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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO. APPL. (M) 140/2011

IN THE MATTER OF

BHARTI INFRA TEL VENTURES LTD.

.....Applicant

Through: Mr. Rajiv Nayar, Senior Advocate with

Ms. Meenakshi Arora, Advocate.

With

14.

CO. APPL. (M) 141/2011

IN THE MATTER OF

VODAFONE INFRASTRUCTURE LTD.

.....Applicant

Through: Mr. Rajiv Nayar, Senior Advocate with

Ms. Niti Dixit, Mr. Vidur Bhatia and

Ms. Raunag B. Mathur, Advocate.

With

15.

CO. APPL. (M) 142/2011

IN THE MATTER OF IDEA CELLULAR

TOWERS INFRASTRUCTURE LTD.

.....Applicant

Through: Mr. Rajiv Nayar, Senior Advocate with

Mr. Sandip Singhi, Mr. Rishi Agrawala

and Mr. Rajeev Kumar, Advocates.

And

16.

CO. APPL. (M) 143/2011

IN THE MATTER OF

INDUS TOWERS LTD.

.....Applicant

Through: Mr. Rajiv Nayar, Senior Advocate with

Mr. Atul Sharma, Mr. Milanka

Chaudhury and Mr. Sarojanand Jha,

Advocates.

CORAM:  
HON'BLE MR. JUSTICE MANMOHAN

O R D E R  
09.11.2011

Co. Appl. 2199/2011 in Co. Appl.(M) 140/2011  
Co. Appl. 2200/2011 in Co. Appl.(M) 143/2011

Keeping in view the averments in the applications, delay in filing/ re-filing the present petitions is condoned.

Accordingly, present application stands disposed of.

Co. Appl.(M) No. 140/2011 & Co. Appl. 2198/2011  
Co. Appl.(M) Nos. 141/2011  
Co. Appl.(M) No. 142/2011  
Co. Appl.(M) No. 143/2011

1. Today in Court, Mr. Rajiv Nayar, learned counsel for the Applicant Companies has handed over an additional affidavit on behalf of the Transferee Company. The same is taken on record.

2. It is pertinent to mention that these first motion Applications under Sections 391 to 394 of the Companies Act, 1956 (for short Act) have been filed by M/s. Vodafone Infrastructure Limited (hereinafter referred to as the 'First Transferor Company'), M/s. Bharti Infratel Ventures Limited (hereinafter referred to as the 'Second Transferor Company'), M/s. Idea Cellular Towers Infrastructure Limited (hereinafter referred to as the 'Third

Transferor Company') [Collectively as Transferor Companies] and M/s. Indus Towers Limited (hereinafter referred to as the 'Transferee Company') in respect of a Scheme of Arrangement (for short 'Scheme') amongst Transferor Companies, Transferee Company and their respective shareholders and creditors. Each of the Transferor Companies and the Transferee Company have filed separate Company Applications before this Court. The Scheme has been enclosed with each of the Applications.

3. The registered offices of all the Applicant Companies are situated within the National Capital Territory of Delhi and are within the jurisdiction of this Court.

4. Details with regard to the date of incorporation of the Transferor Companies and the Transferee Company, their authorized, issued, subscribed and paid up capital have been given in the present Applications.

5. Copies of the Memorandum and Articles of Association and the latest audited Annual Accounts for the year ended 31<sup>st</sup> March, 2011 of each of the Transferor Companies and the Transferee Company have also been enclosed with the Applications.

6. Mr. Rajiv Nayar, learned senior counsel for the Applicant Companies submits that no proceedings under Sections 235 to 251 of the Act are pending against any of the Applicant Companies as on the date of the present Applications.

7. The proposed scheme has been approved by the Board of Directors of all the Applicant Companies. Copies of the Board Resolutions have been filed with the Applications.

8. The status of the shareholders, secured and unsecured creditors of the Transferor Companies and the Transferee Company and the consents obtained from them for the proposed scheme is clearly apparent from the charts given below:-

(a) **First Transferor Company**

| Company                  | No. of Share holders | Consent given | No. of Secured Creditors | Consent given | No. of Unsecured Creditors | Consent given |
|--------------------------|----------------------|---------------|--------------------------|---------------|----------------------------|---------------|
| First Transferor Company | 7                    | All           | Nil                      | N.A.          | 7                          | All           |

9. A prayer has been made for dispensation of the requirement of convening meetings of shareholders, secured creditors and unsecured creditors of the First Transferor Company.

10. In view of the written consents/NOC given, the requirement of convening meeting of shareholders and unsecured creditors of the First Transferor Company are dispensed with. Since the First Transferor Company has no secured creditors, the question of convening a meeting of secured creditors of the First Transferor Company does not arise.

(b) **Second Transferor Company**

| Company                   | No. of Share holders | Consents given | No. of Secured Creditors | Consents given | No. of Unsecured Creditors | Consents given |
|---------------------------|----------------------|----------------|--------------------------|----------------|----------------------------|----------------|
| Second Transferor Company | 7                    | All            | Nil                      | N.A.           | 2                          | All            |

11. A prayer has been made for dispensation of the requirement of convening meetings of shareholders, secured creditors and unsecured creditors of the Second Transferor Company.

12. In view of the written consents/NOC given, the requirement of convening meeting of shareholders and unsecured creditors of the Second Transferor Company are dispensed with. Since the Second Transferor Company has no secured creditors, the question of convening a meeting of secured creditors of the Second Transferor Company does not arise.

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(c) **Third Transferor Company**

| Company                  | No. of Share holders | Consents given | No. of Secured Creditors | Consents given | No. of Unsecured Creditors | Consents given       |
|--------------------------|----------------------|----------------|--------------------------|----------------|----------------------------|----------------------|
| Third Transferor Company | 7                    | All            | Nil                      | Not Applicable | 180                        | 10 (in value 74.85%) |

13. A prayer has been made for dispensation of the requirement of convening meetings of shareholders and unsecured creditors of the Third Transferor Company.

14. In view of the written consents/NOC given, the requirement of convening meeting of shareholders of the Third Transferor Company is dispensed with. Since the Third Transferor Company has no secured creditors, the question of convening a meeting of secured creditors of the Third Transferor Company does not arise.

15. I direct that the meeting of the Unsecured Creditors of the Third Transferor Company shall be held on 24.12.2011 at 11.00 AM at A-26/5, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi – 110 044.

16. Ms. Ranjana Roy Gawai, Advocate, Cell No. 9811415871 is appointed as the Chairperson and Mr. Krishan Kumar Sharma, Assistant Registrar, Cell No. 9717991825 is appointed as the Alternate Chairperson

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for the meeting of the Unsecured Creditors of the Third Transferor Company. They would be paid fees of Rs.40,000/- each. Mr. Krishan Pandey, Court Official, Cell No. 9711224242 and Mr. Govind Singh, Court Official, Cell No. 9911032247 shall provide secretarial assistance to the Chairperson and the Alternate Chairperson and shall be paid a fee of Rs.10,000/- each for this purpose.

(d) **Transferee Company**

| Company            | No. of Share holders | Consents given | No. of Secured Creditors | Consents given | No. of Unsecured Creditors | Consents given          |
|--------------------|----------------------|----------------|--------------------------|----------------|----------------------------|-------------------------|
| Transferee Company | 7                    | All            | 16                       | All            | 856                        | 18<br>(in value 98.11%) |

17. A prayer has been made for dispensation of the requirement of convening meetings of shareholders, secured creditors and unsecured creditors of the Transferee Company.

18. In view of the written consents/NOC given, the requirement of convening meeting of shareholders of the Transferee Company is dispensed with.

19. My attention has been drawn to clause 12.4 of the Common Loan Agreement dated 29<sup>th</sup> June, 2010 executed between the Transferee Company

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and its secured creditors wherein the secured creditors have explicitly consented to the acquisition of assets by the Transferee Company from the IRU Grantor Parties, that means, the three Transferor Companies pursuant to the Transfer Process. In view of the same, the requirement of convening meeting of secured creditors of the Transferee Company is dispensed with.

20. I direct that the meeting of the Unsecured Creditors of the Transferee Company shall be held on 24.12.2011 at 11AM at the registered office of the Transferee Company being Bharti Crescent, 1 Nelson Mandela Road, Vasant Kunj, Phase-II, New Delhi – 110 070.

21. Mr. Syed Shahid Hussain Rizvi, Advocate, Cell No. 9810019968 is appointed as the Chairperson and Mr. Karan Bharihoke, Advocate, Cell No. 9811464567 is appointed as the Alternate Chairperson for the meeting of the Unsecured Creditors of the Transferee Company. They would be paid fees of Rs. 40,000/- each. Mr. Nandan Singh, Court Official, Cell No. 9560556184 and Mr. Devender, Court Official Cell No. 7838565540 shall provide secretarial assistance to the Chairperson and the Alternate Chairperson and shall be paid a fee of Rs. 10,000/- each for this purpose.

22. The Third Transferor Company and the Transferee Company are directed to publish advance notices of the meetings of their Unsecured

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Creditors in the Indian Express (English, Delhi edition) and Jansatta (Hindi, Delhi Edition). The advertisements shall be published a minimum twenty-one days in advance before the scheduled date of the meetings.

23. Individual notices of the proposed meetings of the Unsecured Creditors of the Third Transferor Company and the Transferee Company would be sent by ordinary post minimum twenty-one days in advance before the scheduled date of meeting. The Chairpersons will ensure that the dispatch is made under his/her supervision or his authorized representative.

24. The Quorum for the meeting of the Unsecured Creditors of the Third Transferor Company is fixed as follows:

| Company | Unsecured Creditors |     |
|---------|---------------------|-----|
|         | Number              | %   |
|         | 18                  | 10% |

25. The Quorum for the meeting of the Unsecured Creditors of the Transferee Company is fixed as follows:-

| Company | Unsecured Creditors |     |
|---------|---------------------|-----|
|         | Number              | %   |
|         | 86                  | 10% |

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26. It is also directed that if the Quorum is not present in the above meetings, then the meetings would be adjourned for 30 minutes and thereafter, the persons present in the meetings would be treated as proper Quorum.

27. Voting by proxy is permitted provided that the proxy in the prescribed form and duly signed by the person entitled to attend and vote in the aforesaid meeting or by his authorized representative, is filed with the respective Companies at their registered office, not later than 48 hours before the said meeting.

28. The Chairpersons and the Alternate Chairpersons shall file their reports within two weeks of the conclusion of the meetings.

29. The Applicant Companies are granted liberty to file a joint petition after the conclusion of the meetings convened by the Third Transferor Company and the Transferee Company.

30. The Applications stand allowed in the aforesaid terms.

Order Dasti.

  
MANMOHAN, J

**NOVEMBER 09, 2011**  
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