

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

(CAA) - 65 (PB)/2020

CONNECTED WITH

CA (CAA)-186(PB)/2019

In the matter of:

*Sections 230-232 and other applicable provisions of the Companies Act, 2013
read with the Companies, (Compromises, Arrangements and Amalgamations)
Rules, 2016*

AND

**IN THE MATTER OF COMPOSITE SCHEME OF ARRANGEMENT
BETWEEN**

BHARTI AIRTEL LIMITED

... Transferor Company 1 / Petitioner Company 1

BHARTI AIRTEL SERVICES LIMITED

... Transferor Company 2 / Petitioner Company 2

HUGHES COMMUNICATIONS INDIA PRIVATE LIMITED

... Transferee Company 1 / Petitioner Company 3

HCIL COMTEL PRIVATE LIMITED

... Transferee Company 2 / Petitioner Company 4

Order Pronounced On: 23.03.2021

CORAM:

SH. B. S. V. PRAKASH KUMAR

HON'BLE ACTG. PRESIDENT

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (TECHNICAL)

(CAA)-65(PB)/2020



For the Petitioners: Mr. Sanjeev Puri, Sr. Adv. with Mr. Varun Lamba, Adv.,
Mr. Kunal Mehra, Adv.,

For the RD & OL : Ms. Apoorva Chowdhary

For the I.T. Dept.: Mr. Kunal Sharma and Ms. Zehra Khan, St. Counsels,
Ms. Shreya Choudhary, Adv.

For the DoT : Mr. Vikrant Goyal

ORDER

PER- HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. Under consideration is Company Petition (CAA)-65(PB)/2020 filed under Sections 230 to 232 of the Companies Act, 2013 ("**Act**") read with the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016. The purpose of the Company Petition is to obtain sanction of the Composite Scheme of Arrangement (in short, "**Scheme**") for the: (a) transfer of the VSAT Undertaking 1 (as defined in the Scheme) of **Bharti Airtel Limited** (hereinafter referred to as "**Transferor Company 1/Petitioner Company 1**") and vesting of the same with **Hughes Communications India Private Limited** (hereinafter referred to as "**Transferee Company 1/Petitioner Company 3**"); and (b) transfer of the VSAT Undertaking 2 (as defined in the Scheme) of **Bharti Airtel Services Limited** (hereinafter referred to as "**Transferor Company 2/Petitioner Company 2**") and vesting of the same with **HCIL Comtel Private Limited** (hereinafter referred to as "**Transferee Company 2/Petitioner Company 4**"), both on a going concern basis by way of a Slump

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Sale in accordance with Section 2(42C) of the Income Tax Act, 1962.

2. Transferor Company 1/Petitioner Company 1 was incorporated on July 7, 1995 under the provisions of the Companies Act, 1956 ("**1956 Act**") as "Bharti Tele-Ventures Limited", which was later changed to its present name i.e. "Bharti Airtel Limited", on April 24, 2006. The Transferor Company 1/Petitioner Company 1 is, inter alia, engaged in the business of providing global telecommunication services, and its product offerings include 2G, 3G and 4G wireless services, mobile commerce, fixed line services, high speed home broadband, DTH, enterprise services including national and international long-distance services to carriers.
3. Transferor Company 2/Petitioner Company 2 was incorporated on December 5, 1997 under the provisions of the 1956 Act as "Bharti Comtel Limited" which was later changed to its present name i.e. "Bharti Airtel Services Limited", on May 22, 2007. Transferor Company 2/Petitioner Company 2 is, inter alia, engaged in the business of supplying hardware and related services for telecommunication networks including very small aperture terminal ("**VSAT**") related telecommunication services in India.
4. Transferee Company 1/Petitioner Company 3 was incorporated on March 17, 1992 under the provisions of the 1956 Act as "Hughes Escorts Communications Limited", which on April 5,

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2006 was changed to “Hughes Communications India Limited” and subsequently on October 23, 2019 was changed to its current name i.e. “Hughes Communications India Private Limited” pursuant to it being converted from a public limited company to private limited company. Transferee Company 1/Petitioner Company 3 is a networking company and a satellite service operator, offering broadband services under the “Hughes” brand which include networking, system integration, managed network services, security transaction services, intranet, internet, broadband kiosks and interactive distance education.

5. Transferee Company 2/Petitioner Company 4 was incorporated on September 13, 2007 under the provisions of the 1956 Act as “HCIL Comtel Limited”, which on October 25, 2019 was changed to its current name i.e. “HCIL Comtel Private Limited” pursuant to it being converted from a public limited company to private limited company. Transferee Company 2/Petitioner Company 4 is engaged in the business of supplying hardware and related services for telecommunication networks including VSAT related telecommunication services in India.
6. The board of directors of the Petitioner Companies 1 & 2, in their respective meetings both dated May 6, 2019, and of the Petitioner Companies 3 & 4 in their meetings dated May 24, 2019 and June 1, 2019, respectively, have approved the Scheme.



7. The rationale of the proposed Scheme as stated therein is, inter alia, expanding the businesses of the Transferee Companies 1 & 2 in the growing markets of India, consolidation of the VSAT businesses of the Transferor Companies 1 & 2 with those of the Transferee Companies 1 & 2, availability of increased resources and assets which can be utilized for strengthening the customer base of the Transferee Companies 1 & 2 and servicing existing as well as prospective customers of the Transferee Companies 1 & 2, enhancing competitive strength, achieving cost reduction, efficiencies and productivity gains by pooling the technologies and resources of the VSAT Undertakings (as defined in the Scheme), increase in customer base and acquisition of new customers by the Transferee Companies 1 & 2.
8. This Tribunal vide its order dated 11.05.2020 in CA(CAA)-65(PB)/2019 dispensed with the requirement of holding the meeting of the secured creditors of the Petitioner Company 1. Further, since there were no preference shareholders or secured creditors of Petitioner Companies 2, 3 and 4 as of the cut-off date, hence requirement of convening meeting did not arise. The directions issued by this Tribunal vide order dated 11.05.2020 were complied with respect to the following meetings of the Petitioner Companies which were duly convened:

- (a) Petitioner Company 1 – Equity Shareholders, Preference Shareholders and Unsecured Creditors.

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(b) Petitioner Companies 2, 3 & 4 - Equity Shareholders and Unsecured Creditors.

This Tribunal had further directed the Petitioner Companies to issue notices to the statutory authorities and the notices were issued. Further, the Petitioner Companies were directed to effect newspaper publication in "Financial Express" (English, Delhi NCR edition) and "Jansatta" (Hindi, Delhi NCR edition), which were effected on June 29, 2020 and July 1, 2020 as per directions and the proof of the same was filed with the Tribunal vide Joint Affidavits. The Petitioner Companies have complied with all directions passed in the above order of this Tribunal. Further, the Petitioner Companies have also stated in their Joint Affidavits that no objections to the Scheme have been received by the Petitioner Companies as of the date of filing of the joint Affidavits.

9. The Regional Director, Northern Region has filed a report/representation dated 27.11.2020 ("**Report**"), along with the report of the Registrar of Companies, Delhi; in response to which the Petitioner Companies have filed a Joint Affidavit dated 03.12.2020 and further as per order dated 10.12./2020 of this Tribunal, the Regional Director has filed additional affidavit dated 15.01.2021. The Regional Director has made certain observations in the report/representation:

"12. On examination of the Scheme and the reply submitted by the Petitioner Companies and in addition to the observations



of the ROC as stated above, the observations of the Deponent are as under:

- a) As per the para 9.1 of Part-B of the scheme it is stated that with effect from the effective date and upon the transfer of the VSAT undertaking-1 and vesting of the same with transferee company-1, the said transferee company shall discharge, to the transferor company-1, the lump sum consideration of INR 66,32,10,000/- in the form of cash through normal banking channels. Further, as per the para 9.1 of Part-C of the scheme it is stated that with effect from the effective date and upon the transfer of the VSAT undertaking-2 and vesting of the same with transferee company-2, the said transferee company-2 shall discharge, to the transferor company-2, the lump sum consideration of INR 33,42,90,000/- in the form of cash through normal banking channels.

From the above statement of the Scheme, the observations of the Deponent are:

- i. That as per the scheme there is no transaction of arrangement of the company with its shareholders and/or creditors as stipulated under section 230 of the Act, since no shares are issued by the transferee company to the transferor company and purchase



consideration has been paid by the transferee companies to the transferor companies in cash, hence the transactions falls under the ambit of section 180(1) of the Act. In view of the above the petitioner companies may be directed by the Hon'ble Tribunal to comply the provisions of section 180(1)(a) of the Act to give effect of above transaction instead of filing the scheme before Hon'ble Tribunal.

- ii. As per the above contention, the transaction between Transferor Company-1 with Transferee Company-1 and the transaction between Transferor Company-2 with Transferee Company-2 are the matter involved in the Scheme which are independent in nature (since there is no transaction in between Transferor Company-1 with Transferor Company-2 or Transferor Company-4, similarly there is no transaction between Transferor Company-2 with Transferor Company-1 and Transferee Company-3), hence in above said matter and notwithstanding the submissions given above in (i), two separate applications are required to be filed instead of this single application since the above independent transaction does not fall under the ambit of single window clearance (being there is no common arrangement between all the Petitioner Companies).

- b) *The Scheme is silent about the details of assets and liabilities to be transferred from the Transferor Company-1 & 2 to the Transferee Company 1 & 2 respectively since the schedule 1 showing details of asset enclosed with the scheme is silent about the real assets to be transferred to the Transferee Companies from the Transferor Companies with their respective values, hence, the Hon'ble Tribunal may direct the Petitioner Companies to submit the same in consonance with the valuation report as submitted by the company to arrive such business valuation of the demerged undertakings which may be made part of the scheme to overcome any future ambiguity.*
- c) *As per para-1.13 of Part-A of the scheme it is stated that the functional Balance sheet of the VSAT undertakings and transferee companies shall be prepared using the Audited standalone and consolidated financial statement/Accounts prepared by respective external statutory Auditors as at 31.03.2018. In view of the above the balance sheets as at 31.03.2018 of the VSAT undertakings of the transferor companies shall be made as part of the scheme for the interest of the shareholders of the petitioner companies since the transferor company-1 is a listed company and also it has more than 2 lakh no. of shareholders who have existence round the globe.*



d) *Para 4.1 of the Part-B of the scheme speaks about transfer of contracts/purchase orders with customers and vendors including all contracts pending for renewal or fresh allocation of capacity with department of satellite (DoS) without limitation including Agreement no: INSAT-SES-9/Ku/VSAT/01/2017 dated 25th January 2017, Agreement no: GSAT 16/Ext.C/VSAT/03/2015 dated July, 06, 2015, Agreement no: GSAT/14/Ext./VSAT/02/2014 dated 23, march, 2014 and Agreement no. GSAT/14/Ku/VSAT/04/2018 dated 31st October 2018) deeds, bonds, lease deeds, agreements entered into with the various persons.....*

In the above contention of the scheme it is stated that contracts with DoS will be transferred from Transferor Company-1 to the Transferee Company-1 on approval of the Scheme by the Hon'ble Tribunal which involves a Department of Government of India (DoS). It is prayed before the Hon'ble Tribunal to direct the Petitioner companies to obtain no objection from the DoS for approval of the scheme."

10. In response to the observations of the Regional Director, the Petitioner Companies have stated:

"4.2 With respect to the observation contained in Paragraph 12(a)(i) of the RD Report, it is submitted:

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(a) Pursuant to Sections 230-232 of the Act, a company and its creditors and, or members are permitted to enter into, inter alia, an arrangement, and apply to the jurisdictional National Company Law Tribunal for seeking its sanction.

(b) In this regard, while there is no definition of "arrangement" that has been prescribed under the Act, reference may be drawn to Section 232 (1) (b) of the Act which states as follows:

"232. (1) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal--

(a); and

(b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies,

the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and



the provisions of sub-sections (3) to (6) of section 230 shall apply mutatis mutandis.” [Emphasis supplied]

- (c) *Accordingly, an arrangement under Section 230(1) of the Act read with Section 232(1)(b) of the Act includes transfer of whole or part of an undertaking, irrespective of whether such transfer is against issuance of shares (i.e. a demerger) or payment of cash consideration (i.e. a slump sale). Further, such arrangement is between a company and its creditors, members, and while the company has consented to the arrangement through a Board approval process, the Tribunal orders a meeting of the creditors, members for them to consent to the scheme.*
- (d) *In other words, the power to approve transfer of an undertaking under a scheme by way of slump sale, is vested with the company and its creditors, members. At the same time, such scheme can only be implemented upon being sanctioned by a Tribunal.*
- (e) *Accordingly, companies, for the purposes of seeking sanction, present scheme of arrangements (involving transfer of undertakings by way of slump sale) to the jurisdictional Tribunals. Such sanctions have been sought (and subsequently granted) both under the erstwhile Companies Act, 1956 as well as the Act. Illustrative examples of matters*



involving transfers by way of slump sale under schemes of arrangement are listed below:

S.No	Matter Name	Details	Citation / Case No.
1.	<i>In the matter of Nelco Limited, Tatanet Services Limited and Nelco Network Products Limited</i>	<i>Sanction of a scheme involving transfer of, inter alia, business of providing VSAT hardware and allied services for cash consideration.</i>	<i>C.P.(CAA)-1931/23 0-232/(MB)/2018, C.P.(CAA)-1934/23 0-232/(MB)/2018, C.P.(CAA)-1935/23 0-232/(MB)/2018</i>
2.	<i>United Spirits Limited vs. Nil</i>	<i>Sanction of a scheme involving the sale of a unit at market price i.e. by way of slump sale.</i>	<i>ILR 2015 KAR 2969</i>
3.	<i>In the matter of Scheme of Arrangement of Bharti Airtel Limited and Telesonic Networks Limited</i>	<i>Sanction of a scheme involving sale of, inter alia, optical fibre cable business for cash consideration.</i>	<i>CP. No. (CAA) 125 (PB) OF 2018</i>
4.	<i>In the matter of Scheme of</i>	<i>Sanction of a scheme involving sale of</i>	<i>CP/1396 & 1397/CAA/2019 in</i>

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	Arrangement of Apollo Hospitals Enterprise Limited and Apollo Pharmacies Limited and their respective shareholders	front-end retail pharmacy business for cash consideration.	CA/804 & 805/CAA/2019
5.	In the matter of Brigade Enterprises Limited, Brigade Hotel Ventures Limited, Brigade Hospitality Services Limited and Augusta Club Private Limited	Sanction of a scheme involving transfer of, inter alia, hotel business undertaking for a lump sum consideration to be discharged by way of issuance of optionally convertible redeemable preference shares or by cash or a combination of both.	CP(CAA)No. 78/BB/17
6.	In the matter of Heritage Foods Limited and Heritage Foods Retail Limited and Future Retail	Sanction of a scheme involving transfer of, inter alia, retail undertaking for cash consideration.	CP No. 276 of 2017 In CA No. 163 of 2017

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	<i>Limited and their respective shareholders</i>		
7.	<i>In the matter of The Tata Power Company Limited and Tata Advanced Systems Limited and their respective shareholders and creditors</i>	<i>Sanction of a scheme involving transfer of an undertaking by way of a slump sale for a lump sum consideration.</i>	<i>CP(CAA) No. 4655 (MB) 2018</i>
8.	<i>In the matter of Tata Motors Limited and Tata Advanced Systems Limited and their respective shareholders and creditors</i>	<i>Sanction of a scheme involving transfer of an undertaking by way of a slump sale for a lump sum consideration.</i>	<i>CP(CAA) No. 2954 (MB) 2019</i>
9.	<i>In the matter of Jindal Stainless Limited, Jindal Stainless (Hisar) Limited, Jindal United Steel</i>	<i>Sanction of a scheme involving transfer of three undertakings by way of a slump sale for a lump sum consideration.</i>	<i>CP No. 76 of 2015 connected with CP No. 38 of 2015</i>

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	<i>Limited and Jindal Coke Limited and their respective shareholders and creditors</i>		
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(f) *Additionally, undertaking a slump sale through a scheme of arrangement has also been recognized in the Securities and Exchange Board of India Circular (No. CFD/DIL3/CIR/2017/21) dated March 10, 2017 (“SEBI Circular”), with reference to a scheme involving transfer of whole or substantially the whole of the undertaking of a listed entity. In this regard, we have extracted below the relevant Paragraph (No. I(A)(9)(b)(v) of Annexure I to the SEBI Circular):*

“9. Approval of Shareholders to Scheme through e-Voting:

(a)

(b) *The Scheme of arrangement shall be acted upon only if the votes cast by the public shareholders in favour of the proposal are more than the number of votes cast by the public shareholders against it, in the following cases:*

i.....

ii.....

iii.....

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iv.....

v. where the scheme involves transfer of whole or substantially the whole of the undertaking of the listed entity and the consideration for such transfer is not in the form of listed equity shares;... [Emphasis Supplied]

(g) In any event, Sections 230-232 of the Act is a complete code by itself and is a "single window clearance system" as has been held through various judicial pronouncements, and it recognizes the transfer of the whole or part of an undertaking irrespective of whether such transfer is in lieu of cash consideration or against the issuance of shares, as noted above. Further, it is not the case that the provisions of Section 180(1)(a) of the Act which deal with, inter alia, sale of an undertaking, are not being complied with and at the same time the scheme is sought to be sanctioned otherwise in accordance with applicable law. Sanction of this Hon'ble Tribunal is being sought in terms of Sections 230-232 of the Act and accordingly, it cannot be stated that the Petitioner Companies are to comply with the provisions of Section 180(1)(a) of the Act instead of seeking sanction of this Hon'ble Tribunal.

4.4 With respect to the observation contained in Paragraph 12(a)(ii) of the RD Report, it is submitted that the Scheme which has been approved by the requisite shareholders and creditors of



the Petitioner Companies in their respective meetings and in accordance with the directions contained in the order dated May 11, 2020 as passed by this Hon'ble Tribunal, is a composite scheme of arrangement by way of which the Petitioner Companies seek to transfer the VSAT Undertaking 1 (as defined in the Scheme) of the Petitioner Company 1 to Petitioner Company 3, and the VSAT Undertaking 2 (as defined in the Scheme) of the Petitioner Company 2 to Petitioner Company 4. The business activities undertaken by Petitioner Company 1 and Petitioner Company 2 with respect to the VSAT Undertaking 1 and VSAT Undertaking 2, respectively, are interconnected and will continue to be interconnected upon the Scheme being sanctioned by this Hon'ble Tribunal. In view of the same, and so as to provide the wholistic view of the transaction, a composite scheme of arrangement has been entered into between the Petitioner Companies and accordingly a joint application which is permissible in terms of Rule 2 of The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 has been filed with this Hon'ble Tribunal for seeking sanction of the Scheme.

4.5

4.6 *With respect to the observation contained in Paragraph 12(b) of the RD Report, it is clarified that Schedule I to the Scheme elaborates upon certain assets sought to be transferred by way of the Scheme, and further the said Schedule I also includes a*

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register of fixed assets as of March 31, 2018 in electronic form which the Petitioner Companies have filed with this Hon'ble Tribunal in the 1st motion application (No. CA(CAA)-186(PB)/2019). It is hereby clarified that under the proposed Scheme, ownership of any real estate is not getting transferred, either as part of VSAT Undertaking 1 to the Petitioner Company 3, or as part of VSAT Undertaking 2 to the Petitioner Company 4. The Scheme has been approved by the requisite shareholders and creditors of the Petitioner Companies in their respective meetings and in accordance with the directions contained in the order dated May 11, 2020 as passed by this Hon'ble Tribunal.

4.7

4.8 *With respect to the observation contained in Paragraph 12(c) of the RD Report, it is submitted that the Scheme has been approved by all the shareholders of the Transferor Company 2, Transferee Company 1 and Transferee Company 2 and the preference shareholders of the Transferor Company 1 and also by an overwhelming majority of the equity shareholders of the Transferor Company 1. Further, during the course of the proceedings, no queries were received from any of the shareholders with respect to the provision of the balance sheets as at March 31, 2018 of the VSAT undertakings. Moreover, the audited financial statements of the Transferor Company 1 for the*



financial year 2018-2019 are readily available on its website (www.airtel.in).

4.9

4.10 With respect to the observation contained in Paragraph 12(d) of the RD Report, the Petitioner Company 1 and Petitioner Company 3 submit that Department of Space (“**DoS**”) is not a sectoral regulator. The license for providing VSAT services (“**License**”) has been issued to the Petitioner Company 1 by the Department of Telecommunications (“**DoT**”), and rights to satellite capacity under the contracts being referred at Paragraph 12(d) of the RD Report (“**Contracts**”) are a subset of such License. Accordingly, it is the DoT that is the relevant sectoral regulator, to whom notice has been issued in accordance with Section 230(5) of the Act and as per the directions given by this Hon’ble Tribunal by way of its order dated September 23, 2020. In this regard, the e-mail response dated December 2, 2020 from Antrix Corporation, which is the commercial arm of the Department of Space may be relevant to note, as per which, for the purposes of transferring the Contracts, the Petitioner Company 1 has been asked to submit copy of the order of this Hon’ble Tribunal sanctioning the Scheme. Copy of the E-mail is annexed herewith and marked as Annexure – 4.”

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11. Counsel appearing for the Regional Director has stated that in view of the submissions by the Senior Counsel appearing on behalf of the Petitioner Companies, with respect to the observations in the Report, they do not have any objection to the Scheme. In view of the same, the objections of the Regional Director do not survive and the petition stands to be allowed.
12. The Income Tax department in its separate reports filed with this Tribunal have stated that there are Income tax liabilities in respect of Petitioner Companies 2 & 4. In response to the said reports, Petitioner Companies 2 & 4 have given an undertaking by way of two separate Affidavits stating, *inter alia*, that the tax liabilities will be met and discharged in accordance with applicable laws.
13. The Department of Telecommunications ("**DoT**") has filed an Affidavit and has made the following observations:

"8. That after receipt of the proposed Scheme, sent by Bharti Airtel Limited and Hughes Communications India Private Limited, the Department of Telecommunications, through a letter dated 06.07.2020 bearing office letter No. AS-21/ 1/2020-office of Dir (AS-V), communicated to Bharti Airtel Limited ("Transferor Company 1") and Hughes Communications India Private Limited ("Transferee Company 1"), inter alia, as below:

(i) It has been observed that the Composite Scheme of Arrangement envisages, inter alia, the transfer of the "VSAT



Undertaking 1" of BAL to HCIPL. The clause 1.35 of the Composite Scheme of Arrangement provides as below:

"1;35. "VSAT Undertaking 1" means the entire VSAT business undertaking, activities and operations of the Transferor Company 1 comprising of and including, as deemed fit, the Transferor Company 1 's CUG-VSAT authorization under the unified license granted by the DoT to provide VSAT services, to be transferred to the Transferee Company, 1, as well as, the satellite spectrum assets assigned to or relating to both CUG-VSAT authorizations under the unified license and NLD licence, on a going concern basis by way of a Slump Sale"

(ii) The proposed Composite Scheme of Arrangement shall be governed by the extant terms and conditions of NLD License and VSAT CUG authorisation under Unified License (UL), the Guidelines for transfer/ Merger of various categories of Telecommunication service licences/authorization under Unified Licence (UL) on compromises, arrangements and amalgamation of the companies dated 20.02.2014 (as amended from time to time), the Guidelines for grant of Unified License dated 19.08.2013 (as amended from time to time).

(iii) The clause 6.4(i)(b) of UL mandates that the scheme is to be formulated in such a manner that it shall be effective only after the written approval of the DoT for transfer/ merger of licenses.



In this regard, it is stated that BAL and HCIPL must ensure compliance of the aforesaid provision of the clause 6.4(i)(b) of UL.

(iv) Consequent to the Hon'ble NCLT's approval and sanction to the proposed Composite Scheme of Arrangement, transfer of the VSAT CUG authorization under UL held by BAL, and, the satellite spectrum assets relating to VSAT CUG authorization under UL and NLD Licence held by BAL, to HCIPL will be subject to the following conditions:

- (a) A time period of one year will be allowed for transfer/merger of licenses from the date of approval to the Composite Scheme of Arrangement by the Hon'ble NCLT, New Delhi.*
- (b) The Spectrum Usage Charge (SUC) as prescribed by the Government from time to time, on the total spectrum holding of the resultant entity (viz. HCIPL) shall be payable.*
- (c) All demands, if any, relating to the licences of merging entities, will have to be cleared by either of the two licensees before issue of the permission for merger /transfer of licenses/authorisation. This shall be as per demand raised by the Government/ licensor based on the returns filed by the company notwithstanding any pending legal cases of disputes. An undertaking shall be submitted by the resultant entity to the effect that any*



demand raised for premerger period of transferor or transferee company shall be paid. However, the demands of transferor and transferee company, stayed by the Court of Law, shall be subject to outcome of decision of such litigation.

(d) If consequent to transfer / merger of licenses in a service area, the Resultant entity becomes a "Significant Market Power" (SMP), then the extant rules & regulations applicable to SMPs would also apply to the Resultant entity.

(e) At the time of transfer of "VSAT Undertaking 1" of BAL to HCIPL, BAL will have to ensure compliance to the provisions of the Rule 5 of the Flight and maritime Connectivity Rules, 2018, towards providing the In-flight and Maritime Connectivity (IFMC) service."

14. Thus, the approval will be sought and the other conditions stipulated in the above affidavit would be required to be complied by the Petitioner Companies 1 and 3, in accordance with applicable laws. In addition, the DoT has filed an additional affidavit dated 10.02.2021 with respect to compliance of FDI norms by the Petitioner Company 3, which is taken on record.

15. It is also seen that the National Stock Exchange of India Limited and the BSE Limited have issued observation letters



dated October 29, 2019 and October 25, 2019, respectively, granting their no objection to the Scheme.

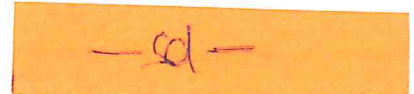
16. Certificates of the respective statutory auditors of the Petitioner Companies have been placed on record to the effect that the accounting treatment provided for in the Scheme is in conformity with applicable accounting standards notified under Section 133 of the Act.
17. In view of the foregoing, there appears to be no impediment in sanctioning the Scheme which appears to be fair and reasonable and not contrary to public policy or violative of any provisions of law. All the statutory requirements of Sections 230-232 of the Act are complied with. Taking into consideration the above facts, the Company Petition is allowed and the Scheme annexed with the Petition is hereby sanctioned.
18. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law. Further, the Petitioner Companies shall be bound to comply with the statutory requirements in accordance with law.
19. The Petitioner Companies shall be at liberty to apply to this Tribunal for any directions that may be necessary in the above matter.

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Accordingly, the **Scheme stands sanctioned** and
(CAA)-65(PB)/2019 stands disposed off.

Let a copy of the order be served to the parties.



(B. S. V. PRAKASH KUMAR)

ACTG. PRESIDENT



(HEMANT KUMAR SARANGI)

MEMBER (TECHNICAL)

23.03.2021

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