

PAGES : 12

CHARGE : 51

O/42988/2016

Read By :

Prepared By : ARCHANA KATARA

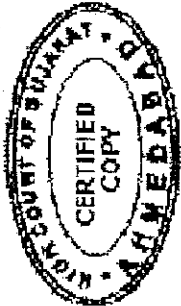
Applied on : 25/11/2016

Examined By :

Prepared on : 21/12/2016

Notified on : 21/12/16

Delivered on : 21/12/16



Dy.S.O.

Section Officer

Decree Department

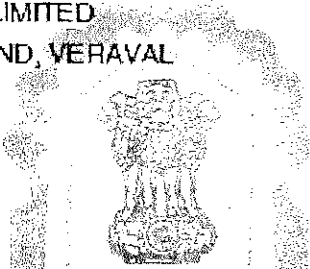
Decree Department

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION 446 of 2016

In COMPANY APPLICATION 425 of 2016

1 . ADITYA BIRLA FINANCE LIMITED
INDIAN RAYON COMPOUND, VERAVAL
GUJARAT - 362 266



Petitioner(s)

VERSUS

1 ..
..

THE HIGH COURT
OF GUJARAT

Respondent(s)

Being ^{COMP} No. 446 of 2016

Appearance on Record:

SINGHI & CO as ADVOCATE for the Petitioner(s) No. 1

NOTICE NOT RECD BACK for the Respondent(s) No. 1

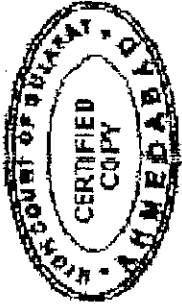
COURT'S ORDER :

CORAM :

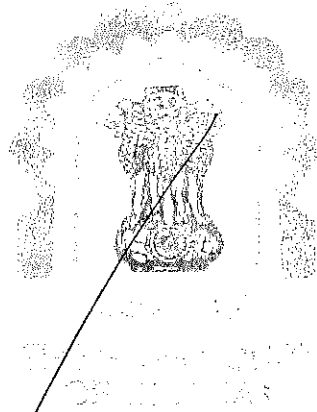
HONOURABLE SMT. JUSTICE ABHILASHA KUMARI

NATIONAL INFORMATICS CENTRE

Data of Decision: 24/11/2016
(COPY OF JUDGEMENT ATTACHED HEREWITH)



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D/COMP/446/2016

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION NO. 445 of 2016

In

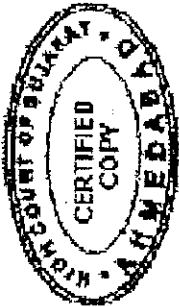
COMPANY APPLICATION NO. 424 of 2016

With

COMPANY PETITION NO. 446 of 2016

In

COMPANY APPLICATION NO. 425 of 2016



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ADITYA BIRLA MONEY MART LIMITED...Petitioner(s)

Versus

.....Respondent(s)

Appearance:

MR SANDEEP SINGHI, ADVOCATE WITH MR PRANJAL BUCH FOR SINGHI & CO, ADVOCATE for the Petitioner(s) No. 1
MR KSHITIJ AMIN, CENTRAL GOVT. STANDING COUNSEL FOR MR DEVANG VYAS, ASSISTANT SOLICITOR GENERAL OF INDIA for Respondent(s) No. 1

CORAM: HONOURABLE SMT. JUSTICE ABHILASHA KUMARI

Date : 24/11/2016

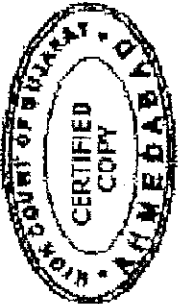
COMMON ORAL ORDER

1. Heard Mr.Sandeep Singhi, learned advocate for Singhi & Co, on behalf of the Petitioner Companies, Mr. Kshitij Amin, learned Central Government Standing Counsel for Mr. Devang Vyas, learned Assistant Solicitor General of India.

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2. These are the petitions filed by the two Petitioner Companies for sanctioning of the Scheme of Arrangement of Aditya Birla Money Mart Limited (Demerged Company) with Aditya Birla Finance Limited (Resulting Company) (Scheme).



3. The Petitioner of the Company Petition No.445 of 2016, i.e., Aditya Birla Money Mart Limited, had filed an application in this Court, being Company Application No. 424 of 2016, for dispensing with the convening and holding of the meetings of the Equity Shareholders, Sole Preference Shareholder and Unsecured Creditors of the said Company. It was also prayed that this Court be pleased to dispense with the separate procedure to be followed under the provisions of the Companies Act, 1956, for the purpose of reductions of the paid up equity and preference share capital as the same forms an integral part of the Scheme itself. This Court, vide its order dated 28.9.2016, inter alia, dispensed with the convening and holding of the meetings of the

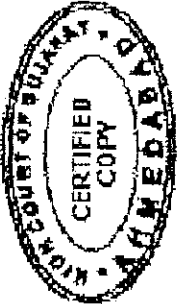
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Equity Shareholders and the Sole Preference Shareholder of the said Company, in view of the consent affidavits to the Scheme received from all the Equity Shareholders and the Sole Preference Shareholder. This Court also dispensed with the meeting of the Unsecured Creditors of the said Company and further held that no separate procedure is required to be followed for reductions of the paid up equity and preference share capital, as the same is part and parcel of the present Scheme. This Court vide its aforesaid order dated 28.9.2016 also noted that there are no Secured Creditors of the said Company.

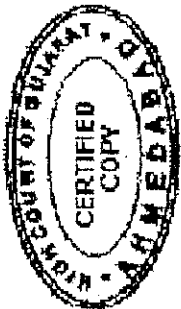
4. The Petitioner of the Company Petition No. 445 of 2016, i.e., Aditya Birla Finance Limited, had filed an application in this Court being Company Application No.425 of 2016, for dispensing with the convening and holding of the meetings of the Equity Shareholders, sole Preference Shareholder, Secured Creditors and Unsecured Creditors of the said Company. This Court vide its order dated 28.9.2016, inter alia, dispensed with the



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convening and holding of the meetings of the Equity Shareholders and sole Preference Shareholder of the said Company in view of the consent affidavits to the Scheme received from all the Equity Shareholders and the sole Preference Shareholder. This Court also dispensed with the meetings of the Secured Creditors and Unsecured Creditors of the said Company.

5. The Petitioners, thereafter, filed Company Petition Nos. 445 and 446 of 2016, seeking the sanction of the Scheme. This Court by its orders both dated 5.10.2016, admitted the aforesaid Company Petitions and directed the issuance of notice to the Regional Director in Company Petition Nos. 445 and 446 of 2016. This Court also directed the publication of the notice of the hearing of the petition in the English daily newspaper, "Indian Express", Ahmedabad Edition and the Gujarati daily newspaper, "Sandesh", Rajkot Edition, in Company Petition Nos. 445 and 446 of 2016. This Court had dispensed with the publication of the notice in the Gujarat

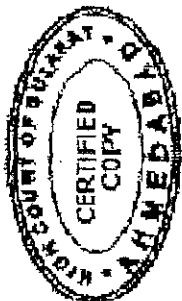
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Government Gazette.

6. Pursuant to the order dated 5.10.2016, the Petitioners of Company Petition Nos. 445 and 446 of 2016 have published the notice of the hearing of the petition in the English daily newspaper, "Indian Express", Ahmedabad Edition and in the Gujarati daily newspaper, "Sandesh", Rajkot Edition both on 22.10.2016. The affidavits of service, on behalf of the petitioner companies both dated 9.11.2016, have been filed, confirming the publication of the notices in the newspapers as directed and also the notice of the hearing of the petitions being served upon the Regional Director.

7. In response to the notice to the Regional Director, Ministry of Corporate Affairs, the Regional Director has filed common affidavit dated 23.11.2016. In paragraph 2(d) of the said common affidavit it is observed that this Court be pleased to direct the Petitioner Company in Company Petition No.445 of 2016, to ensure the

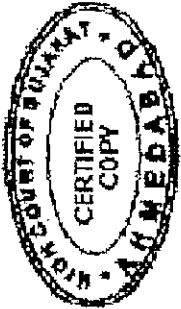


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compliance of guidelines issued by RBI from time to time. It is further observed in paragraph 2(e) of the said common affidavit that this Court be pleased to direct the Petitioner Companies to submit the complete list and full details of assets and liabilities which are proposed to be transferred to the Resulting Company through this Scheme. It is further observed by the Regional Director in paragraph 2(f) of the said common affidavit that this Court be pleased to direct the petitioner companies to place on record all the relevant facts in the matter and to satisfy that these contingent liabilities, in case they get invoked, will not affect the financial position of the Company adversely, so as to impact the liquidity of the Company and its continuance/going concern concept. It is further observed by the Regional Director in paragraph 2(g) of the said common affidavit that this Court be pleased to direct the petitioner companies to undertake the compliance of the Income Tax Act and Rules.

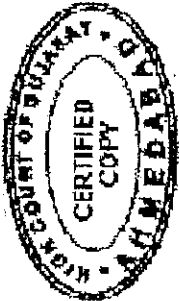


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8. Mr. Singhi, learned Advocate appearing for the Petitioner Companies states that one of the Petitioner Companies, namely Aditya Birla Finance Limited has filed the necessary affidavit in reply dated 24.11.2016 to the common affidavit dated 23.11.2016 filed by the Regional Director.



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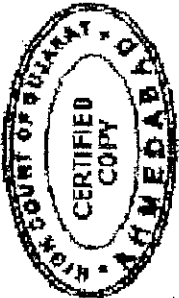
9. In respect of the observations made by the Regional Director at paragraph 2(d) of the common affidavit, the Petitioner Company, in paragraph 3 of its reply, has stated that the NOC from RBI is not required to be obtained by the Resulting Company as per the circular no. DNBR (PD) CC. No. 065/03.10.001/2015-16 dated 9.7.2015 issued by RBI. In light of the aforesaid, this Court is of the view that the observations of the Regional Director at paragraph 2(d) of the common affidavit are no longer tenable.

10. In respect of the observations made by the Regional Director at paragraph 2(e) of the common affidavit, Resulting Company has now produced the statements of assets and liabilities of the

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Wealth Management Undertaking of the Demerged Company as on 1.4.2016, duly certified by the Chartered Accountant, at Annexure-B to the said reply. In light of the aforesaid, this Court is of the view that the observations of the Regional Director at paragraph 2(e) of the common affidavit stand satisfied.



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11. In respect of the observations made by the Regional Director at paragraph 2(f) of the common affidavit, the Petitioner Company in paragraph 5 of its reply has stated that the Resulting Company has already produced its statement of excess of assets over liabilities as on 31.8.2016 which is Rs. 4072.18 crores (after giving effect to the demerger) duly certified by the Chartered Accountant dated 17.9.2016 with the Company Application No. 425 of 2016 at Annexure-M (Colly) and therefore, the contingent liabilities would not affect the financial position of ABFL. In light of the aforesaid, this Court is of the view that the observations of the Regional Director at paragraph 2(f) of the common affidavit are

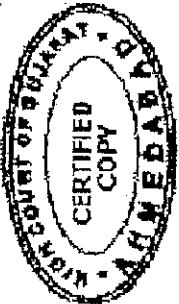
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satisfactorily answered.

12. In respect of the observations made by the Regional Director at paragraph 2(g) of the common affidavit, the Petitioner Company in paragraph 6 of its reply has stated that the Scheme is in compliance with the provisions of Section 2(19AA) of the Income Tax Act, 1961.

13. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the proceedings, it appears that the requirements of the provisions of sections 391 to 394 of the Companies Act, 1956 are satisfied. The Scheme appears to be genuine and bonafide and in the interest of the shareholders and creditors. This Court, therefore, accordingly allows the Company Petitions and approves the Scheme, which includes reductions of the paid up equity share capital and paid up preference share capital of the Demerged Company. The Scheme is hereby sanctioned. The prayers made in the respective Company Petitions are granted.

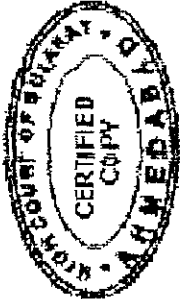


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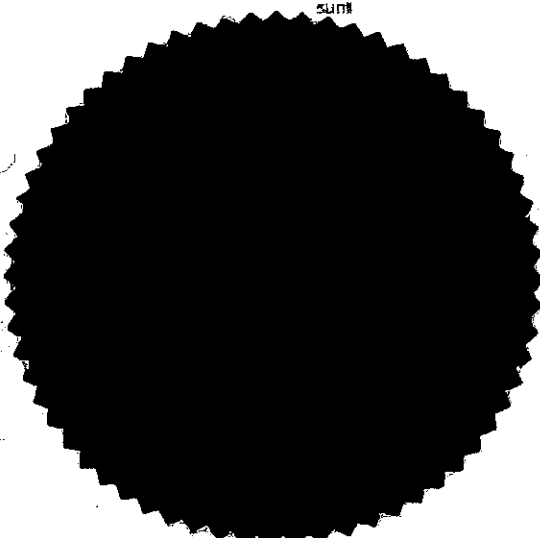
14. The petitions are allowed accordingly. Fees of Mr.Devang Vyas, learned Assistant Solicitor General of India, are quantified at Rs.7,500/- in each of the petitions. The said fees would be paid by the Resulting Company.



15. Filing and issuance of drawn up orders are dispensed with. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar, High Court, Gujarat. The Registrar, High Court of Gujarat shall issue the authenticated copy of this order along with Scheme within seven days of passing of this order.

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Sd/-
(SMT. ABHILASHA KUMARI, J.)



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