

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

**CA No. 207/2022
And
CP(CAA) No. 43/Chd/Hry/2022
(Second Motion)**

**Under Sections 230 to 232 read
with Section 66 of the Companies Act,
2013 read with Companies
(Compromises, Arrangements and
Amalgamation) Rules, 2016
R 11 NCLT Rules, 2016**

In the matter of Composite Scheme of Arrangement amongst:

IN THE MATTER OF:

**Bharti General Ventures Private
Limited,**

having its registered office at
Airtel Center, Plot No. 16, Udyog Vihar,
Phase-IV, Gurugram, Haryana-122015

...Transferor Company/
Petitioner Company No. 1

AND

Bharti Enterprises Limited,

having its registered office at
Airtel Center, Plot No. 16, Udyog Vihar,
Phase-IV, Gurugram,
Haryana-122015

...Transferee Company/
Petitioner Company No. 2

Order delivered on: 14.03.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Petitioner Companies:

1. Mr. NPS Chawla, Advocate
2. Mr. GS Sarin, PCS

For the Income Tax Department :

1. Mr. Yogesh Putney, Senior Standing Counsel
2. Mr. Yatin Chada, Junior Standing Counsel

PER: Subrata Kumar Dash, MEMBER (TECHNICAL)

JUDGEMENT

**CA No. 207/2022 and
CP (CAA) No. 43/CHD/HRY/2022**

1. This is a joint second motion company petition filed by the Petitioner Companies *namely*; **Bharti General Ventures Private Limited**, (Transferor Company/ Petitioner Company No. 1), and **Bharti Enterprises Limited** (Transferee Company/Petitioner Company No. 2), under section 230 to 232 along with section 66 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 (for brevity, the '**Act**') read with Rules 15 and 18 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity '**Rules**') in relation to the Composite Scheme of Arrangement amongst the Petitioner Companies.
2. The Petitioner Companies have prayed for sanctioning of the Composite Scheme of Arrangement amongst the respective companies. The said Composite Scheme of Arrangement is attached as Annexure–A of the petition. During the pendency of the matter, the Petitioner Companies have filed Company Application No. 207/2022 wherein an Amended Scheme of Arrangement envisaging alteration in the Appointed Date of the scheme from 01.11.2021 to 01.04.2022 has been filed which is attached as Annexure C of Diary no. 01897 Dated 12.08.2022.
3. The First Motion Application seeking directions for dispensing/ convening with the meetings of Equity Shareholders, Preference Shareholders, Debenture Holders, Secured Creditors and Unsecured Creditors of the Applicant Companies was filed before this Tribunal by Company Application

No. (CAA) 12/CHD/HRY/2022 and based upon such application moved under section 230-232 along with section 66 of the Act necessary directions were issued on 01.06.2022. In the order dated 01.06.2022, the meetings of Equity Shareholders, Preference Shareholders, Debenture holders, Secured Creditors and Unsecured Creditors of all Applicant Companies were dispensed with for the reasons recorded in the above-mentioned order.

4. The main objects, date of incorporation, and the rationale of the Composite Scheme of Arrangement had been discussed in detail in the order dated 01.06.2022.
5. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 12.07.2022 & 25.08.2022 and the same were complied by the Petitioner Companies by filing affidavit of service vide Diary No. 01277/01 dated 18.11.2022. The notice of hearing was published in newspapers *namely*, "Business Standard" (English) and "Jansatta" (Hindi) on 07.09.2022. The original copies of the newspapers are attached as Annexure- G of the aforesaid affidavit. It is also stated in the aforesaid affidavits that copies of notices were served upon the (1) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs; (2) Registrar of Companies, New Delhi and Haryana; (3) Official Liquidator (attached to the Hon'ble High Court of Punjab and Haryana); (4) Income Tax Authorities, through the Nodal Officer at the Principal Chief Commissioner, by all Petitioner Companies by way of speed post. The copies of the original postal receipts along with the tracking report are attached as Annexure C to E of the aforesaid affidavit.

6. In our aforementioned order dated 25.08.2022, this Bench had directed to serve the amended scheme of amalgamation while serving the copies of the company petition to the statutory authorities. This was done with the intention to make available all the relevant information to the statutory authorities based on the revised appointed date. The responses filed by the Regional Director/Registrar of Companies, Income Tax Department and Official Liquidator after taking into the effect of the revised appointed date.
7. It is deposed by the Counsel for the Petitioner Companies that pursuant to the publications in newspapers, no objection has been received by the petitioner companies or by the counsel for petitioner companies. The aforesaid affidavit has been filed by Diary No. 1277/10 Dated 18.11.2022.
8. In response to the abovementioned notices, the statutory authorities have furnished their replies.

8.1 Registrar of Companies (RoC)/ Regional Director (RD)

8.1.1 The Regional Director (RD) has filed its report along with the report of the Registrar of Companies (ROC) vide Diary No. 01277/8 dated 17.11.2022. Para 12 of the Report of the Regional Director sets out observations of the RoC as made in the Para 34 of RoC Report dated 10.10.2022, with regard to the approval of Insurance Regulatory and Development Authority (IRDAI), treatment of security premium account of transferor company post amalgamation non filing of consolidated Financial Statements of subsidiary company of transferor company, revision of valuation reports as the same has been prepared taking appointed date as 01.11.2021. The petitioner companies have replied to the aforesaid queries raised by the RoC and their reply is attached as Annexure C of the RD

report which is reiterated in Para 12 of the RD report. It is further stated by the Regional Director that the observations raised have been clarified by the petitioner companies.

8.1.2 Thus, no adverse observation can be inferred from the report of the Regional Director/ Registrar of Companies.

8.2 Official Liquidator

8.2.1 The Official Liquidator has filed his report vide Diary No01277/9 dated 16.11.2022. The Official Liquidator in its report has provided information on the incorporation of the Petitioner Companies, their capital structure, financial highlights, shareholding, etc. The Official Liquidator has also reproduced the extracts of Reports of the Statutory Auditors of the Petitioner Companies on the Financial Statements. It is also stated that pursuant to the Composite Scheme of Arrangement becoming effective, the Transferor Company shall stand dissolved without being wound up or liquidated.

8.2.2 Thus, the Official Liquidator has made no adverse observations in regard to the proposed Composite Scheme of Arrangement.

8.3 Income Tax Department

8.3.1 The Income tax Department has filed its report dated 29.09.2022 vide Diary No. 01277/2 dated 14.11.2022 stating that there are no prosecution proceedings pending against the petitioner companies and the Income Tax Department has no objection with regard to the Composite Scheme of Arrangement of the Transferor and Transferee Company.

8.3.2 Thus, the Official Liquidator has made no adverse observations in regard to the proposed Composite Scheme of Arrangement.

9. The certificate of the statutory auditors with respect to the Composite Scheme of Arrangement amongst the Petitioner Companies to the effect that the accounting treatment proposed in the Composite Scheme of Arrangement is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles was filed as Annexures C4 and D4 of the Petition.
10. We have heard the learned counsel for Petitioner Companies and perused the record carefully.
11. In the context of the above discussion, the Composite Scheme of Arrangement contemplated amongst the Petitioner Companies, appears to be prima facie in compliance with all the requirements stipulated under the relevant sections of the Companies Act, 2013. As the observations from the Statutory Authorities have been duly addressed by the Petitioner Companies and since all the requisite statutory compliance have been fulfilled, this Tribunal sanctions the Composite Scheme of Arrangement appended as **Annexure C** of Diary no. 01897 Dated 12.08.2022.
12. Notwithstanding the submission that no investigation is pending against the Petitioner Companies, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioners.
13. While approving the Composite Scheme of Arrangement as above, it is clarified 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, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

- i. That all the property, rights and powers of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 & 232 and Section 66 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same; and
- ii. That all the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 & 232 and Section 66 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company;
- iii. All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Company are entitled to include under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;

- iv. All contracts of the Transferor Company which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;
- v. All the employees of the Transferor Company shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favourable than those on which they are engaged by the Transferor Company, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;
- vi. That the Appointed Date for the scheme shall be 01.04.2022 as specified in the Scheme;
- vii. That the proceedings, if any, now pending by or against the Transferor Company be continued by or against the Transferee Company;
- viii. That the Transferee Company shall, without further application, allot to the existing members of the Transferor Company shares of Transferee Company to which they are entitled under the said Scheme;
- ix. That the fee, if any, paid by the Transferor Company on their authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme';

- x. That the assessment under the Income Tax Act will be in accordance with the provisions of Section 170 (2A) of the Income Tax Act, 1961.
 - xi. That the Transferee Company shall file the revised memorandum and articles of association with the concerned Registrar of Companies and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company; after setting off the fees paid by the Transferor Company;
 - xii. That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the concerned Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company, and the files relating to the Companies and Transferee Company shall be consolidated accordingly, as the case may be; And
 - xiii. That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
14. As per the aforesaid directions, formal orders in Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 be issued after the filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order by the Petitioner Companies.

15. All the concerned Regulatory Authorities to act on a copy of this order annexed with the Composite Scheme of Arrangement duly authenticated by the Registrar of this Bench.
16. CA No. 207/2022 and Company Petition CP (CAA) No. 43/CHD/HRY/2022 are allowed and disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

March 14, 2023
VN/SA

Sd/-

(Harnam Singh Thakur)
Member (Judicial)