

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Through Physical Hearing/VC Mode (Hybrid))

C.P. (CAA) No.29/BB/2023
U/ss 230 to 232 of the Companies Act, 2013
R/w Companies (Compromises, Arrangements
and Amalgamations) Rules, 2016

IN THE MATTER OF:

HCV Digital Entertainment Private Limited

Registered Office at 2nd & 3rd Floor,
No.1, Indian Express Building, Queen's Road,
Bangalore – 560 001. ... Petitioner No.1 / Transferor Company

AND

ACT Digital Home Entertainment Private Limited

Registered Office at Trae Centre,
4th Floor, No.29/4, Race Course Road,
Bangalore- 560 001. ... Petitioner No.2/Transferee Company

Order delivered on: 28th day of June, 2024

CORAM: 1. Hon'ble Shri K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioners Company : Shri C. Dwarakanath
For the Registrar of Companies : Shri Vaibhav
For the Income Tax department : Shri Ganesh R. Ghale

ORDER

Per: Shri Manoj Kumar Dubey, Member (Technical)

1. This is a Second Motion Petition filed by the **HCV Digital Entertainment Private Limited** (described in short as "Petitioner No.1/Transferor Company") and **ACT Digital Home Entertainment Private Limited** (described in short as "Petitioner No.2/Transferee Company") on 09.05.2023 under Sections 230 to 232 of the Companies Act, 2013 (hereinafter referred to as the said Act) r/w Companies (compromises, Arrangements and Amalgamation) Rules 2016

inter alia, seeking for the sanction of Scheme of Amalgamation (for brevity ‘Scheme’) of Petitioner Companies i.e. HCV Digital Entertainment Private Limited and ACT Digital Home Entertainment Private Limited and their respective Shareholders and Creditors and all those concerned.

2. The Petitioner Company filed first motion application bearing C.A.(CAA)No.58/BB/2021 (“First Motion Application”) before this Tribunal. Based on such application moved under section 230 and 232 of the said Act, 2013 necessary directions were issued vide order dated 28.02.2023 wherein the following order was passed:

C.A.(CAA)No.58/BB/2021 – Date of Order 28.02.2023		
List	Applicant Company No.1	Applicant Company No.2
Meeting of Equity Share holders	Dispensed	Dispensed
Meeting of Secured Creditors	NIL	NIL
Meeting of Unsecured Creditors	Dispensed	Dispensed

3. This Tribunal vide Order dated 27.03.2023 issued the following directions, namely;

*“2. The Petition be listed for hearing on **15.11.2023**. At least ten days before the date fixed for final hearing, the Petitioner Company shall publish the notice of final hearing of the Company Petition in two local newspapers viz., ‘Business Standard’ in English Edition and translation thereof in ‘Kannada Prabha’ in Kannada Daily, as per Rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.*

3. Notice be also served upon the Objector(s) or their representative as contemplated under sub-section (4) of Section 230 of the Companies Act, 2013 who may have made representation and who have desired to be heard in their representation along with a copy of the Petition and the Annexures filed therewith at least 15 days before the date fixed for hearing. It is to be specified in the notices that the objections, if any, to the Scheme may be filed within thirty days from the date of the receipt of the notice, failing which, it will be considered that there is no objection to the approval of the Scheme on the part of the Objector(s).

4. In addition to the above public notice, the Petitioner Company shall serve the Notice of the Petition on the following Authorities, namely, (a) The Regional Director (South East Region), Hyderabad; (b) The Registrar of Companies Karnataka, Bengaluru; (c) The Principal Chief Commissioner of Income Tax, Karnataka & Goa, being the Nodal Officer; (d) The Jurisdictional Deputy/Assistant Commissioner/Assessing Authority; (e) The Official Liquidator and (f) Ministry of Information and Broadcasting (Sectoral Regulator), New Delhi along with the copy of this Petition and the Annexures filed therewith by Speed Post immediately and to such other Sectoral Regulator(s) who may govern the working of the Petitioner Companies involved in the Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, with a direction that they may submit their representation, if any, within 30 (thirty) days from the date of receipt of such notice, failing which, it will be presumed that the said Authority has no representation to make to the Scheme.

5. The Petitioner Company shall host Notice of final hearing along with the copy of the Scheme on its website, if any.

6. The Petitioner Company shall at least 7 days before the date of hearing of the Petition file an Affidavit of Service regarding paper publication as well as service of notices on the Authorities specified above including the Sectoral Regulator as well as the Objector(s), if any. The Petitioner Company shall file compliance report with this Tribunal at least 10 (ten) days before the date fixed for final hearing and report to this Tribunal that the directions regarding the service of notices upon regulatory authorities & publication of advertisement of the notice of hearing in the newspapers have been duly complied with.”

4. In pursuance to the notice referred to in para 3, the authorized signatory of the Petitioner Company has filed copies of proof of service of notice vide Diary No.5650 dated 08.11.2023, along with copies of newspaper publication “Business Standard” (English), and “Kannada Prabha” (Kannada) dated 12.10.2023.
5. The main objects, dates of Incorporation, authorized, issued and paid-up share capital, rationale of the scheme and interest of employees have been discussed in detail in first motion order dated 28.02.2023.
6. The Board Resolution of the Petitioner Company approving the Scheme is annexed as **Annexure- P4** to the Petition.

7. It is further submitted that the Certificate of Statutory Auditors of the Transferee Company, stating that the proposed Accounting Treatment contained in Paragraph 3 of Part III to the proposed Scheme is in compliance with accounting principles generally accepted in India, including the Indian Accounting Standards specified under Section 133 of the Act, r/w rules made thereunder, and other generally accepted accounting principles in India. The copy of the certificate is attached as **Annexure-P5** to the Petition.
8. The Audited Financial Statement as on 31.03.2022 of the Petitioner Companies is attached as Annexure-P10 to the Petition. Further, the unaudited Financial Statements of the Petitioner Companies as on 31.12.2022 is attached as **Annexure-P11** to the Petition.
9. As per the Scheme, “Appointed Date” means **1st day of April, 2021**.
10. In pursuant to the notice, the Regional Director (RD) and the Registrar of Companies (ROC) have filed their Common report vide Dairy No.868 dated 08.02.2024 by *inter alia* observing as under, vide para 2:
 - (1) As per the latest Shareholders list attached to the last annual return for the financial year ending 31.03.2023, HCV Digital Entertainment Private Limited, the Transferor Company is wholly owned subsidiary of Transferee Company. Despite the Transferor Company being a wholly owned subsidiary, the Petitioner Companies have preferred an application under Section 230-232 of the Companies Act, 2013 before NCLT instead of Section 233 of the Companies Act, 2013 before the Regional Director. Further, another Company namely Atria Convergence Technologies Limited is holding 100% shares of the Transferee Company.
 - (2) As per para 1.2 of Part-A of the proposed scheme, the Appointed Date has been stated as 01.04.2021. As per Company Master Data both the Companies have filed Annual Returns and Balance Sheets for the year ended 31.03.2023. Since the appointed date is ante-dated beyond two years, the Hon’ble Tribunal may be pleased to direct the Petitioner Companies to change the appointed date from 01.04.2021 to 01.04.2023

or any other date as deem fit and proper by the Hon'ble Tribunal/or may furnish justification to make it anti dated as stated supra.

- (3) The Transferee Company has changed its name from Excite Digit Home Entertainment Private Limited to ACT Digital Home Entertainment Private Limited with effect from 17.08.2012.
- (4) As per the latest Audited Financial Statement for the financial year ending 31.03.2022, Transferor Company is a loss-making entity, whereas the Transferee Company is a profit-making company. The Petitioner Companies need to justify the rationale behind merging of loss making entity with profit making Company. Further, there may be a negative outflow of taxes once the scheme is approved.
- (5) As per independent Auditor's report for the financial year ending 31.03.2022, Transferor and Transferee Companies have outstanding disputed statutory dues to the tune of Rs.2.88crores and Rs.14.70 crores respectively. Hon'ble Tribunal may be pleased to direct the petitioner companies to furnish an undertaking to Hon'ble NCLT to the effect that it will settle the dues as and when the claim is crystallized.
- (6) (a) As per para (vii)(b) of Annexure-I of Independent Auditors Report Attached to the Balance Sheet as at 31.03.2023 of the Transferor Company , there are various dispute pending before Andra Pradesh VAT Appellate Tribunal, Commercial Tax Office, Eluru, Joint Commissioner (Appeals) APGST, Vijayawada and Commissioner of Income Tax (Appeals) Vishakhapatnam.
(b) As per para (Vii)(b) of Annexure-I of Independent Auditors Report Attached to the Balance Sheet as at 31.03.2023 of the Transferee Company, there are various disputes pending before AP VAT Appellate Tribunal, Additional Commissioner (CT) Legal and Joint Commissioner (Appeals).
The petitioner companies may be directed to furnish an undertaking to Hon'ble NCLT to the effect that it will settle the statutory dues immediately, if not settled so far.
- (7) Petitioner Companies vide para 14 to its reply has stated that there are pending litigations with respect to Transferor Company and Transferee

Company and enclosed the list of Tax Disputes with respect to both the companies and various litigations filed by both the companies which are pending before various authorities.

- (8) As per clause 1 of Part III of the Scheme, the Transferor Company is a wholly owned subsidiary of the Transferee Company and hence no consideration shall be payable pursuant to Amalgamation of the Transferor Company with the Transferee Company.
- (9) Clause 9 of Part III of the Scheme provides for Clubbing of Authorized Share Capital wherein it is stated that the authorized share capital of the Transferee Company shall automatically stand increased without any payment of stamp duty and fees. This term in the Scheme is not in line with the provisions of Section 232(3)(i) of the Companies Act, 2013. Hon'ble Tribunal may be pleased to direct the Petitioner Companies that, the Transferee Company shall comply with the provisions of the Section and pay the difference of fee, after setting off the fee already paid by the Transferor Company on its respective capital.
- (10) As per Section 240 of the Companies Act, 2013, the liability in respect of offences committed under the Companies act by the officers in default, of the Transferor Company prior to merger, amalgamation or acquisition shall continue on then respectively after such merger, amalgamation or acquisition.
- (11) No Employees/workmen of Transferor Company to be retrenched/ terminated in the terms of amalgamation of Transferor Company with Transferee Company. The Hon'ble Tribunal may be pleased to see that the Transferee Company is complying with the same in letter and spirit and not retrenching the staff or employee of Transferor Company in the guise of surplus staff on account of merger and need to give a separate undertaking by the Transferee Company in this regard.
- (12) Report of Official Liquidator, Karnataka dated 14.12.2023 is filed before the Hon'ble NCLT(BB) and copy of the same has been furnished to this Directorate vide e-mail dated 14.12.2023 (copy enclosed) with respect to CP(CAA)29/BB/2023. Official Liquidator in his report has pointed out certain observations. Hon'ble Tribunal may be pleased to direct the

Petitioner Companies to comply with the observations pointed out by the Official Liquidator, before the Scheme is allowed.

There is no open complaints, prosecutions, technical scrutiny/inquiry inspections and investigations pending in this office against the Petitioner Companies.

11. Subsequently, reply affidavit to the common report of ROC & RD has been filed by the Petitioner Company vide Diary No.2360 dated 18.04.2024 *inter alia* stating as under:-

- (1) **Reply to Point 1 of the ROC & RD report:** It is submitted that the HCV Digital Entertainment Private Limited (Transferor Company) is a Wholly Owned Subsidiary of ACT Digital Home Entertainment Private Limited (Transferee Company) as the Transferee Company is holding 100% shares in Transferor Company.

The following is the current shareholding pattern of the Transferor Company as on 03.05.2023.

SL. No.	Name of Shareholder	No. of shares	Percentage of holding
01.	ACT Digital Home Entertainment Private Limited	38,461	100%
02.	A.C.N. Cable Private Limited*	1	----
Total		38,462	100%

Note:* A.C.N. Cable Private Limited is only a registered shareholder and the Beneficial interest and owner for the 1 share is with ACT Digital Home Entertainment Private Limited.

Further, ACT Digital Home Entertainment Private Limited (Transferee Company) is a Wholly Owned Subsidiary of Atria Convergence Technologies Limited CIN: U72900KA2000PLC027290.

Following is the current shareholding pattern of the Transferee Company as on 03.05.2023.

SL. No.	Name of Shareholder	No. of shares	Percentage of holding
01.	Artia Convergence Technologies Limited	6,24,615	100%
02.	A.C.N. Cable Private Limited*	1	----

Total	6,24,616	100%
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Note:* A.C.N. Cable Private Limited is only a registered shareholder and the Beneficial interest and ownership for the 1 share is with ACT Digital Home Entertainment Private Limited.

- (2) **Reply to Point 2 of the ROC & RD report:** It is submitted that as per scheme of Amalgamation “Appointed Date” means 01st April 2021, the date with effect from which the scheme shall come into effect or such other date(s) as may be fixed or approved by the Central Government or Tribunal or other competent authority.

Accordingly, it is submitted that the company has No Objection with respect to change in the appointed date to 01.04.2023 as mentioned by the respected authority.

- (3) **Reply to Point 3 of the ROC & RD report:** It is submitted that the Transferee Company had changed its name in the past from Excite Digital Home Entertainment Private Limited to ACT Digital Home Entertainment Private Limited having CIN: U32109KA2008PTC047065 and registered office situated at Trade Center, 4th Floor, No.29/4 Race Course Road, Bangalore, Karnataka, India- 560001 with effect from 17.08.2012.

- (4) **Reply to Point 4 of the ROC & RD report:** It is submitted that Transferor Company is wholly owned subsidiary of the Transferee Company. To cut administrative cost and achieve synergies of amalgamation, the Directors and members of both the Companies approved the Scheme of Amalgamation.

Objects and Rationales for the Scheme

- a. The Transferor Company is wholly owned subsidiary of Transferee Company and engaged in similar nature of business. In order to consolidate similar nature of business at one place and effectively manage the Transferor Company and Transferee Company as a single entity, which will provide several benefits including streamlined group structure by reducing the number of legal entities, reducing the municipality of legal and regulatory compliances,

rationalizing costs, it is intended that the Transferor Company be amalgamated with the Transferee Company.

- b. The independent operations of the Transferor Company and Transferee Company lead to incurrence of significant costs and the amalgamation would enable economies of scale by attaining critical mass and achieving cost saving. The amalgamation will thus eliminate a multi-layered structure and reduce managerial overlaps, which are necessarily involved in running multiple entities and also prevent cost duplication that can erode financial efficiencies of a holding structure and the resultant operations would be substantially cost-efficient. This Scheme would result in simplified corporate structure of the Transferee Company and its business, thereby leading to more efficient utilization of capital creation of a consolidated base for future growth of the Transferee Company.
- c. The amalgamation will contribute in furthering and fulfilling the objectives and business strategies of all the companies thereby accelerating growth, expansion and development of the respective business through the Transferee Company. The amalgamation will thus enable further expansion of the Transferee Company and provide a strong and focused base to undertake the business more advantageously. Further, this arrangement would bring concentrated management focus, integration, streamlining of the management structure, seamless implementation of policy changes and shall also help enhance the efficiency and control of the Transferor Company and Transferee Company.
- d. The Synergies created by the Scheme of amalgamation would increase operational efficiency and integrate business functions.
- e. The proposed arrangement will provide greater integration and flexibility to the Transferee Company and strengthen its position in the industry, in terms of the asset base, revenue, product and service range.
- f. The other benefits of the proposed amalgamation include:

- a. Optimum and efficient utilization and rationalization of capital, resources, assets and facilities;
- b. Enhancement of competitive strengths including financial resources;
- c. Obtaining synergy benefits;
- d. Better management and focus on growing the business;
- e. Reduction of overheads, administrative, managerial and other expenditure;
- f. Simplify shareholding structure and reduce shareholding tiers.

(5) **Reply to Point 5 of the ROC & RD report:** It is submitted that the Transferor Companies would like to submit and hereby undertake, that all the outstanding disputed statutory dues as claimed by IT Department will be discharged as and when the claim is crystalized. The mentioned outstanding demands to be paid by the Transferor Company will be borne by ACT Digital Home Entertainment Private Limited (Transferee Company) in line with the scheme of amalgamation.

(6) **Reply to Point 6(a) of the ROC & RD report:** It is submitted that as per the audited Financial Statements of the Transferor Company (HCV Digital Entertainment Private Limited) as on 31st March, 2023, the Company does not have any dues of income tax, sale tax or any liability for the benefit of the Employee and workers pending for payment except following:

Name of the statue	Nature of the dues	Amount of demand (Rs in million)	Amount paid under protest (Rs in million)	Period to which the amount relates	Forum where the dispute is pending
Andhra Pradesh Value Added Tax, 2005	Tax interest and Penalty	10.53	10.53	2011-12 to February 2015	Andhra Pradesh VAT Appellate Tribunal
Andhra Pradesh Value Added Tax	Value Added Tax	36.33	21.17	March 2015 to February 2017	Andhra Pradesh VAT Appellate Tribunal

Tax, 2005	and Penalty				
Central Sale Tax Act, 1957	Central Sale Tax	0.61	0.30	Financial year 2015-16	Commercial Tax Office, Eluru
Goods & Service Act, 2017	Tax & Interest	26.54	1.45	July 2017 to October 2019	Joint Commissioner (Appeals) APGST, Vijayawada
Income Tax, 1961	Income Tax	28.50	16.81	Financial Year 2009-10 to 2016- 17	Commissioner of Income tax (Appeals) - Vishakapatnam

Also there are court cases pending for and against the Transferor Company. Further as mentioned in the Scheme of Amalgamation, the merger of Transferor Company with Transferee Company shall no way effect the continuance of the litigation. Likewise, pending Income Tax and VAT/CST cases against Transferor Company shall be attended by the Transferee Company.

Reply to Point 6(b) of the ROC & RD report: It is submitted that as per the Audited Financial Statements of the Transferee Company (ACT Digital Home Entertainment Private Limited) as on 31.03.2023, the Company has the following tax liabilities which are pending at various appeal avenues.

Name of the statute	Nature of the dues	Amount of demand (Rs in million)	Amount paid under protest (Rs in million)	Period to which the amount relates	Forum where the dispute is pending
Andhra Pradesh Value Added Tax Act, 2005	Value Added Tax	19.72	17.75	Financial Year 2008-2013	AP VAT Appellate Tribunal
Andhra Pradesh Value Added Tax Act, 2005	Value Added Tax	122.39	30.40	Financial Year 2013-2017	Additional Commissioner (CT) Legal
Andhra Pradesh Value Added Tax Act, 2005	Value Added Tax	8.32	5.02	Financial year 2014-2017	AP Appellate Tribunal

Central Goods and Service Act, 2017	Tax & Interest and Penalty	39.04	1.95	July 2017 to March 2018	Joint Commissioner (Appeals)
Adhra Pradesh Entertainment Tax Act, 1939	Entertainment Tax	0.68	0.68	Financial Year 2009-10 to 2010-11	AP VAT Appellate Tribunal

The Transferee Company be and hereby undertake that the above mentioned statutory dues shall be settled by it as and when the dues get crystalized, post utilization of all appeal avenues available under the applicable laws.

- (7) **Reply to Point 7 of the ROC & RD report:** It is submitted that as per the Audited Financial Statements of the Transferor Company (HCV Digital Entertainment Private Limited) as on 31.03.2023, the Company does not have any dues of income tax, sale tax or any liability for the benefit of the Employee and workers pending for payment except following:

Name of the statute	Nature of the dues	Amount of demand (Rs in million)	Amount paid under protest (Rs in million)	Period to which the amount relates	Forum where the dispute is pending
Andhra Pradesh Value Added Tax, 2005	Tax interest and Penalty	10.53	10.53	2011-12 to February 2015	Andhra Pradesh VAT Appellate Tribunal
Andhra Pradesh Value Added Tax, 2005	Value Added Tax and Penalty	36.33	21.17	March 2015 to February 2017	Andhra Pradesh VAT Appellate Tribunal
Central Sale Tax Act, 1957	Central Sale Tax	0.61	0.30	Financial year 2015-16	Commercial Tax Office, Eluru
Goods & Service Act, 2017	Tax & Interest	26.54	1.45	July 2017 to October 2019	Joint Commissioner (Appeals) APGST, Vijayawada
Income Tax, 1961	Income Tax	28.50	16.81	Financial Year 2009-10	Commissioner of Income tax (Appeals) - Vishakapatnam

				to 2016-17	
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Further, as per the Audited Financial Statement of the Transferee Company (ACT Digital Homes Entertainment Private Limited) as on 31.03.2023, the company has the following tax liabilities:

Name of the statute	Nature of the dues	Amount of demand (Rs in million)	Amount paid under protest (Rs in million)	Period to which the amount relates	Forum where the dispute is pending
Andhra Pradesh Value Added Tax Act, 2005	Value Added Tax	19.72	17.75	Financial Year 2008-2013	AP VAT Appellate Tribunal
Andhra Pradesh Value Added Tax Act, 2005	Value Added Tax	122.39	30.40	Financial Year 2013-2017	Additional Commissioner (CT) Legal
Andhra Pradesh Value Added Tax Act, 2005	Value Added Tax	8.32	5.02	Financial year 2014-2017	AP Appellate Tribunal
Central Goods and Service Act, 2017	Tax & Interest and Penalty	39.04	1.95	July 2017 to March 2018	Joint Commissioner (Appeals)
Adhra Pradesh Entertainment Tax Act, 1939	Entertainment Tax	0.68	0.68	Financial Year 2009-10 to 2010-11	AP VAT Appellate Tribunal

Further, as mentioned herein above as a reply to point no.6, the Petitioner Companies be and hereby undertake that the above mentioned statutory dues shall be settled by the respective companies as and when the dues shall be settled by the respective companies as and when the dues get crystalized, post utilization of all appeal avenues available under the applicable laws.

Furthermore, all litigations filed by the Petitioner Companies and are pending before various judicial and Quasi-Judicial authorities shall be continued in the name of Transferee Company, post amalgamation as per the Scheme of Amalgamation.

- (8) **Reply to Point 8 of the ROC & RD report:** It is submitted that the Transferor Company is a wholly owned subsidiary of the Transferee Company. No consideration shall be payable for the amalgamation of Transferor Company with Transferee Company.
- (9) **Reply to Point 9 of the ROC & RD report:** It is submitted that as on date of signing this reply affidavit, the Authorized Share Capital of Transferor Company is of Rs.5,00,000/- (50,000 Equity Share of Rs.10/- each) and paid-up capital is Rs.3,84,620/- (38,462 Equity Shares of Rs.10/-) each.

The following is the consolidated statement of authorized and paid-up capital of the Transferee Company after the amalgamation.

Sl.No.	ACT Digital Home Entertainment Private Limited (Transferee Co.)	Amount (in Rs.)
1	Authorized Share Capital of the Company 35,50,000 Equity Shares of Rs.10/- each	35,50,00,000
2	Paid-up Share Capital of the Company 6,24,616 Equity Shares of Rs.10/- each	62,46,160/-

The Transferee Company be and hereby undertake that it will bear the stamp duty arising out of the increase in authorized and/or paid-up capital, if any, post amalgamation.

- (10) **Reply to Point 10 of the ROC & RD report:** It is submitted that the liability in respect of offences committed under the Companies Act by the Officers in default, of the Transferor Company prior to merger, amalgamation or acquisition shall continue on then respectively after such merger, amalgamation or acquisition. The merger of Transferor Company with Transferee Company shall no way effect the continuity of offences committed.
- (11) **Reply to Point 11 of the ROC & RD report:** It is submitted that as per the Scheme of Amalgamation of Transferor Company with Transferee Company, no employees/workmen of Transferor Company to be retrenched/terminated.

Further, the Transferor Company has submitted a separate affidavit with regard to non-retrenchment of employees along with the main

second motion petition jointly presented by the Petitioner Companies.

(12) **Reply to Point 12 of the ROC & RD's report:** It is submitted that the Learned Registrar that the replies on the observation made in the report provided by the Official Liquidator dated 14.12.2023 with respect to CP(CAA)29/BB/2023 has been already submitted with the office of the official Liquidator dated 18.03.2024 and 16.04.2024.

12. The Competition Commission of India vide its latter dated 27.10.2023 bearing letter No.N-20(19)/NF/1141-1143/(09)/2023/CD/5295 has informed that under the provisions of the Competition Act, 2002, a notice for combination is to be mandatorily given to Commission subject to meeting of thresholds, in terms of combined assets or combined turnover. Further, there are certain exemptions available for which notice may not normally be given to the Commission and as of said date on the said matters have not been filed with the Commission under the provisions of the Act and thus it seeks an undertaking from the Companies involved that CCI approval is not required for the said Scheme.

13. In pursuant to the notice, the Official Liquidator has filed their report vide Dairy No.6337 dated 15.12.2023 by *inter alia* observing as under:

1. Both Transferor Company and Transferee Company are registered in the state of Karnataka and both the private Companies.
2. The Transferor Company is wholly owned subsidiary of Transferee Company.
3. The appointed date proposed is 01.04.2021. Being an old and out dated, the scheme may be allowed from 01.04.2023 or any other alternative date deem fit. It may be noted that the Transferor Company has filed the Balance Sheets as at 31.03.2022.
4. The authorized Share Capital of Transferor Company is of Ts.5,00,000/- (50,000 equity share of Rs.10/- each) and paid-up capital is Rs.3,84,620/- (38,462 equity shares of Rs.10/- each).
5. Being a wholly owned subsidiary, no fresh share will be issued arising out of the scheme by the Transferee Company to Transferor

Company's shareholders. Hence, no valuation of shares have been done by the petitioner Company. The share shall be extinguished completely therefore.

6. The Transferee Company is holding 100% share in Transferor Company and Transferee Company it is Atria Convergent Technologies Ltd.
7. The Board of Transferor Company has approved the scheme on 25.08.2020 and members/shareholders given their consent on 05.10.2021. The Transferor Company has no secured creditors. The Hon'ble NCLT has dispensed with the meetings of members and unsecured creditors in its first motion dated 28.02.2023. Interest of all creditors as on date should be taken care of by the petitioner company. The Unsecured creditors as at 31.03.2023 was Rs.18.67 Lakhs.
8. The Shares of the Transferee Company may be dematerialized as certain shares are in physical form.
9. As per the details provided, there are court cases pending for and against the Transferor Company. The merger of the Transferor Company with Transferee Company shall no way effect the continuance of litigation. Likewise, pending Income Tax and VAT/CST cases against Transferor Company shall be attended by the Transferee Company.
10. The Transferor Company has related party transactions. Compliance of Section 188 of Companies Act, 2013 needs to be shown.
11. No Employees/Workmen of Transferor Company to be retrenched/terminated in the terms of amalgamation of Transferor Company with Transferee Company. The Hon'ble Tribunal may kindly see that the Transferee Company is complying with the same in letter and spirit and not retrenching the staff on account of merger. Need to give a separate undertaking by the Transferee Company in this regard.
14. Subsequently, reply affidavit to the OL report has been filed by the Petitioner Company vide Diary No.2362 dated 18.04.2024 *inter alia* stating as under:-

- (1) **Reply to point no.1 of the OL Report:** it is submitted that HCV Digital Entertainment Private Limited (Transferor Company) is a private Limited Company incorporated on 05th January 2009 having CIN: U92100KA2009PTC085687 and registered office situated at 2nd & 3rd Floor No.1, Indian Express Building, Queen's Road, Bangalore, Karnataka, India-560001.

Further, ACT Digital Home Entertainment Private Limited (Transferee Company) is a private Company incorporated on 7th July 2008 having CIN: U32109KA2008PTC047065 and registered office situated at Trade Center, 4th Floor, No 29/4 Race Course Road, Bangalore, Karnataka, India- 560001.

- (2) **Reply to point no.2 of the OL Report:** It is submitted that the following is the current shareholding pattern of the Transferor Company as on date of signing this reply affidavit:

Sl.No	Name of the Shareholder	No. of Shares	Percentage of holding
01.	ACT Digital Home Entertainment Private Limited	38,461	100%
02.	A.C.N. Cable Private Limited*	1	---
Total		38,462	100%

Note:* A.C.N. Cable Private Limited is only a registered shareholder and the Beneficial interest and owner for the 1 shares is with ACT Digital Home Entertainment Private Limited.

- (3) **Reply to point no.3 of the OL Report:** It is submitted that as per the scheme of Amalgamation "Appointed Date" means 01st April, 2021 the date with effect from which the scheme shall come into effect or such other date(s) as may be fixed or approved by the Central Government or Tribunal or other competent authority.

Accordingly, submits that the Company has No objection with respect to change in the appointed date to 01.04.2023 as mentioned by the Official Liquidator or any other such date as may be approve by this Hon'ble Tribunal.

- (4) **Reply to point no.4 of the OL Report:** It is submitted that as on date of signing this reply affidavit, the Authorized Share Capital of

Transferor Company is of Rs.5,00,000/-(50,000 Equity Shares of Rs.10/- each) and paid-up capital is Rs.3,84,620/-(32,462 Equity Shares of Rs.10/- each).

(5) **Reply to point no.5 of the OL Report:** it is submitted that HCV Digital Entertainment Private Limited (Transferor Company) is a Wholly Owned Subsidiary of ACT Digital Home Entertainment Private Limited (Transferee Company). Accordingly, no fresh shares will be issued arising out of the scheme by the Transferee Company to the Transferor Company's shareholders and all existing shares shall be cancelled. Hence, no valuation of shares has been done by the petitioner cancelled. Hence, no valuation of shares has been done by the Petitioner Company.

(6) **Reply to point no.6 of the OL Report:** It is submitted that HCV Digital Entertainment Private Limited (Transferor Company) is a Wholly Owned Subsidiary of ACT Digital Home Entertainment Private Limited (Transferee Company) as the Transferee Company is holding 100% shares in the Transferor Company.

Following is the current shareholding pattern of the Transferor Company as on date signing this reply affidavit:

Sl.No	Name of the shareholder	No. of Shares	Percentage of holding
01.	ACT Digital Home Entertainment Private Limited	38,461	100%
02.	A.C.N. Cable Private Limited*	1	---
Total		38,462	100%

Note:* A.C.N. Cable Private Limited is only a registered shareholder and the Beneficial interest and owner for the 1 shares is with ACT Digital Home Entertainment Private Limited.

Further, ACT Digital Home Entertainment Private Limited (Transferee Company) is a Wholly Owned Subsidiary of Atria Convergence Technologies Limited.

Following is the current shareholding pattern of the Transferee Company as on date of signing this reply affidavit:

Sl.No.	Name of the Shareholder	No. of Shares	Percentage of holding
01.	Atria Convergence Technologies Limited	6,24,615	100%
02.	A.C.N. Cable Private Limited*	1	---
Total		6,24,616	100%

Note:* A.C.N. Cable Private Limited is only a registered shareholder and the Beneficial interest and ownership for the 1 share is with Atria Convergence Technologies Limited.

(7) **Reply to point no.7 of the OL Report:** It is submitted that the Board of Transferor Company has approved the scheme in their meeting on 25.08.2020 and members/Shareholders given their consent in the meeting on 05.10.2021.

Further, as the Transferor Company has no secured creditors, accordingly, the Hon'ble NCLT has dispensed with the meeting of members and unsecured creditors in the first motion dated 28.03.2023.

The Transferee Company hereby undertake, in line with the Scheme of Amalgamation, that all outstanding liabilities of Transferor Company will be taken care by it.

(8) **Reply to point no.8 of the OL Report:** It is submitted that as on date of signing this reply affidavit, the paid-up share capital of ACT Digital Home Entertainment Private Limited (Transferee Company) is Rs.62,46,160/- (Rupees Sixty-Two Lakhs Forty-Six Thousand One Hundred and Sixty only) divided into 6,24,616 Equity Shares of Rs.10/- (Rupees Ten only) each, out of which 2,84,616 Equity Shares are in physical form and 3,40,000 Equity Shares are in demat form.

It is submitted that the Company has dematerialized its shares and shareholders have partially dematerialized their shares as stated above and are in the process dematerialization of remaining shares.

(9) **Reply to point no.9 of the OL Report:** It is submitted that the pending cases for and against the Transferor Company shall be continued, post-merger in the name and style of Transferee Company. Further, the pending Income Tax and VAT/CST cases against the

Transferor Company shall be attended to and taken over or continued by the Transferee Company, as per the Scheme of Amalgamation.

(10) **Reply to point no.10 of the OL Report:** It is submitted that the Company wish to bring to the kind notice of the learned officer that the Transferor and Transferee Company does not have any transaction that falls under the ambit of Section 188 of the Companies Act, 2013. All the related party transactions of both the Companies are in ordinary course of business and at arm's length price.

(11) **Reply to point no.11 of the OL Report:** It is submitted that as per the Scheme of Amalgamation of Transferor Company with Transferee Company, no employees/workmen of Transferor Company to be retrenched/terminated.

15. In pursuant to the Notice, the Income Tax Department has filed its report vide Diary No.585 dated 29.01.2024, by *inter alia* observing as under:

The details of M/s. HCV Digital Entertainment Private Limited (Transferor Company) and M/s. ACT Digital Home Entertainment Private Limited (Transferee Company) are detailed below:-

1. Outstanding Demand dues in the case of M/s. HCV Digital Entertainment Private Limited (Transferor Company)

Sl. No.	Assessment Year	Order U/s	Original Demand	Demand paid	Demand Outstanding	Remarks
1.	2012-13	147	29,97,808	7,03,620	22,94,188	
2.	2014-15	143(3)	56,97,010	22,42,842	34,54,168	
3.	2015-16	154	67,68,237	-	67,68,237	
4.	2016-17	154	87,24,787	7,76,686	79,48,101	
5.	2017-18	153C	10,67,319	-	10,67,319	Assessee's rectification application is pending
6.	2018-19	154	12,15,915	-	12,15,915	
7.	2019-20	154	10,84,766	-	10,84,766	
8.	2020-21	154	31,01,234	-	31,01,234	
9.	2022-23	143(1)(a)	1,02,54,390	-	1,02,45,390	

2. Outstanding demand dues in case of M/s ACT Digital Home Entertainment Private Limited (Transferee Company)

Sl.No.	Assessment Year	Order U/s	Original Demand	Demand paid	Demand Outstanding	Remarks
1.	2021-22	154	2,67,42,327	-	2,67,42,327	

2.	2022-23	143(1)(a)	6,05,13,860	-	6,05,13,860
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If any proceedings are pending in the case of M/s HCV Digital Private Limited (Transferor Company)

Sl.No.	Assessment year	Proceedings U/s	Remarks
1.	2016-17	271(1)(c)	Proceedings kept in abeyance as the appeal proceedings in the case is pending before the Commissioner of Income Tax (Appeals)
2.	2017-18	270A	
3.	2018-19	270A	
4.	2019-20	270A	
5.	2020-21	270A	
6.	2021-22	270A	

If any Proceedings are pending in the case of M/s. ACT Digital Home Entertainment Private Limited (Transferee Company)

Sl.No.	Assessment year	Proceedings U/s	Remarks
1.	2016-17	271(1)(c)	Proceedings kept in abeyance as the appeal proceedings in the case is pending before the Commissioner of Income Tax (Appeals)
2.	2017-18	270A	
3.	2018-19	270A	
4.	2019-20	270A	
5.	2020-21	270A	
6.	2022-23	143(3)	Assessment proceedings are pending which is getting barred by limitation on 31.03.2024.

16. Subsequently, reply affidavit to the report filed by the Income Tax Department has been filed by the Petitioner Company vide Diary No.2359 dated 18.04.2024 *inter alia* stating as under:-

- 1. Reply to point no.1 of the IT Report:** It is submitted by the Petitioner Companies that the Transferee Company shall discharge the outstanding demand dues of the Transferor Company as and when the same will be crystallized, post utilizing all the appeal avenues available for the Company. This is in line with the Scheme of Amalgamation as approved by the members of both Transferor and Transferee Companies.
- 2. Reply to point no.2 of the IT Report:** it is submitted that the pending proceedings of both the Transferor and Transferee Companies shall be

continued in the name of the Transferee Company. This is in line with the Scheme of Amalgamation as approved by the members of both Transferor and Transferee Companies.

17. The Transferor Company jointly with Transferee Company has served a copy of Second Motion petition with the Ministry of Information and Broadcasting (MIB) on 25.04.2023 and 27.09.2023 in compliance to the direction given by this Tribunal. In response to the same, the Ministry of Information and Broadcasting vide para 3 of its letter 10.05.2023 bearing reference No.N-45011/12/2023-DAS has informed that the MSO registration granted by MIB is subject to adherence and compliance of the terms and conditions. One of the conditions of the MSO registration is the non-transferability of MSO registration. Therefore, if the merger of the above companies happens, then M/s. HCV Digital Entertainment Private Limited has to surrender its MSO registration this Ministry as its transfer is not permissible under the terms and conditions of grant of MSO registration. In this regard, the Company vide its letter dated 22.01.2024 has confirmed the surrender its MSO registration bearing F.No.9/120/2012-BP& L dated 16.12.2023 and filed an Affidavit in respect of Petitioner Company No.1 confirming the surrender of Multi System Operator (MSO) registration vide Diary No.2361 dated 18.04.2024.
18. The reports of the ROC, RD, Income Tax Department, Official Liquidator CCI and MBI are taken on record. Similarly, reply filed by the Petitioner Companies to the above mentioned reports are also taken on record.
19. The Learned Counsel for the Petitioner Company submitted that the Affidavit of the Authorized Representative of the Petitioner Companies has been filed on 03.05.2023 stating that no pending proceedings/ investigations the Petitioner Companies under any Statutory Act or Regulations in India including the Companies Act, 2013.
20. It is also submitted that the Affidavit of the Authorized Representative of the Petitioner Companies has been filed on 03.05.2023 stating that there will be

no reduction in the share capital of the Applicant Companies or any corporate debt restructuring process in the Petitioner Companies.

21. Heard the learned Counsels for the parties. We have carefully perused the pleadings of the parties.
22. In view of the above discussion, we conclude that the objections/ observations to the Scheme received from ROC, RD, CCI & Income Tax Department have been adequately explained by the Petitioner Companies and hence there is no impediment in approval of the Scheme. However, in respect of the Newspaper Publication, no objection were received within the period of 30 days, and hence the same is presumed to be approved.
23. It is seen that in the para 2 of the Common Report filed by the ROC & RD, the Appointed Date was desired to be changed to 01st April, 2023 from 01st April, 2021. In this regard, the Petitioner Companies in their reply to the observation of ROC & ROC have stated that the Company has No objection with respect to change in the appointed date to 01st April, 2023. Accordingly, this Tribunal hereby directs that in this case, Appointed Date may be considered as 01st April, 2023. Therefore, the Petitioner Companies are directed to amend the said Scheme with Appointed Date being 01st April, 2023, and serve a copy of the revised Scheme to the ROC and other Statutory Authorities and the Registry within ten days from the date of receipt of copy of this order, and file compliance in this regard, within ten days thereafter.
24. With respect to point No. 4 regarding negative outflow of the taxes once the scheme is approved as contended in the Common report of the ROC & RD, it is stated that the Transferor Company is a wholly owned subsidiary of the Transferee Company. To cut administrative cost and achieve synergies of amalgamation, the Directors and Members of both Companies approved the Scheme of Amalgamation.
25. **The Scheme of Amalgamation in question as annexed at Annexure – P1 is approved** and we hereby declare that the same is to be binding on all the shareholders and creditors of the Transferor as well as Transferee Company. While approving the Scheme, it is clarified that this order should not be

construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

AND THIS TRIBUNAL DOES FURTHER ORDER:

- (i) That the Petitioner Companies do, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company and the files relating to Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- (ii) That the Petitioner Companies shall deposit an amount of **Rs.75,000/-** with the “Pay & Accounts Officer, Chennai in respect of the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad” and **Rs.25,000/-** in favour of “The Prime Minister’s National Relief Fund”, within a period of four weeks from the date of receipt of certified copy of this Order; and
- (iii) The Petitioner Companies are directed to make compliance to the provisions of Section 170A of the Income Tax Act, 1961 within the stipulated period of time.
- (iv) That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.
- (v) The approval/sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act,2013 and that the authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.
- (vi) The Petitioner Companies have given various undertaking in response to observations made in ROC/RD, IT Department & OL reports. They are directed to ensure compliance of the same.

26. As per the directions, Form No.CAA-7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the petitioner company on filing of the Schedule Property i.e., (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company by way of affidavit.
27. Accordingly, **C.P. (CAA)No.29/BB/2023 is disposed of.**
28. The copy of this Order be communicated to the Counsel for the Petitioner Company.
29. The learned Counsel for the Petitioner Company is directed to serve a copy of this Order to all the Statutory Authorities within ten days from the date of receipt of copy of this order.

-Sd-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-
(K. BISWAL)
MEMBER (JUDICIAL)