

% 26.04.2011

Present: Mr. Nidhesh Gupta, Senior Advocate with Mr. Tarun Gupta,
Advocate for petitioner.
Mr. Rajiv Bahl, Advocate for Official Liquidator.
Ms. Richa Kukreja, Deputy Registrar of Companies for
Regional Director (Northern Region).

+ **Co. Pet.41/2011**
* **(In the matter of Television Eighteen India Ltd.)**

1. This second motion joint petition has been filed by the petitioner companies under Sections 391 to 394 of the Companies Act, 1956 (for short 'Act') read with Sections 100-103 of the Act seeking sanction to a Scheme of Arrangement (for short 'Scheme') of M/S. TELEVISION EIGHTEEN INDIA LIMITED (hereinafter referred to as the 'Transferor Company No. 1'), M/S. WEB18 SOFTWARE SERVICES LIMITED (hereinafter referred to as the 'Transferor Company No. 2'), M/S. IBN18 MEDIA & SOFTWARE LIMITED (hereinafter referred to as the 'Transferor Company No. 3'), M/S. iNEWS.COM LIMITED (hereinafter referred to as the 'Transferor Company No. 4'), M/S. TELEVISION EIGHTEEN COMMODITIES CONTROL.COM LIMITED (hereinafter referred to

as the 'Transferor Company No. 5'), M/S. RVT INVESTMENTS PRIVATE LIMITED (hereinafter referred to as the 'Transferor Company No. 6'), M/S. NETWORK18 INDIA HOLDINGS PRIVATE LIMITED (hereinafter referred to as the 'Transferor Company No. 7') and M/S. CARE WEBSITES PRIVATE LIMITED (hereinafter referred to as the 'Transferor Company No. 8') (collectively as 'Transferor Companies') with M/S. ibn18 BROADCAST LIMITED (hereinafter referred to as the 'Transferee Company No. 1') and M/S. NETWORK18 MEDIA & INVESTMENTS LIMITED (hereinafter referred to as the 'Transferee Company No. 2') (collectively as 'Transferee Companies').

2. The registered offices of the Transferor Companies and Transferee Companies are situated at New Delhi, within the jurisdiction of this Court.

3. The Transferor Company No.1 was incorporated on 24th September, 1993 under the provisions of the Act with the Registrar of Companies, NCT of Delhi and Haryana with the name and style as 'Television Eighteen India Private Limited'. The name of the

company was changed to its present name i.e. 'Television Eighteen India Limited' on 2nd January, 1995. 6

4. The Transferor Company No.2 was incorporated on 10th July, 2006 under the provisions of the Act with the Registrar of Companies, NCT of Delhi and Haryana.

5. The Transferor Company No.3 was incorporated on 8th April, 2004 under the provisions of the Act as private limited company in the name and style as Jagran TV Private Limited. The name of the company was changed to IBN18 Media and Software Private Limited on 15th May, 2009. Subsequently, w.e.f. 17th June, 2009, it became a public limited company and was named as IBN18 Media and Software Limited.

6. The Transferor Company No.4 was incorporated on 28th August, 2000 under the provisions of the Act as a private limited company under the name and style as iNews.com Private Limited. However, it became a deemed public company with effect from 6th September, 2000 and the name of the company was changed to its present name i.e. iNews.com Limited.

7. The Transferor Company No.5 was incorporated on 17th March, 1997 under the provisions of the Act with the Registrar of Companies, NCT of Delhi and Haryana with the name and style as 'Eighteen Entertainment India Limited'. The name of the company was changed to its present name i.e. 'Television Eighteen Commoditiescontrol.com Limited' on 27th May, 2005.

8. The Transferor Company No.6 was incorporated on 9th July, 2006 under the provisions of the Act.

9. The Transferor Company No.7 was incorporated on 13th August, 2007 under the provisions of the Act with the Registrar of Companies, NCT of Delhi and Haryana.

10. The Transferor Company No.8 was incorporated under the provisions of the Act as a private limited company on 19th January, 2000 issued by the Registrar of Companies, Mumbai, Maharashtra. Presently, the registered office of the company was shifted from State of Maharashtra to National Capital Territory of Delhi vide order of Company Law Board, Western Bench, Mumbai dated 11th October, 2010.

11. The Transferee Company No.1 was incorporated on 06th June, 2005 under the provisions of the Act with the Registrar of Companies, NCT of Delhi and Haryana in the name and style as 'Global Broadcast News Private Limited'. Subsequently, the company was converted into public limited company and the name was changed to 'Global Broadcast News Limited' w.e.f. 7th April, 2006. The name of the company was further changed to its present name i.e. 'ibn18 Broadcast Limited' and a fresh certificate of incorporation was issued by Registrar of Companies on 2nd April, 2008.

12. The Transferee Company No.2 was incorporated on 16th February, 1996 under the provisions of the Act with the Registrar of Companies, NCT of Delhi and Haryana in the name and style as 'SGA Finance and Management Services Private Limited'. The name of the company was changed to 'Network18 Fincap Private Limited' on 12th April, 2006. Pursuant to its conversion into a public company the name of the company was changed to 'Network18 Fincap Limited' on 9th November, 2006 which was further changed to its present name i.e. 'Network18 Media & Investments Limited' on 1st December, 2007.

13. The present Authorized Share Capital of the Transferor Company No.1 is Rs.2,050,000,000/- divided into 410,000,000 equity shares of the face value of Rs.5/- each. The present Issued and Subscribed Share Capital of the Transferor Company No.1 is Rs.909,034,445/- divided into 181,806,889 equity shares of Rs.5/- each. The paid up equity share capital of the Transferor Company No.1 is Rs.906,827,502/-.

14. The present Authorized Share Capital of the Transferor Company No.2 is Rs.65,000,000/- divided into 500,000 equity shares of the face value of Rs.10/- each and 6,000,000 preference shares of the face value of Rs.10/- each. The present Issued, Subscribed and Paid up share capital of the Transferor Company No.2 is Rs.10,533,690/- divided into 4,914,89 equity shares of Rs.10/- each and 561,880 preference shares of Rs.10/- each.

15. The present Authorized Share Capital of the Transferor Company No.3 is Rs.150,000,000 divided into 75,000,000 equity shares of the face value of Rs.2/- each. The present issued, subscribed and paid up share capital of the Transferor Company No.3 is

Rs.134,589,500/- divided into 67,294,750 equity shares of Rs.2/- each.

16. The present Authorized Share Capital of the Transferor Company No.4 is Rs.60,000,000/- divided into 30,000,000 equity shares of the face value of Rs.2/- each. The present issued, subscribed and paid up share capital of the Transferor Company No.4 is Rs.60,000,000/- divided into 30,000,000 equity shares of Rs.2/- each.

17. The present Authorized Share Capital of the Transferor Company No.5 is Rs.5,000,000/- divided into 1,000,000 equity shares of the face value of Rs.5/- each. The present issued, subscribed and paid up share capital of the Transferor Company No.5 is Rs.3,964,250/- divided into 7,92,850 equity shares of Rs.5/- each.

18. The present Authorized Share Capital of the Transferor Company No.6 is Rs.20,000,000/- divided into 2,000,000 equity shares of the face value of Rs.5/- each and 1,000,000 preference shares of the face value of Rs.10/- each. The issued, subscribed and paid up share capital of the Transferor Company No.6 is Rs.6,235,000

divided into 20,000 equity shares of Rs.5/- each and 613,500 preference shares of Rs.10/- each.

19. The present Authorized Share Capital of the Transferor Company No.7 is Rs.160,000,000/- divided into 4,000,000 equity shares of the face value of Rs.5/- each and 14,000,000 preference shares of the face value of Rs.10/- each. The present issued, subscribed and paid up share capital of the Transferor Company No.7 is Rs.94,810,000/- divided into 20,000 equity shares of Rs.5/- each and 9,471,000 preference shares of Rs.10/- each.

20. The present Authorized Share Capital of the Transferor Company No.8 is Rs.15,000,000/- divided into 2,000,000 equity shares of the face value of Rs.5/- each and 500,000 preference shares of the face value of Rs.10/- each. The issued, subscribed and paid up share capital of the Transferor Company No.8 is Rs.8,278,000/- divided into 1,000,000 equity shares of Rs.5/- each 327,800 preference shares of Rs.10/- each.

21. The present Authorized Share capital of the Transferee Company No.1 is Rs.550,000,000/- divided into 275,000,000 equity

shares of face value of Rs.2/- each. The issued and subscribed share capital of the Transferee Company No.1 is Rs.475,350,054/- divided into 237,675,027 equity shares of Rs.2/- each. The Paid up capital of the Transferee Company No.1 is Rs.475,224,551.50/- divided into 237,675,027 equity shares of Rs.2/- each and 70,335 equity shares on which Rs.0.50/- has been paid.

22. The present authorized share capital of the Transferee Company No.2 is Rs.3,060,000,000/- divided into 170,000,000 equity shares of Rs.5/- each and 1,100,000 preference shares of the face value of Rs.100/- each and 10,500,000 preference shares of Rs.200/- each. The present issued and subscribed share capital of the Transferee Company No.2 is Rs.2,637,804,420/- divided into 115,702,844 equity shares of Rs.5/- each and 10,296,451 preference shares of Rs.200/- each. The present paid up capital of the Transferee Company No.2 is Rs.2,121,171,070/- divided into 115,702,844 equity shares of Rs.5/- each and 10,284,379 preference shares of Rs.150/- each.

23. Copies of the Memorandum and Articles of Association of the Transferor Companies and the Transferee Companies have been filed

on record. The audited balance sheets, as on 31st March 2010, of the Transferor Companies and the Transferee Companies have also been filed. 

24. A copy of Scheme has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavits. The petitioner companies are group companies and the Transferor Companies are subsidiaries of the Transferee Companies:

25. So far as the exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme and in consideration of transfer and vesting of the 'News Business Undertaking' of the Transferor Company No. 1, the Transferee Company No. 1 shall issue and allot equity shares, to the shareholders of the Transferor Company No. 1 in the ratio of 17:25 i.e. 17 fully paid-up equity shares of Rs. 2/- each of the Transferee Company No. 1 for every 25 fully paid-up equity shares of Rs.5/- each of the petitioner Transferor Company No.1.

26. On merger of residual Transferor Company No. 1, the Transferee Company No. 2 will issue equity shares to the shareholders

of the Transferor Company No 1 in the ratio of 13:100 i.e. 13 fully paid-up equity shares of Rs.5/- each of the Transferee Company No. 2 for every 100 fully paid-up equity shares of Rs.5/- each of the Transferor Company No.1.

27. Mr. Nidhesh Gupta, learned senior counsel for petitioner companies submits that no proceeding under sections 235 to 251 of the Act is pending either against the Transferor Companies or Transferee Companies.

28. The meeting of the Board of Directors of the Transferor Companies and the Transferee Companies was held on 7th July, 2010 wherein the Directors have unanimously approved the proposed Scheme. Copies of the Resolutions passed at the meetings of the Board of Directors of the Transferor Companies and the Transferee Companies have been placed on record.

29. The Transferor Companies No. 1, 2, 3, 4, 5, 6 and 7 and Transferee Companies had earlier filed CA (M) No. 180/2010 and the Transferor Company No. 8 had filed CA (M) No. 222/2010, seeking directions of this Court to dispense with the requirement of convening the meetings of the equity shareholders, preference shareholders,

secured creditors and unsecured creditors of the Transferor Companies No. 2, 3, 4, 5, 6, 7 & 8 and for convening the meetings of the equity shareholders of the Transferor Company No. 1, Transferee Companies No. 1 & 2 and preference shareholders of the Transferee Company No. 2, which are statutorily required for sanction of the Scheme. Vide order dated November 19, 2010 and January 6, 2011, this Court allowed the applications and dispensed with the requirement of holding of meeting of equity shareholders, preference shareholders, secured creditors and unsecured creditors of the Transferor Companies No. 2, 3, 4, 5, 6, 7 & 8, and directed convening of separate meetings of equity shareholders of Transferor Company No. 1, Transferee Companies No. 1 & 2 and also preference shareholders of the Transferee Company No. 2 to consider the proposed Scheme. There are no creditors of the Transferor Companies No. 3, 7 & 8; and no preference shareholders of the Transferor Companies No. 1, 3, 4 & 5 and Transferee Company No.1.

30. The Chairpersons of the said meetings of the equity shareholders of the Transferor Company No. 1 and the Transferee Companies and preference shareholders of the Transferee Company

No. 2 have filed their reports stating that the meetings were duly held on 21st December, 2010 and 22nd December 2010, as directed, and the Scheme has been approved by the equity shareholders of the Transferor Company No. 1 and the Transferee Companies and the preference shareholders of the Transferee Company No. 2, present and voting, in the meetings.

31. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme. Vide order dated 28th January, 2011, the notices of the petition were directed to be issued to the Regional Director, Northern Region, the Official Liquidator and the Registrar of Companies, Delhi. Citations were also directed to be published in 'The Statesman' (English) and 'Jansatta' (Hindi) in terms of the Companies (Court) Rules, 1959. Affidavits of service have been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region, the Official Liquidator, the service of copy of petition on the Registrar of Companies, Delhi and also regarding citations in the aforesaid newspapers on April 3, 2011. Copies of the newspaper clippings containing the publications have

been filed along with the affidavits of service. Affidavit of receiving no objection after publication was filed on April 20, 2011. 7

32. In response to the notices issued in the petition, Mr. B. K. Bansal, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 7th April, 2011. Relying on Para 23 of Part VIII of the Scheme, he has stated that, upon sanction of the Scheme, all the employees of the Transferor Company No. 1 and Transferor Company No. 2 engaged in 'News Business Undertaking' and 'Web Undertaking' respectively, shall become the employees of the respective Resulting Companies as well as all the employees of all the Transferor Companies No. 1, 3, 4, 5, 6, 7 & 8 engaged shall become the employees of the Transferee Companies without any break or interruption in their services upon sanctioning of the Scheme by this Court.

33. The Regional Director, while referring to Para 8.11 of Part IV of the Scheme, regarding amendment of relevant clause of the Memorandum of Association of the Transferee Company No. 2, has further submitted that the object clause of the Memorandum of Association of a company can be changed/ altered only after

following the procedure prescribed under the relevant provisions of the Act. He, therefore, submitted that the Transferee Company No. 2 may be asked to follow the prescribed procedure for altering its Memorandum and Article of Association. 18

34. In response to the above observation, the petitioner companies in their affidavit dated April 20, 2011, have submitted that the objects clause of the Transferee Company No. 2 is proposed to be changed/ altered as a part of the Scheme and therefore nothing more is required to be done. In this regard reliance is placed on the decision of the Bombay High Court in the case of **Re: "S. S. Miranda Ltd"** reported in **C.P. No. 515 of 1991**, wherein it has been held as under:-

"Section 391 invests the court with powers to approve or sanction a scheme of amalgamation/ arrangement which is for the benefit of the company. In doing so, if there are any other things which, for effectuation, require a special procedure to be followed, then the court has powers to sanction them while sanctioning the scheme itself. Further, it was also provided that it would not be necessary for the company to resort to other provisions of the Companies Act or to follow other procedures prescribed for bringing about the changes requisite for effectively implementing the scheme which is sanctioned by the court. It was also held that Section 391 is a complete code and it is intended to be in the nature of a "single window clearance" system to ensure that the parties are not put to avoidable, unnecessary and cumbersome

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procedure of making repeated applications to the court for various other alterations or changes which might be needed effectively implement the sanctioned scheme whose overall fairness and feasibility has been judged by the court under section 394 of the Act.

Considering the matter from all perspectives, I am of the view, that it is permissible for this court to sanction a scheme under section 394 even if the scheme contemplates a consequential alteration in the objects clause of the memorandum of association of the company."

35. Further, the learned senior counsel also placed reliance upon the decision of the Gujarat High Court in the case of ***"Rangkala Investments Limited"*** reported in ***CP No 47 and 48 of 1994***, decision of the Karnataka High Court in the case of ***"Mysore Cements Limited"*** in ***C.P. No. 86 of 2008*** and decision in the case of ***Maneckchowk and Ahmedabad Manufacturing Co. Ltd., In re (1970) 40 Com Cas 819 (Guj)***, wherein similar stand was taken.

36. Considering the matter from all perspectives, I am of the view, that it is permissible for this court to sanction a scheme under Section 394 of the Act even if the Scheme contemplates a consequential alteration in the objects clause of the memorandum of association of the company. In fact, this Court in Company Petition No.277/2010

has also taken the same view. Hence, the Transferee Company No. 2 in the instant case is directed to file necessary forms as prescribed in law in the office of Registrar of Companies to place on record changes with regard to objects clause of Memorandum of Association.

37. In view of the same, the observation made by the Regional Director stands answered.

38. The Regional Director, while referring to Para 29 of Part VIII of the Scheme, regarding the change in the name of the Transferee Company No. 1, has further submitted that the name of a company can be changed only after following the procedure prescribed under the relevant provisions of the Act. He, therefore, submitted that the Transferee Company no. 1 may be asked to follow the prescribed procedures for changing the name of the Transferee Company No. 1.

39. In response to the above observation, the petitioner companies in their affidavit dated April 20, 2011, have submitted that it has been held in a catena of judgments that Section 391/ 394 are complete code in itself and all changes can be done as a part of the Scheme. Further, they have submitted that under the Scheme it is proposed to change the name of the First Transferee Company to "TV18 Limited" to

reflect the nature of its business and the well recognized corporate name of the First Transferor Company i.e. Television Eighteen India Limited. In this regard reliance is placed on the decision of the Karnataka High Court *In re: "Mysore Cements Limited" in C.P. No. 86 of 2008*, wherein it has been observed that *"the majority of the shareholders of the petitioner company have given their approval to the scheme including change in name and in the absence of there being any objection with regard to change in name, it is unnecessary to once again file an application under section 21 of the Act by the petitioner."*

40. Reliance is also placed *In re You Telecom India P. Ltd* and *In Re You Broadband Networks India P. Ltd. (2008) 141 Company Cases 43 (Bom)*, wherein the Regional Director has raised a similar objection that there was a change in the name of the Transferee Company, it had to comply with the provisions of Section 21 of the Act by filing necessary forms with the Registrar of Companies. It was held that furnishing of notice to the Registrar of Companies of the Scheme as sanctioned will in any way constitute the substantial

compliance with the provisions of section 21 of the Act. Similarly, *In re Norfolk Infotech P. Ltd. reported in (2008) 142 Company Cases 752 (Guj)*, the decision *In Re PMP Auto Industries Ltd.*, was relied upon to hold that a separate formality need to be followed under section 21 of the Act for change of name or the object clause of Memorandum of Association of the resulting company.

41. *In re Sun Metal and Alloys P. Ltd. & In re Sunmet Holdings India P. Ltd.* the objection of the Regional Director that the change in name of the company in the proposed scheme of amalgamation could not be given effect to without obtaining necessary approvals from the Registrar of Companies as required under section 21 of the Act, were held to be only formal in nature and the same could not come in the way of sanctioning of the scheme. As the petition filed under section 391-394 of the Act is like a 'single window clearance' system and the petitioner cannot be burdened with taking various applications which are cumbersome in nature.

42. Hence, the Transferee Company No. 1 in the instant case is directed to file necessary forms as prescribed in law in office of the

Registrar of Companies to place on record the changes with regard to name of the company.

43. In view of the same, the observation made by the Regional Director stands answered.

44. The Regional Director has further submitted that the Transferee Company No. 1 has intimated that certain charges are proposed to be transferred from the Demerged Companies to the Resulting Companies. He has further stated that the name of a company cannot be substituted in the charge documents as such for satisfaction of charge, the company is required to file Form No. 17. He, therefore, prayed that the Transferee Company No. 1 may be asked to comply with the relevant provisions of the Act for satisfaction and creation of charge in Demerged Company and the Resulting Companies respectively.

45. In response to the above observation, the petitioner companies, in the affidavit dated April 20, 2011, have submitted that they will comply with the relevant procedure for modification/ substitution of charges in the demerged company and creation of fresh charge in the

name of the Transferee Companies. The undertaking given by the petitioners is accepted and they shall remain bound by the same. In ²⁴ view of the undertaking given, the observation made by the Regional Director stands answered.

46. No objection has been received to the Scheme from any other party. Learned senior counsel for the petitioners has submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published on April 3, 2011.

47. The Official Liquidator has filed his reports stating that he has not made any adverse findings in the functioning of the petitioner companies and has given opinion that the affairs of the petitioner companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to the public.

48. Even today, during the course of hearing both Ms. Richa Kukreja, Deputy Registrar of Companies appearing for Regional Director (Northern Region) and Mr. Rajiv Bahl, learned counsel for Official Liquidator stated that they have no further objection to present Scheme being allowed.

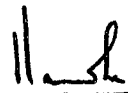
49. In view of the approval accorded by the shareholders of the petitioner companies to the proposed Scheme and as this Court has already dispensed with the meeting of the creditors, and there being no surviving objection to the same by the Regional Director, Northern Region and the Official Liquidator, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within thirty days. It is also clarified that this order will not be construed as an order granting exemption from the payment of stamp duty, taxes, transfer charges as payable in accordance with law and permissions, if any, to be obtained from any authority. Upon sanction becoming effective from the appointed date provided in the Scheme, that is 1st April, 2010, the 'News Business Undertaking' of the Transferor Company No. 1, whole of the Transferor Companies No. 3 and 4 shall stand transferred/ merged into Transferee Company No. 1 and the residual petitioner Transferor Company No. 1, 'Web Undertaking' of the Transferor Company No.

2, whole of the Transferor Companies No. 5, 6, 7 and 8 shall stand transferred/ merged into petitioner Transferee Company No. 2.

50. Mr. Nidhesh Gupta, learned senior counsel for petitioner-companies voluntarily states that Transferor Companies would deposit a sum of Rs.5,00,000/- with the Official Liquidators' Common Pool Fund within three weeks from today. The said statement is accepted.

51. The petition is allowed in the above terms.

Order Dasti.


MANMOHAN, J

APRIL 26, 2011

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