

NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD BENCH

Company Petition No. 53/2016
Connected with
Company Application No. 36/2016

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

**IN THE MATTER OF SECTION 391 AND SECTION 394 OF THE COMPANIES ACT,
1956 (PRESENTLY SECTION 230-232 OF THE COMPANIES ACT, 2013)**

AND
IN THE MATTER OF SCHEME OF AMALGAMATION
AMONGST

1. **NEXT WAVE VENTURES 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 No.1

AND

2. **DIGIVISION 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. 2/ Transferor Company No. 2

AND

3. **DIGIVISION TECHNOLOGIES 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. 3/ Transferor Company No. 3

AND

4. **DIGIVISION INFOTAINMENT 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. 4/ Transferor Company No. 4

AND



5. DIGIVISION MEDIA 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. 5/ Transferor Company No.5

AND

6. DIGIVISION ENTERTAINMENT 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. 6/ Transferor Company No.6

AND

7. MN VENTURES 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. 7/ Transferee Company

PRESENT:


Shri Navin Sinha, Senior Advocate, Assisted by Shri Rahul Agarwal, Advocate for
Petitioner Companies.
Shri M.K Bagri, Learned Official Liquidator for Central Government.

ORDER

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

The present Company Petition CP No. 53/ 2016 was filed as a Second Motion Petition praying for sanction of the Scheme of Amalgamation 391/394 of the Companies Act, 1956 before the Hon'ble High Court of Allahabad and transferred to this Bench of National Company Law Tribunal as per 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 Hon'ble Allahabad High Court during the course of hearing in CA No. 36/2016 vide its order dated 24.11.2016 has been pleased to



dispense with meeting of its shareholders and creditors and granted liberty to the Applicants to file the second motion Petition

The Hon'ble High Court having heard the Second Motion Petition further directed to issue of notices of the present Petition to the office of Regional Director and Registrar of Companies and notices of present petition to be published in newspapers namely Financial Express (English), New Delhi Edition and Naya India (Hindi) New Delhi Edition by its order dated 13.12.2016 by fixing next date of hearing 13.02. 2017, meanwhile it is transferred to this Tribunal.

As per material available on record it transpires that notices were issued to Registrar of Companies, Regional Director and in pursuance thereto a report of the Official Liquidator is filed and representation affidavit of the Regional Director (Northern Region), is also filed.

In response to the affidavit of Regional Director and Official Liquidator's Report, the Petitioner Companies filed a reply dated 2nd March, 2017 and gave undertaking for making compliances of all the statutory obligations and requirement as pointed out by the Regional Director in his affidavit dated 10.02.2017.

The Petitioner Companies also filed another affidavit of Proof of service for effecting paper publication in the newspapers for hearing of the present Petition. Meanwhile, as the case is transferred to NCLT, Allahabad Bench, another notice was published in Form 3(A) for hearing fixed before the NCLT, Allahabad Bench in support there of a paper clipping has been annexed.

It is reported that in response to the above stated paper publication, of Notices in respect of Present Petition, no objections/ comments against the proposed Scheme is received either in the office of the Petitioner Counsel or before the Registry of the Hon'ble High Court or before this Tribunal in respect of Sanction of the proposed Scheme.

We have heard the argument of Counsel of Petitioner Companies and Official Liquidator in respect of Sanction of the proposed Scheme.




Shri Bagri, Learned Official Liquidator during the course of Hearing pointed out relevant paras of his report (i.e. para 11, 12 and 13) contending that its office has scrutinized the books of accounts and papers of Petitioner Companies and it appears that the record and register were properly maintained by all the amalgamating companies as required under law. Therefore, its office is having no objection for dissolution of the Amalgamating Companies without being wound up in pursuance of Section 394 of Companies Act, 1956 read with other applicable sections and relevant rules. The Official Liquidator office also stated that the proposed scheme to be considered on its merits and as per its records the affairs of the Transferor / Amalgamating Companies have not being conducted in the manner prejudicial to its member or against public interest. Hence, the proposed Scheme to be considered on its Merits.

Shri Bagri also contends that the Tribunal may consider the sanction of the Proposed Scheme in the light of observation made in the affidavit of Regional Director and report of Registrar of Companies (Northern region).

Our attention was also drawn on some paras of the affidavit of Regional Director wherein it is pointed out that statutory Auditor of the companies has made some comments on certain delays for few cases in deposit of Income Tax deducted at Source and Service Tax etc. We find such observation is duly replied by Petitioner Companies in its Reply Affidavits.


It is also pointed out in Para 14 of the RD's affidavit that the Petitioner Companies did not mention in the Company Petition about applicability of Accounting Standard-14 issued by Institute of Chartered Accountants of India. In response to this an Affidavit of Mr. Puneet Anurag Chodha being Authorized Signatory of both the Companies (Transferor and Transferee) and whereby the Transferee Company has undertaken to comply with Accounting Standard-14 issued by Institute of Chartered Accountants of India, post the Scheme of Amalgamation becoming effective to the extent it is applicable to the Transferee Company.



It is also informed in the affidavit of Regional Director that; the office of Regional Director did not receive any specific comments observation from Income Tax authorities within 15 days. Further the Registrar of Companies in its report submitted to the Regional Director has made certain observation stating that there are no NRI shareholder in Petitioner Companies and by perusal of last three years auditors report of petitioner companies it is evident that no qualification, reservation or adverse remarks was made in auditor's report except the above stated point of delay in deducting TDS in the Income Tax and Service Tax.

Further there are no prosecution proceedings pending against the Petitioner Companies and their directors for violation of the laws under the Companies Act, 1956/ 2013, FEMA, IPC, RBI Act or before any Court of Law. It is further stated in the affidavit on the Scheme being effective all employees of Transferor Companies 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 their services and on the same terms and conditions of their Employment.

Shri Navin Sinha, Senior Advocate, Counsel for Petitioner Companies during the Course of argument has submitted the main object sought to be achieved by the proposed scheme of Amalgamation are explained well in para 18 to 29 of the Company Petition. He submitted in nutshell that present Scheme is not intended to have any beneficial effect to any of the director of both the companies (Transferor Companies and Transferee company), the aggregate assets of both Transferor and Transferee company are more than sufficient to meet all their liabilities and due provision have been made for payment of all liabilities. He also clarified that no proceeding under Section 251 of the Companies Act, 1956 and Section 210 of the Companies Act, 2013 nor any proceeding is pending or instituted in respect of Mismanagement and Oppression therefore it is submitted that the sanction the proposed Scheme of amalgamation will be for benefit of Petitioner Companies and its Shareholder.




As per the Present Company Petition the objects of the proposed amalgamation are stated as under:

- i. The amalgamation would result in the creation of a company with much larger asset base and a net worth with strong financial enabling further growth and development of said Companies.
- ii. 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.
- iii. The amalgamation will result in better debt equity ratio of the combined entity.
- iv. Greater efficiency in cash management of the Transferee entity, and access to cash flow generated by the combined business.
- v. 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.

It is also contended that in the Present Scheme is not approved than it would cause irreparable loss to the petitioner companies. Hence the prayer sought for, to be granted.

In the light of above given facts of case as placed before us we examined the contents of present Company Petition and perused the documents annexed therewith. Having heard the submissions of the Learned Counsel Shri Navin Sinha, Senior Advocate, Assisted by Shri Rahul Agarwal for Petitioner Companies and Shri M.K Bagri, Official Liquidator representing Central Government, we approve and sanction the proposed Scheme , and deliver the following:

1. The proposed Scheme appears to be fair and reasonable and is not violative of any provision of Law nor contrary to Public Policy nor detrimental to the interest of public at large.
 2. Further all the statutory compliance seems to have been complied with or further undertaken to be complied with by Petitioner Companies as per their Affidavits. Therefore, Company Scheme Petition filed by the Petitioner Companies is made absolute in terms of its Prayer Clause. Accordingly, the Company Scheme of Amalgamation between NEXT WAVE
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VENTURES PRIVATE LIMITED (*Transferor Company No.1*) and DIGIVISION COMMUNICATIONS PRIVATE LIMITED (*Transferor Company No.2*) and DIGIVISION TECHNOLOGIES PRIVATE LIMITED (*Transferor Company No.3*) and DIGIVISION INFOTAINMENT PRIVATE LIMITED (*Transferor Company No.4*) and DIGIVISION MEDIA PRIVATE LIMITED (*Transferor Company No.5*) and DIGIVISION ENTERTAINMENT PRIVATE LIMITED (*Transferor Company No.6*) and MN VENTURES PRIVATE LIMITED (*Transferee Company*) is sanctioned.

3. Further a cost of Rs. 20,000/- is awarded in favor 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.
4. The Petitioner Companies to serve a copy of this order along with Scheme of Amalgamation to the office of Registrar of Companies and also to communicate the office of superintendent of stamp of the UP State Government, for the purpose of adjudication of stamp duty if payable, within 60 days of receipt of this order.
5. The parties to act upon as per operative portion of the order and to take necessary steps as per the provisions of Companies Act and Rules.
6. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal to the Scheme will not come in the way of action being taken, albeit, in accordance with the Law, against the concerned persons, directors and officials of Petitioner Companies.
7. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of taxes or any other charges, if any, and payment in accordance with Law or in respect to any permission/ compliance with any other



requirement which may be specifically required under any Law.

8. The counsel of the Petitioner Companies to furnish a copy of draft order of sanction of the Scheme in 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.
9. All concerned regulatory authorities may act on a copy of this order along with the Scheme duly authenticated by Asst. Registrar, National Company Law Tribunal, Allahabad Bench.

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 21st day of April 2017.

A handwritten signature in black ink, appearing to be 'H.P. Chaturvedi', is written over a horizontal line.

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

Dated: 21.04.2017