

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
MISCELLANEOUS APPLICATION NOS. 145 OF 2017, 193 OF 2017 AND 250 OF  
2017  
IN  
COMPANY SCHEME PETITION NO. 388 OF 2017  
IN  
COMPANY SCHEME APPLICATION NO. 185 OF 2017

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

AND

In the matter of Sections 230 to 232 and  
other applicable provisions of the Companies  
Act, 2013 and Rules framed thereunder as in  
force from time to time;

AND

In the matter of Scheme of Arrangement  
between Reliance Infratel Limited ("RITL"  
or "the Transferor Company") and  
Towercom Infrastructure Private Limited  
("Towercom" or "the Transferee Company")  
and their respective shareholders ("Scheme")

**RELIANCE INFRATEL LIMITED**, a )  
company incorporated under the )  
Companies Act, 1956 having its )  
registered office at H block, 1st floor, )  
Dhirubhai Ambani Knowledge City, )  
Navi Mumbai Maharashtra 400710. )      ...the Petitioner Company.

**Called for Admission of Petition**

Mr. Janak Dwarkadas, Senior Counsel, Ms. Alpana Ghone, Counsel, along with Mr. Rajesh Shah, Ahmed M. Chunawala, Advocate i/b Rajesh Shah & Co., Advocates for the Petitioner

Mr. Darius Khambatta Senior Counsel, Mr. Aniruddha Sen, Mr. Jafar Alam, Anirudh Agarwala, Mr. Siddharth Ranade, Ms. Karishma Dodeja, i/b Trilegal the Applicant/Objector in Miscellaneous Application No. 145 of 2017

Mr. Darius Khambatta i/b AZB Partners for the Objector in Miscellaneous Application No. 193 of 2017

Mr. Shahezad Kazi a/w Mr. Uday Walia and Mr. Tanmay Singh i/b S&R Associates, Advocates for Standard Chartered Bank, the Objector in Miscellaneous Application No. 250 of 2017

**Coram:** SH. B.S.V. Prakash Kumar Hon'ble Member (J) and SH. V. Nallasenapathy Hon'ble Member (T)

Date: 14<sup>th</sup> August, 2017

**MINUTES OF THE ORDER**

1. The Petition is admitted in terms of this Order.
2. Petition is fixed for hearing and final disposal on 13<sup>th</sup> September, 2017.
3. Learned Counsel for the Petitioner submits that in pursuance of the directions contained in Order dated 23<sup>rd</sup> March, 2017, passed by this Tribunal, in the Company Application No. 185 of 2017, meeting of the Equity Shareholders and Preference Shareholders of the Petitioner Company were held on Saturday, 29<sup>th</sup> April, 2017. The requisite quorum for the Equity Shareholders meeting as also the Preference Shareholders meeting was present and the Scheme was approved by requisite majority of the Equity Shareholders and Preference Shareholders of Petitioner Company without modifications. The Chairperson appointed for the said meetings has filed her affidavit dated 29<sup>th</sup> April, 2017 verifying her report, which is annexed as Exhibit 'H' to the petition. As per the directions of this Tribunal a notice to all its Secured Creditors and also to Unsecured Creditors having outstanding balance of Rs.5,00,000 and above as on 30<sup>th</sup> September, 2016 were issued. Affidavit of service to that effect is also filed on record along with the Petition.
4. The Learned Counsel for the Petitioner Company further submits that the Company Petition is filed in consonance with section 230 to 232 of the Companies Act, 2013 along with the Order passed in Company Application No. 185 of 2017 by the National Company Law Tribunal, Mumbai Bench.

**M. A. NO. 145 OF 2017 – China Development Bank Corporation**

5. The Learned Counsel for the Petitioner Company submits that China Development Bank (Formerly known as China Development Bank Corporation), has filed an Application being Misc. Application No. 145 of 2017 raising its objections to the Scheme and also seeking a recall of the order dated 23 March 2017 on the grounds mentioned therein (**Application**). In this regard, the Learned Counsel for the Petitioner Company draws our attention to the affidavit dated 16<sup>th</sup> June 2017, whereby the

Petitioner Company has assured to the Applicant/Objector in paragraph nos. 8.11 and 8.13 that the consent of the Applicant/Objector will be obtained before giving effect to the Scheme.

6. In line with the same, the Petitioner acknowledges that a specific prior written consent of the Applicant /Objector, China Development Bank, is a pre-requisite to the sanctioning of the Scheme. Accordingly, the Petitioner undertakes to this Hon'ble Tribunal to obtain such prior written consent of the Applicant/Objector. Such consent shall be obtained by way of an affidavit from an authorized representative of the Applicant/Objector prior to Scheme being sanctioned by this Tribunal and submitted to Tribunal prior to the final hearing. Further, the Petitioner will not transfer the assets forming the subject matter of the Scheme outside of the Scheme, without the Applicant/Objector's prior written consent.
7. In view of the above, the Applicant/Objector i.e. China Development Bank states that Misc. Application No. 145 of 2017 may be jointly heard along with this petition provided that all rights and contentions of the Applicant are kept open by this order admitting the petition and subject to any order that may be passed in Misc. Application No. 145 of 2017. It is ordered accordingly.
8. The Petitioner Company also made a statement during the oral submissions that it will not claim equity on account of the Objector's permitting the admission of the scheme and the Objector has the liberty to raise the contentions made in the Miscellaneous Application No. 145 of 2017, at the time of final hearing of the said scheme.
9. In view of the above, the Petition is accordingly admitted subject to the aforesaid undertaking being complied with and subject to Misc. Application No. 145 of 2017, and fixed for final hearing on 13.09.2017. In line with paragraphs 5 and 6 above, the Petitioner Company to obtain prior written consent of the Applicant/Objector before the Scheme is sanctioned by this Tribunal.

**M. A. NO. 193 OF 2017 – HSBC Daisy Investments Ltd. & Ors.**

10. The Learned Counsel for the Petitioner Company submits that Minority Shareholders of the Petitioner Company have filed their objections to the Scheme vide Miscellaneous Application No. 193 of 2017. In this regard, the Learned Counsel for the Petitioner Company draws our attention to Clause 4.3.1(a) of the Scheme, which reads as:

***“4.3. CONDITIONALITY OF THE SCHEME***

*4.3.1 This Scheme is and shall be conditional upon and subject to:*

- a) Consent of the Minority Shareholders to the transfer of the Tower Business to the Transferee Company, a related party of the Transferor Company.*
- b) .....*
- c) .....*

11. The Learned Counsel for the Petitioner Company further draws this Tribunal's attention to paragraph 12 of the affidavit dated 28<sup>th</sup> June 2017, wherein the Petitioner Company has further confirmed that before sanctioning of the scheme by this Tribunal, consent of the Minority Shareholders (objectors herein) shall be obtained in accordance with Clause 4.3.1(a) of the Scheme. The Petitioner Company undertook to this Hon'ble Tribunal during oral submissions that it will not apply to this Hon'ble Tribunal for the final sanction of the Scheme unless it has obtained the express written consent of all Minority Shareholders, i.e. the Applicants in Miscellaneous Application No. 193 of 2017. The admission of the Scheme is without prejudice to the rights and contentions of the Minority Shareholders and subject to Miscellaneous Application No. 193 of 2017 and the contents therein. Miscellaneous Application No. 193 of 2017 will be heard together with or before the final hearing of the said Scheme. This order of admission will not prejudice the rights/ contentions of the Minority Shareholders (including the Miscellaneous Application No. 193 of 2017) in any manner.

12. In view of the above, the Petition is admitted and fixed for final hearing on 13.09.2017. The Petitioner Company to obtain consent of all entities mentioned in Clause 4.3.1(a) of the Scheme, including the Minority Shareholders, before submitting the Scheme for final sanction before this Tribunal.

**M. A. NO. 250 OF 2017 – Standard Chartered Bank**

13. The Learned Counsel for the Petitioner Company submits that one of the Secured Lender of the Petitioner Company, Standard Chartered Bank (representing the consortium of External Commercial Borrowing lenders) has filed its objections to the Scheme vide Miscellaneous Application No. 250 of 2017. In this regard, the Learned Counsel for the Petitioner Company draws our attention to paragraph 4 of the affidavit dated 18<sup>th</sup> July 2017, wherein the Petitioner Company has assured to the Objector that:

*“priority will be afforded to the dues of the ECB Lenders upon closing of the transaction with Brookfield Infrastructure Group (“Transaction”) and ECB Lenders consent will be taken prior to the scheme being made effective”*

In view of such assurance that, (a) the Petitioner Company will obtain the consent of the ECB Lenders prior to sanction of the Scheme; and (b) the Petitioner Company will grant priority to the payment of all dues of the ECB Lenders; the Objector’s objections can be considered at the time of final hearing and before the Scheme is sanctioned. The Petitioner Company has made a statement during oral submissions that it will not claim equity on account of the Objector permitting the admission of the scheme and the Objector has the liberty to raise all contentions made in the Miscellaneous Application No. 250 of 2017, at the time of final hearing of the said Scheme. The statement is accepted as an undertaking to this tribunal.

14. The Learned Counsel appearing for the Objector submits that in light of paragraph no. 13 above, the Objector does not press the Miscellaneous Application No.250 of 2017 at the admission stage. Accordingly, the Miscellaneous Application No. 250 of 2017 will be taken up for hearing at the stage of final hearing of the Scheme.
15. In view of the above, the Petition is admitted and fixed for final hearing on 13.09.2017. The Petitioner Company to obtain the written consent of the consortium of External Commercial Borrowing lenders (presently represented by the Objector herein), before the date fixed for final hearing of the Scheme and in any event before the Scheme is sanctioned by this Tribunal.

16. It is further directed that at least 10 days before the date fixed for final hearing, the Petitioner Company to publish the notice of hearing of Petition in two local newspapers viz. "Free Press Journal", in English language and translation thereof in "Navashakti", in Marathi language, both having circulation in Mumbai as per Rule 16(1) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
17. The Petitioner to file an affidavit of service regarding compliance with the above directions, at least three days before the date fixed for final hearing and report to this Tribunal that the direction regarding the issue of advertisement of the notice has been duly complied with.
18. It is expressly clarified that all rights and contentions of the Petitioner and the Applicants /Objectors in respect of the above mentioned Miscellaneous Applications are hereby kept expressly open (without prejudice) until such time that the Petitioner obtains consent of the Applicants/Objectors, as set out hereinabove.

Sd/-

V. Nallasenapathy Member (T)

Sd/-

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