

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SIGNAL BENCH, CHENNAI**

**CP/197/CAA/2017
[CA/153/CAA/2017]**

Under Section 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation

Between

M/s. Chennai Network Infrastructure Limited
(Transferor Company)

With

M/s. GTL Infrastructure Limited
(Transferee Company)

And

Their Respective Shareholders and Creditors

Order delivered on: 13.12.2017

For the Petitioner(s) : *Mr. Abishek Raman, Advocate*
Mr. Pawan Jhabakh, Advocate

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (J)

1. Under consideration the Company Petition No.197/CAA/2017 filed under Sections 230 to 232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. As per the Scheme of Amalgamation (in Short, '**Scheme**') the Applicant Company viz., M/s. Chennai Network Infrastructure Ltd, (for short '**Transferor Company**') will

get merged with M/s. GTL Infrastructure Ltd, formerly known as 'GTL Engineering And Managed Network Services Limited' (hereafter referred to as '**Transferee Company**') as a going concern.

2. The Detail of Share Capital, Shareholders, Secured & Unsecured Creditors of the Applicant Company is as under:-

Particulars	Authorised Capital	Issued, S&P Capital	No. of Equity Share-holders	No. of Secured Creditors	No. of Un-secured Creditors
Transferor Company	Rs.1000,00,00,000	Rs.940,45,41,517	26	13	850

3. The Transferor Company is a Limited Company having its registered office at Old No. 43/1, DL New No. 403 L, 7th Floor Samson Towers, Pantheon Road, Egmore, Chennai – 600 008, Tamil Nadu. The Transferee Company is also a Limited Company having its registered office at M/s. GTL Infrastructure Ltd, 3rd Floor, Global Vision, Electronic Sadan II, MIDC, TTC Industrial Area, Mahape, Navi Mumbai – 400 710. The Transferor Company is engaged in the business of building, establishing, setting-up, acquiring, developing, managing, providing, water supply, inland water ways, air-ports, telecommunications, roads, pipelines of all kinds of usages and other infrastructure

facilities, engineers and general or special contractors for design, construction, manufacture, restoration of work of all types and descriptions in India and overseas, tramways, dams, bridges, underground railways, cable cars, docks wharves, jetties, power generation and/or distribution, factories, drainage and sewage works, building distributed antenna system, etc., building and street level Optical Distributed Antenna System, carriage and delivery services of the traffic from different legs between Long Distance Charging Center and Short Distance Charging Centers, hardware or software implementation, customization, certification, inspection, resources pool management in relation to all kinds of infrastructure services, IT enabling services, industrial purpose and other infrastructure industries, etc. To carry on the business of tele-sales and all other call center services in different media like voice, data, video and multimedia, development and provisioning of software, all associated activities relating to building infrastructure, associated technologies, server farms, dialers, automatic call diversion equipment and other related equipment in the hardware, software and

applications, associated hosted applications, selling and trading of application environment and associated services in consultancy, franchise operations of services and products that may be built as Intellectual Property on behalf of supplies to domestic and international clients, consultancy or annuity basis with rights to resale, refurbish and other associated activities and to carry on or engage in the business of developing, Cellular Networking Services, based on GSM, CDMA, IP and broadband wireless networks like WiMax, Wi-Fi and 3G, technical resources pool management including staffing and body shopping services, switch facilities provisioning, leasing, renting, hire purchase and direct interconnectivity to various nations, provisioning of satellite data, communication links including termination and onward connectivity through optical fiber cables. To carry on business of all kinds of value added services including payment gateway services and international gateway services, unified access services, global mobile communications by satellite services, traders of data processing and information retrieval systems, etc., computer hardware and software of all kinds which

incorporate use and used in conjunction, leasing and/or renting and/or providing and/or licensing and/or developing and/or sharing of infrastructure, associated management services, facility management services relating to people, infrastructure, and technology in connection with the above activities. The Board of directors of Petitioner Company vide its resolution dated 22.04.2017 approved the Scheme of Amalgamation under consideration.

4. This Bench vide its common Order dated 20th September, 2017, in CA/153/CAA/2017 dispensed with convening, holding and conducting of the meeting of equity shareholders, secured and unsecured creditors in respect of the Petitioner Company. In short the Petitioner Company complied with all the orders passed by this Bench.

5. The Learned Counsel appearing for the Petitioner Company submitted that the rationale and circumstances that have necessitated the proposed Scheme are that the amalgamation will assist in achieving higher long term financial returns than would have been achieved by the Transferor Company and the Transferee Company as

separate entities, will make available assets, financial, managerial and technical resources, personnel, capabilities, skills, expertise and technologies of both the Transferor Company and Transferee Company leading to synergistic benefits, enhancement of future business potential, increased global competitiveness, cost reduction and efficiencies, productivity gains and logistical advantages, thereby contributing to significant future growth and enhancement of shareholders value. The amalgamation will enable pooling of resources of the Transferor Company with the resources of the Transferee Company to their advantage, resulting in more productive utilization of said resources, and cost and operational efficiency which would be beneficial to all stakeholders. The learned counsel further submits that no investigation proceedings are pending against the Companies under the provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.

6. The Regional Director, Southern Region (In short, '**RD**') in the Report Affidavit (for brevity, '**Report**') dated 07.12.2017 submitted that as per records of ROC, Chennai. The

Transferor Company is regular in filing its statutory returns and no complaint is pending and no inspection or investigation is pending against Petitioner Company. Further, the RD submitted that under Clause 8, the Scheme proposes to merge the authorised capital of the Transferor Company with that of the Transferee Company. Therefore, the Transferee Company may be directed to file the amended MoA and AoA with the ROC, Navi Mumbai for records. It has further been submitted by the RD that under Clause (i) to Sub Section (3) of Section 232 of the Companies Act, 2013, the Transferee Company has to pay the fees, if any, for the enhanced authorised capital subsequent to the amalgamation after setting off the fees paid by the Transferor Company. He further stated that the Transferee Company may be directed to comply with the above provisions of the Act by making an application with the ROC, Navi Mumbai for payment of the balance fee as applicable under the Provisions of the Act and Rules framed thereunder.

7. The RD further submitted that in Clause 16.1.4 of the Scheme, the Accounting Standard has stated that “the

excess, if any, between the amount recorded as share capital issued by the Transferee Company and the amount of share capital of the Transferor Company shall be transferred to Capital Reserve in the books of the Transferee Company and such reserve shall be free reserve for being used accordingly, except by way of distribution of dividend". The RD submitted that this could not be allowed as the excess amount arising out of the scheme is only a notional gain and there is no fund flow involved. So treating of the Capital Reserve as Free Reserve shall not be allowed under Section 2(43)(i) of the Companies Act, 2013 which inter-alia stipulates that "any amount representing unrealized gains, notional gains or revaluation of assets whether shown as a reserve or otherwise, shall not be treated as free reserve". The RD further stated that the existing Capital Reserve in the Balance Sheet of the Transferee Company to the extent of Rs.19.93 crores as on 31.03.2017, which has arisen in an earlier Scheme of Arrangement could not now be converted to Free Reserve in the present scheme. Based on these observations, the RD suggested to remove the words *"and such reserve shall be free reserve for being used*

accordingly except by way of distribution of dividend” occurring in Clause 16.1.4 of the present Scheme. The counsel for the Applicant Company undertakes to remove the words. Accordingly, the words mentioned in Clause 16.1.4 stand deleted.

8. The RD further observed that in Clause 16.1.5 of the Scheme it is stated that “the reconstruction Reserve in the books of the Transferee Company as on the appointed date i.e., 01.04.2016 shall be reclassified as “Capital Reserve” implying that it will be treated as Free Reserve as provided in Clause 16.1.4 of the Scheme of the Company. The RD stated that this Reserve as per the Company’s Balance Sheet of 31.03.2017 has arisen on an earlier Scheme of Arrangement which could not be changed/converted in the present Scheme and should be retained as such. The RD suggested that the entire Clause 16.1.5 i.e., “*The reconstruction in the books of Transferee Company as on the Appointed date shall be reclassified as Capital Reserve*” be deleted from the present Scheme. The counsel undertakes to delete the entire Clause 16.1.5 from the present Scheme. Accordingly, the entire Clause 16.1.5 stands deleted from

the present Scheme, and the position as per the Company's Balance Sheet of 31.03.2017 shall be retained as suggested by the RD.


9. The Official Liquidator (In short, '**OL**') in its report dated 08.12.2017, submitted that as per order dated 20.09.2017, he has nominated M/s. Venkat & Rangaa, Chartered Accountants (Auditor), Chennai who is one of the empanelled Auditors by the Hon'ble High Court of Madras to look into the composite Scheme of Arrangement (Amalgamation) and to scrutinize the books and accounts of the Transferor Company. The Auditor has broadly reviewed and observed that the Transferor Company submitted his report that under Clause 14.1 of Part-IV of the proposed scheme, and the interest of all staff, workmen and employees in the service of the Transferor Company is safeguarded.

10. The OL further observed that the Chartered Accountants have examined the Books of Accounts and records, other documents, annual reports and statutory books and registers of the Transferor Company, have not been conducted in a manner which is prejudicial to the interest

of members or to public interest and that they did not come across any transactions involving act of misfeasance, which would attract the provision of Sections 339/340 of the Companies Act, 2013.

11. The OL further submits that the Chartered Accountants observed from the Register maintained at the Office of the Registrar of Companies, that the Transferor Company has filed all the returns in accordance with law except for the Assessment Years 2015-2016, 2016-2017 and 2017-2018 under the provisions of Companies Act, 2013.

12. Further perusal of the scheme shows that the Accounting Treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of Amalgamation will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the said Scheme is 1st April, 2016.

13. Subject to the modifications made in the Scheme, the Scheme of Amalgamation appears to be fair and reasonable 

and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under section 230 to 232 of the Companies Act, 2013. Taking into consideration the above facts, the Company Petition is allowed and the scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on the shareholders, creditors and employees of both the Companies.

14. While approving the Scheme as above, it is further clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.
15. The Transferee Company is directed to file the amended MoA and AoA with the ROC, Navi Mumbai for records.
16. The Companies to the Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

17. A certified copy of this Order shall be filed with Registrar of Companies within 30 days of the receipt of the order.
18. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies.
19. Upon receiving the certified copy of this order, the ROC, Chennai is directed to send all documents relating to the Transferor Company to ROC, Navi Mumbai so that the files relating to the Transferor Company could be consolidated with the files and records of the Transferee Company as per the procedure prescribed.
20. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.
21. Accordingly, the Scheme stands sanctioned and CP/197/CAA/2017 stands disposed of.


(CH. MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)