IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 34 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 838 OF 2014

Pune Infoport Private Limited

………. Petitioner/ Transferor Company

COMPANY SCHEME PETITION NO 35 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 839 OF 2014

Indian Express Newspapers (Mumbai) Private Limited

……Petitioner/Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 read with section 100 to 103 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation and Arrangement BETWEEN Pune Infoport Private Limited AND Indian Express Newspapers (Mumbai) Private Limited AND their respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner in both the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in CSP No. 34 of 2015.

Mr. K.R. Choudhari i/b Mr. H.P. Chaturvedi for Regional Director in both the Petitions.

CORAM: S. J. Kathawalla, J.

DATE: 20th March 2015

1. Heard counsel for the Parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the petitions.

2. The sanction of the Court is sought under Sections 391 to 394 read with section 100 to 103 of the Companies Act, 1956, to the Scheme of Amalgamation and Arrangement between Pune Infoport Private Limited and Indian Express Newspapers (Mumbai) Private Limited and their Respective Shareholders.

3. Learned Advocate for the Petitioner further states that the Transferor Company is engaged in the business of providing facility management services and the Transferee Company is engaged in the business of real estate sector as well as media publishing sector.

4. The proposed scheme of amalgamation and arrangement will help avoid duplication of resources, systems, skills and processes, reduce overall cost. Improve synergies, enable the achievement of economies of scale, reduce administrative costs entailed by the conduct of businesses through separate entities. Provide enhanced flexibility in funding of expansion plans and promote management.

5. The Petitioner Companies had approved the said Scheme of Amalgamation and Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The learned Advocate for the Petitioner Companies states that Petitioner Companies have complied with all directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the orders passed in Company Summons for Direction.

7. The Advocate has stated that they have complied with all requirements as per directions of this Hon'ble Court and they have filed necessary Affidavit of compliance in the Hon'ble Court. Moreover, Petitioner Companies undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings are accepted..

8. The Regional Director has filed an Affidavit on 18th March 2015 , stating therein, save and except as stated in paragraph 6, it appears that the scheme is not prejudicial to the interest of shareholders and public. In Paragraph 6 of the said Affidavit, the Regional Director submits that :

6. That the Deponent further submits that:-

(a) Clause No. 31.4 of the Scheme provides for cancellation of the equity share capital of the Transferee Company held by Transferor Company. The scheme is silent with respect to compliance of Section 100 of the Companies Act, 1956 corresponding to section 66 of the Companies Act, 2013. Hence, the Petitioner Companies shall amend the

scheme suitably to reflect such reduction of capital as an integral part of the Scheme. It is suggested that followings be added in that clause, "The reduction shall be effected as an integral part of this Scheme under sections 100 to 103 of the Companies Act, 1956 corresponding to section 66 of Companies Act, 2013 and the order of the High court sanctioning the Scheme shall be deemed to be also the order under section 102 of the Companies Act, 1956 for the purpose of confirming the reduction".

(b) The Shares of Transferor Company are held by Foreign Body Corporate. Hence, while giving effect to the Scheme, by issuing new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company has to comply with the provisions of FEMA, RBI regulations as applicable in this regard.

(c) Clause 10 of the Scheme provides for Modification to the Object clause of the Memorandum of Association of the Transferee Company by inserting new object in its Memorandum of Association so as to enable the Transferee company to continue the business of Transferor company. In this regard, the Transferee Company may be directed to comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of the Companies Act, 1956 and to file amended copy of Memorandum of Association along with necessary form with Registrar of Companies.

(d) It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.

9. In so far as observations made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Counsel for the Petitioner Companies clarifies that the reduction is an integral part of the Scheme and it is require to amend Clause 31.4 of the Scheme and the Petitioner Companies seek leave to amend scheme by adding following paragraph at the end of Clause 31.4 of the Scheme as under:

> "*The reduction shall be effected as an integral part of this Scheme under sections 100 to 103 of the Companies Act, 1956 corresponding to section 66 of Companies Act, 2013 and the order of the High court sanctioning the Scheme shall be deemed to be also an order under section 102 of the Companies Act, 1956 confirming the reduction*".

10. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Transferee Company through their Counsel undertakes that while issuing new shares by the Transferee Company to the shareholders of the Transferor Company, the Transferee Company will comply with the provisions of FEMA, RBI regulations as applicable.

11. As far as observations made in paragraph 6(c) of Affidavit of the Regional Director is concerned, the Petitioner Companies submits that the Transferee Company shall comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of the Companies Act, 1956 and to file amended copy of Memorandum of Association along with necessary form with Registrar of Companies.

12. As far as observations made in paragraph 6(d) of Affidavit of the Regional Director is concerned, the Transferee Companies submits that the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

13. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director agrees with the amendment sought by the Petitioner Companies as mentioned in paragraph nine herein above and satisfied with the undertakings given by the Petitioner Companies. The said undertakings given by Petitioner Company are accepted.

14. Leave to amend Scheme by adding paragraph at the end of Clause 31.4 to the Scheme as mentioned in paragraph nine herein above is granted. Amendment to be carried out within three weeks from date of the Order.

15. The Official Liquidator has filed his report on 10th March 2015 stating that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved without being wound up

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petitions filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Company Scheme Petitions.

18. The Petitioner Companies to lodge a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court, Bombay, 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 the Order.

19. Petitioners are directed to file a copy of this order along with a copy of the modified Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

20. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Company in Company Scheme Petition No. 34 of 2015 to pay sum of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. The Costs to be paid within four weeks from the date of the order.

21. Filing and issuance of the drawn up order is dispensed with.

22. All concerned regulatory authorities to act on a copy of this order along with the modified Scheme duly authenticated by the Company Registrar, High Court, Bombay.

(S. J. KATHAWALLA, J.)