

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 87 OF 2017
(HIGH COURT TRANSFERRED PETITION)
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 525 OF 2016
United Home Entertainment Private Limited. ...Petitioner /
Transferor Company

AND

COMPANY SCHEME PETITION NO. 99 OF 2017
(HIGH COURT TRANSFERRED PETITION)
CONNECTED WITH
AND
COMPANY SUMMONS FOR DIRECTION NO. 526 OF 2016
Disney Broadcasting (India) Limited... Petitioner/Transferee Company

In the matter of the Companies Act, 2013 (18 of 2013);

And

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013;

And

In the matter of Sections 391 to 394 and read with Sections 100 to 103 of the Companies Act 1956 and Section 52 of the Companies Act 2013 and other applicable provisions of the Companies Act, 1956 and the Companies Act, 2013;

And

In the matter of the Scheme of Amalgamation and Arrangement between United Home Entertainment Private Limited and Disney Broadcasting (India) Limited.

Called for Hearing

Counsel Ms Alpana Ghone i/b. J. Sagar Associates, Advocates for the Petitioner Companies.

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

V. Nallasenapthy Member (Technical)

Date: 8th June 2017

1. Heard Counsel for the parties. No objector has come before this Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of this Tribunal is sought under Sections 391 to 394 read with Section 100 to 103 of the erstwhile Companies Act 1956 and Sections 230 to 232 read with Section 52 of the Companies Act 2013 to a Scheme (“Scheme”) of Amalgamation and Arrangement between United Home Entertainment Private Limited (“Transferor Company”) and Disney Broadcasting (India) Limited (“Transferee Company”).
3. The Learned Counsel for the Petitioner Companies states that the Transferee Company is a television broadcasting company running general entertainment (non-news/current affairs) television channels. The Transferor Company is also a television broadcasting company running general entertainment (non-news/current affairs) television channels.
4. The proposed Scheme will have the following advantages: It is strategically appropriate that all the television channels are housed and function from a single legal entity which has more number of channels and hence better customer connect and vendor relationship. The consolidation of the business operations into a single entity will lead to consolidation of various television related intellectual property rights and other properties in the larger entity i.e. the Transferee Company and create synergies of operations thereby enabling the Transferee Company to participate more profitably in an increasingly competitive market. The synergies created by the consolidation would increase operational and

management efficiency and integrate business functions and decrease cost of legal compliance with respect to the transferred businesses. Right sizing balance sheet of the Transferee Company by adjusting extant profit and loss debit balance against the securities premium account.

5. The Petitioner Companies have approved the said Scheme by passing board resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Counsel for the Petitioners states that the Petitioner Companies have complied with the orders passed in the respective Company Summons for Direction of the Hon'ble Bombay High Court and that the Company Scheme Petitions have been filed in consonance with the orders passed in the respective Company Summons for Direction. The learned counsel for the Petitioners states that the utilization of Securities premium account of the Transferee Company is being effected as an integral part of the Scheme. The procedure prescribed under Section 101(2) of the erstwhile Companies Act 1956 was dispensed with by an order dated 1st July 2016 of the Bombay High Court passed in the above Company Summons for Direction and the special resolution annexed at Exhibit H-1 to the Petition was duly passed as per the undertaking given in the aforesaid order.
7. The Learned Counsel for the Petitioners states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and the Hon'ble Bombay High Court and have filed necessary Affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted.

8. The Regional Director has filed a report dated 31st March 2017 *inter-alia* stating therein that save and except as stated in paragraph IV(1) to (7) 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:

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 Court 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.*

2. *According to the Shareholders List provided by the Transferor Company, there are foreign/non-resident shareholders (holding 100% shares) in the Transferor Company. No notice has been served to RBI.*

Company in its reply in point no. 1 (xiii) B has inter mentioned that the entire equity shares & preference shares held by the Walt Disney Company (Southeast Asia) Pte. Limited is proposed to be transferred to Disney Entertainment India Limited subject to requisite RBI approval.

In this regard, the Petitioner has to produce the acknowledgement copy of sending notice to the RBI.

3. *ROC vide report/letter no. ROC/JTA(C)/170405/230 TO 232/675 dated 22.02.2017, has inter alia mentioned that as per MCA Master data the Paid up capital of the Transferor Company and the authorized and paid up capital of the Transferee Company do not tally with the Scheme/Petition.*

In this regard the Petitioner has to clarify for the difference.

4. *Company in the reply at point 1(13) under heading preference shareholders in B inter alia mentioned pre and post scheme share capital and non-resident holding in the Transferee Company. Under the heading post scheme it is mentioned the details based on assumption that Transfer of shares held by TWDC (SEA) in favour of Disney Entertainment (India) Limited on record date and another assumption that TWDC (SEA) continues to hold shares in the Transferor Company on record date.*

In this regard the Petitioner Company to clarify stand that would be taken post amalgamation.

5. *Auditors in their certificate inter alia mentioned that accounting treatment specified in clause 15 (vi) in respect of adjustment of any*

amount up to Rs.4500 Million representing substantial part of the existing debit balance of P&L account of the Company as at 31.03.2015 to securities premium account is outside the purview of accounting standards as applicable on Appointed date.

In this regard the Petitioner in clause 15(vii) inter alia mentioned that the order of the High Court sanctioning the Scheme shall be deemed to be an order under Section 102 of the Act for the purpose of confirming reduction of share capital.

6. *Petitioner in clause 15 regarding accounting treatment inter alia mentioned that assets and liabilities will be transferred at fair value and excess of fair value of shares issued shall be credited to the Securities Premium Account.*

In this regard the Petitioner has not mentioned the method that would be adopted for accounting treatment.

7. *It may be submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 07.02.2017 for comments. This Directorate has also issued reminder letter to the Income Tax Department dated 30.03.2017.*

9. As far as the observation made in paragraph IV(1) of the report of the Regional Director is concerned, this Tribunal has directed the Petitioner Companies to comply with the said observation. Accordingly, the Petitioner Companies undertake to comply with all applicable provisions of the Income Tax Act and all income-tax issues arising out of the Scheme will be met and dealt with in accordance with law. The said undertaking is accepted by this Tribunal.

10. As far as the observation made in paragraph IV(2) of the report of the Regional Director is concerned, the Transferee Company through its Counsel undertakes to comply with the extant provisions of the FDI Policy. The Transferor Company and the Transferee Company are broadcasting companies and are in the business of up-linking of non-news and current affairs T.V. Channels which falls under the automatic route under the extant provisions of the FDI Policy and 100% foreign direct investment is permitted in the Transferor Company and the Transferee

Company. Therefore, no prior approval of the RBI is required. The Learned Counsel for the Petitioners submits that the transfer of shareholding in the Transferor Company is an inter-group transfer from The Walt Disney Company (South East Asia) Pte. Ltd. to Disney Entertainment (India) Ltd. and is independent of the transaction under the Scheme. This being said, in response to an application filed with the Reserve Bank of India for approval to the transfer of shares, the Reserve Bank of India has issued its letter dated 27th March 2017 directing that the transfer can be undertaken in accordance with provisions of paragraph 2 of Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations 2000 as amended from time to time read with the Notification No. FEMA 315/2014-RB dated 10th July 2014 in this regard.

11. As far as the observations made in paragraph IV(3) of the report of the Regional Director is concerned the share capital details of the Transferor Company in the MCA Master data and as mentioned in the Scheme /Petition are the same and correctly reflects the existing share capital. So far as the Transferee Company is concerned the Scheme discloses the authorised, issued and paid-up share capital as on December 22, 2015, the date on which the Scheme was approved by the board of directors of the Transferee Company. Further, the Petition discloses the increased authorised share capital from Rs. 11,05,00,000 to Rs. 21,73,47,000 and the increased issued and paid-up share capital from Rs. 9,98,22,760 to Rs. 10,44,79,680 of the Transferee Company as on the date of its signing. The Petitioner further states that the MCA Master data correctly reflects the existing authorised share capital and the increased issued & paid up share capital from Rs. 10,44,79,680 to Rs. 12,43,44,240 which was so

increased on October 19, 2016 i.e. after the signing of the Petition. The said explanation is found to be satisfactory.

12. As far as the observations made in paragraph IV(4) of the report of the Regional Director is concerned, the Learned Counsel for the Petitioners submits that as stated in paragraph 10 above the Reserve Bank of India has granted its permission subject to the compliance of the applicable Foreign Exchange Management Act regulations. However, the transfer of the shares is yet to be implemented and accordingly, the Petitioner submits that the shareholding pattern of the Transferee Company post-merger shall be as under:

Sr.No.	Name of shareholder	No. of shares	% of equity shares	% of foreign equity holding
1	Disney Entertainment (India) Limited	12,434,424	71.71383	28.28617
2	TWD(SEA)	4,904,518	28.28614	
2	TWDC Holdings (India) LLC	5	0.00003	
Total		17,338,947	100	28.28617

The Counsel for the Petitioners undertakes that all applicable requirements of the Reserve Bank of India for such issuance of shares shall be complied with. The said explanation is found to be satisfactory.

13. As far as the observation made in paragraph IV(5) of the report of the Regional Director is concerned, Learned Counsel for the Petitioners submits that the auditors have issued their certificate dated March 14, 2017 *interalia* stating that clause 15(i) to 15(v) of the Scheme is in accordance with Accounting Standard 14. The Petitioner further submits that since the utilisation of the securities premium account is outside the purview of the

applicable accounting standards on the Appointed Date, the auditor has made a statement in the certificate that the question of commenting as to whether such proposed accounting treatment complies with the aforesaid Accounting Standards does not arise. The Petitioner further submits that the utilisation of the securities premium account is governed by Section 52 of the Companies Act, 2013 read with the erstwhile provisions of Section 100 of the Companies Act 1956. The Transferee Company has complied with all requirements of the provisions of Section 52 of the Companies Act 2013 read with the erstwhile provisions of Section 100 to 102 of the Companies Act 1956 existing at the time of filing of the above Petitions in relation to the adjustment to the securities premium as contemplated in the Scheme. The said explanation is found to be satisfactory.

14. As far as the observations made in paragraph IV(6) of the report of the Regional Director is concerned, the *fair value* of shares of the Transferee Company being issued in excess of the *face value* of such shares will be credited to the securities premium account. The Learned Counsel for the Petitioners submits that the same is in accordance with Section 52 of the Companies Act 2013. Further the same is also covered in auditor's certificate furnished by the Transferee Company and annexed at Annexure 'F' to the report of the Regional Director certifying that the accounting treatment is in accordance with AS-14 applicable to the Transferee Company as on the Appointed Date in the Scheme.
15. As far as the observations made in paragraph IV(7) of the report of the Regional Director the Learned Counsel for the Petitioners states that the same does not require a response. However, the Petitioner Companies will comply with all applicable provisions of the Income Tax Act and all

income-tax issues arising out of the Scheme will be met and dealt with in accordance with law.

16. The observations made by the Regional Director, have been explained by the Petitioner Companies in paragraphs 9 to 15 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
17. The Official Liquidator has made his report dated 6th March 2017 in the Company Scheme Petition no. 87 of 2017 stating therein that the affairs of the Transferor Company have been conducted in a proper manner.
18. 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.
19. Since all the requisite statutory compliances have been fulfilled, the above Transferred Company Scheme Petition Nos. 87 of 2017 are made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No. 99 of 2017 is made absolute in terms of prayer clauses (a) and (b).
20. The Petitioner Companies are directed to file a certified/authenticated copy of this order and the Scheme, 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 effective date of the Scheme.
21. The Scheme contemplates approval, if necessary, from the Ministry of Information and Broadcasting as per clause 20. The Petitioner Companies are directed to file a certified/authenticated copy of the 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, as per the relevant provisions of the Companies Act 2013 within 30 days of receipt of communication from the Ministry of Information and Broadcasting.

22. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and Rs.25,000/- to the Official Liquidator. The Costs to be paid within four weeks from date of receipt of order.
23. All concerned regulatory authorities to act on a copy of this order and the Scheme duly authenticated by Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

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

Sd/-

V. Nallasenapthy Member (Technical)