent No. 7/8, the entire Escrow Amount is to be released to the Former shareholders. Therefore, the Applicant submitted that the Respondent No. 7 / 8 no

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longer have any interest in the Escrow Amount (except as provided in the Escrow Agreement). Respondent No. 7 has already received valuable shares/assets in exchange for the Total consideration paid to the Applicant and the other Former Shareholders of the Company.

12. The Liquidator of the Respondent No. 7 has filed a reply dated 6.5.2024 stating that an amount aggregating to Rs. 30,85,955/- is claimed to be outstanding by the Income Tax Department as per their Demand Letter No. ITBA/COM/F/17/2019-20/1023992372(1) dated 17.1.2020 towards assessment of due payable for the assessment years 2005, 2007, 2008 and 2012, therefore, the amounts retained in the Escrow Account is to be first utilised for payment of the assessment dues which have been raised and no amount from the Escrow Account can be released to the Applicant or any of the erstwhile shareholders for that matter, until the assessment dues are cleared. It is further submitted that it is only in the event of there being any surplus after payment of the assessment dues, that such surplus amount would be payable to the erstwhile shareholders of RHPL.
13. The Union of India has filed its reply dated 16.07.2021 stating that the issue was taken up with one of the investigation agency – SFIO and comment/inputs were sought. SFIO vide its letter dated 12.10.2020 has stated that *“Respondent No. 7 is Firestar Diamond International Private Limited as per the record. The petitioners i.e. Mehmood Mohomedhussein Curmally from his petition appears to be a past shareholder of Respondent No. 7 and is not a respondent of the original Company Petition filed by the Union of India. This has no relationship qua the investigation into the affairs of the defaulter companies as mandated to SFIO under the Companies Act, 2013”*. It is further stated that SFIO in a subsequent response dated 16.6.2021 further stated that *“For the purpose of the relief sought by the Petitioner, it is to stated that the petitioner Mehmood Mohomedhussein Curmally appears to be*

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*shareholder in the company Rhythm House Private Limited which had an immovable property namely “Rhythm House”. The company Rhythm House Private Limited was subsequently purchased by the Firestar Diamond International Private Limited vide Share Purchase Agreement dated 15.5.2017. As per the said agreement Rs. 3 Crore was to be kept under the escrow account and was to be released contingent upon the fulfilment of the conditions as mentioned. The details of any claim or demand made by the Tax and other relevant authorities is not brought out clearly in the said petition.*

*In light of the above facts, the assets of Rs. 3 Crore under the escrow agreement have not been demonstrated to be vested with the petitioner and other erstwhile shareholder of Rhythm House Private Limited.*

*Further, it seems Rhythm House Private Limited is not a respondent in Company Petition No. 277 of 2018 filed by MCA and the property “Rhythm House” has been attached by Enforcement Directorate Mumbai.”*

14. Heard the Counsel and perused the material on record.
15. It is undisputed fact that the applicant and other former shareholders of Rhythm House Private Limited have transferred their shareholding to Respondent No. 7 and the transaction stands consummated thereby transferring and vesting the rights, title and interest in these shares in favour of Respondent No. 7. In other words, the closing as defined in clause 4.1 has taken place. The Total consideration has been paid to the Applicant and other former shareholders, except the money to be retained in the Escrow account in terms of clause 2.2.1(b) of the Share Purchase Agreement, which reads as under –

*“On the Closing, an amount of Rs. 3,00,00,000/- (Rupees Three Crores Only) from the Total Consideration (“Escrow Amount”)*

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*shall be deposited with the Cash Escrow Agent, as mutually agreed upon between the Parties and the same shall be recorded in the Cash Escrow Agreement. From the Escrow Amount, an amount of Rs. 2,00,00,000/- (Rupees Two Crores Only) shall be released to the Sellers (the first holder, for shares held jointly upon the completion of Assessments, or on March 31, 2020, whichever is earlier. Further, the balance amount of Rs. 1,00,00,000/- (Rupees One Crore Only) from the Escrow Amount shall continue to be retained until the completion of Assessments, or upto March 31, 2023, whichever is earlier, and thereon be released to the Sellers (the first holder, for Shares held jointly), subject to a Claim or a demand being made by the tax and other relevant authorities. The details of the escrow mechanism related to the release of the Escrow Amount shall be set out in the Cash Escrow Agreement.*

16. Clause 6 of Escrow Agreement dated 15.5.2017 provides as under –

*Procedure for release of the Escrow Amount*

*6.1 The release of the Escrow Amount from the Escrow Account shall be as follows:*

*6.2 The Escrow Agent shall release the Escrow Amount of Rs.3,00,00,000/- (Rupees Three Crores only) to the Sellers, less the amounts towards the payment of the Claim (as defined in the SPA) and Demand (as set out hereunder in Article 5), if any, upon the completion of the Assessments (as defined in the SPA) as notified by Appointer in respect of the Company for the period prior to Closing Date, in the manner set out in Article 6.3 and 6.4 below.*

*6.3 If, on or before March 31, 2020 any (a) Claim is found to be valid and subsisting after following the process laid down hereinabove; and/ or (b) Demand is found to be valid and subsisting after following the process laid down hereinabove, the Purchaser shall be entitled to retain and/ or utilize such*



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*amount from the Escrow Amount to meet the Claim and/ or the Demand (hereinafter referred to as the "Claim Amount 1"). In such an event, the Escrow Amount shall be deducted with such amount required to meet the Claim Amount 1. Accordingly, on March 31, 2020, the Escrow Agent shall release from the Escrow Account the entire surplus amount after maintaining a balance of Rs. 1,00,00,000/- Including the Claim Amount 1 (to be simultaneously released to the Purchaser) in the Escrow Account (hereinafter referred to as the "Seller Release Amount 1") to the Sellers as per the details as set out in Article 6.7.1 herein below.*

*6.4 It has been agreed between the Parties, that the Purchaser shall retain Rs. 1,00,00,000/- (Rupees One Crore only) from the Escrow Amount for a further period of 3 (three) years to help fulfill any pending, (a) Claim is found to be valid and subsisting after following the process laid down hereinabove; and/ or (b) Demand is found to be valid and subsisting after following the process laid down hereinabove, if any (hereinafter referred to as the "Claim Amount 2"). On March 31, 2023, the entire balance amount available in the Escrow Account after deducting and releasing the Claim Amount 2 to the Purchaser (hereinafter referred to as the "Seller Release Amount 2") shall be released by the Escrow Agent to the Sellers as per the details as set out in Article 6.7.2 herein below.*

*6.5 In the event any payment is made by the Escrow Agent to the Purchaser or any other person towards Claim Amount 1 and/or Claim Amount 2, the Sellers shall be absolved and discharged from such Claim and/or Demand, as the case may be.*

*6.6 In the event of refund/s from the tax authorities and/or any other authority relating to the period prior to the Closing Date, the Purchaser and/or the Company shall forthwith deposit the same in the Escrow Account and the same shall be released by the Escrow Agent from the Escrow Account to each of the existing shareholders (the first holder, for shares held jointly) on a pro rata basis.*

*6.7 Release to the Sellers:*

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*6.7.1 The Appointers shall jointly intimate the Escrow Agent in writing, in the format provided at Annexure - V hereto, requiring the Escrow Agent to release the Seller Release Amount 1 on March 31, 2020 as per the details as set out in Annexure - V hereto.*

*6.7.2 The Appointers shall jointly intimate the Escrow Agent in writing, in the format provided at Annexure - VI hereto, requiring the Escrow Agent to release the Seller Release Amount 2 on March 31, 2023 as per the details as set out in Annexure - VI hereto.*

*6.8 Release to the Purchaser:*

*The Claim Amount 1 and/ or Claim Amount 2 or part thereof (as the case may be) shall be released to the Purchaser and/or the relevant tax authority and/ or third party and/ or the Company, upon the Purchaser submitting to the Escrow Agent a "Claim Amount Release Notice" in the format provided at Annexure - VII, i.e.*

*(i) The Purchaser submitting to the Escrow Agent (with a copy to the Sellers), a copy of the Demand Notice together with a response from the Sellers setting out the disputed and/or undisputed amount of the Demand, or*

*(ii) The Purchaser submitting to the Escrow Agent (with a copy to the Sellers), a copy of the Demand Notice, 10 (ten) days after the issuance of such Demand Notice, together with a statement in writing that no response has been received from the Sellers from the date of the Demand Notice until date.*

*(iii) The Purchaser submitting to the Escrow Agent (with a copy to the Sellers), a copy of the Claim Notice (as defined in the SPA) together with a response from the Sellers agreeing to the amount of the Claim as set out therein, or*

*(iv) The Purchaser submitting to the Escrow Agent (with a copy to the Sellers), a copy of the Claim Notice (as defined in the SPA), 10 (ten) days after the issuance of such Claim Notice, together with a statement in writing that no response has been received from the Sellers from the date of the Claim Notice until date.*

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*Notwithstanding anything contained elsewhere in this Agreement, upon receipt of a Claim Amount Release Notice, the Escrow Agent shall immediately act on such Instructions and release such payment in favour of the Purchaser and/ or third party and/ or relevant tax authority and/ or the Company, even if there are certain objections from the Sellers.*

*6.9 The release of any of the Seller Release Amount 1 and/ or Seller Release Amount 2 to the Sellers as set out in Articles 6.3 and 6.4 above, shall be made within 1 (one) Business Day from receipt of the written instruction from the Appointers with a notice to the Appointers in the format set out in Annexure - VIII.*

*6.10 The release of any of the portion of the Claim Amount 1 and/ or Claim Amount 2 or part thereof, as the case may be, to the Purchaser and/ or third party and/ or the relevant tax authority and/ or the Company as set out in Articles 6.3 and 6.4 above shall be made within 1 (one) Business Day from the receipt of the Claim Amount Release Notice with a notice to the Appointers in the format set out in Annexure - IX.*

*6.11 The Escrow Agent shall transfer the funds in the Escrow Account upon receipt of written instructions as per this Agreement and shall not be liable to verify whether such amounts are due to be paid to the Purchaser or Sellers.*

17. The reliance placed by the Union on clause 7.1.1© of the Share Purchase Agreement providing for the Purchaser to cause Escrow Agent to release the Escrow Amount is not pertinent as the Respondent no. 7, the Applicant herein and the Respondent Yes bank had entered into an Escrow Agreement dated 15.5.2017 which shall be binding on all the parties in so far as release of amount from the Escrow Account is concerned. On a bare reading of provisions of clause 6 reproduced above, it is clear that it is Purchaser and Seller jointly are to intimate the Respondent Yes Bank for release of respective amounts to the Purchaser towards outstanding tax claims and the balance to the Seller. We have no hesitation to say that the Respondent Yes Bank holds this money in

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trust for the Purchaser in so far as amount of tax dues outstanding for the specified period against Rhythm House Private Limited are concerned, and in trust for the Seller in so far as the balance remaining thereafter is concerned. Accordingly, the Order dated 23.02.2018 does not extend to the Escrow Account and the Liquidator of Respondent No. 7 is directed to make claim for the outstanding tax dues till date for the period upto the closing date of transaction in accordance with clause 6 of Escrow Agreement within 15 days, and the Respondent Yes bank shall release the said amount to the credit of Income Tax Department on account of Rhythm House Private Limited. The Liquidator of Respondent no. 7 shall also jointly with the applicant intimate the Respondent Yes Bank within 7 days after payment of tax dues as stated above for release of money in favour of Applicant in accordance with clause 6 of Escrow Agreement.

18. In view of the foregoing, the **MA (CA) 1393/2019** is **allowed** and **disposed of** accordingly.

Sd/-  
**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

Sd/-  
**JUSTICE VIRENDRASINGH BISHT**  
**MEMBER (JUDICIAL)**