

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI, COURT - II**

**Item No. 1**  
**CA-(CAA)-84/2021**

**IN THE MATTER OF:**

**Ericsson India Pvt. Ltd And Ericsson India ... Applicant/Petitioner**  
**Global Services Pvt.Ltd**

**Under Section: 230-232**

**Order delivered on 23.09.2021**

**CORAM:**

**SHRI. ABNI RANJAN KUMAR SINHA**  
**HON'BLE MEMBER (J)**

**SHRI L. N. GUPTA,**  
**HON'BLE MEMBER (T)**

**PRESENT:**


**None**

**ORDER**

Order pronounced in the Open Court today.



**(L. N. GUPTA)**  
**MEMBER (T)**



**(ABNI RANJAN KUMAR SINHA)**  
**MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI (COURT- II)**

**C.A.(CAA)-84/ND/2021**

**IN THE MATTER OF SCHEME OF AMALGAMATION :**

AMONGST

**ERICSSON INDIA PRIVATE LIMITED**

**...Applicant No.1/Transferor Company No.1**

AND

**ERICSSON INDIA GLOBAL SERVICES PRIVATE LIMITED**

**...Applicant No.2/Transferee Company No. 2**

WITH

**THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS**

**Order Delivered on : 23.09.2021**

**Section: 230 to 232 of the Companies Act, 2013**

**CORAM**

**SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)**

**SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)**

**PRESENT**

For Applicants : Mr. Hemant Sethi and Mr. Varun Lamba, Advs.

C.A.(CAA)84/ND/2021

Ericsson India Pvt. Ltd. and Ericsson India Global Services Pvt. Ltd.

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## ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

Under consideration is the Application No. C.A.(CAA)-84/ND/2021 filed under Sections 230 to 232 of the Companies Act, 2013. **The prayer made is to dispense with convening and holding of the meeting of Shareholders and Creditors** in relation to the Transferor and Transferee Companies for approval of the 'Scheme of Amalgamation' (hereinafter termed as "**Scheme**"), which as per the averment, shall take effect from the Appointed Date of 01.04.2021.

2. That M/s Ericsson India Private Limited (hereinafter referred to as the "**Transferor Company No.1**") having CIN no. U74899DL1999PTC047977 is a Private Limited company incorporated under the Erstwhile Companies Act, 1956 on 12.03.1992. The registered office of the Transferor Company No.1 is situated at 4th Floor, Dhaka House, 18/17 WEA, Karol Bagh, New Delhi-110005.

3. That M/s Ericsson India Global Services Private Limited (hereinafter referred to as the "**Transferee Company No. 2**") having CIN no. U72200DL2010PTC204192 is a Private Limited company incorporated under the Erstwhile Companies Act, 1956 on 16.06.2010. The registered office of the Transferee Company No.2 is situated at 4th Floor, Dhaka House, 18/17 WEA, Karol Bagh, New Delhi - 110005.



4. That the present Petition has been jointly filed by the Transferor and Transferee Company. Both the 'Transferor' and 'Transferee' Company together are called '**Applicant Company**' hereinafter. That the Registered offices of the Companies are in Delhi and therefore, the jurisdiction lies with this Bench.

5. It is averred by the Applicant Companies that the Transferor Company is a wholly owned subsidiary of the Transferee Company.

6. It is seen from the record that the Board of Directors of Transferor Company vide have approved the proposed 'Scheme' on 14.06.2021. The Board of Directors of Transferee Company approved the scheme on 25.06.2021.

7. It is stated by the Applicant Companies that the proposed Scheme of Amalgamation will result in the following benefits :

- "a) Enabling better leverage of facilities, infrastructure and human resources and better administration of the business operations.*
- b) Provisions of greater internal control and functional integration at various levels of the organization, such as information technology, human resources, finance, legal and general management leading to an efficient organization capable of responding swiftly to volatile and rapidly changing market scenarios.*
- c) Duplication of administrative functions and multiple record-keeping will be eliminated, thereby eliminating duplication of effort and also resulting in reduced expenditure...."*



8. That the Applicants have annexed their Affidavits, stated to be filed in compliance of Section 230(2) of the Companies Act, 2013 which are at page no. 441 to 450 of the paper book. However, on perusal on those Affidavits there was no specific averments with respect to details of any investigation or proceedings pending against the Applicant Companies.

9. That vide Order dated 09.08.2021, this Bench had directed the Applicant Companies to file their Affidavit in compliance of Section 230(2)(a) of Companies Act, 2013. That the Applicant Companies in response to the same have filed their Affidavits on 09.08.2021 stating that there is no investigation or any proceeding pending against the Applicant Companies.

10. That the Applicant Companies have also placed on record the Certificate from the Statutory Auditors confirming that their Accounting Standards are in conformity with the provisions of Section 133 of the Companies Act, 2013.

11. That the Applicant Companies have filed their respective Memorandum of Association (MoAs) and Articles of Association (AoAs). The Applicant Companies have also filed their latest Balance Sheets as on 31.03.2020.



12. That the position regarding the Applicant Company-wise no. of Shareholders and Creditors and their Consent through Affidavits is summarised overleaf :

Company	No. of Share holders	Percentage of Shareholders given consent	No. of Unsecured Creditors	Percentage of Unsecured Creditors given Consent (in value)
Ericsson India Pvt. Ltd. Applicant No.1 Company/ Transferor	2	100%	473	Not Obtained
Ericsson India Global Services Pvt. Ltd. Applicant No.2/ Transferee Company	2	100%	177	Not Obtained

13. That it is submitted by the Applicant Companies that both the shareholders of each of the Applicant Companies have given 'no objection' to the Scheme on respective affidavits. Therefore, the requirement of convening the Meetings of Shareholders in respect of both the Applicant Companies may be dispensed with.

14. As regards the meeting of Unsecured Creditors of the Applicant Companies, the Applicant Companies have sought dispensation of the meeting Unsecured Creditors on the grounds mentioned in their averment as reproduced below :

*"28. It is the Applicant Company 1's prayer that this Hon'ble Tribunal may be pleased to pass directions for dispensing with the requirement of holding and convening a meeting of the unsecured creditors of the Applicant Company 1 to consider the Scheme, for the following reasons:*

*(i) The unsecured creditors referred hereinabove are in the nature of sundry creditors of the Applicant Company*

*in its day to day business, and they would be paid off in the ordinary course of business;*

*(ii) The Scheme is in no manner prejudicial to the interests of the said unsecured creditors;*

*(iii) In terms of the Scheme, no liability of any of the unsecured creditors of the Applicant Company 1 is proposed to be reduced or extinguished;*

*(iv) The net-worth of the Applicant Company 1 as on January 31, 2021 Rs. 23.227 Million (Rupees Twenty Three Thousand Two Hundred Twenty Two Million Only), and the pre-amalgamation and post-amalgamation net-worth of the Applicant Company 2 as on January 31, 2021 is Rs. 33,044 Million (Rupees Thirty Three Thousand Forty Four Million Only) and Rs. 55.722 Million (Rupees Fifty Five Thousand Seven Hundred Twenty Two Million Only) respectively. Accordingly, the Applicant Company 1 and the Applicant Company 2 have (and will continue to have) sufficient and positive net-worth as on January 31, 2021, which indicate that there are sufficient assets to meet the respective liabilities of the Applicant Company 1 and the Applicant Company 2 In view of the same, the post amalgamation net-worth of the Applicant Company 2 will be sufficient and positive which will enable the Applicant Company 2 to meet the aggregate liabilities of each of the Applicant Companies. A certificate issued by a Chartered Accountant, certifying the net-worth of the Applicant Company 1 as on January 31, 2021 as well as a certificate issued by a Chartered Accountant, certifying the pre amalgamation and post-amalgamation, net-worth of the Applicant Company 2 as on January 31, 2021 are annexed herewith as **ANNEXURE-A10** and **ANNEXURE-A11** respectively.*

*(v) The present Scheme is an arrangement between the Applicant Companies as contemplated under Section 230(1)(b) of the Act, as there is no compromise or arrangement with any of the unsecured creditors as no sacrifice is called for.*

*29. Alternatively, in the event this Hon'ble Tribunal holds that the meeting of the unsecured creditors of the Applicant Company 1 cannot be dispensed with, this Hon'ble Tribunal may be pleased to pass directions for*

*convening meeting of the unsecured creditors of the Applicant Company I to consider the Scheme. ..”*

15. The Applicant Companies have filed their written submissions and placed reliance on the following Judgements of Hon’ble NCLAT and the Co-ordinated Benches of this Tribunal :

- (a) Judgment dated April 6, 2021 delivered by the Hon’ble National Company Law Appellate Tribunal in the matter of Ambuja Cements Limited in Company Appeal (AT) No. 19 of 2021.
- (b) Judgment dated June 28, 2021 delivered by the Hon’ble National Company Law Appellate Tribunal in the matter of Mohit Agro Commodities in Company Appeal (AT) No. 59 of 2021.
- (c) Judgment dated August 19, 2019 delivered by the Hon’ble National Company Law Appellate Tribunal in the matter of DLF Phase – IV Commercial Developers Limited in Company Appeal (AT) No. 180 of 2019.
- (d) Order dated September 5, 2019 delivered by the Hon’ble National Company Law Tribunal, Mumbai Bench, in the matter of Ness Software Services Private Limited in CA(CAA) No. 2629/MB/2019.
- (e) Order dated February 7, 2020 delivered by the Hon’ble National Company Law Tribunal, Mumbai Bench, in the matter of Wonder Space Properties Private Limited in CA(CAA)/4149/MB/2019.

16. That the Applicant Companies have stated that Post-amalgamation, the net worth of the Transferee Company will be more than its pre-amalgamation net-worth and, therefore, the interest of the creditors of the Transferee Company will not be adversely affected. To support its





contention, the Transferee Company has annexed a copy of the Net-Worth Certificate issued by M/s. Shiv & Associates Chartered Accountants, indicating the pre-amalgamation and post-amalgamation Net Worth of the Transferee Company. The scanned copy of the said certificate is reproduced below :



**Shiv & Associates**  
Chartered Accountants

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To,  
The Board of Directors,  
Ericsson India Global Services Private Limited,  
4<sup>th</sup> Floor, Dhaka House 18/17,  
WEA Karol Bagh,  
New Delhi-110005.

PRE-AMALGAMATION AND POST-AMALGAMATION  
NET WORTH CERTIFICATE

The Board of Directors of Ericsson India Global Services Private Limited ("Transferee Company") at its meeting held on June 25, 2021, approved the Scheme of Arrangement ("Scheme") between Ericsson India Private Limited ("Transferor Company") along with the Transferee Company, subject to approval from the Hon'ble National Company Law Tribunal, New Delhi ("NCLT") and such other approvals as required under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013. The said Scheme has also been approved by the Board of Directors of the Transferor Company at its meeting held on June 14, 2021. The Transferor Company is a wholly owned subsidiary of the Transferee Company.

Although post-amalgamation net-worth certificate can only be drawn up after the Scheme becomes effective, we have been requested to provide a certificate for the pre-amalgamation and post-amalgamation net-worth of the Transferee Company to be determined on the assumption that the Scheme has been approved by the NCLT based on the standalone, unaudited financial statements available as on January 31, 2021. Accordingly, based on the details outlined in Paras 1 to 6 below, the net-worth referred to above has been determined and is indicated hereinafter Para 6.

1. The Scheme proposes the Appointed Date to be April 1, 2021, and the Effective Date to be the date on which the certified copy of the NCLT's order sanctioning the Scheme is filed by the respective Company with the Registrar of Companies, National Capital Territory of Delhi & Haryana.
2. For this certificate, we have determined the post-amalgamation net worth of the Transferee Company as if the amalgamation had been given effect on January 31, 2021. This, however, should not be construed to indicate that the Appointed Date is January 31, 2021.
3. The standalone, unaudited financial statements of the Transferor Company and the Transferee Company, as on January 31, 2021 (collectively, the "Statements"), have been prepared by the management of the respective Company, and we have relied on the same



data provided to us by the management. These financial statements have been provided to us by the respective Company and have been relied upon by us.

4. Respective Company is responsible for the maintenance of proper books of accounts and such other relevant records as prescribed by applicable laws which include collecting, collating and validating data and designing, implementing and monitoring of internal controls relevant for the preparation of the statements and drawing up the respective standalone, unaudited financial statements of the respective Company for the period ended January 31, 2021.
5. Our responsibility, for this certificate, is limited to certifying the particulars contained in the Statements based on the standalone, unaudited financial statements certified by the respective Company, the proposed Scheme, other relevant records and documents as maintained by the respective Company and does not include the evaluation of the adherence by the respective Company with all the applicable guidelines. We conducted our verification in accordance with the Standards on Auditing issued by the Institute of Chartered Accountants of India.
6. On the basis of our verification and examination of the proposed Scheme and according to the information and explanations provided to us by the management of the respective Company, we state that we have examined the annexed statement as prepared by the respective Company, with:
  - a) The standalone, unaudited financial statement of the Transferee Company for the period from April 1, 2020, to January 31, 2021, as certified by the management of the Transferee Company;
  - b) The standalone, unaudited financial statement of the Transferor Company for the period from April 1, 2020, to January 31, 2021, as certified by the management of the Transferor Company;
  - c) A certified copy of the proposed Scheme as approved by the Board of Directors of the Transferee Company at its meeting held on June 25, 2021, and by the Board of Directors of the Transferor Company at its meeting held on June 14, 2021; and
  - d) The information and explanation are given to us in relation to the above.

Based on the documents referred to in Para 6 above and the considerations in Paras 1 to 6 above, we certify that had the net worth of the Transferee Company been mathematically determined on January 31, 2021, after considering the effect of the Scheme as referred to above, the pre-amalgamation and post-amalgamation net worth of the Transferee Company would have been Rs. 33,044 Million and Rs. 55,722 Million, respectively as on that date. A statement of computation is annexed to this certificate. The net-worth determined above does not include the Capital Redemption Reserve amounting to Rs. 98 Million (pre-amalgamation) & Rs. 279 Million (post-amalgamation), Capital Reserve amounting to Rs. 31 Million (post-amalgamation) and

Capital Reserve on Business Combination Rs. 23,332 Million (post-amalgamation) as on January 31, 2021.

This certificate is issued at the request of the Transferee Company for onward submission to the NCLT or any other statutory authorities and for any other purposes incidental to obtaining regulatory or other approvals for the sanctioning of the Scheme.

For SHIV & Associates  
(Chartered Accountants)  
FRN: - 009989N



CA Abhishek Vashisht  
Partner  
M.No.526307  
Place: Faridabad  
Date: July 1, 2021  
Udin.: 21526307AAAAGN7295

17. Before adjudicating this Application on merits, we feel it necessary to visit the contents of the Additional Affidavits dated 09.08.2021 filed under Section 230(2)(a) of Companies Act, 2013 in compliance of our Order dated 09.08.2021. The scanned copy of one of the said Affidavits (the one filed by the Transferor Company) is reproduced overleaf :

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, AT NEW DELHI  
COMPANY APPLICATION NO. CA(CAA) – 84 OF 2021  
(under Sections 230-232 of the Companies Act, 2013)**

**IN THE MATTER OF THE COMPANIES ACT, 2013**

**AND**

**IN THE MATTER OF THE SCHEME OF ARRANGEMENT  
BETWEEN ERICSSON INDIA PRIVATE LIMITED AND  
ERICSSON INDIA GLOBAL SERVICES PRIVATE LIMITED**

**AND**

**IN THE MATTER OF:**

**Ericsson India Private Limited**, a company incorporated under the Companies Act, 1956 and having its registered office at 4<sup>th</sup> Floor, Dhaka House, 18/17 WEA, Karol Bagh, New Delhi – 110005.

**...Applicant Company 1/ Transferor Company**

**AND**

**Ericsson India Global Services Private Limited**, a company incorporated under the Companies Act, 1956 and having its registered office at 4<sup>th</sup> Floor, Dhaka House, 18/17 WEA, Karol Bagh, New Delhi – 110005.

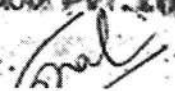
**...Applicant Company 2/ Transferee Company**

1/A

**ERICSSON INDIA PVT. LTD.**  
*[Signature]*  
Authorized Signatory

**I, Vishal Garg, son of Diwan Chand Garg, aged 51 years, residing at A 107, First Floor, Vikaspuri, Delhi - 110018, presently at New Delhi, do hereby solemnly affirm, and say as follows:-**

1. That I am the authorized signatory of Ericsson India Private Limited, the Applicant Company 1/ Transferor Company in the above matter ("Applicant Company 1") and am duly authorized by the board of directors of the Applicant Company 1 to make this affidavit on behalf of the Applicant Company 1.
2. That I am fully acquainted with the facts and circumstances of the instant matter and state that the statements made in the deposition in the forthcoming paragraphs herein are true and correct to the best of my knowledge, as derived from the officially maintained records/ documents made available to me, which I believe to be true and nothing material has been concealed therefrom and no part of it is false.
3. That a Joint Application under Section 230(1) of the Companies Act, 2013 ("Act") read with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 has been filed before this Hon'ble Tribunal and has been registered as CA(CAA)-84 of 2021.

ERICSSON INDIA PVT. LTD.  


4. That in terms of Section 230(2) of the Act, it is stated that the provisions of Section 230(2)(a) of the Act have been complied with and the necessary disclosures as stated therein have been made in the Joint Application and the contents thereof shall be read as part and parcel of the present affidavit and the same are not being repeated herein for the sake of brevity.

5. It is submitted that as per Section 230(2)(a) of the Companies Act, 2013, the Applicant Company 1 is required to disclose the investigations against the Applicant Company 1 that are considered as a material fact relating to the Applicant Company 1. The Applicant Company 1 submits that there are no such investigations pending against the Applicant Company 1, including under Sections 235 to 251 of the Companies Act, 1956 or corresponding notified sections of Companies Act, 2013, i.e., under Sections 210 - 217, 219, 220, 223, 224, 225, 226 and 227 of the Companies Act, 2013.

6. It is submitted that the scheme of arrangement between the Applicant Company 1 and the Applicant Company 2 ("Scheme"), does not contemplate any scheme of corporate debt restructuring as provided for under Section 230(2)(c) of the Act.

ERICSSON INDIA PVT. LTD.

7. It is submitted that since the Applicant Company 1 is a wholly owned subsidiary of the Applicant Company 2, there would be no issue of shares by the Applicant Company 2 to the shareholders of the Applicant Company 1. Accordingly, upon the Scheme becoming effective ("Effective Date"), the entire paid up equity share capital held by the Applicant Company 2 and its nominee in the Applicant Company 1 on the Effective Date shall stand extinguished and all such equity shares of the Applicant Company 1 held by the Applicant Company 2 either in its own name and in the name of its nominee shall be cancelled and shall be deemed to be cancelled on the Effective Date without any further application, act or deed, in the instant case.

8. The Applicant Company 1 submits that the contents of the Joint Application supported by an affidavit which has already been filed before this Hon'ble Tribunal consists of the averments, pleadings which is in accordance with the requirements of the provisions of the Act. However, without prejudice to the same and in addition to the averments in the Joint Application, the present affidavit has been prepared and is being filed on the basis of the observation/ direction of this Hon'ble Tribunal. The Applicant Company 1 reserves its right to file further responses in relation to the above, if deemed necessary.

*Blk*  
dealt the deponent who  
as signed in my presence.

VERIFICATION

I, Vishal Garg, the above named deponent, do hereby verify that the contents of Paragraph nos. 1 to 8 of my above affidavit are true and correct to the best of my knowledge, as derived from the officially maintained records/ documents made available to me, which I believe to be true and nothing material has been concealed therein and no part of it is false.

09 AUG 2021



Verified at New Delhi on this 9<sup>th</sup> day of August, 2021.



CERTIFIED THAT THE DEPONENT  
Shri / Smt. / Km : Vishal Garg  
S/o, W/o R/o : Dr. C. Garg  
I identified by Shri / Smt. : Dr. C. Garg  
Has solemnly affirmed before me at  
Delhi on ..... as SI No. 197  
That the contents of the affidavit which  
have been read & explained to  
him are true & correct to his knowledge

NOTARY

09 AUG 2021

18. That from perusal of the Para 4 & 5 of the aforesaid affidavit, we notice that the Transferor Company has submitted that "as per Section 230(2)(a) of the Companies Act, 2013 the Applicant Company 1 is required to disclose the investigations against the Applicant Company 1 that are



*considered as a material fact relating to the Applicant Company 1. **The Applicant Company 1 submits that there are no such investigations pending against the Applicant Company 1 including under Sections 235 to 251 of the Companies Act., 1956 or corresponding notified Sections of Companies Act., 2013, i.e., under Sections 210-217, 219, 220, 223, 224, 225, 226 and 227 of the Companies Act., 2013.***

Further, it goes on to state that the provisions of Section 230(2)(a) of the Act have been complied with and **the necessary disclosures as stated therein have been made in the Joint Application** and the contents thereof shall be read as part and parcel of the present Affidavit and the same are not being repeated.

19. It may be mentioned that the similar averments have been made by the Transferee Company in the Additional Affidavit filed by them.

20. In the light of the aforesaid averments made by the Transferor Company and Transferee Company, we now consider it necessary to visit the disclosures so made by them in the Joint Application. Accordingly, we refer to the page-271 of the paper book, where the Applicant Companies have jointly given details of the pending investigations and proceedings. The scanned copy of the same is reproduced overleaf :



**DETAILS OF MATERIAL INVESTIGATIONS OR PROCEEDINGS THAT  
HAVE BEEN INSTITUTED AND ARE PENDING AGAINST THE COMPANY**

AS ON 30<sup>th</sup> June 2021

We, the undersigned, state that there are no outstanding investigations or proceedings instituted and pending which has been determined to be material, against the Transferor Company or the Transferee Company, other than as disclosed hereinbelow.

AND WHEREIN, materiality has to be determined on a case-by-case basis depending on specific facts and circumstances relating to the information or event. To determine whether a particular event or information is material in nature, the criteria mentioned herein shall be applied. An event or information where the value involved or the impact exceeds 10% of the total revenue or 10% of the Net worth of the Transferor Company or the Transferee Company, whichever is less, based on the last audited financial statements of the Company has been considered material.

**I. Non - Tax Outstanding investigation or proceedings:**

As of the date, a brief summary of the ongoing material litigation against the Transferor Company is as follows:

-Re: Reliance Communications Ltd. i.e. ("RCOM") & its Associates

In 2013, Ericsson India Private Limited ("Ericsson") and Reliance Communications Ltd. i.e. ("RCOM") entered into a Managed Service Agreement ("MSA"). Certain RCOM associates also signed deeds of adherence to be bound by the terms of the MSA. From 2013 to 2017 Ericsson raised its invoices on RCOM and its associates ("Reliance Companies") from time to time based on purchase orders issued by the Reliance Companies and in consideration of the services provided under the MSA. In May 2017, Ericsson issued three notices under the Insolvency and Bankruptcy Code, 2016 ("Code") to the Reliance Companies, calling upon them to pay the amount of INR 978,72,06,974 being the acknowledged debt. Ericsson stopped the services being provided under the MSA with effect from 11.10.2017 for all the Reliance Companies. On 15.05.2018 the Hon'ble NCLT, Mumbai ("NCLT") passed the common order inter alia admitting the Petitions under Section 9 of the IBC Code against the three Reliance Companies. The Directors of the Reliance Companies filed Appeals under Section 61 of the IBC against the impugned order dated 15.5.2018 before the Learned NCLAT, New Delhi.

Further, during the hearing, RCOM entered into a settlement with Ericsson whereby RCOM duly agreed to pay INR 550 crores to Ericsson within the stipulated timelines. Based upon the settlement terms and taking the same on record, the NCLAT stayed the operation of the order passed by NCLT.

Further, given the settlement between the parties, RCOM preferred a Writ Petition No. 845 of 2018 before the Hon'ble Supreme Court of India ("Supreme Court") and the Supreme Court vide its order dated 3.08.2018 allowed and permitted the RCOM to file the appeal and as a result of the same a Special Leave Petition (C) No. 19850-19885 of 2018 through the Directors was filed for the withdrawal and terminating the insolvency proceedings as per the Code under the supervision of the NCLAT. The NCLAT is currently hearing the appeal filed against the RCOM.

The Supreme Court vide its order dated 03.08.2018 accepted the Settlement between the parties and confirmed that the timeline to be strictly to be adhered to and payment of RS 550/- Crores ( Rupees Five hundred and fifty Crores only) be made on or before 30th September 2018. It was also directed that the undertaking that is to be given by the Chairman of the concerned Company shall be given within one week from that day.

An amount of INR 550 crores was received by the Company in March 2019 based on the Supreme Court order dated 20th February 2019 in Contempt Petition Number 1838 of 2018, 550 of 2019, and 185 of 2019 in Writ Petition no. 845 of 2018 along with an interest of INR 29.74 Crores, aggregating to an amount of INR. 579.74 Crores concerning the proceedings which were initiated against three Reliance Group Companies by the Company.

The Resolution Professional appointed for the Reliance Group Companies under the provisions of the Code sought to claim a refund of the aforesaid amount. However, the applications filed before NCLAT were disposed of vide its order dated 18th September 2019.

The three Miscellaneous Applications for the demand of refund of the aforesaid amount paid to the Company are pending before NCLT. The Applications have not been listed as yet and arguments regarding the application filed for refund have not been heard yet.

The ongoing litigation has been identified as "material". An adverse order against the Company is not expected/ not likely regarding the refund demanded by the resolution professional as the amount of INR 550 Crores along with the interest amount of INR 29.74 Crores was paid to the Company under the clear directions of the Supreme Court in Contempt Proceedings decided against Mr. Anil Ambani & Others where 3 months sentence was awarded in case of non-payment of the aforesaid amount with interest to Ericsson.

## II. Tax Outstanding investigation or proceedings:

As of the date, there is no ongoing material tax litigation against the Transferor Company and Transferee Company.

Though, the Transferor Company and the Transferee Company have ongoing litigations in the areas of direct and indirect taxes. However, it is pertinent to mention here that most of these litigations are related to the matters which have already been decided in their favour for earlier years by the appropriate authority(ies) and/or the Courts have given judgments in favour of the other taxpayers on similar matters. Also, in some of the litigations, the tax authorities have adjusted certain demands against tax refunds due to the Transferor Company. Further, the litigations against the Transferor Company and the Transferee Company are below the threshold limit of materiality as aforesaid.

Accordingly, the amalgamating companies have strong reasons to believe (based upon the factual data, interpretation of laws and available jurisprudence, precedents applicable) of receiving favourable rulings/reliefs in these litigations and in a worst-case scenario, the final tax demands, if any, are not expected to pose any substantial financial burden on the amalgamated entity.

21. On perusal of the aforesaid statement of *"Details of Material Investigations or Proceedings that have been instituted and are pending against the Company"*, we observe that the Applicant Companies have subjected the disclosure to the following averment :

*“AND WHEREIN, materiality has to be determined on a case-by-case basis depending on specific facts and circumstances relating to the information or event. To determine whether a particular event or information is material in nature, the criteria mentioned herein shall be applied. An event or information where the value involved or the impact exceeds 10% of the total revenue or 10% of the Net worth of the Transferor Company or the Transferee Company, whichever is less, based on the last audited financial statements of the Company has been considered material.”*

Basing on the aforesaid criteria, the Applicant Companies, have declared investigations pending in the category of (a) Non-Tax Outstanding Investigations or Proceedings, and (b) Tax Outstanding Investigations or Proceedings.

22. Here, we would like to visit the contents of the Section 230(2)(a) of the Companies Act., 2013, which is reproduced below :

***“230. Power to compromise or make arrangements with Creditors and Members –***

- (1) .....
- (2) *The company or any other person, by whom an application is made under Sub-Section (1) disclose to the Tribunal by Affidavit-*
  - (a) *All material facts relating to the Company, such as the latest financial position of the company, the latest*



*auditor's report on the accounts of the company and the pendency of any investigation or proceeding against the company;"*

23. From the plain reading of the contents of Section 230(2)(a), it is clear that no criteria for considering a particular event or information as material for declaration under this provision, as the one assumed by the Applicant Companies, has been prescribed under the Companies Act. Hence, we observe that despite getting an opportunity vide our order dated 09.08.2021, the Applicant Companies have failed to file proper Affidavits disclosing the complete particulars of all the investigations/proceedings pending against each of them including Case No., Court in which pending, amount of debt involved, next date of hearing and the present status of the case etc.

24. Further, while going through the Application and the averments made therein, we observe that the Applicant Companies have not taken consent of the Creditors (having at least 90 percent value) by way of Affidavit on the proposed Scheme in terms of the provision under Section 230(9) of Companies Act, 2013 and have still sought dispensation of calling their meeting on the ground that there will be no sacrifice made towards the unsecured creditors and the scheme is, in no manner, prejudicial to the interests of the unsecured creditors.

25. That we further notice that there are 473 Unsecured Creditors representing a total outstanding unsecured debt of Rs.24,640.21 million as on 30.06.2021 against the Transferor Company. Similarly, there are 177 Unsecured Creditors representing a total outstanding unsecured debt of Rs.1,262.71 million against the Transferee Company.

26. That in terms of Accounting Reporting, the Creditors are the liabilities of the Company. That on approval of the Scheme, the liability worth Rs.24,640.21 million will be shifted to the 'Transferee' Company, which is already having an existing liability of Rs.1,262.71 million towards its own creditors.

27. In our considered view, the Unsecured Creditors of both the Applicant Companies cannot be kept in dark. If without their consent Affidavits, the meeting of the unsecured creditors is dispensed with, they will be deprived of an opportunity of being heard or oppose the Scheme.

28. That in accordance with law, it should be the well-informed decision of the Unsecured Creditors of the Transferor Company, whether they want to merge or shift the right to recover their debt from the Transferor Company to the Transferee Company, who is already saddled with the debt of 177 creditors. Further, whether the existing 177 creditors of Transferee Company are willing to welcome an addition of 473 Unsecured Creditors of the Transferor Company is a matter to be viewed and expressly decided by the Creditors of the Transferee Company. Therefore, in our view

approval of the unsecured creditors of both the Applicant Companies is needed and cannot be evaded. Hence, it would be wrong to say that no prejudice can ever be caused to any of the creditors if the Scheme is approved without obtaining their explicit consent.

29. That the legislature under Section 230(9) of the Companies Act, 2013 has not made any exception in case of an amalgamation between a holding and a subsidiary company from filing the consent Affidavits of Creditors, nor has it given any explicit power to this Tribunal to dispense with the meeting of the creditors in absence of their consent affidavits in any circumstance. The contents of Section 230(9) of Companies Act, 2013 are reproduced below:

*“9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. Value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.”*

30. Here, it is worthwhile to refer to the Judgment in the matter of **Nathi Devi v. Rahda Devi Gupta in Case No. Appeal (Civil) 5027 of 1999**, dated 17.12.2014, wherein the Hon'ble Supreme Court observed that :

*“It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting error...”*

31. In sequel to the aforesaid discussion, we conclude that the Affidavits filed under Section 230(2)(a) of Companies Act, 2013 are incomplete and defective. Further, we are not inclined to dispense with the meeting of Unsecured Creditors of any of the Applicant Companies in light of the facts of the case and in the absence of their consent Affidavits in terms of Section 230(9) of the Companies Act, 2013.

**32. The Application is accordingly Dismissed.**

33. However, liberty is granted to the Applicant Companies to file a fresh Application on the same cause of action in accordance with the law by complying with all the applicable provisions.



**(L. N. Gupta)**  
**Member (T)**



**(Abni Ranjan Kumar Sinha)**  
**Member (J)**