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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
SINGLE BENCH, CHENNAI**

CP/123/CAA/2018  
[TCA/157/CAA/2017]

Under Section 230 to 232 of the Companies Act 2013

In the matter of Scheme of Amalgamation

Between

**M/s. Real Image LLP**  
(Transferor LLP)

With

**M/s. Qube Cinema Technologies Private Limited**  
(Transferee Company)

And

**THEIR RESPECTIVE PARTNER, SHAREHOLDERS AND  
CREDITORS**

Order delivered on: 11<sup>th</sup> June 2018

**CORAM**

**CH. MOHD SHARIEF TARIQ, MEMBER (J)**

For the Petitioner(s): Mr. Naveen Kumar Murthi, *Counsel*  
Mr. G.V Mohan Kumar, *Counsel*

**ORDER**

Per: CH. MOHD SHARIEF TARIQ, MEMBER (J)

1. Under Consideration is a Joint Company Petition i.e CP. No 123/CAA/2018 filed under Section 230 to 232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and National Company Law Tribunal Rules, 2016. The instant Petition pertains to the proposed Scheme of Amalgamation.

by virtue of which M/s. Real Image LLP (hereinafter referred to as '**Transferor LLP**') are proposed to be amalgamated and vested with M/s. Qube Cinema Technologies Private Limited (hereinafter referred to as '**Transferee Company**') as a going concern.

2. The Transferor LLP viz. M/s. Real Image LLP is incorporated on 04.01.2016 under the provisions of the LLP Act, 2008 having its registered office at No. 42, Dr. Ranga Road, Mylapore, Chennai-600004, Tamil Nadu. The Transferee Company viz. M/s. Qube Cinema Technologies Private Limited, is a private limited company, incorporated on 12.01.2017 under the Companies Act 2013, and has its registered office at No. 42, Dr. Ranga Road, Mylapore, Chennai-600004, Tamil Nadu.

3. Both, the Transferor LLP and Transferee Company (Hereinafter Jointly referred as '**Petitioner Companies**') are engaged in the business of establishing and or acquiring Audio and Video Laboratories for Recording, Re-recording, Mixing, Editing, Computer Graphics and

Special Effects for Film, Television, Video and Radio Productions etc.

4. This Bench vide its Order date 12.01.2018, in TCA/157/CAA/2018, dispensed with the convening the meeting of the Partners of Transferor LLP and directed to convene the meetings of the members, equity shareholders and creditors of the Transferee Company. The petitioner Companies have complied with all the Orders passed by this Bench.

5. The Counsel appearing for the Petitioner Companies submitted the reasons and circumstances leading to and justifying the proposed Scheme of amalgamation, which is beneficial for the Companies concerned, including their members and creditors. He has submitted that the Scheme would consolidate the business operations and provide efficient management control and system.

6. The Scheme provides that the whole of the undertaking of the Transferor LLP comprising its business, all assets and liabilities of whatsoever nature and wherever situated,

including all rights, title and interest in the immovable properties shall be transferred to the transferee company as a going concern.

7. The Regional Director, Southern Region (for short, '**RD**') in his Affidavit dated 18.05.2018 submitted that Clause 10 of the Scheme of the Companies provides for the protection of the interest of the employees of the transferor LLP.
8. The RD further submitted that as per the report of RoC, Chennai, Transferor LLP and the Transferee Company are regular in filing its statutory returns. There is no prosecution filed, no complaints pending and no inspection/investigation has been conducted against the Petitioner Companies.
9. The Official Liquidator (In short, '**OL**') in his Report dated 15.05.2018, has submitted that as per Order dated 12.01.2018, he has nominated M/s. Arun & Balu, Chartered Accountants, Chennai, who is one of the empanelled Auditors by the Hon'ble High Court of Madras to look into the Scheme of Amalgamation and to scrutinize

the books and accounts of the Transferor LLP. The Auditor has broadly reviewed and observed that under Clause 10.1 of Part-II of the proposed Scheme, the interests of all employees in the service of the Transferor LLP are safeguarded. He has submitted that as per Clause 5.1 of Part-II of the Scheme, Transferee Company shall issue and allot 24,62,225 equity shares of Rs. 10/- each to the partners of the Transferor LLP in the ratio in which each partner holds capital in the Transferor LLP. Pursuant to issue and allotment of above shares, the investment held by transferor LLP in the Capital of Transferee Company shall stand adjusted/cancelled.

10. The OL has stated that the Chartered Accountant have examined the audited Balance Sheet and Profit and Loss Accounts, books of accounts, records, registers, etc., of the Transferor LLP and reported that the Transferor LLP maintains the books of accounts as stipulated under Section 23(4) of the LLP Act, 2008.

11. The OL has further submitted that the chartered accountants have concluded that the books of accounts of

the Transferor LLP have been made in compliance with accepted accounting principles and the accounts have been complied with as required by law. The affairs of the Transferor LLP were not conducted in a manner which is prejudicial to the interest of its members, creditors or to the public interest, nor were any transactions, which would attract the provision of Section 542 of the Companies Act , 1956/ 339&340 of the Companies Act, 2013.

12. As per Clause 6, Part II of the Scheme of Amalgamation all the proposed accounting treatment is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.
13. All the statutory compliances have been made under Section 230 to 232 of the Companies Act 2013 but the important question that arises for consideration in the present Company Petition is whether a Limited Liability Partnership can be allowed to amalgamate with a Private Limited Company under a Scheme of Amalgamation filed before the National Company Law Tribunal.

14. The Counsel for the petitioner Companies submitted that Sections 60 to 62 of the LLP Act 2008 and Sections 230 to 234 of the Companies Act 2013 deal with the merger, amalgamation and arrangements. The wordings used in both these provisions are almost identical and both the Acts empower only the National Company Law Tribunal to sanction the scheme proposed by the LLP or Company. He has further submitted that under Section 394(4)(b) of the Companies Act 1956, there was no bar for a transferor in a Scheme of Amalgamation to be a body corporate including a LLP. The underlying rationale was to ensure that the resultant company out of a scheme of amalgamation is only a company as defined under the companies Act and such prohibition was not imposed on the transferor. However, Section 232 of the Companies Act 2013 does not contain the same clause as had been stipulated under Section 394(4)(b). He further submitted that Section 234 of the Companies Act 2013 permits that the foreign company may merge into a Company registered under the Companies Act 2013 or vice versa and the foreign company as defined under the said section, within

its ambit, also includes a body corporate incorporated outside India including a foreign LLP. Therefore, as per section 234, foreign LLP and Indian Company can merge with each other but such benefit has not been provided under Section 232 of the Companies Act 2013 for permitting an Indian LLP to merge with an Indian Company.

15. After hearing the counsel for the petitioners, it is concluded that the legislative intent<sup>is</sup> ~~is~~ behind enacting both the LLP act 2008 and The Companies Act 2013 is to facilitate the ease of doing business and create a desirable business atmosphere for companies and LLPs. For this purpose, both the Acts have provided provisions for merger or amalgamation of two or more LLPs and Companies. The issue involved in the present petition has been categorically dealt with by the Companies Act 1956 but there is no specific provision in the Companies Act 2013. Therefore, this is the clear case of *casus omissus*. If the intention of the parliament is to permit a foreign LLP to merge with an Indian Company, then it would be wrong



to presume that the Act prohibits a merger of an Indian LLP with an Indian Company. Thus, there does not appear any express legal bar to allow/sanction merger of an Indian LLP with an Indian Company.

16. There is no additional requirement for any modification and the said Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. Taking into consideration the above facts, the Company Petition is allowed and the Scheme of Amalgamation annexed with the Petition is hereby sanctioned which shall be binding on the partner, shareholders, creditors and employees of the Companies. The Scheme shall become effective from the date on which the certified copy of this order sanctioning the scheme is filed with the ROC, Chennai.


17. While approving the Scheme as above, it is clarified that this Order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to

be obtained or, even compliances that may have to be made as per the mandate of law. The Transferee Company is directed to file the amended MoA and AoA with the RoC, Chennai, for his records.

18. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

19. A certified copy of this Order shall be filed with the concerned Registrar of Companies within 30 days of the receipt of the Order.

20. The Transferor LLP shall be dissolved without winding up from the date of the filing of the certified copy of this Order with the Registrar of Companies.

21. Upon receiving the certified copy of this Order, the RoC, Chennai, is directed to send all documents relating to the Transferor LLP to the Transferee Company, so that the 

files relating to the Transferor LLP could get consolidated with the files and records of the Transferee Company.

22. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14<sup>th</sup> December, 2016.

23. Accordingly, the Scheme stands sanctioned and CP/123/CAA/2018 **stands disposed of.**

Vishnu

  
**(CH. MOHD SHARIEF TARIQ)**  
MEMBER (JUDICIAL)