

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

C.P.(CAA)/2010/MB/2018

IN

CSA NO. 132 OF 2018

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 read with Section 234 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Scheme of Merger by Absorption of Equator Trading Enterprises Private Limited ("**First Transferor Company**") and Panorama Television Private Limited ("**Second Transferor Company**") and RVT Media Private Limited ("**Third Transferor Company**") and ibn18 (Mauritius) Limited ("**Fourth Transferor Company**") by TV18 Broadcast Limited ("**Transferee Company**") and their respective Shareholders and Creditors ("**Scheme**").

Equator Trading Enterprises Private Limited
.... First Transferor Company/ First Petitioner Company

AND

Panorama Television Private Limited
...Second Transferor Company/ Second Petitioner Company

AND

RVT Media Private Limited
...Third Transferor Company/ Third Petitioner Company

AND

TV18 Broadcast Limited

....Transferee Company/ 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 a/w Mr. Suvaankoor Das

i/b Krishnamurthy & Co.

For Regional Director: Mr. S Ramakantha, Joint Director.

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 read with Sections 234 and other applicable provisions of the Companies Act, 2013 to the Scheme of Merger by Absorption of Equator Trading Enterprises Private Limited, Panorama Television Private Limited, RVT Media Private Limited, ibn18 (Mauritius) Limited by TV18 Broadcast Limited and their respective shareholders and creditors.
3. Learned Counsel for the Petitioners states that the First Transferor Company is currently engaged in the business of trading of goods, the Second Transferor Company is engaged in media business and it broadcasts general news channels in regional languages, the Third Transferor Company is engaged in the business of broadcasting, telecasting, transmitting or distributing in any manner any audio, video or other programmes or software, trading business and commercial services and the Fourth Transferor Company is engaged in providing consultancy services. Learned Counsel for the Petitioners further states that the Transferee Company is currently engaged in the media business and it broadcasts general news channels in

Hindi, English and other regional languages and business news channels in Hindi, English and Gujarati.

4. Learned Counsel for the Petitioners further states that the Scheme envisages merger by Absorption of the Transferor Companies with the Transferee Company and the merger by Absorption shall have the following benefits: a) The Transferor Companies are direct or indirect wholly owned subsidiaries of the Transferee Company. In order to effectively manage all the companies of the group it was decided to consolidate all the Petitioner Companies and the Fourth Transferor Company into a single legal entity; b) Consolidation would result in several benefits including effective management of business, benefitting in synergy, economics of scale, attainment of efficiencies and cost competitiveness; c) rationalizing the group structure to ensure optimized legal entity structure, more aligned with the business by reducing the number of legal entities with an objection to achieve significant reduction of costs, compliances and duplication of corporate affairs; d) integrating news channels, i.e. Business news channels, English news channels, Hindi news channels and regional news channels, in the amalgamated entity would result in maximizing overall shareholder value and bring synergies in operations; e) The Scheme shall be beneficial to and in the best interest of the shareholders, creditors and employees of the Transferor and Transferee Company, public at large and all concerned.
5. The Petitioners have approved the said Scheme by passing respective Board Resolutions which are annexed to the Company Scheme Petitions.
6. The Learned Counsel appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in Company Scheme Application No. 132 of 2018 of the Hon'ble Tribunal.
7. The Learned Counsel appearing on behalf of the Petitioners states that the Petitioners have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary Affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioners undertake to comply with all statutory

requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.

8. The Regional Director, Western Region, Mumbai has filed his Report dated July 12, 2018, stating therein that save and except as stated in paragraph IV of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public:-

- (a) In addition to compliance of AS-14 (IND AS-103), the Petitioner Companies 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) (b)Part-A Definitions & Share Capital Clause - 1.6 of the scheme. "Effective Date" means the date on which the last of the orders, sanctions, approvals, consents, conditions, matters or filings referred to in Clause 22.2 of this Scheme is complied with or obtained or waived, as the case maybe. Any references in this Scheme to the "date of coming into effect of this Scheme" or "effectiveness of this Scheme" or "Scheme taking effect" shall mean the Effective Date. 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.
- (c) As regards Part-B, Clause 17 of the Scheme (Amendment to the Memorandum), and fee payable by the Transferee Company shall be in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013;
- (d) ibn18 (Mauritius) Limited the 4th Transferor Company, is foreign company incorporated in Mauritius. the 4th transferor company is situated in Mauritius, the FEMA Regulations/ RBI Guidelines if any applicable is to be complied with by the transferee/ transferor company.
- (e) ibn18 (Mauritius) Limited the 4th Transferor Company. Further, the Registered Office of all the above mentioned company is situated in Ebene Esplanade, 24 Cybercity, Ebene, Mauritius and does not fall within the jurisdiction of this Hon'ble Tribunal. Accordingly, similar approvals be obtained by the above said Transferor Company in accordance with the laws of Mauritius.
- (f) That it is pertinent to mention that, Reserve Bank of India on 20.03.2018 notified the Foreign Exchange Management (Cross Border Merger) Regulations 2018 (Cross Border Merger Regulations) to regulate cross

border merger from an exchange control perspective. The Cross Border Merger Regulations clarify that cross border merger pending before the RBI for its approval as of 20th March 2018 will be governed by the Cross Border Merger Regulations.

The Present scheme appears to be governed by said Cross Border Merger Regulations. In terms of Mauritius Companies Act, 2001 only a company holding a category 2 global business license can merge with one or more companies incorporate under the laws of a jurisdiction other than Mauritius where the merger is permitted by the laws of such jurisdiction.

It is therefore not clear as to whether Transferor Company No. 4 has taken category 2 license or not.

9. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, Transferee Company through their Counsel 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., to the extent applicable.
10. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report are concerned, Petitioners through its Counsel submit that the Scheme shall become effective on the date when the certified copy of the Order is filed with the Registrar of the Companies and shall be deemed to be effective from the Appointed Date, i.e. April 1, 2016.
11. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his report is concerned, the Transferee Company through their Counsel undertakes that that Clause 17 of the Scheme (Amendment to the Memorandum), and fee payable by the Transferee Company shall be in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.
12. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of the report is concerned, the Petitioners through their Counsel submit that all the FEMA Regulations/ RBI Guidelines, if any applicable has been complied with by the Transferee/ Transferor Companies.

13. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) the Transferee Company through its Counsel undertakes that the Fourth Transferor Company will obtain requisite approvals, if any, under the laws of Mauritius.
14. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (f) of his report is concerned, Petitioners through its Counsel submits the Fourth Transferor Company has obtained a Category 2 Global Business License and has filed an Affidavit dated August 23, 2018 bringing on record the same. ibn18 (Mauritius) Limited, the Fourth Transferor Company shall comply with all applicable laws of Mauritius to the extent applicable.
15. The observations made by the Regional Director have been explained by the Petitioners in Para 9 to 14 above. The clarifications and undertakings given by the Petitioners are accepted.
16. The Official Liquidator has filed his report dated August 16, 2018, whereby the Chartered Accountant appointed by this Hon'ble Tribunal made certain observations in relation to the First, Second and Third Transferor Company, in context of losses incurred by the said Transferor Companies, subject to certain observations. The Chartered Accountant has further observed that *"...in terms of Section 230-232 of the Act and that of Section 230(5) of the Act that the Scheme of Merger by Absorption of Equator Trading Enterprises Private Limited and Panorama Television Private Limited and RVT Media Private Limited by TV18 Broadcast Limited and their respective Shareholders and Creditors, will be in order."* The Counsel for the Petitioner submits that the said Transferor Companies by their letters each dated August 3, 2018, have given necessary clarification, which are also reproduced in the report filed by the Official Liquidator.
17. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.

18. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 2010 of 2018 are made absolute in terms of prayer clause (a) for the Transferee Company and prayer clause (b) for the First to Third Transferor Companies. The First to Third Petitioner/Transferor Companies shall stand dissolved without winding up and the Fourth Transferor Company shall be dissolved as per the applicable law of Mauritius.
19. Petitioners are directed to file a copy of this order along with a copy of the Scheme of Merger by Absorption 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.
20. The Transferee Company to lodge a copy of this order and the Scheme 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.
21. Petitioners to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The First to Third Petitioner Companies to pay costs of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay.
22. Costs to be paid within four weeks from the date of the receipt of the order.
23. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

SD/-
V. Nallasenapathy
Member (T)

SD/-
Bhaskara Pantula Mohan
Member (J)