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

% *Date of Judgment: 14th September, 2012*

+ **Co. Appl. (M) No. 147/2012**

IN THE MATTER OF COMPANIES ACT, 1956

IN THE MATTER OF

VODAFONE DIGILINK LIMITED Applicant/Transferor
Company No. 1

AND

VODAFONE SOUTH LIMITED Applicant/Transferor
Company No. 2

AND

VODAFONE EAST LIMITED Applicant/Transferor
Company No. 3

AND

VODAFONE CELLULAR LIMITED Applicant/Transferor
Company No. 4

AND

VODAFONE MOBILE SERVICE LIMITED Applicant/Transferee
Company

Through : Mr. Rajiv Nayar, Sr. Adv. with
Mr. Anirudh Das, Mr. Kartik
Nayar and Mr. Rohan Dheman,
Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This is a first motion joint application under Sections 391-394 of the Companies Act, 1956, in connection with a Scheme of Amalgamation among Vodafone Digilink Limit, Vodafone South Limited, Vodafone East Limited, Vodafone Cellular Limited and Vodafone Mobile Services Limited and their respective shareholders. A copy of the proposed Scheme of Amalgamation is filed along with the Application.
2. The registered offices of the Applicant/Transferor Company No.1, the applicant/transferor Company No. 2 and the Applicant/Transferee Company are situated within the National Capital Territory of Delhi and are within the jurisdiction of this Court.
3. Details with regard to the date of incorporation of the Applicant Companies, their authorized, issued, subscribed and paid up capital have been given in the Application.
4. Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ending 31st March 2011 of the Applicant Companies and the Non Applicant Companies have

been enclosed with the Application.

5. Learned Senior counsel for the Applicant Companies submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against any of the Applicant Companies as on date of the present Application.

6. The proposed Scheme has been approved by the Board of Directors of the Applicant Companies and the Non Applicant Companies. Copies of the Board Resolutions have been filed along with the Application.

7. The status of the Equity Shareholders, Secured and Unsecured Creditors of the Applicant Companies and the consents obtained by them for the proposed Scheme is clearly apparent from the chart given below:

Name of the Company	Nos. of Equity Shareholders	Consent Given	Nos. of Secured Creditors	Consent Given
	Page No	Page No.	Page No.	Page No.
Applicant/ Transferor Company No.1	7	All	1	-
	653	654-681	683	-
Applicant/ Transferor Company No.2	7	All	4	-
	764	765-792	802	-
Applicant/	7	All	4	-

Transferee Company				
	989	990-1014	1015	-

Name of the Company	Nos. of Unsecured Creditors	Consent Given	Nos. of Preference Shareholders	Consent Given
	Page No	Page No.	Page No.	Page No.
Applicant/ Transferor Company No.1	2069	-	NA	NA
	684	-	NA	NA
Applicant/ Transferor Company No.2	5452	-	2	All
	804	-	793	794-801
Applicant/ Transferee Company	1472	-	NA	NA
	1017	-	NA	NA

8. In view of the written consents/NOC given by all the shareholders of the Applicant/Transferor Company No. 1, the requirement of convening the meeting of equity shareholders of the Applicant/Transferor Company No. 1, the requirement of convening the meeting of equity shareholders of the Applicant/Transferor Company No. 1 is dispensed with.

9. In view of the written consents/NOC given by all the equity shareholders and preference shareholders of the Applicant/ Transferor Company No. 2, the requirement of convening the meeting of equity

shareholders and preference shareholders of the Applicant/Transferor Company No. 2 is dispensed with.

10. In view of the written consents/NOC given by all the equity shareholders of the Applicant/Transferee Company, the requirement of convening the meeting of equity shareholders of the Applicant/Transferee Company is dispensed with.

11. The Applicant Companies are seeking dispensation as regards the meetings of the Secured and Unsecured Creditors of the Applicant Companies. As regards the requirement of convening the meeting of the Secured Creditors of the Applicant Companies, it is submitted by the learned Senior Counsel appearing on behalf of the Applicant Companies that the present Scheme is a Scheme between the Applicant Companies Nos. 1 and 2, the Transferor Company Nos. 3 and 4 and the Applicant/Transferee Company and their respective members under Sections 391 (1)(b) of the Companies Act, 1956. It is further submitted that the Scheme also does not contemplate any variation of the rights of the Secured Creditors. The Applicant/Transferee Company in terms of the Scheme shall be taking over all the liabilities of the Applicant/Transferor Company No. 1 and the Applicant/Transferor

Company No. 2 and undertakes to meet and discharge the same in terms of Clauses 3.2.2 (iii) and 4.2.2(iii) of the Scheme. The Applicant Companies also undertake that upon notice being issued by this Hon'ble Court on the Confirmation Petition for sanction of the Scheme, the Applicant Companies shall issue individual notice to all its Secured Creditors as per list annexed at Annexure R, V and Y, respectively, seeking their objections if any to the Scheme.

12. As regards, the requirement of convening the meeting of the Unsecured Creditors of the Applicant Companies is concerned, it is submitted that the Unsecured Trade/Sundry Creditors of the Applicant Companies are cyclic in nature and the Applicant Companies are meeting such obligation in the ordinary course of business. In terms of the Scheme, there is no variation in the rights of the Unsecured Trade/Sundry Creditors and there is no variation in the amounts owed to such Unsecured Trade/Sundry Creditors. The Applicant/Transferee Company in terms of the Scheme shall be taking over all the liabilities of the Applicant/Transferor Company No. 1 and the Applicant/Transferor Company No. 2 and undertakes to meet and discharge the same in terms of Clauses 3.2.2 (iii) and 4.2.2 (iii) of the

Scheme. The Applicant Companies undertake to issue notice of the Confirmation Petition to all the Unsecured Trade/Sundry Creditors at the Petition stage as per list annexed at Annexure S, W and Z respectively.

13. The learned Senior Counsel has further placed reliance on the Chartered Accountant Certificate dated 10th September, 2012 stating that as per the Scheme, there is no variation in the rights of the Secured and Unsecured Creditors of the Applicant/Transferor Company Nos. 1 and 2 and the Applicant/Transferee Company and the amounts owed to such Secured and Unsecured Creditors and this has also been stated by the Applicant Companies at paras 24(b), 24(c), 25(c) , 25(d), 26(b) and 26(c) of the Affidavit in Support of Summons.

14. Accordingly the requirement of convening the meeting of the Secured and Unsecured Creditors of the Applicant Companies is dispensed with. The Applicant Companies shall issue notice of the Confirmation Petition to their respective Secured Creditors as per list annexed at Annexure R, V and Y, respectively. The Applicant Companies shall also issue notice of the Confirmation Petition to their respective Unsecured Creditors as per list annexed at Annexure S, W

and Z respectively.

15. It is stated that the Registered Office of the Transferor Company No. 3 is in the State of West Bengal and the Registered Office of the Transferor Company No. 4 is in the State of Tamil Nadu. The first motion applications filed by the Transferor Company No. 3 and the Transferor Company No. 4 before the High Court at Calcutta and High Court of Judicature at Madras, respectively, were allowed vide orders dated 29th August, 2012 and 30th August, 2012 respectively and the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors have not been convened by the said Courts.

16. The application stands allowed in the above terms.

INDERMEET KAUR, J

SEPTEMBER 14, 2012

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