

**NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD BENCH**

**Company Petition No. 54/2016**  
**Connected with**  
**Company Application No. 35/2016**

Dated Friday, the 21th Day of April, 2017  
Quorum: Shri H. P. Chaturvedi, Member-Judicial

In the matter of Scheme of Amalgamation of:

**NEXT WAVE COMMUNICATIONS PRIVATE LIMITED**

a private limited company incorporated  
under the provision of Companies Act, 1956,  
having its Registered Office at  
Property No. A-14, Sector -64,  
Noida – 201301, Uttar Pradesh

..... Petitioner Company No. 1/ Transferor Company

**MN ENTERPRISES PRIVATE LIMITED**

a private limited company incorporated  
under the provision of Companies Act, 1956,  
having its Registered Office at  
Property No. A-14, Sector -64,  
Noida – 201301, Uttar Pradesh

..... Petitioner Company No. 2/ Transferee Company

**Claim:**

- (a) To Sanction the proposed Scheme of Amalgamation between NEXT WAVE COMMUNICATIONS PRIVATE LIMITED (*Transferor Company*) with MN ENTERPRISES PRIVATE LIMITED (*Transferee Company*).
- (b) Pass any such further order(s)/ which the Tribunal deems fit and proper in the facts and circumstances of the case.

**Present:**

Shri Navin Sinha, Senior Advocate Assisted by Shri Rahul Agarwal, Advocate.

**ORDER**

**(Per Shri H. P. Chaturvedi, Member-Judicial)**

The present Company Petition was filed before the Hon'ble Allahabad High Court and later on transferred to this Bench of National Company Law Tribunal pursuant to clause (c) of Section 434 (1) of the Companies Act, 2013 and the Companies (Transfer of Pending Proceedings) Rules and the Companies (Removal of Difficulties) Fourth order, w.e.f 15 December, 2016.



The present Company Petition CP No. 54/ 2016 is filed as Second Motion Petition praying for sanction of the proposed Scheme of Amalgamation u/s 391/394 of the Companies Act, 1956.


The Hon'ble High Court vide its order dated 13.12.2016 was pleased to issue notice of Petition to be published in newspapers that is in Financial Express (English), New Delhi Edition and Naya India (Hindi) by fixing the date of hearing. It further directed that a notice be issued to Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi and the Registrar of Companies, Uttar Pradesh at Kanpur. Pursuant thereto the Petitioner Company filed affidavits of service for paper Publication and furnishing proof of service thereof.

During the course of hearing in the first Motion Petition in CA 35/2016, before the Hon'ble Allahabad High Court, the Hon'ble Court was pleased to dispense with for convening the meeting of its shareholders (i.e. two equity shareholder, one preference shareholder) and also of its unsecured creditors by its order passed on 01.12.2016. It is also reported that neither the transferor nor the transferee company is having any secured creditors.

Further in response to the notices issued to Central Government, the Regional Director filed its affidavit on 10.02.2017. The Regional Director while expressing its comments on the merits of the Petition has made certain observations to be complied with Petitioner Companies and to be considered by this Bench while sanctioning the proposed Scheme. Such observations of the Regional Director are stated in Para 14 to 16 of its affidavit.

That apart it is further stated by the Regional Director in his affidavit by referring to the submissions of Petitioner Company that there is no NRI shareholder in Petitioner Companies. As per the auditor report of the Petitioner Companies for last three years it is evident that no adverse remarks were made in Auditors and Compliance Certificate.

It is also stated that there are no prosecution proceedings pending against the Petitioner Companies and its director alleged for violation of any law under the Companies Act, 1956/ 2013, FEMA, IPC, RBI Act or before any Court of Law. It is further stated in the affidavit by referring to Clause 8.1 of the Scheme stating that on Scheme being effective all employees of Transferor Company shall be deemed to become employee of Transferee Company w.e.f Appointed Date





without any break, discontinuance or interruption in their service on the basis of continuity of service and on the same terms and conditions of their Employment.

The Regional Director also reports in his Affidavit stating that the Transferor Company shall stand dissolved without being bound up on the sanction of the scheme. He also pointed out in Para 14 of the affidavit that the Petitioner Companies did not mention in its Petition about the applicability of Accounting Standard-14 issued by Institute of Chartered Accountants of India.

In response to the above said Affidavit (of the Regional Director), Mr. Puneet Anurag Chodha the Authorized Signatory of both the Companies (Transferor and Transferee) has filed his affidavit of undertaking stating that the Transferee Company has undertaken to comply with Accounting Standard-14 as issued by the Institute of Chartered Accountants of India on post sanction of the Scheme of Amalgamation becoming effective and to the extent it is applicable to the Transferee Company.

The Learned Counsel for Petitioner Companies has made assurance that the Petitioner Companies shall abide by all statutory obligation and to comply with statutory requirement arise out of this amalgamation in conformity with provision of Companies Act, FEMA, SEBI, IPC and other Laws. During the course of hearing the Official Liquidator has expressed his view that except the observation / comments made in the RDs Affidavit and in the Report of Registrar Of Companies (U.P.) , nothing adverse is available on record against sanction of the proposed Scheme and its office is having no objection for Sanction of the present Scheme provided that the observations /comments made by RD's office are duly complied with or to be undertaken for its compliance.

The Official Liquidator has expressed its no objection in Para 8 of his report dated 09.02.2017 and thus requested that Scheme of Amalgamation as proposed in the Company Petition may be considered on its merit. He also clarified that as per the information available on its record the affairs of amalgamating company have not been conducted in the manner prejudicial to their member.

We have gone through the contents of Company Petition along with the annexures made therein to consider on the issue of sanction of the proposed Scheme. The Petitioner Companies have stated in the Company Petition about the object of the proposed amalgamation:



- a) The amalgamation would result in the creation of a company with much larger assets base and a net worth with strong financial enabling further growth and development of said Companies.
- b) Reduction of the companies engaged in similar activities which will result into reduction in overheads, administrative, managerial and other expenditure, and optimal utilization of various resources due to consolidation of activities.
- c) The amalgamation will result in better debt equity ratio of the combined entity.
- d) Greater efficiency in cash management of the Transferee entity, and access to cash flow generated by the combined business.
- e) The Transferee Company post amalgamation will have better financial and business prospects. The Scheme shall be beneficial and in the best interests of the shareholders, creditors, employees of the Transferor Company and Transferee Company and all concerned.

The Petitioner Companies have also pleaded that the present Scheme is not intended to have any beneficial effect to any of its director (of both the companies), the aggregate assets of both Transferor and Transferee company are more than sufficient to meet all their liabilities and due provisions have been made for payment of all liabilities. The Company also clarified that no proceeding under Section 251 of the Companies Act, 1956 and Section 210 of the Companies Act, 2013 nor any proceeding in respect of Mismanagement and Oppression is pending or is instituted. Therefore, it is submitted that the sanction of the proposed Scheme of Amalgamation will be for benefit of Petitioner Companies and its Shareholder. The Boards of Director of both Companies have already approved the Scheme. Further there will be no change authorized capital, issued capital, subscribed capital and paid up share Capital of the Next Wave Communications Private Limited. Therefore, on the above stated reason the Petitioner Companies have prayed for the sanction of the proposed Scheme of Amalgamation as stated in Para (c) of prayer clause of the company petition.

Having heard the submissions of the Learned Counsel for Petitioner Companies and Official Liquidator representing Central Government and by perusal of the material available on record we deliver the following:

- I. the proposed Scheme appears to be fair and reasonable and is not violative any provisions of Law nor contrary to Public Policy nor detrimental to the interest of public at large.
- II. Further all the statutory compliance seems to be complied with or further undertaken to be complied with by Petitioner Companies as per their Affidavit. Therefore, the Company Scheme Petition filed by the Petitioner is





made absolute in terms of its Prayer Clause. Accordingly, the Company Scheme of Amalgamation between NEXT WAVE COMMUNICATIONS PRIVATE LIMITED (*Transferor Company*) with MN ENTERPRISES PRIVATE LIMITED (*Transferee Company*) is sanctioned.

- III. Further a cost of Rs. 15,000/- is awarded in favour of the Central Government through the office of Regional Director (N.R.) towards Legal Expenses incurred which is payable by the company within four weeks from the receipt of authentic copy of this order.
- IV. The Petitioner Companies to lodge a copy of this order along with Scheme of Amalgamation to the office of Registrar of Companies (Northern Region) and also communicate the office of superintendent of stamp of the Uttar Pradesh State Government, for the purpose of adjudication of stamp duty if payable, within 60 days of receipt of this order.
- V. The counsel of the Petitioner Companies to furnish a copy of draft order of sanction of the Scheme as per the prescribed format under Companies Compromises, Arrangement and Amalgamations) Rules, 2016 read with other rules for scrutiny and authentication by the Registry of this Tribunal.
- VI. The parties to act upon as per this order and to take necessary steps as per the provisions of Companies Act and Rules.
- VII. All concerned regulatory authorities may act on a copy of this order along with the Scheme duly authenticated by the Asst. Registrar, National Company Law Tribunal, Allahabad Bench.
- VIII. Accordingly Petition stands disposed of.

Dictated to the Law Clerk, typed by her, corrected and pronounced by me in the open Court this Friday, the 21<sup>th</sup> day of April, 2017



**H.P. CHATURVEDI, MEMBER-JUDICIAL**

**Dated : 21.04.2017**