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BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

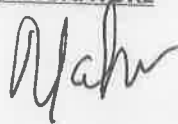
CP(CAA) No. 13/NCLT/AHM/2019 IN
CA(CAA) No. 10/NCLT/AHM/2019

Coram: Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 20.03.2019

Name of the Company: Reliance Jio Infocomm Ltd.
Jio Digital Fibre Pvt. Ltd.
Reliance Jio Infratel Pvt. Ltd.

Section of the Companies Act: Section 230-232 of the Companies Act, 2013

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	RAVI PAKHWA	ADV	PEL	
2.	ilb Thakkar and Pakhwa			

ORDER

The petitioner is represented through their respective Learned Counsel(s).

The Order is pronounced in the open court, vide separate sheet


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 20th day of March, 2019.

CP(CAA) No. 13/NCLT/AHM/2019
in
CA (CAA) No. 10/NCLT/AHM/2019

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

CP(CAA) No. 13/NCLT/AHM/2019
in
CA (CAA) No. 10/NCLT/AHM/2019

In the matter of:

Reliance Jio Infocomm Limited
A Company incorporated under the
Provisions of the Companies Act, 1956,
Having its registered office at
101, Saffron, Nr. Centre Point,
Panchwati 5 Rasta,
Ambawadi,
Ahmedabad-380006
Gujarat

Demerged/Transferor Company
Petitioner Company No. 1

Jio Digital Fibre Private Limited
A Company incorporated under the
Provisions of the Companies Act, 2013,
Having its registered office at
101, Saffron, Nr. Centre Point,
Panchwati 5 Rasta,
Ambawadi,
Ahmedabad-380006
Gujarat

Resulting Company
Petitioner Company No. 2

Reliance Jio Infratel Private Limited
A Company incorporated under the
Provisions of the Companies Act, 1956,
Having its registered office at
101, Saffron, Nr. Centre Point,
Panchwati 5 Rasta,
Ambawadi,
Ahmedabad-380006
Gujarat

Transferee Company
Petitioner Company No. 3

Order delivered on 20th March, 2019

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Appearance: Sr. Advocate Mr. Saurabh Soparkar with Mr. Mehul Shah and Mr. Ravi Pahwa i/b Thakkar & Pahwa is present for the applicants

Final Order



1. The instant joint petition under sections 230-232 of the Companies Act, 2013 is filed, seeking sanction of the Composite Scheme of Arrangement amongst Reliance Jio Infocomm Limited and Jio Digital Fibre Private Limited and Reliance Jio Infratel Private Limited and their respective shareholders and creditors ("Composite Scheme of Arrangement").
2. The Petitioner Companies filed Company Application being CA (CAA) No. 10/NCLT/AHM/2019 before this Tribunal seeking dispensation of the meeting of Equity Shareholders of the Petitioner Company No.2 and the Petitioner Company No.3 while seeking directions to convene and hold meetings of Secured Creditors (including Secured Debenture holders), Unsecured Creditors (including Unsecured Debenture holders), Preference Shareholders and Equity Shareholders of the Petitioner Company No.1.
3. By an order dated 11.1.2019 made in CA (CAA) No. 10/NCLT/AHM/2019, this Tribunal ordered dispensation of the meeting of the Equity Shareholders of the Petitioner Company No.2 and the Petitioner Company No.3, while directing holding and convening the meetings of the Secured Creditors (including Secured Debenture holders), Unsecured Creditors (including Unsecured Debenture holders), Preference Shareholders and Equity Shareholders of the Petitioner Company No.1. This Tribunal also directed issuance of notices to Regional Director, North Western Region, Registrar of Companies, concerned Income Tax Authority (in case of all the Petitioner Companies), Securities and Exchange Board of India, BSE Limited



and National Stock Exchange of India Limited (in the case of Petitioner Company No.1) stating that the representation, if any, to be made by them, be made within a period of 30 days from the date of receipt of such notice. This Tribunal also directed publication of notice about convening and holding of the meetings in "Indian Express" in English language having all India circulation and "Divya Bhaskar" in Gujarati language, having circulation in Ahmedabad.

4. Pursuant to the order dated 11.1.2019, the Petitioner Companies sent notices to the aforesaid statutory authorities and submitted affidavit dated 31st January, 2019 confirming the said compliances.
5. Pursuant to the order dated 11.1.2019, the Petitioner Company No.1 also published notice about convening and holding of the meetings in "Indian Express" in English language having all India circulation and "Divya Bhaskar" in Gujarati language, having circulation in Ahmedabad and submitted affidavit dated 31st January, 2019 confirming the said compliances.
6. Subsequent to the order dated 11.1.2019, the Petitioner Companies amended the Composite Scheme of Arrangement such that the Resulting Company and the Transferee Company shall provide an option to the shareholders of the Demerged Company and to the Transferor Company, at their discretion, to receive a part of the consideration in the form of preference shares, for the demerger of Demerged Undertaking (as defined in the Composite Scheme of Arrangement) and transfer of the Transferred Undertaking (as defined in the Composite Scheme of Arrangement) respectively. The aggregate consideration envisaged under the Composite Scheme of Arrangement, does not undergo any change



pursuant to the aforesaid amendment. A notice of this modification was published in "Indian Express" in English language having all India circulation and "Divya Bhaskar" in Gujarati language, having circulation in Ahmedabad on 13.2.2019.

7. The meetings of Secured Creditors (including Secured Debenture holders), Unsecured Creditors (including Unsecured Debenture holders), Preference Shareholders and Equity Shareholders of the Petitioner Company No.1 were duly convened and held on 18.2.2019. In the aforesaid meetings, the Chairperson informed the Secured Creditors (including Secured Debenture holders), Unsecured Creditors (including Unsecured Debenture holders), Preference Shareholders and Equity Shareholders of the Petitioner Company No.1 that subsequent to the order dated 11.1.2019, the Petitioner Companies amended the Composite Scheme of Arrangement, as stated hereinabove. The Chairperson of the Meetings filed respective reports in the form of an affidavit dated 23rd February, 2019.
8. As per the Chairperson's Report of the meeting of the Secured Creditors (including Secured Debenture holders) of the Petitioner Company No.1, 221 Secured Creditors (including Secured Debenture holders) either in person or through proxy (having value of debt of Rs. 14094,83,33,300/- attended the meeting and the Secured Creditors (including Secured Debenture holders) having value of debt of Rs.14064,83,33,300/- voted in favour of sanctioning the Composite Scheme of Arrangement.
9. As per the Chairperson's Report of the meeting of the Unsecured Creditors (including Unsecured Debenture holders) of the Petitioner Company No.1, 429 Unsecured

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Creditors (including Unsecured Debenture holders) either in person or through proxy (having value of debt of Rs. 94109,85,75,725/- attended the meeting and the Unsecured Creditors (including Unsecured Debenture holders) having value of debt of Rs. 94034,85,75,725/- voted in favour of sanctioning the Composite Scheme of Arrangement.

10. As per the Chairperson's Report of the meeting of the Preference Shareholders of Petitioner Company No.1, 2 Preference Shareholders (representing 100% of total Preference Share Capital of the Petitioner Company No.1) attended the meeting and both the Preference Shareholders voted in favor of the sanctioning of the Composite Scheme of Arrangement.
11. As per the Chairperson's Report of the meeting of the Equity Shareholders of the Petitioner Company No.1, 7 Equity Shareholders (representing 99.827% of total Equity Share Capital of the Petitioner Company No.1) attended the meeting and all the 7 Equity Shareholders voted in favor of the sanctioning of the Composite Scheme of Arrangement.
12. Pursuant to the order dated 11.1.2019, Regional Director, North Western Region, made a representation vide letter dated 13.3.2019 making certain observations.
 - 12.1 The first observation relates to non-convertible debentures of the Applicant Company No. 1.
 - 12.2 The second observation relates to placing on record the relevant facts regarding clause 4.2 of the Composite Scheme of Arrangement.
 - 12.3 The third observation relates to modification of the Composite Scheme of Arrangement.
 - 12.4 The fourth observation relates to approvals to be taken from the concerned Regulatory Authorities.



- 12.5 The fifth observation is regarding sufficiency of authorized share capital to issue and allot new equity shares of the Transferee Company to the shareholders of the Demerged/ Transferor Company upon sanction of the Composite Scheme of Arrangement.
- 12.6 The sixth observation relates to compliance with the provisions of Section 2(19AA) of the Income-Tax Act, 1961.
- 12.7 The seventh observation relates to disclosure of list of assets and liabilities which are proposed to be demerged and transferred pursuant to the Composite Scheme of Arrangement.
- 12.8 The eighth observation relates to legal expenses to be paid to the Regional Director.
- 12.9 The ninth observation relates to representation received by Regional Director from the office of Registrar of Companies, Ahmedabad which contain three observations.
13. In response to the representation dated 13.3.2019, the Petitioner Companies filed an affidavit dated 15.3.2019 giving replies to the observations of the Regional Director.
- 13.1 With regard to first observation, it is submitted that the non-convertible debentures of the Petitioner Company No. 1 are listed on BSE Limited and the National Stock Exchange of India Limited. Regulation 59 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 prescribe prior approval of the stock exchanges where the non-convertible debentures are listed for any material modification in the structure of the aforesaid debentures in terms of coupon, conversion, redemption, or otherwise. It is further submitted that as there is no change in the structure of the non-convertible debentures in terms of coupon, conversion,



redemption, or otherwise pursuant to the Composite Scheme of Arrangement, no prior approval is necessary.

13.2 With regard to second observation, it is submitted that the amount of Preference Share Capital and the corresponding securities premium apportioned to Loan 1, Loan 2 and Loan 3 (as defined in the Composite Scheme of Arrangement) are based on expenditure incurred in respect of the optic fibre cable undertaking, tower infrastructure undertaking and other businesses of the Petitioner Company No.1.

13.3 With regard to third observation, it is submitted that the Petitioner Companies modified the composite scheme of arrangement to the effect that the Resulting Company and the Transferee Company shall provide an option to the shareholders of the Demerged Company and to the Transferor Company, at their discretion, to receive a part of the consideration in the form of preference shares, for the demerger of the Demerged Undertaking and transfer of the Transferred Undertaking respectively. It is further submitted that the aggregate consideration envisaged under the Composite Scheme of Arrangement does not undergo any change pursuant to the aforesaid amendment. It is further submitted that a notice of this modification was published in Indian Express, all editions in English and a Gujarati translation thereof in Divya Bhaskar on 13.02.2019. The modifications were also explained by the Chairperson of the respective meetings of the Secured Creditors (including Secured Debenture holders), Unsecured Creditors (including Unsecured Debenture holders), Preference Shareholders and Equity Shareholders of the Petitioner Company No.1 at their meetings convened and held for approving the Composite Scheme of Arrangement. In the said meetings, the Composite Scheme of Arrangement, as amended, was approved by



the requisite majority of the Secured Creditors (including Secured Debenture holders), Unsecured Creditors (including Secured Debenture holders), Preference Shareholders and Equity Shareholders of the Petitioner Company No.1.

- 13.4 With regard to fourth observation, it is submitted that the approvals and permissions, as may be necessary for carrying on the activities of the Petitioner Companies shall be applied for and obtained by following necessary procedures in accordance with applicable law.
- 13.5 With regard to fifth observation, it is submitted that Petitioner Company No.2 and Petitioner Company No.3, shall reclassify/ increase the authorized share capital to the extent required and also undertake to make due compliances for the said purpose.
- 13.6 With regard to sixth observation, it is submitted that Composite Scheme of Arrangement is a composite Scheme and that the Petitioner Companies shall comply with the provisions of Section 2(19AA) of the Income-tax Act, 1961, to the extent applicable.
- 13.7 With regard to seventh observation, it is submitted that the Petitioner Company No.1 shall submit the list of assets pertaining to the Demerged Undertaking and the Transferred Undertaking with the registry to be annexed as part of the order sanctioning this Composite Scheme of Arrangement. Since the Appointed Date is a prospective date, the Petitioner Company No.1 shall identify all the liabilities of the Demerged Undertaking and the Transferred Undertaking as on the Appointed Date and the same shall also be duly transferred along with the respective undertakings.
- 13.8 With regard to eighth observation, it is submitted that the Petitioner Companies shall pay the requisite legal fees/ cost to the Central Government as may be directed by this Tribunal.



13.9 With regard to the ninth observation which is in relation to representation of Registrar of Companies, it is submitted that the Petitioner Company No.1 has submitted letter dated 08.02.2019 with the office of the Regional Director and the Registrar of Companies, for reply to letter dated 17.12.2018 of Birbhum Highway Division-II, stating that the Composite Scheme of Arrangement will not impact the dues, if any, of the Birbhum Highway Division-II. A copy of the letter dated 08.02.2019 of the Petitioner Company No.1 is placed on record. As regards the second observation is concerned, the Petitioner Company No.1 has submitted letter dated 05.03.2019 with the office of the Regional Director and the Registrar of Companies, for reply to letter dated 29.11.2018 of Municipal Commissioner, Thane Municipal Corporation, clarifying that there is no proposal of merger between the Petitioner Company No.1 and Reliance Communications Limited. So far as the third observation is concerned, it is stated that the Petitioner Company No.1 has submitted a letter dated 07.02.2019 with the office of the Registrar of Companies clarifying the issues and that there is no further observation received from the office of Registrar of Companies.

There are no other observations made by the Regional Director and the Registrar of Companies.

14. Pursuant to the order dated 11.1.2019, concerned Income Tax Department sent two representations dated 14.2.2019 and 6.3.2019 making certain observations.
15. In response to the representations of concerned Income Tax Department, the Petitioner Companies have filed affidavit dated 15.3.2019 with this Tribunal. This Tribunal perused the representations of the Income Tax

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Department and the affidavit filed by the Petitioner Companies in response thereto. This Tribunal notes that though in its initial report, the IT Department had some reservations in the Scheme, later on, after receipt of clarifications from the Petitioner Companies, the IT Department, in its last report, has raised only two issues viz. valuation of the assets under slump sale/ demerger and cancellation of preference shares. In so far as the first issue is concerned, it is understood by the Petitioner Companies that "the IT Department reserves the right to examine any aspect of any tax payable in respect of proposed slump sale and issue of shares, etc." On the second issue, IT Department has merely referred to tax implication on conversion of preference shares into loan. However, having said that, ultimately the report makes the following submissions: -

"9. The Income Tax Department will be free to examine the aspect of any tax payable as a result of the Scheme and in case it is found that the Scheme of Arrangement ultimately results in tax avoidance or is not in accordance to the demerger provisions of the Income Tax Act, then the Department will be at liberty to initiate appropriate course of action as per law.

10. It is further requested that the rights of the Income Tax Department should remain intact to take out appropriate proceedings regarding rising of any tax demand against the demerged company at any future date and these rights should not be adversely affected in view of sanction of the Scheme.

11. It is reiterated that any sanction to the Scheme of Arrangement under Sections 230 to 232 of the Companies Act, 2013 should not adversely impact the rights of the Income Tax Department for any past, present or future proceedings. The department should be at liberty to take appropriate action as per law in case of an event of any tax-avoidance or violation of Income Tax Law or any other similar issue."

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In response to this, the Petitioner Companies have affirmed that the sanctioning of the Composite Scheme of Arrangement will not adversely impact the rights of the Income Tax Department for any past, present or future proceedings as per law in relation to the Petitioner Companies.

No representations have been received from any other statutory authorities.

16. The Petitioner Companies filed the petition being CP(CAA) No. 13/NCLT/AHM/2019 before this Tribunal seeking sanction of the Composite Scheme of Arrangement.
17. This Tribunal, vide an order dated 28.2.2019 admitted the aforesaid petition and directed issuance of notices to Regional Director, North Western Region, Registrar of Companies, concerned Income Tax Authority (in case of all the Companies) and the Securities and Exchange Board of India (in case of Petitioner Company No.1) informing the date of hearing. The Tribunal also directed publication of notice of hearing of the petition in the "Indian Express" in English language having all India circulation and "Divya Bhaskar" in Gujarati language, having circulation in Ahmedabad not less than 10 days before the date fixed for hearing, calling for objections, if any, on or before the date of hearing.
18. Pursuant to the order dated 28.2.2019 passed by this Bench, the Petitioner Companies published the notice of hearing of the petition in "Indian Express" in English having all India circulation and "Divya Bhaskar" in Gujarati language having circulation in Ahmedabad on 2.3.2019. The notice in respect of hearing of the petition was served upon the Regional Director, North Western



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Region, Registrar of Companies, concerned Income Tax Authority (in case of all Petitioner Companies) and Securities and Exchange Board of India (in case of Petitioner Company No.1) on 7.3.2019 and 8.3.2019. Affidavits to that effect have also been filed on behalf of the Petitioner Companies.

19. Pursuant to the order dated 28.2.2019 and issuance of notices to the aforesaid statutory authorities and publication of the notice, no representation has been received.
20. Heard learned Senior Advocate, Mr. Saurabh Soparkar with Mr. Ravi Pahwa, for M/s. Thakkar & Pahwa, Advocates, for the Petitioner Companies and gone through the observations/ comments of Regional Director referred to in Para 12 above and the replies of the Petitioner Companies in Para 13 above.
21. In so far as the observations of Income Tax Department made in Para 15 are concerned, considering the response of the Petitioner Companies, it is hereby made it clear that the Income Tax Department will be free to examine the aspect of any tax payable as a result of the sanction of the Scheme and in case it is found that the Scheme of Arrangement ultimately results in tax avoidance or is not in accordance with the demerger provisions of the Income Tax Act, then the IT Department will be at liberty to initiate appropriate course of action as per law. It is further clarified that any sanction to the Scheme of Arrangement under Sections 230 to 232 of the Companies Act, 2013 shall not adversely impact the rights of the Income Tax Department for any past, present or future proceedings. The department shall be at liberty to take appropriate



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action as per law in case of an event of any tax-avoidance or violation of Income Tax Law or any other similar issue.

22. Considering the entire facts and circumstances of the case and on perusal of the Composite Scheme of Arrangement and the documents placed on record, it appears that the requirements of the provisions of Sections 230 and 232 of the Companies Act, 2013 are satisfied.
23. In the result, the petition is allowed. The Composite Scheme of Arrangement as placed at Annexure-I to CP(CAA) No. 13/NCLT/AHM/2019 is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies namely, Reliance Jio Infocomm Limited and Jio Digital Fibre Private Limited and Reliance Jio Infratel Private Limited, their shareholders, creditors and all concerned under the Composite Scheme of Arrangement.
24. However, the sanction of the Scheme, shall not be construed as an immunity from all the applicable laws, for the time being in force. Further, as mentioned in Para 15 above, the sanctioning of the Scheme will not impact the rights of the Income Tax Department for any past, present or future proceedings/liabilities.
25. The schedule of assets being transferred to the Resulting Company and the Transferee Company, respectively be and is hereby approved and is made a part of this order of the Tribunal sanctioning the Composite Scheme of Arrangement.