

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

+ COMPANY APPLICATION (MAIN) NO. 88/2015

IN THE MATTER OF

**THE COMPANIES ACT, 1956 & THE COMPANIES ACT, 2013
(TO THE EXTENT APPLICABLE)**

AND

**APPLICATION UNDER SECTIONS 391 AND 394
OF THE COMPANIES ACT, 1956.**

SCHEME OF AMALGAMATION OF :

UNICOMMERCE ESOLUTIONS PVT. LTD.

**..... APPLICANT No.1/ TRANSFEROR
COMPANY**

WITH

JASPER INFOTECH PRIVATE LTD.

**..... APPLICANT No.2/ TRANSFEREE
COMPANY**

Through: Mr Rajiv Nayar, Sr. Adv. with Mr
Avimukt Dar, Mr Mohit Chadha, Mr Ishwar
Upneja & Ms Trisha Raychaudhuri, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

**ORDER
20.10.2015**

%

1. This is a joint application filed under Section 391 and 394 of the Companies Act, 1956 on behalf of the applicants herein. Applicant no.1 is the transferor company, while applicant no.2 is the transferee company.

1.1 Both the applicants have their registered office, located within the territorial jurisdiction of this court.

2. By virtue of this application, the applicants have made, primary prayers, to the following effect :-

(i). Dispensation of convening of the meeting of equity shareholders, preference shareholders and unsecured creditors.

2.1 A consequential prayer has been made to dispense with issuance and publication of the notice with regard to the meetings of equity shareholders, preference shareholders and unsecured creditors.

2.2 These prayers, as indicated above, is made both by applicant no.1 and applicant no.2 with respect to their respective equity shareholders, preference shareholders and unsecured creditors.

2.3 To be noted, hereon, I would be referring to applicant no.1 as the transferor company and applicant no.2 as the transferee company, while collectively they would be referred to as the applicants.

2.4 In the application, it is averred that the authorised share capital of the transferor company as on 28.02.2015 is a sum equivalent to Rs.30,44,000/- with issued, subscribed and paid-up capital equivalent to Rs.13,62,100/-. The details with regard to the composition of the authorized, issued, subscribed and paid-up capital are set up in paragraph 4(b) of the application.

2.5 In so far as the transferee company is concerned, it is averred that as on even date (i.e. 28.02.2015), it has an authorised capital of

Rs.2,04,50,000/- with issued, subscribed and paid up capital equivalent to Rs.1,37,33,260/-. The details with regard to the composition of the same are set out in paragraph 5(b) of the application.

2.6 It is further averred that the accounts of the transferor company as on 31.03.2014 have been duly audited and approved by its Board of Directors, and that, after the said date on which the audited accounts have been drawn up, there has been no change in its financial position except that, which has arisen, in the usual and normal course of business.

2.7 As regards the transferee company, it is stated that accounts drawn up as on 31.03.2014, have been duly audited and approved by its Board of Directors. It is, however, averred that subsequent to the date of the audited accounts, the transferee company has received investments and therefore, as indicated above, the issued, subscribed and paid-up capital, as on 28.02.2015, reached a figure of Rs.1,37,33,260/-. The details with respect to the investments received is set out in para 7(c) of the application.

2.8 More importantly, it is averred that the aggregate assets of the transferor and transferee companies after the scheme comes into effect shall be more than sufficient to meet their respective liabilities, and that, the scheme, will not adversely affect the rights of the creditors of the transferor and / or transferee company.

2.9 It is also averred that provisions have been made for payment of all liabilities, as and when they arise, in the usual course of business.

3. The financial position of the transferor company which would obtain as on the appointed date has been set out in paragraph 9 of the application.

4. Briefly, the reasons articulated for propounding the scheme of amalgamation are as follows :-

(i). That there shall be cost savings due to rationalization and standardization of business processes.

(ii). The transferor company will get access to a wider customer base, while the transferee company, will have access to technology that is useful to promote market-place operations.

(iii). Amalgamation is expected to achieve business synergies and make its operations economical.

(iv). Lastly, rationalization of business operations would enable it to achieve growth and diversification, besides, leading to optimization of costs and resources.

4.1 It is also averred that the scheme has been approved by the Board of Directors of both the transferor and transferee companies. The scheme has been appended as Annexure 'U' to the application.

4.2 It is stated that the scheme will get triggered with effect from 01.04.2014, and that, with the narration of the scheme, the transferor company shall stand amalgamated and merged with the transferee company.

4.3 There is also an averment to the effect, in paragraph 14 of the application that, the directors of the transferor and the transferee company have no material interest in the matter except to the extent that Mr. Kunal Bahl and Mr. Rohit Bansal, who are the promoters of the transferee

company are also shareholders of the transferor company. It is stated that both Mr. Kunal Bahl and Mr. Rohit Bansal, separately, hold equity shares to the extent of 4.41% in the transferor company.

4.4 A declaration is made to the effect that no investigation or proceedings have been instituted or are pending against the transferor and the transferee company either under the Companies Act, 1956 and / or under the Companies Act, 2013.

4.5 The position with regard to the number of equity shareholders, preference shareholders, secured and unsecured creditors and the fact whether or not consents to proposed scheme have been received from them and if so, to what extent, is set out in the table given below :-

	Transferor Co.	Transferee Co.
No. of Equity Shareholders	6	16
Consents Given	6 (100%)	8 (96.30%)

No. of Preference Shareholders	1	35
Consents Given	1 (100%)	16 (86.99%)

No. of Secured Creditors	Nil	Nil
Consents Given	n.a.	n.a.

No. of Unsecured Creditors	54	294
Consents given	77%	50%

5. Consents given qua the proposed scheme by the equity shareholders, preference shareholders, both of the transferor and transferee company have been examined. In view of the fact that these are found in order, the

requirement of convening a meeting of equity shareholders and preference shareholders of transferor and transferee company, is dispensed with subject to the condition indicated in paragraph 8 below.

5.1 In so far as the unsecured creditors of the transferor company are concerned, in substance it is averred that these unsecured creditors are trade creditors or sundry creditors and not lenders, whose dues are settled in short intervals of 21 days. It is further averred that the proposed scheme will not adversely affect their interest given these assertions coupled with the fact that 77% have given their consent to the proposed scheme, the meeting of the unsecured creditors of transferor company is dispensed with.

5.2 As regards, unsecured trade creditors of the transferee company, it is averred, once again, that they are, in effect, trade creditors or sundry creditors. In this case also, it is reiterated that the unsecured creditors are not lenders to the transferee company. Furthermore, it is averred that these trade creditors or sundry creditors are sellers registered with the transferee company, who sell their products on the on-line market place maintained by the transferee company. It is stated that upon sale of products to the end consumers, the consideration received is transferred to a “nodal account” qua which the transferor company acts as a custodian. It is further averred that the amounts lying in the nodal account are thereafter collected by the registered sellers. In other words, it is projected that the amounts due to such unsecured creditors (i.e. trade creditors) is not available to the transferee company on a day-to-day basis as it is maintained separately in a nodal account.

5.3 The case set up on this score, is that, the transferee company will have the ability to discharge the debts and liabilities of the unsecured creditors if, the proposed scheme is approved by this court, and that, the said scheme does not adversely affect their interest.

5.4 It is further averred that the transferee company is in a position to discharge its debts and liabilities.

5.5 In support of this contention, Mr. Nayar, has relied upon a judgment of the learned single Judge of this court dated 14.09.2012, passed in Co. Appl.(M) No.147/2012, in the case of : *Vodafone Digilink Ltd. and Ors.*

5.6 Pertinently, the aspect with regard to the grant of permission to dispense with the meeting of unsecured creditors of the transferor and transferee companies came up before my predecessor on 17.07.2015 when, accommodation was sought by the counsels for the applicants to file additional affidavit in respect of the same.

5.7 Thereupon an additional affidavit dated 04.08.2015, was filed by one, Mr. Manish Kumar, Company Secretary of the transferee company. This is reflected in the proceedings held by my predecessor, on 06.08.2015. In that proceeding, it is, inter alia, recorded that in terms of the affidavit, the transferee company has taken over the obligation qua the unsecured creditors of both the transferor and transferee company.

5.8 Thereafter, in the proceedings held on 29.09.2015, it got recorded that a certificate dated 11.08.2015 of Deutsche Bank Ltd. has been filed. Since, the certificate was not on record, the matter was adjourned.

6. I have perused the record. The affidavit dated 04.08.2015 of Mr. Manish Kumar, Company Secretary of the transferee company is on record.

As indicated above, the transferee company has undertaken to pay the liabilities of the unsecured creditors of the transferor and transferee company. Furthermore, a perusal of the certificate dated 11.08.2015, issued by Deutsche Bank Ltd., shows that a nodal account is in operation, as indicated above, in terms of : “agreement for processing payments of intermediaries” . This agreement, apparently, was executed, as per the said certificate, between Deutsche Bank Ltd. and transferee company, on 01.03.2015 for facilitating payments to merchants for on-line sale of goods and services and to bring about final settlement of the obligations of the paying customers. The certificate also bears out that the said arrangement between the transferee company and Deutsche Bank Ltd. shall continue to operate in terms of the agreement entered into between them, even after the scheme as proposed is approved by this court.

7. To be noted, both the transferor and transferee company have no secured creditors.

8. Having regard to the aforesaid, as indicated above, the prayer made in the application for dispensing the meeting of the equity shareholders and preference shareholders, of both transferor and transferee company is allowed; their meeting is dispensed with. In so far as the unsecured creditors of the transferor and transferee company is concerned, the convening of the meeting is dispensed with subject to the applicant companies undertaking to issue separate notices to all unsecured creditors, whose names are listed out in Annexure J (at pages 169-171 of the paper book) and Annexure ‘T’ (at pages 414-416 of the paper book) to seek their objections, if any, when notices are issued on the confirmation petition for obtaining sanction qua the proposed scheme.

9. The captioned application is disposed of, in the aforesaid terms.

RAJIV SHAKDHER, J.

OCTOBER 20, 2015

yg