

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH – V**

**COMPANY PETITION (CAA) NO. – 60/(ND)/2022
WITH
COMPANY APPLICATION NO. CA (CAA) 112/(ND)/2021**

Under Section 230-232 and other applicable provisions of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016)

IN THE MATTER OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF SCHEME OF AMALGAMATION OF:

HT MOBILE SOLUTIONS LIMITED

Hindustan Times House, 2nd Floor,
18-20 Kasturba Gandhi Marg,
New Delhi – 110001

... Transferor Company /Applicant Company No. 1

WITH

HT MEDIA LIMITED

18-20 Kasturba Gandhi Marg,
New Delhi – 110001

... Transferee Company/Applicant Company No. 2

Order Delivered On: 03.12.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Krishnendu Datta, Ld. Sr. Counsel, Adv. Kamal Shankar, Adv. Arjun Narang, Adv. Rahul Gupta

**C.P. (CAA) No. 60/(ND)/2022
With
CA (CAA) No. 112/(ND)/2021
Order Delivered on: 03.12.2024**

For the RD

: Adv. Shankari Mishra, Adv. Jyoti Khurana,

MEMO OF PARTIES

HT MOBILE SOLUTIONS LIMITED

CIN: U74900DL2009PLC187795

Registered Office at: Hindustan Times House, 2nd Floor, 18-20 Kasturba Gandhi Marg, New Delhi – 110001

... Transferor Company / Applicant Company 1

WITH

HT MEDIA LIMITED

CIN: L22121DL2002PLC117874

Registered office at: 18-20 Kasturba Gandhi Marg, New Delhi – 110001

... Transferee Company/Applicant Company 2

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The present Joint Petition is filed by the Petitioner Companies herein **HT MOBILE SOLUTIONS LIMITED (Transferor Company / Applicant Company No. 1)**, and **HT MEDIA LIMITED (Transferee Company/Applicant Company No. 2)** under Section 230-232 of the Companies Act, 2013 read with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and the National Company Law Tribunal Rules, 2016, for the purpose of the Sanction of the proposed Scheme of Amalgamation between the Transferor Company and the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred to as the “Scheme”), has been placed on record.
2. The Transferor Company/Applicant No. 1 i.e., HT Mobile Solutions Limited is a private limited company registered under the provisions of the Companies Act, 1956 vide CIN: U74900DL2009PLC187795, having its registered office at Hindustan Times House, Second Floor, 18-20 Kasturba Gandhi Marg, New Delhi -

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110001. Thus, the registered office of the Transferor Company is under the jurisdiction of this Tribunal. The authorized share capital of the Petitioner Transferor Company is Rs. 5,53,40,00,000/- divided into 55,34,00,000 equity shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the Transferor Company is Rs. 50,41,58,890/- divided into 5,04,15,889 equity shares of Rs. 10/- each. As stated by the Applicants, Transferor Company is a subsidiary company of the Transferee Company with Transferee Company holding 99.41% shareholding of the Transferor Company.

3. The Transferee Company/Applicant No. 2 i.e., HT Media Limited is public listed company registered under the provisions of the Companies Act, 1956 vide CIN: L22121DL2002PLC117874, presently having its registered office at 18-20 Kasturba Gandhi Marg, New Delhi - 110001. Thus, the registered office of the Transferee Company is under the jurisdiction of this Tribunal. Equity shares of HTML are listed on BSE and NSE. Further the non-convertible debentures ("NCDs") of the Transferee Company are listed on BSE. The authorised share capital of the Transferee Company is Rs. 72,50,00,000/- divided into 362,500,000/- equity shares of Rs. 2/- each. The present issued, subscribed and paid-up capital of the Transferee Company is Rs. 46,54,96,628 divided into 232,748,314 equity shares of Rs. 2/- each.
4. The Petitioner Companies submit that the proposed scheme of amalgamation of the Transferor Companies and Transferee Company would have the following benefits: -
 - (i) consolidation of businesses under the Transferee Company/ Applicant No.2 provides an increased capability to offer a wider portfolio of products and services to effectively address change in consumer preferences and market dynamics with a combined ability to integrate, innovate, customize, and bundle the offerings and services of the Transferee Company/ Applicant No.2 and the Transferor Company/ Applicant No. 1 under a single platform and creation of a synergized go to market strategy which shall result in building a sustainable business;

- (ii) consolidation of the Transferor Company/ Applicant No. 2 with the Transferee Company/ Applicant No. 1 would also result in simplification of the holding structure;
 - (iii) reduction in management overlaps and elimination of legal and regulatory compliances & associated costs due to operation of multiple listed and unlisted entities;
 - (iv) consolidation of businesses under the Transferee Company/ Applicant No. 2 thereby resulting in synergies, pooling of financial, managerial, technical, and human resources, thereby creating stronger base for future growth and value accretion for the stakeholders;
 - (v) consolidation of businesses under the Transferee Company/ Applicant No. 2 thereby resulting in savings of operational costs which has become critical for long term sustainability and will also lead to optimum utilisation of resources;
 - (vi) elimination of the need for inter-company transactions between the Transferor Company/ Applicant No. 1 and Transferee Company/ Applicant No. 2
 - (vii) post scheme, the Transferee Company/ Applicant No.2 would be in a better position to support and finance organic and inorganic expansion of the businesses;
 - (viii) post scheme, the Transferee Company/ Applicant No. 2 would be in a position to offer a bouquet of media platforms which result in value accretion for all the stakeholders.
5. The appointed date as fixed for the proposed scheme of Amalgamation is 01.04.2020 or such other date as may be directed by this Tribunal.
6. From the records, it is seen that the First Motion joint application was filed before this Tribunal vide CA(CAA)112/ND/2021 by three (3) Companies, namely Digicontent Limited (other Transferor), HT Mobile Solutions Limited (Transferor Company/ Applicant No. 1) & HT Media Limited (Transferee Company/ Applicant No. 2) and vide order dated 22.12.2021 read with order dated 03.02.2022 allowed the First Motion Application, Shareholders and Creditor of Applicant Company No.

1 and No. 2 have approved the aforesaid scheme of Amalgamation whereas, the said scheme was not approved by the requisite majority of the equity shareholders of M/s Digicontent Limited. Further, Next Mediaworks Limited having registered office in Mumbai was also one of the transferor company. The first motion application for Next Mediaworks Limited was filed before NCLT, Mumbai Bench and the same was allowed vide order dated 03.12.2021. The equity shareholders of the Next Mediaworks Limited have not approved the aforesaid scheme of Amalgamation.

7. The Tribunal vide order dated 27.05.2022 directed the petitioner companies to issue individual notices to the (i) Regional Director, Northern Region of Ministry of Corporate Affairs, (ii) Income Tax Department, (iii) Registrar of Companies, NCT of Delhi and Haryana, (iv) Official Liquidator, (v) Registrar of Chit Fund, and (vi) other Sectoral Regulators.
8. The Petitioner Companies were also directed to carry out publication in the newspapers. It is seen from the records that the petitioners have filed an Affidavit affirming compliance and disclosing that the applicants have effected publication in "Business Standard" (English, Delhi Edition) as well as "Business Standard" (Hindi, Delhi edition), both published on 14.06.2022. In addition to the public notice, notices were served on the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department, Ministry of Information and Broadcasting, New Delhi, BSE, NSE, SEBI and Registrar of Chit Fund, New Delhi.
9. The Observation letters issued by Bombay Stock Exchange and National Stock Exchange dated 13.08.2021 and 16.08.2021 respectively directed that the Transferee Company is not required to send notice for representation as mandated under Section 230(5) of the Companies Act, 2013 to NSE and BSE for its comments/observations/representations.
10. Pursuant to the notice issued to the Regional Director, Income Tax Department and Official Liquidator, they have filed their response/reply in the matter.
11. The Regional Director (RD) in its report dated 14.09.2022 has made certain observations with regard to the proposed scheme of Amalgamation among the

Petitioner Companies to which the Petitioner Companies have filed their response dated 23.09.2022 with respect to the said observations of the RD. The details of the same are summarised below:

Observation of the Regional Director in its affidavit dated 14.09.2022 as per Clause 30 of the ROC Report dated 26.07.2022	Reply of the Petitioner Companies dated 23.09.2022
<p>As per MCA General Circular no. 9/2019 dated 21.08.2019, if the appointed date is significantly ante-dated beyond a Year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest. In this case, the appointed date is 01.04.2020. However, the justification of the same being significantly ante-dated in terms of the above circular is not clearly brought out.</p>	<p>As regard to the observation 1 made in Paragraph 10 of this Report, the Petitioner companies submit before the Hon'ble NCLT that the Scheme has been approved by the Board of Directors of the Petitioner Companies on February 11, 2021, i.e. a date falling within one year from the Appointed Date of the Scheme. In terms of Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 every listed entity desirous of undertaking scheme of arrangement or involved in a scheme of arrangement is required to file the draft scheme with Stock Exchange(s) for obtaining Observation Letter or No-objection Letter, before filing such scheme with any court or Tribunal. Accordingly, to meet the above stated regulatory requirements, Transferor Company 1 had filed an application with the relevant stock exchanges, i.e., BSE and NSE on March 03, 2021, and March 05, 2021, respectively and Transferee Company filed an application with the stock exchanges, i.e., BSE and NSE on March 03, 2021. The No-Objection Letter from BSE and NSE was received only on August 13, 2021, and August 16, 2021, respectively, which has resulted in the Appointed Date of the Scheme to become ante-dated beyond one year at the time of filing of First Motion Application with Hon'ble NCLT, which was filed on September 08, 2021 upon receipt of No-Objection Letter from BSE and NSE. Petitioner Companies humbly submit to your good office that the delay beyond the control of the Petitioner Companies. Further, this delay is not against the public interest in any manner. Petitioner Companies humbly undertake and submit that Appointed Date as mentioned in the Scheme is in compliance with Section 232(6) of the Companies Act, 2013 and the requirements clarified vide circular No.7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>

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<p>In Digicent Limited (i.e. Transferor Company 1 in CA 112 of 2021), as per the report on the meeting of the shareholders furnished by the Satwinder Singh (Chairperson of the Meeting), in terms of the SEBI Circular (supra), the scheme shall not be considered as approved due to fact that 97.59 % of the public shareholders voted against the resolutions. The company may asked to clarify the same.</p>	<p>As regard to the observation 2 made in Paragraph 10 of the said Report, the Petitioner Companies submit that majority of the members of Digicent Limited (i.e. Transferor Company 1 in CA 112 of 2021) representing three- fourths in value have casted votes in the favour of the Scheme; but the votes casted by the public shareholders of Digicent Limited, in favour of the Scheme, were less than the number of votes cast by the public shareholders against it. Accordingly, the Scheme is not considered as approved by the equity shareholders of Digicent Limited in consonance to the circular no. CFD/DIL3/CIR/2017/21 dated March 10, 2017, issued by the SEBI. The report on the voting results of the meeting of equity shareholders of Digicent Limited were submitted to Hon'ble NCLT vide an affidavit on April 11, 2022. The Petitioner Companies humbly undertake and submit that Digicent Limited is no longer a petitioner company in the present scheme under petition no. CP(CAA)/60/230/232/ND/2022 and is not being amalgamated with the Transferee Company, since Part B of the Scheme stands automatically revoked and cancelled.</p>
<p>As per audited financial statement of the HT Mobile Solutions Limited (i.e. Transferor Company 3 in CA 112 of 2021) for the F.Y. 2020-21, it is seen that the company has shown in its balance sheet shares pending issue amounting to 1,496 lacs. A clarification may be sought from the company regarding compliance of section 42 and Chapter V of the Companies Act, 2013.</p>	<p>As regard to the observation 3 made in Paragraph 10 of the said Report relating to shares of 1,496 lacs pending issue as per the balance sheet of Transferor Company 3 (i.e. HT Mobile Solutions Limited) as on March 31, 2021. The Petitioner Companies humbly submit that Clause 8 of the present Scheme disclosed the fact that the scheme of amalgamation ("Previous Scheme") of Firefly e-Ventures Limited, HT Digital Media Holdings Limited, HT Education Limited, HT Learning Centers Limited, India Education Services Private Limited and Top movies Entertainment Limited (Transferor Companies under the Previous Scheme) with HT Mobile Solutions Limited (Transferee Company under the Previous Scheme) under Company CP(CAA)-9/2020 connected with CA(CAA)-72/ND/2020 was pending for being approved by the Hon'ble NCLT. Clause 8 of the present Scheme further states that amalgamation of HT Mobile Solutions Limited with HT Media Limited under the present petition CP(CAA)/60/230/232/ND/2022 before the Hon'ble NCL T shall come into effect after</p>

	<p>giving effect to the Previous Scheme. The Petitioner Companies humbly submit that Hon'ble NCLT New Delhi Bench had, by way of an order dated May 11, 2021, sanctioned the Previous Scheme. The said Previous Scheme became effective on June 07, 2021. HT Mobile Solutions Limited had disclosed shares pending issue under the Previous Scheme amounting to INR 1,496 lacs under note 9 and 38 of the financial statements for the period ended March 31, 2021 (FY 2020-21). The table depicts the computation of the same as under:</p> <table border="1" data-bbox="823 633 1425 808"> <thead> <tr> <th>Particulars</th> <th>Amount (INR)</th> </tr> </thead> <tbody> <tr> <td>Shares to be issued pursuant to merger</td> <td>4,713 lacs</td> </tr> <tr> <td>Shares to be cancelled pursuant to merger</td> <td>(3,217) lacs</td> </tr> <tr> <td>Net effect in the share capital</td> <td>1,496 lacs</td> </tr> </tbody> </table> <p>On Previous Scheme becoming effective on June 07, 2021, HT Mobile Solutions Limited has issued the shares to the shareholders of the transferor companies under the Previous Scheme in accordance with the Previous Scheme. Hence, as on date, there are no shares pending allotment in HT Mobile Solutions Limited, Transferor Company 3 herein</p>	Particulars	Amount (INR)	Shares to be issued pursuant to merger	4,713 lacs	Shares to be cancelled pursuant to merger	(3,217) lacs	Net effect in the share capital	1,496 lacs
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Net effect in the share capital	1,496 lacs								
<p>No Consent/NOC is attached by the Digicontent Limited (i.e. Transferor Company 1 in CA 112 of 2021) from the relevant stock exchange Board, as the company is a listed company.</p>	<p>As regard to the observation 4 made in Paragraph 10 of the said Report, the Petitioner Companies humbly submit before the Hon'ble NCLT that consent/ NOC from BSE & NSE was obtained by Digicontent Limited on August 13, 2021, and August 6, 2021, respectively and was duly filed with the Hon'ble NCLT along with the first motion application CA 112 of 2022 at page nos. 1129 to 1132. A copy of said NOC is enclosed herewith as Annexure 2. However, as stated in to observation 2 above, Digicontent Limited is no longer a petitioner company in the present petition no. CP(CAA)/60/230/232/ND/2022 and is not being amalgamated with the Transferee Company under the present Scheme.</p>								
<p>The auditor of the Digicontent Limited (i.e. Transferor Company 1 in CA 112 of 2021) has qualified his audit report for the F.Y.2020-21, basis of qualification as under: We draw attention to Note 37 to the standalone financial statements, which explains that the Company, basis the financial information as per its last audited financial statements for</p>	<p>As regard to the observation 5 made in Paragraph 10 of the said Report in relation to the auditors' qualification, the Petitioner Companies humbly submit before the Hon'ble NCLT that as stated in observation 2 above, Digicontent Limited is no longer a petitioner company in the present petition no. CP(CAA)/60/230/232/ND/2022 and is not being amalgamated with the</p>								

<p>the year ended 31 March 2020, holds not less than 90% of its net assets in the form of investment in equity shares and loans in/ to group companies and its investments in the equity shares in the group companies constitute not less than 60% of its net assets. However, as per the aforesaid financial statements, the Company did not satisfy the income criterion of principal business criteria as defined by the Reserve Bank of India (RBI) of being classified as a Non-Banking Financial Company (NBFC). Further, till 31 March 2020, the Company did not carry on any other financial activity referred to in Section 451(c) and 451 (f) of the Reserve Bank of India Act, 1934. in this context, the status of the Company is under discussion with RBI i.e. whether it is a NBFC since it does not satisfy the income criterion of principal business criteria and further whether it should be registered as a Systemically Important Core Investment Company (SI-CIC) as per the conditions as stated in the master Direction – Core Investment Companies (Reserve Bank) Directions, 2016, as amended (Regulations) issued by the RBI, since it holds total assets of not less than Rs. 100 Crore and holds public funds as at 31 March 2020. The Company has filed various letters with the RBI and provided unaudited provisional Balance sheet and Income statement as at 31 December registered as a NBFC and SI-CIC since it does not meet the criteria as per the financial statements for the year ended 31 March 2020. However; RBI vide letter dated 23 March 2021, has stated that it appears that the Company qualifies to be a NBFC and it is required to apply for certificate of registration as a NBFC or merge with another NBFC/non- financial company or wind up the business of NBFC. The Management is of the view that the RBI has not fully considered the Company's contentions as detailed in various letters submitted earlier with the RBI, before arriving at the conclusion. The Company vide letter dated 9 June 2021, has submitted its representation to the RBI, wherein, the Company has reiterated that the Company</p>	<p>Transferee Company under the Scheme. Therefore, this observation is not relevant in context of the present scheme of amalgamation of HT Mobile Solutions Limited with HT Media Limited which is the subject matter of the present petition.</p>
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<p>does not fulfil principal business criteria to be classified as a NBFC or register as a SI-CIC and in any case the Company has drawn up a scheme of merger for merging the Company and its two other fellow subsidiary companies with HT Media Limited (a Non-Financial Company and a fellow subsidiary) for which the scheme has been approved by the Board of Directors in February 2021 and filed with the stock exchanges in March 2021 for approval Pending resolution of this matter, we are unable to comment on the impact thereof, if any, on the standalone financial statements for the year ended 31 March 2021. We conducted our audit in accordance with the Standards on Auditing (SAs) specified under section 143(10) of the Act. Our Responsibilities under those SAs are further described in the auditors Responsibilities for the Audit of Standalone Financial Statements section of our report. We are independent of the company in accordance with the Code of Ethics issued by the Institute of Chartered Accountants of India together with the ethical requirements that are relevant to our audit of the standalone financial statements under the provisions of the Act and the Rules 81 DIGICONTENT LIMITED Standalone Financial Statements for period 01/04/2020 to 31/03/2021 there under, and we have fulfilled our other ethical responsibilities in accordance with these requirements and the Code of Ethics. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our qualified opinion on the Standalone financial statements.</p>	
<p>The auditor of the Transferee Company in his audit report for the F.Y. 2020-21, has provided the list of disputed dues of Income tax and services tax and such dispute is pending before the Govt. Authorities. The auditor of the Transferee Company in his audit report for the F.Y. 2020-21, has mentioned "Other Matter" which are as under"</p>	<p>As regard to the observation 6 made in Paragraph 10 of the said Report, the Petitioner Companies humbly undertake and submit before the Hon'ble NCLT that the auditors had disclosed this factual information on pending proceedings of FY 2020-21 against Transferee Company as a part of its responsibility to report on specified matters in the Companies Auditor's Report Order, 2020 and the auditor had not made any adverse/ negative remark. The pending proceedings against the Transferee Company will continue against the Transferee Company and shall not be impacted</p>

	by the amalgamation of HT Mobile Solutions Limited with HT Media Limited under the Scheme.
We did not audit total assets of Rs. 2,111 lakhs as at 31 March 2021 and total revenues of Rs. Nil lakhs for the year then ended, included in the standalone financial statements in respect to HT Media Employee Welfare Trust not audited by us, whose financial information has been audited by another auditor and whose report has been furnished to us. Our opinion on the standalone financial statements, to the extent they have been derived from such financial statements is based solely on the report of such other auditor. Our opinion on the standalone financial statements and our report on Other Legal and Regulatory Requirements below, in not modified in respect of the above matter.	As regard to the observation 7 made in Paragraph 10 of the said Report, the Petitioner Companies humbly undertake and submit before the Hon'ble NCLT that the auditor has just disclosed a fact regarding that some part of the financials of the Transferee Company has been audited by other auditor. This statement of fact is a statutory requirement under auditing standard SA-600 (Using the Work of Another Auditor) and had not made any adverse/ negative remark. Further, this observation shall have no effect on the functioning of the Transferee Company and shall have no impact or effect on the amalgamation of HT Mobile Solutions Limited with HT Media Limited under the Scheme.
The auditor of the HT Mobile Solutions Limited (i.e. Transferor Company 3 in CA 112 of 2021) in his audit report for the F.Y. 2020-21, has mentioned "Emphasis Matter" which are as under" We draw attention to Note 38 of the financial statements which describes the accounting for the Scheme of Amalgamation between Firefly e-Ventures Limited (FEVL), HT Digital Media Holdings Limited (HTDH), HT Education Limited (HTEL), HT Learning Centers Limited (HTLC), India Education Services Private Limited (IESPL) and Top Movies Entertainment Limited (TMEL) ("Transferor Companies') with HT Mobile Solutions Limited (HTMSL) ("Resulting Company'). The Scheme has been approved by the National Company Law Tribunal (NCLT) vide its order dated 11 May 2021 and a certified copy has been filed by the Company with the Registrar of Companies, NCLT of Delhi, on 7 June 2021. Though the appointed date as per the NCLT approved Scheme is 1 April 2020, as per the requirements of Appendix C to Ind AS 103 Business Combination, the combination has been accounted for as if it had occurred from the beginning of the preceding period in the financial statements. Accordingly, the amounts for the financial year ended 31	As regard to the observation 8 made in Paragraph 10 of the said Report, the Petitioner Companies humbly submit before the Hon'ble NCLT that as per clause 8 of the Scheme, amalgamation of HT Mobile Solutions Limited with HT Media Limited under the present petition CP(CAA)/60/230/232/ND/2022 before the Hon'ble NCLT shall come into effect after giving effect to the Previous Scheme (scheme amalgamation) (HTMS scheme) of Firefly e-Ventures Limited, HT Digital Media Holdings Limited, HT Education Limited, HT Learning Centers Limited, India Education Services Private Limited, and Topmovies Entertainment Limited with HT Mobile Solutions Limited). As stated in observation 3 above, the Previous scheme has already been sanctioned by Hon'ble NCLT New Delhi Bench on May 11, 2021 and became effective on June 07, 2021. This observation is a statement of fact which is disclosed by the auditor as "Emphasis Matter" in compliance with applicable auditing standards and the auditor had not made any adverse / negative remark. The effect of the sanction of Previous Scheme shall be considered on the amalgamation of HT Mobile Solutions Limited with HT Media Limited as mentioned in Clause 1.5.3, 8 and 9.1 of the present Scheme.

<p>March 2021 include the impact of the Business Combination for the entire year and the corresponding amounts for the previous year ended 31 March 2020 have been restated by the Company after recognizing the effect of the amalgamation as above. The aforesaid note (Note 38) also describes in detail the impact of the business combination on the financial statements. Our opinion is not modified in respect of this matter.</p>	
<p>The Transferee company may kindly be directed to comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013 in regard to fee payable of its revised Authorized Share Capital.</p>	<p>As regard to the observation 9 made in Paragraph 10 of this Report, Petitioner Companies undertake and confirm before the Hon'ble NCLT that the setting off of fees paid by the Transferor Company on its authorized Share Capital shall be in accordance with the provision of Section 232(3)(i) of the Companies Act, 2013. Further, balance/ differential fee and stamp duty, if any, after setting-off the fees already paid by the Transferor Company on its authorized share capital, shall be paid by the Transferee Company on the increased authorized share capital subsequent to the amalgamation.</p>

12. The Official Liquidator has filed its report dated 14.09.2022, wherein no specific objection has been raised against the approval of the Scheme. Further, the OL submitted in its report 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.
13. In Income Tax Department's report dated 15.09.2022 (for Transferor Company), and 15.09.2022 (for the Transferee Company), no specific objection was raised with respect to the proposed Scheme of Amalgamation between the Petitioner Companies.
14. The petitioner companies have filed the affidavit-cum-undertaking dated 09.11.2022, stating that the Transferee Company undertakes to pay all outstanding tax dues (present and future) or demands raised by the Income Tax Department against the Transferee Company, as and when payable as per law.
15. This Tribunal vide its Order dated 20.10.2021 in CA(CAA) No. 112 of 2021 directed the Petitioner Companies to file an additional affidavit disclosing about the pendency of any investigation/legal proceedings against the Petitioner Companies.

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The Petitioner Companies, in compliance of the Order dated 20.10.2021, have filed an affidavit dated 08.11.2021 disclosing the pendency of legal proceedings instituted by or against the Petitioner Companies. The Petitioner Companies states that no proceedings under the Companies Act, 2013 or the Companies Act, 1956 are pending against the Transferor Company. It is further stated there exists various pending proceedings against the Transferee Company pertaining to either labour, taxation, or general disputes (such as suit for damages/ injunction). Though said proceedings have no bearing over the functioning of the Transferee Company and that the pendency of such proceedings have no impact/ effect on the proposed Scheme.

16. Certificates of Statutory Auditor of the petitioner companies, has 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 read with Rule 7 of the Companies Accounts Rules, 2014 and Companies (Accounting Standards) Amendment Rules, 2016, and other generally accepted accounting principles in accordance with the Companies Act, 2013, as applicable.
17. It has also been affirmed in the petition that the Scheme is in the interest of all the Petitioner Companies including their shareholders, creditors, employees and all concerned. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the present Scheme.

Earlier order of this Tribunal

18. This tribunal vide its order dated 23.02.2023 dismissed the present petition on the ground that shareholders of one of the Transferor Company had not approved the proposed scheme. Relevant extract of order dated 23.02.2023 is reproduced below:

“8. From the submissions of the Petitioner Companies and upon perusal of documents, we observe that the first motion Company Scheme Application i.e., C.A.(CAA)/112/2021 was jointly filled by Page 7 of 8 3 Applicant Companies i.e., M/s. Digicontent Limited, M/s. HT Mobile Solutions Limited and M/s. HT Media

Limited. However, since the shareholders of one of the Applicant Company i.e., M/s. Digicontent Limited had not approved the Scheme, the remaining Petitioner Companies i.e., M/s. HT Mobile Solutions Limited and M/s. HT Media Limited had jointly filed the Company Scheme Petition before this Tribunal seeking the approval of the proposed scheme of Amalgamation. However, the proposed detailed “Scheme of Amalgamation” between the present petitioner companies for which sanction of this Tribunal is sought (annexed as Annexure-1 at pg. 52-93 of the Company Scheme Petition) relates to amalgamation between M/s. Digicontent Limited (Transferor Company No.1), M/s. Next Mediaworks Limited (Transferor Company No.2 jurisdiction in Mumbai), M/s. HT Mobile Solutions Limited (Transferor Company No.3) with HT Media Limited (Transferee Company). However, as the shareholders of M/s. Digicontent Limited had rejected the proposed scheme, it cannot be comprehended, how the approval can be granted to the Scheme which involves all three companies.”

Order of Hon’ble NCLAT

19. Thereafter the Petitioner Company have preferred the Appeal bearing Comp. App. (AT) No. 74 of 2023 under section 421 of the Companies Act, 2013 read with Rule 11 of the National Company Law Appellate Tribunals Rules, 2016 against the order dated 23.02.2023 of this Tribunal. The Hon’ble NCLAT vide its order dated 12.03.2024 set aside the aforesaid order dated 23.02.2023 and directed to revisit the petition in light of observations of RD. the Hon’ble NCLAT has referred to Clause 1.2.2 and Clause 23.1 of the scheme which read as under:

“1.2.2. Notwithstanding, anything contained in this Scheme, if for any reason any Part of this Scheme being Part B or Part C or Part D of the Scheme is found to be unviable or unworkable qua the relevant Transferor Company or cannot be effected together with other Parts of the Scheme in a consolidated manner including on account of non-approval of the Scheme by the Appropriate Authority or by requisite majority of the shareholders of the relevant Transferor Companies, the same shall not, unless decided otherwise by the Boards of the Transferee Company and other Transferor Companies, affect the validity or implementation of the other Parts of this Scheme. For avoidance of doubt, it is hereby clarified that each part of this Scheme being Part B or Part C, or Part D, are severable and can be made effective independently along with the applicable clauses of this Scheme as contained in

Part A, Part E and Part F of this Scheme, subject to Clause 22 of this Scheme. It is further clarified that for the purpose of Part A, Part E and Part F of this Scheme, the term Transferor Company or the Transferor Companies shall be construed accordingly.”

“23.1. In the event any of the sanctions and approvals as referred to in Clause 22 of the Scheme is not obtained or complied with or satisfied, or, if for any other reason, any Part of this Scheme cannot be implemented, such Part of this Scheme shall automatically stand revoked, cancelled and be of no effect, save and except in respect of any act or deed done prior thereto as is contemplated hereunder, or as to any rights and liabilities which might have arisen or accrued pursuant thereto, and which shall be governed and be preserved or worked out as is specifically provided in the Scheme or as may otherwise arise in law. It is hereby clarified that the non-receipt of approvals, as mentioned above, shall not, unless decided otherwise by the Boards of the relevant Transferor Companies and Transferee Company, affect the validity or implementation of the other Parts of this Scheme”

Hon’ble NCLAT in Para 8-9 of the Order dated 12.03.2024 has stated as under:

“8. Thus in terms of clause 1.2.2 and 23.1 of the scheme, it is urged Part B and C dealing with amalgamations of Digicontent and NMW with HT Media, stood automatically revoked and cancelled, having no effect as regard to the implementation of the other parts of the scheme viz. part D.

9. In the light of the relevant provisions of the scheme, the appellants moved the second motion under Sections 230-232 of the Companies Act read with Rule 15 of the CAA Rules seeking sanction of the scheme with respect to HTMS and HT Media, i.e. the scheme excluding parts B and C thereof. The operative portion of the prayer clause in the second motion is as follows:

"The Transferor Company/Applicant No.1 and Transferee Company/Applicant No. 2 therefore pray:

***A.** Sanction the Scheme of Amalgamation of HT Mobile Solutions Limited i.e., the Transferor Company with HT Media Limited i.e., the Transferee Company as per Annexure-1 and declare the same to be binding with effect from the Appointed Date i.e. 1 April 2020 on the Applicant Companies, their shareholders, creditors and all concerned without any further act, deed or thing; and*

- B. Pass orders for the dissolution of the Transferor Company without the process of winding up; and*
- C. Pass such other/further order(s) as this Hon'ble Tribunal may deemed, fit and proper;”*

Further the Hon'ble NCLAT in its order dated 12.03.2024 in paras 13-16 stated that:

“13. Even otherwise, section 231(1) (b) of the Companies Act duly empowers the Ld. NCLT to exercise discretion to “give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement”. The Ld. NCLT was thus duly vested with sufficient powers under the Companies Act, to even partly sanction the scheme.

14. During the argument, the reliance was also placed on ‘Rama Investment Company Pvt. Ltd. vs. Ankit Mittal’ wherein vide order dated 07.09.2022 in Civil Appeal Nos. 2022-2023/2022 the Hon'ble Supreme Court was pleased to set aside the order of this Tribunal and confirm the scheme of amalgamation in part as approved by the Ld. NCLT.

15. Admittedly, OL as well as IT department have given no objections for the partial acceptance of the scheme.

16. In the aforesaid circumstances, while setting aside the impugned order dated 23.02.2023 we direct the Ld. NCLT, New Delhi Bench to revisit the application of second motion in the light of the observations made by this Tribunal above and after considering the observations/clarifications of Regional Director, may dispose of the petition in accordance with law within six weeks from the date of communication of this order.”

20. Thus, in compliance of Hon'ble NCLAT order dated 12.03.2024, this tribunal directed the petitioner companies to issue notice to Regional Director, Official Liquidator and the Income Tax Department. The Income Tax Department and the Official Liquidator have already recorded their no objection before the Hon'ble NCLAT in its order dated 12.03.2024.

21. After the Hon'ble NCLAT order dated 12.03.2024, RD has filed an affidavit dated 12.08.2024 in which they have stated *“The Ld. NCLT was thus duly vested with sufficient powers under the Companies Act, to even partly sanction the scheme.”* and *“That keeping in view of the submissions made above, the Hon'ble Tribunal may*

consider sanctioning the scheme of amalgamation or may pass such order / orders as deem fit and proper in the facts and circumstance of the case.” Further, The Petitioner vide order dated 25.09.2024 undertake to comply with all the statutory requirements of Section 230-232 of the Companies Act, 2013.

22. Since the earlier order of this tribunal dated 23.02.2023 that dismissed the present petition is based on context that first motion application C.A.(CAA)/112/2021 was jointly filed by M/s. Digicontent Limited, M/s. HT Mobile Solutions Limited and M/s. HT Media Limited and the shareholders of one of the applicant company i.e., M/s. Digicontent Limited had not approved the proposed scheme. However, the Hon'ble NCLAT in its order dated 12.03.2024 categorically dealt this issue and observed that the scheme of amalgamation with respect to M/s. Digicontent Limited stands automatically revoked and cancelled in view of Clause 1.2.2 and Clause 23.1 of the Scheme. Hon'ble NCLAT further stated that the NCLT is vested with sufficient powers under the Companies Act to even partly sanction the scheme. In the light of Hon'ble NCLAT order, we have considered the matter and after taking into account subsequent report of the RD, we find there is no impediment in approving the scheme. Thus, in view of above observations the sanction is hereby granted to the Scheme in respect of amalgamation of M/s. HT Mobile Solutions Limited and M/s. HT Media Limited, under Section 230 to 232 of the Companies Act, 2013 with the following directions: -

- (i) The Petitioners shall however remain bound to comply with the statutory requirements in accordance with the law.
- (ii) 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 in accordance with the law, against the concerned persons, directors and officials of the petitioners.
- (iii) 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.

23. This Tribunal further directs with respect to the Transferor Company and the Transferee company, that:

- (i) The proposed scheme has 01.04.2020 as the Appointed Date. Thus, we prescribe 01.04.2020 as the Appointed Date.
- (ii) Upon the sanction becoming effective from the appointed date i.e., 01.04.2020, the Transferor Company shall stand dissolved without undergoing the process of winding up.
- (iii) All contracts of the Transferor Company, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;
- (iv) All the employees of the Transferor Company shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favourable than those on which they are engaged by the Transferor Company, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;
- (v) All liabilities of the Transferor Company, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.

- (vi) All proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company, if any.
- (vii) Any person interested or effected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

24. Further, the 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 shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Company shall be consolidated accordingly.
25. In compliance with the requirement of Section 232 (7) of the Act, the transferee company shall until the full implementation of the Scheme of Amalgamation shall file a statement every year in the Form CAA 8 along with the required fees with the Registrar of Companies as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.
26. The petition stands disposed of in the above terms.

Let a copy of the order be served to the parties.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)