
(2019) 08 NCLT CK 0054

In the National Company Law Appellate Tribunal, Principal Bench, New Delhi

Case No : (CAA) No. 145(PB) Of 2018

Mail Today Newspapers Pvt. Ltd. And Ors.

APPELLANT

Vs

T.V. Today Network Limited

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Companies Act, 2013 — Section 133, 230, 231, 232, 232(3)(i), 233, 234

Citation : (2019) 08 NCLT CK 0054

Hon'ble Judges : M.M. Kumar, CJ; Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Anirudh Das, Rakshit Jha, Sonam Sharma, Swati Koshal

Final Decision : Disposed Of

Judgement

Santanu Kumar Mohapatra, Member (T)

1. This Joint application has been filed by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Arrangement and Amalgamation of both the transferor companies with the transferee company. Copy of the said Scheme of Amalgamation (hereinafter referred as "Scheme") has been placed on record.

2. The "Transferor Company No.1", M/s. Mail Today Newspapers Private Limited was incorporated on 09.05.2007 under the provisions of Companies Act, 1956, having its registered office at F-26, Connaught Place, New Delhi-110001.

3. The "Transferor Company No.2", M/s. India Today Online Private Limited was incorporated on 14.09.2000 under the provisions of Companies Act, 1956, having its registered office at F-26, First Floor, Connaught place, New Delhi-110001.

4. The "Transferee Company", M/s. T.V. Today Network Limited was incorporated on 28.12.1999 under the provisions of Companies Act, 1956, having its registered office at F-26, First Floor, Connaught Circus, New Delhi-110001.

5. A perusal of the petition discloses that initially the First Motion joint application seeking directions for convening or dispensing with the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of all the petitioner companies was filed before this Bench vide Company Application (CAA) No. 77/(PB)/2018 and based on such joint application moved under Sections 230 to 232 of the Companies Act, 2013, the meetings of the equity Shareholders of all the three petitioner companies, secured creditors of Transferor company no. 1 and Transferee company and unsecured creditors of transferee company were directed to be convened. Additionally, the meetings of secured creditors of transferor company no.2 and unsecured creditors of both the transferor companies were dispensed with vide order dated 02.07.2018.

6. Subsequently, the aforesaid meetings in terms of the order dated 02.07.2018 was duly convened on 08.09.2018 and the Scheme of Arrangement and Amalgamation was unanimously approved by the members present in the said meeting. The report of the Chairperson and Scrutinizer in respect of the shareholders meeting of the Transferee Company has been placed on record.

7. Thereafter, on 12.10.2018 the Petitioners were directed to carry out publication in the newspapers "Financial Express" (English, Delhi edition) and "Jan Satta" (Hindi, Delhi edition). In addition to the public notice, notices were directed to be served on the Regional Director (Northern Region), Official Liquidator, Registrar of Companies, NCT of Delhi and Haryana, the Income Tax Department and to the other relevant sectoral regulators.

8. It is seen from the records that the Petitioners have filed an affidavit dated 26.11.2018 affirming compliance of the order passed by the Tribunal dated 12.10.2018. A perusal of the affidavit discloses that the petitioners have effected the newspaper publication as directed in one issue of the 'Financial Express' English edition on 07.11.2018 as well as in 'Jansatta' Hindi edition on 07.11.2018 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition have been duly served on the Registrar of Companies, Regional Director, Northern Region, Official Liquidator and Income Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been enclosed.

9. The Regional Director has filed its representation on 18.02.2019 in which it has been submitted that there is no clause in the Scheme regarding addition of authorized share capital of transferor company no. 2 into authorized share capital of transferee company. Therefore, the petitioner companies should clarify that whether any authorized share capital of transferor company no. 2 has to be added into the authorized capital of the transferee company and, if so, transferee company shall comply with the provisions of Section 232 (3) (i) of the

Companies Act, 2013.

10. In response of the aforementioned observation of the Regional Director, an additional affidavit has been filed by authorized representative of transferee company submitting as follows:

"That the allocation/transfer of the authorized capital of the Petitioner/Transferor Company No. 2 and it vesting in the Petitioner/Transferee Company is a consequence of the amalgamation of the Petitioner/Transferor Company No. 2 into the Petitioner/Transferee Company. Accordingly, in consonance with the scheme of the provisions of the Companies Act, 2013 (Act) and more particularly provisions of Section 231, an appropriate direction may be issued by this Hon'ble Tribunal to the effect that upon passing an order under section 230 of the Companies Act, 2013 (Act) sanctioning the present scheme, the authorized share capital of the Petitioner/Transferor Company No. 2 shall stand transferred and vested in the Petitioner/Transferee Company.

That the Petitioner/Transferee Company shall, subject to the aforesaid order being passed by the Hon'ble Tribunal, undertake to comply with the provisions of Section 232 (3) (i) of the Act in regard to any further additional fees, if any payable on its revised authorized share capital of Rs. 1,34,00,00,000/-."

11. In view of the observation of Regional Director and affidavit of the transferee company it is clarified that pursuant to the sanctioning the Scheme, the authorized share capital of the Petitioner/Transferor Company No. 2 shall stand transferred and vested into the Petitioner/Transferee Company. In addition, it is directed that the transferee company shall comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013, in regard to any further additional fees payable on its revised authorized share capital of Rs. 1,34,00,00,000/-. Accordingly, the sole observation of the Regional Director is taken care of.

12. The Department of Income Tax has also filed its report on 15.04.2019 raising a limited observation that re-assessment proceedings with respect to the Petitioner/Transferor Company 2 for Assessment Year 2013-14 and 2014-15 are pending. However, it is submitted in the report that there is no outstanding pending demand against the petitioner companies.

13. In respect of aforesaid observation of the Income Tax Department, the transferee company filed an affidavit on 23.04.2019 and undertook as follows:

"5. we state that assessment proceedings with respect to the Assessment Year 2013-14 and 2014-15 pending before the Income Tax Appellate Tribunal in ITA Nos. 6453 & 6454/Del/2018 have been allowed in favour of Petitioner/Transferor Company No. 2 by Order dated 15th March, 2019 of the Income Tax Appellate Tribunal, New Delhi. A copy of the order dated 15th March 2019 is annexed hereto and marked as ANNEXURE - A. It is further stated that as on date, as the appeals have been decided in favour of the Petitioner/Transferor Company No. 2 vide aforesaid Order dated 15th March, 2019, no notice of demand has been

received by the Petitioner/Transferor Company No. 2 from the Income Tax Department. We further state that as on the date of affirming the present Affidavit, no notice of appeal has been received by the Petitioner/Transferor Company 2 against the aforestated order 15th March 2019 of the ITAT.

6. It is stated that the Petitioner/Transferee Company undertakes, that upon the Scheme becoming effective, it shall, subject to final order(s) being passed in appellate proceedings if any, pay the tax liability that may arise from a demand by the Income Tax Department with respect to the Assessment Years 2013-14 and 2014-15.

7. It is further stated that the Petitioner/Transferee Company undertakes, that upon the Scheme becoming effective, it shall subject to final order(s) being passed in appellate proceedings if any, pay the income tax liability if any of the Petitioner/Transferor Company 2 for Assessment Years other than the Assessment Years 2013-14 and 2014-15 arising from a demand by the Income Tax Department."

14. In the light of the aforementioned undertaking filed by the transferee company it is clarified that the transferee company shall be bound by its undertaking given on affidavit as above. It is further clarified that there shall be no limitation on the power of the Income tax Department for recovery of pending Income Tax dues, including imposition of penalties etc. from all the petitioner companies as provided in law.

15. The Official Liquidator has filed its report on 12.12.2018 wherein no material objection has been raised by them in relation to the Scheme. It is submitted in the report that the official liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

16. In the joint petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

17. Certificates of respective Statutory auditors of all the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.

18. The shareholders of the applicant companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by the Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial

decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013 will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.

19. In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited (1995) 5 SCC 491 the three Judges Bench of Hon'ble Supreme Court held that:

"A company court does not exercise appellate jurisdiction over a scheme and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the Scheme and to ensure that neither any law has been violated or public interest compromised in the process."

20. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the applicant companies to avail the benefits extended by statutory provisions and the Rules.

21. It has also been affirmed in the petition that Scheme is in the interest of Transferor company and the transferee company including their shareholders, creditors, employees and all concerned.

22. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the report filed by the Regional Director, Northern Region, Ministry of Corporate Affairs, official liquidator and the report filed by Income Tax Department, there appears to be no impediment in sanctioning the present Scheme.

23. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

24. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

25. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

26. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

27. THIS TRIBUNAL DO FURTHER ORDER

i. That the transferor company no.2 shall stand dissolved without following the process of winding-up; and

ii. That all the property, rights and powers of the transferor company no.2, he transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, he transferred to and vest in the transferee company; and

iii. That all the liabilities and duties of the transferor company no.2, he transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, he transferred to and become the liabilities and duties of the transferee company; and iv. That all proceedings now pending by or against the transferor company no.2, be continued by or against the transferee company; and

v. That all the employees of the transferor company no.2 in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the Transferor Company on the said date.

vi. That Petitioner companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the transferor company no.2 shall be dissolved and the Registrar of Companies shall place all documents relating to the transferor company no.2 registered with him on the file kept by him in relation to the Transferee Company and the files relating to both the petitioner companies shall be consolidated accordingly; and

vii. That all the property, rights and powers of demerged company/transferor company no.1 in respect of demerged undertaking, be transferred without further act or deed, to the resulting company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, he transferred to and vest in the transferee company.

viii. That all the liabilities and duties of Demerged company/transferor company no.1 in respect of demerged undertaking, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and

ix. That all proceedings now pending by or against demerged company/transferor company no.1 in respect of demerged undertaking, be continued by or against the transferee company; and

x. That all the employees of Demerged company/transferor company no.1 in respect of demerged undertaking, if any, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than

those subsisting in demerged company/transferor company no.1 on the said date.

xi. That Petitioner companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Company for registration and on such certified copy being so delivered the Registrar of Company shall place all documents relating to the demerged company/transferor company no.1 in respect of demerged undertaking with the file kept by him in relation to the transferee company; and

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

The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.