

HIGH COURT, BOMBAY

0391809

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.728 OF 2010

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.668 OF 2010

In the matter of Sections 391 to 394 of the
Companies Act, 1956;

And

In the matter of HTMT Telecom Private
Limited;

And

In the matter of the Scheme of
Amalgamation

Of

HTMT Telecom Private Limited

Into

Hinduja Ventures Limited

HTMT Telecom Private Limited Petitioner/ Transferor Company

And

COMPANY SCHEME PETITION NO. 729 OF 2010

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.669 OF 2010

Hinduja Ventures Limited Petitioner/ Transferee Company

Mr. Ashish Kamat i/b M/s Chitnis & Co. Advocates for the Petitioners in both the
Petitions

Mr. C. J. Joy and Ms. Soma Singh i/b Mr. H.P. Chaturvedi for Regional Director in both
the Petitions.

Dr. T. Pandian, Official Liquidator, present in Company Scheme Petition No.728 of 2010

CORAM: **S. J. Vazifdar, J**

Dated: **15th April, 2011**

PC:

1. Heard learned Counsel for parties.
2. The sanction of this Hon'ble Court is sought under Sections 391 to 394 of the Companies Act, to the Scheme of Amalgamation of HTMT Telecom Private Limited into Hinduja Ventures Limited.
3. Counsel appearing on behalf of the Petitioners has stated that they have complied with all the requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and the rules made thereunder. The Undertaking is accepted.
4. The Regional Director has filed an Affidavit stating therein that save and except as stated in paragraph 6 (a) to 6 (c) of the Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:

“a. Clause 4 of the Scheme deals with change in Object Clause of the Memorandum of Association of the Transferee Company. In this connection, the Transferee Company may be directed to comply with the provisions of section 40 read with section 18 of the Act

and to file amended copy of Memorandum of Association alongwith Form No. 21 with the Registrar of Companies.

- b. The present scheme of amalgamation does not provide for transfer of employees of the Transferor Company to the Transferee Company or to safeguard their interest. In this connection, the Transferor Company vide its letter dated 14/01/2011 clarified that the Transferor Company does not have any employees/ workers on its payroll as on date, hence the same is not included in the scheme. This is for the information of the High Court. A copy of the letter dated 14/01/2011 of M/s HTMT Telecom Private Limited (Transferor Company) is annexed hereto and marked as **Exhibit "D"**.
- c. In para (C) of Part I of the scheme, it is stated that the Transferor Company has applied for telecom licenses for 16 circles from the Department of Telecommunications (DoT), Government of India under UASL Telecom Policy. The Registrar of Companies in para 29 of his report dated 10/01/2011 stated that NOC from Department of Telecommunication may be insisted for the proposed scheme. In this regard the Registrar of Companies was called upon to ascertain as to whether any license was issued to the Transferor Company. The Registrar of Companies vide his report dated 20/01/2011 enclosing a copy of letter dated 10/01/2011 of the Transferor Company informed that the Transferor Company has not received any approval for the same either from the Department of Telecommunications (DoT), Government of India or from any other authority. Hence, it is felt that no reference has to be made to the Department of Telecommunications (DoT), Government of India in this regard. A copy of the report dated 21/01/2011 of the Registrar of Companies alongwith copy of letter dated 10/01/2011 of the Transferor Company are annexed hereto and marked as **Exhibit "E-1" & "E-2"** respectively.

5. As far as the objection of the Regional Director in paragraph 6 (a) of the Affidavit is concerned, the Petitioner through their counsel undertake to comply with the provisions of Section 40 read with Section 18 of the Act and to file as amended copy of the Memorandum of Association alongwith Form No. 21 with the Registrar of Companies. The said undertaking is accepted.
6. So far as the objection in paragraph 6 (b) of the said Affidavit is concerned, the Counsel for the Petitioner stated that the Transferor Company does not have any employees/ workers on its payroll as on date, hence the clause relating to the same is not included in the scheme. The submission made by the Counsel on behalf of the Petitioner is accepted.
7. As far as the contents of paragraph 6 (c) is concerned, the Counsel for the Petitioner stated that the Transferor Company has applied for telecom licenses for 16 circles from the Department of Telecommunications (DoT), Government of India under UASL Telecom Policy; however the Transferor Company has not received any approval either from the Department of Telecommunications (DoT), Government of India or from any other authority. The submission made by the Counsel on behalf of the Petitioner is accepted.
8. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
9. The Official Liquidator has filed his Report in Company Scheme Petition No.728 of 2010. In paragraph 10 of the said Report, the Official Liquidator has made certain observations which reads as under "On perusal of the Chartered

Accountants' report particularly subject to their note no. 2 in General Remarks and the letter dated 3rd March, 2011 received from the transferor company, the letter dated 21st March, 2011 from M/s Yogesh A. Oza & Co., Chartered Accountants, the Official Liquidator is of the opinion that the stamp duty is payable on these agreements. However, in view of the undertaking of the transferor company, that if it comes to their notice that inadvertently any stamp duty was short paid on the captioned agreements, they offer unconditionally to pay any stamp duty that may lawfully arise, this Hon'ble Court may kindly consider ordering dissolution of the company on its merits."

10. With reference to the aforesaid observations of the Official Liquidator, the Petitioner Transferor Company through its Counsel undertakes that if any stamp duty was short paid on the agreements, as mentioned in the Official Liquidators' Report, the Petitioner Company offer unconditionally to pay any stamp duty that may lawfully arise. The Undertaking is accepted.
11. There is no further objection to the Scheme save and except, as stated in paragraphs 4 to 10 hereinabove and since all the requisite statutory compliances have been fulfilled, both the Company Scheme Petitions i.e. the Company Scheme Petition No.728 of 2010 filed by the Transferor Company and the Company Scheme Petition No.729 of 2010 filed by the Transferee Company are made absolute in terms of prayer clause (a) of the respective Company Scheme Petitions.
12. The Transferor Company to lodge a copy of this Order and the Scheme, duly authenticated by the Company Registrar, High Court, Bombay, with the

concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the order.

13. The Petitioners in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai, Petitioner in Company Scheme Petition No.728 of 2010 to pay costs of Rs. 10,000/- to the Official Liquidator, High Court, Bombay towards his costs. Costs to be paid within four weeks from today.
14. Filing and issuance of the drawn up order is dispensed with.
15. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by Company Registrar, High Court, Bombay.

(S. J. Vazifdar J)

TRUE COPY
AM 20/04/11
Section Officer
High Court, Appellate Side
Bombay