bharti

February 04, 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 Intimation dated January 24, 2019 w.r.t Scheme of Arrangement between Tata Teleservices (Maharashtra) Limited and Bharti Airtel Limited and their respective shareholders and creditors under Sections 230 to 232 of the Companies Act, 2013

Dear Sir / Madam,

Further to our intimation dated January 24, 2019, please find enclosed the certified copy of the Order received by the Company today.

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 126/PB/2018

with

Company Application No.CA (CAA) 65/PB/2018

Judgment dated: 21.01.2019

30.01.2019

Coram:

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

HON'BLE PRESIDENT

&

MR. S.K. MOHAPATRA,

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 ARRANGEMENT

AMONGST

National Company Law Tribunal
Principal Bench
04/02/2019

TATA TELESERVICES (MAHARASHTRA) LIMITED

Company registered under the Companies Act, 2013

Having Registered Office at:

Voltas Premises,

T.B Kadam Marg, Chinchpokli

Mumbai-400033

..... Transferor Company

BHARTI AIRTEL LIMITED

Company registered under the Companies Act, 2013

Having Registered Office at:

Bharti Crescent, 1,

Nelson Mandela Road, Vasant Kunj,

Phase II, New Delhi-110070

..... Petitioner Company / Transferee Company

For the Petitioner: Mr. Sanjeev Puri, Senior Advocate, Mr Kamal Shankar, Mr Gyanendra Kumar, Ms Pallavi Rao, MS Nivedita Rao, Mr Pradyumna Sharma, Ms Aditi Singhvi, Ms Darshna Vyas, Mr. Tanmay Sharma, Advocates.

For the Respondent: Mr Puneet Kumar (Assistant Director, DoT), Ms. Easha Kadian, Advocate for IT Dept, Ms Sonam Sharma, CP (for RD)

National Company Law Tribunal
Principal Bench

ORDER

M.M. KUMAR, PRESIDENT

1. This petition has been filed by the Petitioner Company under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Arrangement. The copy of the Scheme has been placed on record. The Scheme provides for:

(i) *the transfer by way of a demerger of the Demerged Undertaking of the Transferor Company to the Transferee Company, and the consequent issue of a BAL Equity Shares to TTML Equity Holders and BAL RPS to the TTML RPS Holders by the Transferee Company in accordance with clause 6 of the Scheme;*

(ii) *various other matters consequential or otherwise integrally connected with the Scheme.*

2. A perusal of the petition discloses that initially the First Motion application seeking dispensation from convening the meeting of Shareholders and

Creditors was filed before this Bench and based on such application moved under Sections 230-232 of the Companies Act, 2013, this Tribunal vide its order dated 23.05.2018 issued directions with respect to convening the meetings creditors/ shareholders of the company. The Petitioner was directed to carry out publication in the newspapers English Daily 'Indian Express' (Delhi edition) as well as in Hindi Daily 'Jansatta' (Delhi edition). In addition thereto notices were directed to be served on the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, the Income Tax Department and to the other relevant sectoral regulators.

3. It is seen from the records that the Petitioner has filed an affidavit affirming compliance of the order passed by the Tribunal. It further discloses that the petitioner has effected the newspaper publication as directed in English Daily 'Indian Express' (Delhi Edition) as well as in Hindi Daily 'Jansatta' (Delhi Edition) on 10.10.2018 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition were duly served on the Registrar of Companies, Regional Director, Northern Region and Income Tax Department in compliance of the order and in proof of the same acknowledgement, by the respective offices have also been placed on record.

National Company Law Tribunal
Principal Bench

4. It is pertinent to mention that the Transferee Company, received a letter dated 24.07.2018 from an unsecured creditor namely, S2 Infotech International Limited ('Creditor Objector') raising certain disputed claims against the Transferee Company. The creditor objector has an outstanding debt of Rs. 29,19,251 out of total outstanding debt of the Transferee Company amounting to Rs. 244,254 million. It was submitted that the creditor objector constitutes much less than 5% of the total outstanding debt of Transferee Company as on 31.03.2018 and as such, in terms of proviso to Section 230(4) of the Companies Act, 2013, he does not have the requisite locus to object to the Scheme. According to the proviso any objection could be made by persons having outstanding debt amounting to not less than 5% of total outstanding debt as per the latest audited financial statement.

5. Learned Counsel for the Petitioner Company states that one shareholder of the Petitioner Company, Mr. Mukesh Mohan Chandiramani (Objector) has vide his letter dated 18.10.2018 raised certain frivolous objections. The Petitioner Company has filed an Affidavit dated 06.11.2018 in reply dealing with the said objections of the Objector. The Counsel for the Petitioner Company further states that the Objector holds only 9 shares in the Petitioner Company constituting 0.000000460% of the total shareholding of the Petitioner Company which does not meet the

mandatory minimum threshold of 5% prescribed under proviso to Section 230 (4) of the 2013 Act, to raise an objection by a shareholder and on this ground of having no locus, the objection raised by the Objector deserves to be dismissed. Thus, as the Objector does not meet the mandatory minimum threshold prescribed by 2013 Act for a shareholder to raise objection to a Scheme, the objection of the Objector is dismissed as not maintainable.

6. The Regional Director has filed its representation dated 19.11.2018 and raised no objection to the approval of the Scheme.

7. The department of Income Tax has also given their no-objection to the Scheme as well. Its pertinent to mention that nevertheless, the transferee company has unequivocally undertaken to meet the tax liabilities of the Demerged Undertaking with effect from the effective date, in accordance with law.

8. It is seen that the DoT in its letter dated June 18, 2018 has made the following observations:

"*3. It may further be noted that consequent upon sanction of the afore-mentioned Scheme of Arrangement by the concerned NCLTs, the transfer of the Demerged Undertaking of M/s. TTML to M/s. BAL shall be subject to the following conditions:*

(a) A time period of one year will be allowed for transfer/merger of the demerged undertaking of M/s. TTML into M/s. BAL subsequent to the sanction of the Scheme of Arrangement by the concerned NCLTs.

*(b) If a licensee participates in an auction and is consequently subject to a lock-in condition, then if such a licensee propose to merge/compromise arrange/amalgamate into another licensee as per the provisions of applicable Companies Act, the lock-in period would be in respect of new shares which would be issued in respect of the resultant company *(Transferee Company). The substantial Equity/Cross Holding clause shall not be applicable during this period of one year unless extended otherwise. The period can be extended by the Licensor recording reasons in writing.*

(c) The transfer/merger of the demerged undertaking of M/s. TTML to M/s. BAL consequent to compromise arrangements or amalgamation of companies shall be allowed where market share for access services in respective service area of the resultant entity is upto 50%. 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. If the resultant entity fails to reduce its market share

to the limit of 50% within the specified period of one year, then suitable action shall be initiated by the licensor.

(d) *For determining the aforesaid market share, market share of both subscriber base and Adjusted Gross Revenue (AGR) of licensee in the relevant market shall be considered. The entire access market will be the relevant market for determining the market share which will include wireline as well as wireless subscribers. Exchange Data Records (EDR) shall be used in the calculation of wireline subscribers and Visitor Location Register (VLR) data or equivalent, in the calculation of wireless subscribers for the purpose of computing market share based on subscriber base. The reference date for taking into account EDR/VLR data of equivalent shall be 3P December or 30th June of each year depending on the date of application. The duly audited AGR shall be the basis of computing revenue-based market share for operators in the relevant market. The date for duly audited AGR would be 31st March of the preceding year.*

(e) *In the event of judicial intervention in respect of the demands raised for one-time spectrum charges in respect of the spectrum holding beyond 4.4MHz in GSM band/ 2.5MHz in CDMA band before merger in respect of transferee (i.e. acquiring entity) company, a 'bank guarantee for an amount equal to the demand raised by the Department of*

Telecommunications for one-time spectrum charge shall be submitted pending final outcome of the court case.

(f) *The Spectrum Usage Charge (SUC) as prescribed by the Government from time to time, on the total spectrum holding of the resultant entity shall also be payable.*

(g) *Spectrum held by the resultant entity viz. M/s. BAL in respective service areas should be within the prescribed limits as per the provisions of the Guidelines for transfer/Merger of various categories of Telecommunication service licenses/authorisation under Unified License (UL) on compromises, arrangements and amalgamation of the companies dated 20.02.2014 (as amended from time to time) in force at the time of merger.*

(h) *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 the applicable Spectrum Usage Charges on the total spectrum holding of the resultant entity shall be levied for such period. If the spectrum beyond prescribed limit is not surrendered by the merged entity within one year, then, separate action in such cases, under the respective licenses/statutory provisions, may be taken by the Government for non-surrender of the excess spectrum. However, no refund or set off of money paid and/or payable for excess spectrum will be made.*

National Company Law Tribunal
Principal Bench

(i) All demands, if any, relating to the licenses of the merging entitieswill have to be cleared by either of the two licensees before issue of the permission for the merger/transfer of the demerged undertaking of M/s. TTML to M/s. BAL. This shall be as per demand raised by the Government/ Licensor based on the returns filed by the company notwithstanding any pending legal cases or disputes. An undertaking shall be submitted by the resultant entity to the effect that any demand for the pre-merger period of transferor or transferee company shall be paid. However, the 1011 demands except for onetime spectrum charges of transferor and transferee company, stayed by the / Court of law shall be subject to outcome of decision of such litigation. The onetime spectrum charges shall be payable as per provisions in 3(e) above.

(j) If consequent to transfer/ merger of the demerged undertakings of M/s TTML to M/s. BAL in a service area, the Resultant entity becomes a "Significant Market Power" (SMP), then the extant rules & regulations applicable to SMPs would also apply to the Resultant entity. SMP in respect of access services is as defined in TRAI's "The Telecommunications Interconnect (Reference interconnect Offer) Regulations, 2002 (2 of 2002)" as amended: from time to time.

(k) Resultant entity viz. M/s BAL shall submit a Bank 'Guarantee for the deferred payment towards instalment amount of auctioned spectrum in respect of the Demerged Undertaking of M/s TTML."

9. In respect of paragraphs 8 (a) to (h) and (j) to (k), the Transferee Company has undertaken that the conditions/terms stated by in the DoT Letter for the Transferor and Transferee Company, shall be discharged/complied with in accordance with the Scheme as and when the same become due and payable in accordance with law. It without prejudice to the rights of the parties under laws. The Transferee Company has given an undertaking on 29.11.2018 to this effect. Additionally, the Transferee Company has undertaken to comply with the Guidelines for Transfer/Merger of various categories of Telecommunication service licenses/authorisation under Unified License (UL) on compromises, arrangements and amalgamations of the companies, including furnishing of the undertaking requested by DoT, as and when called upon to do so by the DoT, in accordance with law.

10. With reference to the conditions state in paragraph 3(i) of the DoT Letter, the Transferee Company and the Transferor Company have filed an undertaking dated 23.10.2018 with the DoT. In the said undertaking, the Transferee Company has given the following undertaking:

"5. Consequently, BAL hereby undertakes that any and all demands, liabilities or proceedings pertaining to a period prior to the effectiveness of the Scheme of Arrangement:

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Principal Bench

(a) shall be transferred to BAL as part of the Scheme of Arrangement, if such demands, liabilities or proceedings are associated with any UL/Access Service Authorisation in Mumbai and Maharashtra circles issued to TTML; or

(b) shall remain the demands, liabilities or proceedings of TTML and shall not be transferred to BAL as part of the Scheme of Arrangement, if such liability is associated with any UL/ISP License issued to TTML or any ISP licenses which were previously held by TTML...

At the time of oral arguments on 11.12.2018 the Assistant Director for Department of Telecommunication submitted that only mobile business is involved in the Scheme and no license transfer exercise is involved and accorded his no objection. The same fact is also recorded in the order dated 11.12.2018 passed by this Bench.

11. In the petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 are pending against the Petitioner Company.

12. Certificates of respective Statutory auditors of the petitioner company have been placed on record to the effect that Accounting Treatment

proposed in the Scheme is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.

13. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner Company to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs, Income Tax Department and the Department of Telecommunication, there appears to be no impediment in sanctioning the present Scheme. Consequently, sanction is hereby granted to the Scheme under Section 230 & 232 of the Companies Act, 2013. The Petitioner shall however remain bound by the undertakings filed and also to comply with the statutory requirements in accordance with law.

14. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioner.

While approving the Scheme as above, we further clarify that this order should not be construed as an order granting exemption from payment of stamp duty, taxes including income tax, GST etc or any other charges, if

any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

15. **THIS TRIBUNAL DO FURTHER ORDER(S):**

(A) WITH RESPECT TO TRANSFEROR COMPANY AND TRANSFEREE COMPANY

a) All property, rights and powers of Demerged Undertaking 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 vested in the Transferee Company for all intents, purposes and interests of the Demerged Undertaking subject nevertheless to all changes now affecting the same and;

b) All the liabilities (if any) and duties of Demerged Undertaking 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

c) Any proceedings pending by or against the Transferor Company in respect of Demerged Undertaking be continued by or against the Transferee Company ; and

d) The Petitioner Company shall within thirty Days of the date of the receipt of this order dated 30.01.2019 cause a certified copy of this order delivered to the Registrar of Companies for registration and the Demerged Undertakings of the Transferor Company shall be deemed to be transferred.

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

The petition stands disposed of in the above terms.

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

Sd/-

(M.M. KUMAR) 30.1.201

PRESIDENT

Sd/-

(S.K. MOHAPATRA)

MEMBER (TECHNICAL)

FREE OF COST COPY

(Vidya)

वु.वि.वं. राजु / V.V.B. RAJU
उप पंजीयक / DEPUTY REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
Block-3, 6th Floor, CGO COMPLEX
LODHI ROAD, NEW DELHI - 110003

NOTE

Pronounced today in open court in pursuance of power under Rule 151 of NCLT Rules, 2016 as Hon'ble Member (Technical), Mr S.K. Mohapatra is not holding court today.

Nirmala Vincent
Court Officer

4/2/2019

V.V.B. RAJU
DEPUTY REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
Block-3, 6th Floor, CGO COMPLEX
LODHI ROAD, New DELHI - 110003