IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

IA 32, MA 146, MA 147, MA 166, MA 181,
MA 264, MA 279, MA 280 &
Other Unnumbered Mas of 2017

In

CSA No. 264/2017 with CSP 376A, CSP 377,
CSP 378, CSP 379, CSP 380 & CSP 381 of 2017.

Under Sections 230-232 of the Companies Act, 1956.

In the matter of the Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 along with the Companies Act, 1956.

AND

In the matter of composite Scheme of Arrangement of between Reliance Communications Limited ("the Demerged Company 1") and Reliance Telecom Limited ("the Demerged Company 2") and Aircel Limited ("Resulting Company 1") Transferee Company and Dishnet Wireless Limited ("Resulting Company 2") and Deccan Digital Networks Pvt. Ltd. ("the Transferor Company No. 1") and South Asia Communication Pvt. Ltd. (the Transferor Company 2) and their respective Shareholders and Creditors

1. China Development Bank Corporation
2. Chennai Network Infrastructure Ltd.
3. Department of Telecommunications
4. Thomas Cook (India) Ltd.
5. Bharti Airtel Ltd. & Bharti Hexacom Ltd.
6. Ketan Technocom Ltd.
7. Relcom Engineering Pvt. Ltd.
8. Indus Tower Ltd.
9. Bharti Infratel Ltd.
10. Ericsson India Pvt. Ltd.
11. Times Internet Ltd.
12. Core Logistics Pvt. Ltd.
13. ATC Telecom Infrastructure

14. Milstone Brandcom Pvt. Ltd.

..... Objectors

v/s.

Reliance Communication Ltd.
Reliance Telecom Ltd.
Aircel Ltd.
Dishnet Wireless Ltd.
Deccan Digital Networks Pvt. Ltd.
South Asia Communications Pvt. Ltd.
(a company incorporated under the provisions of the Companies Act, 1956)

..... Petitioners

Order delivered on: 14.08.2017

Coram:

Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioners: Shri. Janak Dwarkadas, Shri. Navroz Servai, Shri. Pradeep Sancheti, Ms. Alpana Ghone, a/w. Mr. Rajesh Shah, Mr. Ahmed M. Chunawala, Advocates i/b. Rajesh Shah & Co.

For the Respondents: 1. Shri. Darius Khambata, Mr. Aniruddha Sen, Mr. Jafaer Alam, Mr. Anirudh Agarwala, Mr. Siddharth Ranade, Ms. Karishma Dodeja, Advocates i/b. Trilegal for **China Development Bank**, the Applicant in MA/ Objector.

2. Shri. Ravi Kadam, Shri. Mustafa Doctor, Mr. Nikhil Sakhardande, Mr. Rohan Rajyadakshya, Ms. Shubhra Swami, Ms. Rati Lodha, Chesta Mehta, Mr. Ayush Khandelwal Advocates i/b. Lodha Legal for **Chennai Network Infrastructure Ltd.** Applicant in MA/ Objector.

3. Shri. B. N. Chatterji, Mr. Dhanesh Shah, Mr. Ranit Basu, Advocates for **Department of Telecommunication**, Applicant in MA/ Objector.

4. Mr. Sandeep Parikh, Mr. Krunal Godhia, Mr. Jainuddin Khan, Mr. Shekhar Wig, Mr. Zeeshan Farooqui, Advocates i/b. Gagrates Advocate and Solicitors for **Thomas Cook (India) Ltd.** Applicant in MA/ Objector.

5. Chesta Mehta, Advocate i/b. Lodha Legal for **ATC Telecom Infrastructure Pvt. Ltd.** Applicant in MA/ Objector.

6. Ms. Prachi Pandya, Advocate for **Times Internet Ltd.** Applicant in MA/ Objector.

7. Mr. Santosh Kumar Mishra, Advocate i/b. Kochar & Co., for **Indus Tower Ltd.** Applicant in MA/ Objector.

8. Ms. Ankita Singhania, Ms. Poonam Utekar, Advocates for the **Bharti Infratel Ltd.** Applicant in MA/ Objector.

9. Shri. Anil Kher, a/w. Mr. Kunal Kher, Ms. Nikita Shah, Advocates, i/b. Ashwin Awchad & Associates, for **Ericsson India Pvt. Ltd.** Mr. Vishal Garg, Authorized representative of Ericsson India Pvt. Ltd.

10. Ms. Ashwini Jain, Advocate i/b. MLS Vani & Associates, for **Ketan Technocom Ltd.** Applicant in MA/ Objector.

11. Mr. Kshitij Sancheti, Advocate i/b. Seth Dua & Associates, for **Bharti Airtel Ltd. & Bharti Hexacom Ltd.** (IA 32/2017).

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

ORDER

These are Company Scheme Petitions filed u/s 230-232 of the Companies Act 2013 (herein after referred as **"the Act"**) seeking approval for composite scheme of arrangement between Reliance Communication Ltd. (RCom - Demerged company No. 1), Reliance Telecom Ltd. (RTL - Demerged company No. 2), Aircel Ltd. (Aircel - Resulting company No. 1), Dishnet Wireless Ltd. (DWL-Resulting company No. 2), Deccan Digital Network Pvt. Ltd. (Deccan -Transferor company No. 1) and South Asia Communication Pvt. Ltd. (SACPL – Transferor company No. 2).

2. The rationale behind this scheme is – for consolidation of the wireless telecom business of the demerged companies (Rcom & RTL) with the resulting companies (Aircel & DWL) providing equity interest to RCom in Aircel for expansion of the business of Aircel and DWL into growing markets of India creating greater value for the shareholders of the resulting companies (Aircel& DWL); for availability of increased resources and assets which can be utilized for strengthening of the customer base of Aircel and DWL by servicing existing as well as new customers of the resulting companies; for augmenting the infrastructural capabilities of the resulting companies to effectively meet future challenges in the ever evolving wireless telecom business; for the combination of Demerged Companies and Resulting Companies is a strategic fit for servicing existing market and for catering additional volume link to new customers; for synergies in operational process and logistics alignment leading to economies of scale for the resulting companies for optimization of operational capital expenditure; for assisting these companies in strengthening their asset base while enhancing their financial flexibilities; financing competitive strength to achieve cost reduction, efficiencies and productivity gain by pooling the financial, managerial and technical resources, personal capabilities, skills, expertise and technology of the resulting companies and the demerged companies for significant contribution to future growth and for maximization of shareholders' value; for reduction of the direct and indirect foreign shareholding in Aircel, and to achieve an optimal capital structure through a capital reorganization exercise.

3. This scheme has envisaged various arrangements among all these companies finally to have 50% equity to RCom and 50% equity to Aircel which will result into making Aircel as one of the India's largest private sector company with an asset base over ₹65,000crores and net worth of ₹35,000crores by which Aircel after amalgamation will enjoy substantial benefit of scale deriving significant revenue growth, CAPEX and OPEX synergies.

4. These companies having filed company scheme application under Section 230 (1) of the Act for a direction to give notices to the shareholders, creditors and various government authorities and its Regulators before holding shareholder meetings of all these companies, this Bench on 15.03.2017 passed an order permitting these petitioner companies u/s 230 (1) of the Act to hold shareholders meetings by giving notices to the shareholders and creditors of the respective companies as envisaged u/s 230 (3) of the Act and also by giving notices to various Government Authorities u/s 230 (5) of the Act along with a direction for giving paper publication under proviso to subsection 3 of section 230 of the Act as prescribed under law.

5. Accordingly, these petitioners held the respective shareholder meetings after issuing a notice to all the categories as mentioned above including the objectors before holding shareholders' meetings. In the said shareholder meetings of the respective petitioner companies, since the majority of the shareholders of the respective companies approved the scheme soon after giving notices to all as mentioned u/s 230 (3) & (5) of the Act, these companies filed Company Scheme Petitions for admission, when this Bench was about to admit them, various creditors/objectors namely; Chennai Network Infrastructure Ltd., Bharti Airtel Ltd., Bharti Hexacom Ltd., Ketan Technocom Ltd., Bharati Infratel Ltd., Indus Tower Ltd., Ericson India Pvt. Ltd., Times Internet Ltd., M/s. Smartphone Pvt. Ltd., stating that this scheme is prejudicial to the rights and interest of the objectors, therefore it is void and deserves to be rejected in limine.

6. For the credit value percentage of these objectors in the outstanding debt of credit of Aircel is important, the credit value of the objectors reflected by Aircel in its audited financial statement dated 31.7.2017 is as follows:

Sr. No.	Objectors' Name	Outstanding Amount as on 31.03.2017	Percentage
1.	Bharti Airtel Ltd.	59,71,63,471	0.15%
2.	Bharti Hexacom ltd.	5,30,05,660	0.01%

3.	KetanTechnocom Ltd.	83,75,662	0.00%
4.	Bharati Infratel Ltd.	1,65,77,936	0.00%
5.	Indus Tower Limited	-----	----
6.	Ericsson India Pvt. Ltd.	445,18,94,710	1.10%
7.	Times Internet Ltd.	3,05,551	0.00%
8.	M/s. Smartphone Pvt. Ltd.	31,37,773	0.00%

7. Though initially many filed objections against admission of the petitions, finally only Bharti Airtel, Indus Tower Limited, Ericson India Ltd and Chennai Network Infrastructure Ltd (herein after referred as CNIL) have remained in the battle to fight it out to the end, though all these contenders did not put forth as effectively as CNIL Counsel Shri Ravi Kadam put forth, since Shri Ravi Kadam argued in detail, they have adopted the arguments of him, this Bench has in detail dealt with the contentions of CNIL.

8. This objector, CNIL filed a Miscellaneous Application stating that notice u/s 230(3) of the Act in pursuance of the Order dated 15th March 2017 has not been given to CNIL despite it is one of the creditors of Aircel, but however it has received intimation from DWL saying that equity shareholders' meeting of Aircel and DWL to be held on 22nd April 2017 without any details of the propose of scheme of Arrangement between the petitioner companies. CNIL says it is an unsecured creditor of the resulting companies to the extent of ₹1532,33,87,969, for it being one of the major creditors, it has addressed a letter dated 26.04.2017 to the Aircel entities calling upon them to furnish the necessary information about the proposed scheme of Amalgamation and also requesting them to make payment of the amounts due to CNIL. For it has not received any response to the letter dated 26.04.2017, it has filed this application stating that this scheme is prejudicial to the interest of the creditors, therefore this scheme petition shall be rejected.

9. To which, Aircel filed reply stating that since it is an arrangement between the company and shareholders, meeting of the creditors is not required under the provisions of the Act, on the top of it, for CNIL either on

its own or in aggregate along with other objectors, do not hold 5% of the total outstanding debt of Aircel, it cannot raise an objection to the scheme because CNIL, independently or in aggregate, has not met the threshold limit out of the total outstanding debt of Aircel for filing objections, therefore these Miscellaneous Applications with objections shall be rejected in limine.

10. On the reply given by Aircel, Sr. Counsel Shri Kadam appearing on behalf of CNIL explained how a process of scheme approval takes place in chapter for compromises, Arrangements and Amalgamations by submitting that on an application u/s 230 (1) of the Act for calling and holding a meeting for approval of a scheme in the said meeting by a company or of any creditors or members of the company, the Tribunal may order calling, holding and conducting meeting of the members and creditors in such manner as the Tribunal directs. Soon after such an order has been given for holding meeting, as to creditors meeting, the Tribunal may dispense with calling of meeting of creditors or class of creditors, where such creditors or class of creditors having at least 90% value, agree and confirm, by way of affidavit to the scheme of compromise or arrangement. The Counsel further says since meeting of creditors is mandatory as much as members meeting, the creditors meeting cannot be dispensed with or skipped, until and unless consent of the creditors having 90% in value of the outstanding debt of the petitioner company (Aircel) by way of affidavit is filed before this Tribunal as mandated u/s 230(9) of the Act. The only difference, according to the counsel, is meeting of the creditors could be dispensed with provided the persons having 90% of the value of outstanding debt consented for approval of such scheme, otherwise, he says, it is imperative to hold creditors as much as members meeting, no exemption under the Act not to hold creditors meeting. Besides this, he has further elaborated that there being special arrangement in respect to repayment, this creditor will fall under separate class, by falling so, threshold limit is applicable to the debt outstanding in respect to that class only, not to the total outstanding debt. By this analogy, he says CNIL credit value would be obviously more than 5% value of the debt of that class enabling it to protect its right in realization of its debt.

11. Shri Kadam further submits that though no order has been passed for holding creditors meeting, since Aircel has been ordered to serve notices upon the creditors, according to section 230 (4), a meeting of every class to whomsoever notice has gone shall be held enabling the persons received notice to exercise right of voting in such meeting, no matter whether the person received notice is a member or creditor. Moreover, the proviso to section 230 (4) having not expressed that objection has to be raised before the Tribunal, he says, since it is a settled proposition of law that a proviso must be construed with reference to the main clause, for section 230 (4) speaks of exercising voting right of the persons received notice u/s 230 (3), threshold limited envisaged in the proviso for raising objection shall be construed to be a right to raise objection in a meeting to which a person received notice, not in respect to raising objection before Tribunal, because a proviso cannot be bodily lifted from the main clause to read otherwise saying that threshold limit is for raising objection before Tribunal, he says, if such procedure is adopted, it would frustrate the mandate given in section 230(4) of the Act.

12. Without prejudice to the above submissions, the counsel further submits that this scheme, in any event, shall be an arrangement with creditors as well, because in a scenario like this, the creditors, who expected to continue their relation with Aircel, are required to continue with the entity in which the constitution of board substantially changes, control substantially changes, shareholding substantially changes, in turn, weighing down Aircel with additional liability to the existing liabilities of its own. If such arrangement qua between the company and members makes through, then it will be prejudicial to the interest of the creditors. Therefore, the counsel says that petitioners merely saying proposed scheme of arrangement is an arrangement between the companies and the members, so creditors meetings need not be held, is not correct preposition in the light of section 230 of the Act.

13. To justify this argument, the applicant counsel relied upon ***ICICI Bank ltd. (2002) (2) MhLA 276; In Re Northgate Technologies Ltd. [(2012) 172 company cases 438] and In Re UB Nissam Breweries Pvt. Ltd. [(2011) 167 company cases 562]*** to say that wherever arrangement in between the companies and its members is likely to affect upon creditors adversely, then it would be proper for the court to exercise its judicial discretion to convene meeting of creditors unless majority of the creditors representing ¾ in value of the credit or otherwise given consent for the same.

14. Since discussion is slightly lengthy, I must answer that in all these cases, it speaks of discretion of court to apply if some other arrangement is in requisite in addition to the arrangement sought. Now additional hurdle here in new enactment is, the objectors shall pass the test of qualification before raising objection, on face we have not seen any of these objectors, individually or in aggregate, are qualified to raise objection, therefore this Bench could not invoke discretion just by seeing objection, but in principle we agree that if court comes to an opinion another meeting also to be held to meet the fairness test, then definitely this Bench can invoke discretion, but not as of right, meeting cannot be automatically ordered. Exactly the same is said in the ratio held in all those cases.

15. The Counsel Shri Kadam further submits, since this scheme brings in a new shareholder i.e. RCom, it will automatically have sole control over Aircel Ltd., the time when this creditor extended credit facility to this Aircel, it was advanced on the assumption Aircel would remain answerable to CNIL, for this reason alone, several agreements were entered into carving out slightly different mode of payment. Today, if this scheme is gone through, everything changes; henceforth this counsel argues that this scheme shall not be allowed unless creditors are allowed to take a call over it. Therefore, he has sought for a direction from this Bench for ordering creditors meeting before admitting this Company Scheme Petition.

16. Apart from the objection raised by CNIL, there are other companies like Ericson, Indus Towers Limited, which raised dispute before the Arbitration Tribunal at New Delhi on the ground that these demerged companies have to make payment above ₹130 crores to Indus Towers Limited, filed their objections almost similar to the objections raised by CNIL, I don't believe all of them to be repeated again. Moreover, in the case of Indus Towers Limited, no debt is shown in the recently audited financial statement, moreover this debt being in decimals, its inclusion or exclusion will not make any change to qualification criteria.

17. Though some of them have said notice has not been reached to them, in any event, they have now appeared and argued at length on various points, non-receipt of notice would not make any difference as long as their rights are not effected due to non-receipt of notice. What would happen to them, if information had not reached to them, they could not have raised their objections as they raised now. Non receipt of notice will become fatal only when their non-appearance disabled them from right of hearing about their rights. It is not so here, because these objectors timely attended before this Bench, hearing has been given to them, now deciding their objections on consideration, in view of the same, non-receipt of notice by these objectors already paled into insignificance.

18. To answer the objections raised by Senior Counsel Shri Ravi Kadam on CNIL behalf, the senior counsel Shri Anil Kher on Ericson behalf; Senior Counsel Shri Janak Dwarakdas on Rcom and RTL behalf and Senior Counsel Shri Navroz Seervai on behalf of Aircel, submit that once go through section 230 (1), one can notice two types of arrangements u/s 230(1) of the Act – one, in between the company and its creditors or any class of creditors; two, in between the company and its members or any class of them. According to the intendment of Section 230(1) of the Act, NCLT will normally order for calling and holding a meeting basing on the application of a company or of any creditor/creditors or of a member/members of the company, therefore, the presumption could be, that NCLT would order meeting only on an

application come from any of the categories mentioned above, if no application, then no meeting. In another sense, it is a prerogative and requirement of the applicant to mention the type of meeting it or they want. Since this discretion is left to NCLT to give an order, it can decide as to whether to order or not to order meeting by looking at the scheme of arrangement come before it. The counsel further submits that summoning of power u/s 230(9) of the Act will arise only when compromise or arrangement is made in between the company and its creditors or class of them as contemplated by Section 230(1) of the Act. Section 230(9) only says that if at all it is creditors meeting, then only, the question of giving dispensation would arise provided 90% of the creditors in value obtained. By seeing such a provision for consent to dispense with holding meeting of the creditors, these objectors cannot say that since dispensation clause is given in Section 230(9), in every scheme, meeting of creditors shall be held or dispensed with provided 90% consent is given by the creditors irrespective of an application for holding meeting or an order for calling such meeting is given or not. It could not be said that whenever any arrangement is contemplated, it is imperative to hold shareholders meeting as well as creditors meeting.

19. As to the contention of objector's counsel that threshold limit is not applicable to file objections before Tribunal, the counsel for the petitioners submit that Section 230(4) speaks of voting in the meeting of members/creditors, as the case may be, when it comes to the proviso, it speaks of objection before Tribunal by the members/creditors having threshold limit prescribed in the proviso, as the case may be. Therefore, it has to be construed for raising an objection; it shall be made only **by persons having outstanding debt amounting to not less than 5% value of the total outstanding debt as per the latest audited financial statement**. Here these objectors separately or together do not have 5% value of creditors in the total outstanding debt as per the last audited balance sheet.

20. Having regard to the facts of this case, the counsel on behalf of the Petitioners submit that an order was passed by this Bench on 15th March 2017

to hold equity shareholders' meeting and also to issue notice to all the secured and unsecured creditors having outstanding debt of ₹5 lakhs and above as on 30th September 2016. Likewise, to issue notice to RoC, RD, Official Liquidator, Income Tax authority and other regulating authorities. Thereafter, in pursuance of the notice given for shareholders meeting, it was held on 24.04.2017 for the demerged companies and on 22.04.2017 for the resulting companies and the transferor companies. Since meeting of the creditors was neither asked by any of the companies, nor ordered by this Tribunal, the only recourse available to the creditors is to file objections before this Bench under the proviso to Section 230(4) of the Act provided those creditors having not less than 5% of the value out of the total outstanding debt as per the latest audited financial statement of the company. Since none of these objectors, who have come before this Bench either independently or in aggregate, have 5% value of the total outstanding debt as per the audited financial statement of the company, these objections need not even be looked into by this Tribunal. The petitioners counsel submits that if at all any objection is there to any of the creditors, it could be raised at the final hearing, but not at the admission stage. With these submissions, the counsel Shri Janak Dwarakdas and Shri Navroz Seervai have sought for admission of the Scheme Petitions.

21. On perusal of the submissions of the objectors and the Petitioners counsel, now the points for consideration are as follows:

1. *Whether an objection could be entertained at the stage of admission or not.*

2. *Whether it is imperative to hold shareholders meeting as well as creditors meeting without an application for calling and holding shareholders as well as creditors meeting.*

3. *Whether merely by sending a notice, the company is under obligation to hold the creditors meeting as well or not.*

4. *Whether objector can raise an objection even without having threshold limit of the credit as mentioned in the proviso to Section 230(4) of the Act 2013 or not.*

5. *Whether the Tribunal has discretion to direct the company to hold members/creditors meeting other than the meeting as sought in the application filed by any of the categories mentioned in Section 230(1) or the Act 2013 or not.*

Point # 1: *Whether an objection could be entertained at the stage of admission or not.*

22. If we see the arrangement of the Sections and sub-Sections in the Chapter of compromises, arrangements and amalgamations, we can easily ascertain Sections and sub-Sections are arranged in such a way that compliance will start happening from the date of filing application thereafter issuing notices by the Tribunal for holding meeting, as the case may be and also to receive objections, if any, from the persons having stake in the company and also to hear the objections of various authorities having control over the company as soon as objections come to the Tribunal. Since it has not been said as to when the objections of the creditors are to be heard, we believe it can be heard even before admission, so that if at all this Bench is of the opinion that creditors meeting is also to be held, that also could be simultaneously held for granting scheme. Therefore, there cannot be any hard and fast rule that objections to be heard only at the time of final hearing not at the time of admission. As this argument of the petitioners' counsel does not have any logic to say so, this point is decided against the Petitioners.

Point # 2: *Whether it is imperative to hold shareholders meeting as well as creditors meeting without an application for calling and holding shareholders as well as creditors meeting.*

23. As to holding of a meeting is concerned, it is a business judgment taken by the company to have an arrangement either with the shareholders or with the creditors depending on the requirement of the company, the only point that Tribunal has to look into is as to whether scheme is proposed and

approved in accordance with law or not; in addition to it, it is also to ensure that no fraud is underlying in the scheme causing prejudice to the persons having stake in the company especially members or creditors and also to ensure that no public interest is affected by entering into such an arrangement. If scheme does not fall in any of the constraints, in spite of it, if this Bench unduly delays by raising superfluous and untenable queries, companies get weighed down by far reaching complications. In most of these schemes, time is essence, sometimes the companies gasping for expertise or investment, enter into arrangements expecting it would happen in the time lines contemplated. It is the business of the company, it can take a decision on its own and come for an approval before this Tribunal, as we said above, and this Bench will interfere into the issue only when scheme is not in compliance with the provisions of the Act or only when it is causing prejudice to any of the category of persons as mentioned above. That being the case, the conspectus left to this Bench is limited.

24. In this background, let us visit the text of Section 230(1) of the Companies Act 2013 to find out as to what is the role of the Tribunal in ordering for a meeting, the text is as below:

> ***230. Power to compromise or make arrangements with creditors and members***
>
> *(1) Where a compromise or arrangement is proposed—*
>
> *(a) between a company and its creditors or any class of them; or*
>
> *(b) between a company and its members or any class of them,*
>
> ***the Tribunal may, on the application of the company*** *or* ***of any creditor*** *or* ***member of the company****, or in the case of a company which is being wound up, of* ***the liquidator****, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.*
>
> *Explanation—For the purposes of this sub-section, arrangement includes are organisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.*

25. By reading this subsection, it is ascertainable an application has to be filed, that application must disclose what kind of meeting is proposed, either

(a) or (b) of subsection 1, or both as the case may be, then NCLT will pass an order for calling and holding meeting. By discerning how many categories of persons can file an application, it appears that company or creditor/creditors or member/members can file application to call and hold meeting between the company and the creditor/creditors or between the company and the member/members, as the case may be. On such application comes from any of these categories, the Tribunal will apply its discretion to order for a meeting as sought by any of the persons aforementioned. Therefore, in normal course, no occasion arose to NCLT give directions other than sought by the applicant side.

26. We must also say that this section 230 (1) is in para-materia to old section 391 (1) of the Companies Act 1956, this old provision had held field for almost 60 years, in all these years, meetings were ordered as they were sought by the applicant, mostly by company. In all these years, it was not in doubt meeting means meeting as per the arrangement sought in application, of course there were occasions in the past, meeting other than sought was also granted if at all it was felt by Honorable High Court as a requirement, otherwise it was not even in contemplation two kinds of meetings to be held disregarding the kind of arrangement proposed. When there was no change to the old Act at least to the extent of ordering meeting, the same analogy that was in the past obviously applicable to the situation under new Act.

27. The deviation we have observed is, notice has to be given to all stake holders irrespective of the kind of meeting proposed, in the same breadth, threshold limit is carved out filtering below threshold from filing objections. Perhaps these two modalities have come into existence to expedite granting of scheme enabling the objectors, if any, to forthwith file their objections and at the same time curtailing frivolous objections from the creditors. It has been time tested. In the past, the creditors, having miniscule shareholding or miniscule debt owed by company, used to file objections, they used to remain pending for years. By this arrangement, nobody could say, I am not aware of the scheme proposed, any and everybody now could not object to the

scheme. These are in fact enabling provisions to meet the principles of natural justice and also to speed up dispensation of justice. Therefore, this Bench does not find any deviation from the earlier procedure in ordering meetings; the only difference is earlier it was ordered by Honorable High Court, now by this Tribunal.

28. If we examine this section arrangement, subsection-1 is the opening direction to call for a meeting, it is a crucial mandate for kind of meeting to be held, so NCLT's direction is to what kind of meeting to be held, the ensuing subsections will decide how such meeting is to be held. Once what meeting is to be held is decided in subsection-1, then the ensuing procedure says how that meeting is to be held. Therefore, this procedure of how meeting to be held cannot go back and question the foundational provision (subsection-1) what meeting should have been held and how many meetings should have been held, except in a case where this Bench invokes its discretion to direct the company to hold another meeting also. This is not a routine practice; it is not routine because no such procedure was in existence nor is inserted in the new Act.

29. It is like CPC, sections carve out rights of the parties in a suit procedure, to follow this, orders have come into existence to deal with as to how those rights have to be applied in filing procedure, but the procedure in orders can never be repugnant or inconsistent with the rights given in sections. Likewise, here also, subsection-1 says what meeting is to be held; thereafter remaining subsections will come into action to proceed to hold meetings, like, in how much time meeting to be called, to whom notice has to go, how right of voting to take place, thereafter post compliances of such meeting. In this scenario, we wonder how meetings of both shareholders and creditors to be held in the absence of an order from the Tribunal under section 230(1) of the Act, it is simply not possible, unless this Tribunal forms an opinion that a meeting other than sought is to be held to mitigate the unfairness unraveled in opting a scheme.

30. The objector mainly CNIL counsel has set up an argument saying when the creditors or class of creditors are entitled to file an application without any threshold limit, it has to be construed that the creditors are equally entitled to raise an objection without any threshold limit. By looking into this argument, it appears that it is not compatible to the language of section 230, because an applicant can never become an objector to the relief sought by such applicant. Moreover, since discretion is given to NCLT to pass an order on the application given by any of the category mentioned, no Tribunal will pass an order for holding meeting by looking at an application having shareholding or credit value which is not likely to get majority in the meeting proposed to be held. Therefore, when language is clear that creditor/creditors having less than 5% value of the total outstanding shall not raise an objection, a counter reading cannot be given to the language of the Section to allow an objection raised by a person not even having the threshold percentage as mentioned under the Section, whereby we have not seen any point in saying that since the creditors are given a right to file an application, they are equally entitled to file an objection even without threshold credit limit mentioned in the proviso to Section 230(4) of Act. Hence, this issue is decided in favor of the Petitioners.

Point # 3&4: Whether merely by sending a notice, the company is under obligation to hold the creditors meeting as well or not and *Whether objector can raise an objection even without having threshold limit of the credit as mentioned in the proviso to Section 230(4) of the Act 2013 or not.*

31. In respect to these points also, this Bench has observed that how to go about calling meeting is also flowing out of Section 230(1) itself. Please bear with us if any repetition comes in, because entire discussion revolves over one point, that is creditors meeting is also to be held or not. At the outset, the Tribunal will go on the assumption that company needs to hold a meeting in accordance to its requirement, therefore, as long as Tribunal has not noticed any shortfall in respect to the procedure and no fraudulent element is apparent on face, it will act on application moved by the company by ordering for the meeting of either the company with its members or the company with its creditors or both as the case may be.

32. If Section 230 (3) is looked into, it appears that it says about a meeting ordered under sub-section 1 of section 230, if the order of NCLT is for calling a meeting with creditors, for that meeting alone, if the order of NCLT is for calling a meeting with members, for that meeting alone. Because it starts saying ***where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to*** the persons described in section 230 (3). Even if notice has gone to the persons other than to whom meeting is held, it cannot be construed that by receiving a notice, such person is entitled to vote in the meeting. If that is the case, sub section (1) of the section 230 will become redundant. Can it be that a provision for providing an order for meeting could be made redundant? Obviously, not. If the statute wanted to make section 230 (1) redundant by introducing section 230(4), the legislature would not have brought sub section 1 of section 230 into the statute book. The reason for giving notice to creditors is, conjunction "and" has been used by the statute for sending notices to the members as well as creditors. Next, let us see why it has been necessitated to send notice to creditors as well as members though meeting is held only for one category but not to two categories.

33. If we read sub section 3 of section 230, two three things clear, one – to which meeting notice has to go, two – to whom notice has to go, text of it is as follows:

> *(3) **Where a meeting** is proposed to be called in pursuance of an **order of the Tribunal under sub-section (1),a notice of such meeting** shall be sent to all the creditors or class of creditors **and** to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:*

Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:

Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

34. This sub-section will start speaking of the meeting ordered under sub-section and thereafter it has been again stressed saying that **a notice of such meeting** will alone go to the persons directed under sub section 3. By the time, when we reach to sub section 3, it has already been made clear and an order has been passed as to what meeting is to be held, then there cannot be any question now to look into as to whether creditors meeting also to be held in addition to the meeting ordered under sub section (1). If that is the case, ***the legislature would not have indicated a notice to the meeting already ordered by the tribunal,*** whereby it is not even in contemplation that another meeting is simultaneously to be held in addition to the meeting already ordered under sub section (1) of section 230. Why a notice has been ordered to go to the creditors is, though legislature has indicated what meeting to be held, since conjunctive word ***'and'*** has been used between creditors and members, though meeting is to be held to only one category, it has been made compulsory to send notice to the other category of persons to whom meeting has not been held. By receiving such a notice as directed under sub-section 3, the other category of persons, may be, either creditors or members, cannot stretch it out to say that since notice has come to other categories also, they should be allowed to exercise their right of vote as stated in section 230 (4). By reading sub-section 3 of section 230, it is clear that meeting means the meeting ordered u/s section 230(1) only. Though meeting is to be held as ordered u/s 230(1), since it is made compulsory to give notice to three category of persons mentioned in section 230 (3) of the Act, an order has been passed to send notices to all categories mentioned in section 230 (3).

35. Now the ultimate point for consideration is whether the creditors to whom meeting not been ordered can vote in the meeting of the shareholders ordered under Section 230(1) or not. For the sake of convenience, let us visit sub-section 4 also.

> *(4) A notice under sub-section (3) shall provide that the persons* ***to whom the notice is sent may vote in the meeting*** *either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:*
>
> *Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent of the shareholding or having outstanding debt amounting to not less than five per cent of the* ***total outstanding debt as per the latest audited financial statement.***

If we read this provision closely, it appears that main thrust of this subsection is that the persons can vote directly or through proxies or by postal ballot, then about raising objection if they meet the qualification criteria mentioned in proviso. No doubt, it has also been mentioned *"that the persons to whom the notice is sent may vote in the meeting"*

36. We have said earlier, subsection (1) is the triggering provision to set in the procedure into motion for granting scheme. **Though it is normally understood that later provision prevails over earlier provision, when it is required to read it in the context of earlier provision so as to achieve the mandate of the statute, it has to be read in that sense only.** Since Section 230 (1) and Section 230 (3) speak of a meeting ordered under sub section (1), it has to be held as per arrangement, be with members or be with creditors, as the case may be. Then sub section 4, dealing with voting in a meeting ordered u/s 230 (1), has to be read in the context of sub sections (1) and (3) and directions thereof, but it cannot be read separately to read down the foundational provision. Therefore, as long as Tribunal is not of the view that a meeting other than sought is also to be held, Tribunal will not get swayed to order for a meeting to enable all the persons received notices under subsection 3 of the Act to exercise voting rights. This right of notice, as I said earlier, is given to

know the developments happening in the company and to raise objection if at all any of the persons to whom meeting is held to raise objection, nothing less, nothing more.

37. Before going further, I wish to quote the words of Plato to get an understanding how to go about with the present exigency. ***"No law or ordinance is mightier than understanding." – Plato*** But I must also say that where words of a provision are clear, there is no need for any understanding of us to law. It is held in Jit Ram Shiv Kumar v. State of Haryana (1980 AIR 1285) as follows:

> *"The courts, by its very nature, are most ill-suited to undertake the task of legislating. There is no machinery for the Court to ascertain the condition of the people and their requirements and to make laws that would be most appropriate. Further two judges may think that a particular law would, be desirable to meet the requirements whereas another two judges may most profoundly differ from the conclusions arrived at by two judges"*

38. I believe that Supreme Court has strictly conveyed this message to judicial fraternity to remind that courts have no right to read something into statute making upside down, perhaps for the reason people know what they need, not courts. Every individual righteousness depends upon one's perception, this cannot be rubbed into the statute in the name of interpretation, of course this being the Tribunal, creation of this statute, it cannot even think of it. But when one provision is so incongruous to other provision and violating seamless flow of the statute, then to overcome the situation and effectuate the object and purpose of the statute, the courts are bound to read it in such a way that setting made in the enactment is accomplished by harmonious reading.

39. To get over this situation, a statute should be read as a whole and one provision of the Act should be construed with reference to other provisions in

the same Act so as to make a consistent enactment of the whole statute. Such an interpretation is beneficial in avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. The principles laid down by Honorable Supreme Court are really useful tools to do this surgical operation to take out incongruity. See what they are:

1) The courts must avoid a head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonize them. ***(CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57, p. 74)***

2) The provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its effort, is unable to find a way to reconcile their differences. (Ibid)

3) When it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such as way so that effect is given to both the provisions as much as possible. ***(Sultana Begum v. Premchand Jain, AIR 1997 SC 1006, pp. 1009, 1010).***

4) When it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such as way so that effect is given to both the provisions as much as possible. ***(CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57, p. 74)***

5) To harmonize is not to destroy any statutory provision or to render it fruitless. ***(Ibid)***

40. I must candidly say that I have navigated through and through as to whether I could lay my hands on some Indian citation aptly applicable to the present context, the same not being happened, however I having come across an American Judgment, ***Gilbertson Et Al. v. Culinary Alliance And Bartenders' Union Et Al.(Supreme Court of Oregon – 204*** **Or. 326 (1955) 282 P.2d 632)** effectively dealt with tussle arises with prior section and later section applicability. Perhaps the counsel by oversight having left out arguing on this point, I want to place reliance on this case for the benefit of litigant public.

41. Since this case is slightly on different factual conspectus, I am briefing the facts in a nutshell, as to how earlier section can subsume later section to

give effect to the cause and effect of the enactment. It is on an enactment of Oregon State dealing with labor management relations, the problem in this case is clash of application of sections 13 & 14 as against section 18 of this enactment.

42. Facts are, a complaint was given to the examiner that labor union is indulged in picketing, upon such complaint, labor examiner issued an order to cease and desist Culinary Alliance Bartenders' union from the unlawful action. This enactment provides for the appointment of a labor examiner with authority to issue a complaint on a charge that a person is engaged in conduct made unlawful by the Act, to hold a hearing upon such charge, and, if he finds that the charge is sustained, to issue an order requiring such person to cease and desist from the unlawful action. The examiner or any interested person may petition the Circuit Court to require the enforcement of such an order, and the court is authorized to enter a decree of enforcement. An appeal to this court from the Circuit Court's decree is provided for. The complaint was given to the examiner that labor union is indulged in picketing, upon a complaint; labor examiner issued an order to cease and desist Bartenders' union from the unlawful action. On this order of labor commissioner, review u/s 13 could be filed before Circuit Court by filing transcript of the entire record of the hearing before examiner, looking at it, the circuit court can enforce, modify or set aside the order of the examiner without conducting any further trial or inquiry. Under section 14, either examiner or any interested person may petition before Circuit Court for enforcement of the order of the examiner. As against this arrangement, another section 18 says that courts of competent jurisdiction shall have power to enforce the provisions of the statute by decree after hearing the testimony and after conducting chief and cross examination. But to invoke section 13 or 14 sections, there need not be any trial for passing decree, now the point is whether section 18 violating the procedure of obtaining order under sections 13 or 14 without examination of witnesses. Since Supreme Court has appellate authority over the order of Circuit Court, it was appealed before it. Wherein, the order below has been passed.

"Claim of Inconsistency in Procedural Provisions

*It is suggested that the Act is unenforceable because of a conflict between the provisions of §§ 13 and 14, on the one hand, and § 18 on the other. Where judicial review of an order of the examiner is sought by an aggrieved person, or where the examiner or an interested person petitions the Circuit Court for enforcement of such an order pursuant to §§ 13 and 14, the hearing in the Circuit Court is upon the transcript of the proceedings before the examiner. The court is authorized to enter its decree "upon the pleadings, testimony and proceedings set forth in such transcript" (§ 13). Further, "No objection that has not *336 been urged before the examiner shall be considered by the court. The findings of the examiner with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive." But § 18 empowers courts of competent jurisdiction to enforce the provisions of the Act and then provides: "No relief under ORS 662.610 to 662.790 shall be given by any court except after hearing the testimony of witnesses in open court, with opportunity for cross examination, in support of the allegations of a complaint or petition made under oath, and testimony in opposition thereto, if offered." "ORS 662.610 to 662.790" in the foregoing sentence was substituted in the revision for the words "this Act".* ***If this prohibition were held to apply to proceedings taken under §§ 13 and 14 there would result a clear and irreconcilable conflict, for obviously, on that assumption, a court could not follow the procedure outlined in §§ 13 and 14 without violating the command of § 18.***

*The legislative history is of interest. The measure was introduced as House Bill No. 663 on March 20, 1953. As passed by the House, the bill contained no provision for the creation of the office of labor examiner and no administrative provisions whatever except that the State Board of Conciliation was invested with authority to conduct elections for the purpose of determining a bargaining agent for employees. Section 7 of the bill provided that any person aggrieved by a violation of any of the terms of the Act should be entitled to injunctive relief and to recover damages resulting from such violation in any court of general jurisdiction. All the provisions for administrative proceedings to be conducted by a labor examiner and for judicial review and judicial enforcement of his orders, as well as the present § 18, came into the statute by Senate amendments which were adopted on April *337 20, 1953. On April 21 the bill was finally passed. On April 21 the legislature adjourned. In view of this history the following quotation from State v. Mulhern, 74 Oh St 363, 78 NE 507, is peculiarly pertinent:*

" * * We are therefore remitted to an ascertainment of the policy and intent of the Legislature by a construction of the entire act. This situation, which presents two irreconcilable provisions respecting the time when the commissioner will take office, probably arose from the undue haste which characterized much of the late work of the session, and appears, as was stated by counsel at the oral hearing, to be a case of too many cooks. Such legislation is sometimes held wholly inoperative, and were the subject-matter of minor interest we would be disposed to hold in this case that the number of cooks had spoiled the broth utterly. But it is not a matter of minor interest but of general interest reaching as it does to every county of the state, and affecting vitally the conduct of each county's business,* ***and it undoubtedly is the duty of the court to endeavor to give effect to the act***

in one way or the other. Which construction, therefore, will more nearly effectuate the purpose intended, and which will be freest from objection in the practical working out of the law?"

1. There is a rule that in case of irreconcilable conflict between various provisions the last provision in order of position or arrangement in the statute should prevail. The rule was recognized by this court in Upham v. Bramwell, 105 Or 597, 619, 620, 209 P 100, 210 P 706, 25 ALR 919, but was not applied because the court was able to harmonize two apparently repugnant provisions of the statute in question. In fact, although many courts recognize the existence of such a rule, an examination of the cases indicates that it is applied only as a last resort. As stated in 82 CJS 719, Statutes § 347.

"* * * However, this rule has been criticized as having no satisfactory basis and as not being *338 supported by any sound legislative practice. This is a purely arbitrary and artificial rule of construction to which there are exceptions. So, it is subject to the rule that the statute must be construed as a whole to find the legislative intent, and has no application where the prior section or provision is more in harmony with the general purpose or intent of the act, or is clearer and more explicit that the later one, or where the literal interpretation of the later section would nullify the whole act, and is to be resorted to only when there is clearly an irreconcilable conflict, when there are no other means of ascertaining the legislative intent, and all other means of interpretation have been exhausted, and in extremis."

See, also, Black on Interpretation of Laws, pp. 326, 327. ***The rule is not applied when the earlier provision of a statute conforms to the obvious policy and intent of the legislature.*** *Black, op. cit., supra; State v. Mulhern, supra; State v. Bates, 96 Minn 110, 104 NW 709; Valley National Bank of Phoenix v. Apache County, 57 Ariz 459, 114 P2d 883; Western Beverage Co. v. Hansen, 98 Utah 332, 96 P 2d 1105. As stated by Mr. Black,* ***"it is only when the subsequent clause combines equal clearness with the advantage of position that it will control the former."*** *See, State ex rel v. Public Service Commission, 101 Wash 601, 172 P 890.*

2, 3. We are not, however, compelled to resort to use of a rule, everywhere considered arbitrary and unsatisfactory, for the solution of the present question; for we think that while the provisions under consideration are apparently irreconcilable, they are not actually and necessarily so, and that under settled rules of statutory interpretation they may be harmonized. That it is the court's duty to harmonize them; if possible, there can be no doubt. Lommasson v. School Dist. No. 1, 201 Or 71, 267 P2d 1105. ***"An author must be supposed to be consistent with himself; and, therefore, if in one *339 place he has expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it clearly appears that he had changed it."*** *Endlich, Interpretation of Statutes, 250, § 182.* ***And in a case of conflict between the provisions of a statute those susceptible of only one meaning will control those susceptible of two meanings if the statute can thereby***

***be made harmonious**. 82 CJS 720, Statutes § 347; People v. Monroney, 24 Cal2d 638, 150 P2d 888."*

43. In the given case also, can we assume section 230 (4) will remain in force if section 230 (1) is nullified? Section 230 (4) is consequential to section 230 (1). It is not even an independent provision, completely dependent and continuation to section 230 (1) and Sec 230 (3) of the Act. Moreover, it has not stated in section 230 (4) that both the meetings are to be held, it only says whoever gets notice, he has to vote in the meeting. Before taking this literal interpretation into consideration, if we see to what meeting, voting is to be done, it is clear that meeting is to be held as ordered u/s 230 (1), if the meeting is ordered and convened only to members, how creditors can vote in that meeting? It is simply not possible. Let us take a converse situation, assuming meeting is called since the person received notice according to section 230(3) is entitled to vote as stated in section 230 (4), it would happen only when 230 (1) is violated, if it is violated where from right would come to 230 (4) to hold meeting. It is like cutting stem upon which one sits. This situation is incongruous to give a meaningful reading; therefore, only possible and constructive reading could be, is the persons to whom meeting is held, they alone have to vote, but not other categories.

44. In Sub Section (1) of Sec. 230, a call for a meeting shall be ordered on the application filed, that being the case, could it be construed that legislature would say under sub-Section 4 of Sec. 230 that meetings to be called and held for members as well as creditors repugnant to the order passed under sub-Section (1) of Sec. 230? We believe it can't be.

45. It has been already reiterated in umpteen number of cases held by Supreme Court, Courts are supposed to give harmonious construction so as to validate the provisions of the statute i.e. constructive interpretation. When there is no ambiguity in sub section (1) and sub section (3), when meeting is already being ordered by the tribunal, sub section (4) cannot be read into the mandate of sub section (1) and sub section (3) or section 230. Therefore, it is to

be understood that voting under sub section (4) means voting to the meeting ordered by the Tribunal, not otherwise.

46. Whenever, any statute is read, it has to be read as given by the legislature, when any meeting is held especially shareholders meeting; the meeting will be held to take a democratic decision by majority of the voters. There is no point saying that if the objection comes from more than 5% value of the outstanding debt, they will have some privilege in the meeting. Whenever any meeting is held for taking a decision, the only thing to be seen is whether majority voted for passing the resolution or not. As to argument of Shri Kadam saying threshold limit is in respect to voting in meeting if proviso is read along with main section 230 (4), this argument does not seem to be fitting, because the entire section 230 speaks of various stages happening in approval of scheme, this is all in relation to one action, i.e, approval of scheme, therefore it cannot not be construed that proviso bodily lifted or torn off from subsection 230 (4). As it has been said in Gilbertson case, when any provision is susceptible to two meanings, one that is constructive is to be taken.

47. If any objection is raised before Tribunal, then Tribunal can examine it, will any prejudice happen where election of decision is taken on majority, which is rule in every democratic concept? Such objection could be effectively examined and remedied by Tribunal, but not in the meeting for decision on majority rule concept. Therefore, raising an objection means filing an application before the Tribunal, for filing such objection since proviso mandates 5% value out of the outstanding debt, the objection raised by the objector will not have any locus unless qualified with the threshold limit prescribed. In view of such arrangement inbuilt in the statute, these objectors do not have any locus because all these objectors credit value even in aggregate is less than 5% of total outstanding debt as shown in the audited financial statement of the company. This applicant who has made a long argument has not placed anywhere how much is its credit value in the total outstanding debt of the company as reflected in the audited financial

statement of the company. According to the audited financial statement of Aircel, this applicant has only 0.22% of the credit value out of the total debt in the audited financial statement the company, therefore CNIL is not entitled to raise any objection. Hence, this Bench has decided this point against this applicant as well as other applicants/objectors.

Point # 5: *Whether the Tribunal has discretion to direct the company to hold members/creditors meeting other than the meeting as sought in the application filed by any of the categories mentioned in Section 230(1) or the Act 2013 or not.*

48. It is a point of causing prejudice or loss to any section of the society in allowing the scheme proposed by the company or the applicant as the case may be. We have already said this Bench can interfere into in respect to two areas; one is procedural aspect, since the procedural aspect has been complied with, the other point remains to be seen is whether these companies by entering into this scheme causing any kind of loss or likely loss to any of the stakeholders more especially other category or persons such as creditors, debenture holders, employees and public at large or even State. The counsel appearing on behalf of the petitioner categorically mentioned on affidavit that by this demerger and amalgamation the resulting company i.e. Aircel asset base will go to ₹65000crores and the net worth will shoot up to ₹35000crores from negative net worth of ₹17000crores. Moreover, these applicants flagging their objections saying that their interest will be prejudiced if this has been accomplished has no sense because by virtue of this demerger, RCom and RTL will get 50% equity in Aircel. It will be like a joint venture with 50:50 between two companies. It cannot be said that Aircel has foregone majority to Rcom. Moreover, these people are not shareholders of the company, after all they are creditors, the creditors interest would be limited to reason out as to whether they could realize their debts or not. Here since this resulting company i.e., Aircel will be getting a quantum jump from negative net worth to positive net worth of ₹35000crores, it could not even be imagined that by virtue of this scheme, the creditors interest would be in jeopardy. Since this fact of change of value of the net worth of the company

not being denied by these applicants or by any other applicants, there could not be any occasion to this Bench to contemplate that some fraud is designed to defraud the creditors of Aircel. As long as fraud element is not present, since such allegation has not even been made, this Tribunal is not supposed to recalibrate the business decision of any company. That being the situation, this Bench has no jurisdiction to order the meeting of creditors just for the sake of asking from these creditors, who have no locus even to raise any objection. Therefore, we don't say that this Tribunal has no discretion to order creditors meeting as well, but in this case, no such situation existing warranting this Bench to order for creditors meeting. Since no fraud allegation is raised by the objectors, we don't find any reason to interfere.

49. Therefore, this Bench hereby holds that this Bench is not warranted to invoke discretionary jurisdiction to go into as to whether the meeting other than sought is to be held or not. As to objections raised by Indus Tower Limited, Bharti Airtel and others are similar to the objections dealt with, the discussion is equally applicable to reject the objections of these entities, accordingly their objections are also hereby rejected. In respect to the other companies, who entered into an understanding with the Petitioners companies, they are saved to the extent mentioned in the terms entered between the Petitioners and the respective Objectors.

50. Apart from these Objectors/Creditors objections, Department of Telecommunications Counsel has filed an order passed by the Hon'ble Supreme Court of India on 6.1.2017 holding Aircel and other companies not to earn any revenue by using 2G spectrum licenses granted to M/s. Aircel Telecommunications by simultaneously saying that restraint on use of 2G Spectrum would obviously entail adverse consequences to the spectrum subscribers therefore directed the Ministry of Telecommunicates to devise ways and means whereby the earlier subscriber to 2G Spectrum can be transferred provisionally to some other service providers in case necessary to pass the proposed order arises, basing on this order, the Counsel appearing on behalf of the Department of Telecommunication has raised an

apprehension that any demerger or amalgamation in the teeth of the Supreme Court orders would be against the restraint orders passed by the Hon'ble Supreme Court.

51. On this submission, the Sr. Counsel Shri Seervai appearing on behalf of Aircel submitted that the Hon'ble Supreme Court, even in the order dated 6.1.2017, it has proposed to restrain earning of any revenue, by using 2G Spectrum licenses originally granted to M/s. Aircel Telecommunications. He says if this operative portion of the order is carefully examined, it is clear that Aircel has been restrained from earning any revenue by using 2G spectrum license, here Aircel has not been merging with another company, indeed demerged companies' assets have been coming into Aircel. The resulting company being Aircel, it can't even be assumed that this license is likely to be transferred to some other company, therefore, Aircel Counsel Shri Seervai submits that the order of the Supreme Court will not be having any bearing on this Scheme.

52. On hearing the submissions of either side and by reading the orders dated 6.1.2017 and 3.2.2017 of the Hon'ble Supreme Court of India, to us also, it appears that the order of the restraint passed by Hon'ble Supreme Court is limited to the extent of restraining the earning of revenue by using 2G Spectrum licenses by Aircel, but whereas here, the Scheme is merging of a demerged undertaking of RCom and RTL with Aircel and amalgamation of two other companies with Aircel therefore, it can't even be construed that Aircel trying to earn money by transferring 2G Spectrum license by this Scheme. Since this Scheme doesn't envisage or speaks of any contractual rights over 2G Spectrum licenses, indeed by virtue of this merger, the wireless business of Rcom and RTL coming into Aircel therefore, it can't be said this scheme has to be put on hold until the Hon'ble Supreme Court of India decides Civil appeal 100660/2010 pending before Hon'ble Supreme Court. If it is a case of Aircel merging with some other company losing its identity, then definitely there can be a chance of bearing of Hon'ble Supreme Court order over such Scheme. Even after merger also, the Department of

Telecommunication, will still be in a position to proceed against Aircel in case the Hon'ble Supreme Court orders invalidate 2G Spectrum license or like order.

53. Like CNIL raised objections, Ericsson also raised objections but whereas since the Sr. Counsel appearing on behalf of the Ericsson requested to adopt the arguments of the Counsel appearing on behalf of the CNIL, we don't believe we need to deal with the Ericsson objections separately. Like CNIL has some special contractual rights, Ericson has also the same kind of rights therefore, since this Bench has stated that there is no locus to these objectors on the ground that they are less than 5% of the total outstanding, Ericsson's and others objections have also been turned down.

54. In view of the same, it is hereby held that this merger will not have any bearing over the proceeding pending before the Hon'ble Supreme Court of India and the right of DoT still remains as before. On its merger plans with RCom, the Aircel said that no sale of spectrum is involved in the transaction and no cash is involved as Aircel acquiring assets in merger, not selling assets. In view of the same, we have not seen the contention of the Counsel appearing on behalf of DoT objectionable in sanctioning this Scheme.

55. Accordingly, all objections raised by contenders rejected saving the rights of the objectors on entering into terms with the petitioners.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

B. S. V. Prakash Kumar
Member (Judicial)