

News

Not having the common sense to provide notice? The NCLAT's ex-parte order in the Matrix-Tianish merger is criticized by the Supreme Court.



On December 15, the Court listed the case for additional review and went forward to order status quo.

In *Ras Al Khaimah Investment Authority vs. Matrix Pharmacorp*, the Supreme Court on Wednesday ordered the National Company Law Appellate Tribunal (NCLAT) in Chennai to lift restrictions on the merger of Matrix Pharmacorp Pvt Ltd and Tianish Laboratories Pvt Ltd without notifying the parties involved.

The fact that the order was issued ex-parte without providing the impacted parties with a chance to reply did not impress a bench of Justices Surya Kant and Joymalya Bagchi.

Does this NCLAT lack the common sense to send out a notification and then wait for a response? The Court noted, **"Passing a 30-page order ex-parte."**

The Court observed that the NCLAT was involved in two related actions: one pertaining to the merging of Tianish Laboratories Pvt Ltd into Matrix Pharmacorp Pvt Ltd, and the other involving intervention petitions connected to execution procedures and contempt of court before the Telangana High Court.

In one instance, the merger was allowed without any prior warning, whereas in the other, the parties were given a chance to be heard.

"What will you do if the NCLT order is obviously unlawful? The Bench indicated that the ruling had been tainted by the procedural error by asking, "Will you at least issue a notice?"

As a result, on December 15, it listed the case for additional consideration and ordered status quo.

Businessman Nimmagadda Prasad of Hyderabad and others were held accountable for damages sought by the Ras Al Khaimah Investment Authority (RAKIA), a sovereign investment arm of the Emirate of Ras Al Khaimah, in a February 2, 2022, decree of the Ras Al Khaimah Civil Major Circuit Court in the United Arab Emirates.

The conflict stems from RAKIA's investments in the RAKIA Free Zone Project in Andhra Pradesh (now Telangana) more than ten years ago, which were made in collaboration with Prasad's companies, notably IQuest Enterprises Pvt Ltd and Matrix Enport Holdings.

Later, RAKIA claimed that Prasad had deceived it into making significant investments and diverted funds, causing losses of more than USD 300 million.

In order to enforce the foreign decree against Prasad and related organizations, including Matrix group enterprises, RAKIA started execution proceedings before a Hyderabad commercial court after the UAE ruling.

The Telangana High Court received petitions for contempt of court in connection with

these proceedings, claiming that the status quo directives pertaining to asset alienation had been broken.

Tianish Laboratories Pvt Ltd and Matrix Pharmacorp Pvt Ltd (previously Matrix Pharma Pvt Ltd) jointly petitioned the National Company Law Tribunal in Hyderabad for permission to amalgamate under Section 230 of the Companies Act, 2013 while these enforcement and contempt proceedings were ongoing.

The NCLT approved the merger on March 10 of this year, but it placed two important conditions on the transferee company: it must obtain permission before establishing any charges and it cannot dispose or encumber any of its assets without the Telangana High Court's prior consent.

Submissions mentioning RAKIA's ongoing enforcement efforts and the High Court's status quo rulings in the contempt proceedings served as the impetus for these directives.

On appeal from Matrix and Tianish, however, these limitations were lifted by the NCLAT Chennai Bench, which was made up of Justice Sharad Kumar Sharma (Member Judicial) and Jatindranath Swain (Member Technical).

The NCLAT ruled that the corporations could not be bound by the orders since they were not parties to the execution or contempt cases brought against RAKIA. It noted that other parties cannot be impacted by contempt proceedings, which are in personam.

According to the NCLAT's reasoning, a merger is only a concern of the transferor and transferee corporations under Section 230, and third parties cannot complain unless they are directly impacted by the plan.

RAKIA appealed the NCLAT ruling to the Supreme Court. It argued that a combination that could enable the transfer or dissipation of assets subject to execution in India had been essentially approved by the Tribunal.

In reality, these businesses were a part of a corporate network tied to Prasad's family, hence RAKIA contended that the NCLAT erred in categorizing them as unrelated third parties.

At the hearing, RAKIA's attorney warned that the merging structure could make it difficult to enforce the international ruling and urged the Bench to reinstate restrictions on asset alienation.

Senior Advocates Mukul Rohatgi and Niranjan Reddy, who represented the respondent companies, insisted that Nimmagadda Prasad does not own any shares in Matrix Pharmacorp and that the merger of Matrix and Tianish Laboratories was a purely commercial reorganization that had nothing to do with RAKIA's enforcement actions.

They relied on the NCLAT's conclusions that the Tribunal's involvement under the Companies Act was restricted to guaranteeing procedural compliance and that the appellants were neither parties to the foreign order nor to the contempt.

After weighing the arguments, the court decided to maintain the status quo.

The Supreme Court essentially reinstated the asset limits that were first put in place by the NCLT and then taken away by the NCLAT with its ruling on Wednesday. The directive to preserve the status quo applies to Nimmagadda Prasad, his daughter Swathi Gunupati Reddy, and his son-in-law Venkata Pranav Reddy Gunupati's personal assets in addition to the business assets of Matrix Pharmacorp and Tianish Laboratories.

The Court is anticipated to consider whether the removal of limits by the NCLAT compromised the implementation of a legitimate foreign decree that is still pending in Indian courts at the next hearing, which is scheduled for December 15.

Senior Advocates Abhishek Manu Singhvi and K Vivek Reddy represented RAKIA, along with advocates Tanmay Gupta, Siddharth Seem, Rishab Gupta, Pival K Peddireddy, and Rishab Kapur.

Senior lawyers Mukul Rohatgi, Niranjan Reddy, and Narendra Hooda represented Matrix Pharmacorp and Tianish Laboratories, while Cyril Amarchand Mangaldas's lawyers Saloni Kapadia, Aditi Thakur, Aishwarya Gupta, Indranil Deshmukh, Raunak Dhillon, Jeezan Riyaz, Shubh Sahai, and Yuvraj Nandal defended the latter.