

March 09, 2018

National Stock Exchange of India Limited

Exchange Plaza, C-1 Block G
Bandra Kurla Complex, Bandra (E)
Mumbai – 400051

BSE Limited

Phiroze Jeejeebhoy Towers
Dalal Street
Mumbai – 400001

Ref: Bharti Airtel Limited (532454 / BHARTIARTL)

Sub: Update on Scheme of amalgamation between Telenor (India) Communications Private Limited and Bharti Airtel Limited and their respective shareholders and creditors and your observation letter dt May 31, 2017

Pursuant to Regulation 30(7) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, we are pleased to inform you that Hon'ble National Company Law Tribunal, New Delhi, Principal Bench vide its order dated March 08, 2018, has sanctioned the Scheme of amalgamation between Telenor (India) Communications Private Limited and Bharti Airtel Limited and their respective shareholders and creditors under Sections 230 to 232 of the Companies Act, 2013.

As you will note from the certified order "the approval of this Tribunal is conditional upon the requisite sanction and approval in accordance with the prescribed guidelines for transfer / merger of various categories of telecommunication services license / authorization under Unified License (UL) on compromise / arrangement and amalgamation of companies by DoT".

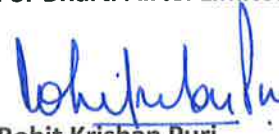
A certified copy of the order is enclosed.

Kindly take the same on record.

Thanking you,

Sincerely Yours,

For Bharti Airtel Limited


Rohit Krishan Puri
Dy. Company Secretary
Enc: a/a



Bharti Airtel Limited

(a Bharti Enterprise)

Regd. & Corporate Office: Bharti Crescent, 1, Nelson Mandela Road, Vasant Kunj, Phase II, New Delhi - 110 070

T.: +91-11-4666 6100, F.: +91-11-4166 6137, Email id: compliance.officer@bharti.in, www.airtel.com

CIN: L74899DL1995PLC070609

FREE OF COST COPY

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

Coram: CHIEF JUSTICE (RETD.) M.M. KUMAR, HON'BLE PRESIDENT
SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

CAA – 313(PB)/2017

CONNECTED WITH

COMPANY APPLICATION NO. CA (CAA)-81(PB) OF 2017

IN THE MATTER OF THE COMPANIES ACT, 2013
(UNDER SECTIONS 230-232 OF THE COMPANIES ACT, 2013)

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

OF:

TELENOR (INDIA) COMMUNICATIONS PRIVATE LIMITED
(PETITIONER COMPANY 1/ TRANSFEROR COMPANY)

AND

BHARTI AIRTEL LIMITED
(PETITIONER COMPANY 2/ TRANSFEREE COMPANY)

AND

Their respective Shareholders and Creditors



MEMO OF PARTIES

TELENOR (INDIA) COMMUNICATIONS PRIVATE LIMITED

CIN: U64200DL2012PTC231991

A Company Incorporated under the provisions of The Companies Act, 1956

Having its registered office at:

DBS Business Center,

First Floor, World Trade Tower, Barakhamba Lane,

Connaught Place, New Delhi – 110001

.....Petitioner Company 1/ Transferor Company

WITH

BHARTI AIRTEL LIMITED

CIN: L74899DL1995PLC070609

A Company Incorporated under the provisions of The Companies Act, 1956

Having its registered office at:

Bharti Crescent, 1 Nelson Mandela Road,

Vasant Kunj, Phase II, New Delhi – 110070

.....Petitioner Company 2/ Transferee Company

PRESENT:

For Petitioners:

Mr. Arun Kathpalia, Sr. Advocate

Mr. Sanjiv Puri, Sr. Advocate

With

Mr. V.P. Singh, Advocate

Mr. Bharat Apte, Advocate

Mr. Rushil Oberoi, Advocate

Mr. Shantanu Tiwari, Advocate

For

AZB & Partners, Advocates & Solicitors



For RD (NR), MCA:

Mr. Manish Raj, Company Prosecutor

For OL, Delhi:

Mr. Amish Tandon and Mr. Ajeyo Sharma, Advocates

For Income Tax Dept:

Ms. Lakshmi Gurung, Advocate

Ms. Easha Kadian, Advocate

Mr. Omkar Singh, Advocate

For UOI:

Mr. Kamal Kant Jha, Sr. Panel Counsel for DOT

ORDER

DELIVERED ON: 08/03/2018

1. This petition filed by the companies above named is coming up finally before us on 26.09.2017 for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of amalgamation of the Petitioner Company 1/ Transferor Company with the Petitioner Company 2/ Transferee Company. A perusal of the petition discloses that initially the application seeking the dispensation/ convening of the meetings of shareholders, secured and unsecured creditors were filed before this Tribunal in Company Application CA (CAA)-81 (PB) of 2017. The Tribunal vide its order dated 28.07.2017 after delineating the relevant particulars of both the companies including its capital base and objects for which these companies have been incorporated and for sake of brevity not repeated in the present order, however the order is annexed as Annexure "A" to the instant order, was pleased to dispense with the requirement of convening the meetings of the Equity shareholders and the secured creditors of the Transferor Company and also the meeting of the secured creditors of the Transferee Company in view of their consents having been obtained and produced before it or there was none therefore the necessity of convening the meeting did not arise as the case may be. In relation to the unsecured creditors of the Transferor Company and Equity shareholders as well as unsecured creditors of the Transferee Company, the Tribunal directed the Petitioner Companies to convene the respective meetings. In compliance with the order of this Tribunal, the meetings were convened and according to the report of the chairperson, 99.99% of the value of the unsecured creditors of the Transferor Company voted (in person or by proxy or by authorized representative) in favour of the proposed scheme of amalgamation. In relation to the Transferee Company, the voting was conducted through Poll papers, E-voting and Postal Ballot. Accordingly, 99.98% of the value of the equity shareholders and 100% of the value of the unsecured creditors of the Transferee Company voted in favour that the scheme should be approved.



2. Under the circumstances, the petitioners have filed their joint petition for sanction of the Scheme of Amalgamation before the Tribunal, subsequent to the order of dispensation and convening of the meeting ordered by the Tribunal on 28.07.2017 and compliance of the same by the respective companies involved in the scheme.
3. As per the Scheme marked at Annexure-1, some of the salient features of the scheme are extracted as under:-

2. Transfer of Assets

2.1 Upon this scheme becoming effective and with effect from the Appointed Date, all assets of the Transferor Company, as are movable in nature or are in corporeal property or are otherwise capable of transferred by manual delivery or by endorsement and delivery shall stand transferred to and vested in the Transferee Company and shall become the property and an integral part of the Transferee Company (to the extent permissible under applicable law). The vesting pursuant to this clause 2.1 shall be deemed to have occurred by manual delivery or endorsement and delivery, as appropriate to the property being vested and titled to the property shall be deemed to have been transferred according.

3. Transfer of Liabilities

3.1 Upon this scheme becoming effective and with effect from the Appointed Date, all liabilities of the Transferor Company, shall, without any requirement of a further Act or deed, be transferred to, or be deemed to be Transferred to the Transferee Company so as to become from the appointed date, the liabilities of the Transferee Company and the Transferee Company undertakes to meet, discharge and satisfy the same.

10 Issue of Shares

10.1 Upon this scheme becoming effective, the Transferee Company shall, without requirement of any further act or deed,



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issue and allot the Transferee merger shares to Telenor Singapore and shall take all such steps as required for the purposes of listing and receiving the final trading approval for the Transferee merger shares, within a reasonable period of time. The Transferee merger share shall be issued by the Transferee Company, free from all liens, charges, equitable interest, encumbrances and other third party rights of any nature whatsoever.

4. On 17.10.2017 the Tribunal ordered Notice in the Second Motion petition in Company Petition No. (CAA)-313 (PB) 2017 moved by the petitioners under Sections 230-232 of the Companies Act, 2013 read with Rules in connection with the scheme of amalgamation, to the Registrar of Companies, Regional Director, Income Tax Department, Official Liquidator, National Stock Exchange, Bombay Stock Exchange, Competition Commission of India, Securities and Exchange Board of India, Reserve Bank of India, Department of Telecommunication, Ministry of Electronics and Information Technology and to such other sectoral regulatory authorities. The Petitioners were also directed vide said order to carry out publication in the newspapers namely "The Indian Express" in English (Delhi Edition) and "Jansatta" in Vernacular (Hindi, Delhi Edition).



5. The petitioners, it is seen from the records have filed an affidavit dated 24.11.2017 in relation to the compliance of the orders passed by the Tribunal dated 17.10.2017 and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the Tribunal in one issue of the 'Indian Express' in English edition on 07.11.2017 and 'Jansatta' Hindi edition on 07.11.2017. Further, it has also been stated in the said affidavit that notices have been served by hand to the Regional Director (NR, MCA), Registrar of Companies (NCT of Delhi & Haryana), Office of the Official Liquidator, Income Tax Department through Asst. Commissioner of Income Tax, National Stock Exchange of India Limited, Bombay Stock Exchange Limited, Competition Commission of India, Securities and Exchange Board of India, Reserve Bank of India, Department of Telecommunications as well as Ministry of Electronics and Information Technology in compliance with the directions

passed by this Tribunal vide order dated 07.11.2017 and in proof of the same acknowledgement made by the respective offices have also been enclosed.

6. Further, since the Transferee Company is a listed company, having its shares listed in National Stock Exchange of India Limited (NSE) and Bombay Stock Exchange Limited (BSE), notice has been order vide order dated 17.10.2017 to SEBI, NSE and BSE by the Petitioner/ Transferee Company on 09.11.2017. However none of these authorities have chosen to respond to the said notices. However it is represented that both the NSE and BSE vide their respective observation letters both dated 31.05.2017 prior to filing of the 1st motion application before this Tribunal have granted No Objection so as to enable the Company to file the draft scheme before this Tribunal. A copy of the letters issued by NSE and BSE are placed on record.
7. In addition to the above, upon notice, the Competition Commission of India vide its order dated 30.05.2017, after considering the facts on record and undertaking given by Transferee Company (herein) regarding its compliance with the prescribed market shares as per the DOT Merger Guidelines, opined that the proposed Combination would not likely to have an appreciable adverse effect on competition in India and hence approved the same. A copy of the order passed by CCI dated 30.05.2017 is placed on record.
8. Further, the counsel of the Income Tax Department has filed a report before this Tribunal on 20.12.2017 stating its observations. In respect of Transferee Company, the Income Tax Department has no objection to the proposed scheme of amalgamation. In so far as the report pertains to the Transferor Company, the Income Tax Department have made the following observation:-



"In this regard, it is to kindly intimate that the assessee company has an outstanding demand of Rs. 367.20 crores for the A.Y. 2014-15 u/s 143(3). Out of this the department has recovered Rs. 50.93 crores. The balance demand was stayed by the Hon'ble Delhi High Court till the disposal of 1st Appeal [CIT(A)]. Now that the Ld. CIT(A) has

passed an order confirming the addition made by the AO the total outstanding demand along with applicable interest now stand due to the assessee. This information is being imparted for further transmitting the information regarding the outstanding demand as mentioned above”

9. In response to the observation made by the Income Tax Department, the Ld. Counsel for the petitioner companies have submitted that on 21.12.2017, the Income Tax Appellate Tribunal (ITAT) had stayed the outstanding demand for the A.Y. 2014-15 on the condition that the Transferor Company (herein) shall deposit Rs. 10 Crores in two installments viz. first on or before 10.01.2018 of Rs. 5 Crores and second on or before 25.01.2018 of Rs. 5 Crores. Pursuant to the directions of the ITAT, the company deposited both the installments vide challan dated 03.01.2018 and 04.01.2018 drawn on HDFC Bank. A copy of the stay order passed by ITAT along with the copy of challans are placed on record. It is further represented by the Learned Sr. Counsel appearing on behalf of the Petitioner Companies that in the event of the above said appeals going against the assessee/ Transferor Company by virtue of clause 7.1 of the Scheme, the tax liability will become that of the Transferee Company and born by it. Reference to clause 7.1 of Part B of the Scheme it is seen reads as follows :-

“7.1 Upon this scheme becoming effective and with effect from the appointed date, all taxes and duties payable by the Transferor Company (including under the IT Act, Customs Act, 1962, Central Excise Act, 1944, State Sales Tax Laws, Central Sales Tax Act, 1956, VAT/Service tax and all other Applicable Laws) accruing and relating to the Transferor Company from the appointed date onwards, including but not limited to advance tax payments, tax deducted at source, minimum alternate tax, any refund and claims shall, for all purposes, be treated as advance tax payments, tax deducted at source or refunds and claims, as the case may be, of the Transferee Company.”



It is also seen from the joint reply filed by the Petitioner Companies to the report of the Official Liquidator an undertaking to the following effect has been given at paragraph no. 14 to the following effect:-

14. That it is lastly submitted that as already provided under Clause 3.1 of Part B of the Scheme, the Transferee Company hereby undertakes to meet and discharge any tax liabilities in accordance with the applicable law, that stand transferred to it from the Transferor Company pursuant to the proposed amalgamation and that the proposed amalgamation shall not prejudice the rights of the Revenue Authorities to take appropriate recourse for recovering the existing or previous tax liabilities of the Transferor Company from the Transferee Company, in accordance with applicable law.

The above undertaking is taken on record. The Learned Sr. Counsel also points out that the financial position of the Transferee Company is very sound and it has consolidated revenues of INR 1,009,373 million (100937.3 crore) for the financial year ended March 31, 2016 against which the tax demand is only Rs. 316.27 crores.

10. The Official Liquidator, upon notice, has filed an affidavit dated 16.11.2017 which includes paragraph 14 extracted supra and in paragraph 13 has made the following observation:

"That as per information submitted by the petitioner companies there are disputed tax liability in case of Transferor and Transferee company."



11. In response to this observation of OL, the petitioner companies have filed a joint reply dated 07.12.2017, in which they have stated that upon the Scheme becoming effective and with effect from the Appointed date, all the liabilities shall stand transferred to the Transferee Company in terms of Clause 3 of Part B of the Scheme i.e., Transfer of Liabilities and the Transferee Company undertakes to meet, discharge and satisfy the same. Further it is

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submitted that the net worth of the Transferee Company was approx. Rs. 9,88,90,20,00,000/- as on 31.10.2017 and this pre – amalgamation net worth is sufficient to cover any disputed tax liabilities of the Transferor Company. Further by virtue of the above said report of the OL it is also brought to the notice of the Tribunal at Paragraph 14 that the Official Liquidator has not received any complaint against the proposed scheme of amalgamation from any person/ party interested in the scheme in any manner till date of filing of this report and again at paragraph 16 it is reported that the OL is of the view that the affairs of the Transferee Company does not appear to have been conducted in a manner prejudicial to the interest of the members or public interest. The above observation of OL are taken on record and in relation to the tax arrears since it has been dealt with elsewhere in the order the said observation for the sake of brevity is not considered here.

12. In relation to the Regional Director, Northern Region an Affidavit dated 10.11.2017 has been filed before the Tribunal wherein the following observations at paragraph 10 which is as follows:-

"10. It is respectfully submitted that the Registrar of Companies at para 31 of his report has inter alia stated as under:

"It has been observed that the Transferor Company had accumulated losses of Rs.56, 753 million as on 31.03.2017 and thus completely eroded its net worth. Further, its auditor has also provided following qualified opinion on the said Balance Sheet:-

a) The Company has entered into a definitive agreement to combine its operations with Bharti Airtel Limited by way of 'Scheme of amalgamation' under the terms of section 230 to 232 of the Companies Act, 2013. The proposed Transaction is inter alia, subject to other regulatory and statutory approvals including but not limited to approvals from the DOT, Government of India & NCLT. Since the company is in the process of executing the proposed Transactions, it has not performed impairment assessment of its property, plant and equipment including capital work in progress of Rs.11,973 Mn and intangible assets of Rs.41,404 Mn as at 31.03.2017, 'Impairment of Assets'. In the absence of adjustment appropriate audit evidence in



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this regard, we are unable to comment on the quantum of adjustment that they may be required in the carrying value of net fixed assets (network equipment and spectrum) of the company as stated in its financial statements.

b) The company has continued to incur losses in the twelve months period ended 31.03.2017, has accumulated losses of Rs.56, 753 Mn and continued erosion of net worth of this date and net current liabilities of Rs. 29,408 Mn. The company has estimated sum of Rs. 60,408 Mn to fund its capital and operating requirements over the next twelve months. Though the shareholders of the company intend to arrange the funding requirements as stated above until the Proposed Transaction is consummated, they have not provided any commitments/ guarantee to arrange such funding. These conditions indicate the existence of material uncertainty that they may cast significant doubt on the company's ability to continue as a going concern;

c) On November 27, 2013, the company had acquired a business through Business Transfer Agreement (STA') on a going concern basis from United Wireless (Tamil Nadu) Private Limited ('the Acquiree). As part of business transfer, the company is required to pay all demands due to Department of Telecommunication (DoT) on behalf of the Acquiree. As per the Supreme Court Order dated February 15, 2013, operators who continued to operate till the date of the said Order, are required to pay spectrum fees post cancellation of licences. The Acquiree has received a demand notice on February 14, 2017 with respect to the said Order of Rs. 7,701 Mn including interest of Rs. 2,839 Mn. Based on legal assessment carried out by the company, it believes that the DN is not tenable and, has not recorded such charge in these financial statements. As the matter is subject to interpretation and litigation, we are unable to comment on the matter



including the extent of its impact on licence fees charge as at 31.03.2017 and net loss for year then ended;

Considering above said qualified opinion, the auditors have concluded that these conditions indicate the existence of material uncertainty that may cast significant doubt on the company's ability to continue as a going concern. The above facts together with Implementation Agreement and the proposed Scheme of Amalgamation thereon prima facie indicate that post amalgamation, the net worth of the Transferee Company may be reduced with carried forwarded losses of the Transferor Company. As the Hon'ble Tribunal has directed these companies to convene and hold separate meetings of the unsecured creditors of the Transferor Company and equity shareholders, secured and unsecured creditors of the Transferee Company for obtaining approval of the proposed Scheme of Amalgamation, thus, the report of this office has been prepared on the basis of Company Application moved by the companies under reference and subject to outcome of such meetings of equity shareholders and creditors of the respective companies."



The Deponent respectfully submits that the observations of Registrar of Companies may be taken into consideration and the petitioner companies may be directed to clarify the same."

13. In response to this observation of RD, the petitioner companies have filed a joint reply dated 06.12.2017 stating that all concerned stakeholders have duly approved the Scheme and the amalgamation envisaged thereof. It is further submitted that the pre - amalgamation net worth of the Transferee Company is sufficient to cover the losses of the Transferor Company that shall stand transferred pursuant to the Scheme. In that regard Ld. Sr. Counsel for the Petitioner Companies has placed reliance on the decision rendered by the Hon'ble High Court of Rajasthan in the matter of *M/s. Sistema Shyam Teleservices Limited and M/s. Reliance Communication Limited* [2016]199CompCas136(Raj) which is as follows:-

“In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited (1995) 5 SCC 499], a three judge bench of the Apex court held that a company court does not exercise appellate jurisdiction over a scheme, and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the scheme and to ensuring that neither any law has been violated or public interest compromised in the process. It was held that where a majority of shareholders (in the aforesaid case 99.64% as against 99.88% in the present case) approved the valuation in respect of the transaction under the scheme as best judges of their interest fully conversant with market trends, their judgment should not be interfered with by the court for the reason that it is not a part of judicial function to examine entrepreneurial activities and ferret out flaws.

It is well settled that the court evaluating the scheme, of which sanction is sought under sections 391 to 394 of the Act of 1956 will not ordinarily interfere with the corporate decision of a company approved by its shareholders and creditors in court convened meetings unless it can be shown that the scheme is not fair, just and reasonable or that it is in contravention of statutory provisions and/or public interest.”



The above observation apply on all fours to the facts of the present case and in the absence of any circumstances being shown that the scheme is not fair, just and reasonable or that it is in contravention of statutory provisions and for public interest the decision of the shareholders or creditors who have overwhelmingly voted in favour of the scheme should be upheld and in the circumstances the said objection of Regional Director is closed.

14. It shall be noted that pursuant to Guidelines issued by Ministry of Communication and Information Technology, Department of Telecommunication (DOT), dated 20.02.2014 for transfer/ merger of various categories of Telecommunication service Licenses/ authorization under Unified License (UL) on compromise/ arrangement and amalgamation of Companies

that the licenser shall be notified for any proposal for compromise, arrangement and amalgamation of companies as filed before the Tribunal or the Company Judge. At the 1st motion stage itself were directions sought to be issued for the purpose of convening the meeting of the shareholders/ creditors of the Petitioner Companies, it is seen that an advance notice had been served upon DOT (Department of Telecommunication) and based upon such submission by the Petitioner companies of the scheme of arrangement to the DOT on 02.06.2017 and 05.06.2017 as is evident from the separate letters/ replies both dated 05.07.2017 addressed to Petitioner companies sent by the Ministry of Communication, Department of Telecommunication (DOT) and also thereafter, by way of a corrigendum issued dated 20.07.2017 to its previous letters dated 05.07.2017. Upon a perusal of the same, the relevant excerpts from the letter of which all extracted hereunder are to the following effect:-

"3. On detailed examination of scheme, it may be noted that as per clause 6.4(ii) (b) of UL Licence, proposed scheme of amalgamation shall be effective only after the written approval of the licenser for transfer/merger of licences and the same is already conveyed to you vide this office letter of even no. dated 12.04.2017. Excerpts of relevant clause of UL is reproduced below:-

"6.4 (i) (b) Whenever amalgamation or restructuring i.e. merger of demerger is sanctioned and approved by the High Court or Tribunal as per law in force; in accordance with the provisions; more particularly Sections 391 to 394 of Companies Act, 1956; provided that scheme of amalgamation or restructuring is formulated in such a manner that it shall be effective only after the written approval of the licenser for transfer/merger of licences, and.."



Merging entities has to ensure for the compliance of the above said clause.

Further, it may be noted that relevant clause 3(b) of M&A guidelines Dt. 20.02.2014 on this matter as under:-

"3(b) A time period of one year will be allowed for transfer/merger of various licences in different service areas in such cases subsequent to the appropriate approval of such scheme by the Tribunal/ Company Judge."

4. Consequent upon fulfilment of above said essential condition, transfer/merger of Licence consequent to proposed scheme of amalgamation will be subject to further following condition:-

a. Further, proposed scheme(s) shall be governed by terms and conditions of UASL/ISP/UL License, Guidelines for grant of UL dated 19.08.2013 & amendments from time to time, Merger & Acquisition guidelines dated 24.09.2015 and Guidelines for Spectrum trading dated 12.10. 2015 amended time to time.

b. All dues relating to the licenses of the merging entities will have to be cleared by either of the two parties before issues of the permission for transfer of licences consequent to merger of companies.

c. The resultant entity i.e. M/s Bharti shall be responsible to clear all demands raised / to be raised by any wing of DoT including the penalties imposed/ to be imposed on Transferor Company/ Transferee Companies. The resultant entity undertakes to pay all future dues inclusive of anything remained unpaid of the past period by the M/s Bharti & Telenor.

d. The transfer/merger of licenses/ authorization held by M/s Telenor shall be permitted after the merger is sanctioned and approved by NCLT as per Law in force; in accordance with the provisions, more particularly sections 391 to 394 of the Companies Act, 1956 or Companies Act 2013 as the case may be.

e. Retention of spectrum by the merged entity and the spectrum charges payable shall be governed by the guidelines in force at the



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time of the transfer of the licences. It is clarified that the validity period of the spectrum shall remain unchanged subsequent to such transfer of assets/ licences/ authorisation held by the Transferor (acquired) / Transferee Company (acquiring).

f. The resultant entity should have up to 25% spectrum and 50% spectrum in a given band allocated to all licensees in respective service area. If, as a result of merger, the total spectrum held by the relevant entity is beyond the limits prescribed, the excess spectrum must be surrendered within one year of the permission being granted.

g. Market share of resultant entity should not be greater than 50% of total market share based on AGR and Subscriber base. In case the merger or acquisition or amalgamation proposals results in market share in any service area(s) exceeding 50%, the resultant entity should reduce its market share to the limit of 50% within a period of one year from the date of approval of merger or acquisition or amalgamation by the competent authority.

h. Merging entities has to clear the liabilities of quashed Licences of M/s Unitech Group Company including the OTSC demands (Rs.770.1583 Crores). In case of judicial intervention, clause 3(i) and 3(m) of M&A guideline dt.20.02.2014 shall apply.

i. Consequent to transfer of assets/ licences/authorisation held by transferor(acquired) company to the transferee (acquiring) company, the licences/ authorisation of transferor (acquired) company will be subsumed in the resultant entity

5. Resultant entity has to ensure the securitisation of deferred payment amounting to Rs. 200, 45, 84,952/- (Instalment amount of spectrum auction).



6. It is also informed further that the issuance of this letter should not be taken as the approval of proposal for transfer/merger of licences/authorisation consequent to the merger/amalgamation of companies. Proposal for transfer/ merger of licences/authorisation may be submitted afresh after the sanction/approval of the Scheme of merger/amalgamation by the concerned NCLT as the case may be."

15. Further, upon notice at the 2nd motion stage, DOT has filed an affidavit dated 11.12.2017 which seeks to bring on record letters of the DOT dated 05.07.2017 alongwith the corrigendum dated 20.07.2017 that the transfer/ merger of license shall be subject to certain conditions mentioned in detail in the said letters.

16. That on the date of hearing on 08.01.2018 before this Tribunal, it was sought that the conditions as stated in the letter issued by DOT may be required to be fulfilled before the approval of the scheme so that it may become the part of the order. Accordingly, DOT was directed to elaborate and substantiate conditions recorded in the said letters dated 05.07.2017 with regard to evaluation of the un-listed portion of the spectrum belonging to the Telenor (India) Communication Pvt. Ltd (Transferor Company) and other issues related to the Appointed Date as mentioned in the scheme which according to Section 232(6) has to be accorded sanctity.

17. That pursuant to the directions of the Tribunal, the Department of Telecommunication (DOT) has filed a detailed affidavit dated 18.01.2018 before this Tribunal elaborating the conditions recorded in the said letters. The excerpts of the affidavit in tabulated form which are as follows:-

DEMANDS RAISED BY THE DOT AGAINST THE MERGING ENTITIES	SUBMISSIONS MADE BY DOT AGAINST THE DEMANDS
(a) License Fee (LF) Demands towards M/s Bharti Airtel Limited – Rs 8310.53 Crores	Demands based on the AGR are sub-judice before Hon'ble Supreme Court and the court in its order dated 29.02.2016 has recorded that the demands will continue to be raised as

	per the department's understanding. However, the same will not be enforced as per order dt 29.02.2016
(b) Spectrum Usage Charges Demands towards M/s Bharti Airtel Limited – Rs. 1528.06 crores	Demand cannot be enforced as per order dated 29.02.2016
(c) License Fee (LF) Demands towards M/s. Telenor (India) Communication Pvt. Ltd – Rs. 817.96 Crores	Demand cannot be enforced as per order dated 29.02.2016
(d) Spectrum Usage Charges Demands towards M/s Telenor (India) Communication Pvt Ltd – Rs. 54.49 Crores	Demand cannot be enforced as per order dated 29.02.2016
(e) One Time Spectrum Usage Charges (OTSC) towards M/s Unitech Wireless (Tamilnadu) Private Limited for the extended period of use of spectrum after quashing of the Licenses by the Hon'ble Supreme Court – Rs. 770.16 Crores.	Hon'ble TDSAT vide order dated 03.03.2017 has directed that no coercive action be taken on this matter.
(f) One Time Spectrum Usage Charges (OTSC) towards M/s M/s Bharti Airtel Limited in respect of the spectrum holding beyond 4.4 MHz in GSM band – Rs. 1499.09 Crores.	Hon'ble Bombay High Court vide order dated 28.01.2013 has stayed the demand(s) in Writ Petition (L) No. 184 of 2013.
(g) CAF penalty to the tune of Rs. 11,23,33,000/- for the Bihar Licensed Services Area for the CAF Audit period from April 2011 to December 2011 against M/s Bharti Airtel Limited.	Hon'ble Patna High Court vide order dated 16.05.2013 has stayed the demands in CWJC 10308 of 2013.
(h) CAF penalty to the tune of Rs. 1,74,78,000/- for the Assam Service Area against M/s Bharti Airtel Limited for the periods – April 2013, July 2013, Oct 2013, Jan 2014, Apr 2014, July 2014, Oct 2014, Jan 2015, Apr 2015, July 2015, Oct 2015, Jan 2016, Apr 2016, Jul 2016, Oct 2016, Jan 2017 and Apr 2017.	Hon'ble TDSAT vide order dated 27.09.2017 has stayed the demand in Telecom Petition No. 93 of 2017.
(i) Financial Penalty of Rs. 50 crores per service area for the service areas of Haryana, Maharashtra, UP East, Kolkata, Gujarat, Kerela and Madhya	Hon'ble TDSAT vide order dated 29.04.2014 in Petition No. 349 of 2013 held that 3G Intra Circle Roaming arrangements are valid and quashed the



Pradesh on the issue of 3G Intra Circle Roaming against M/s M/s Bharti Airtel Limited.	penalty imposed by the department. However, Civil Appeal No. 10910-10917 of 2014 by Department before Hon'ble Supreme Court is pending for final adjudication.
(j) Liquidation Damages demand to the tune of Rs. 89.95 Crores against M/s Unitech Group Entities for violation of roll out obligations.	Hon'ble TDSAT has stayed the demands vide orders dated 14.08.2015 and 14.12.2017.

Further, at paragraph 10 of the DOT affidavit, it has been stated that the resultant entity has to submit an unequivocal and unconditional undertaking before transfer/ merger of licenses and the approval shall be granted only after submission of the undertaking and at paragraph 17 it has been stated that the resultant entity also needs to replace the Bank Guarantee for the deferred payment of Transferor Company amounting to Rs. 200,45,84,952/- towards the instalment amount of auctioned spectrum.

18. That accordingly the Transferee Company has filed an Affidavit cum Undertaking in response to the detailed affidavit of DOT on 31.01.2018. The Transferee Company in its Affidavit cum Undertaking has stated the following:-

"4. The Transferee Company undertakes that the demands stated in the DoT Affidavit for the Transferor and the Transferee Company, as set out in paragraphs 8 and 9 of the DoT Affidavit and referred to at Annexure A and B hereof, shall be discharged by it if and when the same becomes due and payable in accordance with law. Additionally, the Transferee Company undertakes to comply with the Merger Guidelines, including furnishing of the undertaking requested by DoT in the terms set out as above, as and when called upon to do so by the DoT.

5. The DoT in paragraph 9(c) of the DoT Affidavit, has submitted that in accordance with the Merger Guidelines, the Transferee Company is required to submit Bank Guarantee towards the One Time Spectrum

Charge ("OTSC") to the tune of Rs.1499.09 crores in respect of the spectrum holding beyond 4.4 MHz in GSM band. In response thereto, the Transferee Company undertakes that it will comply with this requirement of the Merger Guideline. The Transferee Company however, craves leave of this Hon'ble Tribunal to preserve its rights in law to pursue its legal remedies against the imposition of such a condition by the DoT in the background of its challenge to the demand itself which is pending before the Hon'ble Bombay High Court in Writ Petition (L) No.184 of 2013, where the Transferee Company has a stay against the OTSC demand itself and no requirement of furnishing a bank guarantee has been imposed by the Hon'ble Bombay High Court.

6. In response to paragraph 17 of the DoT Affidavit, the Transferee Company being the resultant entity undertakes to replace the bank guarantees provided by the Transferor Company for the deferred payment of the Transferor Company amounting to Rs.200, 45, 84,952/- towards the instalment of auctioned spectrum following the sanction of the Scheme by this Hon'ble Tribunal, as and when called upon to do so by the DoT."

19. The objections raised by Department of Telecommunication in the above circumstances it is represented by the Learned Sr. Counsel for the Petitioner has been removed by the petitioner company and the above undertaking given by the Petitioner Companies be taken on record.

20. It is pertinent to note that the disputes between DOT on one hand and the Transferor Company or the Transferee Company are pending before the TDSAT being the Appellate Authority or in some instances before the Hon'ble Supreme Court or before the Hon'ble High Court, Bombay and the judicial forums have also been pleased to stay the orders of DOT thereby presently forbearing DOT from proceeding with the collection of amounts in dispute. In the case of *Idea Cellular Limited vs Union of India* [2012] 173 Comp Cas 235 (Delhi),



Hon'ble Justice A.K. Sikri while being the Acting Chief Justice of Delhi High Court, as he then was, while rendering the decision/ judgment in the matter arising out of Company Petition and in Appeal and where the companies to the Scheme of Amalgamation has failed to disclose the then prevalent DOT guidelines in relation to merger and which invited a conditional order/ sanction being passed by the Learned Single Judge has held as follows after elucidating the facts and pre-conditions laid therein and where DOT was the respondent therein:-

At paragraph 2 as follows:-

2. According to the respondent, such a course of action was not permissible without specifically taking its prior approval and the amalgamation of Spice with the appellant was resorted to without the knowledge of or taking consent of or notice of the proceedings to the respondent. On coming to know of the sanctioning of the Scheme, the respondent moved an application for recall of orders dated 5.2.2010 and de-merger of the two companies. This application alongwith other miscellaneous application filed by the respondent has been decided by the learned Company Judge vide orders dated 4.7.2011. The learned Company Judge has recorded a finding that non-disclosure and suppression of material facts from the Court, while seeking sanction of the Scheme, amounts to fraud played upon the Court and the sanction of the Scheme was in contravention of the licence condition and merger guidelines. Notwithstanding this finding, the learned Company Judge has taken a view that it would not be feasible or plausible to recall orders dated 5.2.2010 vide which the scheme of amalgamation was sanction in its entirety as it was not possible to 'unscramble the eggs'. Instead, vide impugned order the sanctioning order dated 5.2.2010 has been modified "to bring sanctioned scheme, in the present case, and in conformity with the Licence and Merger Guidelines, 2008". Consequently, the modification which is done is to the effect that;

(i) The Six overlapping licenses of the Spice would not stand transferred or vested with the appellant till prior permission of DoT is



obtained. Instead, till that time, these licenses shall stand transferred/vested with the respondent;

(ii) The spectrum allocated for such overlapping licences shall also forthwith revert back to DoT;

(iii) Since the appellant had used the overlapping licenses (which belonged to the Spice) without any permission of DoT from 5.2.2010 till date, in contravention of the License and Merger Guidelines, DoT (respondent) is permitted to pass any such order for breach.

Permission however, is given by the learned Single Judge to the appellant to challenge the order of the DoT/respondent in the event the DoT refuses or grant transfer of licenses by filing appropriate proceedings before the TDSAT. The permission is also granted to challenge any order passed by the DoT/respondent qua the contravention of the License and Merger Guidelines by the appellant.

Since the overlapping licenses as well as spectrum allocated for such overlapping licenses has been reverted/transferred back to the DoT, in order to avoid inconvenience to public at large, the DoT is also directed to ensure cell phone customers of two overlapping company namely Punjab and Karnataka which provided regular and uninterrupted service like in the past. Some other incidental directions are also given as would be noticed at the appropriate stage.

At paragraph 29 as follows:-

29. We are of the opinion that had this fact been disclosed it would not have resulted in non-sanction of the scheme of amalgamation of the two companies. Instead, the company Judge would have passed a conditional sanction order. We say so keeping in mind the following aspects.

At paragraph 30 as follows:-



30. As noted above, argument of the appellant is that as per the Licence Agreement, read in the light of the Merger Guidelines issued by the Government, the action of the government in refusing merger of the existing licences of Spice with the existing licences of the appellant is not appropriate. Thus, according to the appellant, even as per the terms of the Licence Agreement, the government is obliged to recognize the appellant as the licensee in place of Spice. The DoT contends otherwise. The DoT has refused the permission. It is a common case that this dispute is to be ultimately resolved by the TDSAT which is the appropriate forum. The matter is already before the TDSAT. At the same time, the scheme contains the class that on the amalgamation of Spice with the appellant overlapping licence of Spice would vest in the appellant. In such a situation, even with the production of the entire relevant material including Merger Guidelines, terms of the Licence Agreement as well correspondence exchanged between the parties, the Company Court could have imposed such other conditions. Here, Mr. Salve is right in his submission that the amalgamation of the companies would be different from the amalgamation of the licenses. (Bold and Italics supplied). Therefore, these material facts would have bearing on the sanctioning of the Scheme with certain conditions and would not have resulted into the dismissal of the company petition seeking sanction. For this reason, we hold that non-disclosure of the aforesaid facts would not amount to fraud resulting into vitiating the very action namely order sanctioning the scheme. Once it is found that implication of the disclosure of the opinion could have led to passing an conditional order of merger, that is precisely the course of action adopted by the learned Company Judge. Thus, apart from the reasoning given by the learned Company Judge that it is not possible to scramble the unscrambled eggs at this juncture, additionally on the aforesaid reason, we feel that there was no case made out by the DoT for recall of the orders dated 05.2.2010 sanctioning the scheme.

Ultimately at Paragraph 31 it has been concluded as follows:-



At paragraph 31 as follows:-

31. With this, we come to the various modification ordered by the learned Company Judge vide the impugned judgment to the sanctioning order dated 05.2.2010. These have already been reproduced above. We agree with all the modifications except one, viz., six overlapping licenses of Spice would vest with the DoT. No doubt, even as per the contention of the appellant itself, sanctioning of merger scheme amounts only the merging company and not the licenses and therefore, the appellant itself maintains that for transfer of these licenses, prior permission of DoT is required. It is also recognized that there is a dispute on this issue inasmuch as, as per the appellant, it is entitled to get the license transferred in its name and the refusal of the Government on this account is not appropriate. This is a dispute which has to be resolved by the TDSAT and parties are already before the TDSAT. Therefore, it is for the TDSAT to give directions, including interim orders in this behalf.

21. At this stage it will be also apposite to cite the judgment of the Hon'ble Supreme Court of India in *Centre for Public Interest Litigation and Ors. Vs Union of India (UOI) and Ors. (2012) 3 SCC 1*, wherein while considering the question of natural resources/ national assets and the manner in which the right over it is required to be exercised by the state to alienate, transfer or distribute natural resources/ national assets, in relation to spectrum has held at paragraph 77 to 78 in the said judgment as follows:-

77. Spectrum has been internationally accepted as a scarce, finite and renewable natural resource which is susceptible to degradation in case of inefficient utilisation. It has a high economic value in the light of the demand for it on account of the tremendous growth in the telecom sector. Although it does not belong to a particular State, right of use has been granted to States as per international norms.



78. In India, the Courts have given an expansive interpretation to the concept of natural resources and have from time to time issued directions, by relying upon the provisions contained in Articles 38, 39, 48, 48A and 51A(g), for protection and proper allocation/distribution of natural resources and have repeatedly insisted on compliance of the constitutional principles in the process of distribution, transfer and alienation to private persons.

79. The doctrine of public trust, which was evolved in *Illinois Central Railroad Co. v. People of the State of Illinois* 146 U.S. 387 (1892), has been held by this Court to be a part of the Indian jurisprudence in *M.C. Mehta v. Kamal Nath* (1997) 1 SCC 388 and has been applied in *Jamshed Hormusji Wadia v. Port of Mumbai* (2002) 3 SCC 214, *Intellectuals Forum, Tirupathi v. State of A.P.* (2006) 3 SCC 549 and *Fomento Resorts and Hotels Limited v. Minguel Martins* (2009) 3 SCC 571

Again at paragraph 81 after touching upon the doctrine of public trust in the paragraphs earlier had cited the judgment of the Hon'ble Supreme Court rendered in *Fomento Resorts and Hotels Limited case* (2009) 3 SCC 57, in which at paragraph 55 the public trust doctrine has been expounded as follows:-

55. The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resource, including down slope lands, waters and resources."



and has finally concluded in relation to natural resources, which includes "Spectrum" within its ambit as follows:-

89. In conclusion, we hold that the State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good.



The onus of alienating, transferring or distribution is thus vested with DOT and both the Transferor and Transferee Companies are bound to follow the directives in dealing with handling the spectrum being a natural resources/ national asset for public good and cannot seek to divorce itself of the said obligation which in the instant case the parties seem to be well aware.

22. Thus, it is seen that in the present instance too disputes have arisen between the Petitioner Companies on the one hand and DOT on the other which are pending adjudication before various courts and it is for these courts to give directions, including any interim orders. However the same cannot be a factor to deny the merger of the companies with each other as contemplated under the Scheme of Amalgamation for which sanction is sought for. However, in relation to Spectrum License and the like for which the Licensor is DOT, it is for the Licensing Authority to see whether both the companies abide by the guidelines including the guidelines prescribed for merger of two companies holding licenses granted by DOT and this Tribunal cannot enter into the same it being in exclusive domain of the Licensing Authority. In case of any denial of merger of the licenses consequent upon the sanction of the Scheme it is for the Petitioner to seek appropriate remedy available to it under law against DOT.

23. At Paragraph 2.4 of Part B of the Scheme it is provided as follows in relation to the licenses:-

"2.4 Without prejudice to the generality of the clauses mentioned above, the assets of the Transferor Company shall also include all



permits, licenses including Unified Access Service License ("UASL") and Unified License issued by the DoT, authorisation, spectrum, and any other licenses, approvals, clearances, authorities, quotas, allocations granted to the Transferor Company, all municipal approvals, permission for establishing cellular towers (including cell site licenses) or receiving stations or any broadband and/ or approvals for bandwidth, authorizations, statutory rights, permissions, registrations, certificates, consents, authorities (including for the operation of bank accounts), powers of attorneys(given by, issued to or executed in favour of the Transferor Company), the concerned licensor and guarantors of such approvals, clearances, permissions, approvals, arrangements, authorisations benefits, concessions, rights and benefits of all contracts, agreements, allocations, consents, quotas, right, easements, engagements, exemptions, entitlements, advantages of whatever nature and howsoever named, properties, movable, in possession or reversion, present or contingent of whatsoever nature and where-so-ever nature situated, liberties, ownerships rights and benefits, earnest moneys payable pertaining to the assets mentioned in the aforesaid clauses, if any, all other rights and benefits, licenses, powers, privileges, and facilities of every kind, nature and description whatsoever; right to use and avail of telephones, telexes, facsimile, connections, installations and other communication facilities and equipment, titles, all other utilities, benefits of all agreements, contracts, government contracts, memoranda of understanding, project service agreement, prequalification, applications, bids, tenders, letters of intent, concessions, non- possessory, contractual rights or any other contracts, development rights, allocated deferred tax and all other interest in connection with or relation to the Transferor Company on the Appointed Date (" Licenses") shall stand transferred to the Transferee Company in accordance with the DoT Merger Guidelines. A list of the existing licenses in favour of the Transferor Company are provided in Annexure-A"



24. In light of above clause an important question arises as to whether Spectrum and the License granted for its exploitation and of similar ilk mentioned can be treated as a freehold asset in the manner in which the Companies involved in the Scheme. The parties being aware of the position that approvals, interalia of DOT is required for implementation of the Scheme has provided at Paragraph 9.1 of Part C of the Scheme as follows:-

“9.1 The Companies undertake to comply with all Applicable Laws (including all applicable compliances required by the Securities and Exchange Board of India and the Stock Exchanges and all applicable compliances required under the Foreign Exchange Management Act, 1999 and the rules, regulations and guidelines issued thereunder as may be prescribed by the RBI, from time to time) including making the requisite intimations and disclosures to any statutory or regulatory authority and obtaining the requisite consent, approval or permission of the Competition Commission of India, DoT or any other statutory or regulatory authority, which by law may be required for the implementation of this Scheme or which by law may be required in relation to any matters connected with this Scheme.”



Clause 2.4 read with Clause 9.1 of the Scheme makes it abundantly clear that the Petitioner Companies are fully aware of this and in the Scheme itself has provided for it.

25. Thus, the approval of this Tribunal is conditional upon the requisite sanction and approval in accordance with the prescribed guidelines for transfer/ merger of various categories of Telecommunication service Licenses/ authorization under Unified License (UL) on compromise/ arrangement and amalgamation of Companies by DOT which goes without saying and both the parties (i.e) the Companies or DOT will not be prevented from exercising their rights under due process of law and remedies as may be available to them in case of any grievance before the appropriate Tribunal or forum meant for the same in relation to the acts of each other. Thus, preserving the right of both the parties' vis-à-vis each other and also a duty is cast upon both the parties while dealing with Spectrum being a national asset/ resource in the manner as delineated by the Hon'ble Supreme Court in *Centre for Public Interest Litigation case (supra)* proceeds further with the consideration of the petition.



26. That the Petitioner Companies have complied with proviso to Section 230 (7) proviso/ Section 232 (3) by filing the certificate of the Company's Auditor's in relation to compliance with the Accounting Standards under section 133 of the Companies Act, 2013.
27. The Petitioner companies have stated in the petition that no investigation proceedings are pending against them under Sections 210 or any other applicable provisions of the Companies Act, 2013. Further, it states that no winding-up petition has been filed and is pending against either of the companies.
28. The counsel for Petitioners have filed an affidavit dated 29.11.2017 stating that they have not received any objections from any objector till date for the purpose of sanction to the present Scheme of Amalgamation. The above statement is taken on record. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation annexed as Annexure -1 with the Company Petition as well as the prayer made therein.
29. 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 will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.
30. While approving the Scheme as above, it is clarified 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 payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.



THIS TRIBUNAL DO FURTHER ORDER

- (1) That all the property, rights and powers of the Transferor Company be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and vest in the Transferee company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same and save in relation to spectrum and such like National Asset/ National Resource which forms an asset category of its own and over which a license for its exploitation has been granted to the Companies involved in the Scheme by State sanction, here DOT or such other instrumentalities of Government of India and the rules and regulations governing it.
- (2) That all the liabilities and duties of the Transferor Company be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company; and
- (3) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee company save individual criminals/ civil actions against the Officers of the Transferor Company, including its director for any of their omission or commissions; and
- (4) That as per clause 5 of Part B of the scheme, all the employees of the Transferor Company in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service.
- (5) That the Transferee Company do without further application allot to the persons entitled of the Transferor Company, as have not given such notice of dissent, as is required by clause 10 of Part B of the SCHEME OF AMALGAMATION herein the shares in the transferee company to which they are entitled under the said SCHEME OF AMALGAMATION;



(6) That Applicant 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 and registered with him on the file kept by him in relation to the Transferee company and the files relating to the said both companies shall be consolidated accordingly;

(7) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

Sd/-

M.M. KUMAR
(HON'BLE PRESIDENT)

08.03.2018

Sd/-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta/M



FREE OF COST COPY

09.3.2018
Registrar
National Company Law Tribunal
New Delhi

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH
NEW DELHI

CA (CAA)-81(PB)/2017

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

MS.DEEPA KRISHAN, MEMBER (TECHNICAL)

In the matter of:

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with
Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

OF

TELENOR (INDIA) COMMUNICATIONS PRIVATE LIMITED

(APPLICANT COMPANY-1 / TRANSFEROR COMPANY)

AND

BHARTI AIRTEL LIMITED

(APPLICANT COMPANY-2/TRANSFeree COMPANY)



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AND

Their respective Shareholders and Creditors

MEMO OF PARTIES

TELENOR (INDIA) COMMUNICATIONS PRIVATE LIMITED

a company incorporated under the Companies Act, 1956

and having its registered office at:

DBS Business Center, First Floor,
World Trade Tower, Barakhamba Lane,
Connaught Place, New Delhi- 110001.

(CIN: U64200DL2012PTC231991).....Applicant Company-1/Transferor Company

BHARTI AIRTEL LIMITED

a Company incorporated under the Companies Act, 1956

and having its registered office at:

Bharti Crescent 1, Nelson Mandela Road,
Vasant Kunj, Phase II, New Delhi - 110070

(CIN: L74899DL1995PLC070609) Applicant Company-2/ Transferee Company

For the Applicants: MrArun Kathpalia, Senior Advocate



Along with

MrV.P .Singh
Mr Bharat Apte
Mr Ankit Tandon
Mr.Rushil Oberoi

CA(CAA)-81(PB)/2017

Telenor (India)Communications Pvt. Ltd. V. Bharti Airtel Limited

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Mr. Shanthanu Tiwari

For Department of Tele-

Communications Mr Kamal Kant Jha

ORDER

Order Delivered on: 28.07.2017

1. M/s Telenor (India) Communications Private Limited, an unlisted private limited company and M/s Bharti Airtel Limited, a widely held public company whose shares are listed in National Stock Exchange and Bombay Stock Exchange, however both being major players in telecom sector, have by virtue of the decisions made in their respective Board of Directors meeting held on 07.03.2017 and 04.03.2017 have decided to amalgamate M/s Telenor (India) Communications Private Limited (hereinafter referred to as Applicant Company 1/Transferor Company) with Bharti Airtel Limited (hereinafter referred to as Applicant Company 2/Transferee Company) with a view to achieve the following objectives as averred by both the applicants before this Tribunal in the joint application filed by them, namely:-

- (i) consolidate the telecom business of the Applicant Company 1 with the Applicant Company 2;

CA(CAA)-81(PB)/2017

Telenor (India) Communications Pvt. Ltd. V. Bharti Airtel Limited

Page 3 of 30



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- (ii) further expansion of the Applicant Company 2's business into the growing markets of India;
- (iii) availability of increased resources and assets for the Applicant Company 2 which can be utilized for strengthening customer base and servicing existing as well as new customers innovatively and efficiently;
- (iv) building a strong infrastructural capability to effectively meet future challenges in the ever-evolving telecom business and a strategic fit for serving existing market; and
- (v) leading to increased competitive strength and efficiencies for the Applicant Company-2.

2) In pursuance of the above objectives and consequent to the decisions of the respective Boards of the applicant companies as detailed above, both the Transferor and Transferee Companies have filed the instant joint application under sections 230-232 of Companies Act, 2013(hereinafter called for brevity The "Act") read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (hereinafter for brevity called the "Rules") in relation to the Scheme of Arrangement by way of Amalgamation(hereinafter referred to as the "SCHEME") proposed between the applicants. The said Scheme is annexed as Annexure "1" to the application. The applicants above named have preferred the instant joint application seeking the following reliefs, namely: -

- i. This Hon'ble Tribunal may be pleased to pass appropriate orders/directions for dispensing with the requirement of holding and convening the meeting of the shareholders of the Transferor

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Company, to consider and, if thought fit, approve, with or without modification, the Scheme, in view of the consents given by all the equity shareholders of the Transferor Company and the Transferor Company having no preference shareholders;

Alternatively, in the event this Hon'ble Tribunal holds that the meeting of the shareholders of the Transferor Company cannot be dispensed with, this Hon'ble Tribunal may be pleased to pass directions for holding and convening a meeting of the equity shareholders of the Transferor Company, to consider and, if thought fit, approve, with or without modification, the Scheme, at such time, date and venue as this Hon'ble Tribunal may deem fit; and direct the appointment of a Chairperson, an Alternate Chairperson and a Scrutinizer (if required) for conducting such meeting of the equity shareholders of the Transferor Company to be held on such terms as this Hon'ble Tribunal may deem fit and who shall report the result thereof to this Hon'ble Tribunal, and direct that individual notices of the meeting may be sent by the Transferor Company to the equity shareholders of the Transferor Company through registered post or speed post or through courier or through e-mail in accordance with applicable law and in such other manner as this Hon'ble Tribunal may deem fit; and direct the publication of the notices in relation of the said meeting in the newspapers, namely "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition), by way of a joint advertisement, if required.

- ii. This Hon'ble Tribunal may be pleased to pass appropriate orders/directions for dispensing with the requirement of holding and convening the meeting of the secured creditors of the Transferor Company, to consider and, if thought fit, approve, with or without modification, the Scheme, in view of the Transferor Company having no secured creditors as on April, 30, 2017.

- iii. This Hon'ble Tribunal may be pleased to pass appropriate orders/directions for holding and convening the meeting of the unsecured creditors of the Transferor Company, to consider and, if thought fit, approve, with or without modification, the Scheme, at such time, date and venue as this Hon'ble Tribunal may deem fit; and direct the appointment of a Chairperson, an Alternate



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Chairperson and a Scrutinizer (if required) for conducting such meeting of the unsecured creditors of the Transferor Company to be held on such terms as this Hon'ble Tribunal may deem fit and who shall report the result thereof to this Hon'ble Tribunal, and direct that individual notices of the meeting may be sent by the Transferor Company to the unsecured creditors of the Transferor Company through registered post or speed post or through courier or through e-mail in accordance with applicable law and in such other manner as this Hon'ble Tribunal may deem fit; and direct the publication of the notices in relation of the said meeting in the newspapers, namely "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition), by way of a joint advertisement, if required.

- iv. That in respect of the meeting of the unsecured creditors of the Transferor Company, this Hon'ble Tribunal may be pleased to dispense with the requirement of issuing individual notices to such unsecured creditors of the Transferor Company having individual outstanding amounts equal to or less than Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand only) representing 0.21% of the total outstanding unsecured debt of the Transferor Company.
- v. This Hon'ble Tribunal may be pleased to pass appropriate orders/directions for holding and convening the meeting of the equity shareholders of the Transferee Company, to consider and, if thought fit, approve, with or without modification, the Scheme, at such time, date and venue as this Hon'ble Tribunal may deem fit; and direct the appointment of a Chairperson, an Alternate Chairperson and a Scrutinizer (if required) for conducting such meeting of the equity shareholders of the Transferee Company to be held on such terms as this Hon'ble Tribunal may deem fit and who shall report the result thereof to this Hon'ble Tribunal, and direct that individual notices of the meeting may be sent by the Transferee Company to the unsecured creditors of the Transferor Company through registered post or speed post or through courier or through e-mail in accordance with applicable law and in such other manner as this Hon'ble Tribunal may deem fit; and direct the publication of the notices in relation of the said meeting in the newspapers, namely "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition), by way of a joint advertisement, if required.



- vi. This Hon'ble Tribunal may be pleased to pass appropriate orders/directions for holding and convening the meeting of the secured creditors of the Transferee Company, to consider and, if thought fit, approve, with or without modification, the Scheme, at such time, date and venue as this Hon'ble Tribunal may deem fit; and direct the appointment of a Chairperson, an Alternate Chairperson and a Scrutinizer (if required) for conducting such meeting of the secured creditors of the Transferee Company to be held on such terms as this Hon'ble Tribunal may deem fit and who shall report the result thereof to this Hon'ble Tribunal, and direct that individual notices of the meeting may be sent by the Transferee Company to the secured creditors of the Transferor Company through registered post or speed post or through courier or through e-mail in accordance with applicable law and in such other manner as this Hon'ble Tribunal may deem fit; and direct the publication of the notices in relation of the said meeting in the newspapers, namely "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition), by way of a joint advertisement, if required.
- vii. This Hon'ble Tribunal may be pleased to pass appropriate orders/directions for holding and convening the meeting of the secured creditors of the Transferee Company, to consider and, if thought fit, approve, with or without modification, the Scheme, at such time, date and venue as this Hon'ble Tribunal may deem fit; and direct the appointment of a Chairperson, an Alternate Chairperson and a Scrutinizer (if required) for conducting such meeting of the secured creditors of the Transferee Company to be held on such terms as this Hon'ble Tribunal may deem fit and who shall report the result thereof to this Hon'ble Tribunal, and direct that individual notices of the meeting may be sent by the Transferee Company to the secured creditors of the Transferee Company through registered post or speed post or through courier or through e-mail in accordance with applicable law and in such other manner as this Hon'ble Tribunal may deem fit; and direct the publication of the notices in relation of the said meeting in the newspapers, namely "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition), by way of a joint advertisement, if required.

9



- viii. This Hon'ble Tribunal may be pleased to pass appropriate orders/directions for holding and convening the meeting of the unsecured creditors of the Transferee Company, to consider and, if thought fit, approve, with or without modification, the Scheme, at such time, date and venue as this Hon'ble Tribunal may deem fit; and direct the appointment of a Chairperson, an Alternate Chairperson and a Scrutinizer (if required) for conducting such meeting of the unsecured creditors of the Transferee Company to be held on such terms as this Hon'ble Tribunal may deem fit and who shall report the result thereof to this Hon'ble Tribunal, and direct that individual notices of the meeting may be sent by the Transferee Company to the unsecured creditors of the Transferee Company through registered post or speed post or through courier or through e-mail in accordance with applicable law and in such other manner as this Hon'ble Tribunal may deem fit; and direct the publication of the notices in relation of the said meeting in the newspapers, namely "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition), by way of a joint advertisement, if required.
- ix. This Hon'ble Tribunal may be pleased to direct service of notice under Section 230(3) read with Section 230(5) of the Companies Act, 2013 along with all the documents in such form as may be prescribed to the statutory authorities and such other sectoral regulators or authorities which are likely to be affected by the Scheme as per Section 230(5) of the Companies Act, 2013;
- x. This Hon'ble Tribunal may be pleased to dispense with the service of notice under Section 230(3) read with Section 230(5) of the Companies Act, 2013 to the Securities and Exchange Board of India as well as The National Stock Exchange of India Limited and the BSE Limited, the stock exchanges on which the equity shares of the Transferee Company are listed in view of the observations of the National Stock Exchange of India Limited and the BSE Limited stating that " It is to be noticed that the petitions are filed by the Company before NCLT after processing and communication of comments/observation on draft scheme by SEBI/stock exchange. Hence, the Company is not required to send notice for representation as mandated under Section 230(5) of the Companies Act, 2013 to SEBI again for its comments/observations/representations."

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xi. This Hon'ble Tribunal may be pleased to further dispense with the service of notice under Section 230(3) read with Section 230(5) of the Companies Act, 2013 to the Department of Telecommunications, Government of India ("DoT") in view of the Applicant Companies notifying the DoT of the amalgamation between the Applicant Companies as envisaged under the Scheme pursuant to Clause 3(a) of the "Guidelines for transfer/ merger of various categories of telecommunication service/licenses/authorization under unified license on compromises, arrangements, and amalgamation of the Companies" dated February 20, 2014 issued by DoT.

xii. This Hon'ble Tribunal may be pleased to pass such further and other orders as deemed proper in the facts and circumstances on the instant case.

3. An Affidavit in support of the above application sworn for and on behalf of the Applicant Company 1 /Transferor Company by one Mr. Sharad Mehrotra and in relation to and on behalf of the Applicant Company 2/ Transferee Company by one Mr. Sameer Chug have been filed along with the application. Learned Senior Counsel for the joint applicants took us through the averments made in the application as well as the typed set of documents annexed there with. Learned Senior Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that the joint application filed by the applicants is maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 and it is also represented that the registered office of both the applicant



companies are situated presently within the territorial jurisdiction of this Tribunal and falling within Registrar of Companies, NCT of New Delhi & Haryana.

4. In relation to the Applicant Company-1/ Transferor Company as per the Scheme marked as Annexure – “A-1”, it is represented that it is having 2 (Two) Equity Shareholders namely (i) Telenor South Asia Investment Pte. Ltd., Singapore and (ii) Telenor South East Asia Investment Pte. Ltd., Singapore. It is further represented by the counsel for Applicants that the Transferor Company as on 30th April, 2017 has no preference shareholders or Secured Creditor(s) and that the said position has not changed as of today. In relation to Unsecured Creditors, it is represented that as on 30th April, 2017, it had 6656 in numbers. In relation to the shareholders of the Applicant Company-1/ Transferor Company, dispensation is sought for from convening and holding of the meetings, in view of consent affidavit having been obtained and placed on record. Further it is represented that in view of the fact that there being no secured creditor the necessity of convening the meeting of secured creditor(s) does not arise.

5. In relation to Bharti Airtel Limited being the Applicant Company-2 /Transferee Company in the Scheme marked as Annexure-“A-1”, Learned Senior Counsel represents that the company is having 198,347 Equity Shareholders. It is further represented by the Learned Senior counsel for Applicants that the Applicant



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Company-2 / Transferee Company as on 30th April, 2017 has only one secured creditor and 18,179 Unsecured Creditors in numbers. In relation to Secured creditors of the Applicant Company-2/Transferee Company, dispensation is sought for from convening the meeting of secured creditors for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent affidavit having been obtained and placed on record.

6. Learned Counsel for the Applicants also represents that the provisions of Section 233 of 2013 Act will not apply to the instant scheme. The registered office of both the applicant Companies are situated within New Delhi and thereby subject to the jurisdiction of Registrar of Companies, NCT, New Delhi and hence are amenable to the territorial jurisdiction of this Tribunal.
7. We have perused the joint application and the connected documents / papers filed therewith including the Scheme of Amalgamation contemplated between the Applicant companies.
8. From the certificate of incorporation filed, it is evident that Applicant Company-1 /Transferor was incorporated in the name of Telewings Communications Services Private Limited on 24th February, 2012 under the Companies Act, 1956 with the office

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of Registrar of Companies NCT of Delhi.& Haryana. On 21st August, 2015, the name of the Transferor Company it is seen has been changed to its present name.

9. The Authorized Share Capital of the Applicant Company-1/Transferor as on the date of filing of the joint application is stated to be Rs120,03,00,00,000/- divided into 12,00,30,00,000 Equity Shares of Rs.10/- each and the Issued, Subscribed and Paid-up Share Capital of the Applicant Company-1 as on the said date is claimed to be Rs.19,23,07,69,230/- divided into 1,92,30,76,923 Equity Shares of Rs.10/- each.
10. Both the applicants have filed their respective Memorandum and Articles of Association along with their respective certificate of incorporations including the one issued consequent to the Change of Name by the Registrar of Companies, NCT of Delhi & Haryana. In addition, the Applicant Company 2/Transferee Company has also filed the Certificate for Commencement of Business dated 18.01.1996.
11. The main objects of the Applicant Company-1/Transferor Company as can be gleaned from the charter documents of the company is stated to be as follows:

(i) to carry on the business of all kinds of communication services mainly telecommunication services, National long distance services, International long distance services, cellular/mobile services, paging, video text, voice, mail and data systems, private networks wide area, network, electronic mail, intelligent network, multi-media communication, systems or the combinations thereof,



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(ii) To carry on the business of manufacturers, dealers, distributors, importers, exporters, buyers, sellers, merchants, agents and stockists, and to market, hire, lease, rent out, assemble, alter, install, service, design research and improve, develop, exchange, establish, provide, run, maintain, repair, refurbish, sand otherwise deal in any manner in all types of telecom infrastructure and services including telecom network, telephone instruments-whether corded, cordless, mobile or of any other kind teleterminals, fax machines, telegraphs, recording instruments and dialing barring devices, wireless sets and other wireless communication devices like radio pagers, cellular phones, satellite phones etc. telecom switching equipments of all kinds telecom transmission equipments of all kinds, test equipments, instruments, apparatus, appliances and accessories and equipment and machinery for the manufacturer thereof and to provide technical services in respect thereof or relating thereto.

(iii) To undertake and execute works, projects or enterprises in the telecom industry whether of a private or public character or any joint venture with any government or other authority in India or elsewhere.

(iv) To apply for and procure licenses and approvals from or enter into agreements with any government, judicial, quasi judicial or other authority, body or institution for carrying out any or all of the above objects, and comply with all the applicable provisions of such license(s) and approvals, and the appropriate laws, guidelines, rules and regulations (including any statutory modification(s) or re-enactment thereof for the time being in force), and any violation of which shall automatically lead to the Company being unable to carry on its business in this regard.

12. From the certificate of incorporation filed, it is evident that the Applicant Company-2

Transferee was incorporated on 7th July, 1995 under the Companies Act, 1956 initially

in the name and style of Bharti Tele-Ventures Limited with the office of Registrar of



Companies, NCT of Delhi & Haryana. Subsequently, on 24th April, 2006 the name of the Applicant Company No.2/Transferee seems to have been changed to its present name.

13. The Authorized Share Capital of the Applicant/ Amalgamating Company-2 is Rs.27,50,00,00,000/- divided into 5,50,00,00,000 Equity Shares of Rs.5/- each and the Issued, Subscribed and Paid-up Share Capital of the Applicant Company-1 /Transferee Company is Rs.19,98,70,00,510/- divided into 3,99,74,00,102 Equity Shares of Rs.5/- each.

14. The main objects of the Applicant Company-2/Transferee Company stated in the joint application as extracted from its charter documents are stated to be as follows:-

1. To promote & establish Companies, Funds, Associations or Partnerships for providing telecom networks and/or to run and maintain telecom services like basic/fixed line services, cellular/mobile services, paging, videotext, voice mail and dat6a systems, private switching network services, transmission network of all types, computer networks i.e. local area network, wide area network, Electronic Mail, Intelligent network, Multimedia communication systems or the combinations thereof and for execution of undertakings. Works, projects or enterprises in the Industry whether of a private or public character or any joint venture re with any government or other authority in India or elsewhere and to acquire and dispose of shares/securities in such companies, and funds and interest in such associations or partnerships.



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2. To provide telecom networks and to run and maintain telecom services like basic/fixed line services, cellular/mobile services, paging, video-text, voice mail & data systems, private switching network services, transmission networks of all types, computer networks like local area network, wide area network, Electronic Mail, Intelligent network, Multi media communication systems or the combinations thereof.
3. To carry on the business of manufacture, merchants, dealers, distributors, importers, exporters, buyers, sellers, agents and stockists, and to market hire, lease rent out, assemble, alter, install, service, design, research and improve, develop, exchange, maintain, repair, refurbish, store and other wise deal in any manner in all types of telephone exchanges, telephone instruments whether corded, cordless, mobile or of any other kind; tele-terminals, fax machines, telegraphs, recording instruments and devices, telephone message/answering machines and devices; dialing machines, trunk dialing barring devices, wireless sets and other wireless communication devices like radio pagers, cellular phone, satellite phones etc. telecom switching equipments of all kinds; telecom transmission equipments of all kinds, test equipments, instruments, apparatus, appliances and accessories and equipment and machinery for the manufacture thereof and to provide technical services thereof or relating thereto.
4. To buy, sell, manufacture, assemble, repair, design, alter, research and improve, develop, exchange, ware-house, let on hire, import, export, and deal in all sorts of Electronic, non-Electronic, Computerized and Electrical items and equipment including Computer and Data Processing Equipment, Peripherals, Printers, Disc-drives, Intelligent Terminals, Modems, Software, Hardware, Personal Computers. 'CAD'CAM' Computer, Graphic Systems, Office Automation Equipments, Word Processors, Photoposetting, Text Editing and Electronic Printing and/or Typing Circuits, including integrated, hybrid, 'VLSI' Chips, Microprocessors and microprocessor based equipment, Semiconductor Memories including bubble Memories, Discrete electronic devices, Facsimile Equipments, Copying Machines, Xerox Machines, Telephone Cable Pressurization Systems, Printed Circuit Boards, all sorts of automatic Float charges, Electronic, Electrical and Computerized Systems and Equipment and Plant and Machineries and Field Engineering support and for all above, their incidental and allied equipment, accessories,



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components, parts, sub-parts, tools, manufactured and semi manufactured goods, raw materials, plant and machineries, substance, goods, articles and things and VCR, VCP, Cassettes, Cameras, Radios, Stereo and Amplifiers, television sets, audio visual equipment, teleprinters, telecommunications satellite Station and electronic equipment, remote control systems, business machines, calculators, hoists, elevators, trolleys and their components including valves, transistors, resistors, condensers, coils and circuits.

5. To guarantee/ counter guarantee the obligations of any of its subsidiary/associate/ group companies and/or other companies in which the company has equity interest under any agreements/contracts/debentures, bonds, stocks, mortgages, charges and securities.

15. Further perusal of the Memorandum of Association of the respective applicant companies evidences that both contain the enabling provisions for undertaking the Scheme as contemplated herein.

16. The Applicant Company 1/Transferor company has filed its last available audited financial statements for the year ended 31.12.2016 and the unaudited financial statements as on 31.03.2017. In relation to the Applicant Company 2/Transferee Company it has filed its last available audited financial statements for the year ended 31.12.2016.

17. Copy of the resolutions of the Board of Directors of the Applicant Company 1/Transferor Company held on 7th March, 2017, approving the proposed Scheme of Amalgamation as contemplated between the applicant companies above have been



placed on record. Similarly in relation to the Applicant Company 2/Transferee Company a copy of the resolutions of the Board of Directors of the said Company held on 4th March, 2017, approving the proposed Scheme of Amalgamation as contemplated between the applicant companies above have been also placed on record.

18. Both the applicant companies have also stated that there has been no change in the authorized, issued, subscribed and paid up share capital of the Transferor Company and the Transferee Company other than what has been stated in the joint application.
19. Both the companies have submitted that no investigation proceedings are pending against them under Sections 210 or any other applicable provisions of the Companies Act, 2013 nor the applicant companies are subject to any winding up proceedings.
20. Learned Senior Counsel represents that in view of the observations made by Security and Exchange Board of India, National Stock Exchange and Bombay Stock Exchange, the Exchanges in which the shares of the Applicant Company 2/Transferee Company are listed, notice under Section 230(3) read with Section 230(5) may be dispensed with as prayed for in paragraph 53(h) of the joint application. A similar plea with respect to notice to Department of Telecommunications, Government of India being the sectoral regulator is also sought for by virtue of prayer contained in paragraph 53(i) of the joint

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application. Learned Senior Counsel also brings to the attention of this Tribunal that Competition Commission of India has also accorded its sanction to the Scheme as contemplated between the joint applicants vide their communication dated 02.06.2017 and that notice to the said authority may also be dispensed with as prayed for in a separate application filed on 30.06.2017 in CA-(M) – 188(PB)/2017 before this Tribunal. We are unable to accede to the request of the applicant companies in relation to dispensing with the notice of meetings to authorities and sectoral regulators as there is a statutory mandate placed upon this Tribunal by virtue of Sections 230(3) read with Section 230(5) for directing notices to be issued to statutory authorities specifically named therein as well as to other regulators, be it capital market regulators or other sectoral regulators to whom it may be warranted. It is also pertinent to note that the notice is issued subsequent to the filing of application by the respective applicants seeking for directions in relation to convening of meetings of its shareholders and creditors and at the time of issuing directions in relation to it and it is not a notice which is sent suo moto by the respective applicants according to their convenience to the authorities to whom notices are required to be sent. Hence as already stated we are unable to accede to the request of the Learned Senior Counsel made on behalf of the applicants for dispensation of the notices to be sent to certain authorities as prayed for in the main application as well in CA-(M) – 188(PB)/2017. In this regard we are not in a





position to understand the observations of National Stock Exchange of India Limited (NSE) and the BSE Limited to the following effect:

"It is to be noted that the petitions are filed by the Company before NCLT after processing and communication of comments/observations on draft scheme by SEBI/stock exchange. Hence, the Company is not required to send notice for representation as mandated under section 230(5) of the Companies Act, 2013 to SEBI again for its comments/observations/ representations."

thereby virtually overreaching their limits and ignoring the Legislative Wisdom and supplanting the same with that of their own and the said attitude on the part of both these stock exchanges are strongly deprecated. The above observations of these exchanges virtually negate the purpose of the provisions and unnecessarily encroaches on the powers of this Tribunal which is totally unwarranted and the applicant companies are directed to ignore the said observations made by the respective exchanges and to strictly act in consonance with the directions given hereunder. Absolute discretion is vested with this Tribunal in relation to ordering of notices are concerned, of course other than to whom notices under provisions of Section 230(5) of the Act are required to be mandatorily given. Thus the discretion of those authorities to whom notices are directed to be sent lies only in whether they choose to respond to the said notices and file their observations, if any, within the statutory period provided thereunder in relation to the Scheme coming up for sanction before this



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Tribunal or not and nothing more. To sum up, the power to circumscribe the issue of notices under Section 230(5) of the Companies Act, 2013 to itself is outside the domain of the said authorities which at the cost of repetition, it must strongly eschew. Similarly it is also not within the rights of the parties to seek for dispensation of notices under Section 230(5) of the Act to certain authorities and thereby trying to impose fetters on the discretion of this Tribunal. The stand of New Delhi Bench of NCLT has already been made clear on this point in the matter. Re: Qualcomm India Private Limited in CA-01/C-III/ND/17 connected with CAA-99(PB)/2017.

21. Be that as it may, turning towards the Scheme it is seen that as per clause 10.1 contained therein the following in relation to issue of shares is contemplated: -

Upon this Scheme becoming effective, the Transferee Company shall, without requirement of any further act or deed, issue and allot the Transferee Merger Shares to Telenor Singapore and shall take all such steps as required for the purposes of listing and receiving the final trading approval for the Transferee Merger Shares, within a reasonable period of time. The Transferee Merger Shares shall be issued by the Transferee Company, free from all liens, charges, equitable interests, encumbrances and other third party rights of any nature whatsoever.

The Scheme defines "Transferee Merger Shares" as follows:-

"Transferee Merger Shares" means 5 (five) fully paid-up equity shares of face value

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Rs.5/-(rupees five only) of the Transferee Company to be issued to Telenor Singapore, in accordance with this Scheme; and

Learned Senior Counsel for the applicants represents that the valuation of shares in support of the issue of shares as contemplated above is in accordance with Fair Exchange Ratio proposed for the purpose of the Scheme by an Independent Valuer vide its report dated 23.02.2017 and further represents that it is also vouched by a Fairness Opinion dated, again, on 23.02.2017 by a SEBI Registered Category I Merchant Banker. It is also represented that the requisite certificate in relation to accounting treatment as contemplated in the Scheme is in consonance with the accounting standards prescribed under Section 133 of the Companies Act, 2013 issued by the respective Company's auditor of the respective applicant companies is also annexed along with the joint application.

22. As per the Scheme it is seen that the 'Appointed Date' means the Effective Date and a reference to paragraph 36 (A) of the joint application in relation to the Appointed Date makes the following statement, viz

In terms of the Scheme, the Appointed Date means the Effective Date, and the Effective Date has been defined as " the date that occurs upon the expiry of 5 (five) Business Days from the later of:
(a) the date on which the certified copy of the NCLT's order sanctioning this Scheme is filed by the Companies with the



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concerned Registrar of Companies; or (b) the fulfillment of the last of the conditions precedent as set out in the Implementation Agreement and delivery of the CP Completion Notice, as stated there under."

23. Since reference to the pertinent clauses in the Scheme as well as the paragraph reproduced above clearly demonstrates that the Scheme is hedged on the Implementation Agreement and the same had not been filed along with the typed set of documents by the applicant companies during the course of hearing, the Learned Senior Counsel for applicant companies was directed to produce the same before this Tribunal to which it was represented by the Learned Senior Counsel that the Implementation Agreement is not for public consumption, but undertook to produce the same before this Tribunal in a sealed cover. We fail to understand the veil of secrecy which is sought to be placed on a document which has a material and significant bearing on the Scheme of Amalgamation as contemplated between the applicant companies, its shareholders and creditors. It is pertinent to note that the Transferee Company is a widely held public company whose shares are listed in both the NSE and BSE and in the circumstances the interest of the shareholders as well as public interest assumes significant importance and hence the applicant companies herein, more particularly the Applicant Company 2/Transferee Company while issuing notice to its shareholders shall disclose all material facts as required under the provisions of the Act and Rules and also make available a copy of material documents including the Implementation Agreement for the inspection of shareholders and creditors at the venue of the meetings of which we propose to direct elsewhere in this order.



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24. Finally at the time of hearing the application, one of the unsecured creditors of the Applicant Company 2/Transferee Company, even without proper application being filed, had raised an objection relating to the Scheme per se. Even though subsequently the counsel representing the said unsecured creditor withdrew the objections, for reasons only best known to the said unsecured creditor, we are of the view that it will be appropriate for the unsecured creditor and others who are similarly placed like it to raise objections, if any, at the forum of the meeting of unsecured creditors and not before this Tribunal at the stage of giving directions for convening the meetings of shareholders and creditors for the purpose of approving the Scheme with or without modifications or otherwise. Even though the Learned Senior Counsel insists that notice to unsecured creditors representing a particular value of the respective applicant companies as prayed for in paragraph 53(iv) of the main application and in Paragraph 11(d) of Company Application No.CA-(M)-188(PB)/2017 be dispensed with, we are of the view that even the threshold of unsecured creditors specified therein enjoy certain rights including the right to initiate insolvency resolution process and hence we are not inclined to grant any dispensation in relation to the notices in relation to these unsecured creditors as prayed for by the applicant companies in the joint application as well as in the company application CA-(M)-188(PB)/2017 filed thereafter, as the case may be.

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25. Taking into consideration the application filed jointly by the Applicant Companies and the documents filed therewith, this Tribunal proposes to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, secured and Unsecured Creditors, or dispensing with the same as well as issue of notices including by way of paper publication as follows:-

A) In relation to the Applicant Company-1/Transferor Company:

(i) With respect to Equity shareholders:

Since it is represented by the Applicant Company-1/Transferor Company that there are only 2 (Two) Equity shareholders in the Company whose consents by way of affidavit have been obtained and are placed on record, the necessity of convening and holding a meeting to consider and it thought fit, the approval of the scheme is dispensed with.

(ii) With respect to Secured Creditors:

Since it is represented by the Applicant Company-1/Transferor Company that there is no Secured Creditor in the Company, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:



Meeting of the Unsecured Creditors of the Applicant Company 1/Transferor Company is directed to be held at 3:00 P.M at Sri Sai Sathya Auditorium, Lodhi Road, Bishpitama Marg, New Delhi – 110 003 on Monday the 18th September, 2017 subject to the notice of meeting being issued. The quorum for the said meeting of the Unsecured Creditors of Applicant Company 1/Transferor Company shall be 1500 in number or 20% in value in terms.

B) In relation to Applicant Company-2/Transferee Company:

(i) With respect to Equity shareholders:

Meeting of the Equity shareholders of the Applicant Company 2/Transferee Company is directed to be held at 9.30 A.M. at Sri Sai Sathya Auditorium, Lodhi Road, Bishpitama Marg, New Delhi – 110 003 on Tuesday the 19th September, 2017 subject to the notice of meeting being issued. The quorum for the meeting of the Equity shareholders of Applicant Company 2/Transferee Company shall be 40,000 in number or 20% in value in terms of the total equity share capital for the equity shareholdings meeting.

(ii) With respect to Secured Creditors:



Since it is represented by the Applicant Company 2/Transferee Company that there is 1 (One) Secured Creditor in the Company whose consent by way of affidavit have been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme of Secured Creditor is dispensed with.

(iii) With respect to Unsecured Creditors:

Meeting of the Unsecured Creditors of the Applicant Company 2/Transferee Company is directed to be held at 12:00 Noon at Sri Sai Sathya Auditorium, Lodhi Road, Bishpitama Marg, New Delhi – 110 003 on Tuesday the 19th September, 2017 subject to the notice of meeting being issued. The quorum for the meeting of the Unsecured Creditors of Applicant Company 2/Transferee Company shall be 4500 in number or 20% in value in terms.

D) In case the quorum as noted above for the above meetings of the Applicant Companies are not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the applicant

Page 26 of 31

CA(CAA)-81(PB)/2017

Telenor (India) Communications Pvt. Ltd. V. Bharti Airtel Limited



companies at least 48 hours before the meetings. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained. However, every endeavour should be made by the applicant companies to attain at least the quorum fixed, if not more in relation to approval of the Scheme.

E) Mr.S.Balasubramanian, former Chairman, Company Law Board(Cell No. 9818243413) is appointed as the Chairperson and Mr.Virender Ganda, Senior Advocate (Cell No. 9810099873) is appointed as the Alternate Chairperson for the meeting of Equity Shareholders and Unsecured Creditors as may have been directed to be convened by this Tribunal as above of the Applicant Companies.

F) The fee of the Chairperson for the aforesaid meetings shall be Rs. 3,00,000/= and the fee of the Alternate Chairperson shall be Rs. 1,50,000/= in addition to meeting their incidental expenses. Mr. Sanjay Grover, Company Secretary (Cell No.9810144530) is appointed as a Scrutinizer and would be entitled to fee of Rs.1,50,000/= for his services in addition to meeting his incidental expenses. The Chairpersons will file their reports within two weeks from the date of holding of the above said meetings.

G) That individual notices of the said meetings shall be sent by the Applicant Companies through registered post or speed post or through courier or through e-mail , 30 days in advance before the scheduled date of the meeting, indicating the day, date,



the place and the time as aforesaid, together with a copy of Scheme of Amalgamation , copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.

H) That the Applicant Companies shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the English Daily Indian Express in English, and Jansatta in Hindi Daily stating the copies of Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies.

I) Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable to the respective companies under the Act and rules framed there under. The Chairperson shall as aforestated be responsible to report the result of the meeting within two weeks of the conclusion of the meeting with details of voting on the proposed scheme.



J) The companies shall individually send notice to Central Government, the Income Tax Authorities, Registrar of Companies NCT Delhi & Haryana and as may be applicable to the respective companies to National Stock Exchange, Bombay Stock Exchange, Competition Commission of India, Securities & Exchange Board of India, Reserve Bank Of India, Foreign Investment Promotion Board (FIPB) as well as to other sectoral regulators including Ministry of Information & Technology who may have significant bearing on the operation of the applicant companies or the Scheme per se along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

K) The applicant companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor or member of all the companies entitled to attend the meetings as aforesaid.

L) The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

M) All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies

Page 29 of 31

CA(CAA)-81(PB)/2017

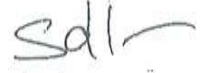
Telenor (India) Communications Pvt. Ltd. V. Bharti Airtel Limited

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(Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

The application stands allowed on the aforesaid terms.


(R. VARADHARAJAN)
MEMBER (JUDICIAL)


(Ms. DEEPA KRISHNAN)
MEMBER (TECHNICAL)

U.D.Mehta
24.7.2017

