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 18, 2019 w.r.t Composite Scheme of Arrangement between Tata Teleservices Limited, Bharti Airtel Limited and Bharti Hexacom 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 18, 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 138/PB/2018

with

Company Application No.CA (CAA) 98/PB/2018

Judgment dated: 17.01.2019

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

TATA TELESERVICES LIMITED

Company registered under the Companies Act, 2013

Having Registered Office at:

10th floor, Tower 1, Jeevan Bharati,

124 Connaught Circus,

New Delhi-110001

04/02/2019

..... Petitioner Company No. 1 / 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 No. 2 / Transferee Company No. 1

BHARTI HEXACOM LIMITED

Company registered under the Companies Act, 1956

Having Registered Office at:

Bharti Crescent, 1,

Nelson Mandela Road, Vasant Kunj,

Phase II, New Delhi-110070

... Petitioner Company No. 3/Transferee Company No. 2

For the Applicants: 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)

ORDER

M.M. KUMAR, PRESIDENT

1.This Joint application has been filed by the Petitioner Companies 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 1 (as defined in the Scheme) of the Transferor Company to the Transferee Company 1, and the consequent issue of a fixed number of BAL RPS (i.e. fully paid up redeemable, non-participating, non-cumulative preference shares of face value Rs. 100/-each) by the Transferee Company 1 to the shareholders of the Transferor Company in accordance with the terms of the Scheme*

(ii) *the transfer by way of demerger of the Demerged Undertaking 2 (as defined in the Scheme) of the, Transferor Company to the Transferee Company 2, and the consequent issue of BHL RPS (i.e. fully paid up redeemable, non-participating, non-cumulative preference shares of face value Rs. 100/-each) by the Transferee Company 2 to the shareholders of the Transferor Company in accordance with the terms of the Scheme; and*

(iii) *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 the joint application moved under Sections 230-232 of the Companies Act, 2013, this Tribunal vide its order dated 14.06.2018 issued directions with respect to convening the meetings of creditors/ shareholders of the companies. The Petitioners were directed to carry out publication in the 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 other relevant sectoral regulators.

3. It is seen from the records that the Petitioners have filed an affidavit affirming compliance of the order passed by the Tribunal dated 25.09.2018. A perusal of the affidavit discloses that the petitioners have effected the newspaper publication as directed in English Daily 'Indian Express' (Delhi Edition) as well as in Hindi Daily 'Jansatta' (Delhi Edition) on 16.11.2018 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of the 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.

4. It is pertinent to mention that the Transferee Company No.1, received a letter dated 22.08.2018 from an unsecured creditor namely, S2 Infotech International Limited ('Creditor Objector') raising certain disputed claims against the Transferee Company No. 1. The creditor objector has an outstanding debt of Rs. 24,67,253 out of total outstanding debt of the Transferee Company 1 amounting to Rs. 29,764.13 crores. It was submitted that the creditor objector constitutes much less than 5% of the total outstanding debt of Transferee Company No. 1 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. The Regional Director has filed its representation dated 14.11.2018 and raised no objection to the approval of the Scheme. The department of Income Tax has also filed two letters dated 19.11.2018 and 05.12.2018 wherein they have given their no-objection to the Scheme as well.

6. The Department of Telecommunication (herein referred to as 'DoT') in its letter dated August 21, 2018 has made a few observations. It is stated that consequent upon sanction of the Scheme by the, the transfer of the 'Demerged Undertaking 1' of M/s TTSL ("Transferor Company" to M/s. BAL ("Transferee Company 1") and the transfer of the 'Demerged

Undertaking' of M/s. TTSL to M/s. BHL ("Transferee Company 2") would be subject to the following conditions:

(a) A time period of one year will be allowed for transfer/merger of the Demerged Undertaking 1 and the Demerged Undertaking 2 of M/s TTSL into M/s BAL & M/s BHL respectively, subsequent to the sanction of the Composite Scheme of Arrangement by the NCLT.

(b) If M/s TTSL is subject to a lock-in condition consequent to its participation in auctions, then lock-in period would apply in respect of new share which would be issued to M/s TTSL in respect of the resultant entities (viz. M/s BAL and M/s BHL). The substantial Equity/ Cross Holding clause shall not be applicable during this period of one year unless extended otherwise. This period can be extended by the Licensor recording reasons in writing.

(c) The validity period of the spectrum held by the Transferor Company (viz. M/s TTSL) shall remain unchanged subsequent to transfer/ merger of the demerged undertaking 1 and the demerged undertaking 2 of M/s TTSL into M/s BAL and M/s BHL respectively.

(d) The market shares of the resultant entities (viz. M/s BAL and M/s BHL) should not be greater than 50% of total market share based on AGR and subscriber base. In case the merger results in market share in any service area(s) exceeding 50% the resultant entities should reduce their market shares to the limit of 50% within a period of one year from the date of

approval of transfer/ merger by the competent authority. If the resultant entities fail to reduce their market shares to the limit of 50% within the specified period of one year, suitable action shall be initiated by the licensor.

(e) In respect of the spectrum of 4.4MHz (GSM)/ 2.5MHz (CDMA) assigned to M/s TTSL against entry fee paid in various LSs. M/s BAL and M/s BHL will have to make payment of the differential between the entry fee and the market determined price of the spectrum for the applicable LSAs from the date of approval of the Composite Scheme of Arrangement by the Hon'ble NCLT on a pro rata basis for the remaining period of validity of the licenses. However, on conclusion of the judicial Proceedings in the Petition No. 10617 of 2013, pending before the Hon'ble High Court of Calcutta, if the administratively allocated spectrum beyond 2.5MHz held by M/s TTSL, in the pre-merger period, which is transferred to M/s BAL and M/s BHL, remains administratively allocated (i.e. the market determined price for such spectrum is not realized by the Department), M/s BAL and M/s BHL shall pay to the Department, the market determined price of such spectrum in respective LSAs from the date of approval of the Scheme by the Hon'ble NCLT on a pro-rata basis for the remaining period of validity of the licenses. Further, M/s BAL and M/s BHL are required to ensure that the right to use of administratively allotted access spectrum beyond 2.5MHz held by M/s TTSL, in the pre-merger

period which is transferred to M/s BAL & M/s BHL, shall be governed by the restricted use of Technology provisioned in the erstwhile Licenses of M/s TTSL.

(f) In the event of judicial intervention in respect of the demands raised for one-time spectrum charges towards the spectrum holdings beyond 4.4MHz (GSM/2.5MHz (CDMA) of M/s BAL and M/s BHL before merger of the demerged undertakings of M/s TTSL, M/s BAL and M/s BHL shall submit a bank guarantee for an amount equal to the demand raised by the Department for one-time spectrum charge for the LSAs in which merger is taking place, pending final outcome of the court case.

(g) The Spectrum Usage Charge (SUC), as prescribed by the Government from time to time, on the total spectrum holding of the resultant entities (viz. M/s BAL and M/s BHL) shall be payable.

(h) Spectrum holding of the resultant entities (viz. M/s BAL and M/s BHL) will be well within the limit defined as under:

a. The total spectrum held by M/s BAL and M/s BHL shall not exceed 35% of the total spectrum assigned for access services, by way of auction or otherwise, in the concerned service area.

b. The combined spectrum holding in the sub-1 GHz bands (700 MHz, 800MHz and 900MHz bands) by M/s BAL and M/s BHL shall not exceed 50% of the total spectrum assigned in the sub-1 GHz bands, by way of auction or otherwise, in the concerned service area.

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c. The principles applied in NIA of August 2016 for calculation of spectrum cap shall continue to be applied while calculating revised overall as well as sub-1 GHz spectrum cap.

d. In case the transferor and transferee companies had been allocated one block of 3G spectrum (2100 MHz) through the auction conducted for 3G/BWA spectrum in 2010, the resultant entities (viz. M/s BAL and M/s BHL) shall be allowed to retain two blocks of 3G spectrum (2100 MHz) acquired through the afore-mentioned auction in respective service areas as a result of the Composite Scheme of Arrangement.

(i) If, as a result of merger, the total spectrum held by the resultant entities (viz. M/s BAL and M/s BHL) is beyond the limits prescribed, the relevant provisions of the Merger and Acquisition Guidelines, 2014 (as amended from time to time) will be applicable.

(j) All demands (including the OTSC demand raised upon M/s BAL for the extended period of license from 30.11.2014 to 27.09.2021 in respect of the erstwhile Chennai Service Area through the Department's letter No.1022/06/2011-WR dated 26.06.2018) relating to the licenses of the merging entities (viz. M/s BAL, M/s BHL and M/s TTSL) will have to be cleared by any of the merging entities before issue of the permission for the merger. This shall be as per demand raised by the Government/Licensor based on the returns filed by the company

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notwithstanding any pending legal cases or disputes. Further, an undertaking shall be submitted by both M/s BAL and M/s BHL to the effect that any demand for the pre-merger period, raised upon the merging entities (viz. M/s BAL, M/s BHL and M/s TTSL) shall be paid by them. However, the demands except for one-time spectrum charges of transferor and transferee companies, stayed by the Court of Law shall be subject to outcome of decision of such litigation. The OTSC shall be payable as per provisions in 3(e) & 3(f) above.

(k) If consequent to transfer/merger of the demerged undertakings of M/s TTSL in a service area, any of the resultant entities (viz. M/s BAL and M/s BHL) becomes "Significant Market Power" (SMP), then the extant rules & regulations applicable to SMPs would also apply to the resultant entities. 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.

(l) The resultant entities (viz. M/s BAL and M/s BHL) shall submit Bank Guarantees for the deferred payment towards instalment amount of auctioned spectrum in respect of the demerged undertakings of M/s TTSL."

7. The Petitioner Companies have filed an affidavit dated 12.11.2018 where they have submitted that with respect to paragraphs 6 (a) to (d) and 6 (f) to (l), the Transferor Company has undertaken that the conditions/terms

stated by the DoT in its letter dated 21.08.2018, would be discharged/complied with in accordance with the Scheme as and when the same becomes due and payable in accordance with law, without prejudice to the rights of the parties under laws.. Additionally, the Transferor Company has also undertaken to comply with the Guidelines for Transfer/ Merger of various categories of Telecommunication Services issued by the DoT on 20.02.2014, including furnishing of the undertaking requested by DoT, as and when called upon to do so by the DoT, in accordance with law.

In respect of paragraph 3(e) of DoT's letter dated 21.08.2018, it is submitted that the Transferee Company 1 and 2 are not taking over the administratively allocated spectrum of 4.4 MHz (GSM) or 2.5 MHz- and 3.75 MHz (in Delhi) (CDMA). By letter dated 22.10.2018, the Transferor Company has already submitted a letter surrendering all spectrum in the 2.5 Mhz- and 3.75 MHz band (in Delhi) (CDMA) allotted to it with immediate effect from 22.10.2018. Also, the Transferor Company has by letter dated 22.10.2018 already surrendered all 4.4 Mhz (GSM) spectrum allotted to it with effect from the Effective Date of the present Scheme. The administratively allotted Spectrum is not being transferred and there is no requirement for the Transferee Company for paying the difference between the entry fee and the market-determined price for such spectrum.

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With reference to the requirement of DoT in paragraph 3(j) for the Transferee Company 1 and Transferee Company 2 have submitted that the all the Petitioner Companies and Tata Teleservices (Maharashtra) Limited have filed the required joint Undertaking dated 23.10.2018 with the DoT.

8. The Applicant Companies have furnished an undertaking dated 23.10.2018 in reference to DoT's letter dated 21.08.2018 stating as below:

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

a) shall be transferred to Bharti as a part of the Scheme of Arrangement, if such demands, liabilities or proceedings are associated with any UL or any UASL issued to TTSL; or

b) shall remain the demands, liabilities or proceedings of TTSL and shall not be transferred to Bharti as a part of the Scheme of Arrangement, if such liability is associated with any NLD license issued to TTSL or any Internet Service Provider Authorisation ("ISP") which were previously held by TTSL or Tata Internet Limited (which has merged into TTSL)."

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.

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9. In the joint 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 Companies.

10. Certificates of respective Statutory auditors of both the petitioner companies 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.

11. 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, 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 Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

12. 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 petitioners.

While approving the Scheme as above, we further clarify that this order should not be construed as an order in any 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.

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

(A) WITH RESPECT TO TRANSFEROR COMPANY AND TRANSFEREE COMPANY NO.1

a) All property, rights and powers of Demerged Undertaking No. 1 be transferred without further act or deed, to the Transferee Company No.1 and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and vested in the Transferee Company No.1 for all intents, purpose and interest of the Demerged Undertaking no.1 subject nevertheless to all changes now affecting the same and;

b) All the liabilities (if any) and duties of Demerged Undertaking no. 1 be transferred without further act or deed, to the Transferee Company No.1 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 no.1; and

c) No proceedings are pending by or against the Transferor Company in respect of Demerged Undertaking No.1 be continued by or against the Transferee Company no.1; and

(B) WITH RESPECT TO TRANSFEROR COMPANY AND TRANSFEREE COMPANY NO. 2

a) All property, rights and powers of Demerged Undertaking no. 2 be transferred without further act or deed, to the Transferee Company no.2 and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and vested in the Transferee Company no.2 for all intents, purpose and interest of the Demerged Undertaking no.2 subject nevertheless to all changes now affecting the same and;

b) All the liabilities (if any) and duties of Demerged Undertaking no.2 be transferred without further act or deed, to the Transferee Company No. 2 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 No. 2; and

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c) No proceedings are pending by or against the transferor company in respect of Demerged Undertaking No.2 be continued by or against the Transferee Company no. 2.

14. The Petitioner Companies 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.

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.

Sd/-

30.01.201

(M.M. KUMAR)
PRESIDENT

Sd/-

(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

FREE OF COST COPY

(Vidya)

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

NOTE

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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

वी.वि.व.राजू / V.V.B. RAJU
उप पंजीयक / DEPUTY REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
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