

IN THE NATIONAL COMPANY LAW
TRIBUNAL, MUMBAI BENCH, COURT - V

C.A(CAA)/38/MB/2024

In the matter of Companies
Act, 2013

AND

In the matter of Companies
Act, 2013 and Section 230-232
of the Companies Act, 2013
and other applicable provisions
of the Companies Act, 2013 and
rules framed thereunder in
force from time to time;

In the matter of Scheme of
Amalgamation/ Merger of
UNICORN STUDIOS PRIVATE
LIMITED, the Transferor
Company and THRILL PARK
LIMITED, the Transferee
Company

UNICORN STUDIOS PRIVATE LIMITED

U74999MH2016PTC272312 ... First Applicant Company/
Transferor Company

THRILL PARK LIMITED

U92190MH2007PLC175250 ... Second Applicant
Company/Transferee Company

Order dated:01.05.2024

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearances:

For the Applicants: Mr. Amit Jaste i/b. Amit Jaste and Associates,
Practising Company Secretaries.

ORDER

1. This is a joint First Motion Company Application filed by the Transferor Company and the Transferee Company (both being referred hereinafter as "Applicant Companies") on 21.03.2024 seeking appropriate directions from this Tribunal in relation to the proposed Scheme of Amalgamation of the Transferor Company with the Transferee Company and their respective Shareholders (hereinafter referred to as the "Scheme") under the provisions of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with relevant Rules of the

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

2. Learned Authorized Representative for the Transferor Company and Transferee Company (collectively referred to as 'Applicant Companies') states that the present Scheme is a Scheme of Amalgamation/Merger of UNICORN STUDIOS PRIVATE LIMITED, the Transferor Company with THRILL PARK LIMITED, the Transferee Company under sections 230 to 232 of the Companies Act, 2013 ('Scheme').

3. Learned Authorized Representative for the Applicant Companies states that the Board of Directors of the Transferor Company and Transferee Company in their respective meetings conducted on 15.02.2024 have approved the Scheme.

4. It is submitted that the Appointed Date fixed under the Scheme is 01.04.2023.

5. The rationale for the proposed Scheme is as under:

(a) The Transferor Company and Transferee Company are in similar line of business i.e. setting up and managing entertainment park, thrill parks, services related thereto etc.

(b) In order to consolidate the group structure and reduce the various administrative costs incurred for the two companies, the applicant companies propose, by way of this Scheme to amalgamate the Transferor Company into and with the Transferee Company.

(c) The scheme is expected to have the following benefits -

(i) The consolidation of operations of both the companies by way of Amalgamation/ Merger better and efficient utilization of

resources of the Transferor Company and Transferee Company, reduction in overheads and other expenses resulting in synergy of operations and economies of scale and create a stronger base for future growth of the amalgamated entity.

- (ii) The Amalgamation/ Merger would result in better administrative and managerial control for the management, as the merger of the companies would ensure synergy in administration and management.
- (iii) The Amalgamation would result in better and efficient utilization of resources of the Transferor Company and Transferee Company, reduction in overheads and other expenses resulting in synergy of operations and economies of scale and create a stronger base for future growth of the amalgamated entity.
- (iv) With the Amalgamation/ Merger of two Companies, the Transferee Company would have the complete access on the assets, as well as readily available utilities, licensing, contracts, etc.
- (v) The Scheme is in the best interest of both the Transferor Company and the Transferee Company, their respective shareholders, creditors and employees.

6. That the convening and holding the meeting of the Equity Shareholders of the First Applicant/ Transferor Company for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation/ Merger of UNICORN STUDIOS PRIVATE LIMITED, the Transferor Company with THRILL PARK LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the two Equity Shareholders

of the First Applicant/ Transferor Company, which are annexed as '**Annexure J**' (Colly) at Page No 566-569 to the Company Application.

7. That the convening and holding the meeting of the Equity Shareholders of the Second Applicant Company/ Transferee Company for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation/ Merger of UNICORN STUDIOS PRIVATE LIMITED, the Transferor Company with THRILL PARK LIMITED, the Transferee Company, is dispensed with in view of the consent affidavits given by the seven i.e. all Equity Shareholders of Second Applicant/ Transferee Company, which are annexed as '**Annexure K**' (Colly) at Page No 571-584 to the Company Application.

8. Learned Authorized Representative for the Applicant Companies submits that in view of the **Consent Affidavit** for the proposed Scheme of Amalgamation/ Merger, given by the sole holder of Compulsorily Convertible Preference Shares of the Second Applicant /Transferee Company, which is annexed as '**Annexure L**' (Colly) at Page No 586-587 to the Company Application, the meeting of the Compulsorily Convertible Preference Shares Holders of the Second Applicant /Transferee Company is not required to be held and is accordingly dispensed with.

9. That Learned Authorized Representative for the Applicant Companies submits that there are no Secured Creditors of the Transferor and Transferee Companies as per the certificate dated 05.04.2024 issued by M/s. Santosh M Raikar & Co, Chartered Accountants and Statutory Auditors of the Transferor and Transferee Company. Accordingly, the question of holding meeting of the Secured Creditors and/or sending of notices does not arise.

10. The Learned Authorized Representative for Applicant Companies submits that there are 2 unsecured creditors of the Transferor Company, as per the certificate dated 05.04.2024 issued by M/s. Santosh M Raikar & Co, Chartered Accountants and Statutory Auditors of the Transferor Company, having outstanding of Rs. 4,65,46,649 as on 31.12.2023 constituting 100% of the creditors of the Company, who have given their consent by way of affidavit, to the proposed Scheme of Amalgamation/ Merger and the same are annexed as “**Annexure M**” (Colly) at Page 588-592 to the application.

11. The Learned Authorized Representative for Applicant Companies further submits that there are 2 unsecured creditors of the Transferee Company, as per the certificate dated 05.04.2024 issued by M/s. Santosh M Raikar & Co, Chartered Accountants and Statutory Auditors of the Transferor Company, having outstanding of Rs. 97,80,42,891 as on 31.12.2023 constituting 100% of the creditors of the Company. He further submits that Unsecured Creditor having outstanding of Rs. 97,59,10,737 constituting 99.78 percent of creditors in value, has given his consent by way of affidavit, to the proposed Scheme of Amalgamation/ Merger and the same is annexed as “**Annexure N**” (Colly) at Page 593-595 of the application. It is further submitted that the Second Applicant/ Transferee Company is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Second Applicant/ Transferee Company shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. However, this bench hereby directs the Second Applicant/ Transferee Company to issue notice to its other Unsecured Creditor whose consent has not been obtained, as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their

representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Companies.

Therefore, the requirement of holding and convening meeting of the Unsecured Creditors of the both the Applicant Companies is dispensed with in terms of Section 230(9) of the Companies Act, 2013.

12. That Learned Authorized Representative for the Applicant Companies submits that since the scheme is an arrangement between the Applicant Companies and their respective shareholders in accordance with the provisions of the Companies Act, 2013, as contemplated under Section 230 (1) (b) of the Companies Act, 2013 there is no compromise or arrangement with the Unsecured Creditors as no sacrifice is called for. Further, so far as Unsecured Creditors of the Applicant Companies are concerned all of them are in the nature of loan creditors for activities of the Applicant Companies and the scheme of amalgamation/ merger does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Companies and hence they will in no way be affected by the Scheme.

13. Upon the Scheme becoming finally effective, the Transferee Company shall issue and allot 520 (Five Hundred and Twenty) Equity shares of Rs. 10/- (Rupees Ten Only) each credited as fully paid-up in the capital of the Transferee Company for every 1 (One) Equity Shares of the face value of Rs. 10/- each, held by the Shareholders of the Transferor Company. The said exchange ratio is based on the Valuation Report dated 15th February 2024, issued by Mr. Bhavesh M Rathod, Registered Valuer, holding Registration No. IBBI/RV/06/2019/10708, a copy of which is annexed at Page No 596-608 to the Company Application.

14. The Applicant Companies are directed to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

15. The Applicant Companies are directed to serve the notice upon the Registrar of Companies, Mumbai, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules. 2016.

16. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessments are made - The First Applicant/ Transferor Company PAN:- AABCU8998H having his address at The Income Tax Officer, Ward 13(3)(1), MUMBAI, Range 553, Aayakar Bhavan, Mumbai; The Second Applicant/ Transferee Company PAN:- AACCT7914M having his address at The Income Tax Officer, Ward 11(3)(1), MUMBAI, Range 333, Aayakar Bhavan, Mumbai, pursuant to Section 230(5) of the

Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17. The Applicant Companies to serve the notice on the concerned Goods and Service Tax Authority within whose jurisdiction the Applicant Company's assessments are made - The Second Applicant/ Transferee Company GSTIN:- 27AACCT7914M1ZV having his address at Commissioner at MUMBAI WEST, Division - DIVISION III, Range - RANGE V, State - Maharashtra, Zone MUMBAI NORTH WEST, Division - ANDHERI, Charge - AZAD NAGAR_707, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Goods and Service Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Goods and Service Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Learned Authorized Representative for the Applicant Companies submits that the First Applicant/ Transferor Company is not registered with Goods and Service Tax Authority. Therefore, the requirement of sending notice does not arise in case of the Transferor Company.

18. The Transferor Company is also directed to serve notice/ intimations of the Scheme upon Official Liquidator, Mumbai, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules,

2016. If no representation / response is received by the Tribunal from the Official Liquidator, Mumbai within a period of thirty days from the date of receipt of such notice, it will be presumed that the Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

19. The Applicant Companies to file an affidavit of service within 15 (fifteen) days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

20. The Appointed Date is 01.04.2023.

21. The Application is disposed of on aforesaid terms.

Sd/-
Madhu Sinha
Member (Technical)

Sd/-
Reeta Kohli
Member (Judicial)