

**(2019) 08 NCLT CK 0043**

**In the National Company Law Appellate Tribunal, Principal Bench, New Delhi**

**Case No :** Company Petition No. CA (CAA) 102 (PB) Of 2019

Alfa Technobuild Private Limited And Ors.

APPELLANT

Vs

Eros Agro & Farms Private Limited

RESPONDENT

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**Date of Decision :** 09-08-2019

**Acts Referred:**

Companies Act, 2013 — Section 133, 230, 230(9), 231, 232

**Citation :** (2019) 08 NCLT CK 0043

**Hon'ble Judges :** M.M. Kumar, CJ; Santanu Kumar Mohapatra, Member (Technical)

**Bench :** Division Bench

**Advocate :** Dinesh Kumar Gupta

**Final Decision :** Allowed

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**Judgement**

Santanu Kumar Mohapatra, Member (T)

1. This application has been jointly filed by the Applicant Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, duly supported by separate affidavits of the Applicant Companies, for seeking appropriate orders/directions for dispensing with the respective meetings of shareholders, secured creditors and unsecured creditors of all the companies, in connection with the proposed Scheme of Amalgamation contemplated between the applicant companies. The Scheme of Amalgamation (hereinafter referred to as the "Scheme") has been placed on record along with the joint application.

2. It is represented that the registered offices of all the applicant companies are situated in New Delhi and therefore the subject matter of this joint application falls within the Jurisdiction of this Bench.

3. M/s. Alfa Technobuild Private Limited (Applicant Company No. 1/transferor

company no. 1) was incorporated on 16.11.2011 under the provisions of the Companies Act, 1956. The Authorized Share Capital of the Company as per Balance Sheet as on 31.03.2018 is Rs. 30,00,000/- divided into 3,00,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 22,94,000/- divided into 2,29,400 Equity Shares of Rs. 10/- each. The registered office of the Transferor Company is situated at Shop no. 128, First Floor, Shiva Market, Pitampura, New Delhi-110034.

4. It is submitted that the Transferor Company no. 1 has 06 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number.

The consent affidavits of all the members have been placed on record. It is further represented that the transferor company no. 1 has no secured creditor and three unsecured creditors. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Since the Transferor Company no. 1 has no secured creditor the requirement of convening of their meeting does not arise. Two out of three unsecured creditors has been paid off and consent affidavit of remaining unsecured creditor has been placed on record. In relation to the shareholders and unsecured creditors, the Transferor company no. 1 seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders and unsecured creditors have given consent affidavits in favour of the Scheme.

5. M/s. HA Buildtech Private Limited (Applicant Company No. 2/transferor company no. 2) was incorporated on 08.12.2011 under the provisions of the Companies Act, 1956. The Authorized Share Capital of the Company as per Balance Sheet as on 31.03,2018 is Rs. 45,00,000/- divided into 4,50,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 42,65,000/- divided into 4,26,500/- Equity Shares of Rs. 10/- each. The registered office of the Transferor Company is situated at Shop no. 128, First Floor, Shiva Market, Pitampura, New Delhi-110034.

6. It is submitted that the Transferor Company no. 2 has 07 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of all the members have been placed on record. It is further represented that the transferor company no. 2 has no secured creditor and three unsecured creditors. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Since the Transferor Company no. 2 has no secured creditor the requirement of convening of their meeting does not arise. Two out of three unsecured creditors has been paid off and consent affidavit of remaining unsecured creditor has been placed on record. In relation to the shareholders and unsecured creditors, the Transferor company no. 2 seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders and unsecured creditors have given consent affidavits in favour of the Scheme.

7. M/s. Paras Infraprojects Private Limited (Applicant Company No. 3/transferor company no. 3) was incorporated on 28.11.2011 under the provisions of the Companies Act, 1956. The Authorized Share Capital of the Company as per Balance Sheet as on 31.03.2018 is Rs. 40,00,000/- divided into 4,00,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 37,10,000/- divided into 3,71,000/- Equity Shares of Rs. 10/- each. The registered office of the Transferor Company is situated at Shop no. 128, First Floor, Shiva Market, Pitampura, New Delhi-110034.

8. It is submitted that the Transferor Company no. 3 has 07 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of all the members have been placed on record. It is further represented that the transferor company no. 3 has no secured creditor and three unsecured creditors. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Since the Transferor Company no. 3 has no secured creditor the requirement of convening of their meeting does not arise. Two out of three unsecured creditors has been paid off and consent affidavit of remaining unsecured creditor has been placed on record. In relation to the shareholders and unsecured creditors, the Transferor company no. 3 seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders and unsecured creditors have given consent affidavits in favour of the Scheme.

9. M/s. Prestige Infraprojects Private Limited (Applicant Company No. 4/transferor company no. 4) was incorporated on 05.11.2011 under the provisions of the Companies Act, 1956. The Authorized Share Capital of the Company as per Balance Sheet as on 31.03.2018 is Rs. 30,00,000/- divided into 3,00,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 23,51,000/- divided into 2,35,100/- Equity Shares of Rs. 10/- each. The registered office of the Transferor Company is situated at Shop no. 128, First Floor, Shiva Market, Pitampura, New Delhi-110034.

10. It is submitted that the Transferor Company no. 4 has 05 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of all the members have been placed on record. It is further represented that the transferor company no. 4 has no secured creditor and five unsecured creditors. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Since the Transferor Company no. 4 has no secured creditor the requirement of convening of their meeting does not arise. Three out of five unsecured creditors have been paid off and consent affidavits of remaining two unsecured creditors have been placed on record. In relation to the shareholders and unsecured creditors, the Transferor company no. 4 seeks dispensation from convening and holding of their

respective meetings on the ground that all the shareholders and unsecured creditors have given consent affidavits in favour of the Scheme.

11. M/s. Samarth Technobuild Private Limited (Applicant Company No. 5/transferor company no. 5) was incorporated on 28.11.2011 under the provisions of the Companies Act, 1956. The Authorized Share Capital of the Company as per Balance Sheet as on 31.03.2018 is Rs. 40,00,000/- divided into 4,00,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 32,90,000/- divided into 3,29,000 Equity Shares of Rs. 10/- each. The registered office of the Transferor Company is situated at Shop no. 128, First Floor, Shiva Market, Pitampura, New Delhi-110034.

12. It is submitted that the Transferor Company no. 5 has 06 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of all the members have been placed on record. It is further represented that the transferor company no. 5 has no secured creditor and three unsecured creditors. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Since the Transferor Company no. 5 has no secured creditor the requirement of convening of their meeting does not arise, two out of three unsecured creditors have been paid off and consent affidavit of remaining unsecured creditor has been placed on record. In relation to the shareholders and unsecured creditors, the Transferor company no. 5 seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders and unsecured creditors have given consent affidavits in favour of the Scheme.

13. M/s. Shine Technobuild Private Limited (Applicant Company No. 6/transferor company no. 6) was incorporated on 08.12.2011 under the provisions of the Companies Act, 1956. The Authorized Share Capital of the Company as per Balance Sheet as on 31.03.2018 is Rs. 30,00,000/- divided into 3,00,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 21,70,000/- divided into 2,17,000 Equity Shares of Rs. 10/- each. The registered office of the Transferor Company is situated at Shop no. 128, First Floor, Shiva Market, Pitampura, New Delhi-110034.

14. It is submitted that the Transferor Company no. 6 has 06 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of all the members have been placed on record. It is further represented that the transferor company no. 6 has no secured creditor and three unsecured creditors. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Since the Transferor Company no. 6 has no secured creditor the requirement of convening of their meeting does not arise, two out of three unsecured creditors have been paid off and consent affidavit of remaining unsecured creditor has been placed on

record. In relation to the shareholders and unsecured creditors, the Transferor company no. 6 seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders and unsecured creditors have given consent affidavits in favour of the Scheme.

15. M/s. Eros Agro and Farms Private Limited (Applicant Company No. 7/ transferee company) was incorporated on 18.07.2007 under the provisions of the Companies Act, 1956. The Authorized Share Capital of the Company as per Balance Sheet as on 31.03.2018 is Rs. 1,00,00,000/- divided into 10,00,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 77,76,000/- divided into 7,77,600 Equity Shares of Rs. 10/- each. The registered office of the Transferor Company is situated at Shop no. 128, First Floor, Shiva Market, Pitampura, New Delhi-110034.

16. It is submitted that the transferee company has 09 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of all the members have been placed on record. It is further represented that the transferee company has no secured creditor and six unsecured creditors. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Since the transferee company has no secured creditor the requirement of convening of their meeting does not arise. Three out of six unsecured creditors have been paid off and consent affidavits of two remaining unsecured creditors out of remaining three unsecured creditors constituting 99.27% of remaining unsecured debt have been placed on record. In relation to the shareholders and unsecured creditors, the transferee company seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders and unsecured creditors constituting 99.27% of remaining unsecured debt have given consent affidavits in favour of the Scheme. Needless to say, that under sub-section 9 of Section 230 of Companies Act, meeting of creditors can be dispensed with if creditors having at least 90% in value agree by way of affidavit in favour of the Scheme.

17. We have perused the joint application and the connected documents/papers filed with the application including the Scheme of Amalgamation as contemplated between the Applicant companies.

18. It is seen that the board of directors of all the applicant companies vide separate meetings have unanimously approved the proposed Scheme of Amalgamation. Copies of all such board resolutions passed by the board of directors of the respective applicant companies have been placed on record.

19. All the applicants have filed their respective Memorandum of Associations and Articles of Associations. The applicants have also filed their latest audited financial statements for the year ending 31.03.2019.

20. It is submitted that the proposed merger is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013 and the same if sanctioned by this Tribunal, the appointed date as provided in the Scheme shall be April 1st, 2019.

21. All the applicant companies have submitted that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under the provisions of the Companies Act, 1956 is pending against any of the applicant companies.

22. The certificates of respective statutory auditors of all the applicant companies have been placed on record confirming that the accounting treatment adopted in the scheme is in conformity with Section 133 of the Companies Act, 2013.

23. Further, it has been stated in the application that the Scheme will be beneficial to all the applicant companies and their respective shareholders, employees, creditors and other stake holders.

24. Taking into consideration the application filed jointly by all the Applicant Companies the following directions are issued: -

A) In respect of meeting of equity shareholders:

? In relation to convening of the meeting of equity shareholders of all the 7 Applicant Companies, it is seen that all shareholders of each of the 7 companies holding 100% in value and 100% in numbers respectively have given consent affidavits in favour of the Scheme. Once all the shareholders of the respective applicant companies have given their consent on affidavit, question of convening the meetings of Equity Shareholders does not arise.

? Accordingly, the requirement of convening meetings of equity shareholders of each of the applicant companies is dispensed with.

B) In respect of meeting of secured creditors:

? It is seen that none of the 07 applicant companies have any secured creditor as per the certificate given by the Chartered Accountant and the affidavit filed by the applicant companies. Once there is no secured creditor in any of the applicant companies, the requirement of convening meeting of Secured creditors does not arise.

? Accordingly, the requirement of convening meetings of secured creditors of each of the applicant companies is dispensed with.

C) In respect of meeting of unsecured creditors:

? In relation to convening of the meeting of unsecured creditors of all the six Transferor Companies, it is seen that all remaining unsecured creditors of each of these 06 Transferor companies holding 100% in value and 100% in numbers respectively have given consent affidavits in favour of the Scheme. Once all the remaining unsecured creditors of the respective transferor companies have given

their consent on affidavit, question of convening the meetings of unsecured creditors does not arise.

? In respect of the meeting of unsecured creditors of the transferee company it is seen that consent affidavits of two remaining unsecured creditors out of remaining three unsecured creditors constituting 99.27% of unsecured debt of transferee company have given their consent affidavits in favour of the Scheme.

? Needless to say, that under sub-section 9 of Section 230 of Companies Act, meeting of creditors can be dispensed with if creditors having at least 90% in value agree by way of affidavit in favour of the Scheme.

? Accordingly, the requirement of convening meetings of unsecured creditors of each of the 7 applicant companies is dispensed with.

25. In view of the above the present joint application stands allowed by dispensing with the meetings of shareholders and creditors of all the applicant companies.

26. The applicants are directed to serve notice of the proposed Scheme on the Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhavan, CGO Complex, New Delhi-110 003, Registrar of Companies at 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi-110 019; the Official Liquidator, Lok - Nayak -Bhavan, 8th Floor, Khan Market, New Delhi -110001; the office of the Income Tax Department at DCIT (High Court Cell), Lawyer's Chamber Block No. 1, Room No. 428 & 429 Delhi High Court. The notices to Income Tax authorities shall disclose sufficient details like PAN card numbers, ward numbers etc. so that proper reply may be filed.

Let copy of the order be served to the parties.