

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

C.P.(CAA)/195/MB/2021
c/w C.A.(CAA)/103/MB/2021

In the matter of
Sections 230 to 232 of the Companies Act, 2013
and other applicable provisions of the Companies
Act, 2013

AND

In the matter of
Scheme of Amalgamation of
Asianet Star Communications Private
Limited,
[Transferor Company /
Petitioner Company 1]

With

Star India Private Limited,
[Transferee Company /
Petitioner Company 2]

And
their respective shareholders.

**Asianet Star Communications
Private Limited**
[CIN: U74300MH1996PTC206321]

... Petitioner Company 1/
Transferor Company

Star India Private Limited
[CIN: U72300MH1994PTC076485]

... Petitioner Company 2/
Transferee Company

(Hereinafter collectively referred to as 'the Petitioner Companies')

Order delivered on: 20.01.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicants

: Mr. Ajit Singh Tawar, Advocate.

For the Regional Director

: Ms. Rupa Sutar, Dy. Director,
Office of the Regional Director,
MCA(WR), Mumbai.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. The Court convened through video-conference.
2. Heard the learned Counsel for the Petitioner and the representative of the Regional Director Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme, nor has any party controverted any averments made in the Petition.
3. The sanction of the Tribunal is sought under Section 232 read with Section 230 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Amalgamation of Asianet Star Communications Private Limited ('First Petitioner Company' or 'Transferor Company') with Star India Private Limited ('Second

Petitioner Company' or 'Transferee Company') and their respective Shareholders.

4. The Counsel for the Petitioner Companies further submits that the First Petitioner Company is engaged in broadcasting of non-news and current affairs television channels, acquisition and production of television programs and solicitation of advertisements.
5. The Counsel for the Petitioner Companies further submits that the Second Petitioner Company is engaged in the business of broadcasting, soliciting advertisements, marketing and distribution of Non-News and Current Affairs TV channel, production and distribution of movies.
6. The Petitioner Companies have approved the said Scheme by passing the resolutions in their respective Board Meetings held on 5th Day of February, 2021 and their respective general meetings held on 16th day of August, 2021. The Appointed date is 1st day of April 2020.
7. The Counsel appearing on behalf of the Petitioner Companies states that the Petition has been filed in consonance with the order dated 16th day of August 2021, passed by this Tribunal in the connected Company Scheme Application bearing C.A.(CAA)/103/MB/2021.
8. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per directions of this Tribunal and have filed necessary

Affidavits of compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made there under.

9. The Petitioner Companies submit that the Scheme of Amalgamation shall result into following advantage / benefits to the Transferee company upon their merger:
 - a. The Scheme seeks to re-structure the broadcasting and distribution business of the Transferee Company and the Transferor Company which will result in the consolidation of the business and operations of the Transferor Company and the Transferee Company to achieve economies of scale, enable synergies, increased operational efficiencies, greater focus on growth and optimal utilization of resources.
 - b. Leverage the financial, managerial, creative, technological, marketing and sales expertise, distribution networks, relationships with traders and customers and other strengths of the Transferor Company and the Transferee Company, with a view to compete in the market more effectively, thereby strengthening the combined market position and growth prospects, as the Transferor Company and the Transferee Company are engaged in similar lines of business, significantly contributing to future growth, and maximizing shareholder' value.

- c. The proposed amalgamation will help the Transferee Company to rationalize the group structure by reducing legal entity engaged in the same line of business which will result in the better working capital management, achieve tax savings and acquiring combined linguistic television rights. The resources of the Transferor Company and the Transferee Company will be merged and pooled together leading to a more effective and centralized management and rationalization of administrative, operational and manpower expenses and overheads which are presently being duplicated because of separation of operations due to separation of entities.
10. The Counsel for the Petitioner Companies states that upon coming into effect of this Scheme, each member of the Transferor Company, other than the Transferee Company, whose name is recorded as a holder of shares in the register of members of the Transferor Company on the Record Date shall, without any further act or deed, be issued and allotted shares in the Transferee Company, in the ratio of
- 10,00,000 (Ten Lakhs only) equity shares of the Transferee Company, for every 38,28,452 (Thirty-Eight Lakhs Twenty-Eight Thousand Four Hundred and Fifty-Two only) equity shares held in the Transferor Company, credited as fully paid up, on the same terms and conditions of issue as prevalent in the Transferee Company.*
11. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its Report dated 27th day of May 2022, inter alia stating that, save and except the observations as stated in paragraph IV (a) to (m)

of the report, this Tribunal may pass such order or orders as deemed fit and proper in the facts and circumstance of the case. In response to the observations made by the Regional Director, the Petitioner Companies have given necessary undertakings and clarification as per affidavit in rejoinder dated 12th July, 2022. The Transferee Company has undertaken that :-

- a) *The Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with accounting standards AS-14 (IND AS-103) and any other applicable accounting standards including AS-5(IND AS-8) to the extent applicable.*
- b) *any issues, arising out of the Scheme, raised by any relevant authority or government department will be addressed and complied with in accordance with law.*
- c) *The Transferee Company shall comply with section 232(3)(i) of the Act and affirm to pay the difference of fees and stamp duty on its authorised capital after set-off against fees and stamp duty paid by the Transferor Company on its authorised capital subsequent to amalgamation.*
- d) *The Petitioner Companies confirm and undertake that the Scheme enclosed to the Company Scheme Application and Company Scheme Petition are one and the same and there is no discrepancy or deviation to the same.*
- e) *The Petitioner Companies shall comply with the requirements and clarification of circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.*
- f) *Any surplus arising out of the scheme will be credited to the Capital Reserve account and that such Capital Reserve shall not be considered as free reserve and will not be available for 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.*
- h) *The Transferee Company shall abide by the decision of the final Forum in*

the complaint filed by the National Software Technology Private Limited.

- i) The Transferee Company undertakes to procure approval of Ministry of Information and Broadcasting as required once the Scheme is approved by the Hon'ble National Company Law Tribunal, Mumbai.*
- j) The Transferee Company shall abide by the decision of the final Forum in the show cause notice issued under FERA & FEMA.*
- k) The Transferee Company shall abide by the decision of the final Forum in case pertaining to alleged contravention of sections 9 & 49 of FERA with regards to transfer of funds from Sterlite Television Asian Region Limited to News Television India Limited (Former name of Star India Private Limited).*
- l) The Transferee Company shall protect the interest of creditors.*

12. On 12th day of July, 2022, the Petitioner Companies provided the clarification/undertakings to the observations made by the Regional Director in paragraph IV (a) to (m) of the report dated 27th day of May 2022 and the Regional Director has filed a supplementary report dated 22nd November 2022 accepting their clarifications/undertakings. It has further been submitted by the Representative of the RD that she has no objection to the approval of the proposed scheme.

13. The Official Liquidator has filed his report on 22nd March 2022 inter alia stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Scheme is not prejudicial to the interest of public and the Shareholders of the Transferor Company. Accordingly, the Transferor Company may be ordered to be dissolved without winding up.

14. The Transferee Company shall be liable to the outcome of the

proceedings pending before various courts and tribunals against the Transferor Company and the proceedings would continue in the name of Transferee Company and will not abate by virtue of scheme getting sanctioned by this Tribunal.

15. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
16. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
17. All the assets and liabilities including taxes and charges, if any and duties of the Petitioner Companies, shall pursuant to section 232 of the Company Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
18. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P.(CAA)/195/MB/2021 filed by the Petitioner Companies is made absolute in terms of prayers clause of the said Company Scheme Petition.
19. The Petitioner Companies are directed to file a certified copy of this

order along with a copy of the Scheme with the concerned Registrar of Company, electronically, along with e-Form INC-28 in addition to physical copy, within 30 days from the date of approval to the scheme by the Ministry of Information and Broadcasting.

20. In light of the fact that the Scheme will not take effect until and unless sanctioned by the Ministry of Information and Broadcasting, exercising the discretionary powers, this Bench hereby orders that this Scheme shall be effective from the date of the Sanction of the Scheme by Ministry of Information and Broadcasting.
21. It is further clarified that for the period between the appointed date and Effective date the business of the Transferor Company shall be carried out by the Transferor Company in trust and for and on behalf of the Transferee Company.
22. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy Registrar or the Assistant Registrar, as the case may be, of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified copy of order.
23. All concerned regulatory authorities to act on a copy of this Order duly certified by the Registry of this Tribunal, along with a copy of the Scheme.

24. Any person or any Authority, whose interest is adversely affected, shall be at liberty to approach appropriate Forum or to take appropriate action as permissible under law.
25. The Scheme of Amalgamation is hereby sanctioned, and the Appointed date of the Scheme is fixed as 1st day of April 2020.
26. Ms. Rupa Sutar, Dy. Director, Office of the Regional Director, MCA (WR), Mumbai present and reported no objections for allowing the above Company Scheme Petition.
27. Accordingly, C.P.(CAA)/195/MB/2021 is **allowed** and disposed-off. File to be consigned to records.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)

20.01.2023/pvs