

BEFORE THE NATIONAL COMPANY LAW
AT NEW DELHI

CORAM: SMT. INA MALHOTRA, MEMBER (JUDICIAL)

& SH. V.K SUBBURAJ, MEMBER (TECHNICAL)

CAA- 86(ND) 2018

IN THE MATTER OF SCHEME OF ARRANGEMENT

BETWEEN

HT Media Limited

(APPLICANT NO.1/ DEMERGED COMPANY)

WITH

Digicontent Limited
(Formely known as HT Digital Ventures Limited)

(APPLICANT NO. 2/RESULTING COMPANY)

Present- Mr. Rajeev Kumar, Advocate

ORDER DELIVERED ON -07.03.2019

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

1. This Joint application has been filed by the Applicant Companies under sections 230 and 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangement, and Amalgamation) Rules, 2016 for the purpose of approval of the Scheme of Arrangement, as contemplated between the Demerged Company and the Resulting Company.



NO. 207
Date of Presentation
of application for Copy 11/03/19
No. of Pages 11
Copying Fee \$ 7
Registration & Postage Fee
Total 200/-
Date of Receipt &
Record of Copy
Date of Preparation of Copy 27/03/19
Date of Delivery of Copy 27/03/19
DD/DR/AA Court Officer
National Company Law Tribunal
New Delhi

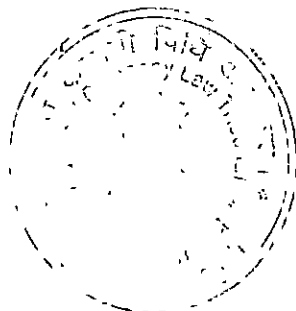
2. Both the Demerged and Resulting Companies have their registered offices at 18-20, Kasturba Gandhi Marg, New Delhi-110001, falling within the jurisdiction of this Tribunal.
3. A perusal of the petition discloses that initially the Demerged Company and Resulting Company had jointly filed the first motion application bearing CAA 24/ND/2018 which had been disposed off by this Tribunal vide its order dated 06.03.2018 directing:-

A.)In respect to the Demerged Company:

- i. A meeting to be convened on 19.05.2018 in respect of its 45,326 Equity Shareholders.
- ii. A meeting to be convened on 19.05.2018 in respect of its 3 Secured Creditors.
- iii. A meeting to be convened on 19.05.2018 in respect of its 734 Unsecured Creditors

B.)In respect to the Resulting Company:

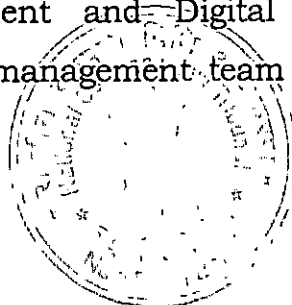
- i. The requirement of convening a meeting of the shareholders was dispensed with, in view of the consent affidavits of its 7 equity shareholders.
- ii. As there were no Secured Creditor of the Resulting Company, the requirement of convening meeting of the Secured Creditors did not arise.
- iii. The requirement of convening a meeting in respect of its 1 Unsecured Creditors, was dispensed with in view of the consent affidavit being on record.



4. The aforesaid meeting of Equity Shareholders, Secured and Unsecured Creditors of the Demerged Company was duly held on 09.06.2018 as directed by the Tribunal, wherein the proposed Scheme was approved by its members and creditors. The Chairman's reports dated 13.06.2018, recording the approval of the proposed scheme without modification subsequent to the voting process, is on record.

5. Vide the present Scheme, the Demerged Company seeks to demerge its business of Entertainment and Digital Innovation with the Resulting Company. They have outlined the rationale and benefit in the Scheme as under:-

- The Entertainment & Digital Innovation Business of HTML has significant potential for growth. The nature of risk, competition, challenges, opportunities and business operations is separate and distinct from other business of HTML. Thus the scheme, which envisages demerger of Entertainment and Digital Innovation Business into a separate company, would enable this business to innovate, scale up and run independent to pursue growth opportunities in a more focused manner.
- As a part of M/s Digicontent Limited, the Entertainment and Digital Innovative Business shall be amenable to benchmarking, and be in a position to attract the right set of investors, strategic partners, employees and other relevant stakeholders.
- There would be more enhanced focus on the operation of the Entertainment and Digital Innovative Business under a dedicated management team of the M/s Digicontent Limited,



✓

who can chart out and pursue an independent strategy to maximize value creation for stakeholders. Likewise, there would be greater management focus on the remaining business of HTML.

- The listing of shares of M/s Digicontent Limited stock exchanges, would enable independent benchmarking of Entertainment and Digital Innovative Business, and give a distinct identity to the Entertainment and Digital Innovative Business which is independent and accountable to the interest of all stakeholders and thus, would provide enhanced liquidity to the investor of HTML.
- There is no adverse effect of scheme on the directors, key managerial personnel, promoters, non-promoters, shareholders of HTML and M/s Digicontent Limited and the scheme would be in the best interest of all stakeholders.
- Scheme shall be amendable to benchmarking and be in a position to attract the right set of investors, strategic partners, employees and other relevant stakeholders.

6. So far as the Share Exchange Ratio is concerned, in terms of the scheme, it has been determined in accordance with the settled principles of valuation. The Report on Valuation of Shares & Share Exchange Ratio dated 25th August, 2017 has been issued by M/s Jain Jindal & Co. Chartered Accountants, New Delhi, proposing that for every 4 Equity share of face value of Rs.2/- each, held in HTML as on the record date, the equity shareholders of HTML shall be issued 1



equity share of face value of Rs. 2/- each credited as fully paid-up in the M/s Digicontent Limited.

7. The other Salient features of the scheme are:-

a.) The Appointed date shall be 31st March, 2018;

b.) Clauses 14.1(a) and 14.2(a) provide that simultaneously with the issue and allotment of the new equity shares by the Resulting Company to the equity shareholders of HTML in accordance with clause 12.1 of the Scheme, in the books of the Resulting Company, any equity shares held by HTML in the Resulting Company shall stand cancelled, extinguished and annulled on and from the Effective Date. The cancellation, which amounts to reduction of share capital of the Resulting Company, shall be effected as an integral part of this Scheme itself in accordance with the provisions of section 66 of the Act for the purpose of confirming the reduction. The reduction would not involve diminution of liability in respect of unpaid share capital or payment of paid up share capital.

c.) Clause 20.2 provides that in order to give effect to this Scheme, the authorized share capital of the Resulting Company shall be increased from Rs. 1,00,000 to Rs. 12,00,00,000. By virtue of clause 20.2 read with clause 3.2 Clause(v) of the Memorandum of association of the Resulting Company shall, without any further act or deed, be amended accordingly to read as under:

"the Authorized Share capital of the Company is Rs. 12,00,00,000 divided into 6,00,00,000 Equity Shares of Rs.2/- each".



✓

8. Copies of the Memorandum of Association and Articles of Association along with their audited Balance Sheets, as on 31.03.2017 and reports of the auditors of both the Applicant Companies have been filed on record. Provisional Balance Sheet as on 31st December, 2017 of both the Applicant Companies have also been filed.

The Applicants submits that the provisions relating to the accounting treatment for the proposed arrangement, as contained in the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. This has been certified by the Statutory Auditors of the applicant companies.

9. The applicant companies have now initiated the Second Motion. An affidavit dated 17.08.2018 discloses that the applicants had effected publication in daily newspapers in "The Hindustan Times" (English) and in "Hindustan" (Hindi) both dated 08.08.2018 (Delhi Edition). The affidavits filed further disclose that due notice of the proposed scheme had been served on the Registrar of Companies, Regional Director, (Northern Region) and the Income tax Department, inviting objections, if any, to the proposed Scheme of Arrangement.

Pursuant to the Publication in the daily newspapers, for listing of the matter before this Bench, one objector has appeared before us opposing the prayer of demerger by the applicant no.1 company, whose objections have been considered by this Bench.

10. The sole objector, Phonographic Performance Ltd. (PPL) has raised an objection on grounds that there is a contingent liability which the applicants have failed to disclose. The objector and HT Music and Entertainment Co. Ltd. had entered into a License Agreement dated 11.10.2006 which was renewed from time to time. These agreements were executed separately for each radio station at Kolkata, Bangalore, Mumbai and New Delhi. The business of HT Music Entertainment Music was

specifically amalgamated with the business FM Business of HT Radio vide order dated 19.05.2009 passed by the Hon'ble High Court of Delhi. The licenses were terminated due to efflux of time and were not renewed thereafter. However, the applicant no.1 company is alleged to have infringed the copyright in the Sound Recordings administered by the Objectors which gave rise to filing of a suit being CS(OS) No. 2749 of 2011 [subsequently re-numbered as CS(COMM) 457 of 2017] pending before the Hon'ble High Court of Delhi. In the said proceedings, the applicant company has been directed to pay a royalty giving rise to a contingent liability being adjudicated by the Delhi High Court.

It is argued by Id. Counsel for the objector that the scheme as proposed is against the interest of the creditors and is not just, fair and reasonable.

11. Reply has been filed on behalf of the applicant company allaying the apprehensions of the objector. It is submitted that vide the proposed scheme, demerger of only one branch of HT Media Ltd. i.e in respect of its Entertainment and Digital Innovation Business is proposed. It is categorically stated that the radio business of the applicant no.1 company shall continue with the Demerged Company, and they shall continue to remain liable towards liabilities, if any, towards PPL to the extent adjudicated by the Hon'ble High Court of Delhi in the pending proceedings. It is argued by the Id. Counsel for the applicant companies that the objector is merely using the scheme of arrangement as a tool to recover outstanding debts which at the moment are only contingent. The objections raised by the PPL are therefore untenable and not sufficient to derail the scheme. The scheme has been made keeping in view the larger interest of the share holders and its creditors, and apart from the objector herein, none of the creditors have raised any objection.

12. As per averments of the applicants and the arguments advanced before this Bench, it has categorically been submitted on their behalf that the demerger of only the Entertainment and Digital Innovation Business of the H T Media Ltd. is being proposed for a more efficacious operation of its business and the scheme shall not in any way effect the contingent liability of the objector herein. The FM radio business shall continue to be run by the Demerged company as its remaining business and has been clarified in the Scheme of Arrangement.

Clause 1.6 clarifies that the "Entertainment & Digital Innovation Business of HTML" shall mean all the businesses, undertakings, activities, assets, properties and liabilities, of whatsoever nature and kind and where so ever situated, of HTML pertaining to the Entertainment & Digital Innovation Business.

Further, it is submitted that the use of the phrase "Fever Audio tool" is merely a tool that is used for aggregation and creation of audio content that is utilized in the Entertainment and Digital Innovation business which is admittedly not used for music.

Therefore, it is further clarified that the Objector does not have any relation with the Entertainment and Digital Innovation Business.

Keeping in view the submissions made, we find that the interest of the objector are not affected by the Scheme and therefore their objections raised are not sufficient to reject the scheme.

13. The Department of the Income Tax has not made any significant objections that would impeditment the sanction of the Scheme. In the reply dated 24.08.2018 filed by the Regional Director, Northern Region. it has been confirmed that the Demerged and Resulting Company are regular in filing their statutory returns. No prosecution has been filed, no complaints are pending and no inspection or investigation has been conducted. Further in

their report, they have stated that they have no objection to the sanction of the proposed scheme.

14. As the shares of the HTML are listed on the BSE Limited ("BSE") and National Stock Exchange of India Limited ("NSE"), the requisite consent, approval and permission from BSE and NSE under Regulation 37 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, has been obtained. Further the No Objection Certificate dated 26th December, 2017 issued by the BSE Limited and the National Stock Exchange of India Limited dated 22nd December, 2017 have been filed.

15. In view of the foregoing and upon considering the approval accorded by the members and creditors of both companies to the proposed Scheme, and no objections having been raised by the office of the Regional Director or the Income Tax Dept or any other interested party, other than PPL whose objections have been taken care of, there appears to be no impediment in granting sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under sections 230-232 of the Companies Act, 2013. The sanctioned Scheme of arrangement shall be binding on the Demerged and the Resulting Company and on all their respective shareholders and creditors. The Applicants shall also be bound to comply with the statutory requirements in accordance with law, and the submissions made to the objections of PPL.

16. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of both the petitioner companies.

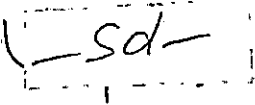
17. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.

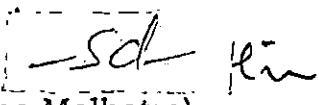
18. THIS TRIBUNAL DO FURTHER ORDER

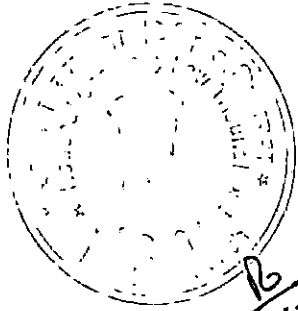
- a.) That all the property, rights and powers of the demerged company, in respect of demerged undertaking, be transferred without further act or deed; to the resulting company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and vest in the resulting company for all the estate and interests of the demerged company in respect of demerged undertaking therein but subject nevertheless to all charges now affecting the same; and
- b.) That all the liabilities and duties of the demerged company, in respect of demerged undertaking, be transferred without further act or deed, to the resulting company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and
- c.) That the Demerged Company shall reduce the Book Value assets and liabilities from its books of account at the values appearing as on the Appointed date. The difference between the Book Value of assets and liabilities shall be debited/credited to the Capital Reserve of the Applicant Company. The reduction of Share Capital of the applicant in terms of the Scheme u/s 66 of the Companies Act 2013 is also permitted in terms of approval of the Scheme of Arrangement its members and creditors.

- d.) That all proceedings now pending by or against the demerged company, in respect of demerged undertaking, be continued by or against the resultant company; and
- e.) That petitioner shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration.
- f.) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- g.) The Demerged Company has consented to pay a sum of **Rs. 1 Lakh** to the Prime Minister Relief Fund within four weeks from the date of the order.

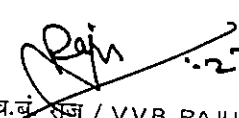
The petition stands disposed of in the above terms.

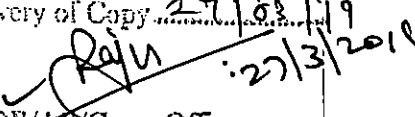

(V.K Subburaj)
Member Technical


(Ina Malhotra)
Member Judicial



NO 307
Date of Presentation
of application for Copy 11/03/19
No. of Pages 11
Copying Fee 5/-
Registration & Postage Fee
Total ₹ 200/-
Date of Receipt &
Record of Copy
Date of Preparation of Copy 27/03/19
Date of Delivery of Copy 27/03/19

 27/3/2019
व.वि.बं राजू / V.V.B. RAJU
उप पंजीयक / DEPUTY REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
Block-3, 6th Floor, CGO COMPLEX
LODHI ROAD, NEW DELHI - 110003

 27/3/2019
DD/DR/AR/Court Officer
National Company Law Tribunal
New Delhi