bharti

July 10, 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 arrangement between Bharti Airtel Limited and Bharti Digital Networks Private Limited (formerly known as Tikona Digital Networks Private Limited) and their respective shareholders and creditors***

Dear Sir / Madam,

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 July 04, 2018, has subject to the approval of DoT, sanctioned the scheme of arrangement between Bharti Airtel Limited and Bharti Digital Networks Private Limited (formerly known as Tikona Digital Networks Private Limited) and their respective shareholders and creditors under Sections 230 to 232 of the Companies Act, 2013.

A copy of the order is enclosed.

Kindly take the same on record.

Thanking you,

Sincerely Yours,

For Bharti Airtel Limited

BHARTI AIRTEL LIMITED NEW DELHI

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

FREE OF COST COPY

IN THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Petition CAA – 31(PB)/2018

Connected with

CA (CAA) -134(PB)/2018

Order Pronounced On: 04.07.2018

Coram:

CHIEF JUSTICE (Rtd.) SHRI M.M. KUMAR

HON'BLE PRESIDENT

&

SHRI S.K. MOHAPATRA

MEMBER (TECHNICAL)

IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013:

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

राष्ट्रीय कम्पनी विधि अधिकरण National Company Law Tribunal प्रधान न्यायपीठ Principal Bench

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

BHARTI DIGITAL NETWORKS PRIVATE LIMITED

(Formerly known as TIKONA DIGITAL NETWORKS PRIVATE LIMITED)

(Petitioner No.1/Transferor Company)

AND

BHARTI AIRTEL LIMITED

(Petitioner No.2/Transferee Company)

AND

Their respective Shareholders and Creditors

APPEAREANCE:

For the Petitioner : Mr. Sanjeev Puri, Sr. Adv.
Mr. Kamal Shankar, Mr. Atul N., Advs.

For the O/L : Mr.Amish Tandon, Mr. Rohit Saroj, Advs.

For DoT (UOI) : Mr. Kamal Kant Jha, Sr. Panel Counsel

For the RD (NR) : Mr. C. Balooni, Co. Prosecutor

राष्ट्रीय कम्पनी विधि अधिकरण National Company Law Tribunal प्रधान न्यायपीठ Principal Bench

MEMO OF PARTIES:

BHARTI DIGITAL NETWORKS PRIVATE LIMITED (formerly known as TIKONA DIGITAL NETWORKS PRIVATE LIMITED)

A Company incorporated under Companies Act, 1956
Having its registered office at:
Bharti Crescent, 1, Nelson Mandela Road,
Vasant Kunj, New Delhi – 110070

...PETITIONER NO.1/ TRANSFEROR COMPANY

BHARTI AIRTEL LIMITED

A Company incorporated under Companies Act, 1956
Having its registered office at:
Bharti Crescent, 1, Nelson Mandela Road,
Vasant Kunj, Phase II
New Delhi – 110070

...PETITIONER NO.2/ TRANSFEREE COMPANY

राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
प्रधान न्यायपीठ
Principal Bench

ORDER

M.M.KUMAR, PRESIDENT

1. The present petition has been filed by the companies above named for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders and creditors by way of amalgamation of the Transferor/ Petitioner Company-I with the Transferee/ Petitioner Company-II namely Bharti Digital Networks Private Limited (for brevity "Transferor Company") and Bharti Airtel Limited (for brevity Transferee Company") under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 (for brevity 'the Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') in relation to the Scheme of Amalgamation (hereinafter referred to as the 'SCHEME') proposed between the petitioners and the said Scheme is also annexed as **(Annexure – 1)** to the petition.

राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
प्रधान न्यायपीठ
Principal Bench

2. From the records, it is seen that the First Motion Application seeking directions for dispensing with the meetings of the Shareholders, Secured Creditors and Unsecured Creditors was filed before this Tribunal vide CA (CAA) No. 134(PB)/2017 and directions were issued by this Tribunal, wherein the meetings of the Shareholders, Secured Creditors and Unsecured Creditors of both the companies were directed to be dispensed with vide order dated 15.03.2018.

3. Under the circumstances, the Petitioner Companies filed their joint petition for sanction of the Scheme of Amalgamation before this Tribunal, subsequent to the order of dispensation of the meeting in relation to both the Transferor Company and Transferee Company. On 10.04.2018 this Tribunal ordered Notice in the Second Motion petition moved by the Petitioner Companies in connection with the scheme of amalgamation, to the Registrar of Companies, NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Department, as well as other sectoral regulators and to such other Objector(s), if any. The Petitioners were also

राष्ट्रीय कम्पनी विधि अधिकरण National Company Law Tribunal प्रधान न्यायपीठ Principal Bench

directed vide said order to carry out publication in the newspapers "Business Standard"(English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition).

4. The petitioners, it is seen from the records have filed an affidavit on 17.05.2018 in relation to the compliance of the order passed by the Tribunal as noted above and a perusal of the same discloses that the petitioners have carried out the paper publication as directed by the Tribunal in one issue of the 'Business Standard' in English edition and 'Jansatta' in Hindi edition on 11.05.2018.

5. Further, in compliance with the directions issued by this Tribunal, a notice of the petition has also been served on the following authorities/ sectoral regulators:

i. Office of the Regional Director (Northern Region), Ministry of Corporate Affairs;

राष्ट्रीय कम्पनी विधि अधिकरण National Company Law Tribunal प्रधान न्यायपीठ Principal Bench

ii. Office of the Registrar of Companies, Ministry of Corporate Affairs, NCT of Delhi & Haryana;

iii. Income Tax Department through the Joint Commissioner of Income Tax (OSD), Circle 8(3)(1), Room no. 315, 6th Floor, Aaykar Bhawan, Maharshi Karve Road, Churchgate, Mumbai – 400020;

iv. Office of the Official Liquidator;

v. The office of CGM and Secretary, Secretary's Department, Reserve Bank Of India;

vi. Department of Telecommunications, Ministry of Communication, Government of India, Room No. 210, 20- Sanchar Bhawan, New Delhi – 110001;

vii. To the standing counsel for Department of Telecommunication, Chamber No. 1C/2, Old Block, Delhi High Court;

राष्ट्रीय कम्पनी विधि अधिकरण National Company Law Tribunal प्रधान न्यायपीठ Principal Bench

viii. To the counsel for Income Tax Department at DCIT (High Court Cell), Lawyer's Chamber, Block 1, Room Nos. 428 & 429, Delhi High Court, New Delhi.

A copy of each of the acknowledgements of receipt obtained from each of the aforementioned authorities/sectoral regulators are attached with the affidavit.

6. That the Regional Director, Northern Region, MCA to whom notice was issued has filed an Affidavit on 17.05.2018 before this Tribunal, New Delhi and upon perusal of the same it is observed that the Regional Director reiterates certain observations made in the ROC Report and does not have any adverse observation/ remark against the Scheme of Amalgamation between the petitioner companies.

7. It is submitted that paragraph 7 of the RD Report mentions about the protection of interest of the employees of the Transferor Company has been provided for under the Scheme. It is respectfully submitted that Clause 13 of Part B of the Scheme (as extracted above) is in consonance and compliance

National Company Law Tribunal
Principal Bench

with the relevant law, in particular, Section 232 (3) (i) read with Section 233 (11) of the Companies Act, 2013. In other words, Section 232 (3) (i) read with Section 233 (11) of the Companies Act, 2013 provide that the fees paid by a transferor company on its ASC prior to an amalgamation can be set-off against the fees payable by the transferee company on its ASC enhanced by the amalgamation. Accordingly, the said Clause 13 of Part B of the Scheme simply reiterates the statutory prescription that the Transferee Company shall be entitled to a merger of the ASC of the Transferor Company, along with a credit of statutory fees paid to the RoC by the Transferor Company in such regard.

In relation to the above, it has further been submitted that, without prejudice and if applicable, the Transferee Company undertook to pay the requite fees on its ASC enhanced by the amalgamation after having made the applicable adjustments, as permitted in terms of Section 233 (11) and 233 (12).Therefore, it is claimed that the above quoted observations of the ROC and the RD stand satisfactorily answered.

राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
प्रधान न्यायपीठ
Principal Bench

Creditors of Statutory Auditors in terms of the proviso to Section 230 (7)/ 233 (3) of the Companies Act, 2013.

i. The RoC Report states that the certificate of the auditors, in this regard was not found attached with the Petition.

ii. In this connection it is submitted by the Petitioner that a copy of the certificate dated October 12, 2017 issued by the Deloitte Haskins & Sells LLP, Chartered Accountants, the statutory auditor of the Transferee Company in terms of the proviso to Section 232 (3) of the Companies Act, 2013, certifying that the accounting treatment provided for in the Scheme is in conformity with the accounting standards specified under Section 133 of the Companies Act, 2013 has already been placed on record before this Hon'ble Tribunal (**Annexure- 10**) to the Company Petition No. (CAA) 31 (PB)/2018 at pages 586-587 therein.

Requirement of clearance from the Department of Telecommunications (DoT)

i. The RoC Report states at S. No. 23, that the Transferee Company is required to obtain DoT clearance for the proposed merger in terms of the *"Guidelines for transfer/merger of various categories of telecommunication service/licences/authorization under unified license (UL) on compromises, arrangements and amalgamation of the companies"* dated February 20, 2014, issued by the DoT (DoT Merger Guidelines.)

ii. In this regard it is submitted that the Transferee Company is cognizant of such requirement and as per paragraph 3 (b) of the DoT Merger Guidelines, a time period of one year will be allowed for transfer/merger of various licenses in different service areas subsequent to the appropriate approval of the Scheme by this Hon'ble Tribunal. Accordingly, the Transferee Company hereby undertakes to obtain the necessary clearance from the DoT at the appropriate stage, as required and applicable.

राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
प्रधान न्यायपीठ
Principal Bench

Non-filing of the Transferee Company's Balance Sheet as at March 31, 2017 with the RoC

i. The RoC Report (as well as RD Report in para 9) note that the Transferee Company has not yet filed its due Balance Sheet as at March 31, 2017.

ii. That in relation to the above mentioned observation of the RD, it has been submitted by the Transferee Company that it has filed its balance sheet as at March 31, 2017 with the RoC within the prescribed period, through e-form No. AOC-4 XBLR (i.e. the form for filing XBRL document in respect of financial statement and other documents with the ROC). The said e-form No. AOC-4 XBLR has since been approved and taken on record by the ROC. In this regard, it is further submitted that while the period as per the Companies Act, 2013, for filing the balance sheet as on March 31, 2017 was originally August 24, 2017 (i.e. within 30 days from the date of the annual general meeting held on July 24, 2017), the same has been presently extended to May 31, 2018

राष्ट्रीय कम्पनी विधि अधिकरण National Company Law Tribunal प्रधान न्यायपीठ Principal Bench

pursuant to certain circulars issued periodically by the Ministry of Corporate Affairs (MCA) namely: (i) General Circular No. 13/2017 dated October 26, 2017; (ii) General Circular No. 01/2018 dated March 28, 2018; and (iii) General Circular No. 04/2018 dated April 27, 2018. Accordingly, since the Transferee Company has filed the said e-form on May 1, 2018, it is in full compliance with its legal obligations with respect to filing of its balance sheet under the Companies Act, 2013.

It has been submitted by the Petitioner Companies that in view of the aforesaid submission, the observations made by the RD and the RoC stand fully addressed.

8. That the report of the Official Liquidator filed on 11.05.2018 has been placed on record which states that the Official Liquidator has not received any complaint against the proposed scheme of Amalgamation from any person/party interested in the scheme. The Official Liquidator is of the view that the affairs of the aforesaid Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the

राष्ट्रीय कम्पनी विधि अधिकरण National Company Law Tribunal प्रधान न्यायपीठ Principal Bench

provisions of the Companies Act, 1956 or 2013, whichever is applicable. Hence, no objection has been raised in the report submitted by the Official Liquidator.

9. The Petitioner Companies have filed their joint reply to the reports of the Regional Director, The Registrar Of Companies and The Official Liquidator vide affidavit dated 21.05.2018, the details of which are mentioned in the paragraphs above.

10. The Income Tax Department has not filed its observations/objections to the Scheme.

11. Further, from the perusal of the records it is seen that an affidavit dated 25.04.2018 has been filed on behalf of the Department of Telecommunications wherein the following observations have been made:

i. That none of the averments of the applicant companies as made in the Scheme of Arrangement, unless explicitly admitted in this affidavit, be deemed to have been admitted by the Department of Telecommunications. Thus, the Department of

Telecommunications reserve their right to file a further detailed affidavit in reply in future as and when such occasion for the same arises.

ii. That any omission on the part of the Department of Telecommunications to deal with any statement, contention, allegation and /or averment made in this affidavit may not be treated as an admission thereof.

iii. That the transfer/merger of license shall be subject to certain conditions mentioned in detail in the letter dated 23.11.2017 bearing office letter No. F No. AS-21/5/201-AS-V. The unintentional clerical mistake in Para 3 of the letter was corrected by issuing a corrigendum dated 30.11.2017.

12. In response to the observations of The Department of Telecommunications an Affidavit cum Undertaking has been filed on behalf of the Transferee Company by one Mr. Rohit

Krishan Puri, being the authorized signatory of the Transferee Company and it is submitted therein that the Transferee Company Undertakes that the demands stated by the DoT in its letter dated November 23, 2017 for the Transferor and Transferee Company, shall be discharged by it and if and when the same becomes due and payable in accordance with law. Additionally, the Transferee Company has undertaken to comply with the Merger Guidelines, including furnishing of the undertaking required by DoT, as and when called upon to do so by the DoT, in accordance with law.

13. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner Companies to the proposed Scheme and the affidavits filed by the Regional Director, Northern region, Ministry of Corporate Affairs, Official liquidator and the Department of Telecommunications, whereby no objections have been raised to the proposed Scheme or if raised has been met by filing undertaking, there appears no impediment to grant sanction to the Scheme. However, the Companies shall remain bound by the undertaking filed by either of them. Consequently,

राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
प्रधान न्यायपीठ
Principal Bench

sanction is hereby granted under Sections 230-232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

14. 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.

15. 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.

16. 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:

That in terms of the Scheme:

A. 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;

B. 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;

C. All proceedings now pending by or against the Transferor Company be continued by or against the Transferee company;

D. All the employees of the Transferor Companies 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;

E. The Transferor Company 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;

F. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

The Petition stands disposed of on the above terms.

(M.M.KUMAR)
PRESIDENT

(S.K.MOHAPTRA)
MEMBER (TECHNICAL)

04.07.2018
(Vidya)

05.7.2018
Registrar
National Company Law Tribunal
New Delhi

FREE OF COST COPY