

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

AT NEW DELHI

**PRESENT: SMT. INA MALHOTRA, MEMBER (JUDICIAL)
&SMT. DEEPA KRISHAN, MEMBER (TECHNICAL)**

CAA- 417/ND/2017

IN THE MATTER OF SCHEME

OF ARRANGEMENT

BETWEEN

ValueFirst Mobility Vision Technologies Limited

A Company Registered under the Companies Act, 1956

Having its Registered Office at 1315, Ansal Tower,

38 Nehru Place, New Delhi-110019

----- Applicant No.1 / Amalgamating Company

And

Ostane Marketing Private Limited

A Company Registered under the Companies Act, 1956

Having its Registered Office at F-208, Second Floor,

Old M.B Road, Lado Sarai, New Delhi-110030

----- Applicant No.2/ Demerged Company

With

ValueFirst Digital Media Private Limited

A Company Registered under the Companies Act, 1956

Having its Registered Office at F-208, Second Floor,

Old M.B Road, Lado Sarai, New Delhi-110030

----- Applicant No.3/ Resulting Company

Present- Mr. Mahesh Agarwal and Mr. Rajeev Kumar, Advocates

ORDER DELIVERED ON: 10.09.2018

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ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

1. This is a joint application by way of a Second motion filed by the Applicant Companies 1-3 under sections 230-232 of the Companies Act 2013 and other applicable provisions, for the purpose of approving the Composite Scheme of Arrangement, as contemplated between the Amalgamating Company (Applicant no.1), Demerged Company (Applicant no.2) with Resulting Company (Applicant no.3).
2. As per averments, the registered offices of all the Applicant Companies are in the National Capital Territory of Delhi, falling within the territorial jurisdiction of this Bench.
3. A perusal of the averments made in the petition discloses that the applicants had filed the first motion application bearing C.A. No. (CAA)402 /ND/2017. This Tribunal vide its Order dated 24.11.2017 had dispensed with the meetings of the equity shareholders, preference shareholders, secured and unsecured creditors of the Applicant Companies in view of the consent affidavits of all concerned having been filed on record. The Board of Directors of each applicant companies 1- 3, had separately passed their respective resolutions approving the Scheme on 21.07.2017, 21.07.2017 and 24.07.2017 respectively. Further, the Articles of Association of each company provides for amalgamation and mergers.

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4. The applicant companies have now initiated the Second Motion. Vide affidavit dated 20.01.2018, it is deposed that the petitioners have effected publication in English and Hindi in the daily newspapers, "The Business Standard" and "Jansatta" respectively, edition of daily having circulation in Delhi, both dated 04.01.2018. It is deposed that neither the applicant companies nor their counsel has received any objection to the sanction of the proposed scheme. Pursuant to the Publication in the daily newspapers notifying the listing of the matter before this Bench, no objector had appeared before us.

5. The applicant Companies have duly served notices of the proposed scheme on the Registrar of Companies, Regional Director, Northern Region and the Income Tax Department in compliance with the order of the Tribunal, inviting objections if any to the proposed Scheme of Arrangement.

6. The report of the Chartered Accountant certifying that the Accounting Standards as required u/s 133 of the Companies Act 2013 has been adhered to in respect of each of the Applicant Companies is on record.

The Memoranda of Association and Articles of Association along with their audited Balance Sheets, as on 31.03.2017 and their provisional financial statements as on 07.08.2017 have been filed on record.

7. The scheme of Arrangement is sought to be justified, interalia, on grounds that it would:-

- a. Streamline the management control and operation of businesses and activities;
- b. Participate more vigorously and profitably in an increasing competitive market;
- c. Improved organizational capability and leadership, arising from the pooling of human capital who have the diverse skills, talent and vast experience to complete successfully in an increasingly competitive industry;
- d. Provide an opportunity to leverage combined assets and build a stronger sustainable business;
- e. This scheme, if approved, will be beneficial to all the companies, their shareholders, creditors, employees and all concerned and will enable them to achieve and fulfill their objective through the combined entity more efficiently and economically.

The Appointed date of the Scheme is 01.04.2017.

8. We have heard the Ld. Counsel for the petitioners and also considered the representation dated 17.01.2018 made by the Regional Director, Northern Region. In the reply filed by the Regional Director (NR), it has been confirmed that the applicant companies are regular in filing their statutory returns. No prosecution has been filed, no complaints are pending and no inspection or investigation has been conducted in respect of the applicant companies. Further in their report, they have stated that they have no objection to the sanction of the proposed scheme.

9. The department of Income Tax has made certain observations which have been replied to by the applicant companies. As per the observations, the Income



Tax Dept has submitted that there is an outstanding demand is pending against Demerged Company No.2/ Octane Marketing Private Limited as under:-

| S.No | Name of the Assessee Company | AY | Outstanding Demand |
|------|--------------------------------------|---------|------------------------|
| 1. | M/s Octane Marketing Private Limited | 2011-12 | Rs. 5,126/- |
| 2. | M/s Octane Marketing Private Limited | 2013-14 | Rs. 11,13,327/- |
| | Total Outstanding Demand | | Rs. 11,18,453/- |

10. There second observation was that the Transferor Company and the Demerged Company have shown losses of Rs. 2,55,44,025/- and Rs. 1,06,18,297/- respectively for the AY 2017-18 while the Transferee Company has shown a profit of Rs. 4,81,73,435/- in AY 2017-18.

It is submitted that the amalgamating company is the sister concern of the resulting company and the directors are common. The applicant companies are using this scheme as a conduit to suppress its profit and to transfer its profits which may be deemed dividend to the directors and shareholders without paying dividend tax.

It is therefore submitted that the real motive of the scheme therefore appears to be the set-off of losses of the amalgamating and the demerged companies and to reduce the tax liability of the resulting company. The Assessing Officer has therefore opined that the proposed arrangement is only for reducing



tax liability, including the dividend tax, which would cause huge loss of revenue to the Exchequer and is opposed to public policy.

11. The aforesaid observations of the IT Dept. have been duly replied to as following:-

1. As per CPC of Income Tax department, there is no outstanding due for AY 2011-12.
2. As per CPC of Income Tax department, outstanding due for AY 2013-14 is reflected as Rs. 10,76,558/- under section 271(1)© with date of demand as 29.07.2016. However, neither the assessment order under section 143(3) nor the penalty order under section 271(1)© has raised any such demand of Rs. 10,76,558/-.
3. It was submitted that the assessment order dated 22.01.2016 for AY 2013-14 under section 143(3) has resulted into refund of Rs. 21,24,170/- and the penalty order dated 29.07.2016 for AY 2013-14 under section 271(1)(c) has resulted into demand OF Rs. 35,018 and this demand amount has been adjusted from the refund of next AY 2014-15.

Further, the Resulting Company to whom substantial business, assets and liabilities of demerged company, have been transferred, has undertaken to indemnify the Income Tax Department for any liabilities of the demerged company.



12. In view of the foregoing, upon considering the approval accorded by the members and creditors of all companies to the proposed Scheme, we find no sustainable objections has been raised by the office of the Regional Director or any other interested party creating impediment in granting sanction to the Composite Scheme. Consequently, sanction is hereby granted to the Scheme of Arrangement under sections 230-232 of the Companies Act, 2013. The sanctioned Scheme of Arrangement shall be binding on the Applicant Companies, its shareholders and creditors. The Petitioners shall also be bound to comply with the statutory requirements in accordance with law.

13. Notwithstanding the above, it would be open to the Income Tax dept, to take recourse to the provisions of chapter XA of the I.T Act in the event of their coming to the conclusion that the scheme has resulted in avoidance of tax. Further the absorption of losses would be adjudicated upon u/s 72 A (1) and 72A(4) of the IT Act. In the event of any tax liability being assessed, the Resulting Company shall be liable for the same. Further if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of both the petitioner companies.

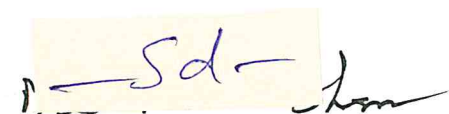
14. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with

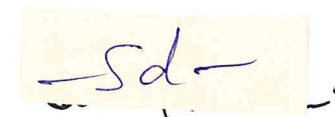
law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.

15. THIS TRIBUNAL DO FURTHER ORDER:

- a.) That all the liabilities and duties of the Amalgamating company and the demerged undertaking, be transferred without further act or deed, to the resulting company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the resulting company; and
- b.) That all proceedings now pending by or against the Amalgamating company and the demerged undertaking, in respect of demerged undertaking, be continued by or against the resulting company;
- c.) That petitioner 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.
- d.) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- e.) The Demerged Company shall pay a sum of **Rs. 1 Lakh** to the Prime Minister Relief Fund. Receipt evidencing payment shall be produced before the ROC prior to further action being recorded by the ROC.

The petition stands disposed of in the above terms.


(Deepa Krishan)
Member (T)


(Ina Malhotra)
Member (J)