

**THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI**

Company Application No. 44/2023

IN

Company Petition No – 879/59/ND/2019

Under Rule 11 of NCLT Rules, 2016.

In the matter of:

M/S AMREX MARKETING PRIVATE LIMITED.

.... ORIGINAL PETITIONER/ NON-
APPLICANT NO.1.

VERSUS

M/S UNIVERSAL CONVEYOR BELTINGS LIMITED AND
ORS.

..... RESPONDENTS/ APPLICANT.

CORAM:

SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER
(TECHNICAL)**

For the Applicant: Adv. Niharika Ahluwalia

For the Respondent Mr. Goutham Shivshankar and Mr. Sharanya Sinha, Ms. Ruchita Geol Advocates for Respondent-6 (Vivro Financial Services Private Limited). Ms Pooja Mehra, Ms

CA. 44/2023

IN

Company Petition No.– 879/59/ND/2019

Vanita Bhargava and Ms Raddhika Khanna Tandon, Advocates
For Respondent 1-4. Mr. Sameer Sagar (Adv) For Respondent 8.

ORDER

PER- P.S.N. PRASAD, MEMBER (JUDICIAL) &

RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Pronounced on: 09.02.2024

1. The present application has been filed by Respondent for bringing on record the valuation reports in compliance of the order dated 01.07.2022, as upheld by the Hon'ble NCLAT in its order dated 15.12.2022.

2. The applicant in the present application has prayed for the following reliefs: -

a. Pass orders allowing the present application and dismiss the present petition with exemplary cost

b. Pass orders taking on record the valuation reports submitted by the two IBBI registered valuers; and/or

c. Pass any other orders or directions as may be deemed fit and appropriate in the facts and circumstance of the present matter

3. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows:

I. That the Applicant has appointed two IBBI registered and approved valuers to obtain the valuation of the equity shares of Respondent No. 1 company for the financial year ending 31st March 2018. Copies of the valuation reports were annexed with this application.

II. It is submitted that the Petitioner in the petition for the reasons best known to it, has averred that the Fair Price of INR 18.42 per share as determined by the Respondent No. 7 cannot be correct as the value per equity share of the Respondent No. 1 company should be higher. However, the valuation of the equity shares as on 31 March 2018 (the year in which Exit Offer was issued) conducted by the two IBBI registered independent valuers in compliance of the Order dated 01 July 2022 passed by this Hon'ble Tribunal reflects as follows:

A. Report issued by Devang Subodh Thakkar, IBBI Registered Valuer (IBBI/RV/03/2022/14881)

Based on our analysis, as described in the valuation report, and subject to the assumptions presented therein, in our opinion, the estimated Fair Value of Company M/s. Universal Conveyor Beltings Limited as on 31st March, 2018 is INR 18.42/- (Rupees Eighteen and Paise Forty-Two only) per Equity share is justified.”

B. Report issued by Rajneesh Sharma, IBBI Registered Valuer (IBBI/RV/03/2021/14143)

“Based on detailed valuation & analysis, the value of one equity shares of Universal Conveyor Beltings Limited as on 31st March 2018 is INR 18.42/- (Please refer to exhibits for detailed analysis)”

III. In light of the above, the malafide intention of the Petitioner is writ large as the Petitioner is seeking to arm twist the Respondent No. 1 company and its directors to extract monies which the Respondents are not liable to pay to the Petitioner.

IV. Accordingly, in view of the valuation reports, it is humbly submitted before this Hon’ble Tribunal that the captioned petition ought to be dismissed, with exemplary costs as the same has been filed to waste the judicial time of this Hon’ble Court and to fulfil personal vendetta

V. In view of the above, the Respondent No. 1 humbly seeks that the valuation reports be taken on record and the captioned petition be dismissed with exemplary costs.

4. Submissions of the Respondent (Original Petitioner) are as under: -

I. The present application has been filed by Respondent No. 1 bringing on record the valuation reports in compliance of the order dated 01.07.2022, as upheld by the Hon'ble NCLAT in its order dated 15.12.2022.

II. That this Tribunal vide order dated 01.07.2022, directed Respondent No.1 to appoint an Independent Valuer for valuation of its shares of Respondent No. 1 who will submit his report within a period of 3 months.

III. The order of this Tribunal was challenged by the Respondents before the Hon'ble Appellate Tribunal wherein the Hon'ble Appellate Tribunal vide order dated 15.12.2022 dismissed the appeal and affirmed the order of this Tribunal. The Hon'ble NCLAT while dismissing the said appeal observed that *"it is an incumbent duty to the Appellant company (Respondent*

herein) to disclose all material information to its shareholders disclosing thereon even the justification for the existing price offered by the Promoters which also seems to be missing in this case.”

IV. The Petitioner shall put forward the objections in the subsequent Paras, which would demonstrate the deliberate flouting of the orders of this Tribunal, misrepresentation, and illegal book-keeping. The Respondent No.1, are opposing the exercise of valuation and not permitting a complete accounting, and the affairs of the Company therefore ought to be investigated in terms of Section 213 of the Companies Act, 2013. The subsequent paras also go on to show that the present case is also a fit case for conducting forensic audit in the books and accounts of the Respondent No. 1 Company.

V. This Hon'ble Tribunal has ample powers to examine the valuation reports as was held by the Hon'ble Supreme Court in *G.L. Sultania and Anr. vs. Securities and Exchange Board of India and Ors. reported in (2007) 5 SCC 133*, wherein the Apex Court held that Courts can

interfere in valuation reports on the following grounds:

(a) well-accepted principles of valuation has been departed from without any reason; (b) approach adopted is patently erroneous; (c) relevant factors have not been considered by the valuer; (d) valuation was made on a fundamentally erroneous basis or that the valuer adopted a demonstrably wrong approach; and (e) fundamental error going to the root of the matter.

VI. That the Respondent No.1 appointed two valuers who have submitted their report to the Respondent No.1. Both the valuers have appointed the exact same methodology for conducting the valuation and come to the precise figure out Rs.18.42/- to be the exact value of the shares. The valuers have acted solely on the instructions of the management. It is the case of the Petitioner, that a bare look at the reports would show that the mathematical precision is unbelievable. Further, as is the normal practice of the industry, no corresponding valuation method is used to demonstrate that the amount of Rs.18.42/- is the correct and most equitable valuation for the minority shareholders.

VII. That this Tribunal specifically directed that fresh valuation was to consider the under-valued transactions or bogus expenses, if any, committed by the Respondent No. 1. However, both the valuers carried out a mere calculation exercise, resulting in the copy and paste of the books of accounts of Respondent No.1 in their valuation reports. Therefore, the said reports cannot by any stretch of imagination be called as valuation reports, as the same grossly failed to consider the basic tenets which compelled this Tribunal to direct for a fresh valuation of shares of Respondent No. 1 Company

VIII. The valuation exercise undertaken by both the valuers was nothing more than imitating the books of accounts of the Respondent No.1, without any independent analysis or objective satisfaction of amounts, cost and value of the assets or the mandate of the order dated 01.07.2022.

IX. It is submitted that both the valuers have relied upon the assumption towards future business events,

however, the valuation was to be undertaken on the basis of the 2017-18.

X. Therefore, the said reports have been prepared without taking into consideration specific directions passed by this Hon'ble Tribunal and the directions of the Hon'ble Appellate Tribunal.

XI. In the aforesaid facts and circumstances, it is submitted that the aforesaid valuation reports filed by the Respondents are merely an eye-wash. The said valuation reports are simply a measure to circumvent the process and flout the categorical instructions of this Hon'ble Tribunal as well as of the Hon'ble NCLAT. The aim to seek valuation of shares was to provide justice and fair valuation of shares to the Petitioner and other minority shareholders of the Respondent company, however, the said reports are nothing but an exercise in futility, as the aforesaid valuers acted on the aid and advice of the Respondent Company. Therefore, the only way by which the fair valuation of shares could be achieved is by directing investigation/ forensic audit into the affairs of the Company, as investigation is the

solitary option left with the Petitioner in order to attain an Exit Offer at a fair valuation.

5. We have heard the Ld. Counsels for both the parties at length and have gone through the documents on record filed by the both the parties.

6. The applicant i.e. M/s Universal Conveyor Beltings Ltd. prayed to take on record the valuation reports in compliance of the order dated 01.07.2022 and also to dismiss the present petition.

7. From the order dated 06.11.2023, it is observed that arguments in the main matter have not yet concluded, and the main petition has not been reserved. Relevant extract of order dated 06.11.2023 is reproduced as under: -

The main matter i.e. CP-IB-879/59/ND/2019 which is a Petition under Section 59 of the Companies Act, 2013 may be heard by the Regular Bench as arguments in the main matter have not yet commenced.

8. Therefore, it is prudent to provide an opportunity to both the parties, before taking a decision to allow or dismiss the present application. Further, without affording the opportunity, any action is not justified. Accordingly, we allow

the applicant's prayer to take on record the valuation report submitted by the applicant.

9. The Original Petitioner i.e., M/s Amrex Marketing Private Limited is directed to file their objections if any, by way of an additional reply/affidavit in response to the valuation report within 7 days from the date of pronouncement of this order in the main company petition.

10. CA No 44/2023 stands disposed of in terms of the above. Let copy of the order be served to the parties concerned.

11. Since the arguments in the main matter have not yet commenced hence, list the main Company Petition for arguments before the regular bench on 22.02.2024.

SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-
(P.S.N PRASAD)
MEMBER (JUDICIAL)