

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

C.P. (CAA)/ 2023/MB/2018

IN

CSA NO. 154 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 the Scheme of Merger by  
Absorption between Genx Entertainment  
Limited ("Transferor Company") and  
Disney Broadcasting (India) Limited  
("Transferee Company") and their  
respective shareholders and creditors.

Genx Entertainment Limited

Petitioner / Transferor Company

Disney Broadcasting (India) Limited

Petitioner /Transferee Company

Order delivered on: 30<sup>th</sup>August 2018

Coram: Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapthy, Member (T)

For the Petitioners:

Counsel Ms. Alpana Ghone i/b. J. Sagar  
Associates, Advocates for the Petitioners.

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

For the Official Liquidator: Mr. Mangutkar – Officer representing the  
Office of the Official Liquidator.

*Per: Bhaskara Pantula Mohan, Member (J)*

**Order**

1. Heard Counsel for the parties. No objector has come before this Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act 2013 to a Scheme of Merger by Absorption ("Scheme") between Genx Entertainment Limited ("Transferor Company") and Disney Broadcasting (India) Limited ("Transferee Company").
3. The Counsel for the Petitioner Companies states that both the Transferor Company and the Transferee Company are television broadcasting companies, operating entertainment (non-news/non-current affairs) television channels.
4. The following is the rationale for the Scheme which entails a merger by absorption of the Transferor Company with the Transferee Company:
  - a. It is strategically appropriate that all the television channels are housed and function from a single legal entity which has more number of channels and hence better customer-connect and vendor relationship.
  - b. The consolidation of the business operations into a single entity will lead to consolidation of various television related

intellectual property rights and other properties in the larger entity i.e. the Transferee Company and create synergies of operations thereby enabling the Transferee Company to participate more profitably in an increasingly competitive market.

c. The synergies created by the consolidation would increase operational and management efficiency and integrate business functions and decrease cost of legal compliance relating to the Transferor Company.

5. The Petitioner Companies have approved the said Scheme by passing board resolutions dated March 09, 2018 and April 09, 2018 which are annexed to the Company Petition.
6. The Counsel for the Petitioner Companies states that the Company Petition has been filed in consonance with the order dated April 4, 2018 passed in the Company Scheme Application No. 154 of 2018 of this Tribunal.
7. The Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits 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. The said undertaking is accepted.
8. The Regional Director has filed a report dated 14<sup>th</sup> August 2018 *inter-alia* disclosing an observation from report of the Registrar of Companies, Mumbai, in serial no. 12 paragraph III and observations of the Regional Director in paragraph IV of the said report, for consideration of the Tribunal.
9. In serial no.12 of paragraph III of the said report, the Regional Director has disclosed the following observations made by the Registrar of Companies, Mumbai in its report:

- (i) As stated in Para 7 of the Report the paid-up share capital of Transferor Company mentioned at Para 2.1 of the scheme Rs. 10,96,93,410/- which does not agree with MCA Master Data.
- (ii) Further, Authorized and Paid-up Share Capital of Transferee Company mentioned at Para 2.2 of the scheme of Rs. 53,23,47,000/- and Rs. 17,33,89,470/- which does not agree with MCA Master Data.
10. In paragraph IV of the said report, the Regional Director has 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) As per Part-I Definitions Clause 1.1 of the Scheme "Appointed Date" shall mean April 1, 2017 or such other date as may be directed or imposed by the Appropriate Authority, being the date from which this Scheme shall stand implemented; In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013, it should be April 01, 2017;
- (c) As per Part-I Definition Clause 1.1 of the Scheme "Effective Date" means the last of the dates on which all the conditions and matters referred to in Clause 20 has been fulfilled, obtained or waived. References in this scheme to the date of "coming into effect of this scheme" or Scheme becoming effective" shall be construed accordingly. In this regard it is submitted that "Effective Date" shall be as per provisions of Section 232(6) of the Companies Act, 2013 and not as specified in the above said clause of the Scheme;
- (d) Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Companies Application & Company Petition, are one and same and there is no discrepancy / any change / changes are made, for

*changes if any, liberty to be given to Central Government to file further report if any required;*

*(e) As regards, Clause 12 of the Scheme (Combination of Authorized Capital) and fees payable by the Transferee Company shall be in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013;*

*(f) It is observed that, The Transferor Company and Transferee Companies are engaged in the business of Broadcasting. In this regard it is submitted that Petitioner Company may kindly be directed to obtain necessary statutory approval, if any, applicable from Regulatory Authority;*

11. As far as the observation made by the Registrar of Companies, Mumbai in its report, mentioned in Sr. No 12 of paragraph III of the Report of the Regional Director is concerned, the Counsel for the Petitioner Companies states and submits that there is no discrepancy in the paid-up share capital of the Transferor Company as disclosed in para 2.1 of the Scheme and that as appears in the MCA Master data as on the date. So far as the Transferee Company is concerned, the first table in para 2.2 of the Scheme discloses the authorised share capital and paid-up share capital of the Transferee Company which is in agreement with the existing MCA Master data as on the date. The second table in para 2.2 of the Scheme discloses the authorised share capital and paid-up share capital of the Transferee Company after considering an earlier Scheme of Amalgamation between United Home Entertainment Private Limited and the Transferee Company which is yet to be given effect to on account of a pending regulatory approval in terms of the order dated June 8, 2017 passed by this Tribunal. Accordingly, the Counsel for the Petitioner Companies submits that the authorised share capital and paid-up share capital of the Transferor Company and the Transferee Company disclosed in the Scheme is in agreement with the MCA master data.

12. In so far as the observation made in paragraph IV (a) of the Report of the Regional Director is concerned, the Transferee

Company through its Counsel undertakes that in addition to compliance of AS-14 (IND AS-103) for accounting treatment, the Transferee Petitioner Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards including AS-5 (IND AS-8), etc. as may be applicable.

13. In so far as the observation made in paragraph IV (b) of the Report of the Regional Director is concerned, the Counsel for the Petitioner Companies confirm that in terms of provisions of Section 232(6) of the Companies Act, 2013, the Appointed Date for the Scheme shall be April 1, 2017.
14. In so far as the observation in paragraph IV(c) of the Report of the Regional Director is concerned, the Counsel for the Petitioner Companies submits and confirms that the "Effective Date" shall be as per provisions of Section 232(6) of the Companies Act, 2013 and upon receipt of all other required regulatory approvals.
15. In so far as the observation made in paragraph IV (d) of the Report of the Regional Director is concerned, the Counsel for the Petitioner Companies states that the Scheme enclosed to Company Application and Company Petition is one and the same and that there is no discrepancy or change except for an inadvertent error with respect to number and value of the authorised share capital of the Transferee Company and the replacement of the term 'Amalgamation' with 'Merger by Absorption' in the Scheme as directed by this Tribunal. However, the Scheme attached to the notice and statement sent to the shareholders, creditors and statutory authorities pursuant to the provisions of Section 230(5) of the Companies Act, 2013 (as duly ratified by the Board of Directors of the Petitioner Companies on April 9, 2018), and as duly approved by the shareholders of the Petitioner Companies at their respective meetings held on May 22, 2018 and the Scheme annexed at Exhibit 'F' to the Company Petition is one and the same.
16. In so far as the observation made in paragraph IV (e) of the Report of the Regional Director is concerned, the Transferee

Company undertakes that as regards the clause 12 of the Scheme (Combination of Authorised Share Capital), setting-off of fees paid by the Transferor Company on its authorized share capital will be in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.

17. In so far as the observation made in paragraph IV (f) of the Report of the Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to obtain necessary approval from Ministry of Information and Broadcasting for the Scheme.
18. The observations made by the Regional Director, have been explained by the Petitioner Companies in paragraphs 11 to 17 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
19. The Official Liquidator has filed his report 7<sup>th</sup> August, 2018 *inter alia* in the Company Petition No. CP (CAA) 2023/MB/2018 stating therein that the affairs of the Transferor Company have been conducted in a proper manner.
20. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public interest.
21. Since all the requisite statutory compliances have been fulfilled, the above Company Petition No. C.P. (CAA) 2023/MB/2018 is made absolute in terms of the prayers as provided therein with the Appointed Date fixed as April 1, 2017.
22. The Petitioner Companies are directed to lodge a copy of this order along with the Scheme, 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 date of receipt of this order.
23. The Scheme contemplates approval, from the Ministry of Information and Broadcasting as per clause 20(a) since the

Petitioner Companies are broadcasting companies and the undertaking given by the Petitioner Companies in paragraph 17 above. The Petitioner Companies are directed to file a certified copy of the order along with the Scheme of merger by absorption with the concerned Registrar of Companies, Mumbai, electronically, along with E-Form INC-28 in addition to the physical copy, as per the relevant provisions of the Companies Act 2013 within 30 days of receipt of appropriate communication from the Ministry of Information and Broadcasting in this regard.

24. Each Petitioner Company to pay costs of Rs. 25,000/- to the Regional Director, Western Region, Mumbai. The Transferor Company (1<sup>st</sup> Petitioner) to pay costs of Rs. 25,000/- to the Official Liquidator, High Court Bombay. The costs to be paid within four weeks from date of receipt of this order.
25. All concerned authorities concerned to act on a copy of this order and the Scheme duly certified by Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

SD/-

V. Nallasenapthy  
Member (Technical)

SD/-

Bhaskara Pantula Mohan  
Member (Judicial)