



Newsflash:
**Ruling pronounced by National Company Law
Tribunal in case of Panasonic Group – GAAR
not to interfere with the rights of the taxpayers
to arrange its affairs tax efficiently**



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Ruling pronounced by National Company Law Tribunal in case of Panasonic Group – GAAR not to interfere with the rights of the taxpayers to arrange its affairs tax efficiently

For Circulation

15 June 2022

1. Background

- 1.1 The Chandigarh Bench of National Company Law Tribunal ('NCLT') approved the scheme of arrangement ('Scheme') between Panasonic Group Companies under section 230-232 of the Companies Act, 2013.
- 1.2 The Scheme provided for the amalgamation of Panasonic India Private Limited ('Transferor Company') into Panasonic Life Solutions India Private Limited ('Transferee Company'). The commercial rationale, as provided in the Scheme, inter-alia, included reduction in operating and marketing cost, economies in procurement, increased value to customers, offering holistic customer solution, besides enhancing the shareholders' value.
- 1.3 While Registrar of Companies, Competition Commission of India and Official Liquidator had no objection to the Scheme, Income-tax Department ('ITD') had raised objections.

2. Objections raised by ITD

- 2.1 The objections raised by ITD, inter-alia, included that:
 - (a) the Transferor Company had accumulated losses of around ₹ 1,437 crores for Assessment Year ('AY') 2020-21 and therefore, the main objective of the Scheme was to enable Transferee Company to take benefit of the accumulated losses and set them off against the income of the Transferee Company in the subsequent years. Accordingly, if the Scheme were to be approved, it would result in substantial loss of around ₹ 359 crores to the ITD;
 - (b) there would be a loss to ITD on account of possible non-payment of capital gains tax by the shareholders of the Transferor Company upon sale of shares of the Transferee Company in future, as these shareholders being resident of Singapore and Netherlands would be entitled to claim the benefits under India - Singapore and India - Netherlands tax treaties; and
 - (c) by receiving 25,91,034 shares of the Transferee Company, the shareholders of the Transferor Company appear to be benefited despite having the negative net worth.
- 2.2 ITD placed reliance on several precedents including order of NCLT, in case of Gabs Investments Private Limited¹, and Wiki Kids Ltd and Ors², to allege that the Scheme was nothing but a vehicle to transfer accumulated losses from transferor company to transferee company, which would attract provisions of General Anti Avoidance Rules ('GAAR').

¹ CSP No. 995 of 2017 and CSP No. 99 of 2017

² CA (AT) No 285 of 2017

3. Findings of NCLT

- 3.1 The NCLT rejected the contentions of ITD and sanctioned the Scheme. While sanctioning the Scheme, NCLT distinguished between the precedents relied upon by the ITD on the grounds that those cases involved simplification of shareholding structure and reduction of shareholding tiers to streamline the shareholding of the promoter group. The Scheme in the present case had provided for a commercial rationale leading to operational synergies between the Transferor Company and Transferee Company. The NCLT also noted that the Scheme was for the business consolidation, and the tax arrangement was merely a consequential fallout of the implementation of the Scheme.
- 3.2 The NCLT relied upon the judgement of the Hon'ble Supreme Court in Vodafone International Holdings B.V.³, where the Court had held that so long as the sole motive of the transaction was not to avoid tax, which otherwise does not lack business / commercial substance, the same cannot be interfered with. The NCLT also relied on the judgement of the High Court of Delhi in the case of EKL Appliances Ltd⁴, where the Court had held that the tax administrator should not disregard and / or restructure legitimate business transactions. Reliance was also placed on the order of Delhi bench of NCLT in case of NIIT Limited⁵, where the plea of GAAR was rejected by the NCLT.
- 3.3 It was also noted that the valuation report and share exchange report had been provided to ITD but they failed to point out any adverse issues relating to valuation of shares.
- 3.4 As regards the allegation of the ITD that the Scheme was nothing but a vehicle to transfer accumulated losses from Transferor Company to Transferee Company, the NCLT noted that Section 72A of the Income-tax Act, 1961 ('Act') and Section 79 of the Act read with applicable rules, provided for a framework regarding carrying forward and set off of losses and therefore, were sufficient to protect the interests of revenue. Even if a proposal of a Scheme of Amalgamation had been approved by the NCLT, no provision of such a Scheme can override the existing provisions of the Act. Sanctioning of the Scheme by the NCLT would not bar the ITD to analyse the Scheme in terms of the provisions of the Act.
- 3.5 As regard the invocation of the provisions of GAAR, the NCLT noted that the ITD would be at liberty to invoke the GAAR provisions in accordance with the procedure laid down in the Act during assessment / reassessment proceedings, if it would be believed that the transaction was an impermissible avoidance arrangement.

4. Our Comments

- 4.1 The order of NCLT is a welcome step and an affirmation that a taxpayer has every right to arrange its affairs in a tax efficient manner provided that the sole objective behind the transaction is not to obtain a tax benefit, though consequential benefit may arise.
- 4.2 The consequential tax benefit should not be considered as a sole determinative factor to reject a Scheme if it is demonstrated that there is a bonafide and commercial rationale for implementing a Scheme.
- 4.3 The order also affirms the proposition that a Scheme of arrangement should not be rejected unless it is demonstrated that there is some illegality or fraud involved in the Scheme.

³ 341 ITR 1

⁴ 345 ITR 241

⁵ CAA – 385 (ND)/2017

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This Newsflash summarizes on Ruling pronounced by National Company Law Tribunal in case of Panasonic Group which concluded that GAAR not to interfere with the rights of the taxpayers to arrange its affairs tax efficiently. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said judgement and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

15 June 2022

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