

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME APPLICATION NO 502 OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 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

ATC Tower Company of India Private Limited, }

a Company incorporated under the provisions of }

Companies Act, 1956 having its registered office }

at 403, 4th Floor, Skyline Icon, Near Mittal }

Industrial Estate, Andheri Kurla Road, }

Andheri East, Mumbai – 400059. }....Applicant Company

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the Applicant Company

CORAM: B.S.V. PrakashKumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

DATE: 20th APRIL, 2017

MINUTES OF THE ORDER

1. The Counsel for the Applicant Company submits that present Scheme is for 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. The Counsel for the Applicant Company further submits that the Applicant Company is registered with the Department of Telecommunications, Ministry of Communications and Information Technology, Government of India (“DoT”) as Infrastructure Provider Category-I (IP-I Infrastructure provider) and is engaged in the business of providing passive telecom infrastructure services to cellular mobile telephony operators and other licensed telecom infrastructure providers in India.

2. The Counsel for the Applicant Company further submit that rationale for the Scheme is as under:

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:

- i. 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;
- ii. 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

- iii. 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.
3. A meeting of the Equity Shareholders of the Applicant Company, be convened and held at 403 & 404, 4th Floor, Skyline Icon, Andheri Kurla Road, Andheri East, Mumbai - 400059 on 27th day of June, 2017 at 10.30 A.M. for the purpose of considering and if thought fit, approving, with or without modification(s), the proposed 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.
4. That at least one month before the said Meeting of the Equity shareholders of the Applicant Company to be held as aforesaid, together with the copy of the scheme, a copy of statement disclosing all material facts as required under section 230(3) of the Companies Act read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post, Speed Post or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the Company, at their last known address or email addresses as per the records of the Applicant Company.
5. That at least one month before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting, indicating the place, date and time of meeting as aforesaid be published and stating that the copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy shall be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the offices of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
6. Mr. Amit Sharma, Director of the Applicant Company failing him Mr. Rajesh Madan, Director of the Applicant Company, shall be the alternative Chairman of the

aforesaid Meeting to be held at 403 & 404, 4th Floor, Skyline Icon, Andheri Kurla Road, Andheri East, Mumbai - 400059 on 27th day of June, 2017 at 10.30 A.M. or any adjournments thereof.

7. That the Notice of the Meeting shall be advertised in two local newspapers viz. "Free Press Journal" in English and "Navshakti" in Marathi, both circulated in Mumbai not less than 30 days before the date fixed for the meeting.
8. That the Chairman appointed for the aforesaid Meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairman shall have all the powers as per the Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof .
9. The quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
10. The value and number of the Equity shares of each member shall be in accordance with the books/ register of the Applicant Company and where the entries in the books/ register are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
11. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered Office at 403, 4th Floor, Skyline Icon, Near Mittal Industrial Estate, Andheri Kurla Road, Mumbai – 400059, Maharashtra, India not later than 48 hours before the aforesaid meeting.
12. That Mr Sandeep Gandhi, Practicing Company Secretary is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the Applicant Company to be held at 403 & 404, 4th Floor, Skyline Icon, Andheri Kurla Road, Andheri East, Mumbai - 400059 on 27th day of June, 2017 at 10.30 A.M. or any adjournments thereof. The fees of the scrutinizer is fixed at Rs 5,000/-
13. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the Meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
14. That the Chairman of the Meeting to report to this Tribunal, the results of the aforesaid meeting within thirty days of the conclusion of the Meeting.

15. The Counsel for the Applicant Company submits that there are no Secured Creditors in the Applicant Company, therefore the question of sending notices to the Secured Creditors does not arise.. The Counsel for the Applicant Company submits that since the Scheme is an arrangement between the Applicant Company and their respective shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This Bench hereby directs the Applicant Company to issue notice to all its Unsecured Creditors as on 28th February, 2017 as required under section 230(3) of the Companies Act 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
16. That the Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Applicant Company's assessments are made, (ii) to the Central Government through the office of Regional Director, Western region, Mumbai, (iii) to the Registrar of Companies, Mumbai, and (iv) to the Department of Telecommunications, Ministry of Communications and Information Technology, Government of India with the direction that they may submit their representations, if any, within a period of thirty days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served to the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposal.
17. The Applicant Company is also directed to serve notice along with copy of Scheme upon Official Liquidator. H.K Dedhia & Co. Chartered Accountant are appointed to assist the Official Liquidator to scrutinize books of accounts of the Applicant Company for the last 5 years. The fees of the Chartered Accountant is fixed at Rs. 40,000/- . If no response is received by the Tribunal from Official Liquidator within thirty days of the date of receipt of the notice, it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
18. Applicant Company to file affidavit of service in the Registry proving dispatch of notices upon shareholders, Creditors, notices to Regulatory authorities as stated in clause 16 and 17 above and publication of notice in newspapers.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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