

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (CAA) NO. 2013 OF 2018
IN
CA (CAA) NO. 133 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 Scheme of Merger by
Absorption of Dentsu Impact Private Limited
by Dentsu Media and Holdings India Private
Limited AND their Respective Shareholders
and Creditors

DENTSU IMPACT PRIVATE LIMITED]
a company incorporated under the Companies Act, 1956]
and having its registered office at B-601, 6th Floor,]
Poonam Chambers, Dr. Annie Besant Road, Worli,]
Mumbai – 400018, India]

First Petitioner Company / Transferor Company

DENTSU MEDIA AND HOLDINGS INDIA PRIVATE LIMITED]
a company incorporated under the Companies Act, 1956]
and having its registered office at B-601, 6th Floor,]
Poonam Chambers, Dr. Annie Besant Road, Worli,]
Mumbai – 400018, India]

Second Petitioner Company / Transferee Company

ORDER DELIVERED ON: 30th August, 2018

CORAM:

Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

For the Petitioner : Mr. Sanjeev Shah i/b. Deloitte Haskins & Sells LLP,
authorised representative for the Petitioner Companies

For Regional Director : S. Ramakantha, Joint Director
For Registrar of Companies : Neelambuj, Public Prosecutor
For Official Liquidator : Santosh Dalvi, Representative

Per: Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. Heard the learned counsel for the Petitioner Companies. Neither any objector has come before the Hon'ble Tribunal to oppose the Scheme of Merger by Absorption nor has any party controverted any averments made in the Petition.
2. The sanction of the Hon'ble Tribunal is sought under Section 230 to 232 of the Companies Act, 2013 to the Scheme of Merger by Absorption of Dentsu Impact Private Limited by Dentsu Media and Holdings India Private Limited and their respective shareholders and creditors (the 'Scheme').
3. The Counsel for the Petitioner Companies state that the Transferor Company and the Transferee Company are operating in the business that complement each other and can be conveniently combined for mutual benefit. The above mentioned merger by absorption will improve organizational capability arising from the pooling of human capital that has diverse skills, talent and vast experience. The Scheme is commercially and economically viable and feasible and is in fact fair and reasonable. The proposed merger by absorption will result in administrative and operations rationalization, organizational efficiencies, reduction in overheads, personnel costs, compliance cost and other administrative expenses. The proposed merger by absorption would be beneficial from a revenue generation and cost optimization perspective as the Transferee Company would continue to reap benefits of qualifications/certifications of the Transferor Company and its preferred vendor status with identified customer post the said merger by absorption. The proposed merger by absorption will prevent cost duplication and will result in synergies in operations. The synergies created by the said merger by absorption would increase operational efficiency and integrate business functions.

4. The Learned Counsel for the Petitioner Companies states that the Board of Directors of the Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the Company Scheme Application.
5. The Learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in the Joint Company Scheme Application and that the Company Scheme Petition has been filed in consonance with the Orders passed in Company Scheme Application.
6. The Learned Counsel appearing on behalf of the Petitioner Companies have stated that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary affidavit of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder, as applicable. The said undertakings given by the Petitioner Companies are accepted.
7. The Official Liquidator has filed his report dated 23rd July, 2018 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
8. The Regional Director has filed his report dated 26th July, 2018 wherein it is stated that save and except as stated in paragraph IV(a) to IV(g), it appears that the Scheme is not prejudicial to the interest of shareholders and public. The observations of the Regional Director as stated in paragraph IV of the said Report are as under:
IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:-
 - (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) As per Definitions Clause 2.2 of the scheme, "Appointed Date" for the purpose of this scheme means 1 April 2017 or such other date(s) as the National Company Law Tribunal may direct/approve. In this regard, it is submitted that in terms of provisions of Section 232(6) of the Companies Act, 2013 it should be 01 April 2017.

(c) Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy/any change/changes are made, for changes if any, liberty be given to Central Government to file further report if any required;

9. In so far as observations made by the Regional Director, the Counsel for the Petitioner submits that the Petitioner Companies has filed affidavit in rejoinder dated 31st July, 2018 and have clarified that:

(a) As far as the observations in paragraph IV (a) of the Report of the Regional Director is concerned, the Petitioner Companies undertakes that 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) As far as the observations in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Appointed Date will be 1st day of April, 2017.

(c) As far as the observations in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that the Petitioner Companies undertakes that the Scheme enclosed to the Company Scheme Application and Company Scheme Petition are one and same and there is no discrepancy or any changes in the said Scheme and in case if any changes are found in the Scheme, the Central Government would have the liberty to file further report.

10. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
11. From the material on record, the Scheme appears to be fair and reasonable and is not in violation with any provisions of law and is not contrary to public policy.
12. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 2013 of 2018 filed by the Petitioner Companies is made absolute in terms of prayer clauses 29 (a) to 29 (c).
13. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the receipt of the order.
14. The Petitioner Companies are further directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically E-Form INC-28 in addition to the physical copy, as per the relevant provisions of the Companies Act, 2013.
15. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Second Petitioner Company/ Transferee Company to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of receipt of the Order.
16. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai.

17. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

SD/-

V. NALLASENAPATHY
MEMBER (T)

SD/-

BHASKARA PANTULA MOHAN
MEMBER (J)