bharti

July 03, 2019

National Stock Exchange of India Limited
Exchange Plaza, C-1 Block G
Bandra Kurla Complex, Bandra (E)
Mumbai – 400051, India

BSE Limited
Phiroze Jeejeebhoy Towers
Dalal Street
Mumbai – 400001, India

Ref: Bharti Airtel Limited (BHARTIARTL/532454)

Sub: Update on Scheme of Arrangement between Bharti Airtel Limited and Telesonic Networks Limited and their respective shareholders and creditors under Sections 230 to 232 of the Companies Act, 2013

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 02, 2019 ('Order') received today, has sanctioned the Scheme of Arrangement between Bharti Airtel Limited ('Transferor Company' or 'Airtel') and Telesonic Networks Limited ('Transferee Company' or 'Telesonic') and their respective shareholders and creditors under Sections 230 to 232 of the Companies Act, 2013, for the transfer of the Optical Fibre Cable business undertaking of Airtel and vesting of the same with Telesonic, on a going concern basis by way of a Slump Sale in accordance with section 2(42C) of the Income-tax Act, 1961.

The 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 & Compliance Officer

FREE OF COST COPY

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

COMPANY PETITION NO. CAA 125(PB) OF 2018

CONNECTED WITH

COMPANY APPLICATION NO. CA(CAA)-37(PB) OF 2018

Judgment Delivered on 02.07.2019

Coram:

CHIEF JUSTICE M.M. KUMAR,
HON'BLE PRESIDENT
&
DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)

IN THE MATTER OF THE SCHEME OF ARRANGEMENT

OF

IN THE MATTER OF:

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

...Petitioner Company 1/ Transferor Company

AND

Telesonic Networks Limited, a company incorporated under the Companies Act, 1956 and having its registered office at Bharti Crescent, 1, Nelson Mandela Road, Vasant Kunj, New Delhi – 110070

...Petitioner Company 2/ Transferee Company

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For the Petitioners: Mr. Sanjeev Puri, Sr. Advocate with Mr. Kamal Shankar, Mr. Pradyumna Sharma and Mr. Tanmay Sharma, Advocates

For Respondent: Mr. Kamal Kant Jha, Senior Panel Counsel for DOT

For IT: Mr. Deepak Anand, Mr. Ayushman Vats, Advocates

ORDER

M.M. KUMAR, PRESIDENT

1. This is a joint petition filed by Bharti Airtel Limited and Telesonic Networks Limited under Sections 230 to 232 of the Companies Act, 2013 ("Act") and Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ("Rules") for the approval of the Scheme of Amalgamation and Arrangement (for brevity, 'Scheme') between the Petitioner Companies and their respective shareholders and creditors under Sections 230 to 232 and other applicable provisions of the Act. The joint petition is maintainable in terms of Rule 3 (2) of the Rules.

2. The Petitioner Companies filed Company Application No. CA (CAA)-37(PB)/2018 which was disposed of by an order dated 24.04.2018 read with order dated 11.05.2018, directing holding and convening of the meetings of the shareholder and unsecured creditors of the Transferor Company and the unsecured creditors of the Transferee Company on 30.07.2018. Accordingly,

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the abovementioned meetings were duly convened and held. The Scheme was approved by 99.99% of the equity shareholders of the Transferor Company; 100% of the unsecured creditors of Transferor Company and 99.96% of the unsecured creditors of the Transferee Company present and voting.

3. In compliance with the order dated 05.09.2018, the Petitioner Companies jointly published the advertisements in relation to the notice of hearing of the Second Motion Petition in the Delhi NCR editions of the following English and Hindi newspapers, namely, "*Indian Express*" and "*Jansatta*", respectively, on 10.10.2018. Further, the Petitioner Companies served notices, upon the following authorities: (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, NCT of Delhi and Haryana; (c) Income Tax Department through the Income Tax Deprtment Cell, DCIT (High Court Cell) at Lawyer's Chamber, Block No. 1, Room No. 428 & 429, Delhi High Court, New Delhi (d) SEBI; (e) BSE; (f) NSE; (g) Department of Telecommunications; (h) the Competition Commission of India and (i) Reserve Bank of India.

4. The Petitioner Companies have filed their respective affidavits of service. The Petitioner Companies, in their respective affidavits of service have placed on record, copies of newspaper publications dated 10.10.2018 in 'Indian Express' (English) and 'Jansatta' (Hindi) both Delhi edition. Further, the Petitioner Companies also stated in their respective affidavits of service that no objections to the Scheme have been received by the Petitioner Companies as on the date of filing of the affidavit of service.

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5. However pursuant thereto, the Regional Director, has filed his representations dated 06.11.2018 along with the report of the Registrar of Companies,

The RD has made certain observations in the Report. In paragraph 10 of the RD Report it is stated that, "*It has been observed that consequent to the Scheme, Transferor Company shall transfer its OFC undertaking to Transferee Company for a lump sum consideration of Rs. 4,564.70 crores. Thus, the Transferee Company may be asked to disclose the mobilization of funds to be paid to the Transferor Company. The Petitioner Companies may be directed to clarify the above observation.*" Further, an observation has been made in relation to the compliance with the provisos to Sections 230 (7) and 232 (3) of the Companies Act, 2013, it is stated: "*Refer to Clause 11 of the proposed Scheme, the Assets and Liabilities of the Transferor Company relating to the Demerged Undertaking shall be derecognised at their carrying amount from the Appointed Date more specified in the Scheme. Transferee Company shall account for the transfer and vesting of Demerged Undertaking in its books in accordance with requirements of Ind AS 103 'Business Combinations' as notified under Section 133 of the Companies Act, 2013. Certificate of auditors, in this regard not found attached with the Petition.*"

6. In response to the aforesaid observations, the Petitioner Companies filed a rejoinder affidavit dated 09.11.2018 wherein with reference to disclosure of mobilization of funds to be paid to the Transferor Company, it is stated that Transferee Company shall arrange the funds for payment of consideration of

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Rs.45,647,000,000 (Rupees Forty Five Thousand Six Hundred Forty Seven Million Only) to the Transferor Company for demerger of optical fibre cable business undertaking ("OFC Undertaking") through one or more of the following sources:

a) Internal accruals; and/or

b) External long-term / short term borrowings from financial institutions; and/or

c) Inter-corporate loans and deposits; and / or

d) Proceeds from issuance of equity shares of the Transferee Company.

Further, in connection with certificates from statutory auditor on the accounting treatment of the Scheme, the Petitioner Companies submit that such certificates have been placed on record by the Transferor and Transferee Companies.

7. The Competition Commission of India has filed its representation in which no material objection has been raised against the approval of the Scheme. However, in the representation this Tribunal is requested to seek an undertaking from the Petitioner Companies that approval of Competition Commission of India is not required for the Scheme.

8. In this regard both the Transferor Company and Transferee Company filed their respective undertakings both dated 09.11.2018 submitting that under the present Scheme only optical fibre cable business ("OFC Business") of Transferor

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Company is being transferred to the Transferee Company as a part of the proposed transaction. The assessment of the structure of the proposed transaction, done in compliance with all relevant accounting standards, reveal that the value of turnover of the OFC Business in the FY 2016-17 is INR 371.8 crores which, in terms of Threshold Notification dated March 27, 2017, is way below the *de minimis* exemption threshold of INR 1000 crore. Thus, the proposed transaction is qualified for the benefit of the *de minimis* exemption and as such would not require a notification to the Competition Commission of India.

9. It is seen that the Department of Telecommunications ("**DoT**") in its affidavit dated 13.11.2018 has made following observations:

> *"6. That, on detailed examination of scheme, it may be noted that as per clause 6.4 (i) (b) of UL License, proposed scheme of amalgamation shall be effective only after the written approval of the licensor for transfer/merger of licenses.*
>
> *Excerpts of relevant clause of UL reproduced below:-*
>
> > *"6.4 (i)(b) whenever amalgamation or restructuring i.e. merger or demerger is sanctioned and approved by the High Court or Tribunal as per the law in force; in accordance with the provision, more particularly Section 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*

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written approval of the licensor for transfer/merger of licenses, and

...."

7. *That both the entities have to ensure compliance of above said clause and, if required, Clause 3.1 & 6.1 of part B and clause 6.1 of Part C of the said scheme may be modified in such a manner that the scheme shall be effective only after the written approval of the Department.*

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

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

8. *That all dues to the Government arising due to transfer of OFC (Optical Fibre Cable Business undertaking as defined at page No. 22 in clause 1.14 of Part-A of Scheme) from transferor company to transferee company will have to be cleared by either of the two parties before issue of the permission for transfer of Business of OFC Undertaking consequently sanction of scheme by NCLT. In the event of judicial intervention in respect of demand by the Government, a bank guarantee for an amount equal to demand raised shall be submitted pending final outcome of the case. Information in respect of dues of entities involved in the Scheme of Arrangements are being collected from different wings of Department of Telecommunications. As per information available so far, the pending demands/outstanding dues in respect of M/s. Bharti Airtel Limited on*

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provisional basis, is 42711.45 crores INR as tabulated in the attachment dated 31.07.2018 and 03.08.2018 9 (Annexure I).

9. *M/s. Bharti Airtel Limited should undertake to pay all dues arising from OFC Undertaking business prior to the effective date raised by any wing of DoT including the penalties imposed/to be imposed. M/s. Telesonic Networks Limited should undertake to pay all the dues arising from OFC undertaking business after the effective date raised by any wing of Department of Telecommunications including the penalties imposed/to be imposed.*

10. *That transfer of OFC undertaking business from Transferor Company to Transferee Company shall be permitted after the merger is sanctioned and approved by the Hon'ble Tribunal as per law in force; in accordance with the provisions, more particularly sections 391 to 394 of the Companies Act, 1956 and now under sections 230-232 of the Companies Act, 2013.*

11. *That the Scheme as approved by the Hon'ble Tribunal may be filed with the Registrar of Companies only after written approval of the Department of Telecommunications (the Licensor) for Transfer/merger of Licenses of Transferor Company to the Transferee Company.*

12 *That the proposed scheme(s) shall be governed by terms and conditions of NLD/ILD/UL/UL(VNO) License, Revised IP-1 guidelines dated 04.07.2017, terms and conditions mentioned in the Registration Certificate, DoT's spectrum linearization guidelines, DoT's spectrum sharing guidelines, DoT's spectrum trading guidelines, Merger & Acquisition guidelines dated 20.02.2014 as amended from time to time and any other*

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DoT's guidelines/ agreement / regulation in accordance extant policy of DoT. Both the parties shall have to ensure compliance of the same."

13. The Petitioner Companies have filed a joint response to the DoT affidavit dated 12.12.2018 wherein with respect to paras 6 and 7 of the DoT affidavit, it is submitted that under the Scheme, the Transferor Company merely intends to transfer its optical fibre business to the Transferee Company and the aforesaid transfer of fibre assets to its subsidiary does not entail transfer of any Telecom Service Licenses or registrations by the Transferor Company to the Transferee Company. The approval from DoT, if any, will be sought by the Petitioner Companies pursuant to sanction/approval of the Scheme by this Tribunal.

In respect of Para 8 dealing with the demands/outstanding dues pertaining to Transferor Company in relation to AGR (SUC), OTSC (One Time Spectrum Charge) is concerned, the Petitioner Companies submit that all demands/ outstanding dues related to Licences/Spectrum allotted to the Transferor Company are sub-judice before various courts and shall remain dues of the Transferor Company. Such Licenses and/or Spectrum are not getting transferred under the Scheme to the Transferee Company. In any event, the Transferor Company has given an undertaking that it shall continue to be responsible for such demands and shall pay all the demands /outstanding dues to the DoT Affidavit if such due/ demands become payable after adjudication by the various Courts, in accordance with law.

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14. Further, with respect to Para 9, it is submitted that all dues pertain to Telecom Services licenses and Spectrum which are, in any event sub-judice. In respect of OFC business of Transferor Company, there are no dues,. In relation to the dues pertaining to Telecom Service Licenses and Spectrum related dues, the Transferor Company has undertaken to pay the same, if found payable after the final adjudication in the court of law. Since no OFC business related dues are payable by Transferor Company, no liabilities in relation to OFC business would arise on the Transferee Company consequent to the approval of the Scheme. In any event, if at all, any dues arise from the OFC businesses pertaining to period before or after the effective date, *the Transferor and the Transferee Companies, have given an undertaking to pay the same to DoT, subject to their rights and if found payable in accordance to law.*

With respect to para 10 and 11, it is submitted that Spectrum Auction Deferred Payments as sought by DoT are not applicable in the present case as no transfer of Access Spectrum is involved under the Scheme. In any event, these amounts are already secured by way of Financial Bank Guarantees (FBGs) given by the Transferor Company that are submitted with DoT as per provisions of the respective NIAs. Further, in respect of para 12 of the affidavit, the Petitioner Companies have undertaken to comply with all laws, rules and guidelines, as may be applicable in the instant matter.

15. It is pertinent to mention that the DoT has further filed a supplementary affidavit dated 29.01.2019, in which it made some statements to supplement its

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carlier affidavit dated 13.11.2018. In the said affidavit, DoT made the following observations:

*"(a) **Statement supplementary to Para 8:***

i. As far as the condition namely "That all dues to the Government arising due to transfer of OFC (Optical Fibre Cable Business undertaking as defined at page No. 22 in clause 1.14 of Part-A of Scheme) from transferor company to transferee company will have to be cleared by either of the two parties before issue of the permission for transfer of Business of OFC Undertaking consequently sanction of scheme by NCLT" is concerned, it is stated that in case the dues of the Department of Telecommunications, arising from the OFC Undertaking business of the Transferor Company, are not separable, all dues relating to licenses/authorisation/registration held by M/s. Bharti Airtel Limited, involving OFC Undertaking business, in whatsoever manner, and all dues relating to IP-1 registration held by M/s. Telesonic Networks Limited, will have to be cleared by either of the two parties before issue of permission by the Department of Telecommunications for transfer of business of OFC Undertaking consequent to sanction of Scheme by Hon'ble NCLT.

ii. As far as condition stating that "in the event of judicial intervention in respect of demand by the Government, a bank guarantee for an amount equal to demand raised shall be submitted pending final outcome of the case." is concerned, it is stated that in accordance with the clause 3(i) of

the Merger & Acquisition Guidelines, 2014, the condition relating to submission of bank guarantee for an amount equal to demand raised by the Government applies only for one time spectrum charges in respect of spectrum holding beyond 4.4MHz (GSM)/2.5 MHz (CDMA) in respect of the transferee company. In the instant case, the Transferee Company does not hold any spectrum and hence this condition will not be applicable.

iii. *As far as information regarding pending demands /outstanding dues of Rs. 42711.45 crores in respect of M/s. Bharti Airtel Limited on provisional basis, is concerned, is stated that these demands comprise of the License Fee (LF) demand of Rs. 20103.07 Crore, Spectrum Usage Charges (SUC) demand of Rs. 8535.13 Crore, One time Spectrum Charges (OTSC) demands of Rs. 8414 Crore and Deferred payments for Spectrum acquired through auction of Rs. 5659.25 Crore. The demand towards LF, SUC and OTSC are sub-judice and hence these demands are not enforceable at this stage. However these demands will become payable depending on the outcome of the decision of such litigations. Further, the deferred payment for spectrum acquired through auction does not get attracted in the case owing to the fact that no transfer of spectrum has been indicated in the proposed transfer.*

Further, dues towards one-time spectrum charge (OTSC) of Rs. 1287.97 crore for Chennai LSA are pending in respect of M/s. Bharti Airtel Limited.

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"(b) ***Statement supplementary to Para 9***

As a licensee, the liabilities, penalties, dues, payments, fees etc. identified, communicated, imposed, recognised, etc. either pre or post Scheme of Arrangement remains the responsibility of M/s. Bharti Airtel Limited. The transfer of OFC undertaking business in no way transfers the departmental liabilities, penalties, dues, payment, fees etc. identified, communicated, imposed, recognised, etc. either pre or post Scheme of Arrangement to a non-licensed company. Therefore, M/s. Bharti Airtel Limited shall undertake to pay all the dues arising from the OFC undertaking business including the penalties imposed/to be imposed raised by any wing of the Department of Telecommunications relating to the telecom licenses/authorisations held by it, for the period prior to the Scheme of Arrangement even subsequent to the implementation of the Scheme of Arrangement.

16. In response to the contents of the supplementary affidavit filed by the DoT, the Petitioner Companies relied upon its response to the earlier DoT Affidavit dated November 14, 2018 wherein the Petitioner Companies had undertaken to pay all dues to DoT, in accordance with law.

"5. .....

In any event, if at all, any dues arise from the OFC business pertaining to period before or after the effective date, the Transferor and the Transferee Companies as the case may be,

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undertake before this Hon'ble Tribunal to pay the same to DoT, subject to their rights and if found payable in accordance to law."

17. The Income Tax Department has also filed separate reports with respect to the Transferor Company and the Transferee Company with no adverse observations.

18. We have verified the speed post receipts showing dispatch of notices to the SEBI, NSE, BSE and the RBI and their corresponding delivery reports, and observed that all such notices were delivered, however, no representation or observation have been received from SEBI and RBI. However, it is submitted by the Petitioner Companies that the NSE had provided its approval to the Scheme vide its observation letter dated 09.02.2018. Similarly the BSE had provided its observation letter dated 09.02.2018 wherein it is stated that it has no adverse observations.

19. In view of the above, there is no impediment in sanctioning the Scheme. The Scheme as contained in *Annexure 1* is approved. While approving the Scheme, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes or any other charges/payments in accordance with law or granting exemption in respect of any permission/ compliance with any other requirement which may be specifically required under any law.

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20. THIS TRIBUNAL DO FURTHER ORDER:

WITH RESPECT TO TRANSFEROR COMPANY AND TRANSFEREE COMPANY:

i. The OFC Undertaking of Transferor Company shall stand transferred to, and vested in the Transferee Company on a going concern basis.

ii. All assets of the OFC Undertaking that are movable in nature or are otherwise capable of transfer 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.

iii. All movable assets of the OFC Undertaking, other than those specified in para (ii) above, including cash and cash equivalents, sundry debtors, outstanding loans and advances, if any, recoverable in cash or in kind or for value to be received, bank balances and deposits, if any, with government, semi government local and other authorities and bodies, customers and other Persons shall, without any requirement of any further act, instrument or deed, become the property of the Transferee Company.

iv. That all Intellectual Property Rights (as defined under the Scheme) of the Transferor Company relating to OFC Undertaking shall, without any

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requirement of any further act or deed, stand transferred and vested in the Transferee Company. The Scheme shall serve as a requisite consent for use and transfer of the Intellectual Property without requiring the execution of any further deed or document, so as to transfer of the said Intellectual Property in favour of the Transferee Company.

v. All liabilities of the OFC Undertaking shall stand transferred or be deemed to have been 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.

vi. All Contracts (as defined under the Scheme), deeds, bonds, lease deeds, agreements entered into with various persons, including independent consultants, subsidiaries/associates/joint venture companies and other shareholders of such subsidiaries/associates/joint venture companies arrangements and other instruments of whatsoever nature in relation to the OFC Undertaking to which the Transferor Company is a party or to the benefit of which the Transferor Company may be eligible, and which are subsisting or having effect immediately before the Effective Date, shall, continue in full force and effect on or against or in favour of, as the case may be, of the Transferee Company and may be enforced as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obligee thereto or thereunder.

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vii. All employees of the OFC Undertaking as on the Effective Date, shall be deemed to have become, employees of the Transferee Company, without any interruption of service and on the basis of continuity of service and on the basis of same terms and conditions as those applicable to them with reference to the Transferor Company on the effective date. The services of such employees, if any, with the Transferor Company upto the Effective Date shall be taken into account for the purposes of all benefits to which the employees, if any, may be eligible under the Applicable Law. Further, all contributions to funds and schemes in respect to provident fund, employee state insurance contribution, gratuity fund, superannuation fund, staff welfare scheme or any other special schemes or benefits created or existing for the benefit of the employees of the OFC Undertaking, if any, shall be made by the Transferee Company in accordance with the provisions of such schemes or funds and Applicable Law.

viii. All legal or other proceedings (including before any statutory or quasi-judicial authority or tribunal) by or against the Transferor Company, which may be instituted after the Effective Date and which relate to a period after Effective Date and in each case relating to the OFC Undertaking would stand transferred, or be deemed to stand transferred to the Transferee Company and shall solely be continued and enforced by or against the Transferee Company. All legal or other proceeding(s) (including before any statutory or quasi-judicial authority or tribunal) by or against the Transferor

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Company pending on the Effective Date and/or which may be instituted after Effective date but which relate to a period prior on or prior to Effective Date and in each case relating to the OFC Undertaking would be to the sole account of the Transferor Company and shall be solely be continued and enforced by or against the Transferor Company.

ix. The Petitioner Companies shall within 30 days of date of receipt of this order cause certified copy of this order delivered to Registrar of Companies, National Capital Territory of Delhi & Haryana for registration and the OFC Undertaking of the Transferor Company shall be deemed to be transferred.

x. That 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 in the above terms.

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Sd/-

(M. M. KUMAR)
PRESIDENT

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)

vidya

02.07.2019

3/7/19
सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
C.G.O. COMPLEX, NEW DELHI-110003