

\$~A19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 30th August, 2012*

+ **CO.PET. 283/2012**

IN THE MATTER OF THE COMPANIES ACT, 1956 AND
IN THE MATTER OF SECTIONS 391 TO 394 OF
THE COMPANIES ACT, 1956
SCHEME OF ARRANGEMENT AND DEMERGER

**SPECTRA ISP NETWORKS
PVT LTD & ORS.**

..... Petitioner No.1
(Demerged Company)

And

CITYCOM NETWORKS PVT. LTD. Petitioner No.2
(Resulting Company)

Through: Mr.P. Nagesh with Mr.Anand
M.Mishra, Adv. for the petitioner
companies.
Mr. K.S. Pradhan, Dy. Registrar
of Companies for the Regional
Director.

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

ORDER

% **30.08.2012**

1. This Second motion joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956(hereinafter referred to as 'Act')

by the petitioner Companies seeking sanction of the Scheme of Arrangement and Demerger (hereinafter referred to as 'Scheme')

2. The petitioner companies had earlier filed C.A. (M) No. 54 of 2012 seeking directions of this Court for (a) dispensation of the meetings of Equity Shareholders and Preference Shareholders of Demerged Company and dispensation of the meetings of Equity Shareholders of Resulting Company (b) direction for convening the meetings of Secured and Unsecured Creditors of the Petitioner Companies. Vide Order dated 23rd March 2012, this court allowed the application and was pleased to direct convening the meetings of the Secured and Unsecured Creditors of the Petitioner Companies and dispensed with the requirement of convening meetings of Equity Shareholders and Preference Shareholders of Demerged Company and dispensation of the meetings of Equity Shareholders of Resulting Company. The Chairpersons appointed by this Court have filed their respective reports stating that the Scheme of Arrangement and Demerger has been approved unanimously at the aforesaid meetings convened on 05.05.2012.

3. The Petitioner Companies have thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 01.06.2012, notice in the Petition was directed to be issued to the Regional Director, Northern Region, the Citations were also directed to be published in “Financial Express” (English, Delhi Edition) and “Danik Jagran” (Hindi, Delhi Edition). Affidavit of service and publication dated 27.08.2012 has been filed by the Petitioners showing compliance regarding service of the petition on the Regional Director, Northern Region and also regarding Publication of Citations in the aforesaid News papers on 07.08.2012, copies of the news papers cuttings, in original, containing the publications have been filed with the affidavit of service.

4. In response to the notice issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit / report dated 23rd August, 2012. Relying on clause 8 of Part - B of the Scheme of Arrangement, he has stated that, upon sanction of the Scheme of Arrangement all the staff / employees of the Transferor Company / Demerged Company engaged in “ISP Business” shall become the employees of Transferee Company without any break or

interruption in their services upon sanctioning of the Scheme of arrangement by the Hon'ble Court.

5. The Regional Director further at para 4 and 4.1 of its representation / affidavit had stated that "Para 14 of Part-B of the Scheme, provides that the object clause of the Demerged Company would stand altered and amended and after sub-clause 1 of Clause III (A) of the Memorandum of Association of the Demerged Company, the following sub – clause 2 shall be added.....". Further in para No.4.1, the Learned Regional Director has submitted that the "Memorandum of Association of a Demerged Company can be changed/altered only after following the procedure prescribed under the relevant provisions of the Companies Act, 1956. It is, therefore, submitted that the Demerged Company may be asked to follow the procedure prescribed under the Companies Act, 1956.

6. He further submitted in para No. 5 of the affidavit dated August 23, 2011 that both the Petitioner Companies vide their letter dated 18.07.2012 have intimated that certain charges are proposed to be transferred from the De-merged Company to the Resulting Company.

Further in para No. 5.1 of its representation / affidavit, the Regional

Director has submitted that the name of the Demerged Company cannot be substituted in the Charge Documents as such for satisfaction of charge, the Demerged Company is required to file Form No. 17. In view of this the Regional Director observed that the Petitioner Companies may be asked to comply with the relevant provisions of the Companies Act, 1956 for satisfaction and creation of charge in Demerged Company and Resulting Company, respectively.

7. In response to the observations made by Ld. Regional Director at para 4, 4.1, 5 and 5.1 of the representation / affidavit, the Petitioner Companies filed their respective reply on 29.08.2012 stating that the pursuant to the Scheme of Arrangement and Demerger, the Object Clause of the Memorandum of Association of the Demerged Company will stand amended on approval of this Scheme by the Hon'ble Court and the charges as mentioned in the Scheme of Arrangement and Demerger will stand transferred to the Resulting Company automatically on approval of this Scheme by the Hon'ble Court. Further it is submitted that the approval of Scheme in terms of Section 391-394 of the Companies Act, 1956 is a **'Single Window Clearance'** and no further act on the part of any of the Petitioner Companies is required to be done

after the approval of the Scheme, for giving effect to the said amendment in the Memorandum of Association of the Demerged Company and for the transfer of the charges from the Demerged Company to the Resulting Company.

8. In the case of PMP Auto Industries Ltd. (1994) Vol. 80 Comp. Cases 289, the Hon'ble Bonbay High Court held as follows:-

“Section 391 invests the court with powers to approve or sanction the 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 – except reduction of capital – then the court has power to sanction them while sanctioning the scheme itself. 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. Not only is section 391 a complete code, as held by the courts, but, in my view, 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 procedure of making repeated applications to the court for various other alterations or changes which might be needed effectively to implement the sanctioned scheme, whose overall fairness and feasibility has been judged by the court under section 394 of the Act.”

The counsel for the Petitioner Companies on instructions says that the Petitioner Companies will file the requisite forms, if any, required in law.

9. The Ld. Regional Director further at para 6 of its representation / affidavit dated 23.08.2012 has submitted that the Demerged Company is carrying on the business of Internet Service Provider including value added service and that it is not clear whether the Demerged Company has obtained any Licenses from the Ministry of Telecommunication regarding providing Internet Service. Further in para No. 6.1, the Learned Regional Director has submitted that both the Transferor and Transferee Companies may be asked to obtain the necessary approval from the Ministry of Telecommunication for transfer of licenses after the sanction of the scheme by this Hon'ble Court pursuant to the Ministry of Telecommunication letter no. 820-1/2003 –LR dated 9th June 2003 in which the Ministry of Telecommunication has clarified that the licensee may transfer the license with prior written approval of Licensor even in cases of Scheme of Amalgamation under Section 391/394 of Companies Act, 1956.

10. In response to the observations made by Ld. Regional Director at para 6 and 6.1 of the representation / affidavit, the Petitioner Companies have stated that the Demerged Company as well as Resulting Company are in the same business of providing internet services and therefore they already have a license dated 05.07.2007 and 06.08.2008 respectively from the Ministry of Telecommunication. The license agreement does not provide any restriction on transfer of the license agreement. Further that in terms of the circular no. 820-1/2003 – LR dated 9th June 2003 issued by Ministry of Telecommunication and with regard to the comment of the Regional Director, both the companies undertake to take written approval from the Ministry of Telecommunication after the Scheme is sanctioned by the Hon'ble Court.

11. In view of the reply filed by the Petitioner Companies and undertaking given by the Petitioner Companies and after hearing the oral submissions made by Mr. P. Nagesh, Ld. Counsel for the Petitioners, this Court is of the view that the observations made by the Regional Director have been sufficiently answered by the Petitioner Companies

and the Scheme of Arrangement & Demerger needs to be sanctioned by this Court.

12. No objection has been received to the Scheme of Amalgamation from any other party. In this regard, Mr. P. Nagesh, Advocate of Petitioner Companies has filed an affidavit dated 27th August, 2012 stating that neither he nor the management of Petitioner Companies has received any notice from any person opposing the Petition pursuant to the citations published in the Newspapers respectively.

13. No objection has been received to the Scheme of Arrangement and Demerger from any other party, Mr. Krishan Kumar, Company Secretary of Transferor / Demerged Company and Mr. Kishore Gogar, Company Secretary of Transferee Company have filed their respective affidavits dated 27th August 2012 confirming that neither the Petitioner Companies nor their Legal Counsel have received any objection pursuant to the citations published in the Newspapers.

14. Even today, During the Course of hearing Mr. K.S. Pradhan, Deputy Registrar Of Companies for Regional Director (Northern Region) states that he has no objection to the present Scheme being sanctioned.

15. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies, representations/ reports filed by the Regional Director, Northern Region to the proposed Scheme of Arrangement and Demerger, and the reply affidavit dated 29.08.2012 of the Petitioner Companies, and the submissions made in the Court today there appears to be no impediment to the grant of Sanction to the Scheme of Arrangement and Demerger. Consequently sanction is hereby granted to the Scheme of Arrangement and Demerger under Section 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law. Certified copy of the order be filed with the Registrar of Companies within 30 days from receipt of the same. In terms of the provisions of Section 391 and 394 of the Companies Act, 1956 and in terms of the Scheme, the ISP Business / Undertaking, comprising of the properties whether movables or immovable, all debts, liabilities, contingent liabilities, duties and obligations of every kind, nature and description, all documents of title, deeds, papers, contracts, licenses, permissions, approvals, Registration, Authorizations, Rights, lease etc. of the Transferor / Demerged Company be transferred to and vest in the

Transferee / Resulting Company without any further act or deed. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

16. Learned counsel for the petitioners states that the Petitioner Companies would voluntarily deposit a sum of Rs. 1,00,000/- in the Common Pool Fund of the Official Liquidator within three weeks from today. The statement is accepted.

17. The petition is allowed in the above terms.

INDERMEET KAUR, J

AUGUST 30, 2012
rb