

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

Under section 230-232 of  
Companies Act 2013.

In the matter of

COMPANY SCHEME PETITION NO. 129 OF 2017  
(HIGH COURT TRANSFERRED PETITION)  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO.971 OF 2016

Chowrangee Marketing Private Limited ... Petitioner  
(Transferor Company No.1)

And

COMPANY SCHEME PETITION NO. 130 OF 2017  
(HIGH COURT TRANSFERRED PETITION)  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO.972 OF 2016

Femtex Mercantile (India) Private Limited ...Petitioner  
(Transferor Company No.2)

And

COMPANY SCHEME PETITION NO. 131 OF 2017  
(HIGH COURT TRANSFERRED PETITION)  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO.973 OF 2016

Prachaar 4 Communications Limited ...Petitioner  
(Transferor Company No.3)

And

COMPANY SCHEME PETITION NO. 132 OF 2017  
(HIGH COURT TRANSFERRED PETITION)  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO.974 OF 2016

Prachar Communications Private Limited ...Petitioner  
(Transferee Company/  
Demerged Company)

And

COMPANY SCHEME PETITION NO. 133 OF 2017  
(HIGH COURT TRANSFERRED PETITION)  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO.975 OF 2016

Choosy Impex Private Limited ...Petitioner  
(The Resulting Company)

IN THE MATTER of the Composite Scheme of Arrangement between Chowrangee Marketing Private Limited (The "First Transferor Company"), Femtex Mercantile (India) Private Limited (The "Second Transferor Company"), Prachar 4 Communications Limited (The "Third Transferor Company"), Prachar Communications Private Limited (The "Transferee Company / Demerged Company"), Choosy Impex Private Limited (The "Resulting Company") and Their Respective Shareholders.

Order delivered on: 5<sup>th</sup> October 2017

CORAM: Hon'ble B.S.V. Prakash Kumar, Member (J)  
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s) : Mr. Yogesh Adhia, advocate.

For Regional Director : Ms. P. Sheela, Joint Director in the Office of the Regional Director

Per : V. Nallasenapathy, Member (T)

### **Order**

1. Heard learned counsel for parties.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 (corresponding to Sections 391 to 394 of the Companies Act, 1956), to the Composite Scheme of Arrangement between Chowrangee Marketing Private Limited (The "First Transferor Company"), Femtex Mercantile (India) Private Limited (The "Second Transferor Company"), Prachar 4 Communications Limited (The "Third Transferor Company"), Prachar Communications Private Limited (The "Transferee Company / Demerged Company"), Choosy Impex Private Limited (The "Resulting Company") and their respective shareholders.
3. The learned counsel for the Petitioner Companies states that the 1<sup>st</sup> Transferor Company is carrying on business inter alia as marketing agents and as brokers. The 2<sup>nd</sup> Transferor Company is carrying on business inter alia of dealing in fabrics, yarn and various cloth materials. The 3<sup>rd</sup> Transferor Company is carrying on business inter alia

of satellite transmission, broadcasting, and production of tele-series and programs and advertisers on various medias. The Transferee Company/ Demerged Company is carrying on the business inter alia of advertising and publicity agents and consultants and telefilm, motion picture and display specialists. The Resulting Company is carrying on the business inter alia of export, import and trading of diamonds and other precious stone.

4. The learned counsel for the Petitioner Companies further states that the Composite Scheme of Arrangement between Chowrangee Marketing Private Limited (The "First Transferor Company"), Femtex Mercantile (India) Private Limited (The "Second Transferor Company"), Prachar 4 Communications Limited (The "Third Transferor Company"), Prachar Communications Private Limited (The "Transferee Company / Demerged Company"), Choosy Impex Private Limited (The "Resulting Company") and Their Respective Shareholders will result into the following benefits namely, (a) integration of operations, (b) simplification the group structure, (c) elimination of multiple entities within the group, (d) rationalization of administrative, operative and financial costs, (e) availing synergies arising out of consolidation of business such as, enhancement of net worth of the combined business to capitalise on future growth potential, optimal utilisation of resources and better administration and cost reduction and (f) efficient management control and system.
5. The learned counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per the directions of the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder, whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.

6. The Transferor Companies, the Transferee Company/ Demerged Company and the Resulting Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
7. The learned Counsel for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.
8. The Petitioner companies have also filed their latest unaudited financial statements for the year ended 31<sup>st</sup> March 2017 through Affidavit dated 12<sup>th</sup> July 2017 and the same are taken on record.
9. One M. Basu, Legal Manager of Sun TV Network Ltd. had filed his affidavit of objection dated 21<sup>st</sup> April 2017 on behalf of Sun TV Network Ltd. in Company Scheme Petition No.132 of 2017. The Petitioner therein has filed Affidavit of Mr. Deepak Doshi dated 5<sup>th</sup> June 2017 in reply to the said objection. However, the Counsel for the Petitioner states that the dues of objector are cleared and they have given no due certificate and Counsel for objector admits same. The Objector has also filed an affidavit dated 11<sup>th</sup> July 2017 stating inter alia that the Objector does not have any objection to the present Scheme, and the same may be accepted by this Tribunal. Thus, the only objection to the Scheme, now stands withdrawn.
10. The Official Liquidator has filed its Report dated 19<sup>th</sup> June 2017 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Hon' ble Tribunal.
11. The Regional Director has filed his Affidavit on 18<sup>th</sup> April 2017, inter alia, stating therein that save and except as stated in paragraphs IV (1) to (6) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs IV (1) to (6) of the said Affidavit, the Regional Director has stated that:

- “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 scrutinise 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.*
2. *Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*  
*In this regard it is requested that Petitioner may be asked to submit the certificate to comply with the provisions of Section 232 (3) proviso of the Companies Act, 2013.*
3. *It may be submitted that the Petitioner Companies have submitted the proof of serving notice dated 06.02.2017, 07.02.2017 & 13.02.2017 upon the Income Tax Authorities for comments. This Directorate has also issued reminder letter to the Income Tax Authority dated 18.04.2017.*
4. *Petitioner in clause 6.7 has inter alia has mentioned that The Board of Directors of the Transferee Company, in consultation with statutory auditors, is authorized to account for any of the balances in any other manner, if such accounting treatment is considered more appropriate.*  
*In this regard Petitioner has to undertake to comply with the accounting standards in accordance with the provisions of the Companies Act, 2013.*
5. *Petitioner in clause 6.6 of the scheme inter alia has mentioned that in case of any difference in accounting policy impact of the same shall be quantified and adjusted in the Profit and Loss account of the Transferee Company whereas in clause 6.9 petitioner inter alia has mentioned that in case of any difference in accounting policy impact of the same shall be quantified and adjusted in the General Reserve of the Transferee Company.*

*In this regard petitioner company to state the treatment that would be adopted and undertake to comply with the applicable accounting standards.*

6. *Petitioner in its reply inter alia informed that the authorized share capital is not sufficient to issue and allot shares pursuant to the merger. Clause 7 inter alia provides for that the transferee company will take necessary steps to increase or alter or re-classify, if necessary its authorized share capital.*

*In this regard Petitioner to undertake to comply with the provisions of the Companies Act, 2013 for increasing the authorised capital and for reclassification.*

12. In so far as observations made in paragraph IV (1) of the Affidavit of Regional Director is concerned, the Petitioners through their Counsel undertake that they are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with the income tax laws.
13. In so far as observations made in paragraph IV (2) of the Affidavit of Regional Director is concerned, the Transferee and Resulting Companies have filed the necessary certificate of their auditors, along with Affidavit dated 5<sup>th</sup> July 2017, stating that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013.
14. In so far as observation made in paragraph IV (3) of the Affidavit of the Regional Director, the Petitioners through their counsel submit that no objection has been received from the Income Tax Authorities and the observation has been duly noted.
15. In so far as observation made in paragraph IV (4) of the Affidavit of the Regional Director, Petitioner Companies through their Counsel undertake to comply only with the Accounting Standards in accordance with the provisions of the Companies Act, 2013.

16. In so far as observation made in paragraph IV (5) of the Affidavit of the Regional Director, Petitioner Companies through their Counsel undertake that the treatment of the impact of any difference in the in accounting policy shall be in compliance of the applicable Accounting Standards. The Transferee Company undertakes that any difference in accounting policy, impact of the same shall be quantified either in Profit and Loss Account or General Reserve of the Transferee Company.
17. In so far as observation made in paragraph IV (6) of the Affidavit of the Regional Director, Petitioner Companies through their Counsel undertake that subsequent to sanction of the Scheme, they shall comply with the provisions of the Companies Act, 2013 for increasing the authorised capital and for re-classification.
18. The Learned Representative for Regional Director on instructions from the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that he is satisfied with the undertaking given by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.
19. 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.
20. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 129 of 2017 to 133 of 2017 are made absolute in terms of prayer clauses (a) and (c).
21. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly authenticated by the Registrar, 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 the order.
22. The Petitioner Companies further 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

physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

23. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.25,000/- each to the Regional Director and Rs.25,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the receipt of this Order.
24. All concerned authorities to act on a copy of this order along with Scheme, duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench.

Sd/-  
V. Nallasenapathy, Member (T)

Sd/-  
B.S.V. Prakash Kumar, Member (J)