THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.32OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 822 OF 2014

NGC NETWORK (INDIA) PRIVATE LIMITED

....Petitioner/ Transferee Company

With

COMPANY SCHEME PETITION NO.33OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 821 OF 2014

FOX CHANNELS (INDIA) PRIVATE LIMITED

....Petitioner/ Transferor Company

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

And

In the matter of Sections 391 to 394 of the Companies Act, 1956

And

In the matter of the Scheme of Amalgamation of Fox Channels (India) Private Limited with NGC Network (India) Private Limited and their Respective Shareholders and Creditors

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company

Mr. S. Ramakantha, Official Liquidator Present

Ms. Neeta Masurkar i/b Mr. A.A. Ansari for Regional Director.

CORAM: S. J. Kathawalla, J.

DATE: 18th April, 2015

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation of Fox Channels (India) Private Limited with NGC Network (India) Private Limited and their Respective Shareholders and Creditors.

3. The Learned Counsel for the Petitioners states that Petitioner / Transferee Company is engaged in the business of in distribution sales representation and advertising sales representation for certain television channels. It is also engaged in program content/post production services to media companies and Petitioner / Transferor

Company is engaged in distribution sales representation and advertising sales representation for certain television channels.

4. Learned Counsel for the Petitioners states that due to complementary Nature of business carried on by both the Companies the Scheme will result into following benefits namely achieving economies of scale, Lesser regulatory / procedural compliances, Integrate, rationalize and streamline the management structure of the merged business, Pooling of the human talents in terms of manpower, management, administration and marketing which would result in savings of costs, amalgamation of the companies would eliminate duplication of work, administrative services, and will result in cost savings, Cost saving in fees/ duties payable on statutory and procedural compliance, facilitate inter transfer of resources and costs and optimum utilization of Assets, synchronizing of efforts to achieve uniform corporate policy, Ease in decision making and to reflect the consolidated net worth of these companies in one balance sheet.

5. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Learned Counsel for the Petitioners further states that the Petitioner Companies has complied with all the directions passed in

the respective Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioners has stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 15th day of April, 2015 stating therein, save and except as stated in paragraph 6 (a) to (d) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 (a) to (d) of the said Affidavit, the Regional Director has stated that:-

"6. *That the Deponent further submits that,*

(a) *With reference to Clause No. 14.1(iii) & 14.1(vii) of the Scheme, it is submitted that the reserve, if any arising out of the Scheme be credited to Capital Reserve Account of Transferee company. In the process of exchanging assets and liabilities of Transferor Company, the Transferee Company will allot shares to the shareholders of Transferor Company. The Transferee company is not receiving any cash/revenue out of this process and as such the Securities Premium proposed to be created on allotment of new shares is not justified, and therefore, it is suggested that the surplus arising out of the scheme and due to transfer of* *capital assets be credited to Capital Reserve Account only and not to securities premium account of the Transferee company.;*

(b) 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;

(c) The Shares of Transferor Company are held by Foreign Body Corporate. Hence, while giving effect to the Scheme, by issuing new shares of 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.

(d) Clause 14.1(viii) and 16 of Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of Transferor Company and Transferee Company have been authorized to make any amendments to scheme, if necessary, after the Scheme is approved by the Hon'ble High Court. Such liberty shall not be exercised by Board of Directors without obtaining prior approval from the Hon'ble High Court. The Petitioner Companies shall be directed to undertake to this effect.

9. So far as the observations made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Transferee Company through its Counsel undertakes that the surplus, if any, arising out of this Scheme be credited to Capital Reserve Account of the Transferee Company.

10. So far as the observation in paragraph 6 (b) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Companies are bound to comply

with all applicable provisions of Income Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

11. So far as the observation in paragraph 6 (c) of the Affidavit of Regional Director is concerned, Transferee Company through its Counsel undertake to comply with the provisions of FEMA/RBI regulations as applicable while issuing new shares to shareholders of the Transferor Company.

12. In so far as the observations made in paragraph 6(d) of the Affidavit of the Regional Director is concerned, the Counsel appearing for the Petitioner Company submits that the Clauses 14.1(viii) and 16 of the Scheme authorizes the Board of Directors of the Petitioner Company and the Transferee Company to modify any part of the Scheme. The learned Counsel for the Petitioner states that such power to amend the Scheme is subject to the prior approval of the High Court. It is therefore clarified that the power vested under Clauses 14.1(viii) and 16 of the Scheme will be subject to the approval of the High Court.

13. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, Joint Director (Legal) in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings given by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 32 & 33 of 2015 are made absolute in terms of the prayer clause (a) of the respective Company Scheme Petition.

16. The Petitioner Company is directed to file a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), 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.

17. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with concerned E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013 whichever is applicable after the receipt of sanction and approval to the Scheme by the Ministry of Information and Broadcasting.

18. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western

Region, Mumbai and the Petitioner Company in Company Scheme Petition No. 33 of 2015 to pay cost of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

20. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. J. Kathawalla, J.)