

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

COMPANY SCHEME PETITION NO. 136 OF 2017

Connected with

High Court Company Summons for Direction No.952 of 2016

Reach Data Services India Private Limited Petitioner Company/
Transferor Company

AND

COMPANY SCHEME PETITION NO. 137 OF 2017

Connected with

High Court Company Summons for Direction No.953 of 2016

Reach Network India Private Limited Petitioner Company/
Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956) (or re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provision of Companies Act, 2013 as may be notified);

AND

In the matter of Scheme of Amalgamation of Reach Data Services India Private Limited ("RDSIPL") with Reach Network India Private Limited ("RNIPL") And Their Respective Shareholders And Creditors

Called for Hearing

Ms. Shruti Kelji a/w. Ms. Sunila Chavan and Ameya Lambhate, Advocates for the Petitioner

Mr. Ramesh Gholap, Assistant Director in the office of Regional Director in all Company Scheme Petitions

Mr. Raghunath Pola, Deputy ROC in the office of Registrar of Companies in all Company Scheme Petitions

Mr. Santosh Dalvi, representative from the office of Official Liquidator, present in CSP No.136 of 2017

CORAM: B. S. V. Prakash Kumar, Member (Judicial)
V. Nallasenapathy, Member (Technical)

Date: 26th April, 2017

1. Heard Advocate for the parties. Neither any objector has come before the Hon'ble Tribunal to oppose the Scheme of Amalgamation nor has any party controverted any averments made in the Petitions.
2. The sanction of the Hon'ble Tribunal is sought under Section 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Reach Data Services India Private Limited ("RDSIPL") with Reach Network India Private Limited ("RNIPL") and their respective Shareholders and Creditors.
3. The Learned Advocate for the Petitioners state that the Transferor Company is carrying on business of providing network and support services to its affiliates and Transferee Company is carrying on business of providing network and support services to Telstra Corporation Limited, its ultimate Parent Company.
4. The Learned Advocate for the Petitioners state that the amalgamation of Transferor Company with the Transferee Company would have benefit of cost savings from standardization and simplification of processes, improved procurement and optimization of support functions, resources and the assets and easier and speedier decision making and better management and the amalgamation will result in avoiding duplication of administrative functions, reduction in multiplicity of legal and regulatory compliances and the amalgamation will facilitate inter-transfer/adjustment of resources/assets and enhance the shareholder's value.
5. The Learned Advocate for the Petitioner states that the Board of Directors of the Petitioner Companies have approved the said Scheme of

Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Learned Advocate for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the Orders passed in respective Company Summons for Directions.
7. The Learned Advocate appearing on behalf of the Petitioner Companies have stated that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Bombay High Court as well as of this Hon'ble Tribunal and they have filed necessary affidavit of compliance. Moreover, the Petitioner Companies undertake 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 undertakings given by the Petitioner Companies are accepted.
8. The Official Liquidator has filed his report dated 6th March, 2017 in the Hon'ble Tribunal in Company Scheme Petition No.136 of 2017 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
9. The Regional Director has filed his Report dated 13th April, 2017 stating therein save and except as stated in para IV (1) and IV (7) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Paragraph IV of the said Report, the Regional Director has stated that:
 - 1) *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 Court 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 Companies.*

- 2) *It may be submitted that the Petitioner Companies have not submitted the proof of serving notice upon the Income Tax Authorities for comments. This Directorate also issued reminder letter dated 07.04.2017 to the Income Tax Authority.*
- 3) *Certificate by the Company's Auditor stating that the Accounting Treatment, if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013. In this regard Petitioner has to submit Auditor's Certificate.*
- 4) *As per the reply of the Company and the scheme, 100% of the shares of both the companies are held by Reach Holding Ltd., Mauritius and Reach Nominees Ltd., Mauritius 01%.
In this regard, it is submitted that the Transferee Company will be issuing and allotting shares to the shareholders of the Transferee Company who are Mauritius companies and hence the Petitioner has to produce the proof of sending notice to the RBI.*
- 5) *ROC in his report has inter alia mentioned that as per MCA Master data the Paid up capital of the Transferee Company is Rs.8,00,00,000/-. However, the paid up capital mentioned in the Scheme is not this amount. In this regard petitioner has to clarify the difference along with proof.*
- 6) *Petitioner in Clause 11 inter alia has mentioned that there are no employees where as in Clause 11.2 has mentioned that as far as the provident fund or any other special fund or schemes created, participated or existing for the benefit of the past staff, workmen, employees of the transferor companies are concerned, upon the scheme becoming effective, the transferee company shall stand substituted for the transferor company for all purposes whatever related to administration or operation of such schemes.*
- 7) *Petitioner in Clause 14.6 of the scheme inter alia has mentioned that the board of directions of the transferee company in consultation*

with the statutory auditors of the Company may give suitable accounting treatment.

In this regards, it is submitted that in clause 14 the petitioner has mentioned that the accounting treatment proposed is in accordance with AS-14 whereas Board is also given power to give suitable accounting treatment. This has to be clarified and undertake to comply the provisions of Section 133 of the Act, 2013.

10. As far as the observations made in paragraph IV (1) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the tax implication, if any, arising out of the Scheme is subject to final decision of the Income Tax Authority. The Petitioner Companies further submit that the approval of the Scheme by this Tribunal will 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 shall be binding on the Petitioner Companies.
11. As far as the observations made in paragraph IV (2) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that they have served Notice for Scheme of Amalgamation to the concerned Income Tax Department for their comments vide their letter dated 7th February, 2017 alongwith Company Scheme Petition Nos.136 and 137 of 2016 and its original acknowledgements for each Petitioner Company have been filed by way of an Affidavit of Service dated 27th March, 2017 before this Tribunal.
12. As far as the observations made in paragraph IV (3) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the Certificate by the Company's Statutory Auditor stating that the Accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 is already filed before this Tribunal by way of an Affidavit dated 24th April, 2017 and the copy of the said Affidavit alongwith Auditor's Certificate is served upon the office of the Regional Director as well as the Registrar of Companies, Mumbai on 25th April, 2017.

13. As far as the observations made in paragraph IV (4) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies states that both the Transferor and Transferee Companies has been incorporated to carry on the business of providing network and support services. The current activities of the Transferor and Transferee Companies falls under the Automatic Route and do not require approval of any regulator/RBI under the *extant* provisions of the Foreign Direct Investment (FDI) Policy issued by the Department of Industrial Policy and Promotion (DIPP) read with the Foreign Exchange Management (Transfer or issue of security a Person Resident Outside India) Regulations, 2000. Hence, there is no need to give prior notice of the Scheme to the Reserve Bank of India. However, Transferee Company reassures that upon the Scheme becoming effective, the Transferee Company will comply with the FEMA laws including filing requisite forms with the Reserve Bank of India pursuant to the issue and allotment of shares by the Transferee Company to the shareholders of the Transferor Company.
14. As far as the observations made in paragraph IV (5) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the Clause 4.1 of the Scheme mentions the paid up share capital of the Transferee Company is Rs.8,00,00,000/- Hence, there is no discrepancy between the Paid-up Capital mentioned in the Scheme and in the MCA Master Data.
15. As far as the observations made in paragraph IV (6) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that though there were no employees as on the date of the Scheme being approved by the Board of Directors, the Clause 11.2 of the Scheme specifically refers to past staff, workman, employees of the Transferor Company's provident fund or any other special fund, if any will stand transferred to the Transferee Company for all purposes whatsoever.
16. As far as the observations made in paragraph IV (7) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the Petitioner Companies undertake to strictly comply with Clause 14.1 to 14.5 of the Scheme which is in accordance with the Accounting Standard 14 on 'Accounting for Amalgamations'

- issued by the Institute of Chartered Accountants of India (ICAI) and further the Certificate by the Company's Statutory Auditor already states that the Accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.
17. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 10 to 16. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
 18. 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.
 19. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 136 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No. 137 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) and (b).
 20. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai 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 receipt of the order.
 21. The Petitioner Companies are further 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 physical copy, as per the relevant provisions of the Companies Act, 2013 within 30 days from the date of issuance of the order by the Registry.
 22. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region Mumbai in Company Scheme Petition No.136 of 2017 and Company Scheme Petition No.137 of 2017 and costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay in Company Scheme Petition No.136 of 2017. Costs to be paid within four weeks from the date of the Order.

23. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai.
24. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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