

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 906 OF 2015**

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.774 OF 2015

**INDUSIND MEDIA & COMMUNICATIONS
LIMITED... ...Petitioner /Transferor Company**

AND

COMPANY SCHEME PETITION NO. 907 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.775 OF 2015

**PLANET E-SHOP HOLDINGS
INDIA LIMITEDPetitioner /Transferee Company**

IN THE MATTER OF COMPANIES ACT, 1956

AND

**IN THE MATTER OF SECTIONS 78,100 & 101,
391 AND 394 OF THE COMPANIES ACT, 1956**

AND

**IN THE MATTER OF SCHEME OF
ARRANGEMENT BETWEEN INDUSIND
MEDIA & COMMUNICATIONS LIMITED
WITH PLANET E-SHOP HOLDINGS INDIA
LIMITED AND THEIR RESPECTIVE
SHAREHOLDERS AND CREDITORS.**

CALLED FOR HEARING

MR.NIMISH PANDYA ,i/b PANDYA & CO ,ADVOCATE FOR PETITIONERS .

MR.M.S.CHUNAVALA i/b. MR. A.A.ANSARI FOR REGIONAL DIRECTOR IN BOTH PETITIONS

CORAM: K.R.SHRIRAM , J.

DATE : 4TH MARCH , 2016

PC:

1. Heard Learned Counsel for the parties. No objector has come before the Court to oppose the Scheme, nor has any party controverted any averments made in the captioned Petition.

2. The sanction of the Court has been sought under Sections 391 and 394, read with Section 78, 100 and 101 of the Companies Act, 1956, to the Scheme of Arrangement between INDUSIND MEDIA & COMMUNICATIONS LIMITED (Transferor Company) WITH PLANET E-SHOP HOLDINGS INDIA LIMITED (Transferee Company) and their respective shareholders and creditors .

3. The Learned Advocate for the Transferor Company, being the Petitioner in CSP No 906 of 2015 submits that the Transferor Company is primarily engaged in the business (a) providing transmission or retransmission of Broadcaster programming services to the subscribers through Digital Addressable Systems and (b) Broadband Service and the Transferee Company, being the Petitioner in CSP No 907 of 2015 is engaged in the business of distribution channels.
4. The purpose of the Scheme of Arrangement is more particularly set out in paragraph 3 of the Scheme of Arrangement is to leverage the business position and scale up the Broadband business by investing in technology, Broadband infrastructure and human resources. Through this the potential of the Broadband business can be fully exploited and it will enhance the shareholders' value and create a brand image for the Broadband business like other reputed players in the industry.
5. The Petitioner Companies have approved the Scheme of Arrangement in their respective Boards Meetings and extracts of the resolution passed in this regard are annexed to the respective Company Scheme Petition.
6. The Learned Counsel on behalf of the Petitioners has stated that they have complied with all requirements as per direction of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, the

Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and the Rules made thereunder. The said undertaking is accepted.

7. The Regional Director has filed his affidavit dated 22nd February, 2016, stating therein that save and except as stated in paragraph 6 of the affidavit, the Scheme is not prejudicial to the interest of shareholders and public. The paragraph No. 6 of the said affidavit reads as under:

6) “ *That the Deponent further submits that*

(a) it has been observed that the Ministry of Communication and IT , Department of Telecom is the Regulatory Authority regulating the business , undertaking and the license issued by Department of Telecom to the Transferee Company is subject to the approval of the competent authority from the Department of Telecom . The Petitioner company shall take appropriate steps in this regard .The Transferor Company vide its letter dated 01/01/2016 has intimated the Ministry of Communication and IT with respect to the scheme petition filed before the Hon’ble High Court , Mumbai. In this regard, separate notice has been issued to the said authority by this Directorate vide letter dated 01/02/2016 calling for their comments/views on the scheme to this Directorate within 2 weeks hereof.

b) This scheme is not a tax neutral scheme. In this regard , it is respectfully submitted that the Tax issue if any arising out of this

Scheme shall be subject to the 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.

8. As regards the observations at paragraph 6(a) of the Regional Director's Affidavit is concerned (a) the Learned Advocate has submitted that as per the Guidelines dated 20th February, 2016 issued by Government of India , Ministry of Communications and Information Technology , Department of Telecommunications for Transfer /Merger of various categories of Telecommunication service licenses/authorization under Unified License (UL) through compromises, arrangements and amalgamation of the companies , it is provided in clause 3(a) and (b) of the said guidelines as under :

a) The Licensor shall be notified for any proposal for compromise , arrangements and amalgamation of companies as filed before the Tribunal or the Company Judge .Further, representation/objection , if any, by the Licensor on such scheme has to be made and informed to all concerned within 30 days of receipt of such notice.

b) A time period of one year will be allowed for transfer/merger of various licenses in different service areas in such cases subsequent

to the appropriate approval of such scheme by the Tribunal/Company Judge.

(b) The Learned Advocate with respect to clause 3(a) above has submitted that the letter of intimation addressed by the Transferor Company to the Joint Secretary, Ministry of Communications and Information Technology, Department of Telecommunications dated 01.01.2016 , has been duly acknowledged by the Ministry of Communications and Information Technology , Department of Telecommunications on 28th January, 2016 and no objections have been raised by the said Regulatory Authority. The Learned Advocate undertakes that with respect to clause 3(b) of the said Guidelines, the Transferee Company shall take appropriate steps in this regard.

9. As regards the observations at paragraph 6(b) of the Regional Director's Affidavit is concerned , the Advocate of the Transferee Company undertakes that the Tax issue ,if any, arising out of this Scheme shall be subject to the 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 Transferee company after giving effect to the amalgamation . The decision of the Income Tax Authority is binding on the Transferee company. The said undertaking is accepted.

10. The Learned Counsel for Regional Director , on the instructions of Mr. 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 Petitioners . The above undertakings are accepted.
11. From the material on record, the Scheme of Arrangement appears to be fair and reasonable and is not violative to any provisions of law and is not contrary to public policy. None of the parties concerned has come forward to oppose the said Scheme.
12. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No.906 of 2015 filed by the Transferor Company and Company Scheme Petition No.907 of 2015 filed by the Transferee Company, are made absolute in terms of prayer clauses (a) to (d) of the respective petitions.
13. The Petitioner Companies are further directed to lodge a copy of this Order and the Scheme of Arrangement with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 (sixty) days from date of the order.

14. The Petitioner Companies are further directed to file a copy of this Order and the Scheme of Arrangement with the concerned Registrar of Companies alongwith E-form INC 28 in addition to physical copies as per the relevant provisions of the Companies Act, 1956 /2013.
15. The Petitioner companies in both petitions to pay costs of Rs.10,000/-each to the Regional Director,Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.
16. Filing and issuance of the Drawn up Order is dispensed with.
17. All authorities concerned to act on a copy of this Order alongwith the Scheme of Arrangement duly authenticated by the Company Registrar, High Court,Bombay.

(K.R.SHRIRAM J)

CERTIFICATE

“I certify that the Order uploaded is a true and correct copy of original signed Order “

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