

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 3/2016

Reserved on 5th January, 2016
Date of pronouncement: 18th February, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

Application under Sections 391 & 394 of the Companies Act, 1956

Scheme of Arrangement between:

Essel Shyam Communication Limited

Applicant/Demerged Company

AND

Cloudcast Digital Limited

Applicant/Resulting Company

**Through Mr. P. K. Mittal, Advocate for
the applicant**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 & 394 of the Companies Act, 1956 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the resulting company and equity and preference shareholders of the demerged company and for convening of separate meetings of the secured and unsecured creditors of the demerged company, to consider and approve, with or without modification, the proposed Scheme of Arrangement between Essel Shyam Communication Limited (hereinafter referred to as the demerged company) and Cloudcast Digital Limited (hereinafter referred to as the resulting company).

2. The registered offices of the demerged and resulting companies are situated at New Delhi, within the jurisdiction of this Court.

3. The demerged company was originally incorporated under the Companies Act, 1956 on 30th April, 1996 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Essel Spacelinks Limited. The company changed its name to Essel Shyam Communication Limited and obtained the fresh certificate of incorporation on 9th April, 1997.

4. The resulting company was originally incorporated under the Companies Act, 1956 on 3rd November, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of ESCL Technologies Limited. The company changed its name to Escal News India Limited and obtained the fresh certificate of incorporation on 16th May, 2011. The company again changed its name to Cloudcast Digital Limited and obtained the fresh certificate of incorporation on 30th March, 2015.

5. The present authorized share capital of the demerged company is Rs.48,00,00,000/- divided into 3,30,00,000 equity shares of Rs.10/- each aggregating to Rs.33,00,00,000/- and 75,00,000 0.01% non-cumulative

compulsorily convertible preference shares of Rs.20/- each aggregating to Rs.15,00,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.27,57,29,900/- divided into 1,64,62,878 equity shares of Rs.10/- each aggregating to Rs.16,46,28,780/- and 55,55,056 0.01% non-cumulative compulsorily convertible preference shares of Rs.20/- each aggregating to Rs.11,11,01,120/-.

6. The present authorized share capital of the resulting company is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the demerged and resulting companies have been filed on record. The audited balance sheets, as on 31st March, 2015, of the demerged and resulting companies, along with the report of the auditors, have also been filed.

8. A copy of the Scheme of Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavit. It is submitted by the applicants that the proposed Scheme, *inter alia*, provides for demerger of the VSAT and ISP Division of the demerged company by

way of slump sale to the resulting company. It is claimed that the proposed arrangement will achieve synergistic integration of the businesses presently being carried on by the demerged company, which shall be beneficial to the shareholders, creditors, employees and to the interests of the public at large, as such arrangement would create greater synergies between the businesses of the two companies and would enable them to have access to better financial resources as well as increase the managerial efficiencies, while effectively pooling the technical, distribution and marketing skills of each other. It is further claimed that the proposed demerger would assist in induction of joint venture partner/strategic investor/financial investor and pursue inorganic and organic growth opportunities in such businesses.

9. So far as the share exchange ratio is concerned, the Scheme provides that the total consideration for transfer and vesting of VSAT and ISP Division of the demerged company in the resulting company shall be Rs.2,07,45,334/- which shall be discharged by the resulting company within a period of three months from the effective date or receipt of all regulatory approvals, whichever is later, without any interest, or such other extended period(s) and in such manner as may be agreed by the Board of the demerged and resulting companies.

10. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the demerged and resulting companies.

11. The Board of Directors of the demerged and resulting companies in their separate meetings held on 28th October, 2015 have unanimously approved the proposed Scheme of Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the demerged and resulting companies have been placed on record.

12. The demerged company has 97 equity shareholders and 01 preference shareholder. 51 out of 97 equity shareholders, being 52.58% in number and 97.19% in value, and the sole preference shareholder have given their consents/no objections in writing to the proposed Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and preference shareholders of the demerged company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with.

13. The resulting company has 07 equity shareholders. 03 out of 07 equity shareholders, being 42.86% in number and 99.99% in value, have

given their consents/no objections in writing to the proposed Scheme of Arrangement. There consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity shareholders of the resulting company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with. There is no secured or unsecured creditor of the resulting company, as on 30th September, 2015.

14. The demerged company has 03 secured creditors and a direction is sought to convene and hold their meetings to seek their approval to the proposed Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the secured creditors of the demerged company shall be held on 19th March, 2016 at 02:00 p.m. at C-34, Sector-62, Electronic City, Noida. Mr. Ankur Arora, Advocate, (Mobile No. 9811929774) is appointed as the Chairperson and Ms. Alka Srivastava, Advocate, (Mobile No. 9811950380) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the secured creditors of the demerged company shall be 2 in number and more than 25% in value of the total secured debt.

15. The demerged company has 235 unsecured creditors and a direction is sought to convene and hold their meetings to seek their

approval to the proposed Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the demerged company shall be held on 19th March, 2016 at 03:00 p.m. at C-34, Sector-62, Electronic City, Noida. Mr. Rajeev Sharma, Advocate, (Mobile No. 9810104886) is appointed as the Chairperson and Mr. Siddharth Thakur, Advocate, (Mobile No. 9650032198) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the demerged company shall be 50 in number and more than 25% in value of the total unsecured debt.

16. In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the meetings is filed with the registered office of the applicant company at least 48 hours before the meetings. The Chairpersons and Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

17. The Chairpersons and Alternate Chairpersons shall ensure that notices for convening the aforesaid meetings of the secured and unsecured creditors of the demerged company, along with copies of the

Scheme of Arrangement and the statement under Section 393 of the Companies Act, 1956, shall be sent to the secured and unsecured creditors of the demerged company by ordinary post at their registered or last known addresses at least 21 days before the date appointed for the meetings, in their presence or in the presence of their authorized representatives. Notice of the meetings shall also be published in the Delhi editions of the newspapers "Statesman" (English) and "Veer Arjun" (Hindi) in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meetings.

18. The Chairpersons and Alternate Chairpersons will be at liberty to issue suitable directions to the management of the applicant companies so that the aforesaid meetings of the secured and unsecured creditors of the demerged company are conducted in a just, free and fair manner.

19. The fee of the Chairpersons and the Alternate Chairpersons for the aforesaid meetings shall be Rs.50,000/- each in addition to meeting their incidental expenses. The Chairpersons will file their reports within two weeks from the date of holding of the aforesaid meetings.

20. The application stands allowed in the aforesaid terms.
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SUDERSHAN KUMAR MISRA, J.

February 18, 2016