

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on:09.11.2016
Judgment Pronounced on: 19.12.2016

CO. PETITION 530/2016

IN THE MATTER OF:-

AUGERE WIRELESS BROADBAND INDIA PRIVATE LIMITED

... PETITIONER/TRANSFEROR COMPANY

AND

BHARTI AIRTEL LIMITED

..... TRANSFEREE COMPANY

Through: Mr. Abhinav Vashisth, Sr. Advocate
with Mr. Anirudh Das and Mr.
Kamaljeet Singh, Advocates

Ms. Aparna Mudium, Assistant
Registrar of Companies

Mr. Rajiv Bahl, Advocate for the
Official Liquidator

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J

1. The present Petition under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act') has been filed by Augere Wireless Broadband India Private Limited (hereinafter referred to as 'Transferor

Company/Petitioner’) to seek approval of the Scheme of Amalgamation (hereinafter referred to as ‘the Scheme’) of the Transferor Company with Bharti Airtel Limited (hereinafter referred to as ‘Transferee Company’).

2. The registered offices of the Transferor Company/Petitioner and Transferee Company are situated at New Delhi, thus, this Court has the necessary territorial jurisdiction to adjudicate this petition.

3. The Transferor Company/ Petitioner was incorporated under the Act, vide certificate of incorporation dated 25.08.2010 issued by the Deputy Registrar of Companies, National Capital Territory of Delhi and Haryana.

4. The Transferee Company was incorporated under the name of ‘Bharti Tele-ventures Limited’ vide Certificate of Incorporation dated 07.07.1995 issued by the Registrar of Companies, NCT of Delhi and Haryana. The name of the Transferee Company was thereafter changed to its present name vide Fresh Certificate of Incorporation dated 24.04.2006 issued by the Registrar of Companies, NCT of Delhi and Haryana.

5. The authorized share capital of the Transferor Company/Petitioner as on 31.12.2015, is Rs.2,50,00,00,000/-, divided into 25,00,00,000 equity shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the company as on 31.12.2015 is Rs.1,96,15,380/-, divided into 19,61,538 equity shares of Rs.10/- each.

6. The authorized share capital of the Transferee Company as on 31.12.2015, is Rs.25,00,00,00,000/-, divided into 5,00,00,00,000 equity shares of Rs. 5/- each. The issued, subscribed and paid-up share capital of the company as on 31.12.2015 is Rs.19,98,70,00,510/-, divided into 3,99,74,00,102 equity shares of Rs.5/- each.

7. It has been averred on behalf of the Transferor Company/Petitioner that there are no proceedings pending against them, under Sections 235 to 250A of the Act (and/or under their corresponding sections of the Companies Act, 2013).

8. Copies of the Memorandum of Association and Articles of Association of the Transferor Company/Petitioner and the Transferee Company have been filed on record. The audited balance sheets as on 31.03.2015, along with the report of the auditors, have also been filed and the same are on record.

9. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and set out in detail in the Petition. It has been stated therein that the Transferor Company/Petitioner is a wholly owned subsidiary of the Transferee Company and the proposed amalgamation shall result in pooling of resources, creating better synergies across the group, optimal utilization of resources and greater

economies of scale. It has also been stated that the proposed Scheme will result in faster and effective decision making, better administration and cost reduction.

10. It has been submitted by the Transferor Company/Petitioner that the Scheme, *inter alia*, provides for the transfer and vesting of the Transferor Company/Petitioner along with all assets and liabilities into and with the Transferee Company and the consequent dissolution, without winding up of the Transferor Company/Petitioner.

11. So far as the share exchange ratio is concerned, the Scheme provides that upon coming into effect of this Scheme, no consideration shall be payable by the Transferee Company since the Transferor Company/Petitioner is the wholly owned subsidiary of the Transferee Company.

12. It has been further submitted on behalf of the Petitioner that the Scheme has been approved by the respective Board of Directors (BODs) of the Transferor Company on 18.01.2016 and of the Transferee Company on 26.10.2015 and 27.10.2015, respectively. Copies of the BODs resolutions dated 18.01.2016, 26.10.2016 and 27.10.2015, have been filed and the same are on record.

13. The Transferor Company/Petitioner and Transferee Company had earlier filed CA (M) No. 60/2016 seeking directions of this Court to dispense with the meetings of the equity shareholders, secured and unsecured creditors of the Transferor Company/Petitioner and Transferee Company. Vide order dated 30.05.2016, this Court allowed the application and dispensed with the convening of the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company/Petitioner and Transferee Company to approve the Scheme.

14. Further, this Court, by way of the said order dated 30.05.2016, also dispensed with the requirement of filing of any Application/Petition by the transferee company seeking sanction of this Court to the Scheme.

15. The Transferor Company/Petitioner has thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. By way of order dated 12.07.2016, notice in the petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator. Citations were also directed to be published in 'Indian Express' (English) and 'Jansatta' (Hindi). Affidavit of service dated 27.09.2016 has been filed by the Transferor Company/Petitioner showing compliance with the order dated 12.07.2016, regarding service on the Regional Director, Northern Region

and the Official Liquidator and also regarding publication of citations in the newspapers on 01.09.2016.

16. In response to the notices issued in the Petition, the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi has filed an affidavit dated 29.09.2016. The Regional Director raised some objections which are summarised as hereinunder:

- At paragraph 10 (i) of the Affidavit, the Regional Director has stated that the Scheme does not specify the Appointed Date.
- At paragraph 10 (ii) directions have been sought from the Court, for the Transferor Company and the Transferee Company to comply with all the requirements notified by the Ministry of Telecommunications with the terms and conditions of the license agreement.

17. In response, by way of an affidavit in reply dated 04.10.2016, it has been stated by the Transferor Company/Petitioner, that the Appointed Date has been clearly set out and defined at Clause 1.4.4 of the Scheme. The Appointed Date has been defined to mean the effective Date i.e. the date when all approvals in terms of Clause 4.7.1 of the Scheme are received and certified copy of the order of this Hon'ble Court approving the Scheme is filed with the Registrar of Companies, National Capital Territory of Delhi

and Haryana. It has been further stated that the Scheme provides for the amalgamation of the Transferor Company/Petitioner with the Transferee Company and accordingly, in terms of Clause 3.1.1 of the Scheme, the entire business of the Transferor Company/Petitioner as a going concern, on the Effective Date shall stand transferred to the Transferee Company. It has thus been further submitted that there is no legal or other impediment for the Appointed Date to be the Effective Date, more particularly in the case of an amalgamation where, on the Effective Date, the entire business of the Transferor Company/Petitioner shall stand transferred to the Transferee Company.

18. A perusal of the record, makes it clear that the Appointed Date has been defined in the Scheme to mean the Effective Date. Accordingly, the observations of the Regional Director at paragraph 10 (i) of the Representation/Affidavit stand satisfied.

19. It has further been stated by way of the said affidavit in reply dated 04.10.2016 that upon the sanction of the Scheme, matters as set out in letter dated 01.06.2016, by the Department of Telecommunications; in letter dated 22.08.2016 by the Transferee Company in reply to the said letter dated 01.06.2016; and the aspect of transfer of telecom licenses as set out at Schedule I of the Scheme, would be the subject matter of appropriate

proceedings before the Department of Telecommunications, Ministry of Communications, Government of India. In view thereof, it has been submitted that no directions as prayed for at paragraph 10 (ii) of the Affidavit of the Regional Director are called for.

20. In view of the foregoing, it has been stated on behalf of the Regional Director that all the objections raised on behalf of the Regional Director stand satisfied.

21. Further, the Official Liquidator has filed report dated 21.09.2016, not raising any objections to the proposed Scheme. However, the Official Liquidator has made two observations in paragraphs 4 and 5 of his report, which are reproduced as hereinunder:

“4. That the as per information furnished by the Transferor Company disputed tax liability in case of Transferor Company. A demand from Income Tax Department of Rs. 2,074,000/- but it does not form part of contingent liability. Further there is entry tax of Rs. 6,292,074/- during the year is paid as disputed liabilities. Assessment for the year 2014-25 is under progress.

5. That as per information, transferee Company having its registered office at Bharti Crescent, 1, Nelson Mandela Marg, Vasant Kunj, New Delhi-110070 has not been impleaded as petitioner in this petition.”

22. In response to the Report of the Official Liquidator, the Transferor Company/Petitioner has filed an affidavit dated 30.09.2016 stating as hereinunder:

- In response to paragraph 4, the Transferor Company/Petitioner has stated submitted that the demand of the Income Tax Department is disputed by the Transferor Company/Petitioner and an Appeal has been filed on 16th April 2016 before the Commissioner of Appeals, Income Tax Department against Assessment order dated 07th March 2016. Hence, at present, the same is not stated as a contingent liability in the books of accounts of the Transferor Company/Petitioner. It has been further stated that the payment of Entry Tax of Rs.62.9 lacs during the year 2014-15 is disputed and proceedings in relation thereto, are pending before various fora including the Hon'ble Supreme Court of India. Moreover, in terms of Clause 3.1.2 (vi) and (xi) of the Scheme of Amalgamation, the Transferee Company i.e. Bharti Airtel Limited would, upon the Scheme becoming effective, be the successor entity as regards all

pending proceedings. The Transferee Company shall also be the successor entity with respect to pending assessment proceedings and orders passed thereon under the Income Tax Act, 1961.

- So far as the second observation in paragraph 5 is concerned, it has been stated that this Court, vide order dated 30th May, 2016, in Company Application (Main) No.60 of 2016, dispensed with the requirement of filing any application or petition by the Transferee Company for sanction of the Scheme.

23. In view of the aforesaid, it has been stated on behalf of the Official Liquidator that the observations stand satisfied.

24. Thus, it is evident that neither the Regional Director nor the Official Liquidator has any further objection remaining to the grant of relief, as prayed for by the Transferor Company/Petitioner, in the present petition.

25. The Transferor Company/Petitioner, vide affidavit dated 04.10.2016, has submitted that neither the Transferor Company/Petitioner nor its counsel has received any objection to the sanction of the Scheme, pursuant to the citations published in the newspapers.

26. In view of the foregoing, and upon considering the approval accorded by the members and creditors of the Transferor Company/Petitioner to the proposed Scheme; and the affidavit filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the circumstance that the objections raised by the RD stand satisfied and the report filed by the Official Liquidator attached to this Court and the circumstance that the observations have been satisfied, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under sections 391 to 394 of the Act. The Transferor Company/Petitioner will however, comply with the statutory requirements, in accordance with law.

27. A certified copy of this order, sanctioning the Scheme, be filed with the ROC, within thirty (30) days of its receipt.

28. Resultantly, it is hereby directed that the Transferor Company/Petitioner will comply with all provisions of the Scheme and, in particular, those which are referred to hereinabove.

29. Notwithstanding the above, if there is any deficiency found or, violation committed *qua* any enactment, statutory rule or regulation, the sanction granted by this Court to the Scheme will not come in the way of

action being taken, *albeit*, in accordance with law, against the concerned persons, directors and officials of the Petitioner Company.

30. The Transferor Company/Petitioner shall stand dissolved without being wound up.

31. It is made clear, that this order shall not be construed as an order granting exemption, *inter alia*, 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.

32. The Transferor Company/Petitioner shall deposit a sum of Rs.5,00,000/-, by way of costs, in the Delhi High Court Bar Association Lawyers' Social and Welfare Fund, New Delhi, within a period of two weeks from today.

33. Consequently, the petition is allowed in the aforesaid terms and is accordingly disposed of.

SIDDHARTH MRIDUL, J

DECEMBER 19, 2016

dn/sb