

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CSP NO. 729 OF 2017

Mahindra Telecommunications Investment Private Limited
.....Petitioner/Transferor Company 1

AND

Gateway Housing Company Limited
...Petitioner/Transferor Company 2

AND

Mahindra Holdings Limited
.....Petitioner/Transferee Company

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other
applicable provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of
Mahindra Telecommunications Investment Private
Limited and Gateway Housing Company Limited with
Mahindra Holdings Limited and their respective
shareholders

Order delivered on 4th January 2018

Coram:

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

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

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co
Mr. S Ramakantha, Joint Director in the office of
Regional Director

Mr. Parvez Naikwadi Assistant Registrar of
Companies, Mumbai

Per: **V .Nallasenapathy, Member (T)**
Order

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of the Tribunal is sought under section 230 to 232, of the Companies Act, 2013, to the Scheme of Amalgamation of Mahindra Telecommunications Investment Private Limited and Gateway Housing Company Limited with Mahindra Holdings Limited and their respective shareholders .

3. The learned Counsel for Petitioners submit that Transferor Company 1 is engaged in the business of other financial services, activities, except insurance and pension funding activities. Transferor Company 1 is a wholly owned subsidiary of Mahindra Holdings Limited. Transferor Company 2 is primarily engaged in the business of aggregators of goods and providing all types of mobility, advertising and transportation related services for all types of goods and materials and digital or logistic solutions. The Transferee Company is engaged in the business of Investment in Mahindra Group companies. Post sanctioning of the Scheme the entire share capital of the Transferor Companies held by the Transferee Company shall stand cancelled.
4. The Counsel for Petitioners submit that the rational for scheme is that the Transferor companies are wholly owned subsidiaries of the Transferee Company. With a view to maintain a simple corporate structure and eliminate duplicate corporate procedures it is desirable to merge and amalgamate all the undertakings of the Transferor Companies into Transferee Company. The amalgamation of all undertakings of Transferor Companies into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.
5. The Counsel for Petitioners submit that post filing of the scheme the authorized share capital of the Transferee Company has been increased from Rs. 410 Crs. to Rs. 2423 Crs and the paid up capital has been increased from Rs. 179,18,65,350 to Rs. 1161,40,65,350.
6. The Petitioner Companies have approved the said Scheme by passing the board resolutions which are annexed to the respective Company Scheme Petitions.
7. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company

Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Directions.

8. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.
9. The Regional Director has filed a Report dated 22th December, 2017 stating therein that save and except as stated in paragraph IV of the said Report, 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 Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
 2. *Roc in its report given certain observations which the Petitioners to undertake to comply.*
 3. *Petitioners in clause under transfer of property has referred to provisions of Companies act, 1956 instead of section 230-232 of the Act 2013.*
 4. *Petitioner in clause 13 of the scheme has inter alia mentioned that upon the coming into effect of this Scheme and with effect from the Appointed Date, the accounting for amalgamation shall be on the basis of Pooling of Interest Method as notified under the Companies Act, 2013. All assets and liabilities will be recorded at their respective book values. The excess if any of the net assets over liabilities will be credited to the Reserves of the transferee company, whereas, the same shall be credited to capital reserves.*
 5. *Petitioner in clause 13.7 has inter alia mentioned that to comply with relevant laws and applicable accounting standards the Board of the Transferee Company may alter or modify the provisions of the clause on accounting treatment as may deem fit to settle any questions arising out of the scheme consider.*

In this regard, it is submitted that petitioner companies undertake to state that no modification in this scheme can be allowed without prior approval of the Hon'ble NCLT.

6. *Auditor has issued certificate under section 133 of the Companies Act, 2013 but it is not in accordance with the provisions of section 232 of the Companies Act, 2013 . Petitioner to undertake to submit fresh certificate.*
7. *Petitioner transferor companies is inter alai into telecommunication business and proof serving notice to Telecommunication Ministry is not submitted for its representations if nay within 30 days under section 230(5) of the Act 2013.*
8. *Transferee business is inter alia into investment in Mahindra group companies, notice to RBI is not served.*
9. In so far as observations made in paragraph IV (1) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
10. As far as observations made in paragraph IV (2) of the report of Regional Director is concerned, the Transferee Company through their Counsel submits it will comply with the observations made by ROC to the extent applicable.
11. In so far as observations made in paragraph IV (3) of the Report of Regional Director is concerned, the Counsel for the Petitioners clarify that the Scheme was approved by the Board of Directors of Transferor Company 1 on 27th July 2016, the Board of Directors of Transferor Company 2 approved the scheme on 19th August 2016 and the Board of Directors of Transferee Company approved the Scheme on 17th August 2016 when Companies Act 1956 was in force, therefore reference to Companies Act, 1956 has been made. However the Transferee Company through their Counsel undertakes that the transfer of assets and liabilities will be subject to provisions of section 230 to 232 of the Companies Act, 2013.
12. In so far as observations made in paragraph IV (4) of the Report of Regional Director is concerned, the Transferee Company through their Counsel undertakes that the Transferee Company shall follow Accounting Standard 14 – Accounting for Amalgamations (AS14) - Pooling of Interest Method as notified under the Companies

Act.2013 and confirms that all assets and liabilities will be recorded at their respective book values and the excess if any of the net assets over liabilities will be credited to the capital reserves instead of Reserves .

13. In so far as observations made in paragraph IV (5) of the Report of Regional Director is concerned, the Transferee Company through their Counsel undertakes that no modification to the Scheme will be done without the leave of this Tribunal.
14. In so far as observations made in paragraph IV (6) of the Report of Regional Director is concerned, the Counsel for the Petitioners clarify the Statutory Auditors in clause 7 of their report dated 23rd March 2017 have given their opinion that accounting treatment contained in clause 13 of the Scheme is in compliance with the provisions of section 391 to 394 of the Companies act, 1956 and the provisions of section 230 to section 232 of the Companies Act, 2013.
15. In so far as observations made in paragraph IV (7) of the Report of Regional Director is concerned, the Counsel for the Petitioners submit that Transferor Company 1 is not into telecommunication business and therefore requires no registration with Ministry of Telecommunications therefore no notice is required to be given.
16. In so far as observations made in paragraph IV (8) of the Report of Regional Director and para 16 of Report of Registrar of Companies dated 30th November 2017 of Registrar of Companies are concerned, the Petitioner Companies states that the Master Circular- dated 1st July 2013 Regulatory Framework for Core Investment Companies issued by the RBI, does not require the Transferee Company to take approval of the RBI or give any notice thereof. Considering that this is merger of wholly owned subsidiaries into the parent, there is no change in the Transferee Company which requires intimation to the RBI. The Counsel for the Petitioners undertakes to file a copy of the order along with the scheme with the RBI.
17. In so far as observations made by the Registrar of Companies in para 19 of his report dated 30th November 2017 forming part of Report of Regional Director, the Counsel for the Petitioners clarify that the Scheme will be effective from the date when the certified

copy of this Tribunal is filed with Registrar of Companies and that the effective date shall not be subsequent to the appointed date.

18. The observations made by the Regional Director and Registrar of Companies have been explained by the Petitioner Companies in paragraphs 8 to 16 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
19. The Official Liquidator has filed his report stating therein that the Affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Tribunal.
20. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
21. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 729 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the Petition.
22. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
23. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with e-form INC 28 in addition to the physical copy, within 30 days from the date of receipt of the order.
24. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Transferor Companies to pay sum of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of the Order.

25. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai Bench.
26. 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)

4.1.2018