

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**(CAA)-56/PB/2019
In
CA(CAA)-16/PB/2018**

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation
of

VERIZON INDIA PRIVATE LIMITED

... Transferor/Petitioner Company 1

And

VERIZON COMMUNICATIONS INDIA PRIVATE LIMITED

...Transferee/Petitioner Company 2

And

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Order Delivered on: 17.12.2020

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**B.S.V. PRAKASH KUMAR,
HON'BLE ACTG. PRESIDENT**

**HEMANT KUMAR SARANGI,
HON'BLE MEMBER (TECHNICAL)**

For the Petitioner: *Mr. Mahesh Agarwal & Rajeev Agarwal, Advocates*
For the RD & OL: *Ms. Tania Sharma, Advocate*

ORDER

PER- B.S.V PRAKASH KUMAR, ACTNG. PRESIDENT

Order Pronounced on: 17.12.2020

Under consideration is Company Petition **CAA-56/PB/2020**
filed under Sections 230 to 232 of the Companies Act, 2013
read with the Companies (Compromises, Arrangements &



Amalgamations) Rules, 2016. The purpose of the Company Petition is to obtain sanction of the Scheme of Amalgamation (in short, “**Scheme**”) by virtue of which **Verizon India Private Limited** (hereinafter referred to as “**Transferor/Petitioner Company-1**”) is proposed to be merged with **Verizon Communications India Private Limited** (hereinafter referred to as “**Transferee/Petitioner Company-2**”) as a going concern.

2. The Transferor/Petitioner Company-1 is a Private Limited Company and was incorporated under the Companies Act, 1956 on 06.01.2000 as M/s. MCI Worldcom India Private Limited and later changed to M/s. Verizon India Private Limited and engaged in the business to carry on the work of development of computer software and to offer services in data processing in all fields of application and to buy, sell, hire, lease, export and import all varieties of computer software, etc. The Transferee/Petitioner Company-2 is a Private Limited Company and was incorporated under the Companies Act, 1956 on 11.01.2002 as M/s. Worldcom Communications India Private Limited and later changed to Verizon Communications India Private Limited and engaged in the business to act as an



Internet Service Provider including installing, operating and maintaining International gateways and telecommunication networks and hosting Portal sites including providing virtual private networks, etc. The Registered office of both the Companies were shifted from A-Wing, 3rd Floor, Radisson Commercial Plaza, National Highway-8, New Delhi to Unit-305, 3rd Floor, Aero City, Asset No-7, Worldmark-3 Indra Gandhi International Airport New Delhi-110037. The Board of Directors of the Transferor and Transferee Company vide Board Resolution dated 16/12/2019 approved the said Scheme of Amalgamation.

3. This Tribunal vide its order dated 25/02/2020 and 16/06/2020 in CA(CAA)16/PB/2020 directed separate meetings to be held of Equity Shareholders and Unsecured Creditors of the Petitioner Companies and the meetings were duly convened on 25.07.2020. This Tribunal had further directed the Petitioner Companies to issue notices to the statutory authorities and the notices were issued. Further, the Petitioner Company was directed to effect paper publication in "Business Standard" (English, Delhi Edition) and "Business Standard" (Hindi, Delhi Edition). The same were effected on



10/10/2020 and proof of the same was filed with the Tribunal vide Affidavit. The Petitioner Companies have complied with all the directions passed in the above orders of this Tribunal.

4. The Counsel appearing on behalf of the Petitioner Companies submitted that the proposed amalgamation would simplify the corporate structure of the group and Consolidating the operations will result in increase of economies. The Companies involved in the amalgamation are engaged in business which are complimentary to each other and can be conveniently combined for mutual benefit, resulting in greater financial strength and flexibility and maximizing overall shareholder value. It will help in elimination of administrative duplications, consequently reducing the administrative costs of maintaining separate companies.

5. The Official Liquidator has filed its report wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that, as per clause 16 of the Scheme and Share Valuation Report submitted by Madhvi Takiar Sehgal, Registered Valuer, IBBI, the share exchange



ratio is as follows: ***“10 Fully paid equity shares in the Transferee Company of face value INR 10 (Rupees Ten Only) each credited as fully paid up (“New Equity Shares”) to the Shareholders of the Transferor Company on a proportionate basis as consideration for amalgamation”***. The Official Liquidator has further submitted that he has not received any complaint against the proposed Scheme from any person/ party interested in the Scheme in any manner and that affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/2013 whichever is applicable. It was further submitted that Clause 14 of the Scheme, all the staff, workmen, officers and employees in service of each of the Transferor Company who are on their respective payrolls shall become the staff, workmen, officers and employees of the Transferee Company with effect from the effective date, on such terms and conditions as are no less favourable than those on which they are currently engaged by the respective Transferor Company without any interruption of service as a result of this amalgamation and transfer.



6. The Regional Director, MCA has filed his report/affidavit, along with the report of the Registrar of Companies, New Delhi and stated that both the Transferor Company and the Transferee Company have filed the Balance Sheet and Annual Return up to 2018-2019. No prosecution has been filed & no inspection or investigation has been conducted in respect of the Petitioner Companies. The Transferee Company has also filed rejoinder affidavit regarding replying to the observations of the RD.

7. As per Para 33 of the RoC Report dated 24.07.2020, following observations have been made:

- i. *Refer to clause 22 of the Scheme, the Transferee Company shall comply with Section 232(3)(i) of the Companies Act, 2013 and pay the difference fee, after setting off the fee already paid by the Transferor Company on its respective capital. In this regard, the Transferee Company may kindly be directed to give an undertaking to that effect. In response to it, the Petitioner Companies undertakes that the Transferee Company shall comply with Section 232(3)(i) of the Companies Act, 2013 and file the requisite forms, pay the difference fee, if any after setting off the fee already paid by the Transferor Company on its respective capital.*



ii. *Almost all the shares of the Petitioner Companies are held by foreign entities, hence the companies may be directed to comply with FEMA/RBI regulations.* In response to it, the Petitioner Companies undertake that the Petitioner Companies would comply with the applicable FEMA/RBI Regulations.

8. In view of above the objection of the RD does not survive and the petition stands to be allowed. The Official Liquidator, Ministry of Corporate Affairs, New Delhi has also submitted his report through a representation, wherein it has not raised any objection against the Scheme of Amalgamation.

9. The Income Tax Department in its letter dated 05.11.2020 stated that Para 12 of the scheme, the Transferee Company undertakes to take over all the legal proceedings of the Transferor Company and taxes, interest, penalties etc., upon the scheme coming into effect on the 'Effective Date' and with effect from the 'Appointed Date'. The concerned Authority has further submitted that the records for Transferor Company have been examined and it found that as on date following demands are recoverable by the revenue authorities:

a.) AY 2009-10 – Rs. 1,13,137 (penalty demand u/s 271(1)(e));



b.) AY 2017-18 -Rs. 8,17,10,777 (demand raised u/s. 143(3).

Further in para 7 of letter is stated that the undersigned has no-objection to the proposed scheme of Amalgamation, subject to the following:

- i.) *All pending proceedings of the Transferor Company will be taken over by the Transferee Company;*
- ii.) *All outstanding demands, as on date, of the Transferor Company will be taken over by the Transferee Company;*
- iii.) *All outstanding demands, which may arise in future, of the Transferor Company will be taken over by the Transferee Company;*

In response to the ITD letter, the transferee company had filed an undertaking that

- i.) All pending proceedings of the Transferor Company will be taken over by the Transferee Company;
- ii.) All outstanding demands, as on date, of the Transferor Company will be taken over by the Transferee Company;
- iii.) All outstanding demands, which may arise in future, of the Transferor Company will be taken over by the Transferee Company;

10. We have gone through the reports of the Ld. Regional Director (Northern Region), Ministry of Corporate Affairs, New



Delhi and Ld. Official Liquidator, Ministry of Corporate Affairs, New Delhi and after perusing the same, we are of the view that the sanction of the present Scheme is not in violation of any provision of Companies Act as well as not against public policy, nor it would be prejudicial to the public interest at large.

11. A certificate of Statutory Auditor of the Petitioner Companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013. The Appointed date of the said Scheme is 01.04.2019.

12. There is no requirement for any modification and the said Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory requirements of sections 230 to 232 of the Companies Act, 2013 are complied with. Taking into consideration the above facts, the Company Petition is allowed and the Scheme of



Amalgamation annexed with the Petition is hereby sanctioned which shall be binding on the members, creditors and shareholders of the Transferor Company.

13. While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption 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.

14. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

15. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies.

16. The Transferor Company is directed to file the certified copy of this order along with a copy of the Scheme of



Amalgamation 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, 2013 within 30 days of receipt of the order.

17. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

18. Accordingly, the Scheme **stands sanctioned** and **CAA-56/PB/2019** stands disposed of.

Sd/-

(B.S.V PRAKASH KUMAR)

ACTG. PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)

MEMBER (TECHNICAL)

17.12.2020

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