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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 147 OF 2016
IN
COMPANY SUMMONS FOR DIRECTION NO. 106 OF 2016**

In Re:
RELIANCE COMMUNICATIONS
LIMITED, a company incorporated under the
provisions of the Companies Act, 1956 and having
its registered office at H Block, 1st Floor,
Dhirubhai Ambani Knowledge City, Navi
Mumbai 400 710 ...Petitioner

APPEARANCES:

Mr. Janak Dwarkadas, Senior Advocate, a/w Ms. Alpana Ghone,
i/b M/s. Rajesh Shah & Co., for the Petitioner.
Mr. Shailesh P. Mehta, Objector in person, present.
Mr. Shyam Kapadia, a/w Mr. Omkar Bade, i/b Desai & Diwanji for
Objector (ATC Telecom Infrastructure Pvt. Ltd).
Mr. B. M. Chatterjee, Senior Advocate, a/w Mr. Ranit Basu, i/b
Shrikanth Pandhi, for the Regional Director.

CORAM: G.S. PATEL, J
DATED: 7th October 2016

ORAL JUDGMENT:

1. I have before me a Company Scheme Petition for sanction. One Systema Shyam Teleservices Limited (“**SSTL**”) is the Transferor company. The Transferee company is the present Petitioner Reliance Communications Limited (“**RCom**”). One of SSTL’s undertakings is proposed to be demerged from it and vested in RCom on the appointed date. SSTL’s registered office is in Jaipur. SSTL therefore made a corresponding application to the Rajasthan High Court at its Jaipur bench. The Rajasthan High Court allowed SSTL’s petition by an elaborate judgment dated 30th September 2016.

2. The rationale of the Scheme is set out in this voluminous record.¹ The ostensible purpose, at least as far as RCom is concerned, is to facilitate its expansion in the telecom market, develop its infrastructure, create additional value for its shareholders and to achieve improved efficiencies in its operations. The expression “transferred undertaking” is separately and specifically defined. This is a comprehensive definition.² It covers several immovable properties, plant and machinery, debts, obligations and, most importantly for our purposes, what are known as Unified Access Service Licenses (“**UAS Licenses**”) issued by the Department of Telecommunications (“**DoT**”). At the most general level, the transferred undertaking is defined to mean the telecom business undertaking of SSTL on a going-concern basis. Certain assets and liabilities are specifically identified in the schedule. A related concept is that of “remaining business”. This is logically necessary, for this contains a definition of the SSTL

1. Record, *p.* 720.

2. Record, *pp.* 729–732.

undertaking that *remains* after the demerger or divesting of the transferred undertaking from SSTL.³ I also notice that there is a clarification on an Affidavit in Reply to an early objector, who has since withdrawn the objection, that the ‘remaining business’ includes the Data Centre, Tower Business and SSTL’s investments in RCom.

3. The entire Scheme is framed under Sections 391 to 394 of the Companies Act, 1956. It is clearly conditional and it is subject to a series of events that are set out in the Scheme in Clause 8(j). The conditions include receipt of written approvals from the DoT. Following the proposed demerger and vesting in RCom, the Scheme proposes that SSTL will hold 10% of RCom’s equity. This translates to 27,65,53,305 equity shares, today of an estimated market value of Rs. 1,379 crores. This is, very broadly, the outline of the Scheme. To put it in a nutshell, the Scheme contemplates that SSTL will stop doing its previous telecom business under UAS licenses that it currently holds and that this telecom business under these licenses will vest in RCom from the appointed date, and will be carried on by RCom thereafter. SSTL will hold equity (as mentioned above) in RCom. There is one objection in regard to this equity holding. That has been dealt with on affidavit, but I will consider it presently, as I I address each objection placed before me.

4. A quick look at some relevant dates may be necessary. RCom’s Board of Directors approved the Scheme on 2nd November 2015. The Bombay Stock Exchange (“BSE”) and National Stock

3. Record, *p.* 727.

Exchange (“NSE”), both delegates of the Securities Exchange Board of India (“SEBI”), approved the Scheme on 13th January 2016. On 5th February 2016, this Court issued directions for convening and holding a meeting of RCom’s equity shareholders. That meeting was to be held on 8th March 2016. It was so held. There is no quarrel with the calling of that meeting or the conduct of it. At that meeting, the Scheme was approved by 99.8758% of the shareholders. This represents 99.9999% of the equity value in RCom. Voting was in person or by proxy or through authorized representatives. There was electronic voting as well. Public financial institutions such as LIC and others, which collectively hold around 29% of RCom’s equity, also voted in favour.

5. The present Petition was admitted on 1st April 2016. Even at that stage there was an objection from Mr. Mehta, a shareholder who holds 10 equity shares in RCom. At the time of admission, Mr. Mehta was told that he would be heard at the final hearing. I have therefore heard him at some length and considered his objections, all of which I will address in this judgment.

6. Between 3rd May and 26th August 2016, a series of Affidavits were filed. There were four Affidavits filed by the Regional Director. There were also Affidavits filed by the creditors of RCom, as also other parties. RCom in turn filed Rejoinders. I do not think it is necessary to detail each one of these. It is sufficient to note that all objections except those from the Regional Director and Mr. Mehta have been addressed and specifically withdrawn. What survives, therefore, today, and to which I must now direct my attention are

the objections from the Regional Director and the objections from Mr. Mehta.

7. I have heard Mr. Dwarkadas for the Petitioner, Mr. Chatterjee for the Regional Director and Mr. Mehta, all quite extensively. The objections from Mr. Chatterjee on behalf of the Regional Director and Mr. Mehta are qualitatively different. The Regional Director's objections are very specific and on narrowly defined issues. At one level, it is easier to address these. Mr. Mehta's concerns seem to be somewhat larger. He raises some broad and general points about the need for disclosure, accountability and transparency. This is with particular reference to the two documents, and I will note these at the beginning. One is a document called an Earn Out Deed ("EOD") and the second is a Merger Agreement. It is not in dispute that neither the EOD nor the Merger Agreement are set out in their entirety in the Scheme itself although the Scheme refers to both. Both BSE and NSE had before them the Scheme with these references to EOD and Merger Agreement. Neither asked for copies to be disclosed. When the Scheme was considered by the shareholders in general meeting, other than Mr. Mehta, no other shareholder sought a disclosure of these documents. I note this as a matter of factual record simply because even before me in the papers as filed neither the EOD nor the Merger Agreement are on file. Having regard to Mr. Mehta's concerns and the manner in which he placed his submissions, and finding that these were also echoed to a some extent by Mr. Chatterjee, who said that the Court should at least satisfy itself as to these documents, I did not think it appropriate to simply reject these submissions out of hand. I asked Mr. Dwarkadas for the Company, therefore, whether the Company

was prepared to at least let me have a copy of these two documents, so that I could satisfy myself, and if necessary, put any questions that I might have on these to him. Mr. Dwarkadas readily agreed. Copies of both documents was given to me in a sealed cover. They have been in my custody since. I have read them and though they are exceedingly complex commercial documents, and do not make for any easy reading, I have attempted to gain some understanding of their implications and purport.

8. There is an outlying concern voiced quite openly by Mr. Mehta and somewhat less directly by Mr. Chatterjee, viz., that SSTL is an Indian Company with an overseas (Russian) principal. The amounts involved in this transaction are large. There is a question of liability in regard to what is known as ‘contiguity approvals’.⁴ The DoT seems to have taken the view that SSTL has a liability and is required to pay for contiguity approvals, including making a security deposit. This was taken up before the Telecom Disputes Settlement & Appellate Tribunal, New Delhi (“TDSAT”), which held against the DoT. The matter regarding contiguity has been carried higher. That is where it stands today. Clearly, therefore, as of today there are two distinct possibilities. Either the DoT’s stand will be accepted or it will be rejected. There is a financial implication to both. In the event of DoT’s stand being accepted, there is question of making certain payment. The converse is also true, if the DoT’s stand is not accepted then the

4. There is an entirely distinct question of possible liability, as yet unascertained, to the DoT in regard to certain licenses held by SSTL and which were subsequently quashed. There are orders of the Supreme Court of 2012 in this regard. The dispute under discussion relates only to the contiguity approvals, not the quashed licenses.

question of liability for contiguity approvals will not arise. The Scheme is being proposed, therefore, in a climate that is at the very least somewhat fluid and uncertain. It is perhaps for this reason that the two parties SSTL and RCom have between themselves entered into an understanding reduced to writing that these documents will be kept as confidential and will be saved from disclosure. Mr. Dwarkadas does not, in my understanding of his submissions, canvas any proposition wider than simply this: that the two documents contemplate situations that are entirely conditional or contingent, and have not yet come to pass. They define the respective roles of the parties depending on the happening or not happening of certain trigger events. A widespread disclosure at this stage might have the result of jeopardising the entire Scheme and compromising on wholly unrelated issues the merits of the present Scheme. I have made clear that if I should accept his submission that these two documents must be kept from disclosure, this is not to be read or understood to mean that any Regulatory Authority or body is bound to follow suit or that it cannot, on account of this judgment, in exercise of its own powers in law order the disclosure of these documents. My own remit in the company jurisdiction is limited to matters that arise under Sections 391-394 of the Companies Act, 1956. I have no concern with broader policy issues or what is social or morally desirable or of matters relating to the conduct or control of Regulatory Authorities.

9. Mr. Mehta's submission is based on a reading of Sections 391 and 393 of the Companies Act, 1956. In particular, he emphasizes the proviso to Section 391(2). Section 391 reads:

Section 391 — Power to compromise or make arrangements with creditors and members

(1) Where a compromise or arrangement is proposed —

- (a) between a company and its creditors or any class of them; or
- (b) between a company and its members or any class of them,

the Tribunal may, on the application of the company or of any creditor or member of the company or, in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be to be called, held and conducted in such manner as the Tribunal directs.

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, or class of members as the case may be, present and voting either in person or, where proxies are allowed under the rules made under section 643, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Tribunal, be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be, and also on the company, or, in the case of a company which is being wound up, on the liquidator and contributories of the company:

Provided that no order sanctioning any compromise or arrangement shall be made by the Tribunal unless the Tribunal is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 351, and the like.

(3) An order made by the Tribunal under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

(4) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees for each copy in respect of which default is made.

(6) The Tribunal may, at any time after an application has been made to it under this section stay the commencement or continuation of any suit or proceeding

against the company on such terms as the Tribunal thinks fit, until the application is finally disposed of.

(Emphasis added)

10. Mr. Mehta submits that the EOD and Merger Agreement are firstly “material facts relating to the company” (*i.e.*, RCom), of which he is a shareholder; and, second, the words “and the like” must be read along with the preceding words and this, therefore, requires or demands the disclosure of the EOD and the Merger Agreement. I will take this to mean that it is Mr. Mehta’s submission that the phrase “and the like” must be read in the context in which it appears on a principle of interpretation of statutes such as *noscitur a sociis*: a phrase or an expression is not a species of a genus, but is known by the company it keeps and must be understood in a cognate sense, the general clauses taking their colour from the less general ones. The *noscitur a sociis* principle demands that the meaning of general expressions is to be restricted to the less general.⁵ Of course, it is equally well-settled that in interpreting a statute, a court invokes one or other of several permissible principles only where there is some uncertainty or ambiguity in the plain language of the statute.⁶ The submission, therefore, is that even if the EOD and the Merger Agreement is not specifically contemplated by the Statute, they are covered by the

5. *M. K. Ranganathan v Government of Madras*, (1955) 2 SCR 374; *Leelabai Gajanan Pansare v Oriental Insurance Co Ltd*, (2008) 9 SCC 720; *Ahmedabad (P) Primary Teachers Association v Administrative Officer*, (2004) 1 SCC 755; *The State of Bombay and Others v. The Hospital Mazdoor Sabha and Others*; AIR 1960 SC 610, (1960) 2 SCR 866.

6. *Kehar Singh and Others v. State (Delhi Admn.)* AIR 1988 SC 1883; *State of H.P. v. Pawan Kumar* (2005) 4 SCC 350; *State of Rajasthan v. Babu Ram* (2007) 6 SCC 55.

words “material facts relating to the company” as also the words “and the like”. The *noscitur a sociis* principle is but one of contextual interpretation. In *Prabhudas Damodar Kotecha v Manharbala Jeram Damodar & Anr.*,⁷ the Supreme Court restated the law in this regard, citing the UK Court of Appeals opinion that “a word or phrase in an enactment must always be construed in the light of the surrounding text. ...words and particularly general words, cannot be read in isolation; their colour and their content are derived from their context.”⁸ In *Prabhudas Kotecha*, the Supreme Court held that although the rule has been widely applied, it is still a mere rule of construction; where wider words have intentionally been used by the legislature “*in order to make the scope of the defined word correspondingly wider*”, the rule of *noscitur a sociis* cannot prevail. Yet this is what Mr. Mehta demands when he submits that there is much authority in the context of investigations into public affairs and broad matters of probity and policy that demand that such a disclosure be made.

11. Mr. Mehta’s submission must, in my judgment, receive a carefully circumscribed refusal.⁹ These words cannot be stretched out to a wholly alien result and context not contemplated. The

7. (2013) 15 SCC 358.

8. *Attorney-General v Prince Ernest Augustus of Hanover*, [1957] AC 436, per Viscount Simonds.

9. By this, I mean that while I do not accept the need for these disclosures in the present context of a Petition for sanction of a Scheme under Sections 391-394, I do not mean or intend that these documents are, therefore, saved from disclosure in all contexts and all circumstances. As I have earlier noted, if a Regulatory Authority or Body in exercise of its statutory powers can and finds it necessary to order the disclosure, it will of course do so on the merit of applications before it.

words are clear: the expression “all material facts relating to the company” is the governing clause. What follows is illustrative and this is evident from the use of the words “such as ... pendency of any investigation proceedings in relation to the company under sections 235 to 351”. The trailing words “and the like” only show that the illustration is not intended to be exhaustive. They are not intended to amplify or expand the expression “all material facts relating to the company” to a situation that covers facts that are not material to the scheme (but might relate to the company). The word ‘material’ must mean material to the scheme at hand, and expansively includes anything that impacts the scheme. My concern is only to see whether these documents are necessary to a determination of the objections that are raised, and to assess whether the disclosure of these documents is material to the scheme. What Section 391(2) and its proviso contemplate is not merely a disclosure for its own sake. It must be a disclosure that affects the scheme that is proposed under this Section. Mr. Mehta’s argument that he cannot consent without the fullest of information and that this would not be informed consent is, in my view, not entirely accurate. An informed consent means a consent that is not given in blank but given with knowledge of such facts as are relevant for the purpose. This does not mean that disclosure is necessary of every fact without demonstration of its relevance or every document without showing its applicability, nor that consent obtained without this information or disclosure is necessarily bad.

12. In fact, it seems to me what Mr. Mehta suggests that is actually quite dangerous. I have noted before the consent of the vast majority of shareholders who represent 99.9999% of the value as also

the approval of BSE and NSE. If what Mr. Mehta says is correct, then every single one of these persons who have “consented” should have found himself or itself incapable of giving that consent without the disclosure of these documents. They have not said so. None of them have said so. None of them have felt this necessary. Mr. Mehta expects that in every such case, therefore, a Court will sit in appeal over the unanimous view of the general body on the say-so of most minor shareholder, thus abandoning every known principle and construct of corporate democratic governance. Courts in sanctioning Schemes do not perform a merely ministerial task. They do not rubber stamp Schemes. But if an objection has to be raised, it must be shown to be an objection that is so fundamental that no Scheme can be allowed to proceed without that objection being met. I do not think this demand for disclosure falls in that category at all. Apart from anything else, the ‘material facts’ regarding the contiguity approvals are known and are disclosed. The existence of the EOD and Merger Document are not secrets either. What has been kept back is only the internal workings contingent on the happening or not happening of certain events.

13. Besides, there is another reason to accept Mr. Dwarkadas’s submission. The entire issue of the validity of the DoT’s stand is yet under adjudication. Given the values, and given the uncertainty inherent in the yet-to-be-determined outcome of that litigation, there are implications to both SSTL and RCom; those implications are also known. What is perhaps kept back is only the mechanics of operating the final result. None of this materially affects either company or the Scheme. At this stage, therefore, the objection is in the nature of an entirely speculative request: it seems to me to be

more or less a fishing enquiry to see if further objections can be excavated and the scheme delayed further. Mr. Mehta's concern of what will happen to his (tiny) investment is unreal. There can be no such impact. Mr. Mehta's reliance on decisions mandating disclosure are not relevant; they must be read in context, and a context of public office or public policy is quite distinct from a fact scenario such as this. Mr. Mehta forgets: he is not the designated sentinel on the ramparts of the corporate world. That spot has been taken; and neither the statutorily anointed sentinel, SEBI, nor its delegates, the BSE and the NSE, have supported Mr. Mehta's objection. To give in to what Mr. Mehta demands is to relegate the views of the BSE, the NSE and the vast majority of the shareholders to second-place; worse yet, to proceed on the assumption that they knew not what they were doing. I will make no such assumption.

14. I will only note that there is unequivocal statement made by RCom in the form of an undertaking on Affidavit¹⁰ that even under the EOD and the Merger Agreement, no amount is proposed to be paid to SSTL's holding foreign company. All questions, therefore, of payout to that company being kept from shareholders are irrelevant and do not arise.

15. I will take up now the remaining objections. I notice from the Affidavits filed by the Regional Director that there are several objections that relate not to RCom but to SSTL. In assessing a Petition brought by RCom, I do not propose to spend any time at all on objections relating to SSTL and SSTL's Petition for sanction. In

10. Record, *p.* 1052.

any case, this would be wholly impermissible in law now that the Rajasthan High Court has allowed that petition. It is not for me to sit in appeal over that decision.

16. I also find from the Regional Director's Affidavit that there are some objections that are not actually objections. They are more in the nature of, if I may be permitted a certain latitude, recommendations for probity. They require that RCom will comply with Reserve Bank of India / FEMA provisions, dutifully pay taxes and so on. I expect a little more thoughtfulness from the Regional Director while framing these objections. RCom is hardly likely to come to Court asking for a Court's permission to be allowed to defraud the revenue and cheat on its taxes, defy regulatory authorities. This is equally true of questions such as those raised in paragraph 6(c) of the Regional Director's first Affidavit,¹¹ where the Regional Director seeks a clarification that an approval of the Scheme by this Court will not restrict the Regulatory Authorities from considering the proposal of transfer of UAS (or other) licenses from SSTL to RCom. Nobody is suggesting anything of the kind, and of course those transfer applications will be heard and decided on their own merits.

17. The Regional Director's first Affidavit dated 3rd May 2016 contains nothing of substance that requires a separate determination. There is a second Affidavit dated 13th June 2016. Once again, I will ignore any objections raised in this Affidavit about SSTL. In paragraph 5 of this Affidavit the Regional Director points

11. Record, *p.* 995.

out that the Scheme as framed does not provide for 'fractional entitlements'. This means that the Scheme does not cover situations where an entity holds a fractional percentage point like 11.5% of the equity. The Rajasthan High Court has dealt with this in its judgment at page 48. This is also a matter that relates to SSTL, not RCom, and in any case, it has been clarified that SSTL's Board has formed a sub-committee to consolidate all the fractional entitlements. This is really matter of internal working and it is not the kind of material on which a Scheme should be denied.

18. The third Affidavit filed by the Regional Director also makes comments about the need of disclosure of the EOD and Merger Agreement. I have already dealt with this and it is not necessary to do so again.

19. The third Affidavit does, however, contain certain objections that are puzzling. The first is that there is no rationale behind the allotment of shares to SSTL rather than to SSTL's shareholders. I do not see why either the Regional Director or I should be at all concerned with this. Nobody is able to show me any statutory provision which requires that shares in RCom on such a demerger and vesting in RCom must necessarily be issued to SSTL's shareholders and not to SSTL itself. What SSTL does with its shareholding in RCom *vis-à-vis* its own shareholders is SSTL's concern. This is, therefore, not an objection of any substance.

20. Another objection is that details of assets and liabilities are not crystallized. I am unable to understand the basis of this

objection, particularly since an identical objection has been rejected by this Court in its decision in *Ajmera Realty & Infra India Limited*.¹² Similarly, the objection that it is not clear what is meant by “remaining business” is without substance. Tax issues, of course, will be dealt with in accordance with law.

21. The only issue that remains and require a clarification, if at all, is that RCom had not till the timing of filing the third or fourth Affidavit made its position clear regarding the SSTL licenses that were quashed in 2012. This objection resurfaces in the fourth Affidavit as well. The fact of the matter is that a letter was issued by SSTL undertaking to discharge all liabilities in respect of these quashed licenses to the DoT. Mr. Chaterjee submits that RCom has not produced the DoT’s acceptance of this undertaking. I do not see how either RCom or SSTL can be held responsible or accountable for the failure of the Department of Telecommunications to telecommunicate. That letter was sent a long time ago. All that it required was for somebody at DoT to either accept or reject it. DoT, possibly trying to play it safe, has decided to do nothing. In matters like this, this type of masterful inactivity is not an option even for the Government. If DoT has not refused the undertaking or shown why it is inadequate, it must be deemed to have accepted that undertaking, particularly if parties have acted further on that basis. It is one thing for a government to say that a private party or citizen has not applied for permission or submitted an undertaking. It is an entirely different thing for the government to pillory a private party or citizen because the government itself has not accepted or rejected an undertaking duly submitted. A government’s failure to act, its

12 (2009) 151 Company Cases 442.

inaction (or sloth) cannot be used to the prejudice of a party that is in no position to compel or force governmental action. It is even more surprising that such an objection has been raised by one Government Department saying that another Government Department has not acted, and requiring a private party in the private sector to do something about it. My suggestion would rather be to ask the Regional Director to get the DoT to commit one way or the other. If the Regional Director has not done so, and the DoT has not found it necessary to refuse or reject that undertaking, I see no reason why, for the present purposes, the entire question of DoT's 'non-acceptance/non-refusal' should not be treated as wholly irrelevant; or, equally, why a court should be paralysed in assessing a scheme petition for sanction. As far as the undertaking by SSTL is concerned, therefore, at least for the purposes of this Petition, it will be treated as an undertaking binding on SSTL, and the matter will end at that. If DoT wishes to take a different view on the matter, all contentions are left open in appropriate proceedings. This is certainly not a reason to deny the present scheme.

22. The additional objection in the fourth Affidavit dated 12th October 2016 filed by the Regional Director¹³ is based on a concept of desirability rather than of substance. Here, the Regional Director seems to suggest that had the shares of SSTL been listed on a Stock Exchange as ordered by the High Court in 2005, SSTL's valuation would have been determined on the basis of market forces and the shareholders of SSTL would have not suffered a loss. There are so

13. I am not revisiting objections I have dealt with previously. There is once again a reiteration about the quashed licenses. I believe it is adequately answered above and I do not propose to revisit it simply because it comes again and again in one Affidavit after the other.

many problems with this formulation that it is hard to know where to begin. First of all it deals with SSTL and has no business finding place in an Affidavit dealing with RCom. Second, there is a material difference between what ought to be and what must be. I do not think that there is any requirement under the statute of letting the best become the enemy of the good. There is no dispute that the valuation of the entire business has been done by M/s. S. R. Batliboi and Company LLP (“**Batliboi**”), a highly respected accounting and consultancy firm. This has been approved by both BSE and NSE and also the vast majority of shareholders. Finally, this entire argument proceeds on an assumption that some loss has in fact been caused. There is nothing whatever to show this.

23. This, therefore, addresses the concerns of the Regional Director.

24. There were three creditors, Andromeda BPO Private Limited, Indus Towers Limited and ATC Telecom Infrastructure Private Limited, who objected. Their objections have been met. They do not survive today, except to note that it has been kept open to ATC to adopt its own remedies for recovery of its dues. RCom has said that it will abide by the final outcome in those proceedings.

25. This leaves the other objections raised by Mr. Mehta. I have already addressed the first of his objections, common to both he and the Regional Director, relating to the non-disclosure of the EOD and the Merger Agreement.

26. Mr. Mehta also raises an objection about Batliboi's valuation report being flawed. No other shareholder raised any such objections. I have seen that valuation report. There is no doubt that Batliboi chose one of several well-established methods of valuation and proceeded on that basis. I do not see the consequence of this objection. It is an objection that is being taken for the sake of it and has no consequence: it is unclear from the submission¹⁴ whether Mr. Mehta means that SSTL should have acquired more than 10% of RCom's equity or less. This is, therefore, not a sound basis on which to question the Scheme itself.

27. His other objection, that the Scheme does not comply with Accounting Standard 14 ("AS-14"), is actually misdirected. That Accounting Standard applies to a merger, not to a case of a demerger. What is not being understood is that this is not a case of two companies merging together into one entity but of the hiving off of one enterprise or undertaking of SSTL and the vesting of that undertaking in RCom. The so-called "merger" is not a merger in the sense intended by AS-14 but is a question of divesting and vesting in the transferee company.

28. A further objection is that the details of the assets and liabilities of the transferred undertaking are not known. Actually the Scheme does contain a detailed description of the assets and liabilities. There is little purpose achieved in getting a valuation of each of these crystallized. That would be a time-consuming exercise

14. Paragraph 38 at p. 1530

and susceptible to all kinds of questioning; it is not mandatory either.

29. There is again finally based on the EOD and Merger Agreement an apprehension that RCom would have to pay US\$300 million to SSTL's foreign parent. That issue has been addressed. No question of payment to the foreign parent is contemplated under the Scheme.

30. There are finally a number of statements – I will not even call them objections – made by Mr. Mehta which I think are singularly unfortunate. I understand that as a party in person he has a certain latitude. But to include in this all manner of allegations ventilating grievances against this or that director at the helm of RCom's affairs is inappropriate and unacceptable. I find allegations being made about purchase of a yacht, telephone bills, RCom's software defects, the non-upgrading to 4G networks, that the RCom's Chairman allegedly conducts four AGMs in a day and does not allow Mr. Mehta to speak for more than two to three minutes and so on. None of these has a bearing on the Scheme. If RCom's Chairman is able to conduct four AGMs in a day, that surely speaks to his capacity and stamina, particularly if he has to deal with obdurate shareholders at each. As for restricting Mr. Mehta to two to three minutes, that is perhaps all to the good; I do not see under what law Mr. Mehta can claim a right to exhaust patience and trespass on eternity. These are not the kind of matters that should be trotted out to pad up (and this is nothing if not padding up) an objection. These objections are utterly frivolous.

31. I will allow the Scheme. The Petition is made absolute in terms of prayer clause (a).

32. I am returning the EOD and Merger Agreement copies given to me immediately to Mr. Rajesh Shah on behalf of the Petitioner. They are in a cover, and it is given to Mr. Shah in open Court. Mr. Shah acknowledges receipt of the cover. None of the others have seen these documents.

33. Mr. Mehta seeks a stay of this order. I regret that I am unable to grant that stay. Had I found substance in his arguments and then held against him, I might have considered it. I have found no substance from the objections from any of the parties. The application for stay is rejected.

34. It will not be open to Mr. Mehta to canvass that his contentions raised and decided in this judgement are still kept open and are at large for being taken in any other proceedings. It is clarified that they are not. If he has taken point here and it has been decided or is deemed to have been decided, that point is not open for further discussion in a parallel forum.

35. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)