

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) No. 178 of 2019**

[Arising out of order dated 7<sup>th</sup> June, 2019 passed by NCLT, Jaipur Bench, Rajasthan, in CA No. 01/230-232/JPR/2019]

**IN THE MATTER OF:**

- 1. Alovera Tradelink Pvt. Limited**
- 2. Destiny Exim Pvt. Limited**
- 3. Dove Creations Pvt. Limited,**
- 4. Duggal Tex. Pvt. Limited**
- 5. Archid Products Pvt. Limited**
- 6. Chunri Prints Pvt. Limited**
- 7. Kolaveri Textile Pvt. Limited**
- 8. Paneri Textiles Pvt. Limited**
- 9. Vesta Tex Pvt. Limited**
- 10. Seasons Agro Chem India Pvt. Limited .. Appellants  
/Transferor Companies**

**Versus**

**Ostwal Physchem (India) Limited .. Respondent  
/Transferee Company**

**Present:**

**For Appellants: Mr. Ajatshatru S. Mina and Ms. Aishwarya,  
Advocates**

**J U D G M E N T**

**KANTHI NARAHARI, MEMBER(TECHNICAL)**

The present appeal filed against part of the order of the National Company Law Tribunal, Jaipur Bench, Rajasthan (hereinafter referred to as "**Tribunal**") dated 7<sup>th</sup> June, 2019 passed in CA No. 01/230-232/JPR/2019 whereby the Tribunal directed the Applicant

Companies viz., Transferor and Transferee Companies to convene meeting of the equity shareholders of the Transferor and Transferee Companies as specified in paragraph- 11 of the impugned order dated 7<sup>th</sup> June, 2019 as under:

11. *Directions for Meetings to be held are issued as under:-*

*Meeting of the equity shareholder of Transferor and Transferee companies shall be held as specified below:*

- (a) Meeting of the equity shareholder of Transferor No. 1 company at 10:00 A.M. on 09.08.2019.*
- (b) Meeting of the equity shareholder of Transferor No. 2 company at 2 at 11:00 A.M. on 09.08.2019.*
- (c) Meeting of the equity shareholder of Transferor No. 3 company at 12 noon on 09.08.2019*
- (d) Meeting of the equity shareholder of Transferor No. 4 company at 2:00 P.M. on 09.08.2019.*
- (e) Meeting of the equity shareholder of Transferor No. 5 company at 3:00 P.M. on 09.08.2019.*
- (f) Meeting of the equity shareholder of Transferor No. 6 company at 4:00 P.M on 09.08.2019*
- (g) Meeting of the equity shareholder of Transferor No. 7 company at 10:00 A.M on 10.08.2019.*

- (h) Meeting of the equity shareholder of Transferor  
No. 8 company at 11:00 A.M on 10.08.2019.*
- (i) Meeting of the equity shareholder of Transferor  
No. 9 company at 12 noon on 10.08.2019.*
- (j) Meeting of the equity shareholder of Transferor  
No. 10 company at 2:00 P.M on 10.08.2019.*
- (k) Meeting of the equity shareholder of Transferee  
Company at 3:00 P.M. on 10.08.2019.*

2. The brief facts are that the Appellants filed a joint application under Section 230-232 of the Companies Act, 2013 seeking approval of the Tribunal for amalgamation of Transferor Companies with the Transferee Company as contemplated under the Companies Act, 2013 (for short Act) and NCLT Rules, 2016. The reason for the said arrangement was to facilitate the administrative convenience, enhance the net worth and value creation of the Transferee Company.

3. Learned Counsel for the Appellants submitted that the application came up for hearing on 03.01.2019 before the Tribunal and the Tribunal directed the Appellants to file Memorandum of Association (**'MOA'**), Articles of Association (**'AOA'**) and Consent Letters of shareholders of the Transferor and Transferee Companies. In compliance thereof the Appellants filed the said documents vide diary no. 145/2019 on 24.01.2019. The Appellants also filed Consent Letters of the Creditors on 28.02.2019 vide diary no. 354/2019.

4. While matter stood thus, the grievance of the Appellants is that the Tribunal did not consider the Consent Letters of the shareholders filed vide diary no. 145/2019. However, the Tribunal allowed the Consent Letters of the Secured Creditors which was filed on 28.02.2019 and in considering the same, the Tribunal dispensed with the convening of meeting of Creditors (Secured and Unsecured).

5. From the perusal of the impugned order the Tribunal directed the Appellants i.e., Transferor and Transferee Companies to convene the meetings of equity shareholders on the ground “non-filing” of the Consent Letters given by the shareholders by way of affidavit before the Tribunal. The relevant paragraph 10 of the impugned order is as follows:

*“10. Taking into consideration the application filed jointly by the Applicant Companies and the documents filed therewith, this Tribunal propose to issue the following directions with respect to calling, convening and holding of the meetings of the Equity Shareholders, Secured and Unsecured Creditors or dispensing with the same as well as issue of notices including by way of paper publication as follows:-*

**(A) In relation to Transferor Company:**

*i) With respect to Equity Shareholders:*

*It is stated that an affidavit of directors of respective transferor companies on behalf of all the equity shareholders are filed. It is seen that applicant has failed to file individual consent*

*affidavit of all the Equity shareholders of Transferor Companies. Thereby this Tribunal is of the view that a meeting of equity shareholders of the Transferor Companies is required to be held.*

*ii) With respect to Secured Creditors*

*Since it is represented by the Transferor Companies that there is only one Secured Creditor in the Transferor No. 10 Company whose consent affidavit have been obtained and is placed on record. It is also represented that Transferor No. 1-9 companies has no secured Creditor. Therefore, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.*

*(iii) With respect to Unsecured Creditors:*

*Since it is represented by the Transferor Companies that there are no unsecured Creditor in the Transferor No. 1-9 Companies, therefore, their meetings are not required to be called for and in relation to Transferor No. 10 Company there are 17 unsecured creditors, it is seen that consent affidavits of 6 unsecured creditors (having 96.83% in value terms) are available as filed by the Applicant Company. Therefore, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.*

**(B) In relation to Transferee Company:**

- (i) *With respect to Equity Shareholders:*  
*In relation to transferee company it is stated and submitted by learned counsel that an Affidavit of Mr. Parmod Kumar Jaketia and Rajendra Prasad Ostwal Director of Transferee Company on behalf of all the equity shareholder (except one Rajasthan State Mines and Minerals Ltd having 1.36% of holding) stating that consent and no objection of all the equity shareholders have been obtained. It is seen that applicant has failed to file individual consent affidavit of all the Equity shareholders. Therefore, this Tribunal is of the view that a meeting of equity shareholders of the Transferee Company is required to be held.*
- (ii) *With respect to Secured Creditor:*  
*Since it is represented by the Transferee Company that there are two Secured Creditor in the Transferee Company, whose consent has been obtained and is placed on record, therefore, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.*
- (iii) *With respect to Unsecured Creditors:*  
*Since it is represented by the Transferee Company that there are 147 Unsecured Creditors in the Company but it is seen that consent affidavit of 60 unsecured creditors (having 91.24% in value terms) are filed by the company and are placed on record. Therefore, the necessity of convening and holding a*

*meeting to consider and if thought fit, the approval of the scheme is dispensed with.*

6. The Appellants submit that the individual Consent Letters given by the shareholders (Transferor and Transferee Companies) have already been filed vide diary No. 145/2019, however, the Tribunal failed to consider the documents (Consent Letters of the shareholders).

7. Be that as it may, the present appeal has been filed by the Appellants on 03.07.2019 along with separate Paper Book vide Dy. No. 12856 dt. 03.07.2019 containing the Consent Letters of the individual shareholders of Transferor and Transferee Companies wherefrom it is evident that the Appellants filed the Consent Letters of more than 90% equity shareholders of the Transferor and Transferee Companies. In the said Consent Letters, the shareholders have addressed to the Board of Directors of their respective companies by consenting their 'no objection' for amalgamation and merger of Transferor companies with the Transferee Company namely Ostwal Phoschem(India) Ltd., reflecting their individual equity shares in their respective companies.

8. Further from the perusal of the Consent Letters of the Transferee Company, the shareholders have given their 'no objection' and consent for merger of the Transferor Companies with the Transferee Company.

9. From the Consent Letters, it is un-equivocal that the equity shareholders of the Transferor and the Transferee Companies do not have any objection to the Scheme of Arrangement by way

amalgamation of the Transferor Companies with the Transferee Company.

10. The only ground taken by the Tribunal in directing the Transferor and the Transferee Companies to convene the meeting of shareholders is that the shareholders of the Transferor and Transferee Companies failed to file individual Consent Affidavits of all the equity shareholders. The shareholders of the Transferor and Transferee Companies filed their consent affidavits of more than 90% of the shareholders by expressing their 'no objection' for amalgamation/merger of the Transferor Companies with the Transferee Company.

11. The Tribunal had already dispensed with convening and holding meeting of secured and unsecured creditors taking into consideration the Consent Affidavits filed by them expressing their 'no objection' for amalgamation of Transferor Companies with the Transferee Company.

12. In view of the aforesaid reasons, we are of the considered view that the Appellant (Transferor and Transferee) Companies have complied with the requirements to consider and approve the Scheme of amalgamation and having satisfied with the documents filed by the Appellants, we dispense with the convening of meetings of the equity shareholders of the Transferor and Transferee Companies as directed by the Tribunal in the impugned order dated 07.06.2019.



13. Accordingly, the impugned order of the Tribunal dated 07.06.2019 whereby it directed to the Transferor and Transferee Companies to convene and hold meeting of the equity shareholders is hereby set aside and to that extent the order is modified as directed supra.

14. With the above direction, the appeal is allowed and the Tribunal is directed to consider CA No. 01/230-232/JPR/2019 and dispose of the same expeditiously.

[Justice S.J. Mukhopadhaya]  
Chairperson

(Kanthi Narahari)  
Member(Technical)

New Delhi  
6<sup>th</sup> August, 2019

AKC