

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

C.P.(C.A.A.)/2765/MB/2018

SAAM TELEVISION PRIVATE LIMITED

...Transferor Company/First Petitioner Company

SAKAL MEDIA PRIVATE LIMITED

...Transferee Company/Second Petitioner Company

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 SAAM Television Private Limited ('the Transferor Company') with Sakal Media Private Limited ('the Transferee Company') and their respective shareholders

Order delivered on 11th September, 2018

Coram:

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

Hon'ble: V. Nallasenapathy, Member (T)

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

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

For the Official Liquidator: Mr. Santosh Dalvi, Representative OL

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

1. Heard learned counsel for the First Petitioner Company & the Second Petitioner Company (hereinafter collectively referred to as 'Petitioner Companies'). 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 of the Companies Act, 2013 to the Scheme of Merger by absorption of SAAM Television Private Limited with Sakal Media Private Limited and their respective shareholders ('Scheme').

3. Learned Counsel for the Petitioner Companies states that the First Petitioner Company is currently engaged in the business of broadcasting. Learned Counsel for the Petitioner Companies further states that the Second Petitioner Company is primarily engaged in the business of print media.

4. Learned Counsel for the Petitioner Companies further states that the amalgamation envisaged in the Scheme shall be beneficial for the following reasons:
 - The Petitioner Companies are both part of the Sakal Group.
 - The Broadcasting business of Sakal Papers Private Limited was demerged to the First Petitioner vide a Scheme of Arrangement with an idea to bring strategic investment in the Broadcasting business.
 - However, the envisaged transaction didn't go through and hence, the management of the Sakal Group decided to merge the First Petitioner Company into the Second Petitioner Company with a view to achieve following objectives:
 1. Elimination of multiple entities in the group; which will eliminate duplication of administrative functions and reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Company and the Transferee Company;
 2. Enhancement of net worth of the combined business to capitalise on future growth potential;
 3. Achieving operational and management efficiency; and
 4. Optimal utilisation of resources resulting into reduction in operational and compliance cost.

5. The Petitioner Companies have approved the Scheme by passing respective Board Resolutions which are annexed to the Joint Company Scheme Petition.

6. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Joint Petition has been filed in consonance with the order passed in Company Scheme Application No. 191 of 2018 of the Hon'ble Tribunal.

7. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies 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, Petitioner Companies 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 5th July, 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 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 Definition Clause 2.2 of the Scheme, "**Appointed Date**" means the **1st day of April 2017** or such other date as may be fixed or approved by the National Company Law Tribunal. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be on **1st day of April 2017**.*
- (c) *As per Definitions Clause 2.6 of the scheme, "**Effective Date**" means the last of the dates on which the certified copies of the orders sanctioning this Scheme, passed by the National Company Law Tribunal at Mumbai, are filed with the Registrar of Companies, Pune by the Transferor Company and the Transferee Company collectively. Any references in this scheme to the date of "**coming into effect of this Scheme**" or "**upon the Scheme being effective**" 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 specified in the above said clause of the scheme;*
- (d) *As regard Clause 16 of the Scheme (Aggregation of Authorized Share Capital of the Transferee Company) and fee payable by the Transferee Company shall be in accordance with the provisions of Section 232(3) (i) of the Companies Act, 2013;*
- (e) *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 the 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;*

(f) *It is observed that, The First Petitioner Company is engaged in the business of Broadcasting. In this regard it is submitted that petitioner Company to obtain necessary statutory approval if any applicable from Regulatory Authority (Ministry of Information and Broadcasting).*

9. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report are concerned, Second Petitioner Company through their Counsel undertake that the Petitioner Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with all applicable Accounting Standards such as AS-14 (IND AS-103), AS-5 (IND AS-8), etc.
10. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of the report is concerned, the Petitioner Companies clarify that the Appointed Date for the purpose of the Scheme shall be 1st day of April 2017.
11. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his report are concerned, Petitioner Companies through their 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. 1st day of April 2017.
12. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of the report is concerned, Second Petitioner Company through their Counsel undertakes that fees if any payable shall be in accordance with Section 232(3)(i) of the Companies Act, 2013.
13. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of his report is concerned, Petitioner Companies through its Counsel undertake that the Scheme enclosed to the Joint Company Scheme Application and the Joint Company Scheme Petition are one & same and there is no discrepancy / any change/ changes are made thereunder.

14. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (f) of his report is concerned, the Petitioner Companies through their Counsel undertake that the Petitioner Companies shall obtain necessary statutory approval from Ministry of Information and Broadcasting.
15. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 to 14 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
16. The Official Liquidator has filed his report dated 4th September 2018 stating therein that the Affairs of the First Petitioner Company have been conducted in a proper manner and that the First Petitioner Company may be ordered to be dissolved by this Tribunal.
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 Joint Company Scheme Petition No. 2765 of 2018 filed by the Petitioner Companies is made absolute in terms of prayer clause (a) of the Joint Company Scheme Petition.
19. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme 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 Second Petitioner Company to lodge a copy of this order and the Scheme duly certified by the Deputy Director, 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. Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The First Petitioner Company to pay cost of Rs. 25,000/- 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 Deputy Director/ Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

SD/-

SD/-

V. Nallasenapathy, Member (T)

Bhaskara Pantula Mohan, Member (J)

Date:- 11.09.2018