

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT III

30. C.A.(CAA)/240/MB/2022

CORAM: SH. H. V. SUBBA RAO, MEMBER (J)
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **05.01.2023**

NAME OF THE PARTIES: Ugar Theatres Private Limited

SECTION 230(I) OF COMPANIES ACT, 2013

ORDER

Mr. Hemant Sethi, Ms. Devanshi Sethi i/b Hemant Sethi & Co., counsel for
the Applicant are present through virtual hearing.

C.A.(CAA)/240/MB/2022

Heard the counsel appearing for the Applicant and the above Company
Application **is allowed. Detail order would follow:**

Sd/-
MADHU SINHA
Member (Technical)
//SGP//

Sd/-
H. V. SUBBA RAO
Member (Judicial)

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT III

CA (C.A.A.)240/MB/2022

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 of the Companies Act,
2013;

AND

In the matter of Scheme of Amalgamation (Merger by
Absorption) between Ugar Theatres Private Limited having
CIN U33205PN1977PTC199900 ('Transferor Company')
and The Ugar Sugar Works Limited having CIN
L15421PN1939PLC006738 ('Transferee Company'), and
their respective Shareholders and Creditors ('Scheme')

Ugar Theatres Private Limited,
CIN: U33205PN1977PTC199900

..... First Applicant Company

The Ugar Sugar Works Limited,
CIN: L15421PN1939PLC006738

..... Second Applicant Company

Order delivered on: 05.01.2023

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

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

For the Applicant(s):

Mr. Hemant Sethi, Ms. Devanshi Sethi, i/b
Hemant Sethi & Co.

ORDER

1. The Counsel for the Applicants states that the present Scheme is a Merger by Absorption of Ugar Theatres Private Limited ('the Transferor Company') by The Ugar Sugar Works Limited ('the Transferee Company') and their respective Shareholders.
2. The Counsel for the Applicants states that the Board of Directors of the Applicant Companies in their respective meetings held on dated 21st September, 2021 & 22nd September, 2021 approved the Scheme. The appointed date of Scheme of Merger is 1st April, 2022.
3. The First Applicant Company was incorporated to do business of the business of Producers, Distributors, Dealers, Exporters, Importers and Cinematograph films and construction, purchase, take on lease or otherwise acquire Studios, Cinema Halls, Theatre Halls, Drama Halls and Entertainment Halls, either in whole or in part for the purpose of carrying on business of Producer, Distributors, Exhibitors, Importer and Exporter of Cine Film. Currently the First Applicant Company is not doing any business.
4. The Second Applicant Company is primarily engaged in the business of sugar manufacturing. The Transferee Company and the Transferor Company, though having different main objects, are agreeing to integrate their operations to achieve vertical integration in process of using premises.
5. Rationale of the Scheme as submitted in the Application is stated as below:
 - a. The Transferee Company and the Transferor Company, though having different main objects, are agreeing to integrate their operations to achieve vertical integration in process of using premises.

- b. Theatre premises owned by the Transferor Company was not in operation since long and is being utilized as warehouse. It will be used for the business activity of the Transferee Company in a more efficient way if the Companies will be amalgamated. Amalgamation will help to increase synergies between the activities carried out by the Transferor Company and the Transferee Company and be more efficient while operating as one entity.
- c. The Transferee Company will utilise the capital to its best extent and will facilitate expansion of amalgamated entity.
- d. By the proposed Scheme of Amalgamation, the financial resources of both the will be conveniently merged and pooled together leading to a more effective and centralized management and reduction of administrative and manpower expenses and overheads, which are presently being multiplied because of separate entities.
- e. Amalgamation will result better coordination and administration along the supply chain. For example, the uncertainty of inputs and demand for a product can be minimized and costs of communication can be saved.
- f. Amalgamation will result in the larger pool of various resources as well as manpower and will create a synergy, which will enable the Transferee Company to grow and prosper at a faster pace.
- g. The amalgamation will enhance the capability of the Transferee Company to invest in larger and sophisticated projects to ensure rapid growth and will consolidate the strategic strength of the Transferee Company.
- h. The Amalgamation will maximize the returns to the shareholders of the Transferee Company.

6. The Learned Counsel for the first Applicant Company further submits that being wholly owned subsidiary of the Second Applicant, the entire Equity share Capital of the First Applicant Company is held by the Transferee Company. The First Company has obtained consent affidavit of the Transferee /Holding Company which is annexed to the Company Scheme Application. Further 6 nominee shareholders have also given their consent affidavits which are attached to the Company Scheme Application.
7. In view of the fact that all the Shareholders of the First Applicant Company given their consent affidavits to the proposed Scheme, the meeting of the Equity Shareholders of the First Applicant Company is hereby dispensed with.
8. The First Applicant submits that there are no Creditors in the First Applicant Company therefore the no notices is required to be given to the Creditors.
9. The Applicant Companies respectfully submits that:
 - a. Being a merger of wholly owned subsidiary company into its holding company, no shares would be issued or allotted as consideration pursuant to the merger. Accordingly, the rights of members of the Second Applicant Company are not affected since there will be no issue of shares pursuant to the Scheme and there would be absolutely no change in the equity share capital of the Second Applicant Company. Also, the present Scheme will not result in any dilution in shareholding of the shareholders of the Second Applicant Company;
 - b. The rights of the creditors of the Second Applicant Company are not affected since there will be no reduction in their claims and the assets of the Second Applicant Company, post amalgamation, will be more than sufficient to discharge their claims. Also, the net worth of the Second Applicant Company is and will continue to remain highly positive post-merger; and

- c. The existence of the Second Applicant Company will remain as before without any change either to its shareholding pattern or debt position pursuant to the Scheme.

10. The learned Counsel for the Applicants submit that there are 15 Secured Creditors in the Second Applicant Company who have given their consent Affidavits which are attached to the Additional Affidavit dated 23rd November 2022 and to the further affidavit dated 25th November 2022. In view of the fact that all the Secured Creditors of the Second Applicant Company have given their consent Affidavits the meetings of the Secured Creditors is hereby dispensed.

11. The Learned Counsel for the Second Applicant Company submits that in view of above, no reconstruction or arrangement is proposed by the Second Applicant Company either with its shareholders or with its creditors, and thus, it does not require to hold either shareholders meeting or creditors meeting for approval of the proposed Scheme.

12. The Counsel for the Applicant submits that the Hon'ble High Court of Judicature at Bombay in the case of Mahaamba Investments Limited V/s. IDI Limited (2001) 105 Company Cases page 16 to 18 inter alia observed and held that if the Scheme of Amalgamation provides for no issue of equity shares to the members of the transferor company, being a wholly owned subsidiary of the transferee company and the creditors of the transferee company, are not likely to be affected by the scheme, a separate Petition by the transferee company was not necessary. The Hon'ble National Company Law Appellate Tribunal in the case of DLF Phase-IV Commercial Developers Limited & Ors, In Company Appeal (AT) No. 180 of 2019, Ambuja Cements Limited, In Company Appeal (AT) No. 19 of 2021, and Patel Engineering Limited, In Company Appeal (AT) No. 137 of 2021, Company Scheme Application No. 911 of 2014 in case of a Eurokids India

Private Limited passed by SJ Kathawalla,(J) of Bombay High Court in the similar facts have taken similar view.

13. Based on the above the meetings of the Equity shareholders and Creditors of the Second Applicant Company are hereby dispensed with since the First Applicant Company is wholly owned subsidiaries of the Second Applicant Company.

14. The Applicant Companies are accordingly directed to serve notices along with copy of scheme upon-

a. Concerned Income Tax Authorities within whose jurisdiction the Applicant Company's assessments are made i.e., for the First Applicant Company, having PAN AAACU2230P and address at VGC6+6W6, Ayodhya Nagar, Sadashiv Nagar, Belagavi, Karnataka 590019, for the Second Applicant Company, having PAN AAACU7580R and address at RHXP+HGQ, Nishant Colony, Sangli, Maharashtra 416416,

b. The Central Government through the office of Regional Director, Western Region, Mumbai;

c. Concerned Registrar of Companies;

d. The Goods and Service Tax Authorities. GST registration number of the First Applicant Company – NIL/ N.A, for Second Applicant Company – 29AAACT7580R1ZD. ECC No. AAACU7580 RXM001;

e. BSE Limited (only in case of the Second Applicant Company);

f. National Stock Exchange of India (only in case of the Second Applicant Company);

g. Securities Exchange Board of India (only in case of the Second Applicant Company); and

pursuant to sub-section (5) of Section 230 of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, with a direction that they may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon

the Applicant Companies, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

15. Additionally the First Applicant Company is also directed to serve notice along with a copy of scheme upon Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013. M/s MUKESH & ASSOCIATES, Chartered Accountants having his office at: B/401, Sahayog CHS Ltd., S. V. Road, Above Central Bank of India, Kandivali (W), Mumbai - 400 067, Mobile No. (+91) 9892220027 (Email id: mukeshgshah@gmail.com) are hereby appointed to assist the Official Liquidator to scrutinize books of Accounts of the First Applicant Company for the last 5 years. The fees of the Chartered Accountant is fixed at Rs. 2,00,000/-. The Official Liquidator may submit his representations, if any, within a period of 30 (thirty) days from the date of receipt of such notice to the Tribunal and a copy of such representations shall simultaneously be served upon the First Applicant Company, failing which, it shall be presumed that the Official Liquidator have no representations to make on the proposed arrangement embodied in the Scheme.
16. The Applicant Companies shall host notices along with the copy of the Scheme on their respective websites, if any.
17. The Applicant Companies to file an affidavit of service and Compliance within 10 (ten) working 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.

Sd/-

Madhu Sinha
Member (Technical)

Sd/-

H.V. Subba Rao
Member (Judicial)