

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

CP (CAA) 86/230-232/NCLT/MB/MAH/2018

Under section 230-232 of the Company Act, 2013

In the matter of

M/s. Tayana Digital Private Limited
..... Petitioner / Transferor Company

Order Pronounced on : 08.10.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

For the Petitioners :

Mr. Hemant Sethi, Advocate i/b. Hemant Sethi & Co. – Advocates for the Petitioner.

For the Regional Director :

Mr. R. S. Meena – Jt. Director (WR).

For the RoC :

Mr. Neemlambuj – CP RoC.

For the Official Liquidator :

Mr. Santosh Dalavi – Representative of OL.

Per : M. K. Shrawat, Member (J)

COMMON ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Company Act, 2013, to a Scheme of Merger by Absorption of M/s. Tayana Digital Private Limited (Transferor Company) with M/s. Jupiter Capital Private Limited (Transferee Company) and their respective shareholders.
2. It is stated that the Transferee Company i.e. M/s. Jupiter Capital Private Limited is situated within the Jurisdiction of the NCLT, Bengaluru Bench. And the NCLT, Bengaluru has sanctioned the Scheme vide an Order dated 09.04.2018.
3. The Petitioner Companies have approved the said Scheme of Merger by Absorption by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.

4. The Transferor Company is engaged in the business of software development and its related services. And the entire Issued, Subscribed and Paid-up Share Capital of the Transferor Company is held by the Transferee Company and one another Company namely, HIGI Mauritius. The HIGI Mauritius is also a wholly owned subsidiary of the Transferee Company hence, the Transferee Company directly and in-directly holds the entire Share Capital of the Transferor Company.
5. The Transferee Company is a systemically important Non Deposit Accepting Non-Banking Finance Company (“NBFC – ND SI”) which is primarily an investment and loan company. Besides this, Jupiter Capital Private Limited is also in the business of Air Charter, holding an NSOP license.
6. The proposed Scheme will inter alia have following benefits :
 - a) Greater integration, financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder value and will improve the competitive position of the combined entity;
 - b) Improved organizational capability and leadership, arising from the pooling of resources to compete successfully in an increasingly competitive industry;
 - c) Greater leverage in operations, planning and process, efficiency in cash management and unfettered access to cash flow generated by the combined business;
 - d) Cost savings are expected to flow from synergies achieved through joint operational efforts, rationalization, standardization and simplification of business processes, administration, finance, accounts, legal and other related functions, leading to elimination of duplication and rationalization of administrative expenses; and
 - e) Simplification of group structure.
7. The averments made in the Petition and the submissions made by the Learned Representative for the Petitioners are:
 - a) The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertake to comply with all the

statutory requirements if any, as required under the Company Act, 2013 and the Rules made there under whichever is applicable.

- b) The Regional Director has filed his Report dated 06.09.2018 stating therein that, save and except as stated in paragraph IV (a) to (h), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

IV. The observation of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:

- a. The Petitioners under provisions of Section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or Amalgamation. Further, the approval of the Scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the Scheme. The decision of such Authorities is binding on the Petitioner Company(s).*
- b. 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.*
- c. The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.*
- d. It is observed that the Petitioner companies have not submitted a copy of the admitted Petition along with Minutes of Order for admission of the Petition. In this regard petitioner companies has to undertake to submit the same for the record of Regional Director.*
- e. As per Clause 1.2 of the Scheme, Appointed Date means the April 1, 2017 or such other date as may be fixed or approved by the*

National Company Law Tribunal. In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the Scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

f. Petitioner in the Clause 10.1.d of the Scheme has inter alia mentioned that the difference, being the excess of the value of the assets over liabilities, of the Transferor Company and Transferee Company, transferred to and vested in the Transferee Company pursuant to the Scheme, shall be credited to General Reserve / Capital Reserve Account. In case of there being a deficit, the same shall be debited to Goodwill Account. The Deponent prays that the above mentioned excess shall be credited to Capital Reserve only and not in General Reserve.

g. It is observed that the Transferor Company has foreign / non-resident shareholders. The Transferee Company must observe the FEMA guidelines for allotment of shares to the shareholder of the Transferor Company in Transferee Company.

h. As regards Para 12 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation for setting-off of fees paid by the Transferor Company on its Authorized Share Capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.

c) Apropos the observation made in Para IV(a) of the report of Regional Director is concerned, the counsel for the Petitioner submits that notices as required under the provisions of section 230(5) of the Companies Act, 2013 have been served upon all the concerned authorities as directed by this Tribunal in pursuance of order dated 21st November, 2017. The counsel for the Petitioner further submits that issues of the said concerned authorities, if any, arising after giving effect to the scheme shall be subject to the decisions of the concerned authorities in accordance with law and the decisions of such authorities as per law shall be binding on the Petitioner Company.

- d) Apropos the observations made in paragraph IV(b) of the Report of the Regional Director is concerned, the Petitioner Company 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 Accounting Standards such as AS-5 (IND AS-8).
- e) Apropos the observations made in paragraph IV(c) of the Report of the Regional Director is concerned, the Petitioner Company clarifies that the Scheme enclosed to the Company Scheme Application and the Scheme enclosed to the Company Scheme Petition are one and the same and there is no discrepancy or deviation.
- f) Apropos the observations made in paragraph IV(d) of the Report of the Regional Director is concerned, the Petitioner Company, the counsel for the Petitioner Company submits that the copy of the Petition along with the Chairman's report as annexed to the petition has been submitted to the office of the Regional Director on 25th July, 2018. Further once the order is uploaded on the NCLT website, the same will be filed with the office of Regional Director.
- g) Apropos the observations made in paragraph IV(e) of the Report of the Regional Director is concerned, the Petitioner clarifies that the amalgamation as embodied in the Scheme shall take effect from the Appointed Date i.e. 1st April 2017.
- h) Apropos the observations made in paragraph IV(f) of the Report of the Regional Director is concerned, the Petitioners through their Counsel undertakes that the difference being the excess of the value of the assets over liabilities of the Transferor Company and the Transferee Company will be credited to Capital Reserve.
- i) Apropos the observations made in paragraph IV(g) of the Report of the Regional Director is concerned, the Petitioners through their Counsel undertakes that the Transferee Company will comply with the provisions of FEMA Guide lines and Companies Act, 2013, to the extent applicable.
- j) Apropos the observations made in paragraph IV(h) of the Report of the Regional Director is concerned, the Petitioner clarifies that the Authorized Share Capital of Transferor Company shall be merged with that of the Transferee Company in accordance with the provision of Section 232(3)(i) of the Companies Act, 2013..

- k) The Official Liquidator, High Court Bombay has filed his report dated 14.05.2018 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may ordered to be dissolved without winding-up.
- l) It is also stated that no objector has approached neither to the Petitioners nor before this Tribunal to oppose the Scheme.
8. From the material on record, the Scheme of Merger by Absorption appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Company, **do Order that:**
- a) All the assets and liabilities including taxes and charges, if any, and duties of the Transferor Company, shall, pursuant to S. 232 of the Company Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) Since the entire Issued, Subscribed and Paid-up Share Capital of the Transferor Company is held by the Transferee Company the Shares held by the Transferee Company in the Transferor Company shall stand cancelled, after this Scheme becomes effective and no new Shares shall be issued and allotted to the Shareholders of the Transferor Company.
- d) The Transferor Company shall be dissolved without winding-up after this Scheme becomes effective.
- e) Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the order.
- f) Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Company, electronically, along with E-form INC 28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry, duly

certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

- g) The Petitioner Companies shall pay costs of ₹ 25,000/- to the Regional Director, Western Region, Mumbai. The cost is to be paid within four weeks from the date of the receipt of Order.
- h) The Petitioner / Transferor Company shall pay costs of ₹ 25,000/- to the Official Liquidator, High Court Bombay. The cost is to be paid within four weeks from the date of the receipt of Order.
- i) All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- j) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- k) Any concerned Authority (i.e. RD, RoC, OL, Income Tax Authority etc.) is at liberty to approach this Bench for any clarification/directions under this Scheme.
- l) The sanctioning of this Scheme shall not deter any concerned Authority (i.e. RD, RoC, OL, Income Tax Authority etc.) from assessing transactions arising out of this Scheme, if need be.
- m) The Scheme is sanctioned hereby, and the appointed date of the Scheme is fixed as **1st April, 2017**.

9. Ordered Accordingly. To be consigned to Records.

Dated : 08.10.2018

SD/-

**M. K. SHRAWAT
MEMBER (JUDICIAL)**

Avinash