

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL BENCH,  
AT MUMBAI

CSP NO.702 OF 2017

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

In the matter of Scheme of Arrangement  
(Demerger) between Next Radio Limited and  
Syngience Broadcast Ahmedabad Limited  
and their respective shareholders and  
creditors.

Next Radio Limited

...First Petitioner Company / Demerged Company

Syngience Broadcast Ahmedabad Limited

...Second Petitioner Company / Resulting Company

Order delivered on: October 5, 2017

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

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioners: Mr. Ashish Parwani, i/b Rajani Associates,  
Advocate for the Petitioner Companies

Per: V. Nallasenapathy, Member (T)

**ORDER:**

1. Heard learned counsel for parties, none appears before this Tribunal to oppose the Scheme and nor any party has controverted any averments made in the Company Scheme Petitions.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Arrangement (Demerger) between Next Radio Limited (First Petitioner/Demerged Company) and Syngience Broadcast Ahmedabad Limited (Second Petitioner/ Resulting Company) and their respective shareholders and creditors.
3. The learned Advocate for the Petitioner Companies states that the Demerged Company is engaged in the business of private FM radio broadcasting and has established 'Radio One' as it's FM Brand. The Demerged Company is having operations in 7 cities across India viz. (a) Mumbai, (b) Delhi, (c) Chennai, (d) Kolkata, (e) Bangalore, (f) Pune and (g) Ahmedabad. It broadcasts music using 94.3 MHz frequency in all the aforesaid cities except in Ahmedabad, where it is using 95 MHz frequency. The Resulting Company is incorporated in order to carry on the business in terms of its memorandum of association.
4. The learned Advocate for Petitioner Companies further states that the Resulting Company, a wholly owned subsidiary of the Demerged Company, will take over the Ahmedabad FM Radio Broadcasting Business (the "Demerged Undertaking") on a going concern basis from the Demerged Company. This Scheme will

enable the business comprised in the Demerged Undertaking and the Remaining Undertaking to be pursued and carried on more conveniently and advantageously. The same will facilitate efficiency in operations due to individual specialization and cause the business considerations and factors applicable to the said businesses to be addressed more effectively and adequately by the respective companies. The transfer of Demerged Undertaking to the Resulting Company will enable greater focus on the operations of the said business in the separate entity and result in a dedicated and independent management set-up to ensure growth of said business to optimal level.

5. The Petitioner Companies have approved the said Scheme of Arrangement (Demerger) by passing the Board Resolutions which are annexed to their respective Company Scheme Petitions.
6. The Learned Advocate for the Petitioner Companies states that the Company Scheme Petition has been filed in consonance with the order passed in the Company Scheme Application.
7. The Learned Advocate appearing on behalf of the Petitioner Companies states that they have complied with all the requirements as per directions of this Hon'ble Tribunal and they have filed necessary Affidavits of compliance in the proceedings. Moreover, the Petitioner Companies undertakes to comply with all the statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

8. The Regional Director has filed his Affidavit on September 21, 2017 stating therein that save and except as stated in paragraphs IV (a) to (g) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs IV (a) to (g) of the said Regional Director has stated that:

- (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 existing practice the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the Petitioner Companies vide letter dated 30.06.2017 has served a copy of Company Scheme Application No.697 of 2017 along with relevant orders etc. Further this Directorate has also issued a reminder on 12.09.2017 to IT Department.*
- (c) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the schemes by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*
- (d) *As per Clause 4.4 of Part II – Definitions and Sharecapital*

of the scheme. "Appointed Date" means 1<sup>st</sup> day of April, 2017 or such other date as the relevant Adjudicating Body(ies) may direct or fix, for the purpose of this Scheme. In this regard it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1<sup>st</sup> April, 2017.

- (e) Petitioner in the clause 10.1.3 of the scheme inter alia has mentioned that the difference between the value of assets and liabilities transferred in terms of Clause 10.1.1 pursuant to the Scheme shall be appropriated against Capital Reserves of NRI.

The Deponent prays that the difference shall be appropriated against the Profit & Loss Account instead of Capital Reserve Account.

- (f) Petitioner in the clause 10.1.4 of the scheme inter alia has mentioned that notwithstanding the above, NRL, in consultation with the statutory auditors, is authorised to account any of these balances in any manner whatsoever, if considered more appropriate.

The Deponent prays that the company has to comply with Accounting Standards and they can do so in consultation of Auditor and not in deviation of Accounting Standards.

- (g) Resulting company has only Rs. 5 Lakhs Authorized share Capital and they has to allot 1,82,10,000 equity shares of Rs. 10/- each to the shareholders of Demerged Company. Hence the resulting company has to increase their Authorised share capital and comply with the provisions of

*Companies Act, 2013 read with rules thereof."*

9. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (a) of his Affidavit is concerned, in relation to the accounting entries, the Learned Advocate for the Petitioner Companies submits that the Resulting Company undertakes that, in addition to compliance of AS-14 corresponding (IND AS-103) accounting treatment, the Resulting Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 (IND AS-8) etc.
  
10. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (b) & (c) of his Affidavit is concerned, in relation to any tax issue arising out of the Scheme of Arrangement (Demerger), the Learned Advocate for the Petitioner Companies submits that Scheme shall be subject to the final decision of the Income Tax Authority and the approval of the same by this Tribunal, may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Companies after giving effect to the arrangement. However, the Petitioner Companies shall have the liberty to exercise all its legal rights under applicable laws including, under Income Tax Act, 1961 and/or under equity in the event the Petitioner Companies are not satisfied with the order/adjudication done by the Income Tax Authority(ies) in the aforesaid matter. The Petitioner Companies through their Advocate undertakes to comply with all the provisions of the Income Tax Act, 1961.

11. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (d) of his Affidavit is concerned, the Learned Advocate for the Petitioner Companies submits that the Appointed Date in terms of provisions of Section 232(6) of the Companies Act, 2013 will be 1<sup>st</sup> day of April, 2017.
12. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (e) of his Affidavit is concerned, the Learned Advocate for the Petitioner Companies states that the Petitioner Companies undertake that the difference between the value of assets and liabilities transferred in terms of Clause 10.1.1 of the Scheme pursuant to the Scheme shall be appropriated against surplus in Profit & Loss Account (in Balance Sheet under the heading 'Reserves and Surplus') instead of Capital Reserve Account of the Demerged Company in accordance with the applicable accounting standards.
13. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (f) of his Affidavit is concerned, the Learned Advocate for the Petitioner Companies states that the that the Demerged Company undertakes that it shall account for any balances in its books of accounts in relation to the Scheme in accordance with the applicable accounting standards and in consultation with its auditors. The Demerged Company undertakes that it shall adhere to the provisions of applicable accounting standards and shall not deviate from it.
14. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (g) of his Affidavit is concerned, the Learned Advocate for the Petitioner Companies

states that the Resulting Company undertakes that it shall increase its authorised share capital to the extent required to issue shares to the shareholders of the Demerged Company in accordance with the procedure prescribed by the Companies Act, 2013.

15. The representative of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings and submissions made by the Petitioner Companies in above Paras 9 to 14 of this Order through their Advocate with respect to observations made by the Regional Director in his Report. In view thereof, the said undertakings given by the Petitioner Companies are accepted.
16. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
17. Since all the requisite statutory compliances have been fulfilled, the joint Company Scheme Petition No.702 of 2017 filed by the Demerged Company and the Resulting Company are made absolute in terms of prayer clauses (a) to (e).
18. The Petitioners Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement (Demerger) 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 issuance of the certified Order along with the Scheme by the Registry.



19. The Petitioner Companies to lodge a copy of this Order along with the Scheme of Arrangement (Demerger) duly authenticated/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 certified Order along with the Scheme of Arrangement (Demerger) from the Registry.
20. The Petitioner Companies in Joint Company Scheme Petition to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai within four weeks from today.
21. All authorities concerned to act on a copy of this Order along with the Scheme of Arrangement (Demerger) duly authenticated/certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy,  
Member (Technical)

Sd/-

B.S.V. Prakash Kumar  
Member (Judicial)