

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**COMPANY PETITION No. 21 of 2005**  
**In**  
**COMPANY APPLICATION No. 20 of 2005**  
**With**  
**COMPANY PETITION No. 22 of 2005**  
**In**  
**COMPANY APPLICATION No. 19 of 2005**

**For Approval and Signature:**

**HON'BLE MR.JUSTICE K.A.PUJ**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

**TERENE INDUSTRIES PRIVATE LIMITED - Petitioner(s)**  
**Versus**  
**.. - Respondent(s)**

**Appearance :**

NANAVATI ASSOCIATES for Petitioner No(s).: 1.

MR JITENDRA MALKAN for Respondent No(s).: 1.

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<b>CORAM :</b>	<b>HON'BLE MR.JUSTICE K.A.PUJ</b>
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**Date : 28/07/2005**

**COMMON ORAL JUDGMENT**

1. These two petitions are filed by the two petitioner Companies for sanction of Scheme of Arrangement between Reliance Infocomm Infrastructure Private Limited (Transferor Company) and Terene Industries Private Limited (Transferee Company) under which, certain specified undertakings of Reliance Infocomm Infrastructure Pvt. Limited are proposed to be transferred to Terene Industries Private Limited and as a result thereof, the consequent reduction of the share capital of Terene Industries Private Limited is proposed.

2. Reliance Infocomm Infrastructure Private Limited,

the petitioner of Company Petition No. 22 of 2005, was incorporated on 14.07.1993 in the State of Gujarat as a Public Limited Company, limited by Shares under the Companies Act, 1956 as Terene Fibres India Limited. The Company obtained the Certificate for commencement of business on 22.07.1993. Thereafter, it was converted into a Private Limited Company, after complying with the provisions of Section 21/31 of the Act and the name was changed to Terene Fibres India Private Limited and the Registrar of Companies issued fresh Certificate of incorporation on 27.03.1997. Subsequently, the name of the Company was changed to Reliance Infocomm Infrastructure Private Limited and the Registrar of Companies issued a fresh Certificate of Incorporation on 30.06.2003.

3. Terene Industries Private Limited, the petitioner of Company Petition No. 21 of 2005, was incorporated on 01.10.1990 in the State of Gujarat as a Public Limited Company, limited by Shares,

under the Companies Act, 1956 as "Reliance Yarn Limited". The Company obtained the Certificate for commencement of business on 25.10.1990. Thereafter, it was converted into a Private Limited Company, after complying with the provisions of Section 21/31 of the Act and the name was changed to "Reliance Yarn Private Limited" and the Registrar of Companies issued fresh Certificate of incorporation on 01.07.1996. Subsequently, the name of the Company was changed to "Silvassa Yarn & Investments Private Limited" and the Registrar of Companies issued a fresh Certificate of Incorporation on 11.09.1998. The name of the Company was changed to "Silvassa Yarn & Investment Limited" with effect from 07.10.1998 pursuant to Section 43-A(1) of the Act. The name was again changed to "Silvassa Yarn and Investments Private Limited" and fresh Certificate of Incorporation was issued by the Registrar of Companies on 29.09.1999. The name of the Company was once again changed to "Terene Industries

Private Limited" after complying with the provisions of Section 21 of the Act and fresh Certificate of Incorporation was issued by the Registrar of Companies on 21.10.2000.

4. The Board of Directors of both the petitioner Companies, have at their respective meetings held on 21.12.2004, approved the Scheme of Arrangement between Reliance Infocomm Infrastructure Private Limited and Terene Industries Private Limited. The said Scheme provides for the transfer of the specified Undertaking (as defined in the Scheme) from the Transferor Company to the Transferee Company and for the consequential reduction in the share capital account of the Transferee Company under the Provisions of Sections 100 & 391 to 394 of the Act. The Transferor Company has only 13 shareholders and the Scheme of Arrangement was duly approved by all the Equity Shareholders of the Transferor Company and copies of consents have been attached as Exh. F-1 to F-13 of the petition.

The Transferor Company had about 800 Unsecured Creditors for an aggregate amount of Rs.481,91,97,667/-. Out of this Unsecured Creditors, consents of 4 Unsecured Creditors for an amount of Rs.457,69,43,687/- representing 94.97% of the total Unsecured Creditors of the Transferor Company were filed before this Court on 19.01.2005 and annexed as G1 to G4 to an affidavit dated 19.01.2005. Further, consents of 65 Unsecured Creditors for an amount of Rs.12,84,62,082/- representing 2.67% of the total Unsecured Creditors were filed with this Court by an affidavit dated 25.01.2005. The meeting of the Equity Shareholders, Secured Creditors and the Unsecured Creditors of the Transferor Company was dispensed with by an order dated 25.01.2005 passed in the Company Application No. 20 of 2005. However, the Transferor Company was directed by this Court to serve the notice of hearing of the petitioner on Unsecured Creditors having claim of more than Rs. 1 Lac and who had not given their

consents in writing. Subsequently, further consents of 74 Unsecured Creditors for an amount of Rs.5,66,42,723/- representing 1.18% of the total Unsecured Creditors were filed with this Court by an affidavit dated 28.02.2005. An amount of Rs.22,94,981/- representing 0.05% of the total Unsecured Creditors was in the nature of provisions made by the Transferor Company towards Tax Payable and Leave Encashment Benefits to the employees of the Transferor Company. Individual notices, therefore, were not sent to the parties in this category.

5. Similarly, the Transferee Company has only 2 Shareholders and the Scheme of Arrangement was duly approved by both the Equity Shareholders of the Transferee Company. Copies of consent letters have been attached as Exh. G-1 and G-2 to Company Petition No. 21 of 2005. The Transferee Company has no Secured Creditor and it has only two Unsecured Creditors. Both the Unsecured Creditors

have given their consent in writing to the said Scheme and copies thereof are annexed at Exh. H-1 & H-2 to the said petition. The meetings of the Equity shareholders and Unsecured Creditors of the Transferee Company were therefore dispensed with by an order dated 25.01.2005 passed in Company Application No. 20 of 2005.

6. By an order dated 07.02.2005 passed by this Court in both the Company Petitions, the petitioners were directed to issue advertisement of the notice of the hearing of the petition once in each of Indian Express and Gujarat Samachar, both of Ahmedabad Editions. Over and above this, in the case of the Transferor Company, the Court has directed the Company to issue individual notice of the final hearing of the petition to all the Unsecured Creditors of the Company who have not given their consent to the Scheme of Arrangement in writing and who have claims for an amount exceeding Rs.1,00,000/-, by ordinary post Under



Certificate of Posting. In compliance of the directions of this Court, advertisement as directed was published on 12.02.2005 and affidavit dated 22.02.2005 along with the original abstracts of the said Newspapers, was filed before this Court. The Transferor Company has also issued individual notices to 82 Unsecured Creditors for an amount of Rs.4,40,31,131/- representing 0.91% of the total Unsecured Creditors of the Transferor Company. The balance 527 Unsecured Creditors of the Transferor Company were for an amount of Rs.1,08,23,063/- representing 0.22% of the total Unsecured Creditors of the Transferor Company having outstanding individual claims of equal to or less than Rs. 1 Lacs. An affidavit in this regard along with the copy of acknowledgment receipt from Postal Department confirming dispatch of the individual notices was filed before this Court on 28.02.2005. Furthermore, the Transferor Company in its Company Application No. 142 of 2005 has stated that one M/s. Shree Traders, an

Unsecured Creditor having a claim of Rs. 1,42,020/- had objected to the Scheme. Subsequent to the filing of the said application, the Transferor Company paid the said amount to the said Firm and copy of the stamped receipt dated 26.04.2005 evidencing the remittance of this payment was filed by the Transferor Company by way of affidavit dated 27.04.2005 before this Court. No objection to the petitions was received from any one in response to the public notice.

7. The above Scheme of Arrangement as proposed by the Companies provides for the transfer of the Specified Undertakings (as defined in the said Scheme) of the Transferor Company to the Transferee Company and the consequential reduction in the share capital account of the Transferee Company. The Specified Undertaking is defined to comprise the specific investments of the Transferor Company, cash balances, and the specific liabilities as set out in the Schedule to

the said Scheme.

8. Subsequent to the filing of these Company Petitions and after issuance of public notice as well as individual notices, the Board of Directors of both the petitioner Companies, have at their respective meetings held on 23.04.2005, thought it fit, that in order to achieve synergy in operations and to ensure effective focus on the different activities of the petitioner Companies, to divide the activities of the Transferor Company in such manner that the Transferor Company retains the undertaking relating to Information Technology (including IT enabled) services, infrastructure and facilities for telecom business and that all other business including specifically the Information Technology (including IT enabled) service, infrastructure and facilities for non-telecom business be de-merged and transferred to the Transferee Company. Accordingly, the respective Board of Directors of both the

Companies had proposed to modify the said Scheme of Arrangement and consequentially, to amend the petitions filed by each of them respectively in this Court.

9. The Transferor Company has, therefore, filed an application being Company Application No. 142 of 2005 seeking orders and directions of this Court to make certain modifications in the Scheme of Arrangement and for consequential amendment of the petition filed by the Transferor Company to give effect to the modifications in the said Scheme. Similarly, the Transferee Company has also filed Company Application No. 143 of 2005 seeking similar orders and directions from this Court. This Court vide order dated 27.04.2005 has allowed the modifications to the said Scheme of Arrangement and amendment to the respective applications subject to certain conditions.

10. The modifications to the Scheme of Arrangement

were allowed by this Court subject to the Transferor Company obtaining the consent in writing of its Secured Creditors. The Transferor Company has only one Secured Creditor, namely, ICICI Bank Limited. The said Secured Creditor of the Transferor Company had given its consent to the Original Scheme of Arrangement which original consent letter was filed by the Transferor Company on 25.01.2005 along with an affidavit making certain averments with regard to the Unsecured Creditors of the Transferor Company. The modifications to the Scheme of Arrangement were conditional upon the Transferor Company obtaining the consent in writing of the said Secured Creditor prior to the hearing of the petition. However, the Transferor Company was not able to obtain the consent in writing of the said Secured Creditor to the modified Scheme of Arrangement. In this view of the matter, it was prayed that the modifications to the Scheme of Arrangement be allowed to be withdrawn.

11. The Scheme of Arrangement between the Transferor Company and the Transferee Company which is the subject matter of the present petitions, provides inter alia that the Scheme shall become null and void in the event that any of the sanctions and approval referred to in Clause 11 of the Scheme not being obtained and/or this Scheme not being sanctioned by this Court, and/or the order or orders not being passed as aforesaid before 31.03.2005 or within such period or periods as may be agreed upon between the respective Board of Directors of both the Companies. Since the petitions are pending hearing and final disposal and the necessary sanction of this Court could not be obtained prior to 31.03.2005, it was necessary to extend the time specified in Clause 13 of the Scheme. The Board of Directors of both the Companies at their Board Meeting held on 28.03.2005 had resolved to extend the time limit of 31.03.2005 to 30.06.2005. Similar affidavit is

also filed by the Transferor Company and the Transferee Company before this Court. Despite this extension, necessary sanction of this Court could not be obtained and hence, the Board of Directors of the Transferor and Transferee Company have at their meeting held on 27.06.2005 again resolved to extend the time limit of 30.06.2005 to 31.08.2005.

12. The original Scheme of Arrangement has been duly approved by all members of both the Transferor and the Transferee Company and the Secured Creditor of the Transferor Company. No Unsecured Creditor of the Transferor or Transferee Company has objected to the original Scheme of Arrangement except one M/s. Shree Traders, an Unsecured Creditor of the Transferor Company having a claim of Rs. 1,42,020/- had objected to the Scheme. Subsequent to the filing of the Application No. 142 of 2005 by the Transferor Company, the Transferor Company paid the said amount to the

said Firm and copy of the stamped receipt dated 26.04.2005 evidencing the remittance of this payment was filed by the Transferor Company by way of affidavit dated 27.04.2005 before this Court. The original Scheme of Arrangement is not prejudicial to the interest of any person concerned. The modifications were sought to be withdrawn and the sanction was prayed for the original Scheme of Arrangement. A detailed affidavit to this effect is filed on 19.07.2005 by the Transferor as well as Transferee Company.

13. Notice of the petition has been served upon the Central Govt. through Regional Director. Shri J.M. Malkan, learned Assistant Solicitor General appears for the Central Government. He has informed the Court and put on record the letter from the Registrar of Companies of Gujarat dated 21.07.2005 along with the letter of the Regional Director dated 06.05.2005 indicating that the Scheme of Arrangement has been examined by the



Regional Director and it has decided not to oppose the Scheme in view of the Undertakings given by the petitioners vide their letters dated 04.05.2005 to file affidavit in the Court.

14. After having heard learned Senior advocate Mr. K.S. Nanavati appearing for the petitioners and Mr. J.M. Malkan, learned Assistant Solicitor General appearing for the Central Government and after having gone through the petitions and the orders passed by this Court from time to time and the affidavits placed on record on behalf of the petitioner Companies from time to time, the Court is of the view that the Scheme of Arrangement as originally framed is in the interest of all concerned and nobody's interest would be prejudicially affected by the proposed Scheme of Arrangement. The petitioners have given salient features of the proposed Scheme of Arrangement in the petitions and since there is no objection from any corner against the proposed Scheme, prayers

made in terms of para 23 of the Petition No. 22 filed by the Transferor Company and 29 of the Petition No. 21 filed by the Transferee Company are hereby granted. Since the Board of Directors of the petitioner Companies in their respective meetings held on 27.06.2005 have resolved to extend the time limit of 30.06.2005 to 31.08.2005, the time limit specified in clause 13 of the Scheme is hereby extended upto 31.08.2005.

15. The petitions are disposed of accordingly. So far as the costs to be paid to the Asst. Solicitor General is concerned, I quantify the same at Rs.3,500/- per petition. The same may be paid directly to Shri J.M. Malkan.

**[K.A. PUJ, J.]**

**Savariya**