

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI**

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

Judgment dated: 14.06.2018

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

1. TATA TELESERVICES LIMITED

..... (APPLICANT COMPANY NO. 1/TRANSFEROR COMPANY NO. 1)

AND

2. BHARTI AIRTEL LIMITED

(APPLICANT COMPANY NO.2/TRANSFEREE COMPANY NO. 1)

3. BHARTI HEXACOM LIMITED

(APPLICANT COMPANY NO. 3/ TRANSFEREE COMPANY NO. 2)

AND

Their respective Shareholders and Creditors

MEMO OF PARTIES

1. 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

..... Applicant Company No. 1 / Transferor Company

2. 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

..... Applicant Company No. 2 / Transferor Company



3. 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

... Applicant Company No. 3/Transferee Company

ORDER

M.M. KUMAR, PRESIDENT

1. This is an application filed by the applicant companies under Sections 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 (for brevity the "SCHEME") proposed between the applicants. The said Scheme is also annexed [Annexure "A1"]. In terms of Sections 230 and 232 of the 2013 Act following prayers have been made for orders:-

a) *This Hon'ble Tribunal may be pleased to pass appropriate orders/directions for dispensing with the requirement of holding and convening the meeting of the equity and preference shareholders of the*



Transferor Company, to consider and, if thought fit, approve, with or without modification, the scheme, in view of the consent affidavits given by the equity shareholders having over 90% equity shareholding in the Transferor Company and in view of Transferor Company and the sole preference shareholder of the Transferor Company;

alternatively, in the event this Hon'ble Tribunal holds that the meeting of the equity and preference shareholders of the Transferor Company cannot be dispensed with, this Hon'ble Tribunal may be pleased to pass directions for holding and convening a meeting of the equity and preference shareholders of the Transferor Company, to consider and, if thought fit, approve, with or without modification, the Scheme, at such time, date and venue as this Hon'ble Tribunal may deem fit; and direct the appointment of a Chairperson, an Alternate Chairperson and a Scrutinizer (if required) for conducting such meeting of the equity and preference shareholders of the Transferor Company to be held on such terms as this Hon'ble Tribunal may deem fit and who shall report the result thereof to this Hon'ble Tribunal; and direct that individual notices of the meeting may be sent by the transferor Company to the equity and preference shareholders of the Transferor Company through registered post or speed post or through courier or through e-mail in accordance with applicable law and in such other manner as this Hon'ble Tribunal may deem fit; and direct the publication of the notices in relation of the said meeting in the newspapers, namely "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition), by way of a joint advertisement, if required;

b) This Hon'ble Tribunal may be pleased to pass appropriate order/directions for holding and convening the meeting of the secured

creditors of the Transferor Company, to consider and, if thought fit, approve, with or without modification, the Scheme, at such time, date and venue as this Hon'ble Tribunal may deem fit; and direct the appointment of a Chairperson, an Alternate Chairperson and a Scrutinizer (if required) for conducting such meeting of the secured creditors of the Transferor Company to be held on such terms as this Hon'ble Tribunal may deem fit and who shall report the result thereof to this Hon'ble Tribunal; and direct that individual notices of the meeting may be sent by the transferor Company to the secured creditors of the Transferor Company through registered post or speed post or through courier or through e-mail in accordance with applicable law and in such other manner as this Hon'ble Tribunal may deem fit; and direct the publication of the notices in relation of the said meeting in the newspapers, namely "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition), by way of a joint advertisement, if required;

- c) This Hon'ble Tribunal may be pleased to pass appropriate order/directions for holding and convening the meeting of the unsecured creditors of the Transferor Company, to consider and, if thought fit, approve, with or without modification, the Scheme, at such time, date and venue as this Hon'ble Tribunal may deem fit; and direct the appointment of a Chairperson, an Alternate Chairperson and a Scrutinizer (if required) for conducting such meeting of the unsecured creditors of the Transferor Company to be held on such terms as this Hon'ble Tribunal may deem fit and who shall report the result thereof to this Hon'ble Tribunal; and direct that individual notices of the meeting may be sent by the transferor Company to the unsecured creditors of the Transferor Company through registered post or speed post or through courier or through e-mail in accordance with applicable law and in such other



manner as this Hon'ble Tribunal may deem fit; and direct the publication of the notices in relation of the said meeting in the newspapers, namely "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition), by way of a joint advertisement, if required;

d) This Hon'ble Tribunal may be pleased to pass appropriate order/directions for holding and convening the meeting of the shareholders of the Transferee Company No. 1, to consider and, if thought fit, approve, with or without modification, the Scheme, at such time, date and venue as this Hon'ble Tribunal may deem fit; and direct the appointment of a Chairperson, an Alternate Chairperson and a Scrutinizer (if required) for conducting such meeting of the shareholders of the Transferee Company No. 1 to be held on such terms as this Hon'ble Tribunal may deem fit and who shall report the result thereof to this Hon'ble Tribunal; and direct that individual notices of the meeting may be sent by the Transferee Company 1 to the shareholders of the Transferee Company through registered post or speed post or through courier or through e-mail in accordance with applicable law and in such other manner as this Hon'ble Tribunal may deem fit; and direct the publication of the notices in relation of the said meeting in the newspapers, namely "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition), by way of a joint advertisement, if required;

e) This Hon'ble Tribunal may be pleased to pass appropriate orders/directions for dispensing with the requirement of holding and convening the meeting of the secured creditors of the Transferee Company 1, to consider and, if thought fit, approve, with or without

modification, the scheme, in view of the consent affidavits given by the only secured creditor of the Transferee Company 1;

alternatively, in the event this Hon'ble Tribunal holds that the meeting of the secured creditors of the Transferee Company 1 cannot be dispensed with, this Hon'ble Tribunal may be pleased to pass directions for holding and convening a meeting of the secured creditors of the Transferee Company 1, to consider and, if thought fit, approve, with or without modification, the Scheme, at such time, date and venue as this Hon'ble Tribunal may deem fit; and direct the appointment of a Chairperson, an Alternate Chairperson and a Scrutinizer (if required) for conducting such meeting of the secured creditors of the Transferee Company 1 to be held on such terms as this Hon'ble Tribunal may deem fit and who shall report the result thereof to this Hon'ble Tribunal; and direct that individual notices of the meeting may be sent by the transferee Company to the secured creditors of the Transferee Company 1 through registered post or speed post or through courier or through e-mail in accordance with applicable law and in such other manner as this Hon'ble Tribunal may deem fit; and direct the publication of the notices in relation of the said meeting in the newspapers, namely "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition), by way of a joint advertisement, if required;

f) This Hon'ble Tribunal may be pleased to pass appropriate order/directions for holding and convening the meeting of the unsecured creditors of the Transferee Company No. 1, to consider and, if thought fit, approve, with or without modification, the Scheme, at such time, date and venue as this Hon'ble Tribunal may deem fit; and direct the appointment of a Chairperson, an Alternate Chairperson and a Scrutinizer (if



required) for conducting such meeting of the unsecured creditors of the Transferee Company No. 1 to be held on such terms as this Hon'ble Tribunal may deem fit and who shall report the result thereof to this Hon'ble Tribunal; and direct that individual notices of the meeting may be sent by the Transferee Company to the unsecured creditors of the Transferee Company through registered post or speed post or through courier or through e-mail in accordance with applicable law and in such other manner as this Hon'ble Tribunal may deem fit; and direct the publication of the notices in relation of the said meeting in the newspapers, namely "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition), by way of a joint advertisement, if required;

g) This Hon'ble Tribunal may be pleased to pass appropriate orders/directions for dispensing with the requirement of holding and convening the meeting of the shareholders of the Transferee Company 2, to consider and, if thought fit, approve, with or without modification, the scheme, in view of the consent affidavits given by all the equity shareholders of the Transferee Company 2 and it having no preference shareholders;

alternatively, in the event this Hon'ble Tribunal holds that the meeting of the shareholders of the Transferee Company 2 cannot be dispensed with, this Hon'ble Tribunal may be pleased to pass directions for holding and convening a meeting of the shareholders of the Transferee Company 2, to consider and, if thought fit, approve, with or without modification, the Scheme, at such time, date and venue as this Hon'ble Tribunal may deem fit; and direct the appointment of a Chairperson, an Alternate Chairperson and a Scrutinizer (if required) for conducting such meeting of the shareholders of the Transferee Company 2 to be held on such



terms as this Hon'ble Tribunal may deem fit and who shall report the result thereof to this Hon'ble Tribunal; and direct that individual notices of the meeting may be sent by the transferee Company 2 to the shareholders of the Transferee Company 2 through registered post or speed post or through courier or through e-mail in accordance with applicable law and in such other manner as this Hon'ble Tribunal may deem fit; and direct the publication of the notices in relation of the said meeting in the newspapers, namely "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition), by way of a joint advertisement, if required;

h) This Hon'ble Tribunal may be pleased to pass appropriate orders/directions for dispensing with the requirement of holding and convening the meeting of the secured creditors of the Transferee Company 2, to consider and, if thought fit, approve, with or without modification, the scheme, in view of the Transferee Company No. 2 having no secured creditors as on 31.03.2018;

i) This Hon'ble Tribunal may be pleased to pass appropriate order/directions for holding and convening the meeting of the unsecured creditors of the Transferee Company No. 2, to consider and, if thought fit, approve, with or without modification, the Scheme, at such time, date and venue as this Hon'ble Tribunal may deem fit; and direct the appointment of a Chairperson, an Alternate Chairperson and a Scrutinizer (if required) for conducting such meeting of the unsecured creditors of the Transferee Company No 2 to be held on such terms as this Hon'ble Tribunal may deem fit and who shall report the result thereof to this Hon'ble Tribunal; and direct that individual notices of the meeting may be sent by the Transferee Company 2 to the unsecured creditors of the



Transferee Company 2 through registered post or speed post or through courier or through e-mail in accordance with applicable law and in such other manner as this Hon'ble Tribunal may deem fit; and direct the publication of the notices in relation of the said meeting in the newspapers, namely "Indian Express" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition), by way of a joint advertisement, if required;

j) This Hon'ble Tribunal may be pleased to direct service of notice under Section 230 (3) read with Section 230 (5) of the Companies Act, 2013 along with all the documents in such form as may be prescribed to the statutory authorities and such other sectoral regulators or authorities which are likely to be affected by the Scheme as per Section 230 (5) of the Companies Act, 2013; and

k) This Hon'ble Tribunal may be pleased to pass such further and other orders as deemed proper in the facts and circumstances on the instant case."

2. Affidavits in support of the application sworn for and on behalf of the Transferor Company has been filed by one Mr. Arun Kumar Singh, on behalf of the Transferee Company No. 1 has been filed by one Mr. Rohit Krishan Puri, on behalf of the Transferee Company No. 2 has been filed by one Mr. Suman Singh being the authorized representatives.

3. It is represented that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act.

Learned Counsel has taken us through the averments made in the application as well as the typed set of documents annexed there with. It is further represented that the application filed by the applicants is maintainable in view of Rule 3(2) of the Rules and Learned Counsel also represented that the registered offices of all the applicant companies are situated within the territorial jurisdiction of this Tribunal and fall within domain of Registrar of Companies, NCT, New Delhi.

4. In relation to the Transferor/ Applicant Company No. 1 in the Scheme marked as Annexure- "A1", it has been represented that company has 35 Equity Shareholders 10 of whom, having 90% equity shareholding have already given their consent affidavits to the scheme. We are further apprised that the Transferor / Applicant Company No.1 has only one preference shareholder who has also consented to the Scheme by way of an affidavit. There are 24 Secured Creditors and 16,524 Unsecured Creditors. In relation to the Secured and Unsecured Creditors Transferor / Applicant Company No. 1 seeks a direction for direction of convening of meetings for the purpose of obtaining their approval to the proposed Scheme.
5. In relation to the Transferee/ Applicant Company No. 2 in the Scheme marked as Annexure- "A1", it has been represented that company has 2,00,110 Equity Shareholders and no Preference Shareholders. We are further apprised that the Transferor / Applicant Company No.1 has one Secured Creditor who has already consented to the Scheme by way of an

affidavit and 8,311 Unsecured Creditors. In relation to the Shareholders and Unsecured Creditors Transferee / Applicant Company No. 2 seeks a direction for direction of convening & holding of meetings for the purpose of obtaining their approval to the proposed Scheme.

6. In relation to the Transferee/ Applicant Company No. 3 in the Scheme marked as Annexure- "A1", it has been represented that company has 7 Equity Shareholders all of who have already given their consent affidavits to the scheme and no Preference Shareholders. We are further apprised that the Transferee/ Applicant Company No.3 have no Secured Creditor and 965 Unsecured Creditors. In relation to the Unsecured Creditors Transferee / Applicant Company No. 3 seeks a direction for direction of dispensing with holding of meetings for the purpose of obtaining their approval to the proposed Scheme.
7. The above application has been placed before us and this Tribunal proceeds to entertain the same. The registered offices of all the applicant companies are situated within New Delhi which are subject to the territorial jurisdiction of Registrar of Companies, NCT, New Delhi as well as that of this Tribunal.
8. We have perused the application and the connected documents filed along with the Scheme of Amalgamation contemplated between the Applicant Companies.



9. Applicant Company No. 1 was incorporated in the state of Delhi under the provisions of Companies Act, 1956 on 23.03.1995 under the name "*Tata Teleservices Private Limited*". Thereafter on 06.05.1995, the name of the Transferor Company was changed to the present name i.e. "*Tata Teleservices Limited*". The authorised share capital of the Transferor Company is Rs 90,150 crores divided into 2263,00,00,000 equity shares of Rs 10/- each, 63,00,00,000 CCPS of Rs. 100/- each, 112,20,00,000 preference shares of Rs. 100/- each, 1000,00,00,000 unclassified shares of Rs. 10/- each and 400,00,00,000 unclassified shares of Rs. 100/- each. The issued, subscribed and paid-up share capital of the Company is Rs. 14,299.52 crores divided into 577,50,33,234 fully paid up equity shares of Rs. 10/- each, 62,24,49,170 fully paid up CCPS of Rs 100/- each, 23,00,00,000 fully paid up optionally convertible non-cumulative preference shares of Rs. 100/- each.

10. Applicant Company No. 2/ Transferee Company No. 1 was incorporated in the state of Delhi under the provisions of Companies Act, 1956 on 07.07.1995 the name "*Bharti Tele-Ventures Limited*". Thereafter, on 24.04.2006, the name of the Transferee Company 1 was changed to its present name i.e. "*Bharti Airtel Limited*". The authorised share capital of the Company is Rs 27,50,00,00,000 Only, divided into 5,50,00,00,000 equity shares of face value Rs. 5 each. The issued, subscribed and paid-up share

capital of the Company is Rs. 19,98,70,00,510 only divided into 3,99,74,00,102 equity shares of face value Rs 5 /- each.

11. Applicant Company No. 3/ Transferee Company 2 was incorporated in the state of Delhi under the provisions of Companies Act, 1956 on 20.04.1995 under the name "*Hexacom India Limited*". Thereafter on 02.12.2004 the name of the Company was changed to "*Bharti Hexacom Limited*". The authorised share capital of the Company is Rs 250 crores only, divided into 25,00,00,000 equity shares of Rs. Ten each. The issued, subscribed and paid-up share capital of the Company is Rs. Rs 250 crores only, divided into 25,00,00,000 equity shares of Rs. Ten each.

12. The Board of Directors of the Companies, vide separate meetings held on 19.12.2017 have unanimously passed resolutions and approved the proposed Scheme of Arrangement as contemplated above and copies of resolutions have also been placed on record by the Company.

13. Taking into consideration the application and the documents filed therewith, we propose to issue the following directions with respect to calling, convening and holding of the meetings of the Shareholders, Secured and Unsecured Creditors or dispensing with the same which are as follows:-

A. In relation to the Applicant No. 1/ Transferor Company:

i. With respect to Shareholders:



Since it is represented by the Applicant No. 1 that consent-affidavits of Shareholders have been obtained and are placed on record, the requirement of convening and holding a meeting is dispensed with.

ii. With respect to Secured Creditors:

It is represented by the Applicant No. 1 that there are 24 Secured Creditors in the Company. Meeting of Secured Creditors be convened on Tuesday, 21.08.2018 at 11.00 A.M. at Shri Satya Sai Auditorium, Lodhi Road, New Delhi-110003. The Quorum of the meeting shall be 15.

iii. With respect to Unsecured Creditors:

It is represented by the Applicant No. 1 that there are 16,524 Unsecured Creditors in the Company. Meeting of Unsecured Creditors be convened on Tuesday, 21.08.2018 at 02.00 P.M. at Shri Satya Sai Auditorium, Lodhi Road, New Delhi-110003. The Quorum of the meeting shall be 75.

B. In relation to the Applicant No. 2/ Transferee Company No. 1:

i. With respect to Shareholders:



It is represented by the Applicant No. 2 that there are 2,00,110 Equity Shareholders in the Company. Meeting of Equity Shareholders be convened on Tuesday, 28.08.2018 at 10.30 A.M. at Ocean Pearl Retreat, Chattarpur Mandir Road, Satbari I, New Delhi-110034. The Quorum of the meeting shall be 75.

ii. With respect to Secured Creditors:

Since it is represented that there is one Secured Creditor in the Company, who has already consented to the scheme by way of an affidavit, therefore the requirement of convening and holding a meeting is dispensed with.

iii. With respect to Unsecured Creditors:

It is represented by the Applicant No. 2 that there are 8311 Unsecured Creditors in the Company. Meeting of Unsecured Creditors be convened on Tuesday, 28.08.2018 at 01.30 P.M. at Ocean Pearl Retreat, Chattarpur Mandir Road, Satbari I, New Delhi-110034. The Quorum of the meeting shall be 50.

C. In relation to the Applicant No. 3/ Transferee Company No. 2:

i. With respect to Shareholders:

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It is represented that there are only 7 Equity Shareholders and no preference shareholders in the Company and consent-affidavits from all of them have been obtained and are placed on record. Hence, the necessity of convening and holding a meeting is dispensed with.

ii. With respect to Secured Creditors:

Since it is represented that there are no Secured Creditors in the Company, therefore the necessity of convening and holding a meeting is dispensed with.

iii. With respect to Unsecured Creditors:

It is represented by the Applicant No. 3 that there are 965 Unsecured Creditors in the Company. Meeting of Unsecured Creditors be convened on Tuesday, 28.08.2018 at 04.00 P.M. at Ocean Pearl Retreat, Chattarpur Mandir Road, Satbari I, New Delhi-110034. The Quorum of the meeting shall be 50.

D. In case the Quorum as noted above for the above meetings of the applicant companies are not present, in the meetings, then the meetings shall be adjourned for half an hour, and thereafter, the person present shall be deemed to constitute the quorum. For the purpose of computing the quorum,



the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, are duly filed with registered office of the applicant companies at least 48 hours before the meetings. The Chairperson and the Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained.

E. Sh. Anant Palli, Advocate, Supreme Court (9810199102) is appointed as the Chairperson and Sh. Sandeep Vermani, Advocate (9815600534) is appointed as Alternative Chairperson for the meetings of Applicant Companies as has been directed to be convened by this Tribunal.

F. The fee for the Chairperson for the aforesaid meetings shall be Rs. 2 Lacs and the fee for the Alternate Chairperson shall be Rs. One Lac , in addition to meeting their incidental expenses. Sh. Vivek Goel (9815522553) is appointed as a Scrutinizer and would be entitled to fee of Rs. One Lac for his services in addition to meeting his incidental expenses. The Chairperson will file their reports within two weeks from the date of holding of the above said meetings.

G. The individual notices of the said meetings shall be sent as required and prescribed by the Companies Act, 2013 through registered post or speed

post or through courier or through e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, place and time as aforesaid, together with a copy of scheme of arrangement, a copy of explanatory statement. The prescribed form of proxy shall be sent along with and in addition to the above documents, any other documents as may be prescribed under the Act may also be duly sent with the notice.

H. That the applicant companies shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date, place and time as aforesaid, to be published in the English Daily '**Indian Express**' and Hindi Daily '**Jansatta**' (Delhi Edition) stating the copies of Scheme of Arrangement, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies.

I. Voting shall be allowed on the proposed Scheme by voting in person or by proxy, as may be applicable to the respective companies under the Act and rules framed there under. The Chairperson shall be responsible to report the result of the meeting to this Tribunal within two weeks of the conclusion of the meeting with regard to the proposed scheme.

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J. The Companies shall individually send notice to the Central Government, the Income Tax Authorities, concerned Registrar of Companies, NCT of Delhi & Haryana, Official Liquidator, BSE Limited, National Stock Exchange of India Ltd, Securities and Exchange Board of India and any sectorial regulators who may have significant bearing on the operation of the applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

K. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

The application stands allowed in the aforesaid terms.

Sdl

(M.M. KUMAR)
PRESIDENT

Sdl

(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

14/06.2018
(vidya)