

DIVISION BENCH

ITEM NO.C1

**NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
PRAYAGRAJ**

CA (CAA) NO.19/ALD/2023

(First Motion)

CORAM:

- 1. SHRI PRAVEEN GUPTA,
HON'BLE MEMBER (JUDICIAL)**
- 2. SHRI ASHISH VERMA,
HON'BLE MEMBER (TECHNICAL)**

Date of Order: 26th July, 2024

Attendance-Cum-Order Sheet of the Hearing.

NAME OF THE COMPANY	M/S CALICO SHOES PRIVATE LIMITED WITH M/S TORPEDO SHOES PRIVATE LIMITED
UNDER SECTION	230/232 OF COMPANIES ACT, 2013

COUNSEL APPEARED THROUGH PHYSICAL/ VIRTUAL HEARING:

Sh. Vipin Kumar Kushwaha, Adv.

: For the Applicant-Companies

ORDER

- 1.** This company application is a first motion application filed under Section 230 and 232 of the Companies Act for amalgamation of the Transferor Company with the Transferee Company as per the scheme of amalgamation. After hearing the Ld. Counsel, the matter was reserved on 4th July, 2024.
- 2.** While going through the record of the present company application, particularly with respect to the consents given by the Unsecured Creditors of the Transferee Company, as per the list of the Unsecured Creditors placed at Annexure No.1 Page No.3 Vol.1 of Supplementary Affidavit, there are 218 Unsecured Creditors with the cumulative value of Rs.106774873.66/-.
- 3.** It was contended by the Ld. Counsel representing the Applicant-Companies that out of this list of 218 Unsecured Creditors of the Transferee Company, consents have been given by 105 such Unsecured Creditors with the cumulative value of Rs.102858097.55/-. The said

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consents would constitute 96.33%.

4. However, while examining and perusing the record, it was observed that out of these 105 Unsecured Creditors with respect to which the consents are stated to have been attached by the respective Unsecured Creditors, however no consent affidavit has been found for about 10 Unsecured Creditors. The serial number of these 10 Unsecured Creditors out of the list given at Page No.8 have been produced below:

8. AMIGO INTERNATIONAL
22. CONTENDER INDUSTRIES PRIVATE LIMITED
29. FERROZ TANNERS
36. INSTYLE OVERSEAS LLP
43. LEATHER WORLD (INDIA)
50. NADEEM IMPEX
55. NOVELTY LEATHER FINISHERS
56. NOVELTY TRADING CORPORATION
61. RAHMAN INDUSTRIES LTD.
69. ROSHAN ENTERPRISES

5. Therefore, the consent affidavits with respect to the aforesaid 10 Unsecured Creditors as given above are not available in the record. If the value of these 10 Unsecured Creditors is deducted from the total cumulative value of Rs.102858097.55/- then the total cumulative value for the consents of the Unsecured Creditors would fall to 76.47%.
6. That being the position, it is apparently clear that the consents of the Unsecured Creditors of the Transferee Company fall below the requisite 90% as envisaged under Section 230 (9) which is as under:

“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.”

- 7.** In view of the aforesaid background, the matter is listed for hearing to seek clarification from the Ld. Counsel representing the Applicant Companies.
- 8.** Let the matter be adjourned for 22nd August, 2024.

-Sd-
(Ashish Verma)
Member (Technical)

-Sd-
(Praveen Gupta)
Member (Judicial)

Date- 26th July, 2024

Avaneesh Kumar Singh
(Stenographer)