

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI**

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

COMPANY PETITION NO. 725 OF 2016

CONNECTED WITH

COMPANY APPLICATION (MAIN) NO. 139 OF 2015

(TRANSFERRED FROM THE FILE OF HON'BLE HIGH COURT OF DELHI)

IN THE MATTER OF SECTION 391 & 394 OF

THE COMPANIES ACT, 1956

(PRESENTLY SECTIONS 230-232 OF THE COMPANIES ACT, 2013)

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

PALM BROADCASTING PRIVATE LIMITED

Having registered office at:

D-135, Chattarpur Extension, Near Baba Balak Nath Mandir

New Delhi-110074

...TRANSFEROR COMPANY / PETITIONER


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WITH

PRARTHANA BHAWAN BROADCASTING PRIVATE LIMITED

Having registered office at:

Prabhu Yesu da Prathana Bhawan, Yesu nagar, Pind Machian

Khurd, Ludhiana, Punjab. ... TRANSFEREE COMPANY/ NON-PETITIONER

AND

Their respective Shareholders and Creditors

**ADVOCATE FOR THE PETITIONERS: Mr. Pradeep K Mittal, Advocate
Mr. Praveen K Mittal, Advocate**

**FOR REGIONAL DIRECTOR, (NR), MCA: Ms. Sonam Sharma, Company
Prosecutor**

**FOR OFFICIAL LIQUIDATOR: Dr. Ramesh Kumar, Assistant official
Liquidator, Office of Official Liquidator, Delhi**


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ORDER

1. This petition filed by the Transferor Company above named is coming up finally before us on 31.05.2017 for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of amalgamation of the Transferor Company/ Petitioner with the Transferee Company. A perusal of the petition discloses that initially the application seeking the dispensation of the meetings of equity shareholders, secured and unsecured creditors of the Transferor Company were filed before the Hon'ble High Court of Delhi in CA (M) 139/2015. The Hon'ble High Court of Delhi vide its order dated 11th September, 2015 ,was pleased to dispense with the requirement of convening the meetings of the equity shareholders and unsecured creditor of the Petitioner Company, in view of their consents having been obtained and produced before it and there being no secured creditor in the Petitioner Company.

2. Under the circumstances, the transferor company / petitioner have filed the petitions for sanction of the Scheme of Amalgamation before the Hon'ble High Court of Delhi under the erstwhile provisions, subsequent to the order of dispensation of the meeting ordered by the Hon'ble High Court of Delhi on 11th September, 2015.

3. On 23.09.2015 the Hon'ble High Court of Delhi ordered Notice in the Second Motion petition in C.P. No.725/2015 moved by the petitioners under Sections

391 to 394 of the Companies Act, 1956 read with relevant Rules of the Companies (Court) Rules, 1959 in connection with the scheme of amalgamation, to the Registrar of Companies, Regional Director and the Official Liquidator. The Petitioners were also directed vide said order to carry out publication in the newspapers "Statesman" in English edition and "Veer Arjun" in Hindi Edition.

4. While the joint petition in C.P.No. 725 of 2015 was pending disposal, since the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 had been notified w.e.f. 15.12.2016 wherein the power to consider such schemes have now been vested with the National Company Law Tribunal, the Hon'ble High Court of Delhi pursuant to the notification bearing No. DL.33004/99 dated 7.12.2016 issued by the Ministry of Corporate Affairs has transferred/transmitted the records of the above petition to this Tribunal vide order dated 11.04.2017, for our consideration.
5. In view of the above, the petition of Second Motion as above filed by the petitioners jointly before the Hon'ble High Court and subsequently transferred is taken up for final consideration by us. The Petitioner was directed to serve the copy of petition to the Ministry of Information and Broadcasting vide order dated 25.05.2017 and the same was served as affirmed by the Petitioner vide affidavit dated 29.05.2017.
6. The petitioners, it is seen from the records have filed an affidavit dated 18.07.2016 in relation to the compliance of the orders passed by the Hon'ble High Court of

Delhi dated 23.09.2015 and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the Hon'ble High Court of Delhi in one issue of the 'Statesman' in English edition and 'Veer Arjun' in Hindi edition on 25.01.2016. Further, it has also been stated by the Learned Counsel for the Petitioner Companies that notices have been issued to the Regional Director, Northern Region as well as to the Official Liquidator attached to the High Court, Delhi in compliance with the order dated 23.09.2015 and in proof of the same acknowledgement made by the respective offices have also been enclosed.

7. Further, it is also seen that pursuant to the directions from Regional Director, Northern Region, a copy of the Company Petition has also been served on the jurisdictional Income Tax Officer of the Petitioner Company from which no specific/ adverse comments has been received .
8. The representative of the Official Liquidator represents that the office of Official Liquidator does not have any objection to the scheme being approved.
9. Further, Regional Director, Northern Region has also filed the Affidavit dated 22.07.2016 before the Hon'ble High Court, New Delhi and have stated that there is no objection to the sanction of the Scheme by the Hon'ble Court. However two pertinent observation is made by the Regional Director in para 7 and para 9 is as follows:-

"That the Deponent states that the Petitioner Company vide
para 8 of their reply stated that the Transferor Company is


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got License for down linking of Television Channel into India from MIB. The terms and conditions of the license are required to be complied by the Transferor Company. In view of that Hon'ble Court may consider to direct the Petitioner Company about the compliance requirement arising out of the license and if think fit may direct for issue of notice to the Ministry of Information and Broadcasting".

10. The petitioner vide reply affidavit "submitted that there is no compliance requirement on the part of Transferor Company in respect of license issued by the Ministry of Information & Broadcasting hence notice is not required to be issued to the Ministry of Information & Broadcasting. However, the Transferor Company undertakes to comply any terms and conditions as may be imposed by this Hon'ble Court while allowing the present petition or imposed by the Ministry of Information and Broadcasting after the approval of present scheme of Amalgamation".

11. The second observation made by the Petitioner company in para 9 is as follows:

"That the Deponent states that the Petitioner Company vide para 21 of reply stated that no tax liabilities towards income tax,


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Sales tax or any government tax and liability for the benefit of the Employees and Workers are pending. However, the Company has shown Rs.1,27,69,005 as advance received from customers upon which it is liable to pay service tax which the company has not complied with the provisions of Service Tax Act”.

12. The petitioner replied that “it is submitted that the Company has already paid the Service Tax to the Service Tax Department in the month of May, 2015 and February and March, 2016. Hence, there is no such requirement to pay further Service Tax and the Petitioner Company have complied the provisions of Service Tax Act.

13. The petitioner has also filed an affidavit dated 24.05.2017 stating that:

“That the Petitioner Company namely Palm Broadcasting private Limited have a Registration Certificate for down linking of T.V. Channel into India from Ministry of Information and Broadcasting.

That the Deponent has gone through the terms and conditions of the Registration Certificate and it does not require any permission/approval from the Ministry of Information and Broadcasting.

That the Deponent further submits that the Registration Certificate dated 29.07.2011 has been renewed for another period of one year upon its expiry in the year 2016.

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That the Deponent further submits that the Deponent has gone through the provisions of programme advertising codes prescribed under the Cable TV Network (Regulation) Act, 1995 and Rules framed thereunder and affirm that there is no requirement for seeking permission from Ministry of Information and Broadcasting for merger of Petitioner Company with any other Company.

That the Deponent further submits that there is no legal requirement under any other law which requires permission of any other regulatory authority for the purpose of merger of petitioner Company with any other Company.

Hence after considering the replies and taking into consideration the undertaking given as above as well as Ministry of Information and Technology being put on notice about the scheme nothing further is required in relation to the said observation.

14. Further, it is also represented that the jurisdictional ROC from whom report has been sought has not made any adverse comment.

15. The counsel for Petitioner had stated that they have not received any objections from the third party and public at large for the purpose of sanction to the present Scheme of Amalgamation vide affidavit dated 18th July, 2016. The above statement is taken on record. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this

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Tribunal sanctions the scheme of amalgamation annexed as Annexure -I with the Company Petition as well as the prayer made therein.

16. That the Petitioner Company have complied with proviso to Section 230 (7) proviso/ Section 232 (3) by filing the certificate of the Company's Auditor's.
17. That in respect to the Transferee Company the petition was filed before the Hon'ble High Court of Punjab and Haryana wherein the scheme was approved vide order dated 06.09.2016.
18. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.
19. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER

- (1) That all the property, rights and powers of the Transferor Company be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and vest in the


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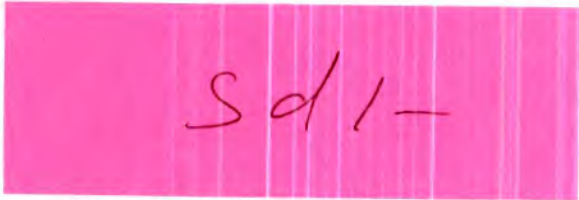
Transferee company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and

- (2) That all the liabilities and duties of the Transferor Company be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company; and
- (3) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee company; and
- (4) That the Transferee Company do without further application allot to such members of the Transferor Company, as have not given such notice of dissent, as is required by clause 6.3 of the SCHEME OF AMALGAMATION herein the shares in the transferee company to which they are entitled under the said SCHEME OF AMALGAMATION;
- (5) That as per clause 9 of the scheme, all the employees of the Transferor Company in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service.
- (6) That Transferor Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the Registrar of

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Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee company and the files relating to the said both companies shall be consolidated accordingly.

(7) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.



Sd/-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Date: 28/06/2017 .

U.D Mehta