

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CSP 1031/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Company Act, 2013

In the matter of

M/s. GTL Infrastructure Limited
.....Petitioner in CSP 1031/2017
(Transferee Company)

Heard on : 15.12.2017
Order delivered on : 22.12.2017

Coram :

Hon`ble M. K. Shrawat, Member (J)

Hon`ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Mustafa Doctor, Counsel a/w. Mr. Jehangir Jejeebhoy, and Mr. Chandrakant Mhadeshwar, Advocate i/b. Chandrakant Mhadeshwar – Advocate for the Petitioner

For the Regional Director :

Mr. Ramesh Gholap – Dy. Registrar (WR).

Per : M. K. Shrawat, Member (J)

ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Company Act, 2013, to a Scheme of Arrangement of Chennai Network Infrastructure Limited (The Transferor Company) and GTL Infrastructure Limited (The Transferee Company) and their respective shareholders and Creditors.
2. The Petitioner Company have approved the said Scheme of Arrangement by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. Both the Transferor Company and Transferee Company are engaged in business of building, maintaining and providing telecommunication infrastructure facilities to telecommunication service providers.



4. The Scheme will assist in achieving higher long term financial returns than would have been achieved by the Transferor Company and the Transferee Company as separate entities, will make available assets, financial, managerial and technical resources, personnel, capabilities, skills, expertise and technologies of both the Transferor Company and the Transferee Company leading to synergistic benefits, enhancement of future business potential, increased global competitiveness, cost reduction and efficiencies, productivity gains and logistical advantages, thereby contributing to significant future growth and enhancement of shareholder value.
5. The Authorised Share Capital of the Transferor Company is ₹ 11000,00,00,000/- comprising of 1000,00,00,000 equity shares of ₹ 10/- each and 10,00,00,000 Preference Shares of ₹ 100/- each.
6. The Issued, Subscribed and Paid-up Share Capital of the Transferor Company is ₹ 9404,54,15,170/- comprising of 940,45,41,517 equity shares of ₹ 10/- each.
7. The Authorised Share Capital of the Transferee Company is ₹ 7000,00,00,000/- comprising of 600,00,00,000 equity shares of ₹ 10/- each and 10,00,00,000 Preference Shares of ₹ 100/- each.
8. The Issued, Subscribed and Paid-up of the Transferee Company is ₹ 4152,29,91,570/- comprising of 415,22,99,157 equity shares of ₹ 10/- each, fully paid up.
9. The averments made in the Petition and the submissions made by the Learned Representative for the Petitioners are:
 - a) The Petitioner Company have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertake to comply with all the statutory requirements if any, as required under the Company Act, 2013 and the Rules made there under whichever is applicable.
 - b) The Regional Director has filed his Report dated 6th October, 2017, stating therein that save and except as stated in paragraph IV (a) to (j), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:



(a) "The Petitioner Company has inter alia mentioned in the point B of the scheme that Company were adversely impacted

due to external developments, which were beyond the control of the management. To address the current debt issues, the CDR lenders of the Transferee Company and the Transferor Company, at meeting of the Joint Lender Forum ("JLF") HELD ON September 20, 2016, had unanimously agreed to invoke the strategic Debt Restructuring Scheme for the Transferee Company and the Transferor Company. In terms of the CDR package of the Transferee Company and the Transferor Company and as per original sanction terms laid down by lenders and further under SDR Scheme, merger of the Transferor Company with the Transferee Company was envisaged.

In this regard the Deponent prays that the Petitioner Company shall comply the provisions under section 230(2) (ii), as applicable, i.e. make provision for safeguarding the interest of secured and unsecured creditors.

(b) The petitioner Company has inter alia mentioned in the clause 7.5.7 of the Scheme that the Board of the Transferee Company shall instead consolidate all such fractional entitlements to which the shareholders of the Transferor Company may be entitled on issue and allotment of the GIL Shares of the Transferee Company as aforesaid and shall, without any further application, act, instrument or deed, issue and allot such fractional entitlements directly to an individual trustee or a board of trustee or a corporate trustee (the "Trustee for Fractional Entitlements")

In this regard, the deponent prays that the Transferee Company shall not hold any shares in its own name or in the name of any trust whether on its behalf of any of its subsidiary or associate companies.

(c) The Transferee Company is a listed company with Bombay Stock Exchange and National Stock Exchange. Both the Stock Exchange have given their observation in their letter dated 01.09.2017 which is annexed as Annexure "E" and "F" respectively with this report. In this regard, the petitioner

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Company has to comply with the observations made by both the Stock Exchange.

(d) The Petitioner Company has submitted the letters dated 15.06.2017 and 07.07.2017 received from the Competition Commission of India which is annexed as Annexure "G-1" and "G-2".

The Deponent prays that the Petitioner Company shall comply with the observations made by the Competition Commission of India.

(e) In addition to compliance of AS-14 (IND AS-103) the Petitioner Companies shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.

(f) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the company vide acknowledgement obtained from your office dated 29.09.2017 has served a copy company scheme application No. 864 of 2017 along with relevant orders etc.

(g) The tax implication if any arising out of scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.

(h) As regards Para No. 8 of the Scheme, the transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital. Subsequent to the Amalgamation for setting-off of fees paid by the Transferor Company on its Authorized Share Capital in accordance with provisions of Section 232 (3) (i) of the Companies Act, 2013.

(i) The registered office of the Transferor Company is situated in the State of Tamil Nadu, i.e. outside of the jurisdiction of NCLT OF THIS Tribunal and falls within the jurisdiction of NCLT of Chennai. Accordingly, similar approval be obtained by the Transferor Company from Hon'ble NCLT at Chennai.

(j) ROC Mumbai has given the following observations :

- *Para 1.5 of the Scheme effective date shall not be subsequent to appointed date as per section 232 (6) of the Companies Act, 2013*
- *Para 20 of the Scheme modification/alteration/deletion/ amendment shall be subject to prior approval of the Hon'ble NCLT*
- *The Transferee Company is listed company on BSE/NSE both the Stock Exchange has given their observation in their letter dated 01-09-2017. In this regards the Transferee Company has to comply with observations made by the NSE/BSE. ”.*

- c) Apropos the observation of the Regional Director stated in paragraph IV (a) is concerned, the Petitioner Company has filed its affidavit dated 14th December 2017 wherein it stated that entire scheme of amalgamation has been proposed pursuant to the decision of the lenders and the entire proposed scheme of amalgamation itself is to safeguard the interest of the secured creditors and the unsecured creditors. Counsel for the Petitioner further states that meetings of the Secured Creditors and Unsecured Creditors was convened and held and in the said meetings the proposed Scheme of Arrangement was approved unanimously.
- d) Apropos the observation of the Regional Director stated in paragraph IV (b) is concerned, the Petitioner Company undertakes that the Transferee Company will not hold any shares in its own name or in the name of any trust whether on its behalf of any of its subsidiary or associate companies.
- e) Apropos the observation of the Regional Director stated in paragraph IV (c) is concerned, Counsel for the Petitioner Company states that the Petitioner Company undertake to comply with observations made by the BSE and NSE.

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- f) Apropos the observation of the Regional Director stated in paragraph IV (d) is concerned, the Learned Counsel for the Petitioner Company states that, the Petitioner Company undertake to comply with observations made by the Competition Commission of India.
- g) Apropos the observation of the Regional Director stated in paragraph IV (e) is concerned, the Petitioner Company undertake that, in addition to compliance of AS-14 (IND AS-103) the transferee company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable accounting standards such as AS-5 (IND AS-8) etc.
- h) Apropos the observation of the Regional Director stated in paragraph IV (f) is concerned, the Learned Counsel states the information provided by the Regional Director is factually correct.
- i) Apropos the observation of the Regional Director stated in paragraph IV (g) is concerned, the Learned Counsel states that the Petitioner Company undertake to comply with all applicable provisions of the Income Tax Act. All tax issues arising out of the Scheme will be met and answered in accordance with law.
- j) Apropos the observation of the Regional Director stated in paragraph IV (h) is concerned, Learned Counsel for the Petitioner Company states that the Petitioner Company undertake to comply with provisions of Section 232 3(i) of the Companies Act, 2013.
- k) Apropos the observation of the Regional Director stated in paragraph IV (i) is concerned, the Learned Counsel for the Petitioner Company states that the Petitioner Company the similar petition was filed by the Transferor Company for approval of the present scheme before Chennai NCLT and the Chennai NCLT has heard the Petition finally and the same is reserved for order.
- l) Apropos the observation of the Regional Director stated in paragraph IV (j) is concerned, Learned Counsel for the Petitioner Company states that the Scheme will be deemed to be effective from the appointed date. Counsel for the Petitioner further states that any modification/ alteration/ deletion/ amendment to the Scheme will be subject to prior approval of the NCLT.
- m) No objector has approached, neither to the Petitioner nor before Tribunal, to oppose this Scheme of Arrangement.

10. From the material on record, the Scheme of Arrangement appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Company, **do Order that:**

- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company, shall, pursuant to S. 232 of the Company Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- b) The clarifications and undertakings given by the Learned Counsel for the Petitioner to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) Transferor Company to be dissolved without winding up from the date of said Scheme becomes effective.
- d) In lieu of the Consideration of the Scheme, the Transferee Company shall issue and allot 1 equity share of ₹ 10/- for every 1 fully paid-up equity share of ₹ 10/- to the shareholders of the Transferor Company.
- e) The Petitioner Company to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
- f) Petitioner Company is directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Company, electronically, along with E-form INC 28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry, duly certified by the Deputy Director or Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- g) The Petitioner Company to pay costs of ₹ 25,000/- to the Regional Director, Western Region, Mumbai.

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- h) All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
- i) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- j) Any concerned Authority is at liberty to approach this Bench for any clarification/directions under this Scheme.
- k) That, in the case of the Transferor Company viz. M/s. Chennai Network Infrastructure Limited, the respected NCLT, Chennai Bench in CP/197/CAA/2017 [CA/153/CAA/2017] delivered an order on 13.12.2017 and the proposed Scheme is sanctioned.
- l) Since, the Scheme has already been sanctioned by respected co-ordinate bench therefore on the same lines the said Scheme is hereby sanctioned. The appointed date i.e. 1st April, 2016 as pronounced in the Scheme is also hereby approved.

11. Ordered Accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 22.12.2017

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