

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

TCSP 161A/230-232/NCLT/MB/MAH/2017

TCSP 162A/230-232/NCLT/MB/MAH/2017

TCSP 163A/230-232/NCLT/MB/MAH/2017

TCSP 164A/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Ashpin Holdings Private Limited

.....Petitioner in TCSP 161A/2017

(1st Transferor Company)

M/s. Bizmedia Private Limited

.....Petitioner in TCSP 162A/2017

(2nd Transferor Company)

M/s. Pri Holdings Private Limited

.....Petitioner in TCSP 163A/2017

(3rd Transferor Company)

M/s. Bimexma Technologies (India) Private
Limited

.....Petitioner in TCSP 164A/2017

(Transferee Company)

Order delivered on: 22.01.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

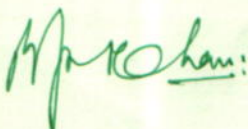
For the Petitioner :

Mr. Rajesh Shah, Advocate a/w. Mr. Ahmed Chunawala, Advocate i/b. M/s. Rajesh Shah & Co. – Advocate for the Petitioners.

For the Regional Director :

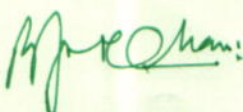
Mr. Ramesh Gholap – Dy. Registrar (WR).

Per : Bhaskara Pantula Mohan, Member (J)



COMMON ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Merger by Absorption (hereinafter as **Scheme**) between M/s. Ashpin Holdings Private Limited (1st Transferor Company) and M/s. Bizmedia Private Limited (2nd Transferor Company) and M/s. Pri Holdings Private Limited (3rd Transferor Company) with M/s. Mascot Capital And Marketing Private Limited (Transferee Company).
2. The Transferor Companies and the Transferee Company have approved the said Scheme by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The 1st and 3rd Transferor Companies at present are in the business of an investment Company and to invest the capital and other moneys of the Company in the purchase or upon the security of shares, stocks, units debentures, debenture-stock, bonds, mortgages, obligations and securities of any kinds issued or guaranteed by any company
4. The Second Transferor at present are in the business of publishers of Magazines-monthly, bi-monthly, weekly, Daily Newspapers, Periodicals, Text-books and other Journals
5. The Transferee Company at present is in the business of binders, printers, Stationers, Typers, lithographers, electrocomposers, photographic printer, photo-lithographers, Chrom Lithpgraphers, engrvers, diesinkers, envelop manufacturers, book-binders, account book manufactures, machine rollers, numerical printers, Computer Stationery.
6. Since all the companies are under the same management and that the merger by absorption will enable the transferee company to consolidate the businesses and lead to synergies in operations and create a stronger financial base and it would be advantageous to combine the activities and operations of all companies into a single Company for synergistic linkages and the benefit of combined financial resources and this will be reflected in the profitability of the Transferee Company and that the merger by absorption will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the transferor companies and the transferee company.



7. The Authorised Share Capital of the 1st Transferor Company is ₹ 10,00,000/- comprising of 1,00,000 equity shares of ₹ 10/- each and the Issued, subscribed and paid up capital is ₹ 10,00,000/- comprising of 1,00,000 equity shares of ₹ 10/- each fully paid up.
8. The Authorised Share Capital of the 2nd Transferor Company is ₹ 25,00,000/- comprising of 2,50,000 equity shares of ₹ 10/- each and the Issued, subscribed and paid up capital is ₹ 17,75,000/- comprising of 1,77,500 equity shares of ₹ 10/- each fully paid up.
9. The Authorised Share Capital of the 3rd Transferor Company is ₹ 25,00,000/- comprising of 2,50,000 equity shares of ₹ 10/- each and the Issued, subscribed and paid up capital is ₹ 25,00,000/- comprising of 2,50,000 equity shares of ₹ 10/- each fully paid up.
10. The Authorised Share Capital of the Transferee Company is ₹ 10,00,000/- comprising of 1,00,000 equity shares of ₹ 10/- each and the Issued, subscribed and paid up capital is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each fully paid up.
11. The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:
 - a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
 - b) The Regional Director has filed a Report on 04.07.2017 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV (1) to (4) of the said Report, the Regional Director has stated that:-

“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:

1. In addition to compliance of AS-14 (Ind AS-103) the Transferee Company shall pass such accounting entries which are necessary

[Signature]

in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (Ind AS-8) etc

2. As per Definitions 3.6 of the Scheme the "Appointed Date" means 1st April, 2015 or such other date as the High Court of Judicature at Mumbai or the competent authority may otherwise direct/ fix. In this regard it is submitted in terms of provisions of Section 232(6) of the Companies Act, 2013 it should be 1st April, 2015.

3. 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 27/10/2016 has served a copy company scheme petition No. 699 to 672 of 2016 along with relevant orders etc., further the Regional Director has also issued a reminder 29th June, 2017 to IT Department.

4. 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 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."

c) Apropos the observation in paragraph IV (1) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes that in addition to compliance of AS-14 (corresponding Ind AS-103, if applicable) for accounting treatment, 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 (corresponding Ind AS-8), if applicable etc.

d) Apropos the observation in paragraph IV (1) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that

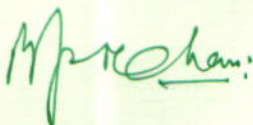
By order of the Tribunal;

Appointed Date will either be 1st April, 2015 or any other date as may be fixed by the Tribunal.

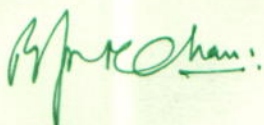
- e) Apropos the observation in paragraph IV (3) and (4) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company/Transferee Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
- f) The Official Liquidator has filed his report dated 16.06.2017 and stating therein that, the affairs of the Transferor Companies have been conducted in a proper manner and accordingly the Transferor Companies may be ordered to dissolve without winding up. Further it is submitted that, the Scheme is not prejudicial to the interest of public or shareholders.
- g) It is further submitted that, no objector has approached neither to the Petitioners nor before Tribunal, to oppose this Scheme.

12. 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. And hereby this Bench, to the Petitioner Companies, **do Order that:**

- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Companies, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) In lieu of consideration of the Scheme, 150 Equity Shares of ₹ 10/- each, credited as fully paid-up, of the Transferee Company, shall be issued and allotted for every 1,000 Equity Shares of ₹ 10/- each, of the 1st Transferor Company.



- d) In lieu of consideration of the Scheme, 1 Equity Share of ₹ 10/- each, credited as fully paid-up, of the Transferee Company, shall be issued and allotted for every 1,000 Equity Shares of ₹ 10/- each, of the 2nd Transferor Company.
- e) In lieu of consideration of the Scheme, 230 Equity Shares of ₹ 10/- each, credited as fully paid-up, of the Transferee Company, shall be issued and allotted for every 1,000 Equity Shares of ₹ 10/- each, of the 3rd Transferor Company.
- f) Further, during the course of hearing it is noticed that, the said Scheme is not a Scheme of Amalgamation as titled but contrary it is a Scheme of Merger by Absorption, hence, a liberty is granted to the Petitioners to amend the Scheme appropriately.
- g) Transferor companies are to be dissolved without winding-up after Scheme becomes effective.
- h) Petitioner Companies 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 the physical copy within 30 days from the date of issuance of the Order by the Registry, duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- i) The Petitioner Companies to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, 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.
- j) Each Petitioner Companies to pay cost of ₹ 25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- k) Transferor Companies (i.e. Petitioners in TCSP No. 161A, 162A and 163A of 2017) to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.



- l) All authorities concerned, to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- m) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- n) Any concerned Authority is at liberty to approach this Bench for any further clarification after sanctioning of the Scheme.
- o) The Scheme is sanctioned and the appointed date of the Scheme is fixed as, 1st April, 2015.

13. Ordered accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 22.01.2018