

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No.55 of 2025

In the matter of:

Dhani Services Ltd. & Ors.

...Appellants

Vs.

...Respondent

Present:

Appellant:

Mrs. Munisha Gandhi, Sr. Advocate with Mr. Vaibhav Sharma, Ms. Salina Chalana and Ms. Vedika Gandhi, Advocates

Respondent:

O R D E R
(Hybrid Mode)

28.2.2025 - I.A. 1393 of 2025

This is an application seeking exemption from filing all annexures attached and from filing free of cost copy as certified copy. The application is allowed subject to filing of certified copy within two weeks.

Main Appeal

2. This Appeal is against an impugned Order dated 29th January, 2025. The Appellant is aggrieved of the direction given in sub-para – (i) of para 17 of the impugned Order which says *the quorum of the meeting of the equity shareholders shall be 51% in number of the equity shareholders or 51% in value of the equity share capital of the respective companies as on the date of this Order*. Further it directs *“The proxy(ies) will not be counted for the calculation of the quorum for the*

above meetings of the Equity Shareholders. In case, the quorum is not present within half an hour from the time appointed for holding the meeting of Equity Shareholders, then the Chairman shall adjourn the meeting to the same day in the next week at the same time and place. The intimation about the adjourned meeting should be given to each member, as the case may be, through e-mail or by any other mode. If the quorum is still not present on such adjourned date, then the Chairman may furnish a report to that effect to this Tribunal within seven days thereafter”.

3. It is the submission of the learned Senior Counsel for the Appellant the shareholders in Applicant Company No.1 are 1,83,000 approximately; whereas shareholders of Applicant Company No.2 are 75,000 approximately; and in Company No.20 shareholders are 64,000 approximately. It is submitted such direction is not only against the settled law as also it is not physically possible to arrange the meeting of such large number of shareholders. Heard.

4. Section 103 of the Companies Act is as under:-

“103. Quorum for meetings.—(1) *Unless the articles of the company provide for a larger number,—*

(a) in case of a public company,—

(i) five members personally present if the number of members as on the date of meeting is not more than one thousand;

(ii) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;

(iii) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;

(b) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

(2) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—

(a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

(3) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.”

5. Section 103 says unless the Articles of the company provide for a larger number, in the case of a public company, 30 members personally be present if the number of members as on the date of meeting exceeds five thousand. Further Section 105 of the Companies Act, allows proxies and so does Sub-Section (6) of Section 230 as under:-

*“(6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, **voting in person or by proxy** or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.”*

6. Further, in the matter of scheme of demerger of GHCL Ltd. with M/s. GHCL Textile Ltd. and the respective shareholders - CA(CAA)40/AHM/2022, the following was held:

“26. The quorum for the aforesaid meetings shall be as prescribed under Section 103 of the Companies Act, 2013 and would include Shareholders and Creditors present through video conferencing and/or other audio-visual means. In case the required quorum as stated above is not present at the commencement of the meeting, the meeting shall be adjourned by 30

(thirty) minutes and thereafter the persons present shall be deemed to constitute the quorum.”

7. Further, in “Minda I Connect Pvt. Ltd. vs. Minda Industries Ltd.” – Company Appeal (AT) No.134 of 2021 this Tribunal held as under:-

“8. Having regard to the fact that the Scheme of Amalgamation is already approved with most of the stakeholders assenting, with Equity Shareholders representing 100% in number and 100% in value of Appellant 1/Company who had given their consent on affidavit; the Secured Creditors of Appellant 1/Company representing 100% in number and 100% in value have given their consent and no objection to the Scheme in Affidavit, the Appellant Companies had sought for direction to dispense with the meeting before the NCLT. The direction in the Impugned Order with respect to fixing of the Quorum by 10% of Shareholders i.e. 440 and minimum of 50 Unsecured Creditors is hereby set aside. The meetings may be conducted within 8 weeks from the date of this Order.”

8. Thus the learned Senior Counsel for the Appellant argues the learned NCLT has no jurisdiction to fix the number of shareholders to form a quorum as has been held in above two Judgements. The Appellant has already given an undertaking to the learned NCLT to convene the meeting as per Section 103 of the Companies Act.

9. In the circumstances, the direction contained in sub-para (i) of para 17 of the impugned Order needs to be set aside and we hold the quorum for the aforesaid meeting of shareholders shall be as prescribed under Section 103 of the Companies Act and will include the shareholders present through video conferencing and other audio video means. In case the required quorum as stated above is not present, the meeting shall be adjourned per Section 103 of the Act. The voters shall also be kept guided by MCA General Circular No.14/2020 dated 8th April, 2020.

9. With these observations, the directions contained in sub-para (i) of Para 17 of the impugned order is set aside. Appeal is disposed of. Pending applications, if any, are also disposed of.

[Justice Yogesh Khanna]
Member (Judicial)

[Mr. Ajai Das Mehrotra]
Member (Technical)

rs/md