

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

C.P.(CAA)2443/MB/2018
IN
CSA No. 118 of 2018

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and
other applicable provisions of the
Companies Act, 2013;

AND

In the matter of Composite Scheme of
Arrangement between Cross-Tab
Marketing Services Private Limited (The
Transferee Company" / "The Demerging
Company") and Blueocean Market
Intelligence Services Private Limited ("The
First Transferor Company") and Borderless
Access Panels Private Limited ("The
Second Transferor Company") and
Protune Trade & Commerce Private
Limited ("The Resulting Company") and
their respective Shareholders

Cross-Tab Marketing Services Private Limited, a }
Company incorporated under the Companies Act, 1956 }
and having its registered office at Unit No. 404, }
Tower-II, Seepz++, Seepz SEZ, Andheri East, }
Mumbai- 400096. }

.....First Petitioner Company

AND

Blueocean Market Intelligence Services Private Limited, }
a Company incorporated under the Companies Act, 1956 }
and having its registered office at 205, Mastermind V, }
Royal Palms, Picadelly III, Aarey Milk Colony, }
Goregaon East, Mumbai- 400065. }

.....Second Petitioner Company

AND

Borderless Access Panels Private Limited, a Company }
incorporated under the Companies Act, 1956 and }
having its registered office at 102/814, Motilal }
Nagar No. 1, Goregaon West, Mumbai-400104. }

.....Third Petitioner Company

AND

Protune Trade & Commerce Private Limited, a }
Company incorporated under the Companies Act, 2013 }
and having its registered office at 205, Mastermind V, }
Royal Palms, Picadelly III, Aarey Milk Colony, }
Goregaon East, Mumbai - 400065. }

.....Fourth Petitioner Company

Order delivered on: 30th August, 2018

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co.

For the Regional Director: Mr. S Ramakantha, Joint Director representing the office
of Regional Director

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Joint Petition and nor any party has controverted any averments made in the Petitions.
2. The sanction of the Tribunal is sought under Sections 230 to Section 232 and other applicable provisions of the Companies Act, 2013, to the Composite Scheme of Arrangement between Cross-Tab Marketing Services Private Limited ("The Transferee Company / "The Demerging Company') and Blueocean Market Intelligence Services Private Limited ("The First Transferor

Company") and Borderless Access Panels Private Limited ("The Second Transferor Company") and Protune Trade & Commerce Private Limited ("The Resulting Company") and their respective Shareholders ("Scheme of Arrangement").

3. The Counsel for the Petitioner Companies submit that the Transferee Company/ Demerging Company is engaged in market research activity which includes and covers IT enabled research and analysis of market response to products and services launched by various companies. The same is done through the following process:

- Sample collection - Involves preparing questionnaire, collecting data from a sample representative of the population which uses or has some experience with the desired product/service; and
- Data analysis - Analyzing the results of the data collection / results provided by third parties and then preparing reports based on the results of the analysis.

The First Transferor Company is engaged in the business of data analytics providing predictive analytics and decision support for sales, marketing and product planning teams and organizations.

The Second Transferor Company is engaged in the business of online data collection for market research activity. It has extensive experience in conducting internet (online) surveys in the developing markets for its clients and has its own in-house Access Panel for collecting email address and managing these email addresses for online surveys.

4. The Counsel for the Petitioners submit that the Board of Directors of the Petitioner Companies in their respective meetings held on 31st January, 2018, approved the Scheme of Arrangement.

5. The Appointed date fixed under the Scheme of Arrangement is 1st April, 2017.

6. The rationale for the proposed merger under the Scheme of Arrangement is that the Transferee Company, the First Transferor Company and the Second Transferor Company are group companies engaged in providing data collection and analytics services to different set of clientele. The Transferee Company is a sample only services, research services and analytics company having

agencies as its clients, where it does a subcontractor's role and the agencies are contractors of the work for the end clients. The First Transferor Company is a full service boutique agency for Digital and Advanced Analytics, Insights and Visualisation catering mainly to end clients. The Second Transferor Company's business is concentrated on sample only services and data collection. It has its own in-house Access Panel which invests its tool and technology to build a community of consumers and business decision makers and collects their email address along with their consent to participate in future online surveys.

The merger will enable the Companies to consolidate the following into the Transferee Company which would lead to increase in the operating margin:

- o First Transferor Company's relationship with end clients which would remove the middle level of agencies;
- o Access to services and automation capacity developed by the Transferee Company; and
- o Second Transferor Company's in-house Access Panel for the data collection business.

The merger will enable the Transferee Company to reduce the number of companies under the same Management and thus lead to reduction in administration efforts. It would be advantageous to combine the activities and operations of the Companies for leveraging financial and operational resources and reflecting stronger financial position and for the benefit of lesser compliance issues. It would enable the consolidated entity to leverage on the large delivery team, command benefit of efficiency of scale, larger infrastructure and better services. The merger will result in cost saving for the Companies and is expected to result in administrative efficiency and higher profitability levels for the Transferee Company. The merger will enable concentrated effort and focus by senior management to grow the business by eliminating duplicative communication and burdensome coordination efforts across multiple entities and enable them to utilize the offices and support people more efficiently.

7. The rationale for the proposed demerger under the Scheme of Arrangement

isthat the Data Collection, Sample only services and Data Analytics businesses, though connected, have distinct characteristics and are at a different maturity stage in their life cycles. The difference is not only in their revenue cycles but also requires different sales approach and methodologies, have varied technology skill sets, and hence associated risk profile. First Transferor Company's clientele mainly consists of clients requiring data analytics services, Second Transferor Company's clientele mainly consists of clients requiring sample only services and data collection services and the Demerging Company's clientele consists of clients requiring sample only services and clients requiring data analytics services. Current clients of sample only services are moving to the Resulting Company and post demerger, the Demerging Company will not engage in the Sample only business. The Demerger will enable the Companies to consolidate sample only services and data collection business into the Resulting Company thereby eliminating any conflict from the Demerging Company on Sample only business. The Demerger will enable the Demerging Company and the Resulting Company to have their own independent management teams who can independently chart out their strategies to maximize value creation for their respective businesses and stakeholders. Further, since the sample only services and the data analytics business have a distinct attractiveness to divergent set of investors, the demerger will enable to unlock the prospect of attracting investors and provide better flexibility in accessing capital Therefore, it is prudent that the Demerged Division be transferred into a separate Company.

8. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in the order of Company Scheme Application No. 118 of 2018 of the Petitioner Companies, by this Tribunal and that the Company Scheme Petition No. 2443 of 2018 of the Petitioner Companies has been filed in consonance with the order passed in abovementioned Company Scheme Application.
9. The Regional Director has filed a Report dated 27th July, 2018 stating therein, save and except as stated in paragraph IV (a) to (e), it appears that the Scheme of Arrangement is not prejudicial to the interest of shareholders and

public. In paragraph IV, of the said Report it is stated that:

- (a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc;*
- (b) *The Hon'b/e NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and Company Petition are one & same and there is no discrepancy or deviation.*
- (c) *As per Definition Clause-1.11 of the Scheme the "Effective Date" means the date on which the certified copies of the Order of National Company Law Tribunal - Mumbai (' NCLT'), sanctioning the Scheme is filed with the Registrar of Companies, Maharashtra, Mumbai. In this regard it is submitted that the "Effective Date" shall be as per provisions of section 232(6) of the Companies Act, 2013 and, not as mentored in the above said clause of the Scheme.*
- (d) *As regards Clause 23 of the Scheme - (Change of Name of the Demerged Company and Resulting Company). In this regard it is submitted that the same is subject to compliance with the provisions of section 4(2) &(3) of the Companies Act, 2013 r/w rule 8(8) of the Company (Incorporation) Rules, 2014.*
- (e) *As regards Clause 24 & 25 of the Scheme - (Amendment to Memorandum of Association of the Resulting Company and Demerged Company). In this regard, it is submitted that the same is subject to compliance with the provisions of section 13(9) of the Companies Act, 2013 r/w relevant rule(s) of the Company (Incorporation) Rules, 2014.*
10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report are concerned, the Transferee Company through its Counsel undertakes to comply with all applicable Accounting Standards by passing such accounting entries as may be necessary.
11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report, the Petitioners through their Counsel submit an undertaking to the effect that the Scheme enclosed to the Company Application and Petition are one and same.
12. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioners through its Counsel submits that in

accordance with the provisions of section 232(6) of the Companies Act 2013 and Clause 1.2 of the Scheme clearly indicates that 1st April 2017 shall be the appointed date and the scheme shall be deemed to be operative from such date.

13. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report, the Petitioner through their Counsel submit that the change in names of the Resulting Company and the Demerging Company shall be in compliance with the relevant provisions of Section 4(2) and (3) of the Companies Act, 2013 r/w rule 8(8) of the Company (Incorporation) Rules, 2014.
14. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of his report, the Petitioner through their Counsel submit that the amendment to Memorandum of Association of the Resulting Company and the Demerging Company shall be in compliance with the provisions of Section 13(9) of the Companies Act, 2013 and the relevant rules of the Company (Incorporation) Rules, 2014.
15. The observations made by the Regional Director have been explained by the Petitioners in Para 10 to 13 above. The clarifications and undertakings given by the Petitioners are accepted.
16. From the material on record, the Scheme of Arrangement appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.
17. Since all the requisite statutory compliances have been fulfilled, the Company Petition is made absolute in terms of prayer clause (a) of the Petition.
18. Petitioners are directed to file a copy of this order along with a copy of the Composite Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the order from the Registry.
19. The Resulting Company to lodge a copy of this order and the Scheme of Arrangement duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, within a period of 60 days from the date of receipt of the order.
20. Petitioners Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the receipt of the order.

21. Petitioners Companies to pay costs of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the receipt of the order
22. All authorities concerned to act on a copy of this order along with the Scheme of Arrangement duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

SD/-

V. Nallasenapathy

Member (T)

SD/-

Bhaskara Pantula Mohan

Member (J)