

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH,
AT NEW DELHI**

COMPANY PETITION NO. CAA-79 (PB) 2018

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

In the matter of:
Scheme of Arrangement
BETWEEN

Bharti Support Services Private Limited

Transferor Company No.1/Petitioner Company No. 1

AND

Bharti Insurance Holdings Private Limited

Transferor Company No.2/Petitioner Company No. 2

AND

Cedar Support Services Limited

Transferor Company No.3/Petitioner Company No. 3



AND

Bharti Enterprises Limited

Transferor Company No.4/Petitioner Company No. 4

WITH

Bharti Enterprises (Holding) Private Limited

Transferee Company /Petitioner Company No. 5

AND

Bharti Ventures Limited

Petitioner Company No. 6

Judgment delivered on: 27.09.2018

CORAM:

CHIEF JUSTICE (Rtd.) M.M.KUMAR, Hon'ble President

Mr. S. K. MOHAPATRA, Hon'ble Member (T)

For Petitioners:

Mr. Sanjeev Puri, Sr. Advocate

Mr. Kamal Shankar, Mr. Pradyuman

Sharma, Mr. Abhinav Ashwin, Advocates

For Regional Director, (NR): Mr. C. Balooni, Company Prosecutor



ORDER

S. K. Mohapatra, Member

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 contemplated between the petitioner companies. The copy of the Scheme has been placed on record.
2. The “Transferor Company No.1”, Bharti Support Services Private Limited was incorporated on 1st December, 2011 under the provisions of companies Act 1956, having its registered office Bharti Crescent-, 1 Nelson Mandela Road, Vasant Kunj, Phase-II, New Delhi-110070.
3. The “Transferor Company No.2”, Bharti Insurance Holdings Private Limited was incorporated on 15 December, 2010, under the provisions of companies Act 1956, having its registered office Bharti Crescent-, 1 Nelson Mandela Road, Vasant Kunj, Phase-II, New Delhi-110070.



4. The “Transferor Company No.3”, Cedar Support Services Limited was incorporated on 12, February, 2007, under the provisions of Companies Act 1956, having its registered office Bharti Crescent-, 1 Nelson Mandela Road, Vasant Kunj, Phase-II, New Delhi-110070.
5. The “Transferor Company No.4”, Bharti Enterprises Limited was incorporated on 22 May, 2007, under the provisions of Companies Act 1956, having its registered office Bharti Crescent-, 1 Nelson Mandela Road, Vasant Kunj, Phase-II, New Delhi-110070.
6. The “Transferee Company”, Bharti Enterprises (Holding) Private Limited was incorporated on 8 January 2010 under the Companies Act, 1956, having its registered office Bharti Crescent-, 1 Nelson Mandela Road, Vasant Kunj, Phase-II, New Delhi-110070.
7. The “Petitioner Company No. 6”, Bharti Ventures Limited was incorporated on 21 November 2005 under the Companies Act, 1956, having its registered office Bharti Crescent-, 1 Nelson Mandela Road, Vasant Kunj, Phase-II, New Delhi-110070.



8. A perusal of the petition discloses that the First Motion application seeking directions for dispensing with the requirement of convening of the meetings of Shareholders and creditors was filed before this Bench vide CA (CAA) No. 28 (PB) 2018 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of all the six Petitioner Companies were dispensed with, vide order dated 21.05.2018 passed by this Bench.
9. On 14.06.2018 the Petitioners were directed to carry out publication in the newspapers 'Business Standard' English Delhi edition as well as in 'Jansatta' Hindi Delhi edition. In addition to the public notice, notices were directed to be served on to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.
10. It is seen from the records that the Petitioner Companies have filed affidavits dated 17.07.2018 affirming compliance of the order passed by the Tribunal dated 14.06.2018. A perusal of the affidavits discloses that the petitioners have affected the



newspaper publication as directed in one issue of the 'Business Standard' English edition on 11.07.2018 as well as in 'Jansatta' Hindi edition again on 11.07.2018 in relation to the date of hearing of the petition. Further, the affidavits of all the petitioner companies also disclose that copies of petition have been duly served on the Registrar of Companies, Regional Director, Northern Region, official liquidator, Income Tax Department and Reserve Bank of India in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been placed on record.

11. The Regional Director has filed its representation dated 17.07.2018 in which following submissions have been made:

"12

Refer to clause 13 & 14 of Part B of the proposed may be advised to comply with the provisions Companies Act, 2013'.

The Deponent submits that the observations of the Registrar of companies may be taken into consideration by the Hon'ble Tribunal. Further, the transferee company may be directed by the Hon'ble Tribunal to comply with section 232 (3)



(i) and furnish a verified statement showing computation of the fee payable for increase of authorized share capital of the Transferee company consequent upon clubbing of the authorized capital of the Transferee company.

13 The Deponent respectfully submits the scheme, in clause 15 of Part E of the scheme provides for change of name of Bharti Ventures Ltd to “Bharti Enterprises Ltd” (Transferor company- 4). The clause is contrary to the provisions of section 356 of the Companies Act 2013. Hon’ble Tribunal has power to make order declaring dissolution void on application of any person made within two years who appears to the Tribunal to be interested. If eventually the dissolved transferor company is restored in terms of the provisions of section 356 of the Act the restored company shall be having the identical name as like the Transferee Company which is not justifiable as two companies should not have identical names.”



12. In response of the aforesaid observations a rejoinder affidavit has been filed by the petitioner companies in which following submissions have been made:

“ 7.5 in relation to the above, it is hereby further submitted that, without prejudice and if applicable, the transferee company hereby undertakes to pay the requisite fee on its ASC enhanced by the amalgamation after having made the applicable adjustments, as permitted in terms of Section 232(3)(i) read with Section 233 (11) of the Act.

8.2. In relation to the above observation of the Regional Director, it is submitted that the board of the Transferor Company 4 has approved the use of its name by BVL by approving the Scheme vide resolution dated January 8, 2018. It is further submitted that the board of BVL has also approved the change of its name to “Bharti Enterprises Limited” by approving the Scheme vide resolution dated January 8, 2018.

8.3. In relation to the above observation of the Regional Director, it is pertinent to note Rule 8(8) of the



Companies (Incorporation) Rules, 2014
("Incorporation Rules"), as extracted below:

8. Undesirable names:-...

(8) The Names released on change of name by any company shall remain in data base and shall not be allowed to be taken by any other company including the group company of the company who has changed the name for a period of three years from the date of change subject to specific direction for the competent authority in the course of compromise arrangement and amalgamation.


8.4 It is submitted that Rule 8(8) of the Incorporation Rules permits a company to take up a name that has been released on change of name by any company so long as it is pursuant and subject to a specific direction from this Hon'ble Tribunal.

8.5. It is further submitted that this Hon'ble Tribunal vide order dated November 24, 2017 had



held as under in the matter of Interglope Enterprises Limited and Ors. [C.P. No.26 of 2016 connected with C.A. No.126 of 2016].

“13. Likewise the objection with respect to change of name of the Transferee Company by adopting the name of the Transferor Company would also be permissible and reliance has rightly been placed on the judgment of Bombay High Court In the case of P & P Auto Industries (supra). The Tribunal has thus similar powers to sanction the proposal containing change of name. Moreover, from a perusal of Rule 8(8) of the Companies (Incorporation Rules 2014 it is evident that the names released on change of name by any company including the group company of the company are not to be allowed to be taken by any other company including group company which is subject to specified direction from the competent authority in the course of



compromise arrangements and amalgamation. Accordingly we are of the view that since there is no misuse the transferee company would qualify to use the name of the transferor company. Accordingly, we issue direction to the authorities to do the needful subject to compliance with the procedural part.”

8.6. *It is lastly submitted that BVL hereby undertakes to surrender its acquired name i.e. “Bharti Enterprises Limited” in accordance with applicable law in the event the Transferor Company 4 is to be revived in terms of Section 356 of the Act.*

8.7. *It is humbly submitted that for the reasons mentioned hereinabove, it is therefore, respectfully prayed that this Hon’ble Tribunal be pleased to accordingly sanction the scheme.”*

13. It is pertinent to mention here that the Regional Director has also filed an additional affidavit in which it is submitted that the rejoinder filed by the petitioner companies has been examined by the Regional Director and it is contended that the



clarification made by the petitioner companies in para 8.6 and 8.7 to the observations made by the regional director seems to be reasonable. Needless to say that the petitioner company have undertaken to deposit the requisite fee, as admissible, for enhancement of the authorized capital after the Scheme becomes effective. Similarly, undertaking has been given to surrender the name in case of revival of the Transferor company no.4 and shall follow the procedure provided under law for change of name of the Company. Accordingly, there appears to be no serious objection in adopting the name of transferor company no.4 by Petitioner Company no. 6 subject to following the procedure required under the law.

14. The Official Liquidator has filed its report dated 17.07.2018 wherein no material objection has been raised against the approval of the Scheme. It is submitted in the report that the official liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.



15. The department of Income Tax has filed its representation in respect of all the petitioner companies on 29.08.2018 in which no material objection has been raised by the revenue department against the approval of the Scheme. However, it is stated in the report that the transferee company shall ensure the compliances of Section 72A of the Income Tax Act, 1961 and pendency of rectifications and refunds of transferor company no.3 shall be borne by the transferee company.
16. It is pertinent to state here that the transferee company filed affidavit dated 29.8.2018 affirming that in pursuance of the Scheme, any pending proceeding or future proceedings against the transferor companies shall be continued in the name of transferee company and the transferee company undertakes to discharge any pending tax liability of any of the transferor companies. It is further confirmed that the Scheme is not prejudicial in any manner to the rights of revenue authorities.
17. In the joint petition it has also been affirmed that no proceedings under Section 210 to 227 of the Companies Act, 2013 are pending against the Petitioner Companies.



18. Certificates of respective Statutory auditors of all the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Arrangement 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.

19. The share exchange ratio as provided in the Scheme is as under:

- *Transferor Company 1 was engaged in the business of providing management consultancy to other Bharti Group Companies till April 2017. Thereafter Transferor Co. 1 has not undertaken any business operations and has no income. Further, if scheme approved, the Transferee Company issue or allot to each shareholder of the Transferor Company 1 such number of BSSPL Merger Shares, in proportion of their shareholding in the Transferor Company 1.*
- *Transferee Company holds 98.28% of Equity Share capital in Transferor Company 2 indirectly through its subsidiary i.e. Bharti*



Ventures Limited, which get cancelled at the time of amalgamation. For remaining 1.72% equity shareholders, Valuation will be based on Adjusted Net Assets Methods, as Transferor Company 2 is engaged in the business of making, holding and nurturing investments in group companies with non-recurring and uncertain revenue streams. This makes other valuation method inapplicable.

- *Transferee Company holds 10% equity in Transferor Company 4. And Transferor Company 4 in turn holds 100% equity of Transferor Company 3. On amalgamation, Transferee Company's investment will get cancelled with equity of Transferor Company 4. Similarly, on amalgamation, Transferor Company 4's investment in equity of Transferor Company 3 will also get cancelled. Hence no valuation is required in this case.*
- *Since the Transferee Company will not be issuing any equity shares, the derivation of exchange ratio*



will not be applicable in the amalgamation. The transferee Company will only be issuing Non-Cumulative Redeemable Preference Shares of Rs.10/- each to the equity shareholders of the Transferor Companies based on the value derived on Adjusted Net Assets Method, on the appointed date.

20. The shareholders of the applicant companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013 will not ordinarily interfere with the corporate decisions of companies approved by their shareholders and creditors.

21. In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited (1995) 5 SCC 491 the three judges bench of Hon'ble Supreme 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 ensure that neither any law has been violated or public interest compromised in the process.

22. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the petitioner companies to avail the benefits extended by statutory provisions and the Rules.
23. The petitioner companies have filed an affidavit dated 17.07.2018 confirming that no objection has been received against the Scheme from any party or from any person interested in the Scheme in any manner.
24. It has also been affirmed in the petition that Scheme is in the interest of all the transferor companies and the transferee company including their shareholders, creditors, employees and all concerned.
25. 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 and the report of official liquidator, 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.

26. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

27. 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.

28. While approving the Scheme as above, we further clarify 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, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

29. **THIS TRIBUNAL DO FURTHER ORDER**

1. That all the Transferor Companies shall stand dissolved without following the process of winding-up; and



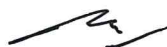
2. That all the property, rights and powers of all the transferor companies, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and vest in the transferee company for all the estate and interests of the transferor companies therein but subject nevertheless to all charges now affecting the same; and
3. That all the liabilities and duties of all the transferor companies, 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
4. That all proceedings now pending by or against all the transferor companies, be continued by or against the transferee company; and
5. That all the employees of all the transferor companies in service, on the date immediately preceding the date on which the scheme takes effect,



i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in concerned transferor companies on the said date.

6. That the name of Petitioner Company No. 6 shall be changed to “Bharti Enterprises Limited” subject to complying with all the required procedures provided under the law.

7. That Petitioner 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 Company for registration and on such certified copy being so delivered all the transferor companies shall be dissolved and the Registrar of Company shall place all documents relating to the transferor companies registered with him on the file kept by him in relation to the transferee company and the files relating to all the transferor companies and the transferee company shall be consolidated accordingly; and



8. 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.

Let copy of the order be served to the parties.

Sd/-
27.09.2

(M.M. KUMAR)

PRESIDENT

Sd/-

(S. K. MOHAPATRA)

MEMBER (T)