

**Before the National Company Law Tribunal,
Chandigarh Bench
Corporate Bhawan, Plot No.4B, Sector 27-B, Madhya Marg,
Chandigarh.**

No: NCLT/CHD/Reg/CC/1110

Date: 12-2-2020

CP (CAA) No. 10/Chd/CHD/2019
Under Saction 230 to 232
of the Companies Act, 2013

IN THE MATTER OF SCHEME OF AMALGAMATION OF:

Golden Chem-Tech Limited

...Petitioner Company No.1/Transferor Company

And

Stylam Industries Limited

... Petitioner Company No.2/Transferee Company

To

Ms. Salina Chalana, Adv.
For Petitioner Companies
Chandigarh

Please find enclosed herewith a certified copy of order dated 11.02.2020,
for information and necessary action.


12.2.2020

Designated Registrar
for Registrar
NCLT, Chandigarh Bench

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

CP (CAA) No.10/Chd/Chd/2019

**Under Sections 230-232 of the
Companies Act, 2013.**

In the matter of Scheme of Amalgamation:

- 1. GOLDEN CHEM-TECH Limited**
Having registered office at SCO 14,
Sector 7-C, Madhya Marg,
Chandigarh 160019
PAN AABCG3552B

...Petitioner Company No.1/Transferor Company

AND

- 2. STYLAM INDUSTRIES LIMITED**
Having registered office at SCO 14,
Sector 7-C, Madhya Marg,
Chandigarh 160019
PAN AAACG5969R

...Petitioner Company No.2/Transferee Company.

Judgment delivered on 11.02.2020

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For the Petitioner-
Companies

- 1) Mrs. Munisha Gandhi, Senior Advocate
2) Ms. Salina Chalana, Advocate

For the Income Tax
Department

Mr. Yogesh Putney, Advocate

For the Official Liquidator &
Regional Director:

Mr. Deepak Agarwal, Advocate



Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

This is a joint second motion petition under Sections 230 to 232 of the Companies Act, 2013 (for short the 'Act') filed by the Petitioner Companies in terms of Rule 15 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, the 'Rules') for the sanction of Scheme of Amalgamation (for brevity 'Scheme') of Golden Chem-Tech Limited, (Transferor Company / Petitioner Company No.1) with Stylam Industries Limited (Transferee Company / Petitioner Company No.2). The joint petition is maintainable in terms of Rule 3(2) of the Rules.

2. The Petitioner Companies filed First Motion Application bearing CA (CAA) No.38/Chd/Chd/2018 before this Tribunal for seeking directions to convene the meetings of secured creditors of the Transferor Company and equity shareholders, secured and unsecured creditors of Transferee Company and for seeking dispensation of the meetings of equity shareholders and unsecured creditors of the Transferor Company.

3. The First Motion Application was disposed of vide order dated 21.12.2018 with a direction to hold the meetings of secured creditors of the Transferor Company and equity shareholders, secured and unsecured creditors of Transferee Company. Further, meetings of the equity shareholders and unsecured creditors in Transferor Company were dispensed with as mentioned in the order dated 21.12.2018 attached at Annexure A-12 of the petition.

4. The affidavits dated 29.10.2019 of Mr. Manit Gupta, Authorised signatory of all the Petitioner Companies with regard to compliance of all the directions given in the order dated 21.12.2018 was filed vide Diary No.6007 dated 31.10.2019. Notices are also stated to be sent to Income Tax Authorities, Regional Director (Northern Region), Official Liquidator and Securities & Exchange Board of India (SEBI). The courier receipts along with tracking reports are also part of the record.

5. Reports of the Chairperson have been filed vide Diary No.765, 766, 767, 767-A, 768, 769 and 770, dated 14.02.2019 along with the report of the Scrutinizer in respect of the meetings of secured creditors of the Transferor Company and equity shareholders, secured and unsecured creditors of the Transferee Company.

6. The Chairperson has reported that the secured creditors of the Transferor Company and equity shareholders, secured and unsecured creditors of the Transferee Company have unanimously approved the Scheme. Thereupon, the instant petition was filed for approval of the Scheme in terms of Rule 15 of the Rules.

7. The main objects, date of incorporation, authorized and paid-up share capital, interest of employees and rationale of the Scheme were already discussed in detail in First Motion order dated 21.12.2018 passed by this Tribunal.

8. It is further submitted that the certificates of statutory auditors of the Petitioner Companies have been filed with the first motion record, stating that the accounting treatment proposed in the Scheme is in accordance with requirements of Section 133 of the Act read with Rule 7 of



the Companies (Accounts) Rules read with the Rules made thereunder and other Generally Accepted Accounting Principles in India.

9. The audited financials of the Petitioner Companies as on 31.03.2018 and supplementary financial statements as on 30.09.2018 has been annexed as Annexures A-3 (Colly) and A-7 (Colly) of the petition.

10. As per the Scheme, the "Appointed Date" for the purposes of the Companies Act, 2013 and the Income-tax Act, 1961, means closing hours of business on 30th September, 2017 or such other date as may be approved by National Company Law Tribunal or such other competent authority. The Scheme provides for the manner in respect of share exchange ratio for which share exchange report along with fairness opinion report by V.B. Desai, Financial Services Limited is attached as Annexure A-10 of the petition. The share exchange ratio under the 'Scheme' has been determined in accordance with the report on share entitlement dated 20.11.2017 by Gandhi & Associates LLP, Chartered Accountants, the share exchange ratio is as follows:-

"100 (One Hundred) equity shares of Stylam of Rs.10 each fully paid for every 371 (Three Hundred & Seventy-One) equity shares of Golden Chem-Tech of Rs.10 each fully paid up as on 20th December, 2017"

11. When the petition was listed on 17.05.2019, the following directions were issued:-

"This is a Second Motion Company Petition filed by the petitioner-companies, namely, Golden Chem-Tech Limited (Transferor Company) and Stylam Industries Limited (Transferee Company) for sanction of the Scheme and for fixing a date of hearing of the main Company Petition as well as for a direction in relation to publication in press to be effected and notices to be issued to the authorities concerned in relation to date of hearing of the petition and calling for the objections, if any, to the Scheme of Amalgamation (here-in-after referred to as the 'Scheme') contemplated between the petitioner-companies. The petition has

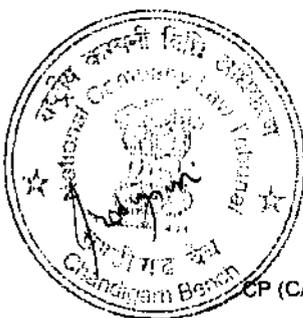


been filed in terms of Sections 230 and 232 of the Companies Act, 2013 read with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations), Rules 2016. The first motion application seeking directions for dispensing with the meetings of equity shareholders, secured creditors and unsecured creditors of the Transferor and Transferee Companies was filed before this Tribunal vide Company Application No.CA (CAA) No.38/Chd/CHD/2018 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, (for brevity, the 'Act') necessary directions were issued on 21.12.2018 to dispense with the meetings of the equity shareholders and unsecured creditors of the Transferor Company and to convene the meetings of secured creditors of Transferor Company and equity shareholders, secured and unsecured creditors of the Transferee Company on 09.02.2019.

| Sr. No. | Meeting of | Chairperson/Alternate Chairperson/Scrutinizer | Chairpersons Report | | Date of meeting |
|---------|---|---|---------------------|----------------|-----------------|
| | | | Date of report. | Date of filing | |
| 1. | Secured creditors of Transferor Company | Dr. J.N. Barowalia, District & Sessions Judge (Retd.), Mr. Prateek Gupta, Advocate and Mr. P.D. Sharma, Company Secretary | 14.02.2019 | 14.02.2019 | 09.02.2019 |
| 2. | Equity shareholders of Transferee Company | -do- | 14.02.2019 | 14.02.2019 | 09.02.2019 |
| 3. | Secured creditors of Transferee Company | -do- | 14.02.2019 | 14.02.2019 | 09.02.2019 |
| 4. | Unsecured creditors of Transferee Company | -do- | 14.02.2019 | 14.02.2019 | 09.02.2019 |

In compliance with the directions issued by this Tribunal, the meetings of the secured creditors of the Transferor Company and equity shareholders, secured and unsecured creditors of Transferee Company was held for which Chairperson, Alternate Chairperson and the Scrutinizer were appointed and they have filed their reports as detailed hereunder:

The Scheme was unanimously approved by the members present and voting. The learned counsel submits that the affidavit dated 04.02.2019 of the authorized signatory of the Applicant Companies was filed on 04.02.2019 stating the compliance with



regard to the directions issued by this Tribunal in the first motion petition and service of notices sent to the statutory authorities. The petition be listed for hearing on 12.07.2019. Notice of hearing be advertised in the same newspapers as in the first motion petition i.e. Business Standard (English), Chandigarh Edition and Jansatta (Hindi), Chandigarh Edition not less than 10 days before the aforesaid date fixed for hearing.

Notice be also served upon the Objector(s) or their representatives as contemplated under sub-section (4) of Section 230 of the Act who may have made representation and who have desired to be heard in their representation along with a copy of the petition and the annexures filed therewith at least 15 days before the date fixed for hearing. It be specified in the notices that the objections, if any, to the Scheme contemplated by the authorities to whom notice has been given on or before the date of hearing fixed herein may be filed within thirty days from the date of the receipt of the notice, failing which it will be considered that there is no objection to the approval of the Scheme on the part of the authorities by this Tribunal and subject to other conditions being satisfied as may be applicable under the Companies Act, 2013 and relevant rules framed thereunder.

In addition to the above public notice, each of the petitioner-companies shall serve the notice of the petition on the following Authorities namely, (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi (b) Registrar of Companies, Jammu & Kashmir at Jammu (c) Income Tax Department through the Nodal Officer - Principal Chief Commissioner of Income Tax, NWR, Aaykar Bhawan, Sector 17-E, Chandigarh by mentioning the PAN of the companies (d) Official Liquidator, Chandigarh (e) Bombay Stock Exchange (BSE) and (f) Securities and Exchange Board of India (SEBI), along with copy of this petition by speed post immediately and to such other Sectoral Regulator(s) who may govern the working of the respective companies involved in the Scheme.

The petitioner-companies are directed to file specific affidavits of the authorized representative to the effect that there is no other sectoral regulator(s) governing the business of the petitioner-companies and the petitioner companies shall also file the affidavit at least two days before the date fixed to the effect that no objections to the Scheme have been received by the petitioner-companies.

Both the petitioners shall at least two days before the date of hearing of the petition file an affidavit of service regarding paper publication as well as service of notices on the authorities specified above including the sectoral regulator as well as to objectors, if any.

Registry shall also report before the date fixed as to whether any objection has been received to the proposed Scheme in the registry. Registry is directed to add the record of First Motion Application."

12.

On 24.05.2019, the following order was passed:-

" The matter has been listed today to rectify mistake in the order dated 17.05.2019. It is found that in 4th and 5th line of the last paragraph at page-5, "Jammu and Kashmir at Jammu" has inadvertently been typed. Instead of "Jammu and Kashmir at Jammu", henceforth, it be read as "Punjab and Chandigarh at Chandigarh" The order dated 17.05.2019 is corrected accordingly to the above extent. Rest of the order remains the same.

The Registry will make correction accordingly in the order dated 17.05.2019."

13. The learned senior counsel for the petitioner companies filed compliance affidavit of Mr. Manit Gupta, the authorized representative of the Petitioner Companies dated 04.12.2019 (Diary No.6850 dated 04.12.2019). The registry has reported on 10.07.2019 that no objections have been received against the Scheme in this Tribunal.

14. The learned senior counsel has also furnished the copies of newspaper publications in 'Business Standard' (English) Chandigarh Edition, 'Jansatta' (Hindi) Chandigarh Edition both dated 11.06.2019 in compliance of the above order dated 17.05.2019 and 24.05.2019.

15. It is also stated in the affidavit dated 04.12.2019 that notices were sent by the petitioner-companies to (i) Regional Director (Northern Region), Ministry of Corporate Affairs; (ii) Registrar of Companies, Punjab and Chandigarh and SEBI. The courier receipts of the notices sent to the statutory authorities are part of the said affidavit.

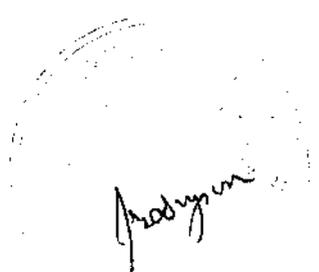
16. We have heard the Learned Senior Counsel for the petitioner Companies, Learned Counsel for the Income Tax Department & learned counsel representing the Official Liquidator and Regional Director and perused the records carefully.

The Regional Director, Northern Region, Ministry of



Corporate Affairs filed its report by way of affidavit of Dr. Raj Singh, Regional Director dated 21.11.2019. Following are the observations:-

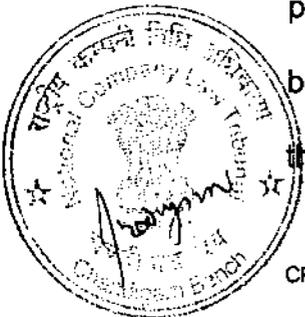
- (i) In para 11 of the report, it is stated that the applicant/petitioner companies vide letter dated 10.10.2019 submitted the copies of Form GNL-1 and its Challan of Both the Petitioner Companies; BSE report for having No Objection dated 04.10.2019; and Condonation of Delay for filing Form CG-1 and its Challan. It is also stated that the additional documents submitted by the petitioner companies may be considered in this regard.
- (ii) In para 12 of the report, it was further reported that the ROC, Punjab and Chandigarh has also submitted its report dated, 18.10.2019 and on further examination, it is observed that as per Annual Report made upto 29.09.2018, company having only six shareholders, however, as per section 3 of the Companies Act, 2013, a public company should have at least Seven shareholders/members. It is also submitted that the Transferor Company has violated the provisions of Section 3 of Companies Act, 2013 and the Transferor Company has to make the default good and get the offence compounded as per Companies Act, 2013. Copy of ROC report is



annexed as Annexure D of Diary No.39, dated 06.01.2020.

18. The Income Tax Officer, Ward-1 (5), Chandigarh has filed its report dated 26.07.2019 (Diary No. 3718 dated 29.07.2019) in respect of both the petitioner companies. It is submitted that there are no proceedings and tax demand pending against the petitioner companies under the Income Tax Act, 1961. It is further submitted that the Scheme of Amalgamation between the petitioner companies is prejudicial to the interest of the revenue and does involve public interest. It is also stated that the Transferor Company is a loss making company and losses to be set off in the assessment year 2018-19 is Rs.2,84,03,858/- and MAT Credit available is Rs.51,69,851/-, whereas the Transferor Company is a profit making concern. It is also reported that the brought forward losses shall affect the revenue.

19. The Deputy Commissioner of Income Tax, Circle-1(1), Chandigarh has filed its report dated 04.11.2019 (Diary No. 6126 dated 05.11.2019) in respect of Transferee Company. It is stated in the report that Scrutiny Assessment Proceedings for the assessment year 2017-18 and 2018-19 are pending with the Assessing Officer. It is also stated that the tax demand is Rs.54,579/- (Assessment Year 2006-07), Rs.1,85,840/- (Assessment Year 2013-14) and Rs.43,31,470/- (Assessment Year 2017-18) is pending with the revenue department. It is also submitted that the demands of the assessee have been proposed to be adjusted out of the refund pending for the assessee with the department after which the demands will become nil. It is further submitted that the Scheme of Amalgamation between the petitioner companies is prejudicial to the interest of the revenue and does



involve any public interest. It is also stated that the Transferor Company is a loss making company and losses to be set off in the assessment year 2019-20 are Rs.4,68,38,998/- and MAT Credit available is Rs.52,15,022/-, whereas the Transferor Company is a profit making concern. It is also mentioned that the brought forward losses of Transferor Company will adversely affect the revenue of the Transferee Company.

20. The petitioner companies in response to the Income Tax Report has filed reply vide Diary No.7004, dated 10.12.2019. It is submitted that it is not denied that the Transferor Company is a loss making company as the same have been duly reflected in the balance sheets appended with the petition at Annexure A-3 (Colly). It is further contended that the Scheme is not driven solely for the purpose of causing prejudice to the revenue department. It is further submitted that the Scheme is in no way against the law or public policy and the tax benefits which the Transferee Company may incur by setting off the losses of the Transferor Company are not in contravention to the provisions as provided under Income Tax Act or any law. The petitioner Companies has also relied upon the judgment of Hon'ble High Court of Gujarat in the case titled "Vodafone Essar Gujrat Limited Vs. Department of Income Tax (2013) 176 Comp Cas 7, wherein it was held that an act which is otherwise valid in law cannot be treated as non-est merely on the basis of some underlying motive supposedly resulting in some economic detriment or prejudice to the national interest as perceived by the respondent.

21. The Deputy Commissioner of Income Tax, Circle-1(1), Chandigarh has filed response to the reply of the petitioner companies dated 10.12.2019 (Diary No.395, dated 16.01.2020), wherein the contents of the



previous Income Tax Reports have been reiterated and it is further stated that the decision in the case titled "Vodafone Essar Gujrat Limited Vs. Department of Income Tax (2013) 176 Comp Cas 7, has no application in the present as the issue in the case in hand is altogether different. It is submitted that the appointed date of the Scheme is 30.09.2018 and the Scheme does not suggest set off of brought forward / carried forward losses. It is also submitted that the Amalgamation between the petitioner companies will erode the profits of Transferee Company to the extent of set off losses and therefore, the Scheme is detrimental to the interest of revenue. It is also reported that in view of Section 72A of Income Tax Act, the losses of the Transferor Company cannot be permitted to be set off and as per Section 79 of Income Tax Act, no loss shall be carried forward and set off against the income of the previous year in this case.

22. The Official Liquidator has filed its report vide Diary No.6071, dated 04.11.2019. It is submitted that the Scheme of Amalgamation between the petitioner-companies has not been technically approved by the shareholders of the Transferor Company. It is stated that there are six shareholders in Transferor Company as on 30.09.2018, which is in contravention of Section 3 of the Companies Act, 2013. It is also stated that one shareholder i.e. Late Shri Satish Gupta's shares have not been transferred in the name of his nominee or legal heirs till the approval of the Scheme. It is further mentioned that the Transferor Company has obtained NOC from the family members of Late Shri Satish Gupta, and who are not the shareholders in the Transferor Company.



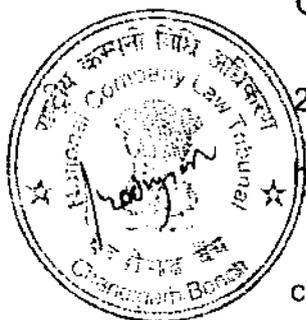
23. In response to the report of the Official Liquidator, the petitioner companies have filed reply (Diary No.7005, dated 10.12.2019) wherein it is admitted that Mr.Satish Gupta, shareholder in the Transferor Company passed away on 15.12.2017, but the affidavits of all legal heirs, consenting to the Scheme of Amalgamation and dispensation of meetings for the same were obtained and placed on record at Annexure A-5 (Colly) with the first motion application. It is further stated that all the shares in the name of Mr.Satish Gupta were duly transferred to his legal heir / wife, Mrs. Pushpa Gupta, pursuant to the order of the Addl.Civil Judge (Senior Division), Panchkula dated 22.08.2019. The copy of share certificates, order dated 22.08.2019 along with settlement deed are appended with the petition as Annexure-1 (Colly) of Diary No.7005. It is also submitted that in relation to the contravention of Section 3 of the Companies Act by the Transferor Company, Section 3A of the Act would take effect in that case.

24. The Official Liquidator has filed reply in response to the petitioner companies' written statement vide Diary No.544, dated 21.01.2020. It is stated that as submitted by the petitioner companies that they have placed affidavits of the legal heirs of Mr. Satish Gupta with the first motion application, it is observed that the date of obtaining of consent is not mentioned there. Further, the Official Liquidator has quoted the provisions of Section 72 (1) and 72 (3) which relates to "Power to Nominate" of the holder of securities, by which the securities shall vest into the nominee in the event of the death of the security holder. It is also reported that the petitioner company has violated the provisions of Section 3A and the punishment for the same shall fall under Section 450 of the Act.

25. BSE has filed its reports vide Diary Nos.452, dated 10.07.2019, 830, dated 07.10.2019 and 474, dated 17.07.2019. In the report, the Transferor Company is directed to comply with the provisions of para 1 (A) (3) (a) of Annexure 1 of Circular dated 10.03.2017 issued by SEBI, failing which the no objection granted by the Exchange may be considered as withdrawn. It is reported that the Transferor Company vide its letters dated 05.09.2019 and 18.09.2019 approached the Exchange for condoning the aforesaid non-compliance and informed to the Exchange about the alternative mode undertaken by the Company regarding disclosure of information about the said unlisted company. Copies of Company's letters dated 05.09.2019 and 18.09.2019 are attached as Annexure II of Diary No.830. It is also stated that the SEBI vide its letter dated 30.09.2019 has informed that it has taken on record the aforesaid action undertaken by the company for compliance of requirement of disclosure of information about the unlisted company for forwarding the abridged prospectus to all the shareholders.

26. It can be seen that the revenue department has raised objections as to the Scheme where the Transferor Company is a loss making concern whilst Transferee Company being a profit making company. It is alleged that the Amalgamation of Transferor Company with the Transferee Company, would be detrimental to the revenue department. Their contention is that the setting off losses of the Transferor Company with the Transferee Company would result in loss of revenue to the Income Tax Department.

27. The Hon'ble National Company Law Appellate Tribunal has held in the case titled "*Joint Commissioner of Income Tax Vs. Reliance Jio*



Infocom Limited and others" (Company Appeal (AT) Nos.113 and 114 of 2019, dated 20.12.2019) wherein in para 38 it is stated as under:-

"38. Mere fact that a Scheme may result in reduction of tax liability does not furnish a basis for challenging the validity of the same. In the Division Bench of the Hon'ble Gujarat High Court in "Vodafone Essar Gujarat Ltd. v. Department of Income Tax (2013) 176 Com Cas 7 (Guj)" while rejecting the similar objection of the Income Tax Department held:

"42. The main contention of the Income Tax Department is that the Scheme is floated with the sole object to avoid tax liability. Except the Income Tax Department no objections were raised by anyone against sanctioning the Scheme. In this connection, it is submitted by Mr. Mihir Thakor, learned Counsel for the Department that the transaction in question is nothing, but a transaction of assets of passive infrastructure of the transferor company into Indus, but the said transaction is given colour by an artificial device and with a view to save income-tax liability two stages are created by the appellant group i.e. Vodafone i.e. introducing a pre-ordained devise/conduit in the form of a new Company (the present Transferee Company) and transferring by way of Gift to this new Company and thereafter amalgamating this new Company into Indus. Both the stages are done under the guise of scheme u/s. 391 to legitimise the same by obtaining the seal of the Hon'ble Court and evade payment of Income Tax, stamp duty and VAT and other taxes. In this connection, it is required to be noted that as per the Scheme the Passive Infrastructure business and the telecommunication service business was sought to be segregated in order to achieve a commercial purpose and object inter alia being segregating the PI business and the telecommunications service business to enable further growth and maximize value in each of the business; improved quality of services to customers by establishing high service standards and delivering services in an environment friendly manner; increase in the speed of roll out and efficiency through sharing of infrastructure, converting the PI assets from non-revenue generating assets; improved network quality and greater coverage etc. It is required to be noted that various telecommunication companies in this country have adopted the business policy of segregation of telecommunication services and telecommunication infrastructure business as per the global trends prevailing as on today. During the course of hearing it has been pointed out that the working group under the Planning Commission has recommended sharing of infrastructure. Keeping the said object in mind if the Scheme has been framed and is approved by the shareholders in their wisdom, in our view, it cannot be said that the Scheme itself is floated with the sole criteria of tax avoidance simply because it may have effect and result into avoidance tax. If the Scheme is evolved by way of an arrangement and with an object of converting the PI assets from

non-revenue generating assets; improved network quality and greater coverage etc. Moreover the segregation of telecommunications services and telecommunications infrastructure business reflects the global trend and has been adopted by telecommunication companies in India without objection. In fact, the Working Group under the Planning Commission has recommended sharing of infrastructure, and the present Scheme reserves flexibility to it for easing such process when required. It may be relevant to note that even the Central Government has not raised any objection to the Scheme and even, the Department has not contended that the aforesaid objectives are imaginary. Therefore it cannot be said that the Scheme has no purpose or object and that it is a mere device/subterfuge with the sole intention to evade taxes, particularly when even the incidence of tax purportedly sought to be evaded is not established on facts. Further, similar scheme of arrangement proposed by other telecommunication companies to achieve the aforesaid objectives have been sanctioned by different High Courts. In our considered view, this Court cannot refuse the sanction on the aforesaid ground by coming to the conclusion that the only object of the Scheme is to avoid taxes.

43. It is, no doubt, true as argued by Mr. Thakor that in case the Scheme is sanctioned, it may result into tax avoidance on the part of the appellant, but it is required to be noted that even if the ultimate effect of the Scheme may result into some tax benefit or even if it is framed with an object of saving tax or it may result into tax avoidance, it cannot be said that the only object of the Scheme is tax avoidance. Considering the various clauses of the Scheme it is not possible for us to come to a conclusion that the Scheme is floated with the sole object of tax avoidance. In its commercial wisdom if the Company has decided to have a particular arrangement by which there may be even benefit of saving income-tax or other taxes, that itself cannot be a ground for coming to the conclusion that the sole object of framing the Scheme is to defraud the Income Tax Department or other taxing authorities. It is also required to be noted that identical Schemes have been approved by various High Courts as pointed out earlier. As per the Scheme, it proposed to demerge the passive infrastructure assets of seven transferor companies and transfer them to the transferee company. The transferor companies and the transferee company are wholly owned and subsidiary of transferee company viz. Vodafone Essar Mobile Services Limited. One of the objects for framing of the Scheme is segregation of passive infrastructure business and telecommunication services business is to enable further growth and maximize value in each of the businesses.

39. The aforesaid decision of the Hon'ble Gujarat High Court in "Vodafone Essar Gujarat Ltd." (Supra) was affirmed by the Hon'ble Supreme



Court in "Department of Income Tax v. Vodafone Essar Gujarat Limited – (2015) 16 SCC 629" wherein the Hon'ble Supreme Court observed: "2. We are not inclined to entertain the special leave petitions. The special leave petitions are, accordingly, dismissed. We only state that the Income Tax Department is entitled to take out appropriate proceedings for recovery of any tax statutorily due from the transferor or transferee company or any other person who is liable for payment of such tax due."

40. The case of the Appellant(s) is covered by the decision of the Hon'ble Supreme Court in "Department of Income Tax v. Vodafone Essar Gujarat Limited and Another" (Supra) and in view of the liberty given to the Income Tax Department, we are not inclined to interfere with the Scheme of Arrangement as approved by the Tribunal.

Both the appeals are dismissed. No costs."

28. In view of the above discussion and our considered view, if a company has decided to have a particular arrangement by which there may be a benefit of saving of income tax as well, it cannot be ascertained that the sole object of the Scheme is tax avoidance and same is against the public interest.

29. The Regional Director, Registrar of Companies and the Official Liquidator have submitted that the Transferor Company being a public limited company has to have at least seven members in total as per the requirement of Section 3 of the act. Their objection is that the Transferor Company did not have the minimum required number of members at the stage of first motion application and at present. Due to this, it is also contended that the Transferor Company has eventually contravened the provisions of Section 3 of the act and hence, liable to be punished as per the provisions contained in Section 450 of the Act. The petitioner companies have filed response and stated that Section 3A of the act comes into recognition when the provisions of Section 3 of the Act are not abided by. Section 3A of the Act is as follows:-

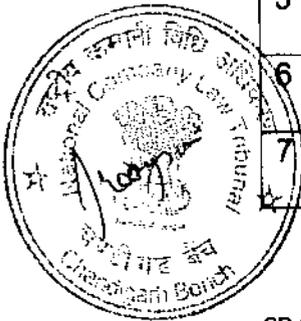
“3A.Members severally liable in certain cases.

If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor”

30. It is observed that the provision of Section 3A provides for the liability of each member where the number is reduced by seven in case of public limited company and two in the case of private limited company and each member of the company could be held severally liable and be sued for the payment of the whole debts of the company during such period of time.

31. The learned senior counsel has also placed on record the shareholding pattern of the Transferor Company as on 18.01.2020 certified by Mittal Goel and Associates, Chartered Accountants, which is as under:-

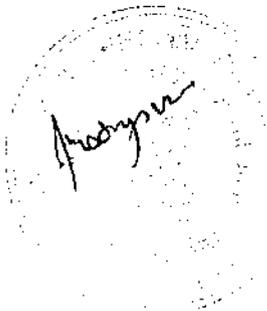
| Sr. No. | Particulars | Pre Merger | | Post Merger | |
|---------|-------------------|--------------------------------|------------------------|---------------------------------|------------------------|
| | | Pre-Offer No. of equity shares | % holding of Pre-Offer | Post-Offer No. of equity shares | %holding of Post-Offer |
| 1 | Mr. Jagdish Gupta | 266,500 | 23.34 | Nil | Nil |
| 2 | Mrs.Pushpa Gupta | 870250 | 76.20 | Nil | Nil |
| 3 | Mrs.Usha Gupta | 5,100 | 0.45 | Nil | Nil |
| 4 | Mr.Manit Gupta | 98 | 0.01 | Nil | Nil |
| 5 | Ms. Saru Gupta | 100 | 0.00 | Nil | Nil |
| 6 | Ms. Dipti Gupta | 1 | 0.00 | Nil | Nil |
| 7 | Mr. Manav Gupta | 1 | 0.00 | Nil | Nil |



| | | | | | |
|--|--------------|-------------------------|----------------------|--|--|
| | Total | <u>1,142,050</u> | <u>100.00</u> | | |
|--|--------------|-------------------------|----------------------|--|--|

32. The learned senior counsel for the petitioner-companies has referred to clause 7.1 of the Scheme which provides that all legal proceedings pending by or against the Transferor Company shall be continued by or against the Transferee Company and that clause 9.8 provides that all taxes paid or payable by the Transferor Company shall be deemed to be the corresponding item paid by the Transferee Company. Therefore, if any proceedings for contravention of any provisions of Income Tax Act, 1961 or Companies Act, 2013 in the case of Transferor Company, if required, may be instituted, against the Transferee Company.

33. In view of the above discussion, we conclude that the objections/observations to the Scheme received from RD and IT Department have been adequately replied by the Petitioner Companies and hence, there is no impediment in the sanction of the Scheme. The Scheme is approved and we hereby declare the same to be binding on all the shareholders and creditors of the Petitioner Companies and on all concerned. While approving the Scheme, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. With the sanction of the Scheme, the Transferor Company shall stand dissolved without undergoing the process of winding up. The Issued, Subscribed and Paid-up Share Capital of the Transferor Company shall stand cancelled and extinguished. Further, no



shares would be issued and allotted by the Transferee Company upon the amalgamation of the Transferor Company with the Transferee Company.

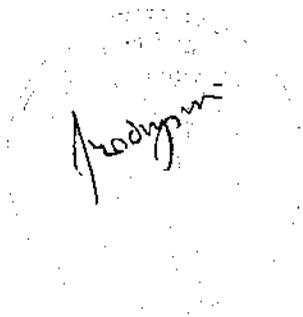
THIS TRIBUNAL DO FURTHER ORDER:

- 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 Section 230 to 232 of the Companies Act, 2013 be transferred to and vested in the Transferee Company for all estate and interest of the Transferor Company therein 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 Section 230 to 232 of the Act, be transferred to and become the liabilities of the Transferee Company; and
- iii) That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and
- iv) That all the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the 'Scheme'; and
- v) The authorized share capital of the Transferee Company shall stand increased and that of Transferor Company shall



stand cancelled and extinguished as provided in the Scheme; and

- vi) That the fee, if any, paid by the Transferor Company on its 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'; and
- vii) That the Petitioner Companies do, within 30 days after the date of receipt of the order of this Tribunal, cause a certified copy of this order to be delivered to the 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 and the concerned Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept in relation to the Transferee Company and the files relating to the said Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- viii) That the Transferee Company shall deposit an amount of ₹1,00,000/- (Rupees One Lac only) with the Pay & Accounts Officer in respect of the Regional Director, Northern Region, Ministry of Corporate Affairs within a period of three weeks from the receipt of the certified copy of this order.

A circular stamp with a signature written across it. The signature appears to be 'Pradyumn'. The stamp is faint and partially obscured by the signature.

- ix) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary, and
- x) Appointed date i.e. 30.09.2017 is hereby approved.
- xi) That if the Transferor Company is liable to be proceeded for contravention of any of the provisions of Income Tax Act, 1961 or Companies Act, 2013, the same may be instituted, against the Transferee Company.

34. As per the above directions and Form No. CAA.7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the petitioners filing the schedule of properties i.e. (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company by way of affidavit.

— Sd —

(Pradeep R. Sethi)
Member (Technical)

— Sd —

(Ajay Kumar Vatsavayi)
Member (Judicial)

February 11th, 2020
Ashwani





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M. Bilal 12.2.2020

DD / DR / AR / Court Officer
National Company Law Tribunal
Chandigarh Bench, Chandigarh