

**National Company Law Appellate Tribunal**

**Principal Bench, New Delhi**

**COMPANY APPEAL (AT) No. 137 of 2021**

(Arising out of Order dated 15<sup>th</sup> November, 2021 passed by National Company Law Tribunal, Mumbai Bench-IV, in C.A. (CAA)/37/MB-IV/2021.)

**IN THE MATTER OF:**

**1. Patel Hydro Power Private Limited,  
A Company incorporated under the Companies  
Act, 1956 bearing CIN  
U40108MH2010PTC326949 and having its  
registered office at Patel Engineering  
Compound, Patel Estate Road, Jogeshwari  
West, Mumbai, Maharashtra 400102, India.**

**...Appellant Company No. 1  
Ninth Transferor Company**

**2. Zeus Minerals Trading Private Limited,  
A Company incorporated under the Companies  
Act, 1956 bearing CIN  
U51909MH2007PTC167522 and having its  
registered office at Patel Engineering  
Compound, Patel Estate Road, Jogeshwari  
West, Mumbai, Maharashtra 400102, India.**

**...Appellant Company No. 2  
Tenth Transferor Company**

**3. Patel Concrete & Quarries Private Limited,  
A Company incorporated under the Companies  
Act, 1956 bearing CIN  
U14200MH2008PTC178210 and having its  
registered office at Patel Engineering  
Compound, Patel Estate Road, Jogeshwari  
West, Mumbai, Maharashtra 400102, India.**

**...Appellant Company No. 3  
Eleventh Transferor  
Company**

**4. Patel Lands Limited, A Company  
incorporated under the Companies Act, 1956  
bearing CIN U70100MH2010PLC207028 and  
having its registered office at Patel  
Engineering Compound, Patel Estate Road,  
Jogeshwari West, Mumbai, Maharashtra  
400102, India.**

**...Appellant Company No. 4  
Twelfth Transferor  
Company**

**5. Patel Engineers Private Limited, A Company  
incorporated under the Companies Act, 1956  
bearing CIN U70100MH2005PTC157559 and  
having its registered office at Patel  
Engineering Compound, Patel Estate Road,**

**...Appellant Company No. 5**

**Jogeshwari West, Mumbai, Maharashtra  
400102, India.**

**Thirteen Transferor  
Company**

**6. Phedra Projects Private Limited  
A Company incorporated under the Companies  
Act, 1956 bearing CIN  
U45201MH2006PTC164317 and having its  
registered office at Patel Engineering  
Compound, Patel Estate Road, Jogeshwari  
West, Mumbai, Maharashtra 400102, India.**

**...Appellant Company No. 6  
Fourteenth Transferor  
Company**

**7. Patel Engineering Limited,  
A Company incorporated under the Companies  
Act, 1956 bearing CIN  
L99999MH1949PLC007039 and having its  
registered office at Patel Engineering  
Compound, Patel Estate Road, Jogeshwari  
West, Mumbai, Maharashtra 400102, India.**

**...Appellant Company No. 7  
Transferee Company**

**Appellants: Mr. Krishnendu Datta, Sr. Advocate along with Mr.  
Shikher Upadhay, Ms. Prachi Golechha, Ms. Ranjana  
Roy Gawai, Mr. Hemant Sethi and Ms. Vasudha Sen,  
Advocates.**

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

**[Per; Shreesha Merla, Member (T)]**

1. Aggrieved by the Order dated 15.11.2021, passed by the NCLT (National Company Law Tribunal, Mumbai Bench-IV) in C.A. (CAA)/37/MB-IV/2021, *M/s. Patel Hydro Power Private Limited and Ors.* preferred this Appeal under Section 421 of the Companies Act, 2013 (hereinafter referred to as the '**Act**').
2. Facts in brief, are that a Company Scheme Application was filed by the Appellant Companies under Section 230-232 of the Act read with Companies (Compromise, Arrangement and Amalgamation) Rules, 2016 (hereinafter referred to as the '**Rules**'), whereby and whereunder the Appellant Company sought dispensation of the meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors, in respect of the Scheme of merger by

absorption Wholly Owned Subsidiary ('Transferor Company') with its holding Company namely *M/s. Patel Engineering Ltd.* ('Transferee Company') and their respective Shareholders ('the Scheme'). The Transferor Appellant Company and the Transferee Appellant Company are collectively referred to as the 'Appellant Companies'.

3. By the Impugned Order, NCLT has directed the Appellant Transferee Company as follows:-

*"20. Further, the Consent Affidavits of the Secured Creditors of Rs.1881.81 crore of the Transferee Company have also been provided by the Transferee Company as detailed above. The condition of Consent Affidavit of the Secured Creditors has since been complied.*

*21. The Transferee Company has not submitted the list of Equity Shareholders and Unsecured Creditors. As far as the Meeting/Consent Affidavit of the Equity Shareholders of the Transferee Company are concerned, the Transferee Company will submit Consent Affidavits of the Equity Shareholders of the Transferee Company or hold the meeting of the Equity Shareholders before filing of the Company Petition. In case the Transferee Company chooses for the meeting of the Equity Shareholders, the same may be held on 22nd December, 2021, Wednesday at 11.00 am at the registered office of the Transferee Company or at any convenient place in Mumbai. The Chairman/Managing Director of the Transferee Company will be the Chairperson of the meeting of the Equity Shareholders.*

*22. At least 30 (thirty) clear days before the aforesaid meeting of the Equity Shareholders of the Transferee Company be held as aforesaid, a notice convening the said meeting at the day, date and time aforesaid, together with copies of the Scheme and the Explanatory Statement required to be sent under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, shall be sent by Registered Post-AD/Speed Post and e-mail to the Equity Shareholders of the Transferee Company whose email addresses are duly registered with the*

*Transferee Company, addressed to each of the shareholders, at their last known e-mail addresses as per the records of the Transferee Company.*

*23. At least 30 (thirty) days before the aforesaid meeting of the Equity Shareholders of the Transferee Company to be held as aforesaid, an advertisement of notice convening the said meeting, indicating the day, date and time aforesaid be published once each in 'Business Standard' in English and 'Navshakti' in Marathi, both circulated at Mumbai, and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230 (3) of the Companies Act, 2013 can be obtained free of charge by emailing the Transferee Company.*

*24. Keeping in view of the fact and circumstances of the case, as 14 Transferor Companies are transferring into the Transferee Company and in the interest of the creditors of the Applicant Companies, this Bench directs the Transferee Company to issue Notice of Scheme to all its Unsecured Creditors by Registered Post-AD/Speed Post and by E-mail whose Email IDs are available with the Company and file Consent Affidavits of the Unsecured Creditors at least of the value of 90% at the time of filing of Company Petition.*

*25. Further, the Bench has observed that since there are 7 (seven) IBC proceedings pending against the Applicant Companies, the list of which has been filed by the Applicant Companies vide Additional Affidavit dated 11.06.2021 annexed as Annexure "C", the Applicant Companies are directed to issue notice of Scheme by Registered Post-Ad/ Speed Post and Email upon the Petitioners who have filed the Insolvency Proceedings against the Applicant Companies and specific consents of these Petitioners of the IBC Proceedings is to be submitted at the time of filing of Company Petition.*

*26. The Applicant Companies to file affidavit of service and compliance within 10 working days after serving the notices to all the Regulatory Authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with."*

4. The Appellant had sought dispensation from the requirement of holding Equity Shareholders and Creditors Meetings of the 7<sup>th</sup> Appellant/Transferee Company from the Tribunal, as no new shares are being issued by the Transferee Appellant Company and the 'Scheme' would not result in dilution in shareholding of the Transferee Appellant Company.

5. Learned Counsel appearing for the Appellants contended that the approval of Members/Creditors was required only when there was any change in the rights. But when no change is proposed to Members/Creditors' rights, the requirement of consent/approval could be done away with. He argued that NCLT had erred in directing the Transferee Appellant Company to compulsorily obtain 90% consent Affidavits from its Unsecured Creditors, while no such provisions are stipulated under Sections 230-232 of the Act, which mandates the Companies to compulsorily obtain the concerned Affidavit from its Creditors. It is also the case of the Appellants that NCLT ought not to have directed the Transferee Appellant Company to procure 'consents' from the Petitioners who have filed Insolvency Proceedings, which have not yet been admitted, against the Transferee Appellant Company when there is no such provision in the law that mandates procuring of 100% consent from the Creditors who have filed Insolvency Proceedings. Learned Counsel further contended that since the Transferee Company would continue to be in existence post amalgamation, any pending Legal Proceedings by or against the Transferee Appellant Company would continue, in the same manner and in the same extent and there would be no diminution of obligations of the Transferee Appellant Company. It is also their case that direction of NCLT to hold Physical Meeting for Shareholder is contrary to Ministry of Corporate

Affairs ('MCA') clarification dated 08.04.2021, on manner and mode of issuance of Notice for conducting General Meetings which allows the listed Companies to conduct Meetings through VC or OAVM facilities and allows issuance of Notice to the Members for such Meetings by using only electronic means including registered email addresses of Members. The Learned Counsel placed reliance on the Judgement of this Tribunal in '**DLF Phase IV, Commercial Developers Limited and Ors.**' in **Company Appeal (AT) No. 180 of 2019** and also in '**Ambuja Cements Limited**' Vs. --- (2021) SCC OnLine NCLAT 117.

6. For better understanding of the case, it is relevant to reproduce the Sections 230 and 232 of the Companies Act, 2013 and also the relevant Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 are hereunder:-

**'Sec 230 Companies Act 2013**

*[(1) Where a compromise or arrangement is proposed—*

*(a) between a company and its creditors or any class of them; or*

*(b) between a company and its members or any class of them, the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator <sup>2</sup>[appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be,] order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such a manner as the Tribunal directs.*

*Explanation.—For the purposes of this subsection, arrangement includes a reorganization of the company's share*

*capital by the consolidation of shares of different classes or by the division of shares into share of different classes, or by both of those methods.*

*(2) The company or any other person, by whom an application is made under subsection (1), shall disclose to the Tribunal by affidavit—*

*(a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;*

*(b) reduction of share capital of the company, if any, included in the compromise or arrangement;*

*(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent of the secured creditors in value, including—*

- (i) a creditor's responsibility statement in the prescribed form;*
- (ii) safeguards for the protection of other secured and unsecured creditors;*
- (iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;*
- (iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and*
- (v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.*

*(3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under subsection (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be*



*accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:*

*Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:*

*Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.*

*(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:*

*Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent of the shareholding or having outstanding debt amounting to not less than five per cent of the total outstanding debt as per the latest audited financial statement.*

*(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the*



competition commission of India established under sub-section (1) of section 7 of the Competition Act, 2002 (12 of 2003), if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

(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 creditor, 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<sup>2</sup>[appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be,] and the contributories of the company.

(7) An order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:--

(a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;

(b) the protection of any class of creditors;

(c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions section 48;

(d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick

*Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall abate;*

*(e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement:*

*Provided that no compromise or arrangement shall be sanctioned by the tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.*

*(8) The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.*

***(9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.***

*(10) No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.]*

*(11) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed:*

*Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.*

*(12) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.*

*Explanation.—For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.’*

**‘Section 232 – Merger and amalgamation of companies**

*<sup>1</sup>[(1) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—*

*(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies: and*

*(b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply mutatis mutandis.*

*(2) Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:--*

*(a) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company:*

*(b) confirmation that a copy of the draft scheme has been filed with the Registrar;*

(c) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

(d) the report of the expert with regard to valuation, if any:

(e) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

(3) The Tribunal, after satisfying itself that the procedure specified in sub sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order.'

**'Companies (Compromises, Arrangements and Amalgamations) Rules, 2016**

**G.S.R. 1134(E).**— In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with sections 230 to 233 and sections 235 to 240 of the Companies Act, 2013 (18 of 2013), THE Central Government hereby makes the following rules, namely:-

**1. Short Title and Commencement.—**

(1) These rules may be called the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

(2) They shall come into force with effect from 15<sup>th</sup> December, 2016.

**3. Application for order of a meeting.—**

(1) An application under sub-section (1) of section 230 of the Act may be submitted in Form no. NCLT-1 (appended in the National Company Law Tribunal Rules, 2016) alongwith:-

(i) a notice of admission in Form No. NCLT-2 (appended in the National Company Law Tribunal Rules, 2016);

(ii) an affidavit in Form No. NCLT-6 (appended in the National Company Law Tribunal Rules, 2016);

(iii) a copy of scheme of compromise or arrangement, which should include disclosures as per sub-section (2) of section 230 of the Act; and

(iv) fee as prescribed in the Schedule of Fees.

(2) Where more than one company is involved in a scheme in relation to which an application under sub-rule (1) is being filed, such application may, at the discretion of such companies, be filed as a joint-application.

(3) Where the company is not the applicant, a copy of the notice of admission and of the affidavit shall be served on the company, or, where the company is being wound up, on its liquidator, not less than fourteen days before the date fixed for the hearing of the notice of admission.

(4) The applicant shall also disclose to the Tribunal in the application under sub-rule (1), the basis on which each class of members or creditors has been identified for the purposes of approval of the scheme.

#### **4. Disclosure in application made to the Tribunal for compromise or arrangement.—**

*Creditors Responsibility Statement.* For purposes of sub-clause (c) of sub-section (2) of section 230 of the Act, the creditor's responsibility statement in Form No. CAA. I shall be included in the scheme of corporate debt restructuring.

*Explanation:-* For the purpose of this rule, it is clarified that a scheme of corporate debt restructuring as referred to in clause (c) of sub-section (2) of section 230 of the Act shall mean a scheme that restructures or varies the debt obligations of a company towards its creditors.

#### **5. Directions at hearing of the application.—**

Upon hearing the application under sub-section (1) of section 230 of the Act, the Tribunal shall, unless it thinks fit for any reason to dismiss the application, give

such directions as it may think necessary in respect of the following matters:-

- (a) *Determining the class or classes of creditors or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement; or dispensing with the meeting or meetings for any class or classes of creditors in terms of sub-section (9) of section 230;*
- (b) *fixing the time and place of the meeting or meetings;*
- (c) *appointing a Chairperson and scrutinizer for the meeting or meetings to be held, as the case may be and fixing the terms of his appointment including remuneration;*
- (d) *fixing the quorum and the procedure to be followed at the meeting or meetings, including voting in person or by proxy or by postal ballot or by voting through electronic means;'*

7. It is seen from the record that the Transferor Company being a Wholly Owned Subsidiary of the Applicant Transferee Company, no shares are required to be issued or allotted as consideration from the proposed amalgamation. The rights of the Shareholders of the Transferee Company are not affected as no new shares are being issued to the Shareholders of the Transferor Companies and the proposed Scheme does not involve any reorganization of the share capital. In a similar case, this Tribunal in **'Ambuja Cements Limited' (Supra)** dispensed with the meeting of the Equity Shareholders, Secured and Unsecured Creditors of the Appellant Company and remanded the matter back to NCLT for further consideration. We also find force in the contention of the Learned Counsel for the Appellants that the manner and mode of issuance of Notice for conducting General Meetings issued by MCA vide circular dated 08.04.2021, is applicable.

8. This Tribunal in the matter of **'DLF Phase IV, Commercial Developers Limited and Ors.' (Supra)** set aside the direction of NCLT for convening



meetings of the Equity Shareholders, Secured and Unsecured Creditors. In **‘Mahaamba Investments Ltd.’ Vs. ‘IDI Ltd.’**. The Hon’ble High Court of Bombay held as follows:-

*“5. In the present case, having regard to the relevant clauses of the proposed scheme and particularly the provision whereby no new shares are sought to be issued to the members of the transferor company by the transferee company, the scheme will not affect the members of the transferee company. The creditors of the transferee company are not likely to be affected by the scheme in view of the financial position of the transferee company. In paragraphs 13 and 14 of the affidavit in support of the company application, the financial position of the transferor and transferee companies has been set out and which would show that in so far as the transferor company is concerned, it has an excess of assets over liabilities to the extent of Rs. 508 lakhs whereas in the case of the transferee company, there is an excess of assets over liabilities to the extent of Rs. 6,900 lakhs.*

*6. In the circumstances, the office objection is accordingly disposed of with the clarification that filing of a separate petition by the transferee company is not necessary, in the facts and circumstances of the present case.”*

9. In **‘Eurokids India Pvt. Ltd.’** (C.S.D. No. 911 of 2014) dated 19.12.2014, the Hon’ble High Court of Bombay observed as hereunder:-

*“The Applicant Company is Wholly Owned Subsidiary of the Transferee Company and there is no re-organization of share capital of the Transferee Company and no new shares are being issued by the Transferee Company as all shares will be cancelled as per Clause 5 of the Scheme and rights of creditors of Transferee Company are not affected as mention in para 19 of the Affidavit in support of Summons for Direction and also in view of observations made by this court in Mahaamba Investment Ltd vs. IDI Ltd. (2001) 105 Co cases page 16 to 18, the filing of separate Company Summons for Direction and*



*Company Scheme Petition under Section 391 and 394 of the Companies Act, 1956 by Eurokids International Private Limited, the Transferee Company is dispensed with.”*

*(Emphasis Supplied)*

10. It is seen that Section 232(1) of the Companies Act, 2013 uses the word ‘may’ which introduces an element of discretion to the Tribunal to be exercised in the interest of justice in appropriate situations. It is evident from the aforesaid citations that the High Courts have exercised this discretion dispensing with the requirement of convening the meetings, if the Bench is satisfied in all respects. Section 232 is a specific provision carved out by the Legislature when both conditions maintained in clauses (a) and (b) of sub-Section (1) of Section 232 are met. In the instant case the amalgamation sought for is between a Wholly Owned Subsidiary and the Holding Company. The point which needs to be noted is whether such an arrangement alters the rights of the Stakeholders of the Company; whether such an amalgamation has any bearing internally on Creditors/Members of both the Companies; whether not holding the subject meeting would amount to violation of any of the provisions of the Companies Act, 2013; whether the Tribunal can exercise their discretion when the ‘Transferor Company’ is a Wholly Owned Subsidiary of the ‘Transferee Company’ and financial position of the ‘Transferee Company’ is positive and the merger is not affecting the rights of the Shareholders or the Creditors.

11. The material on record establishes that the ‘Transferee Company’ is a Wholly Owned Subsidiary of the ‘Transferor Company’ and there is no issuance of any new shares and therefore there is no reorganization of share

capital and consequently no arrangement wherein Shareholders have to compromise with Creditors of the 'Transferor Company'.

12. To reiterate, we observe that the rights and liabilities of Secured and Unsecured Creditors were not getting affected in any manner by way of the proposed scheme as no new shares are being issued by the 'Transferor Company' and no compromise is offered to any Secured and Unsecured Creditors of the 'Transferee Company'. Therefore, we are of the considered view that when the 'Transferor and Transferee Company' involve a parent Company and a Wholly Owned Subsidiary the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors can be dispensed with as the facts of this case substantiate that the rights of the Equity Shareholders of the 'Transferee Company' are not being affected. Therefore, we hold that obtaining 90% consent Affidavits from its unsecured Creditors is not required keeping in view the facts of the attendant case.

13. For all the aforementioned reasons we allow this Appeal and set aside the Order of NCLT with respect to directions regarding dispensation of meetings of Equity Shareholders and Creditors only.

**[Justice Anant Bijay Singh]**  
**Member (Judicial)**

**[Ms. Shreesha Merla]**  
**Member (Technical)**

**NEW DELHI**  
**22<sup>nd</sup> December, 2021**

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