

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSP NO 687 OF 2017
AND
CSP NO 688 OF 2017
AND
CSP NO 689 OF 2017
AND
CSP NO 690 OF 2017
AND
CSP NO 691 OF 2017
AND
CSP NO 692 OF 2017

McCoy Developers Private Limited

.....**Petitioner/Transferor Company 5**
AND

ATC Telecom Infrastructure Private Limited

.....**Petitioner /Transferee Company**
AND

ATC Tower Company of India Private Limited

.....**Petitioner /Transferor Company 1**
AND

Transcend Infrastructure Private Limited

.....**Petitioner /Transferor Company 3**
AND

ATC Telecom Tower Corporation Private Limited

.....**Petitioner /Transferor Company 4**
AND

ATC India Tower Corporation Private Limited

.....**Petitioner/Transferor Company 2**

Under Section 230 to 232 of CA 2013 and other applicable
provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of ATC Tower Company
of India Private Limited and ATC India Tower Corporation Private
Limited and Transcend Infrastructure Private Limited and ATC
Telecom Tower Corporation Private Limited and McCoy Developers
Private Limited with ATC Telecom Infrastructure Private Limited
and their respective shareholders

Order delivered on 28th September 2017

Coram:

Hon'ble **B.S.V Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner (s): Mr. Hemant Sethi i/b Hemant Sethi & Co. Advocates for Petitioners

Per: B.S.V. Prakash Kumar, Member (J)

ORDER

1. Heard the learned counsel for the Petitioner Companies. The Counsel for the Petitioners tenders affidavit dated 27th September 2017 placing on record objections received from five Unsecured Creditors. The Counsel for the Petitioners further submit that the purported claim of the objectors is about 0.007% (in aggregate) of the total outstanding debt of the Company as per the last audited balance sheet as on March 31 2017 and the objectors do not meet the required threshold limit of 5 % of the total debt as required under section 230(4) of the Companies Act, 2013 and clarifies that the Scheme does not affect the rights of the creditors as there is no compromise or arrangement with any of the creditors.
2. The sanction of the Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of ATC Tower Company of India Private Limited and ATC India Tower Corporation Private Limited and Transcend Infrastructure Private Limited and ATC Telecom Tower Corporation Private Limited and McCoy Developers Private Limited with ATC Telecom Infrastructure Private Limited and their respective shareholders.
3. The Counsel for Petitioners submit that Transferor Company 1 to 4 are engaged in the business of providing passive telecom infrastructure services to cellular mobile telephony operators and other licensed telecom infrastructure providers in India. Transferor Company 5 was earlier registered with the Department of Telecommunication ('DoT'), under Ministry of Communication & Information Technology as Infrastructure Provider Category — I (IP-I Infrastructure provider) which was surrendered by the Company with effect from 31st May 2010. As of now, the Transferor Company 5 does not have any operations. The Transferee Company is engaged in the business of, amongst other things, building, developing,

maintaining, supplying, operating, managing and dealing in services, facilities and infrastructure in connection with or ancillary to telecommunication systems.

4. The rationale for the Scheme is that the American Tower Corporation group (the “**ATC Group**”), through one of its group entities in Singapore i.e., ATC Asia Pacific Pte. Ltd, had acquired a 51% stake in ATC Telecom Infrastructure Private Limited (formerly known as Viom Networks Limited) on April 21, 2016, which is engaged in same line of business as the ATC Indian Entities (each of which is wholly owned by the ATC Group). The management of the Transferor Companies and the management of the Transferee Company (which includes representatives of shareholders outside of ATC Group that hold a 49% stake in the Transferee Company) believe that the businesses of the Transferor Companies and the Transferee Company require a combined management focus, business strategies and synergies. With a view to achieving the above, it was agreed between the shareholders of each of the Transferor Companies and the continuing shareholders of the Transferee Company, to consolidate the business of the Transferor Companies and the Transferee Company which would benefit the respective companies and their stakeholders. The proposed amalgamation will also:

- enable consolidation of the business and operations of the Transferor Companies and the Transferee Company which will provide significant impetus to growth, enable synergies, reduce operational costs, increase operational efficiencies and greater focus and enable optimal utilization of various resources as the Transferor Companies and the Transferee Company are engaged in the same line of business;
- lead to a significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and the Transferee Company and also avoid duplication of administrative functions and eliminate multiple record-keeping; and
- be in the best interests of the shareholders (including shareholders outside of

ATC Group holding 49% stake in the Transferee Company), creditors, employees and other stakeholders of each of the Transferor Companies and the Transferee Company, as it would result in consolidation of the enhanced market value and market share of the Transferor Companies along with the Transferee Company and would result in enhancement of shareholder value and would enable the management of the Transferee Company to vigorously further pursue revenue growth and expansion opportunities.

In view of the abovementioned reasons, it is considered desirable and expedient to implement the proposed Scheme of Amalgamation.

5. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in Company Summons for Directions.
7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.
8. The Regional Director has filed his report dated 25th September 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, 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) 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;

(b) As per existing practice, the Petitioner Companies are required to serve notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 23rd May 2017 & 25th May 2017 has served a copy company scheme application No. 501 to 506 of 2017 along with relevant orders etc. Further, this Directorate has also issued reminder 08/09/2017 to IT Department.

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

(d) Except Transferor Company 5, as all other Transferor Companies and Transferee Company are registered with DOT as Infrastructure provider Category-1 (IP-1 Infrastructure provider) NOC from Department of Telecommunication (DOT) appears to be necessary. Hence the applicants be directed to obtain NOC from DoT. Hon'ble NCLT may pass appropriate order(s) as deem fit.

9. In so far as observations made in paragraph IV (a) of the Report of Regional Director are concerned, the Transferee Company through its Counsel undertakes 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 as may be applicable.
10. In so far as observations made in paragraphs IV (b) & (c) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
11. In so far as observations made in paragraphs IV (d) of the Report of Regional Director is concerned, the Counsel for the Petitioners submit that the Petitioners/Transferor Companies and Petitioner/Transferee Company have already served a notice u/s. 230(5) along with copy of the Scheme to the Department of Telecommunication ('DOT') vide letters dated 25th May, 2017 respectively. No representation has been received from DOT. Further, the Counsel for the Petitioners submit that the Petitioner Company will take necessary steps as may be required as per the regulations of DOT to surrender the IP-1 registration(s) held by the Transferor

Companies, on the Scheme becoming effective as the same will no longer be required since the Transferee Company already has IP-1 registration.

12. The observations made by the Regional Director have been explained by the Petitioners in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
13. The Official Liquidator has filed his report inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.
14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 687, 688, 689, 690, 691 and 692 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
16. The Petitioner Companies 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.
17. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with e-form INC 28 in addition to the physical copy, within 30 days from the date of receipt of the approval of DoT in terms of clause 14 of the Scheme, which date shall be the Effective Date for the purposes of the Scheme.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Companies in Company Scheme Petition No 687, 688, 689 , 690 & 691 of 2017 to pay sum of Rs. 25,000/- each to the Official

Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of Order.

19. All authorities concerned to act on a copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V Prakash Kumar, Member (J)