

**THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

C.P.(CAA)/130/MB-I/2021

Connected with

C.A.(CAA)/1082/MB-I/2020

In the matter of

The Companies Act, 2013 (18 of 2013);

AND

In the matter of

Sections 232 r/w 230

*and other applicable provisions of the
Companies Act, 2013 and Rules framed
thereunder as in force from time to time;*

AND

In the matter of

Composite Scheme of Amalgamation

Whats On India Media Private Limited

CIN: U72200MH2006PTC160271

...Petitioner Company/
Transferee Company

Order delivered on 26.04.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances (through)

For the Applicant(s)

: Mr. Ahmed Chunawala,
Advocate/ i/b Rajesh Shah &
Co.

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ORDER

1. Heard learned Counsel for the Petitioner Company. Objectors viz. Shyam Todi HUF and others, Jagdish Todi HUF, Suresh Todi HUF, Murari Todi HUF, Motilal Geeta Todi Trust, AUM Trust and Trioise Private Limited have objected the scheme by filling miscellaneous application to which the Petitioner Company has filed an affidavit. The sanction of the Tribunal is sought under Sections 232 r/w Section 230 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Amalgamation of **Tribune Digital Ventures Software Development Center India Private Limited** (Transferor Company) with **Whats On India Media Private Limited** (Transferee Company) and their respective Shareholders.
2. This Company Application **CA 643/2022, CA 652/2022, CA 10/2023 & CA 51/2023, and CA 71/2023** have been filed by Bhagwan Amenities & Services LLP, Indira P Todi, Shyam Todi HUF and Todi Industries (“Applicant”) respectively on various dates seeking direction from this Tribunal to call for a meeting of creditors of the Transferee Company as well as Transferor Company and stay the captioned Company Application and scheme until due satisfaction of the claims of objectors are satisfied.

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3. CA 525/2022 has been filed by the Petitioner Company seeking urgent hearing of the Company Petition. Nothing survives in this Company Application, accordingly, dismissed as infructuous.
4. Mr. Aman Kacheria, Ld. Counsel appeared on behalf of the objectors and vehemently opposes the approval of the scheme stating that these applications involve a dispute arising out of lease of the assets taken over by the Company. Ld. Counsel for the Petitioner Company filed an affidavit dated 21.07.2023 stating that the objector has stated that the claims are towards repairing and restoring the premises provided to the Petitioner Company under the Amenities Agreement. Further, the Petitioner Company stated that the Objector has no locus to file an application since Section 230(4) clearly provides that an objection to the scheme can be filed only by a person holding not less than 5% of the total outstanding debt. The Petitioner Company also stated that as per the latest audited financial statement of the Company there were no outstanding liability towards the objectors.
5. Heard the learned Counsel for the objectors as well as the Petitioner Company. In this case the objectors do not constitute 5% of the total outstanding debt, hence the objectors have no independent locus to object to the scheme. Nonetheless, the

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Petitioner company have stated that interest of the creditors duly protected they shall be paid the amount as when becomes payable in terms of law.

6. The Petitioner Company have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 11th February 2020 which are annexed to the respective Company Scheme Petitions.
7. The Transferor Company is registered in Karnataka and hence accordingly applied for the sanction of the scheme before the NCLT Bengaluru.
8. The Petitioner states that the Petitions have been filed in consonance with the Order passed in the C.A. (CAA) 1082 of 2020 vide order dated 05.05.2021 of the Tribunal.
9. The Petitioner further states that the Petitioner Company have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench in order dated 10.08.2021 and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.
10. The Petitioner Company commenced its business in the year 2006 and presently carrying on the business of Software solutions services.

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11. The Rationale of the Scheme of Amalgamation is as under:

Both the Companies are under the same management. The management is of the opinion that the merger will lead to synergies of operations and more particularly the following benefits:

- a) The amalgamation of the Transferor Company with the Transferee Company will enable the Transferee Company to integrate its business operations and provide impetus to the operations of the Transferee Company and would enable it to operate as a single entity;
- b) Enable Transferee Company to use the resources of Transferor Company and generate synergy in operations;
- c) Reduce the operational, financial and administrative costs to achieve economy of operations;
- d) Facilitate administrative convenience and ensure optimum utilization of available services and resources;
- e) Efficient and Focused management control and system;
and
- f) Provide operational benefits to the Transferee Company which would be in the best interest of all the stakeholders;

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12. The Regional Director has filed his Report dated 17.04.2024 making certain observations and the Petitioner Companies have undertaken/made following submission that :

- a. The Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 as applicable;
- b. The Scheme shall take effect from the Appointed Date i.e. 1st April, 2020 in terms of provisions of Section 232(6) of the Companies Act, 2013;
- c. The Petitioner Company shall comply with the provisions and requirements clarified vide circular no. F. No. 7/12/2019/CL-I dated 21-08-2019 issued by the Ministry of Corporate Affairs, if required;
- d. The setting off of the fees paid by the Transferor Company on its Authorised Share Capital shall be in accordance with the provision of Section 232(3)(i) of the Companies Act, 2013;
- e. The registered office of the Transferor Company is situated in the state of Karnataka i.e. outside of the Jurisdiction of this Tribunal and falls within the jurisdiction of NCLT of Karnataka. Further NCLT Bengaluru Bench approved the petition filed by the

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Transferor Company vide its order dated 08th December, 2021;

- f. The Petitioner Company undertake that difference credited to Capital Reserve arising on amalgamation, if any shall not be considered as free reserves and shall not be available for the distribution of dividend;
 - g. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company; and
 - h. The interest of creditors are not affected by the Scheme.
13. The Regional Director had filed a Supplementary Report dated 21st January, 2021 and on the date of hearing Mr. Aparna Mudiam, Deputy Registrar, Office of Regional Director (WR), Mumbai appeared and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.
14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 130 of 2021 is made absolute in terms of clauses (a) to (e) of the said Company Scheme Petition.

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15. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this Scheme and it shall be open to the Income Tax Authorities to take necessary action to deal with, in relation to tax or any other kind of obligations of Transferor Company against the Transferee Company, as permissible under the Income Tax Laws.
16. This Approval of the scheme shall be subject to the approval of the scheme in case of Transferor Company by NCLT, Bengaluru.
17. Petitioner are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry.
18. The Petitioner Company to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.
19. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.

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20. The Appointed Date is 1st April 2020.

21. Ordered Accordingly. Pronounced in open court today.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)