NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER (JUDICIAL)

Date: 6th day of January, 2017

C.A.(CAA) No. 3/230-232/NCLT/AHM/2017

Aditya Birla Financial Services Limited,
A company incorporated under
the provisions of the Companies
Act, 1956 and having its Registered
Office at Indian Rayon Compound,
Veraval, Gujarat – 362 266. ..... Applicant.

Appearance: -

Mr. Mihir Joshi, Senior Advocate, with
Mr. Sandeep Singhi and Mr. Pranjal Buch,
Advocates, for M/s Singhi & Co.,
Advocates, for the Applicant.

FINAL ORDER

(Date: 06.02.2017)

1. Aditya Birla Financial Services Limited (hereinafter referred to as "ABFSL" or a "Resulting Company", as the context may admit) is also a public company limited by shares.

2. Aditya Birla Nuvo Limited (hereinafter referred to as "ABNL" for short) is a public company limited by shares.

3. ABNL along with its wholly owned subsidy, namely, ABNL Investment Limited, holds 100% paid-up share capital of ABFSL.

4. Grasim Industries Limited is a public company limited by shares.

5. This Company Application is filed by ABFSL proposing a composite scheme of arrangement between ABFSL, ABNL and Grasim Industries Limited and their respective shareholders and creditors.

6. In this application, ABFSL has prayed to –

(a) dispense with the meeting of equity shareholders of the Applicant-company for the purpose of considering and, if thought fit, approving with or without modification(s), the composite scheme of arrangement between ABNL, Grasim and ABFSL and their respective shareholders and creditors in view of the consent affidavits to the scheme given by all the equity shareholders of the Applicant-company;

(b) dispense with the meeting of the preferential shareholders of the Applicant-company for the purpose of considering and, if thought fit, approving with or without modification(s), the scheme in view of the consent affidavits to the scheme given by all the preference shareholders of the Applicant-company; and

(c) pass such other and further orders or directions as deemed fit and expedient.

7. Heard learned Senior Advocate, Mr. Mihir Joshi and learned Advocates Mr. Sandeep Singhi and Mr. Pranjal Buch for M/s Singhi & Company, Advocates for the Applicant-company. Perused the application and the supporting affidavit of Mr. Ashok Malu, President Authorised Signatory and Company Secretary* of the Applicant-company, dated 16.01.2017 and the annexures annexed thereto. * corrected as per order dated 14.2.2017.

8. The proposed scheme is for amalgamation of ABNL with Grasim and upon amalgamation of ABNL with Grasim becoming effective, demerger of the financial services business of Grasim and transfer of the same to ABFSL.

9. The proposed scheme shown as Annexure-J to the application along with joint valuation/share exchange ratio/share entitlement ratio report submitted by M/s Bansi S. Mehta & Co. and Price Waterhouse & Co. LLP, Chartered Accountants (hereinafter referred to as "Joint Valuation Report"), in respect of the proposed amalgamation of ABNL with Grasim and the proposed demerger of the demerged undertaking of Grasim (i.e. upon amalgamation of ABNL with Grasim becoming effective) and transfer of the same to ABFSL was placed before the Audit Committee of ABFSL in its meeting held on 11th August, 2016. The Audit Committee, based on the material, recommended the scheme to the Board of Directors of ABFSL for its consideration and approval and for consideration by the Stock Exchanges and the Securities and Exchange Board of India by its report dated 11th August, 2016.

10. The Board of Directors of ABFSL, in its meeting held on 11th August, 2016, approved the scheme. The scheme was also placed before the Board of Directors of ABNL in the meeting held on 11th August, 2016 and the same was approved by its Board of Directors. The scheme was also approved by the Board of Directors of Grasim in its meeting held on 11th August, 2016. It is stated in the application that no investigation has been instituted or is pending in relation to the companies under Chapter XIV of the Companies Act. It is also stated in the application that no winding up order has been passed against either ABFSL or ABNL or Grasim under the Companies Act. It is also stated in the Application that ABNL and Grasim have received no objection/approval/consent from BSE and NSE, in respect of the scheme. That the Competition Commission of India has issued necessary approval for the scheme. It is also stated that the accounting treatment, as proposed in the scheme, is in conformity with the accounting standards prescribed under Section 133 of the Act. It is also stated in the Application that ABFSL has, as on 31st December, 2016, no creditors (either secured or unsecured) and, therefore, the scheme having any effect on the said creditors

does not arise. It is also stated in the Application that the scheme having become effective, no rights of employees of the Applicant-company are affected.

11. Having considered the entire material on record, this Tribunal is of the view that in view of the complexities involved in the proposed scheme, it is just and expedient to have a meeting of the equity shareholders and preferential shareholders in spite of consent letters given by all the equity shareholders and preferential shareholders. Therefore, this Tribunal is not inclined to dispense with the meetings of equity shareholders and preferential shareholders. Hence, this Tribunal passes the following order: -

(1) A meeting of the equity shareholders of the Applicant-company shall be convened and held at the registered office of the Applicant-company at Auditorium, Indian Rayon Compound, Veraval, Gujarat – 362 266 on Monday, the 10th April, 2017, at 10.00 A.M., for the purpose of considering and, if thought fit, approving with or without modification(s) the scheme.

(2) A meeting of preferential shareholders of the Applicant-company shall be convened and held at the registered office of the Applicant-company at Auditorium, Indian Rayon Compound, Veraval, Gujarat – 362 266 on Monday, the 10th April, 2017, at 10.30 A.M. or soon after the conclusion of meeting of equity shareholders of the Applicant-company, whichever is later, for the purpose of considering and, if thought fit, approving with or without modification(s) the scheme.

(3) In view of Sections 230(4) and 232(1) of the Companies Act, 2013 read with Rules 5 and 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and Rules 20 and 22 of the Companies (Management and Administration) Rules, 2014, the Applicant-company is required to provide the facility of postal ballot and e-voting to its shareholders. Accordingly, voting by equity

shareholders of the Applicant-company to the scheme shall be carried out through (i) postal ballot and e-voting; and (ii) electronic voting system or ballot or polling paper at the venue of the meeting to be held on 10th April, 2017.

(4) At least one month before 10.4.2017, i.e. the date of aforesaid meetings, an advertisement about convening of the said meetings, indicating the day, date, place and time, as aforesaid, shall be published in Indian Express (All editions in English language) and a Gujarati translation thereof in Sandesh (Rajkot edition). The publication shall indicate the time within which copies of the scheme shall be made available to the concerned persons free of charge from the registered office of the company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and the prescribed form of proxy can be obtained free of charge at the registered office of the Applicant-company or at the office of its Advocates, i.e. M/s. Singhi & Co., 1, Magnet Corporate Park, Near Sola Flyover, S. G. Highway, Ahmedabad – 380 059 in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.

(5) At least one month before 10.04.2017, i.e. the date of aforesaid meetings of equity shareholders and preferential shareholders, a notice in Form No.CAA.2 convening the said meeting indicating the day, date, place and time aforesaid, containing instructions with regard to postal ballot and e-voting (in case of equity shareholders) together with a copy of the scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the equity shareholders and preferential shareholders of the Applicant-company at their respective registered or last known addresses either by Registered Post or Speed Post /Airmail or by Courier or e-mail. The aforesaid notice and other documents shall also be placed on the

website of the Applicant-company [proviso to Section 230(3)]. The notices shall be sent to the equity shareholders and preferential shareholders of the Applicant-company with reference to the list of persons appearing on the record of the Applicant-company and its register as on 4.3.2017, being the cut of date as prescribed under Rule 20 of the Companies (Management and Administration) Rules, 2014. The aforesaid cut of date would be the date determining the eligibility to vote by the equity shareholders.

(6) Mr. S. C. Bhargava, a Director of the Applicant-company and, in his absence, Mrs. Pinky Mehta, a Director of the Applicant-company shall be the Chairman/Chairperson of the aforesaid meetings to be held on 10.4.2017 and in respect of any adjournment or adjournments thereof.

(7) Mr. Ashish Garg, a Practising Company Secretary, is appointed as the Scrutinizer for the meeting of the equity shareholders and preferential shareholders of the Applicant-company including for conducting the postal ballot and e-voting process.

(8) The Chairman or Chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meetings referred to above. The Chairman/Chairperson is free to avail the services of the Applicant-company or any agency for carrying out the aforesaid directions. The Chairman or Chairperson shall have all powers under the Articles of Association of the Applicant-company and also under the Rules in relation to the conduct of meetings, including for deciding any procedural questions that may arise at the meetings or adjournments thereof proposed at the said meetings, amendment(s) to the aforesaid scheme or resolutions, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of the sense of the meeting of equity shareholders by (i) postal ballot and e-voting; and (ii) electronic voting system or ballot or polling paper at the venue of the meeting

of equity shareholders and preferential shareholders of the Applicant-company by polling paper/ballot.

(9) The quorum for the meeting of equity shareholders shall be 1 (one) present in person. The quorum for the meeting of the preferential shareholders shall be 1 (one) person present in person.

(10) Voting by proxy/authorised representative is permitted, provided that the proxy in the prescribed form/authorisation duly signed by the person entitled to attend and vote at the aforesaid meetings is filed with the Applicant-company at its registered office at Indian Rayon Compound, Veraval, Gujarat – 362 266, Gujarat not later than 48 hours before the meetings vide Rule 10 of Companies (CAA) Rules, 2016 read with Section 105 of the Companies Act.

(11) The number and value of equity shares of the equity shareholders and preferential shareholders shall be in accordance with the records or registers of the Applicant-company and where the entries in the records or registers are disputed, the Chairman of the meetings shall determine the number or value, as the case may be, for purposes of the meetings.

(12) The Chairman/Chairperson to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of Companies (CAA) Rules, 2016.

(13) It is further ordered that the Chairman or Chairperson shall, report to this Tribunal on the result of the meetings in Form No.CAA.4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in Form No.CAA.4.

(14) In compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant-company shall send a notice of meeting under sub-section (3) of Section 230 read with Rule 6 of the Companies (CAA) Rules, 2016 in Form No.CAA.3 along with a copy of the scheme of compromise or arrangement, the explanatory statement, copy of this order and the disclosures mentioned under Rule 6 to (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, (iii) the Income-tax authorities, (iv) the Reserve Bank of India, (v) the Competition Commission of India and (vi) the Official Liquidator stating that representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed scheme. The said notice shall be sent forthwith after notice is sent to the members of the company by registered post or by speed post or by courier or by hand delivery at the office of the authority as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230, shall sent the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed arrangement.

This Company Application is disposed of accordingly.

6/2/17

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on this
6th day of February, 2017.