

31

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CSP NO. 705 OF 2017

SAKAL PAPERS PRIVATE LIMITED

...Petitioner/ Demerged Company

AND

SAAM TELEVISION PRIVATE LIMITED

...Petitioner/ Resulting Company

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 of the
Companies Act 2013;

AND

In the matter of Scheme of Arrangement between
Sakal Papers Private Limited ("Demerged
Company") and SAAM Television Private Limited
("Resulting Company") and their respective
shareholders

Coram:

Hon'ble **B.S.V Prakash Kumar**, Member (J)

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

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

Mr. S Ramakantha , Joint Director in the office of Regional
Director

Per: V. Nallasenapathy, Member (T)

Order delivered on 24th August 2017

ORDER

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of the Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement between Sakal Papers Private Limited and SAAM Television Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioner Companies states that the Demerged Company is primarily engaged in the business of print media, broadcasting of television media, real estate & windmills and the Resulting Company is incorporated with the main objective of carrying on Broadcasting business.
4. The proposed Scheme of Arrangement will achieve the following primary benefits:
 - i. Simplification of the group structure;
 - ii. Achieving operational and management efficiency by way of segregation of businesses;
 - iii. Attribution of appropriate risk and valuation to different businesses based on their respective risk return profile and cash flows; and
 - iv. More focused management and greater visibility on the performance of individual businesses
5. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the Company Scheme Petition.
6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons for Directions.
7. The learned 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 in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.
8. The Regional Director has filed his report dated 19th July, 2017 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. In paragraph IV of the said report, the Regional Director has stated that:
 - a) *As per clause 2.2 Definitions of the scheme "Appointed Date" means the closure of business hours of 31st day of March 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 closure of business hours of 31st day of March 2017.

- b) *As per existing practice, the Petitioner Companies are required to serve notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 19th May 2017 has served a copy company scheme application No. 561 of /2017 along with relevant orders etc., to the IT Department. Further, this office has also issued remainder letter dated 17/07/2017 to the concerned Income Tax authorities.*
- c) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner company.*
- d) *ROC Pune vide her report dated 14/06/2017 has observed that in terms of Rule 6(3)(ix) (c) of the Compromise Rule, 2016 the auditor of the Company to issue Certificate to the effect that the Accounting Treatment, if any, propose in the scheme is in conformity with the Accounting Standard prescribed u/s 133 of the Companies Act, 2013.*

In this regard, it is submitted that petitioner has to comply with proviso to section 230(7) read with Rule 6(3)(ix)(e) of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 the auditor of the company to issue certificate to the effect that the Accounting Treatment, if any, propose in the scheme is in conformity with the Accounting Standard prescribed u/s 133 of the Companies Act, 2013. Hon'ble Tribunal may pass appropriate order/ orders as deem fit.

- 9. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel confirm and submit that in terms of provisions of section 232(6) of the Companies Act, 2013 Appointed date should be closure of business hours of 31st day of March 2017.
- 10. In so far as observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel state that the observation is noted and accepted.
- 11. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertake to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
- 12. In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel submit

that the Petitioner Companies have submitted the certificate of Auditor as required under proviso to Section 232(3) of the Companies Act, 2013 with the Regional Director on 30th May 2017. The Certificate of Statutory Auditors are also annexed as Annexure H1 & Annexure H2 to the Company Scheme Application.

13. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 12 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
14. 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 policy. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 705 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the Petition.
16. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated 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, if any, on the same within 60 days from the date of receipt of the order.
17. 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 the physical copy, within 30 days from the date of issuance of the order by the Registry.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The costs to be paid within four weeks from the date of Order.
19. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V Prakash Kumar, Member (J)