

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH, at MUMBAI

CSP NO 462 OF 2017

AND

CSP NO 471 OF 2017

VIDEOCON D2H LIMITED ... Transferor Company

AND

DISH TV INDIA LIMITED Transferee 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
Arrangement for Amalgamation
amongst Videocon D2h Limited
having CIN

U92100MH2002PLC137947

(Transferor Company) and Dish TV
India Limited having CIN

L51909MH1988PLC287553

(Transferee Company) and their
respective Shareholders and Creditors

Called for Hearing

Judgment/Order delivered on 27th July, 2017

Coram:

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

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

For the Petitioner(s): Mr Zal Andhyarujina with Mr. Anirudh Das and Mr. Pulkitesh Tiwari for Shardul Amarchand Mangaldas & Co, Advocates for the Transferor Company .
Mr. Zal Andhyarujina, Counsel with Mr. Hemant Sethi i/b Hemant Sethi & Co. for the Transferee Company.

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

Mr Santosh Dalvi, Senior Assistant in the office of Official Liquidator present in Company Scheme Petition No. 462 of 2017.

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

ORDER

1. Heard the learned counsel for the Petitioner Companies.

2. The sanction of the Tribunal is sought under Sections 230 and 232 of the Companies Act, 2013, to the Scheme of Arrangement for Amalgamation amongst Videocon D2H Limited ("the Petitioner/Transferor Company") and the Dish TV India Limited (the Petitioner/Transferee Company) and their respective Shareholders and Creditors ("Scheme").
3. Learned Counsel for the Petitioner Companies states that the Petitioner/Transferor Company is primarily engaged in the business of providing direct to home TV (satellite) services to consumers across the country. The Petitioner/Transferee Company is engaged in the business of providing Direct to Home ('DTH') broadcasting services to its subscribers and providing teleport (up-linking) services.
4. The amalgamation of the Petitioner/Transferor Company with the Petitioner//Transferee Company would *inter alia* have the following benefits:
 - (a) The proposed amalgamation will enable consolidation of the business and operations of the Transferor Company and the Transferee Company which will provide substantial impetus to growth, enable synergies, reduce operational costs, increase operational efficiencies and enable optimal utilization of various resources as a result of pooling of financial, managerial and technical resources, and technologies of both the Transferor Company and the Transferee Company, significantly contributing to future growth and maximizing shareholder value; and
 - (b) The proposed amalgamation would be to the benefit of their respective shareholders and creditors, as it is expected that the combined entity resulting out of such an arrangement will have better prospects of growth and that this would enable the management of the Petitioner/Transferee Company to vigorously pursue revenue growth and expansion opportunities..
5. The Transferor Company and Transferee Company have approved the said Scheme of Arrangement for Amalgamation by passing the Board Resolution which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.
6. Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble National Company Law Tribunal, Mumbai bench and has filed

necessary affidavits of compliance with the National Company Law Tribunal, Mumbai bench. Moreover, the Petitioner Companies through its Counsel undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertaking given by the Petitioner Companies is accepted.

7. The Regional Director ('RD') has filed an Report dated 21th day of June, 2017 stating therein, that the Tribunal may take consider the observations and pass such other order or orders as deemed fit and proper in the facts and circumstances of the case post considering the observations made at Sr. No. IV (a) to (f) mentioned in his report.

In paragraphs IV (a) to (f), of the said Report it is stated that:-

“..

- a) *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.,*
- b) *The scheme does not stipulate "The Appointed Date". In this regard, it is submitted that as per the provisions of section 232(6) of the Companies Act, 2013 the scheme shall clearly indicate an appointed date which it shall be effective and scheme shall be deemed to be effective from such date and not a date subsequent to the appointed date. The petitioner companies be directed to fix the Appointed Date and amend the scheme accordingly;*
- c) *As per Part-A-Definitions (k) M/s. Videocon D2H Limited the Transferor Company and the President of India acting through the Director, Broadcasting, Policy & Legislation, Ministry of Information and Broadcasting, Government of India executed "DTH License Agreement" dated December 28, 2007. NOC from the the Director, Broadcasting, Policy & Legislation, Ministry of Information and Broadcasting appears to be the sectoral regulator/authority is likely to be affected by this amalgamation. Hence, notice under section 230(5) of the Companies Act, 2013 appears to be necessary. Hence, the applicant is directed to serve a copy of the petition/scheme and obtain NOC from Government of India, the Director, Broadcasting, Policy & Legislation, Ministry of Information and Broadcasting.*
- d) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 1st April 2017 and 4th April 2017 has served a copy company scheme application No. 278 of 2017 & Company Petition No. 273 of 2017 along with relevant orders etc., to IT Department. Further this Directorate has also issued a reminder 14.06.2017, to IT Department.*
- e) *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.

- f) In view of the objection raised by the ROC Mumbai mentioned at para 11 above Hon'ble NCLT may kindly pass appropriate order/orders as deem fit.*

Para 11 - Status of ROC Report: -

ROC Mumbai vide report/letter No. ROC/JTA (SG)/287553/230-232/759 dated 07.06.2017, has mentioned that No complaints, no Technical Scrutiny etc., However, vide point 32 has made an observations and has mentioned that the Aditor in his report dated 23/05/2016 in respect of Dish TV India Limited has stated that various amonts payable for Income Tax, VAT, Sales Tax etc, are pending on accont of disputes. A copy of the said report is annexed with report and the matter may be decided by Hon'ble NCLT on merits.

8. So far as the observation in paragraph IV(a) of the RD Report is concerned, the Petitioners through its Counsel states that the Transferee Company undertakes that in addition to compliance of AS-14 accounting treatment or relevant standard under IND AS ie IND AS 103, the Transferee 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 etc.
9. With reference to the observation set out in paragraph IV (b) of the RD Report, the Petitioner Companies through its Counsel states that the Appointed date will be 1st October 2017.
10. With reference to the observation set out in paragraph IV (c) of the RD Report, the Petitioner Companies through its Counsel states that the Petitioner/Transferor Company and Petitioner/Transferee Company have already served a notice u/s. 230(5) along with copy of the Scheme to the Ministry of Information and Broadcasting ('MIB') vide letters dated 5 April, 2017 and 8 April, 2017 respectively, but neither an objection nor a representation has been placed in pursuance of the notice given under Section 230 (5) of the Companies Act. However, the Petitioner Companies undertakes to obtain the approval from the MIB and the effectiveness of the Scheme is also subject to inter-alia approval of the MIB.
11. So far as the observation in paragraphs IV (d) & (e) of the RD Report is concerned, the Petitioner Companies through its Counsel submits that the tax implication if any arising out of the Scheme is subject to final decision of the

Income Tax Authorities and that the Petitioner/Transferee Company undertakes to comply with the applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be answered in accordance with law.

12. With reference to the observation set out in paragraph IV (f) of the RD Report in relation to the observation of the Registrar of Companies, Mumbai in point no. 32 of the ROC report, the Petitioner/Transferee Company through its Counsel submits that the Petitioner/Transferee Company undertakes to pay the amounts in respect of Income tax, VAT, Sales Tax etc as and when the disputes are settled at the respective forums where they are pending
13. The observations made by the Regional Director have been explained by the Petitioners in paragraphs 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
14. The Official Liquidator has filed his report 18th July 2017 inter alia, stating therein that the affairs of the Petitioner /Transferor Company have been conducted in a proper manner and that the Petitioner /Transferor Company may be ordered to be dissolved. The Official Liquidator at para 9 of the Report has set out observations made at Sr. No. (1) to (5) which are as follows:

- "1) That the Official Liquidator craves leave to submit that there is no mention about Cut of Date/Appointed Date in the proposed scheme of Amalgamation, which is mandatory for a Scheme of Arrangement/Amalgamation*
- 2) That the Official Liquidator further craves leave to submit that M/s Videocon D2H Limited (Transferor Companies) and M/s Dish TV India Limited (Transferee Company) are required by Ministry of Information & Broadcasting. As such, the Transferee Company may be directed to obtain necessary approvals from the Ministry concerned, as may be required in the cases of Scheme of Amalgamation under section 391/394 of the Companies Act, 1956.*
- 3) That the Official Liquidator further craves leave to submit that shares of the Transferee Company viz. M/s Dish TV India Limited are listed at Bombay Stock Exchange and National Stock Exchange. The Bombay Stock Exchange vide letter dated 02.03.2017 and National Stock Exchange vide letter dated 01.03.2017 has given their approval with the condition that "the Company shall duly comply with various provision of the circular". It is submitted that the Transferee Company may be asked to comply with the conditions raised by the Bombay Stock Exchange.*
- 4) That the Official Liquidator further craves leaves to submit that Para 8.1 of Part-D the Scheme provides as under:*

"As an integral part of this Scheme, upon the effectiveness of this Scheme, the name of the Transferee Company shall stand changed to "Dish TV Videocon Limited" or such other name as may be approved by the board, shareholders of the Transferee company and the ROC, without any further act, instrument or deed and the name "Dish TV India Limited" wherever it appears in the Memorandum of Association and Articles of

Association of the Transferee Company shall stand substituted by the new name "Dish TV Videocon Limited" or such other name as may be approved by the board, shareholders of the Transferee Company and the ROC, without any further act, instrument or deed on the part of the Transferee Company. Upon such name change, the requirement of using or displaying the former name "Dish TV India Limited" together with the new name "Dish TV Videocon Limited" or such other name as may be approved by the board, shareholders of the Transferee Company and the ROC, outside its offices, on its company seal, letter, bills, notices, official publications and all other places or documents whatsoever, shall be automatically dispensed with without any further act, instrument or deed on the part of Transferee Company by virtue of the order of the Court sanctioning this Scheme. The order of the Court sanctioning this scheme shall be deemed to be a specific direction under Section 13 of the 2013 Act read with Rule 8(8) of the Companies (Incorporation) Rules, 2014 and/or any other applicable provisions of the companies Act and rules and regulations framed thereunder for the change of name of the Transferee Company to "Dish TV Videocon Limited" pursuant to the release of the aforesaid name by the Transferor Company."

5) *It is submitted that the name of a company can be changed/alterd only after following the procedure prescribed under the relevant provisions of the Companies Act, 1956/2013."*

15. In response to the observations of the Official Liquidator at Para 9(1), counsel for the Petitioners states that the Appointed date will be 1st October 2017.
16. In response to para 9(2) of the Report, counsel for the Petitioner/Transferor Company states the Petitioner/Transferor Company has served notice of the Company Scheme Application No.278 of 2017 on the Ministry of Information and Broadcasting, New Delhi on 05 April 2017 and craves leave to refer and rely upon the Affidavit of Service dated 26 April 2017 filed in the present proceedings. It is further submitted that in terms of Clause 2 read with Clause 3.1 of Section II of the Scheme, the effectiveness of the Scheme is subject to inter-alia, approval of the Ministry of Information and Broadcasting has been obtained.
17. As regards the observations of the Official Liquidator with respect to the conditions set out in the observations letters of the BSE and NSE as mentioned in paragraph 9(3) of his report, counsel for the Petitioner/Transferee Company states that the Transferee Company shall comply with the conditions as set out by the Bombay Stock Exchange and the National Stock Exchange in their letters dated 02 March 2017 and 01 March 2017 respectively.
18. As regards the observations of the Official Liquidator at paragraph 9(4) and 9(5) of his Report, it has been submitted by counsel for the Petitioner Companies that the Transferee Company shall, upon the Scheme becoming effective, follow the procedure prescribed under the provisions of the Companies Act, 2013, for change of name.

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, Company Scheme Petitions No. 462 and 471 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
21. Petitioner Companies are directed to file a copy of this order along with a copy of amended Scheme of Arrangement for Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of approval of the Ministry of Information & Broadcasting to the Scheme which date shall be the Effective Date for the purposes of the Scheme.
22. The Transferee Company to lodge certified copy of this order and the amended Scheme of Arrangement for Amalgamation 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.
23. It is clarified that for the period between the Appointed Date and Effective Date, the business of the Transferor Company shall be carried on by the Transferor Company in trust and for and on behalf of Transferee Company.
24. The respective Petitioner Companies to pay cost of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.
25. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
26. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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