IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.270 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.245 OF 2016

Crystal Sound & Music Private Limited ...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 271 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 246 OF 2016

Spectrum Broadcast Holdings Private Limited ...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 272 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 247 OF 2016

Music Broadcast Limited ...Petitioner Company

In the matter of the Companies Act 1 of 1956) (or re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 read with Sections 78, 100 to 103 of the Companies Act, 1956 (or any corresponding provision of Companies Act, 2013 as may be notified);

AND

In the matter of the Composite Scheme of Arrangement

Between

Jagran Prakashan Limited (Amalgamated Company)

And

Crystal Sound & Music Private Limited (Transferor Company 1)

And

Spectrum Broadcast Holdings Private Limited (Transferor Company 2)

And

Shri Puran Multimedia Limited (Demerged Company)

And

Music Broadcast Limited (Resulting Company)

And

their respective Shareholders And Creditors

Ms. Alpana Ghone i/b. Ms. Shruti Kelji for the petitioners.
Mr. Dharmesh Joshi for the Regional Director.
Mr. S. Ramakantha, Joint Director, present.
Mr. Bhavin Gada with Ms. Ketki Minhas i/b. M/s. H & M Legal Associates for Phonographic Performance Limited.
Mr. Sandeep Marne for The Indian Performing Right Society Limited.
Mr. Vinod Sharma, Official Liquidator present in Company Scheme Petition Nos. 270 and 271 of 2016.

Coram : A. K. MENON, J.
Date : 27th October, 2016

P.C.:-

1. Heard Counsel for the parties.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Composite Scheme of Arrangement between Jagran

Prakashan Limited (Amalgamated Company), Crystal Sound & Music Private Limited (Transferor Company 1), Spectrum Broadcast Holdings Private Limited (Transferor Company 2), Shri Puran Multimedia Limited (Demerged Company) and Music Broadcast Limited (Resulting Company) and their respective Shareholders And Creditors.

3. The First Transferor Company is engaged in the business of event management, on ground activation and promotional business. The Second Transferor Company is engaged in the business of programming and running FM & AM radio stations. The Amalgamated Company is engaged, inter alia, in the business of publication and event management. The Demerged and the Resulting Company are both engaged in the business of operating private FM radio station.

4. The proposed Composite Scheme of Arrangement between the Amalgamated Company and Transferor Companies and the Demerged Company and the Resulting Company would apparently enable consolidation of related businesses, bring cost synergies and better growth in revenues and profits and improve key financial ratios.

5. The Petitioner Companies have approved the Scheme of Amalgamation by passing necessary Board Resolutions which are annexed to the Company Scheme Petitions.

6. The Learned Counsel for the Petitioners states that the Petitioner Companies

have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the Order passed in Company Summons for Directions.

7. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petitioners have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements as required under the Companies Act, 1956/2013 and the Rules made thereunder. The said undertaking is accepted.

8. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Indian Performing Right Society Limited and Phonographic Performance Limited an unsecured Creditors of the Shri Puran Multimedia Limited (Demerged Company) have filed their objections in Company Scheme Petition No. 272 of 2016 filed by Music Broadcast Limited i.e. Resulting Company.

9. The Official Liquidator has filed his amended report on 28th September, 2016 in Company Scheme Petition No. 270 of 2016 and Company Scheme Petition No. 271 of 2016 and has stated that the business of the Transferor Company No.1 and Transferor Company No.2 have not been conducted in a manner prejudicial to its members or public interest. However, he has made some observations in paragraph Nos. 8 and 9 of his report.

10. As far as the observations made by Official Liquidator in his report pertaining to Transferor Company No.1 Crystal Sound and Music Private Limited are as follows :

a) *On review of the Loans and Advances given and Investments made by the Company, we observe that the company has made an aggregate loans and advances and investment of Rs.87.158 Crores as on 31-Mar-2015 in other companies, which amount is more than the aggregate of the paid up capital and free reserves of the company. As per the provisions of Sec 186 of the Companies Act, 2013, in case a company intends to invest in/give loans and advances to other company(ies) in excess of its paid up capital and free reserves, then it shall obtain the approval of its members for the same.*

The Company has taken approval for an aggregate amount for a maximum of Rs.50 Crores. As explained by the company the requirements of the erstwhile section 372A of the Companies Act, 1956 were not applicable to the company, being a private limited Company. Hence, no such resolution was passed w.r.t. the investments, which were made in the earlier year(s). However, since the Companies Act, 2013 does not provide for any exemption for the earlier year(s), approval taken under section 186 of the Companies Act, 2013 should be taken for the full amount outstanding as well as for any further investments made.

b) *While checking the books of accounts and other records, we observed that there is difference between the amount of Input Tax Credit of Service Tax as per books and as per the service tax return filed by the Company. The details in respect of the same are as under :*

As per Books :		
Account – Prepaid Service Tax	*1,85,72,262 Dr.*	
Account – CENVAT	*43,27,682 Cr.*	
Account – Service Tax Payable	*7,77,050 Dr.*	
Net Input available as per books		*1,50,21,630*
Input as per Service Tax Return		*8,70,420*
Difference		***1,41,51,210***

As explained, the difference is due to the reason that certain amount are being booked as Input credit in the books of accounts for which credit may not allowed for various reasons and hence the same was not reflected in the Return. It was explained that such excess as per books shall be written off in the current year.

c) *On analysis of the transaction entered into by the company with its related parties we observed a major chunk of the transactions have been entered into with related parties which as explained by the management was done on the basis of business prudence. However, as per the details provided by the management in Annexure – D, it can be seen that one of the major reason for the loss is that the transaction of* *revenue share of the Company received/ receivable from a related party are on a fixed lump sum basis which are significantly less to even cover the operating expenses incurred by the company leading to loss in the period under review. The economical reasons for keeping fixed amount of revenue as fixed despite the expenses being much higher are not known to us. This in our opinion, is prejudicial to the interest of the shareholders of the Company.*

11. As far as the observations made in the paragraph no. 8(a) of the Official Liquidator's Report are concerned, the Learned Counsel for the Transferor Company No.1 states that a Special resolution has been passed by its shareholders under section 186 of the Companies Act, 2013 authorizing loans/investments/guarantee upto Rs.500 Crores effective from 1st April, 2014. Copy of the resolution is annexed to the report of the Official Liquidator.

12. As far as the observations made in the paragraph no. 8(b) of the Official Liquidator's Report are concerned, the Learned Counsel for the Transferor Company No.1 states that as the said amount would not be available to it as CENVAT Credit, it has reconciled the differential amount of Rs.1,41,51,210/- into the Profit & Loss Account in the Financial Year ended 31/3/2016.

13. As far as the observations made in the paragraph no. 8(c) of the Official Liquidator's Report are concerned, the Learned Counsel for the Transferor Company No.1 states that all transactions with related parties were at arm's

length and in ordinary course of business and these transactions were business decisions made by the management of the Transferor Company No.1 after taking into consideration the interests of its shareholders. The Transferor Company No.1 states that it has complied with the requirements of all applicable laws and the question of prejudice to the interest of its members or those of the public do not arise. Further the Transferor Company No.1 is a closely held private company and all its shares are owned by Spectrum Broadcast Holdings Private Limited i.e. Transferor Company No.2. In view thereof, the said requirements mentioned in para no 8(a), to 8(c) shall be complied with by the Transferor Company No.1. In any event, the shareholders of the Transferor Company No.1 have issued a letter dated 2nd August, 2016 re-affirming the transactions of the Transferor Company No.1.

M/S. SPECTRUM BROADCAST HOLDINGS PRIVATE LIMITED (TRANSFEROR COMPANY NO.2)

14. As far as the observations made by Official Liquidator in his report pertaining to Spectrum Broadcast Holdings Private Limited Transferor Company No.2 are as follows :

d) On review of the Loans and Advances given and Investments made by the Company, we observe that the company has made an aggregate loans and advances and investment of Rs.185.92 Crores as on 31-Mar-2015 in other companies, which amount is more than the aggregate of the paid up capital and free reserves of the company. As *per the provisions of Sec 186 of the Companies Act, 2013, in case a company intends to invest in/give loans and advances to other company(ies) in excess of its paid up capital and free reserves, then it shall obtain the approval of its members for the same.*

The Company has taken approval for an aggregate amount for an maximum of Rs.150 Crores. As explained by the company the requirements of the erstwhile section 372A of the Companies Act, 1956 were not applicable to the company, being a private limited Company. Hence, no such resolution was passed w.r.t. the investments, which were made in the earlier year(s). However, since the Companies Act, 2013 does not provide for any exemption for the earlier year(s), approval taken under section 186 of the Companies Act, 2013 should be taken for the full amount outstanding as well as for any further investments made.

e) *We observed that the Company has taken interest bearing short term loans and has invested the same in long term investments which are not yielding any returns for the company. This in our opinion, may be prejudicial to the interest of the members of the Company as the company is incurring interest cost for funds borrowed but is earning from investing the same.*

f) *We observed that the Company has made investments of Rs.66.33 Crores in a related party M/s. Crystal Sound and Music (P) Ltd.,* *(CSMPL), in FY 2014-15. CSMPL is a loss making company and its net-worth has been eroded. The company cites business prudence as the reason for the investment however from the investment in a loss making company, the company may not be able to get any returns and the same in our opinion, may be prejudicial to the interest of the members Spectrum Broadcast holdings (P) Ltd.*

g) The Company has taken interest bearing loans in the form of ICD / Debentures and Loans from banks on which interest rate ranges from 10% to 15.5%. A major chunk of this amount is invested in long term Investments and Loans & Advances. The company has not received any return on these investments for the period covered under review, despite continuing to pay interest for the loans taken. This decisions, in our opinion, may be prejudicial to the interest of the members of Spectrum Broadcast Holdings (P) Ltd.

15. As far as the observations made in the paragraph 9(d) of the Official Liquidator's Report are concerned, the Learned Counsel for the Transferor Company No.2 states that a Special resolution has been passed by its shareholders under section 186 of the Companies Act, 2013 authorizing loans/investments/guarantee upto Rs.500 Crores effective from 1st April, 2014. A true copy of such resolution is stated to be annexed to the report of the Official Liquidator.

16. As far as the observations made in the paragraph 9(e) of the Official

Liquidator's Report are concerned, the Learned Counsel for the Transferor Company No.2 states that it has availed interest bearing short term loans and invested the same in long term investments which are not yielding fruitful returns. This was a business decision taken by the management of the Transferor Company No.2, with the intention of fetching adequate returns/gains in the long term and taking into consideration the interest of Transferor Company No.2's shareholders. Furthermore all its shares are owned by Jagran Prakashan Limited i.e. Amalgamated Company.

17. As far as the observations made in the paragraph 9(f) of the Official Liquidator's Report are concerned, the Learned Counsel for the Transferor Company No.2 states that the investment of Rs.66.33 Crores in Crystal Sound & Music Private Limited was a business decision taken by the management of the Transferor Company No.2 with the intention of fetching adequate returns/gains in the long term and taking into consideration the interests of the Transferor Company No.2 shareholders. Further the Transferor Company No.2 is a closely held private Company and all its shares are owned by Jagran Prakshan Limited i.e. Amalgamated Company.

18. As far as the observations made in the paragraph 9(g) of the Official Liquidator's Report are concerned, the Learned Counsel for the Transferor Company No.2 states that it was purely a business decision taken by the management of the Transferor company No.2 with the intention of fetching adequate returns / gains in the long term and taking into consideration the

interest of the Transferor Company No.2's shareholders and all its shares are owned by Jagran Prakash Limited i.e. Amalgamated Company.

In view thereof, the aforesaid requirements mentioned in paragraph 9(d) to 9(g) are complied with by the Transferor Company No.2. In any event, the shareholders of the Transferor Company No.2 have issued a letter dated 2nd August, 2016 re-affirming the transactions of the Transferor Company No.2.

19. It is submitted that the rights of the shareholders of the Transferor Companies are not prejudiced and hence the Transferor Companies be dissolved without being wound-up.

20. The Regional Director has filed an Affidavit on 28th June, 2016 stating therein, save and except as stated in paragraph 6(a) to (d), it appears to the Regional Director that the Scheme is not prejudicial to the interest of the shareholders and public. The aforesaid paragraph 6 reads as under:

Clause No.10.1.3 of the scheme provides that the difference between the aggregate of the recorded value of assets in the books of accounts of the Resulting Company over the aggregate of the recorded value of the liabilities in the books of accounts of the Resulting Company (i.e. net assets) and the aggregate face value of the equity shares allotted by the Resulting Company under Clause 10.1.2 shall be adjusted in the Securities Premium account directly in the Balance Sheet of MBL. As per sub-clause 10.1.4 of the scheme, the utilization of the security *premium by the resulting company to be effected as an integral part of the scheme. In this regard, on examination of the material papers submitted by the petitioner company, it appears that there will be no deficit arising out of the scheme consequently utilization of securities premium account does not warrant. In this regard the Resulting Company vide its letter dated 22nd June, 2016 clarified that:*

"there will be surplus arising and the said surplus will be transferred to Capital Reserve Account of the Resulting Company and hence there is no question of adjustment from Securities Premium Account of the Resulting Company copy of the said letter is annexed hereto and marked as Exhibit – "D".

In this regard the Petitioner Company may be directed to carryout necessary corrections in the scheme as well as petition suitably.

(a) It has been observed that, the Transferor Company / Demerged Company and Resulting Company have given notice to Ministry of Information and Broadcasting, Shastri Bhavan, New Delhi vide letter dated 10/12/2015. The Ministry of Information and Broadcasting vide their letter dated 26th May, 2016 advised the Petitioner Companies to get the approval from the respective High Court in first instance before seeking approval from that Ministry. In this regard the petitioner companies may be directed to obtain approval from the Ministry of Information and Broadcasting, before giving effect to the scheme.

(b) That the registered office of the Transferee Company and the Demerged Company are situated in the State of Uttar Pradesh. Hence the Transferee Company and Demerged Company have to file similar petitions before the Hon'ble High Court of Uttar Pradesh at Allahabad for approving the said scheme.

(c) That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company."

21. As far as the observations made in paragraph 6(a) of the Affidavit of the Regional Director are concerned, the Learned Counsel on behalf of the Petitioner Companies states that the Resulting Company vide its letter dated 22nd June, 2016 to the Regional Director had clarified that "there will be surplus arising out of the scheme of arrangement and the said surplus will be transferred to Capital Reserve Account of the Resulting Company and hence there is no question of adjustment from Securities Premium Account of the Resulting Company". The explanation provided by the Resulting Company appears to be satisfactory. The Learned Counsel for the Resulting Company states that there is no securities premium account in the Resulting Company.

In view thereof, the word "Security Premium Account" to be found in clauses 10.1.3, 10.1.4, 10.2.2 and 10.2.3 of the scheme was replaced with the word "Surplus" by way of amendment pursuant to the Order dated 13th October, 2016 passed by this Court.

22. As far as the observations made in paragraph 6(b) of the Affidavit of the Regional Director are concerned, the Learned Counsel on behalf of the Petitioner Companies undertakes to obtain approval from Ministry of Information & Broadcasting, New Delhi prior to giving effect to the present scheme.

23. As far as the observations made in paragraph 6(c) of the Affidavit of the Regional Director are concerned, the Petitioner Companies states that the Transferee Company as well as the Demerged Company have already filed appropriate Applications and Petitions before the Hon'ble Allahabad High Court, Uttar Pradesh. The Allahabad High Court has vide its order dated 22nd September, 2016 sanctioned the composite Scheme of Arrangement.

24. As far as the observations made in paragraph 6(d) of the Affidavit of the Regional Director are concerned, the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of scheme will be met and answered in accordance with law and they undertake to comply with all such requirements of law.

25. The Learned Counsel for the Regional Director on instructions of S.

Ramakantha, Joint Director (Inspection) in the office of the Regional Director states that they are satisfied with the undertakings given by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

26. The Learned Counsel for the Petitioner Companies states that the Authorised Share Capital of the Resulting Company has increased w.e.f. 16th October, 2015 from 4,20,00,000 Equity Share Capital of Rs.10/-each aggregating to Rs.42,00,00,000/- to 4,60,00,000 Equity Share Capital of Rs.10/- each aggregating to Rs.46,00,00,000/- and 50,000 Convertible Redeemable Preference Shares of Rs.10/- each aggregating to Rs.5,00,000/-, amended clause No.2.4.5 of the Scheme now reads as under:-

Particulars	Amount in Rupees
Authorised Capital	
46,000,000 Equity Share Capital of Rs.10/- each	460,000,000
50,000 Convertible Redeemable Preference Shares of Rs.10/- each	500,000
Total	**460,500,000**
Issued, Subscribed and Paid-up Capital	
41,917,767 Equity Share Capital of Rs.10/- each	419,177,670
Total	**419,177,670**

The said Clause No.2.4.5 of the Scheme has been amended pursuant to the Order dated 13th October, 2016.

27. The Learned Counsel for the Petitioner Companies have amended the Scheme as mentioned in paragraph Nos. 21 and 26 hereinabove in Clauses 2.4.5,

10.1.3, 10.1.4, 10.2.2 and 10.2.3 of the composite Scheme of Arrangement and any consequential amendments thereof. The said amendments were allowed vide order dated 13th October, 2016 and the re-verification was dispensed with.

28. During the hearing on 5th August, 2016 two creditors, Indian Performing Right Society (IPRS) and Phonographic Performances Limited (PPL) sought to oppose the scheme. They have filed affidavits in opposition. IPRS claims Rs.5,58,82,190/- from Shri Puran Multimedia Limited the demerged company towards royalty payments due from Radio stations owned by the demerged company whereas the scheme provides only for a claim of Rs.39,27,111/-

29. Mr. Marne the learned counsel appearing for IPRS submitted that IPRS has filed CS (OS) No.613 of 2010 in the Delhi High Court against the demerged company claiming Rs.5,58,82,190/-.

30. Mr. Bhavin Gada, the learned counsel appearing on behalf of on behalf of PPL opposed the scheme despite the fact that the claims made by the PPL would also be addressed by the aforesaid scheme and in particular the demerged company. Mr. Gada in support of his objections that his client's claim ought not to be brushed aside, relied upon a decision of the single judge and the division bench of the Madras High Court in ***G. V. Films Ltd., reported in (2009) 150 Comp Cas 415 (Mad) and (2010) 154 Comp Cas 252 (Mad)*** respectively. He relied upon the observations that consent of all the creditors would be necessary. In the present case the PPL

had not consented owning to its claims being unpaid over a period of time. Mr. Gada submitted that dispensation of the meeting with unsecured creditors sought Company Summons for Direction No.247 of 2016 is contrary to Section 101(2) of the Act and further that the revenue figures were suspect for various reasons set out in the affidavits filed on behalf of PPL

31. In two affidavit dated 6th September, 2016 of one Chirag Bagadia on behalf of the Resulting Company, it is stated that IPRS and PPL are unsecured creditors but the scheme proposes merging of the radio business of the demerged company into the Resulting Company and since that scheme was pending before the Allahabad High Court all applications should have been been made there. PPL has also filed a winding up petition against the demerged company in the Allahabad High Court. Ms. Ghone has today relied upon a copy of the order dated 22nd September, 2016 in Company Petition no.27 of 2016 and 28 of 2016 whereby the Allahabad High Court has allowed the company petitions. and in the said scheme provisions have been made to secure the interest of the IPRS and PPL under clauses 3.4 and 4.1 as a result of which all contingent liabilities of the radio business of the demerged company shall vest in the Resulting Company and that under clause 4.1 of the scheme if any suit or appeal or other proceeding whatsoever is pending against the demerged company and relating to the radio business the same shall not abate or be discontinued or in any way be prejudicially affected by the reason of the demerger. Accordingly the concerns of the IPRS & PPL are already addressed

in the said scheme. Mr. Marne since expressed satisfaction over the provisions made in the scheme to protect IPRS' suit claim. After considering these objections on behalf of IPRS and PPPL, I am of the view that the interests of PPL as IPRS have been taken into consideration in the scheme and there is no reason why the present scheme ought not to be allowed and I see no impediment in allowing these petitions.

32. From the material on record and the submissions and subject to the undertakings, the Scheme appears to be fair and reasonable and does not appear to be violative of any provisions of law or contrary to public policy.

33. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 270 of 2016, Company Scheme Petition No.271 of 2016 and Company Scheme Petition No. 272 of 2016 are made absolute in terms of prayer clauses (a) to (c).

34. The Petitioner Companies are directed to lodge a copy of this order and the amended Scheme along with the Form of Minutes 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 receipt of the order.

35. The Petitioner Companies are further directed to file a copy of this order along with a copy of the amended Scheme and Form of Minutes duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the

concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to physical copies as per relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

36. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai in Company Scheme Petition Nos. 270 of 2016 to Company Scheme Petition Nos. 272 of 2016 and pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay in Company Scheme Petition No. 270 of 2016 and 271 of 2016. Costs to be paid within four weeks from the date of the Order.

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

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

(A.K. MENON, J.)