IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 596 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 706 OF 2016

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Arrangement

BETWEEN

Reliance Communications Limited

AND

Reliance Telecom Limited

AND

their respective shareholders and creditors

Reliance Telecom Limited ....Petitioner/ the Transferor Company

Called for hearing

Ms Alpana Ghone, Counsel and Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioner.

Mr. Ashish Mehta i/b Pankaj Kapoor, for Regional Director, present.

CORAM: A. K. Menon, J.

DATE: 27th October, 2016

PC:

1. Heard Learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 and other relevant provisions of the Companies Act, 1956, to the Scheme of Arrangement between Reliance Communications Limited ("RCom" or "the Transferee Company") and Reliance Telecom Limited ("RTL" or "the Transferor Company" or "the Petitioner Company") and their respective shareholders and creditors ("the Scheme").

3. The Learned Counsel for the Petitioner states that the Transferor Company is engaged in the business of telecom services, data services along with an exhaustive range of value added services and applications. The Transferee Company is engaged, *inter alia,* in the business of providing telecom services, covering mobile and fixed line telephony, including broadband, national and international long distance services and data services along with an exhaustive range of value added services and applications

4. Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company and the Transferee Company have approved the said Scheme by passing Board Resolutions, which were annexed to the Company Scheme Petition.

5. Learned Counsel for the Petitioner further states that the Petitioner Company is a wholly owned subsidiary of the Transferee Company and entire equity share capital of the Petitioner Company is held by the Transferee Company (78.80%) and its wholly owned subsidiary, Reliance Infocomm Infrastructure Limited ("RIIL") (21.20%). By the present Scheme it is intended to transfer the Telecom Undertaking from the wholly owned subsidiary to its holding company and does not involve any movement of assets or liabilities to any company outside the group. Upon the Scheme becoming effective, inter alia, in recognition of the fact that the Companies Act, 1956 prohibits allotment of shares by a holding company to its subsidiary, no shares of the Transferee Company shall be allotted in lieu or exchange of the holding of RIIL in the Petitioner Company. Also, the Transferee Company is not required to pay or provide for any consideration therefore the Transferee Company is not issuing any shares or paying any consideration, directly or indirectly, to either the Petitioner Company or its shareholders. Further, the Scheme does not affect the rights and interests of the members or creditors of the Petitioner Company and does not involve a re-organization of the Share Capital of the Transferee Company. Consequently the shareholders of the Transferee Company are not likely to be affected by the Scheme. In view of the judgment of this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of Company Summons for Direction and Company Scheme Petition by the Transferee Company was dispensed with vide order dated 5th day of August, 2016 passed in CSD No. 706 of 2016.

6. The Learned Counsel for the Petitioner further states that, Petitioner Company has complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the order passed in Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per directions of this Court and it has filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and Rules made thereunder whichever are applicable. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 3rd day of October, 2016, inter alia, stating , save and except as stated in paragraph 6 (i) to (vi), it appears according to Regional Director, that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

i) That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company.

ii) *Petitioner to state that as per ROC observation there is a complaint dated 21.7.2016 against a previous scheme involving Transferee Company has been received which is attached as Exhibit "D".*

Deponent prays that the Hon'ble Court to peruse the same and pass such orders as deem fit.

iii) *With specific reference to the Note 2.27 (g) of the audited financials of the demerged company as at 31.3.2016, it is disclosed to the effect that preliminary charges have been framed by a Trial Court (CBI Charge sheet) against the demerged company and its director.*

Deponent prays that the Hon'ble Court to pass such orders as deem fit.

iv) *With reference to the para no.5.1.5.2 of the scheme, prior approval of DoT, MoC & IT, and Govt. of India may be required to be obtained.*

Deponent prays that the Hon'ble Court may direct the company to make compliance of the requirements of DoT MoC & IT.

v) *Divisional (undertaking wise) Financials of the demerged company including the details of assets and liabilities/contingent liabilities of the demerged undertaking and remaining undertaking are not provided along with the scheme documents so as to verify the details of its assets/liabilities proposed to be demerged in to resulting* *company. Further, it is not clear whether demerged company undertaking meets the criteria as defined under Explanation below section 180 (/) (a) of the Companies Act,2013 i.e. whether the investment of the demerged company in the demerged undertaking exceeds 20% of its net worth or not. Vide para No.4.1 of the Scheme, Telecom undertaking (i.e.) entire undertaking is sought to be demerged, however, only 5 LSAs out of 8 LSAs are sought to be demerged as mentioned in para no. C.2 of the Scheme and hence entire Telecom undertaking is not being demerged. Transferee company's audited financials (as duly signed by the auditor) were not furnished as at 31.3.2016 along with scheme papers though the appointed date is given as 1.4.2016.*

vi) *BSE vide its letter No. DSC/AMAL/ND/24 (f) 475/16-17 9 and NSE vide its letter No. NSE/LIST/81843 dated 28.07.2016 "Exhibit E-1 & E-2" inter alia informed that as per the directions of SEBI the company has to comply with various provisions of the circulars. And that they have no observations with limited reference to those matters having a bearing on listing requirements. Upon the sanction of the Scheme the company to submit stock exchange such documents as mentioned in the letter and the exchange reserves the right to withdraw its "no adverse observation ".*

Deponent prays that the Hon'ble Court to direct the company to make compliance of directions issued by the Exchanges vide above refereed letters.

The company vide its letter dated 29.09.2016 replied for the observations at point (iv) and (v) attached as Exhibit "F".

9. In response to above observations of the Regional Director, the Petitioner Company has filed its affidavit in reply dated 17th October, 2016 dealing with the observations made by the Regional Director:

10. As far as the observation in paragraph 6(i) of the affidavit of Regional Director is concerned, the Petitioner Company has submitted that it will comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

11. As far as the observation in paragraph 6(ii) of the affidavit of Regional Director is concerned, complaint referred to in the paragraph under reference pertains to Scheme of Arrangement between Sistema Shyam TeleServices Limited ("SSTL") and Reliance Communications Limited ("RCom"). Rajasthan High Court (in relation to SSTL) by its order dated 30th September, 2016 and Bombay High Court (in relation to RCom) by its order dated 7th October, 2016 has sanctioned the Scheme of Arrangement. As the complaint does not pertain to the present scheme of arrangement, the explanation provided by the Petitioner Company is found to be satisfactory.

12. As far as the observation in paragraph 6(iii) of the affidavit of Regional Director is concerned, the Petitioner Company has submitted that trial court proceedings will be defended by the Petitioner Company in accordance with law. As the said proceedings do not pertain to the present Scheme of Arrangement, the explanation provided by the Petitioner Company is found to be satisfactory.

13. As far as the observation in paragraph 6(iv) of the affidavit of Regional Director is concerned, the Petitioner Company states that as per clause 19.3 of the Scheme, the Scheme is conditional upon obtaining of approval of the Department of Telecommunications. The Petitioner Company shall obtain such approvals before giving effect to the Scheme. The said explanation provided by the Petitioner Company is found to be satisfactory.

14. As far as the observation in paragraph 6(v) of the affidavit of Regional Director is concerned,

(i) In respect of the observation pertaining to non submission of division financials is concerned, Petitioner Company has vide its letter dated 29th September, 2016 provided certified copy of the divisional financials of its Demerged Business and the Remaining Business as on 31st March, 2016 to the Office of Regional Director. The said explanation is found to be satisfactory.

(ii) In respect of the observation pertaining to applicability of Section 180 of the Companies Act, 2013 is concerned, the Petitioner Company has submitted that the present Scheme is filed under sections 391 to 394 of the Companies Act, 1956. It is further submitted that as the transfer of undertaking is being effected as an integral part of the Scheme u/s 391 to 394 of the Companies Act, 1956, section 180 of the Companies Act, 2013 is not applicable. The aforesaid aspect has also been considered by the Delhi High Court in its judgment in HCL Infosystems Limited (Company Petition 140 of 2003) wherein while considering the provisions of section 293 (1)(a) of the Companies Act, 1956 (which is similar to section 180 of the Companies Act, 2013) it held that section 293(1)(a) was not applicable as the demerger was being effected u/s 391 to 394 of the Companies Act, 1956. The same was also considered by the Karnataka High Court in its decision In Re: United Spirits Limited (Company Petition No.170 of 2014) wherein it, interalia, held that provisions of section 293 of Companies Act, 1956 or section 180 of the Companies Act, 2013 would not be applicable as the transfer of the undertaking is pursuant to a Scheme framed u/s 391 to 394 of the Companies Act, 1956. The explanation provided by the Petitioner Company is found to be satisfactory.

(iii) In respect of observation pertaining to transfer of 5 licenses only out of 8 licenses is concerned, the Petitioner Company has submitted that Clause 1.13 of the Scheme defines Telecom Undertaking. The same has to be read with Schedule 1 of the Scheme which specifically lists the 5 licenses to be demerged into the Transferee Company. The remaining 3 licenses would continue to form part of the

Remaining Business of the Petitioner Company. The said explanation is found to be satisfactory.

(iv) In respect of observation pertaining to non-furnishing of audited financials of the Transferee Company as on 31.3.2016 is considered, the Petitioner Company submits that a copy of the Audited Annual Accounts of the Transferee Company has been annexed as Annexure '3' to the Affidavit dated 17th October 2016 filed by the Petitioner Company. The said explanation is found to be satisfactory.

15. As far as the observation in paragraph 6(vi) of the affidavit of Regional Director is concerned, Petitioner Company shall comply with the directions issued by the BSE Limited and National Stock Exchange of India Limited vide their respective letters dated 28th July, 2016.

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition is made absolute in terms of prayer clauses (a) and (c).

18. The Petitioner Company to file a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay, 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 this Order.

19. The Petitioner is directed to file a certified copy of order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC- 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

20. The Petitioner Company to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of this Order.

21. Filing and issuance of the drawn up order is dispensed with.

22. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(A.K.Menon J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

Uploaded by : Shankar Gawde, Stenographer.