### IN THE NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH AT HYDERABAD

C. A. (CAA) No.134/230/HDB/2017 U/s 230 and 232 of the Companies Act, 2013

#### In the matter of

M/s.Pyro Holdings Private Limited
Registered Office at Flat No. 503,
Shreeji Mehta Park, Behind Hockey stadium,
Rasoolpura, Secunderabad,
Telangana - 500003 ... Applicant/ Resulting Company/
Transferee Company-2

Date of order: 27.10.2017

#### Coram:

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

#### Parties /Counsels

For the Applicant:

Mr. V.S. Raju & MR V.B. Raju,

Advocates

Per: Mr. Rajeswara Rao Vittanala, Member (Judicial)

#### **ORDER**

- The present Company Application bearing CA No. 134/230/HYD/2017 is filed by M/s Pyro Holdings Private Limited (Resulting Company/Transferee Company-2 herein), by inter-alia, seeking directions to dispense with the meeting of the equity shareholders of the Applicant / Resulting Company/Transferee Company-2.
- 2. Brief facts, leading to filing of the present Company Application, are as follows:
  - i. M/s. Pyro Holdings Private Limited (Resulting Company or Transferee Company 2) was registered as a private limited company on 3<sup>rd</sup>day of November, 2006 in the then State of Andhra Pradesh.

- ii. The main objects of the Resulting Company or Transferee Company 2 are set out in the Memorandum of Association which are briefly as to be engaged in the business of being an investment company, investment consultants & portfolio management in all its branches and without prejudice shares, stocks, debentures, debenture stock, bonds, obligations and securities issued or guaranteed by any company constituted or carrying on business in India or elsewhere."
- iii. The authorized, issued, subscribed and paid-up share capital of the Resulting Company or Transferee Company-2 as on 31st March 2016 is as under:

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Particulars	Amount in INR	
Authorized Share Capital:		
50,000 equity shares of INR 10 each	5,00,000	
TOTAL	5,00,000	
Issued, Subscribed and Paid-up Capital:		
10,000 equity shares of INR 10 each	1,00,000	
TOTAL	1,00,000	

iv. The Resulting Company or Transferee Company-2 closes its financial every year on 31 March. The audited financial statements of the Resulting Company or Transferee Company 2 as on 31 March 2016 is as under:

Particulars	Amount in INR
EQUITY AND LIABILITIES	
Shareholder's Funds	
Share Capital	100,000
	100,000
Non-Current Liabilities	
Long term borrowings	3,717,733
	3,717,733
Current Liabilities	
Other current liabilities	40,264
	40,264

Total:	3,857,997
ASSETS	
Non-current assets	
Fixed assets	
Long term loans and advances	3,812,328
	3,812,328
Current Assets	
Cash and bank balance	45,669
	45,669
Total	3,857,997

- v. M/s. Pyro BKP Telecom Consultants Private Limited (Demerged Company or Transferee Company-1) was registered as a private limited company on 21st day of May, 2008 in the then State of Andhra Pradesh.
- The main objects of the Demerged Company or vi. Transferee Company 1 are set out in the Memorandum of Association which are briefly to carry on in India or elsewhere the business and to act as a consultant, advisor, representative, signatory liaison, agent, service man and other similar subjects and to make feasibility studies, techno economic feasibility studies, project reports, forecasts and to run, maintain, provide, operate, manage, supervise, arrange services, facilities, conveniences, equipment of Radio frequency engineering services such as network audits, offer, host, provide and render off -line services including planning, designing and implementation services, internet, etc.
- vii. The authorized, issued, subscribed and paid-up share capital of the Demerged Company or Transferee Company 1 as on 31stMarch 2016is as under:

Particulars	Amount in INR
Authorized Share Capital:	,
70,00,000 equity shares of INR 10 each	7,00,00,000
TOTAL	7,00,00,000
Issued, Subscribed and Paid-up Capital:	



68,67,746 equity shares of INR 10	6,86,77,460
each	
TOTAL	6,86,77,460

viii. The Demerged Company or Transferee Company 1 closes its financial every year on 31 March. The audited financial statements of the Demerged Company or Transferee Company 1 as on 31 March 2016 is as under:

Particulars	Amount in INR
<b>EQUITY AND LIABILITIES</b>	
Shareholder's Funds	
Share Capital	68,677,460
Reserves and Surplus	(118,971,510)
Securities Premium	104,295,655
	54,001,605
Non-Current Liabilities	
Long-term borrowings	2,100,536
	2,100,536
Current Liabilities	
Trade payables	2,859,490
Other current liabilities	15,618,466
	18,477,956
Total:	74,580,097
ASSETS	
Non-current assets	
<u>Fixed assets</u>	
Tangible assets	14,605,876
	14,605,876
Current Assets	
Trade receivables	16,112,498
Cash and bank balance	248,162
Short term loans and advances	43,613,561
	59,974,221
Total	74,580,097



ix. M/s. Pyro Mobile Private Limited (Transferor Company -

1) was originally incorporated as a private limited company on 12<sup>th</sup> day of March, 1999 in the then State of Andhra Pradesh under the name and style of Abacus Web (India) Private Limited. The said company has changed its name to its present name i.e., Pyro Mobile Private Limited and has obtained a fresh certificate of incorporation subsequent to the change of name from

Registrar of Companies, Andhra Pradesh on 13<sup>th</sup> August 2005 after complying with the necessary formalities under the Companies' Act, 1956.

- x. The main objects of the Transferor Company 1 are set out in the Memorandum of Association which are briefly as to carry on the business as developers of mobile networking, mobile technology and telecommunications, tool processing of imports and exports of such developed turnkey systems those include the customized installation activities as business for delivery of required software as hardware devices, otherwise termed as IT enabled service business and provide services and solutions in relation to mobile network activities based on the areas of Internet, Intranet and e commerce, etc.
- xi. The authorized, issued, subscribed and paid-up share capital of the Transferor Company 1 as on 31st March 2016 is as under:

Particulars	Amount in INR
Authorized Share Capital:	
50,000 equity shares of INR 10 each	5,00,000
TOTAL	5,00,000
Issued, Subscribed and Paid-up Capit	al:
10,000 equity shares of INR 10 each	1,00,000
TOTAL	1,00,000

xii. The Transferor Company-1 closes its financial every year on 31 March. The audited financial statements of the Transferor Company-1 as on 31 March 2016 is as under:

Particulars	Amount in INR
EQUITY AND LIABILITIES	
Shareholder's Funds	
Share Capital	100,000
Reserves and Surplus	3,837,302
	3,937,302
Non-Current Liabilities	
Long-term borrowings ,	132,679



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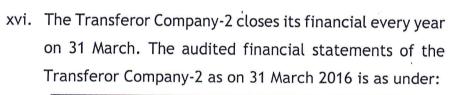
	132,679
Current Liabilities	
Trade payables	3,521,782
Short-Term Borrowings	30,615
	3,552,397
Total:	7,622,378
ASSETS	
Non-current assets	
Fixed assets	
Tangible assets	62,444
	62,444
Current Assets	
Trade receivables	4,552,744
Cash and bank balance	121,631
Short term loans and advances	2,885,559
	7,559,934
Total	7,622,378



- xiii. M/s. Pyro Telecom Solutions Private Limited (Transferor Company-2) was originally incorporated as a private limited company on 15th day of May, 2002 in the then State of Andhra Pradesh under the name and style of Pyro Networks Private Limited. The said company has changed its name to its present name i.e., Pyro Telecom Solutions Private Limited and has obtained a fresh certificate of incorporation subsequent to the change of name from Registrar of Companies, Andhra Pradesh on 11th December 2013 after complying with the necessary formalities under the Companies' Act, 1956.
- xiv. The main objects of the Transferor Company-2 are set out in the Memorandum of Association which are briefly as to carry on the business as developers of networking for telecommunications tool processing of imports and exports of such developed turnkey systems. Those include the customized installation activities as business for delivery of required software as hardware devices, otherwise termed as IT enabled service business and offer, host, provide and render off-line services

- including planning, designing and implementation services, etc.
- xv. The authorized, issued, subscribed and paid-up share capital of the Transferor Company-2 as on 31st March 2016 is as under:

Particulars	Amount in INR	
Authorized Share Capital:		
2,510,000 equity shares of INR 10	25,100,000	
each		
TOTAL	25,100,000	
Issued, Subscribed and Paid-up Capital:		
1,847,500 equity shares of INR 10	18,475,000	
each		
TOTAL	18,475,000	



Particulars	Amount in INR
EQUITY AND LIABILITIES	
Shareholder's Funds	
Share Capital	18,475,000
Reserves and Surplus	333,597,996
	352,072,996
Non-Current Liabilities	
Deferred tax Liability (net)	1,525,114
Long-term borrowings	8,379,862
	9,904,976
Current Liabilities	
Trade payables	139,893,385
Other current liabilities	94,804,530
Short-Term Borrowings	106,035,779
Short-Term Provisions	1,326,570
	342,060,264
Total:	704,038,236
ASSETS	
Non-current assets	
<u>Fixed assets</u>	
Tangible assets	39,095,080
Long term loans and advances	16,514,893
Non-current Investments	129,830,123
	185,440,096
Current Assets	
Trade receivables	431,219,485



Cash and bank balance	4,637,521	
Short term loans and advances	13,519,753	
Other Current Assets	69,221,381	
	518,598,140	
Total	704,038,236	

xvii. M/s Pyro Networks Private Limited (Transferor Company-3) was originally incorporated as a private limited company on 13<sup>th</sup> day of February, 2008 in the then State of Andhra Pradesh under the name and style of Pyro Telecommunications Private Limited. The said company has changed its name to its present name i.e., Pyro Networks Private Limited and has obtained a fresh certificate of incorporation subsequent to the change of name from Registrar of Companies, Andhra Pradesh on 3<sup>rd</sup> February 2014 after complying with the necessary formalities under the Companies Act, 1956.

xviii. The main objects of the Transferor Company-3 are set out in the Memorandum of Association which are briefly to carry on the business of as developers of networking, electronic recharging and printing of postpaid and prepaid vouchers for various telecom operators in India and abroad and offer, host, provide and render offline services including planning, designing and implementation services, internet, intranet business promotion, branding, marketing, training project consultancy and establish, promote, operate run, tele communication, application and implementation of turnkey network solutions, etc.

xix. The authorized, issued, subscribed and paid-up share capital of the Transferor Company-3 as on 31<sup>st</sup>March 2016 is as under:



PARTICULARS	AMOUNT (INR)		
Authorized Share Capital:	The state of the s		
3,000,000 equity shares of INR 10 each	30,000,000		
TOTAL	30,000,000		
Issued, Subscribed and Paid-up Ca	pital:		
1,999,700 equity shares of INR 10 each			
TOTAL	19,997,000		

xx. The Transferor Company-3 closes its financial every year on 31 March. The audited financial statements of the Transferor Company 3 as on 31 March 2016 is as under:



Particulars Amount in			
EQUITY AND LIABILITIES	2.		
Shareholder's Funds			
Share Capital	19,997,000		
Reserves and Surplus	20,554,408		
	40,551,408		
Non-Current Liabilities			
Long-term borrowings	16,630,792		
	16,630,792		
Current Liabilities			
Trade payables	13,171,686		
Other current liabilities	35,895,545		
Short-Term Borrowings	24,854,015		
Short-Term Provisions	1,144,147		
	75,065,393		
Total:	132,247,593		
ASSETS			
Non-current assets			
Fixed assets			
Tangible assets	22,244,053		
Non-current Investments	1,349,357		
	23,593,410		
Current Assets			
Trade receivables	91,011,996		
Cash and bank balance	1,602,801		
Short term loans and advances	16,039,386		
	108,654,183		
Total	132,247,593		

#### 3. RATIONALE FOR THE PROPOSED SCHEME

The circumstances that have necessitated or justified the proposed composite scheme and its main benefits are *interalia*, summarised as under:

- (i) To rationalise/simplify the group structure which would enable the management to have focused attention towards its business which would enable better growth.
- (ii) To achieve strengthened leadership in the industry, in terms of the consolidated asset base, consolidated revenues of the combined entity.
- (iii) To achieve consolidation, greater integration and financial strength and flexibility which will maximize overall shareholders' value and improve the competitive position of the combined entity.
- (iv) To achieve greater efficiency in cash management and unfettered access to cash flows generated by the combined entity, which can be deployed more effectively to fund organic and inorganic growth opportunities.
- (v) The amalgamation will result in reduction of multiplicity of entities, thereby reducing compliance cost of multiple entities viz., statutory filings, regulatory compliances, labour law/ establishment related compliances.
- 4. In view of the aforesaid benefits, the Board of Directors of the Applicant/ Resulting Company/Transferee Company-2 vide its meeting dated 5<sup>th</sup> June, 2017 approved the Composite Scheme of Arrangement between Pyro BKP Telecom Consultants Private Limited, Pyro Mobile Private Limited, Pyro Holdings Private Limited, Pyro Telecom Solutions Private Limited and Pyro Networks Private Limited and their respective shareholders and creditors.



5. The following are brief terms of the proposed scheme:-

## IN THE CASE OF DEMERGER OF DEMERGED BUSINESS UNDERTAKING OF DEMERGED COMPANY INTO RESULTING COMPANY

- (a) The Appointed date for the purpose of this scheme is 01.04.2016.
- (b) Upon the Scheme becoming effective, all properties and liabilities, etc., of the Demerged Business undertaking of the Demerged Company shall stand transferred to and vested in or deemed to be transferred to and vested in the Resulting Company with effect from the appointed date, becomes the properties of the Resulting Company/Transferee Company-2 by virtue of Amalgamation.
- (c) After the appointed date, any proceedings taken against the Demerged Business Undertaking of the Demerged Company is pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of this demerger or by anything contained in this Scheme, but the same may be continued, prosecuted and enforced by or against the Resulting Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Demerged Company as if the Scheme had not been made.
- (d) Upon the Scheme becoming effective, all staff, workmen and employees on the payrolls of the Demerged Business Undertaking of the Demerged Company, in service on the Effective Date shall be deemed to have become staff, workmen, and employees of Resulting Company on such date without any break or interruption in their service and on the terms and



conditions of their employment not less favourable than those subsisting with reference to Demerged Business Undertaking of the Demerged Company as on the said date.

- Upon the coming into effect of this Scheme and in consideration of the transfer and vesting of the Demerged Business Undertaking of Demerged Company into the Resulting Company pursuant to the Scheme, the Resulting Company shall issue and allot to the equity shareholders of the Demerged Company, equity shares of Rs. 10/- (Rupees Ten only) each, credited as fully paid up of the Resulting Company, in the ratio of twenty-one equity shares of the face value of Rs. 10/-(Rupees Ten only) each of the Resulting Company for every one thousand equity share of the face value of Rs. 10/- (Rupees Ten only) each credited as fully paid-up held on the Record Date by such equity shareholders or their respective legal heirs, executors or administrators or, as the case may be, successors in the Demerged Company.
- (f) Upon the coming into effect of this Scheme and in consideration of the demerger of the Demerged business Undertaking of the Demerged Company into Resulting Company pursuant to this Scheme, the Resulting Company shall not be required to issue and allot equity shares to Pyro Telecom Solutions Private Limited since Pyro Telecom Solutions Private Limited is getting merged with Pyro Holdings Private Limited (i.e. Resulting Company or Transferee Company 2 as applicable) as a part of the this Scheme having the same Appointed Date (i.e. as per Part II Section C of the Composite Scheme of Arrangement).



- (g) Upon the scheme being effective, the entire issued and paid up Share Capital of Pyro BKP (i.e., the Demerged Company), without any application or deed, shall stand cancelled and further, such issued and paid-up Share capital cancelled and the securities premium collected by Demerged Company on issue of such shares shall be adjusted against the accumulated profit and losses account of the Demerged Company. Further, in case of any excess of such cancelled issued and paid up Share Capital and the Securities Premium thereon over the accumulated profit and loss balance of the Demerged Company shall stand credited to the General Reserve.
- (h) Upon the Scheme becoming effective, Resulting Company shall record the assets and liabilities of the Demerged Business Undertaking of the Demerged Company transferred to Resulting Company pursuant to this Scheme at their respective book values and account for the demerger of the Demerged Business Undertaking of the Demerged Company at the close of the business on the day immediately preceding the Appointed Date.
- (i) The Resulting Company shall credit to its Share Capital Account in its books of account, the aggregate face value of the new equity share issued by it to the members of Demerged Company pursuant to Clause 8.1 of the Scheme.
- (j) The excess of, or deficit, if any, remaining after recording the aforesaid entries shall be credited by the Resulting Company to General Reserve Account or debited to Goodwill, as the case may be.
- (k) Upon the Scheme becoming effective, the book value of assets and liabilities transferred to the Resulting Company shall be reduced from the book value of assets and liabilities of the Demerged Business Undertaking of



the Demerged Company. The difference between the value of assets and the value of liabilities transferred pursuant to the scheme shall be adjusted to Profit & Loss Account. The amount arising on cancellation of the issued, subscribed and paid up equity share capital shall be adjusted against the Profit and Loss account.

# IN THE CASE OF AMALGAMATION OF TRANSFEROR COMPANY-2 AND TRANSFEROR COMPANY-3 WITH TRANSFEREE COMPANY-2

- (I) Upon this Scheme becoming effective and with effect from the Appointed Date, all properties, assets, liabilities and Undertaking(s) of the Undertaking of Transferor Company 2 and Transferor Company 3 respectively shall stand transferred to and vested in or deemed to be transferred to and vested in the Transferee Company 2 on a going concern basis under the provisions of Section 230 to 232 of the 2013 Act and all other applicable provisions, if any, of the 2013 Act and also in accordance with section 2(1B) of the Incometax Act, 1961, without any further deed or act, subject to existing charges or lispendens, if any thereon, in favour of banks/ financial institutions.
- (m) After the appointed date, any proceedings taken against the Transferor Company 2 and Transferor Company 3 is pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of this amalgamation or by anything contained in this Scheme, but the same may be continued, prosecuted and enforced by or against the Transferee Company 2 in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Company 2 and Transferor Company 3 as if the Scheme had not been made.



- (n) Upon the Scheme becoming effective, all staff, workmen and employees on the payrolls of the Transferor Company 2 and Transferor Company 3 respectively, in service on the Effective Date shall be deemed to have become staff, workmen, and employees of Transferee Company 2 on such date without any break or interruption in their service and on the terms and conditions of their employment not less favourable than those subsisting with reference to Transferor Company-2 and Transferor Company-3 as on the said date.
  - Upon the coming into effect of this Scheme and in consideration of the transfer and vesting of the Transferor Company-2 and Transferor Company-3 respectively into the Transferee Company-2 pursuant to the Scheme, the Transferee Company-2 shall without any further application, act, instrument or deed, issue and allot to the respective equity shareholders of the Transferor Company-2 and Transferor Company-3, whose names are registered in the register of members of Transferor Company-2 and Transferor Company-3 on the Record Date equity shares of Rs. 10/- (Rupees Ten only) each, credited as fully paid up of the Transferee Company-2, in the ratio of one equity share of the face value of Rs. 10/- (Rupees Ten only) each of the Transferee Company-2 for every one equity share of the face value of Rs. 10/- (Rupees Ten only) each credited as fully paid-up held on the Record Date by such equity shareholders or their respective legal heirs, executors or administrators or, as the case may be, successors in the Transferor Company-2 and Transferor Company-3 respectively.



(p) Upon the Scheme becoming effective, Transferee Company-2 shall record the assets and liabilities of the Transferor Company-2 and Transferor Company-3 transferred to Transferee Company-2 pursuant to this Scheme at their respective fair values and account for the amalgamation of the Transferor Company-2 and Transferor Company-3 pursuant to the Scheme in accordance with AS 14 notified by the Companies (Accounting Standards) Rules, 2006, as amended from time to time, under purchase method. Any difference, whether surplus or shortfall, in the recorded value of assets and liabilities in the books of accounts of the Transferee Company-2 and the value of the equity shares allotted thereof by the Transferee Company-2, in case of surplus, shall be credited to "Capital Reserve Account" and the same can be utilized by Transferee Company-2 for the purposes of issue of bonus shares to its shareholders. (Which for all intents and purposes shall be considered as part of net worth of the Amalgamated Company) or, in case of shortfall, shall be debited to "Goodwill Account", as the case may be.



The amount of goodwill, if any, arising on account of the said amalgamation, shall represent goodwill purchased by the Transferee Company-2 pursuant to the amalgamation. The purchased goodwill will be allocated across intangible assets by the Transferee Company-2. This will be recorded in the books of the Transferee Company-2 as at the Appointed Date in compliance with the applicable accounting standards. The goodwill, if any, shall be depreciated as per the generally accepted Indian accounting principles.

To the extent there are inter-corporate loans or

balances between the Transferor Company-2 and Transferor Company-3 and the Transferee Company-2 the obligations in respect thereof shall come to an end and corresponding effect shall be given in the books of accounts and records of the Transferee Company-2 for the reduction of any assets or liabilities, as the case may be.

- (q) Upon this Scheme becoming effective, the Transferor Company-2 and Transferor Company-3 shall be dissolved without going through the process of winding up pursuant to the provisions of Section 232 of the 2013 Act.
- 6. No investigation or proceedings have been instituted or are pending against the Demerged Company or Transferor Company-1, Resulting Company or Transferee Company-2, Transferor Company-1, Transferor Company-2 and Transferor Company-3.
- 7. There are only 2 (two) Equity Shareholders in the Applicant/Resulting Company/Transferee Company-2 as per details given below:-

S. No	Name of Equity Shareholder	No. of equity shares	Total paid up value (in Rs.)	% of share-holding
1	S.M.Reddy	5,000 equity shares of Rs.10/- each	50,000	50%
2	S.P.Reddy	5,000 equity shares of Rs.10/- each	50,000	50%
	Total	10,000	1,00,000	100%

Both have given their consent to the proposed scheme of Amalgamation by means of affidavits dated 09.09.2017. It is further submitted that there are no secured/unsecured creditors.

8. It is further submitted that a similar applications are being filed by the Demerged Company or Transferee Company-1,



Transferor Company-1, Transferor Company-2 and Transferor Company-3 seeking dispensation of the meeting of Equity Shareholders and Creditors before the Tribunal.

- 9. Heard Mr.V.B.Raju, Learned Counsel for the Applicant Company. As per the directions of the Tribunal on 24.10.2017, the Learned Counsel for the Applicant Company issued notice to the Regional Director, Registrar of Companies vide letter dated 25.10.2017.
- 10. I have considered pleadings of the Learned Counsel for the Applicant Company and all the material papers in support of the application and satisfied that the Company is stated to be following all provisions of Company Act, 2013, and rules made there under and the scheme in question prima facie satisfies fundamental requirements for its sanction, however subject to approval of its shareholders and finally by NCLT. Therefore, the Company is entitled for dispensation of meeting of its Shareholders as they have already given their consent by way of sworn affidavits and conducting of meeting will not serve any purpose.
- 11. In the result, the Company Application bearing CA (CAA) No.134/230/HDB/2017, is disposed by dispensing with conducting of the meeting of the Equity Shareholders of the Applicant / Resulting Company / Transferee Company-2.

RAJESWARA RAO VITTANALA MEMBER (JUDICIAL)

Dy. Regr./Asst. Regr/Court Officer/
National Company Law Tribunal, Hyderakad Bench

प्रमणित प्रति
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केस संख्या
CASE NUMBER (-A (CAA) A) - 134 20 4408
निर्णय का तारीख
DATE OF JUDGEMENT 27 10 2017
प्रति तैयार किया गया तारीख
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