(2020) 08 NCLT CK 0010

In the National Company Law Tribunal

Case No : Company Petition No. (CAA)/940/Mb-I Of 2020 And Company Appeal No. (CAA)/378/Mb-I Of 2020

In Re: Indusind Media And Communications Limited And Ors APPELLANT

Vs

RESPONDENT

Date of Decision : 21-08-2020

Acts Referred:
Companies Act, 2013 — Section 230, 231, 232

Citation : (2020) 08 NCLT CK 0010

Hon'ble Judges : Janab Mohammed Ajmal, J;V. Nallasenapathy, Member (Technical)

Bench : Division Bench

Advocate : Gaurav Joshi, Parita Dave, Rupa Sutar

Final Decision : Allowed

Judgement

V. Nallasenapathy, Member (T)

1. This Petition seeks sanction under sections 230 to 232 of the Companies Act, 2013 (the Act for short) to the Scheme of Arrangement between IndusInd Media And Communications Limited (the Demerged Company'/Petitioner Company 1) and NxtDigital Limited (the Resulting Company/Petitioner Company 2) and their respective shareholders.

2. The Court is convened through video conference today. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any of the averments made in the Petition to the Scheme.

3. Learned Counsel for the Petitioner Companies submits that the Petitioner Company 1 engaged in the business of engaged in the business of Media and Communications business consisting of Cable TV, HITS platform (Media and Communication Undertaking); Technical services business (including investments in JVs); and Passive infrastructure business. The Petitioner Company 2 is

engaged in business of Media, Real Estate, Treasury, Dark Fiber Leasing business and has close to 4,000 kilometers of underground and overhead Dark Fiber network across the country and is also engaged in the business of high sea sale of set-top boxes.

4. Learned Counsel for the Petitioner Companies submits that the Board of Directors of the Petitioner Companies approved the Scheme in their meetings held on 27th August, 2019. The Appointed Date fixed under the Scheme is 1st October 2019.

5. Learned Counsel for the Petitioner Companies submits the rationale for the Scheme is that the restructuring would have following benefits.

a) Demerged Company and Resulting Company are part of the Hinduja Group. Demerged Company has grown into one of India's largest integrated media companies. Accordingly, in 2017 as a step towards consolidation of media and communications business, the Headend in the Sky ("HITS") business was transferred by Grant Investrade Ltd. (a Hinduja Group Company), to Demerged Company pursuant to scheme of arrangement. The Resulting Company holds 77.55 % of shares in the Demerged Company.

b) Recognizing the growth potential of the 'Media and Communications Undertaking' (more particularly defined hereinafter) in the backdrop of the fact that its 'Media and Communications Undertaking' has matured and the associated risks has reduced significantly as well as the recent regulatory reforms (New Tariff Order) providing additional stimuli, Resulting Company is proposing to consolidate this vertical as it feels that this will create a new platform for it go to the next level of performance.

c) The Resulting Company is streamlining its business and proposes to consolidate its Media and Communications Undertaking carried on by its subsidiary i.e. Demerged Company into a single company. As part of this arrangement, the Media and Communications Undertaking of Demerged Company will be demerged into Resulting Company.

d) Pursuant to this restructuring, the media business of the Group will be consolidated into a single group which will assist in achieving flexibility, scale and financial strength. Upon segregation of identified business undertaking, Resulting Company and Demerged Company shall be able to achieve higher long-term financial returns, increased competitive strength, cost reduction and efficiencies, productivity gains, and logistical advantages, thereby significantly contributing to future growth in their respective business verticals.

e) Apart from the various benefits/advantages stated and illustrated above, the management of the Resulting Company and Demerged Company are of the opinion that the following benefits shall also be enjoyed and realized by all the stakeholders:

i. Consolidation and growth of Media and Communications Undertaking: The demerger will enable Resulting Company to consolidate similar businesses into a single company. This will enable Resulting Company with an opportunity to provide services in a seamless manner to its customers. Further, this will also help Resulting Company to demonstrate its capability and provide competitive advantages vis-à-vis its competitors.

ii. Focused Management, Organization Efficiency and Operational Synergies: Consolidation of the business into a single consolidated entity shall enable focused strategies, management, investment and leadership for the consolidated entity and further result into organization efficiency and operational synergies;

iii. Unlock shareholders value: The proposed consolidation will create long term value for the shareholders by unlocking value since the business and profits will accrue to a single entity i.e. Resulting Company;

iv. Efficiency in Fund raising for harnessing future growth: Housing of Media and Communications Undertaking in Resulting Company directly shall facilitate and provide adequate opportunities to mobilize the financial resources of Resulting Company for the growth of the Media and Communications Undertaking and also streamline the process for fund raising;

6. The Company Petition is filed in terms of sections 230 to 232 of the Companies Act, 2013 and in accordance with the Order passed in CA (CAA) No. 378/MB/2020 of this Tribunal.

7. The Petitioner Companies have complied with all the requirements as per directions of the Tribunal and have filed necessary affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements, if any, as required under the Act and the Rules made there under as applicable. The undertakings given by the Petitioner Companies are accepted.

8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report dated 5th August, 2020, inter alia stating therein that save and except as stated in para IV (a) to (g) of the Report, the Scheme is not prejudicial to the interest of shareholders and public. In response to the observations made by the Regional Director, the Petitioner Company has also given necessary undertakings and clarification. Further the observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies which is summarized in the table below:

SR. No. Para (IV)

RD Report/Observation 5th August 2020

Response of the Petitioner companies with an Joint Affidavit dated 5th August 2020

a)

In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.

Apropos observation made in paragraph IV(a) of the report of Regional Director, the Petitioner Companies through its Advocate undertakes to pass such accounting entries which are necessary in connection with the scheme to comply with applicable Accounting Standards including AS- 14 (IND AS-103) and AS-5 (IND AS-B).

b)

As per Part - 1 Definitions clause 2(2.1 and 2.5) of the Scheme

"Appointed Date" in relation to the Scheme means 1st October, 2019.

"Effective Date" means the Appointed Date or the date on which the last of conditions referred to in Clause 15 hereof have been fulfilled, whichever is later. Reference in this Scheme to the "date of coming into effect of this Scheme" or "upon the Scheme becoming effective" shall also mean the Effective Date.

"Record Date" means such date after the Effective Date when the Board of Directors of the Resulting Company may decide for the purposes of issue and allotment of Equity Shares under the Scheme.

In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

Further, the Petitioners may be asked to comply with the requirements as clarified vide circular No. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs

Apropos observation made in paragraph IV(b) of the report of Regional Director, the Petitioner Companies confirms that as per Clause 2.1 of Part A of the Scheme, "Appointed Date" means 1st October, 2019. Further, Clause 2.5 of Part A of the Scheme specifies that the effective date means the Appointed Date or the date on which the last of conditions referred to in Clause 15 hereof have been fulfilled, whichever is later. Reference in this Scheme to the "date of coming into effect of this Scheme" or "upon the Scheme becoming effective" shall also mean the Effective Date. In this regard, it is submitted that, in terms of provisions of section 232(6) of the Companies Act, 2013, the Scheme shall be deemed to be effective from 1st October 2019 i.e. the Appointed Date. Thus, the Petitioner Companies will be complying with the applicable requirements of the circular no F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of

Corporate Affairs.

c)

The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.

Apropos observations made in paragraph IV(c) of the Report of the Regional Director, the Petitioner Companies submits that in pursuance of Order of this Hon'ble Tribunal dated February 27, 2020 passed in Company Scheme Application No. 378 of 2020, and Order of this Hon'ble Tribunal dated April 22, 2020 passed in the Miscellaneous Application No. 980 of 2020, the meeting of the Equity Shareholders of the Demerged Company was directed to be convened on April 15, 2020 which was duly convened and held through video conferencing for the purpose of considering and if thought fit, approving with or without modifications(s) the proposed Scheme at which the requisite quorum was present and the Scheme was approved unanimously without modifications by the Equity Shareholders. The meeting of Equity Shareholders of the Resulting Company was dispensed as the meeting of Equity Shareholders could not be convened in the present situation due to lockdown situation on account of COVID-19 pandemic and has considered the votes casted via remote e-voting/ postal ballot facility as the final consent of the Equity Shareholders towards the Scheme. The Demerged Company further undertakes to submit the Minutes of the shareholder meeting.

d)

Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition, are one and the same and there is no discrepancy/any change/changes are made, for changes if any, liberty be given to the Central Government to file further report if any required;

Apropos observations made in paragraph IV(d) of the Report of the Regional Director, the Petitioner Companies submits that they have filed the requisite affidavit with the NCLT on August 05, 2020, inter alia, stating that the scheme enclosed to the Company Scheme Application and to the Company Scheme Petition is one and the same and there is no discrepancy/any change/changes are made, for changes if any, liberty be given to the central government to file further report if any required.

e)

The Petitioner under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).

Apropos observations made in paragraph IV(e) of the Report of the Regional Director, the Petitioner Companies submits that it has served notices to the authorities which are likely to be affected by the Compromise or Amalgamation or Arrangement in accordance with Section 230(5) of the Companies Act, 2013. Further, Petitioner Companies undertake that the sanctioning of the Scheme shall not deter the authorities from raising any issues in accordance with applicable law and the decision of such authorities shall be binding on the Petitioner Companies to the extent tenable under law.

f)

As NXTDIGITAL Limited (formerly known as Hinduja Ventures Limited), the Resulting Company the equity shares are listed on BSE & NSE, hence the petitioner be directed to file an affidavit to the extent it has complied with the directions of issued vide letter No. DCS/AMAL/DS/R37/1649/2019-20 dated 13.01.2020 and NSE/LIST/21847 II dated 13.01.2020 by BSE and NSE respectively.

Apropos observations made in paragraph IV(f) of the Report of the Regional Director, the Petitioner Companies submits that it has filed requisite affidavit on August 05, 2020, inter alia, stating that it has complied with all the directions of the Observation Letters issued by Bombay Stock Exchange Limited ("BSE") vide letter dated January 13, 2020 bearing Reference No. DCS/AMAL/DS/R37/1649/2019-20 and National Stock Exchange of India Limited ("NSE") vide letter dated January 13, 2020 bearing Reference No. NSE/LIST/21847 II.

g)

In view of the observation raised by the ROC Mumbai, mentioned at para 15 above, the Hon'ble NCLT may pass appropriate order/orders as deem fit.

Apropos observations made in paragraph IV(g) of the Report of the Regional Director, the Resulting Company submits that the observation raised by ROC relates to observation letters issued by Bombay Stock Exchange Limited ("BSE") vide letter dated January 13, 2020 bearing Reference No. DCS/AMAL/DS/R37/1649/2019-20 and National Stock Exchange of India Limited ("NSE") vide letter dated January 13, 2020 bearing Reference No. NSE/LIST/21847 II. The Resulting Company states that it has complied with the observation letters.

9. The observations made by the Regional Director have been explained and the clarifications and undertakings given by the Petitioner Companies have been explained in Para 8 above. The Undertaking filed by the Petitioner Companies in response to the said report, is accepted by this Tribunal.

10. From the material on record, the Scheme appears to be fair and reasonable

and does not violate of any provisions of law and is not contrary to public policy.

11. Since all the requisite statutory compliances have been fulfilled, CP (CAA) No. 940/MB-I/2020 is made absolute in terms of prayer made in the Petition. Hence ordered.

ORDER

The Petition be and the same is allowed subject to the following.

i. The Scheme, with the Appointed Date fixed as 1st October, 2019 placed at Page Nos. 655 to 669 of the CP (CAA) No. 940/230/MB-I/2020 is hereby sanctioned. It shall be binding on the Petitioner and the Companies involved in the Scheme and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors and Employees.

ii. The Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme forthwith. The Petitioners are directed to file a copy of this Order along with a copy of the Scheme with the Registrar of Companies concerned, electronically in E-Form INC-28, within 30 days from the date of receipt of the Order from the Registry.

iii. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any, payable within 60 days from the date of receipt of the Order.

iv. The Petitioner Company shall comply with the undertakings given by it.

v. All concerned shall act on a copy of this Order along with Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal.

vi. The Petitioner Company is directed to issue newspaper publications with respect to approval of the Scheme, in the same newspapers in which previous publications were issued.

vii. The Petitioner Company shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.

viii. Any person interested in above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.