

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, MUMBAI

COMPANY SCHEME PETITION NO. 601 OF 2017

AND

COMPANY SCHEME PETITION NO. 581 OF 2017

**WESTERN OUTDOOR INTERACTIVE PRIVATE LIMITED**

..... **Transferor Company / Petitioner Company**

**FAIRDEAL MULTIMEDIA PRIVATE LIMITED**

..... **Transferee Company / Petitioner 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 Amalgamation between Western Outdoor Interactive Private Limited ('WOI' or 'the Transferor Company') with Fairdeal Multimedia Private Limited ('Galina' or 'the Transferee Company') and their respective Shareholders

AND

In the matter of Sections 230 read with Section 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013

Order delivered on 22<sup>nd</sup> September, 2017

Coram:

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

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

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

Mr. Ramesh Golap, Assistant Director in the office of Regional Director

Per: Sh. **B.S.V. Prakash Kumar**, Member (J)

### ORDER

1. Heard learned counsel for parties. 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 present Scheme of Amalgamation pertains to merger of Western Outdoor Interactive Private Limited ('Transferor Company') into Fairdeal Multimedia Private Limited ('Transferee Company') and their respective shareholders.
  - a. The Counsel for Petitioners submit that the Transferor Company is engaged in the business of providing specialized services for GUI design, interactive application development, content update services, software development, maintenance & support, system integration, games & application development and process outsourcing. The Transferee Company is engaged in airline entertainment business. It acquires the licenses of Indian and foreign movies and songs for a specified period and sells it to different airlines for a specified period. The Petitioner Company, through its subsidiary, is engaged in providing specialized services for GUI design, interactive application development, content update services, software development, maintenance & support, system integration, games & application development and process outsourcing.
  - b. The business of the Transferor Company was acquired by the Transferee Company through a two-step process i.e. (a) acquisition of business of the Transferor Company, and (b) consolidation of the acquired business of the Transferor Company into the Transferee Company.
  - c. The Transferor Company is a wholly owned subsidiary of the Transferee Company. A consolidation of the Transferor Company and the Transferee Company by way of amalgamation would therefore lead to a more efficient utilization of capital in one entity.
  - d. The amalgamation will also result in administrative and operation rationalization, organizational efficiencies, reduction in overheads, administrative and operational costs and other expenses and optimal utilization of various resources. It will prevent cost duplication that can erode financial efficiencies of a holding structure and the resultant operations would be substantially cost-efficient. The synergies created by the



arrangement would increase operation efficiency and integrate business functions.

- e. The amalgamation will eliminate a multi-layered structure and reduce managerial overlaps, which are necessarily involved in running multiple entities. The Transferor Company is a wholly owned subsidiary of the Transferee Company and all the shares of the Transferor Company are presently held by the Transferee Company in its own name and ten shares by a nominee of the Transferee Company. The Scheme is not prejudicial to the interest of the shareholders of the Transferor Company. The Scheme does not affect the rights and interest of the shareholders or the creditors of the Transferee Company. The shareholding and other rights of the members of the Transferee Company will remain unaffected as no new shares are being issued by the Transferee Company to the shareholders of the Transferor Company.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petition.
4. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Company Scheme Petitions have been filed in consonance with the order passed in Company Scheme Application Nos. 128 & 564 of 2017.
5. The Learned Advocate 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 in the 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.
6. The Regional Director has filed his Report dated 15<sup>th</sup> September, 2017 stating therein that save and except as stated in paragraph IV (1) to (5) of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Paragraph IV, of the said Report reads as follows:

- 1) *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 Act is binding on the petitioner Company.*

- 2) *It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 08.05.2017 and 23.05.2017 for comments. The office of the Directorate also has issued reminder dated 04.07.2017.*
- 3) *Petitioner in clause 7 of the scheme has inter alia mentioned that upon the scheme becoming effective and with effect from the appointment date the name of the Transferee Company shall be changed to Western Outdoor Interactive Private Limited or such other name as may be approved by the Ministry of Corporate Affairs. From the effective date till the time necessary formalities for change of name is completed, the Transferee Company would be eligible and shall be deemed to have a right to use the name of Western Outdoor Interactive Private Limited to ensure continuity of business operations.*

*In this regard, Petitioner Companies have to undertake to mention the reason for change of name for justification and further state that the Transferee Company shall use the new name only after the requisite form is filed before the Registrar of Companies and the same is approved.*

- 4) *Petitioner in the scheme has not mentioned the combination of the authorized share capital.*

*In this regard petitioner have to undertake to mention the combined authorized share capital pursuant to provisions of Section 232(3)(i) of the Act, 2013.*

- 5) *It is submitted that, M/s. Global Entertainment GMBH is holding 99.995% shares in petitioner Transferor Company*

*In this regards, petitioner Transferor Company have to undertake to serve notice to RBI.*

7. *In so far as observation of the Regional Director, as stated in paragraph IV (1) & (2) of the Report is concerned, the Petitioner Companies through their Counsel undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues, if any arising out of the Scheme of Amalgamation will be met and answered in accordance with law.*
8. *In so far as observation of the Regional Director, as stated in paragraph IV (3) of the Report is concerned, the Petitioner Companies through their Counsel submits that the Petitioner Companies considers it commercially more viable to maintain and run*



the operations of the Amalgamated Company in the name of Wester Outdoor Interactive Private Limited. The Petitioner Company also submits that the name of the Amalgamated Company will be changed to ensure the continuity of operations of the Transferor Company and to maintain the brand name in the market. Also, the Petitioner Companies undertakes to file requisite form with the Registrar of Companies.

9. In so far as observation of the Regional Director, as stated in paragraph IV (4) of the Report is concerned, the Petitioner Companies through their Counsel states that the Petitioner Companies does not want to combine their authorised share capital. Thus, the Petitioner companies need not undertake to mention the combined authorised share capital pursuant to provisions of Section 232(3)(i) of the Act, 2013.
10. In so far as observation of the Regional Director, as stated in paragraph IV (5) of the Report is concerned, the Petitioner Companies through their Counsel submits that the Transferor Company is a wholly owned subsidiary of the Transferee Company and M/s. Global Entertainment GMBH does not hold any shares in the Transferor Company. Thus, the Transferor Company does not need to serve notice to RBI
11. The observations made by the Regional Director have been explained by the Petitioners in paragraphs 7 to 10 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
12. The Official Liquidator has filed his report in Company Scheme Petition No. 601 of 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved without winding up by this Hon'ble Tribunal
13. From the material on record, the Scheme appears to be fair, reasonable and is not violative of any provisions of law nor is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 601 of 2017 are made absolute in terms of prayer clauses (a) to (i).
15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 581 of 2017 are made absolute in terms of prayer clauses (a) to (i).
16. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Company,

electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the order by the Registry.

17. Petitioners to lodge certified 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, if any, on the same within 60 days from the date of receipt of the order.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company in Company Scheme Petition No. 601 of 2017 to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the receipt of the order.
19. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

**V. Nallasenapathy, Member (T)**

Sd/-

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