

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH
NEW DELHI

Company Petition No. CP (CAA) No. 141 (ND) of 2019

Connected with

Company Application No. CA (CAA) No. 110 (ND) of 2019

(Under Section 230, 232 & 66 of the Companies Act, 2013)

IN THE MATTER OF SCHEME OF ARRANGEMENT OF:

1. **Shams Professional Pvt Ltd**, a private limited company incorporated under the Companies Act, 1956 and having its registered office at 301, Prakash Deep, 7, Tolstoy Marg, New Delhi-110 001

.....Petitioner Company No. 1/Transferor Company

AND

2. **Ashvins Agri Products Pvt Ltd**, a private limited company incorporated under the Companies Act, 2013 and having its registered office at 301, Prakash Deep, 7, Tolstoy Marg, New Delhi-110 001

.....Petitioner Company No. 2/Transferee Company

CORAM: **Mr P.S.N. Prasad, Hon'ble Member (J)**

Ms Sumita Purkayastha, Hon'ble Member (T)

Present: Mr Rajeev K Goel, Advocate

ORDER DELIVERED ON 17.07.2020

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ORDER

PER SUMITA PURKAYASTHA MEMBER (TECHNICAL)

1. The Present Petition is filed by Petitioner Companies under Sections 230, 232 & 66 of the Companies Act, 2013 read with Rules framed thereunder, as in force from time to time, for the Sanction of the proposed Scheme of Arrangement of Shams Professional Pvt Ltd and Ashvins Agri Products Pvt Ltd and their respective Shareholders and Creditors (hereinafter referred to as "Scheme" or "Scheme of Arrangement").
2. The proposed Scheme of Arrangement has previously been approved by the Board of Directors of the Transferor Company and the Transferee Company in the respective meetings held on 15th April, 2019.
3. A perusal of the present Petition discloses that initially the Petitioner Companies had filed Company Application No. 110 (ND) of 2019 seeking directions of this Tribunal to dispense/convene meetings of Shareholders, Secured Creditors and Un-secured Creditors of the Petitioner Companies for the purpose of the considering and approving, with or without modification, the aforesaid Scheme of Arrangement. Accordingly, this Hon'ble Tribunal vide its order dated Order dated 6th August, 2019, read with order dated 3rd September, 2019 (date of pronouncement), was pleased to dispense with the requirement of convening the meetings of Equity Shareholders and Preference Shareholders of the Transferor Company; and Equity Shareholders and



Un-secured Creditors of the Transferee Company. Further, this Tribunal was pleased to direct for convening of a meeting of Un-secured Creditors of the Transferor Company under its supervision for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement.

There were no Secured Creditor of the Petitioner Companies as per the records placed before the Tribunal.

4. Further the present Petition discloses that in pursuance of the directions contained Order dated 6th August, 2019, read with order dated 3rd September, 2019 (date of pronouncement), passed by this Tribunal in Company Application No. 110 (ND) of 2019, meeting of Un-secured Creditors of the Transferor Company (Shams Professional Pvt Ltd) was convened and held on Saturday, 12th October, 2019, at 3.30 P.M. at The Park Hotel, 15, Parliament Street, New Delhi-110 001.
5. The requisite quorum was present and the Scheme was approved unanimously in the meeting of the Un-secured Creditors of the Transferor Company, without any modifications. The Chairperson appointed for the meeting has filed his report dated 15th October, 2019.
6. The Applicant companies have now initiated the Second Motion. An affidavit of service and publication, confirming that notices have been duly published in English Newspaper "Business Standard", Delhi Edition and Hindi Newspaper "Jansatta", Delhi



Edition. The Petitioner Companies have also served notice of the Company Petition to (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Delhi and Haryana, New Delhi; (c) The Official Liquidator, New Delhi; and (d) the Income Tax Department.

7. We have heard the counsels for the Applicant and also considered the representation made by the Regional Director, Northern Region. It is observed that the petitioner may be asked to clarify regarding the obtaining of the approval/consent, if any, of the un-secured creditors who did not attend the meeting held on Saturday, 12th October, 2019 in compliance of the order passed by this Tribunal.

8. In response to the abovementioned observation of the RD, the Transferor Company filed an affidavit submitting that where a meeting of Shareholders or Creditors is convened to consider a Scheme of Arrangement, sub-section (6) of section 230 provides that minimum 75% of the total value of shareholders or creditors, present and voting in such meeting must approve the scheme. Section 230(6) does not prescribe minimum value of shareholders or creditors who must attend the meeting. Further section 230(9) of the Companies Act, 2013, provides that if 90% of the total value of Creditors give their consent to the Scheme, this Tribunal can dispense with the requirement of



convening the meeting of such creditors to consider and approve the Scheme.

Furthermore 98.35% of the total value of the Un-secured Creditors of the Transferor Company attended the meeting and unanimously approved the Scheme of Arrangement. No Un-secured Creditor voted against the proposed Scheme of Arrangement. This satisfies the requirement of Companies Act in letter and spirit. Accordingly, the observation made by the RD stands satisfied.

9. The Official Liquidator has also filed his report and no objection has been raised by him to the proposed Scheme of Arrangement .

10. The Income Tax Department has also filed its reports. The IT Department has pointed out that some Income Tax Demands are pending in the Transferor Company. The Petitioners have filed two detailed reply/affidavits in which it was clarified that the Transferor Company has some pending Income Tax Demand which was subject matter of litigation. However, it is submitted that the Transferor Company has decided to avail Vivad Se Vishwas Scheme, introduced by the Government of India under the Direct Tax Vivad Se Vishwas Act, 2020. The time period of the Scheme has been extended to 31st December, 2020. It was clarified that the Transferor Company has already made the requisite Application for the same. Learned Counsel of the Petitioners submitted under instructions, that substantial payment has already been made by the Transferor Company against



the said demand. The Petitioner Transferor and the Transferee Companies have submitted a written undertaking to make the balance Payment within the statutory time period, once the COVID-19 lock down is lifted.

It is submitted that the Scheme of Arrangement provides that all the assets & liabilities including statutory liabilities & Income Tax, etc., as well as the pending demands and litigations in the Transferor Company will vest in and will be continued against the Transferee Company.

11. The Rational of the proposed Scheme of Arrangement is elaborately described in the present Company Petition which may be summarized as under:

- a.** The Transferee Company is a wholly owned subsidiary of the Transferor Company. The proposed amalgamation of the Transferor Company with the Transferee Company would result in business synergy, consolidation of the wholly owned subsidiary and the parent company and pooling of their resources into a single entity.
- b.** The Transferor Company is engaged in event management, media planning and consultancy services, manpower supply and other related activities. The Transferee Company is engaged in consultancy and other services in the agriculture sector and other related activities. The management of these Companies has decided to consolidate their financial resources by



amalgamating the Transferor Company with the Transferee Company.

- c.** The proposed Scheme of Arrangement would result in pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the combined entity.
- d.** The proposed Scheme of Arrangement will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of financial, human and other resource and enhancement of overall business efficiency. The proposed Scheme will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth.
- e.** The proposed Scheme of Arrangement will also enable substantial saving in terms of cost incurred on compliance management and increased efficiency.
- f.** The Transferor Company has creditors towards long term liabilities and borrowings. The Transferor Company is proposing to pay off these Creditors by way of issuing equity shares in the Transferee Company. Further, it is proposed to write off the post-

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merger debit balance of profit & loss account in the Transferee Company against the post-merger share capital, securities premium account, capital reserve and other reserves and surplus in the books of the Transferee Company.

- g.** The proposed Arrangement would enhance the shareholders' value of the Transferor and the Transferee Companies.
 - h.** The proposed Scheme of Arrangement will have beneficial impact on the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.
- 12.** That as per the proposed Scheme, the Share Swap ratio in terms of the valuation dated 13th April, 2019 conducted by Mr Sandeep Kumar Agrawal, Chartered Accountant. It is also submitted that the Board of Directors of the Petitioner Transferor Company and the Transferee Company have determined the share exchange ratio as under:

a. *The Transferee Company will issue 1 (one) Equity Share of ₹10 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of ₹10 each held in the Transferor Company-Shams Professional Pvt Ltd.*

b. *The Transferee Company will issue 1 (one) Equity Share of ₹10 each, credited as fully paid up, for every 100 (one*



hundred) Compulsorily Convertible Preference Shares of ₹10 each held in the Transferor Company-Shams Professional Pvt Ltd.

- c.** The Transferee Company will issue equity shares of ₹10 each, credited as fully paid up, at @ ₹ 10.69 per share to all the Specified Un-secured Creditors of the Transferor Company against part payment of their respective credit balances in the Transferor Company.
- 13.** The report of the statutory auditors certifying that the Accounting Standards as required u/s 133 of the Companies Act 2013 had been adhered to is on record.
- 14.** It has also been stated in the Petition that none of the Directors of the Petitioner Companies have any material interest in the Scheme, save as except to the extent of shareholding in the abovementioned Petitioner Companies.
- 15.** It has also been stated in the Petition that the Scheme is not prejudicial to the interest of the Shareholders and Creditors of the Petitioner Companies and the Petition is made *bona fide* and is in the interest of both the Petitioner Companies and their Shareholders and Un-secured Creditors as a whole and is also just and equitable.



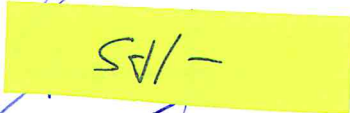
16. We have gone through the report of the Ld. Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi, the Official Liquidator, New Delhi and the Income Tax Department, New Delhi and after perusing the same, we are of the view that the sanction of the present Scheme is not against public policy, nor it would be prejudicial to the public interest at large.
17. In addition to above, all the statutory compliance either seems to have been complied with or further undertaken for making compliances by Petitioner Companies. Therefore, the present Company Petition deserves to be allowed in terms of its Prayer clause. In the result, the Scheme of Arrangement annexed to Company Petition is duly approved and hereby sanctioned.
18. In the result, the proposed Scheme of Arrangement which is annexed to the Company Petition stand approved and sanctioned. Petitioner Companies are required to act upon as per terms and condition of the sanctioned Scheme and the same to be binding on its Shareholders and Un-secured Creditors of the above named Petitioner Companies and also on the Petitioner Companies with effect from the appointed date, i.e., 1st day of April, 2019.
19. While approving the Scheme as above, it is clarified that this order should not be construed as, in any way, granting exemption from payment of stamp duty (if any is applicable), taxes (including Income



Tax, GST or any other charges, if any are applicable) and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law. Also, the Transferor Company shall stand dissolved without undergoing the process of winding up.

20. The Petitioner Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration.
21. All concerned regulatory authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar, National Company Law Tribunal, New Delhi Bench-V, New Delhi.
22. Any person interested shall be at liberty to apply before this Tribunal in the above matter for such directions as may be necessary.
23. Accordingly, the present Company Petition bearing **CP (CAA) No. 141 (ND) of 2019** is allowed and stands disposed of.


Sumita Purkayastha
Member (Technical)


P.S.N. Prasad
Member (Judicial)