

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT – 5, MUMBAI BENCH**

**CA.No.422/MB/2022  
Connected With  
C.A.(CAA)/183/MB/2022**

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to Section 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Composite Scheme of Amalgamation and Arrangement amongst DVK Investments Private Limited (“DVK” or “Transferor Company 1”) and Aegean Properties Limited (“APL” or Transferor Company 2”) and Fermenta Biotech Limited (“FBL” or “Transferee Company”) and their respective Shareholders

DVK Investments Private Limited  
CIN : U67120MH2003PTC141695

..... First Applicant Company/  
Transferor Company 1

Aegean Properties Limited  
CIN : U45200MH1995PLC084766

..... Second Applicant Company/  
Transferor Company 2

Fermenta Biotech Limited  
CIN : L99999MH1951PLC008485

..... Third Applicant Company/  
Transferee Company

(Collectively referred as to “Applicant Companies”)

Order Reserved On: 23.08.2022  
Order Pronounced on: 15.09.2022

Coram:

Hon'ble H. V. Subba Rao : Member (Judicial)  
Hon'ble Anuradha Sanjay Bhatia : Member (Technical)

Appearances (via videoconferencing) :

For the Applicants: Mr. Hemant Sethi i/b Hemant  
Sethi & Co., Advocates

ORDER

1. The above C.A. is filed for modification of the direction with regards to obtaining consent affidavit of at least the value of 90% Secured and Unsecured Creditors at para 25 of the order dated 19.07.2022 of C.A. (CAA)/183/MB/2022.
2. It is the contention of the Petitioner that the above direction of the tribunal in Para 25 of the order directing both for convening meeting and also obtaining consent of 90% of secured and unsecured creditor is contrary to the provision of the Act.
3. It is the submission of the Applicant that if this Tribunal directs Holding of meeting, it is incumbent on the Petitioner to obtain the consent of only three-fourth in value of the creditors present and voted.  
Therefore, the consent of 90% of the creditors can be insisted only in case of dispensing with the meeting.
4. In support of his argument the Petitioner invited the attention of this bench to Clauses 6 and 9 of the Section 230 of the Companies Act, 2013 that reads as hereunder -

**Section 230 (6) of the Companies Act, 2013 -**

*“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 creditors, 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 and the contributories of the company.”*

**And Section 230 (9) of the Companies Act, 2013 –**

*“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.”*

5. Therefore, the Petitioner sought to dispense with the consent affidavit of 90% of Secured and Unsecured creditor of the Third Applicant Company at the time of filing of Company Petition since it is contrary to the provisions of the Act.

6. After thoroughly considering the above provisions of the Companies Act, 2013 & upon pursuing the order, this bench is of the opinion that there is a legal force in the submission made by the counsel for the Applicant and accordingly Para 25 of the order needs to be rectified by deleting the following lines from the order dated 19.07.2022.

*“and file consent affidavit of at least the value of 90% Secured and Unsecured Creditors at the time of filing of Company Petition.”*

7. Accordingly, the above CA/422/MB/2022 is allowed and disposed off.

Sd/-  
Anuradha Sanjay Bhatia  
Member (Technical)

Sd/-  
H. V. Subba Rao  
Member (Judicial)