

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, MUMBAI

TRANSFEREED COMPANY SCHEME PETITION NO. 49 OF 2017

MRH DIGITAL SYSTEMS PRIVATE LIMITED ...Petitioner Company

AND

TRANSFEREED COMPANY SCHEME PETITION NO. 50 OF 2017

MRH SOUND SOLUTIONS PRIVATE LIMITED ...Petitioner Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 AND Sections 230 to 232 of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between MRH Digital Systems Private Limited ('MRH Digital' or 'the Demerged Company') and MRH Sound Solutions Private Limited ('MRH Sound' or 'The Resulting Company') and their respective shareholders

CALLED FOR HEARING:

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner Company.

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

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

V .Nallasenapathy Member (Technical)

Date: 7th June , 2017

MINUTES OF THE 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 Arrangement pertains to demerge the Business Undertaking of the Demerged Company – MRH Digital Systems Private Limited, on a going concern basis, comprising of the business of Authorized distributorship and operating service / repair center's for all companies and brands represented by BOSCH in India and representing MIPRO microphones & other professional audio products along with all related assets, liabilities and

employees, pertaining to and required solely for conducting the business activity. This Demerger would help in achieving the desired operating structure and shall *inter alia* have the following benefits (i) achieving Family Settlement Arrangement as agreed between the Shareholders; (ii) segregation of Business Undertaking of MRH Digital from its Remaining business and housing it under Resulting Entity - MRH Sound Solutions Private Limited, (iii) achieving operational and managerial efficiency; and (iv) enhanced management focus and operational flexibility

3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. By order dated 22nd April, 2016 passed by the Bombay High Court in Company Summons for Direction Number 308 of 2016, meetings of equity shareholders of MRH Digital was dispensed with in view of consents given by all the equity shareholders of MRH Digital. Also, convening of meetings of unsecured creditors of MRH Digital was dispensed with in view of the undertaking given by MRH Digital that they would issue individual notice of hearing of the petition to all its unsecured creditors.
5. By order dated 22nd April, 2016 passed by the Bombay High Court in Company Summons for Direction Number 309 of 2016, meetings of equity shareholders of MRH Sound was dispensed with in view of consents given by all the equity shareholders of MRH Sound. Also, convening of meetings of unsecured creditors of MRH Sound was dispensed with in view of the undertaking given by MRH Sound that they would issue individual notice of hearing of the petition to all its unsecured creditors.
6. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in Company Summons for Direction Nos. 308 of 2016 and 309 of 2016.
7. The Learned Advocate appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements. 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 whichever is applicable. The said undertaking is accepted.
8. The Regional Director has filed his Report on March 22, 2017 stating therein that save and except as stated in paragraph IV(a) to IV (f) 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:

- a. *It is further submitted that ROC Mumbai vide report/ Letter No. ROC /JTA (AK)/ 213707/ 391-394 / 569 dated 4.10.2016, has mentioned that no complaint against the company. However at Point 29 of the said letter he has made few observations. The said observations were taken up with the company vide this office letter of even number dated 10.10.2016. Further, the reply of the Company 23.12.2016, submitted to this office on 16.01.2017 was forwarded vide this office letter of even number dated 23.01.2017 to ROC for perusal and submission of necessary report to Hon'ble NCLT as required u/s 230(5) of the Companies Act, 2013, considering the replies of the companies still awaited.*

Copy of the letter dated 10.10.2016, reply dated 23.12.2016 received in this office on 16.01.2017, forwarded to ROC Mumbai are enclosed herewith and marked as Annexure – "D" and "E" respectively

- b. *In addition to compliance of AS-14 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 etc.*
- c. *Regarding Part 1 (1.2) Definitions of the Scheme, it is submitted that the Appointed Date is 1st April 2016 or such other date as may be fixed by this Hon'ble Court. Regard it is submitted that since the financial statements available before this Hon'ble Court is upto 31.03.2015. This Hon'ble NCLT may kindly fix the Appointed Date as 1st April 2015.*
- d. *Regarding clause 6.2 of the Scheme the surplus if any arising out of the Scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account of the Resulting Company*
- e. *The tax implication if any arising out of the Scheme is subject to the final decision of the 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.*
- f. *That in view of the observation made at (a) above Hon'ble NCLT may issue notice to ROC Mumbai, u/s 230(5) of Companies Act 2013*

9. As far as observation of the Regional Director, as stated in paragraph IV(a) and (f) of his Report is concerned, the Petitioner Companies submit that necessary replies have been filed in the office of Regional Director as well as under the instruction of Regional Director with the Registrar of Companies on September 20, 2016, January 16, 2017 and March 2, 2017 respectively. Post which there has been no observation from the Regional Director office and Registrar of Companies. The Scheme was filed u/s 391-394 of Companies Act, 1956 before the provisions of Section 230(5) of Companies Act, 2013 were made effective. The Petitioner Company has submitted all necessary documents as desired by the Regional Director vide its letter as above. Hence, the question of further issue of Notice to Registrar of Companies does not arise.
10. As far as observation of the Regional Director, as stated in paragraph IV(b) and (d) of his Report is concerned, the Petitioner Companies submit that though AS-14 does not apply to Demerger, the Petitioner Companies shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 etc.
11. As far as observation of the Regional Director, as stated in paragraph IV(c) of his Report is concerned, the Petitioner Companies submit that the Financials for the year ended March 31, 2016 are closed and already filed with the Registrar of Companies and with all respective authorities such as Income tax, Service Tax, VAT etc. Further, the Board of Directors have approved the Scheme with Appointed Date April 1, 2016 and the Scheme with the Appointed Date as 1st April 2016 has been unanimously approved by all the shareholders of the Petitioner Companies.
12. As far as observation of the Regional Director, as stated in paragraph IV(e) of his Report is concerned, the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
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.
14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 49 of 2017 and 50 of 2017 are made absolute in terms of prayer clause (a) to (g) of the respective petitions.
15. Petitioners are directed to lodge a copy of this order along with a copy of the Scheme of Arrangement 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.

16. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.
17. All concerned regulatory authorities to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy Member (T)

Sd/-

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