

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 116/2015

Reserved on 6th July, 2015
Date of pronouncement: 22nd July, 2015

In the matter of

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

And

**Application under Sections 390 & 391 of the
Companies Act, 1956 read with Rules 6 & 9 of
the Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

Ubico Networks Private Limited

Applicant/Transferor Company No. 1

Spectranet IT Services Private Limited

Applicant/Transferor Company No. 2

WITH

Citycom Networks Private Limited

Applicant/Transferee Company

**Through Mr. P. Nagesh, Advocate for
the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 390 & 391 of the Companies Act, 1956 read with Rules 6 & 9 of the Companies (Court) Rules, 1959 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of the equity shareholders of the transferor and transferee companies, debenture holder of the transferee company and the secured creditors of the transferor company no. 2 and the transferee company and for convening of separate meetings of the secured and unsecured creditors

of the transferor company no. 1 and the unsecured creditors of the transferor company no. 2 and the transferee company to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Ubico Networks Private Limited (hereinafter referred to as the transferor company no. 1) and Spectranet IT Services Private Limited (hereinafter referred to as the transferor company no. 2) with Citycom Networks Private Limited (hereinafter referred to as the transferee company).

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

3. The transferor company no. 1 was incorporated under the Companies Act, 1956 on 18th May, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferor company no. 2 was incorporated under the Companies Act, 1956 on 25th July, 2012 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferee company was originally incorporated under the Companies Act, 1956 on 9th May, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of

Citicom Networks Private Limited. The company changed its name to Citycom Networks Private Limited and obtained the fresh certificate of incorporation on 25th July, 2008.

6. The present authorized share capital of the transferor company no.1 is Rs.20,00,00,000/- divided into 2,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.18,32,80,000/- divided into 1,83,28,000 equity shares of Rs.10/- each.

7. The present authorized share capital of the transferor company no.2 is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferee company is Rs.30,00,00,000/- divided into 3,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.23,95,20,000/- divided into 2,39,52,000 equity shares of Rs.10/- each.

9. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2014, along with the reports of

the auditors, and the provisional balance sheets, as on 15th March, 2015, of the transferor and transferee companies have also been filed.

10. A copy of the Scheme of Amalgamation 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 Scheme has been envisaged to create a single robust entity which would carry on businesses that are integrated and complementary in nature. It is claimed that the proposed amalgamation would result in strengthened leadership in the industry in terms of asset base, revenue, and market share of the combined entity. It is further claimed that the amalgamation would help the management to achieve greater integration and better financial strength which would result in improving the competitive position of the combined entity

11. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor companies in the following ratio:

“27 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each fully paid up held in transferor company no. 1.”

“151 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 01 equity share of Rs.10/- each fully paid up held in transferor company no. 2.”

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

13. The Board of Directors of the transferor and transferee companies in their separate meetings held on 19th March, 2015 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

14. The transferor company no. 1 has 03 equity shareholders. All the equity shareholders have given their consents/no objections in writing to the proposed Scheme of Amalgamation. 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 meeting of the equity shareholders of the transferor company no. 1 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

15. The transferor company no. 2 has 02 equity shareholders. Both the equity shares have given their consents/no objections in writing to the proposed Scheme of Amalgamation. 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 meeting of the equity shareholders of the transferor company no. 2 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferor company no. 2, as on 15th March, 2015.

16. The transferee company has 02 equity shareholders and 01 debenture holder. Both the equity shareholders and the only debenture holder have given their consents/no objections in writing to the proposed Scheme of Amalgamation. 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 debenture holder of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferee company, as on 15th March, 2015.

17. The transferor company no. 1 has 01 secured creditor and a direction is sought to convene and hold its meeting to seek its approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the secured creditor of the transferor company no. 1 shall be held on 21st August, 2015 at 12:00

noon at Lecture Room – II (Basement), India International Centre (IIC), 40 Max Mueller Marg, New Delhi – 110003. Mr. R. P. Jain, Advocate, (Mobile No. 9910390950) is appointed as the Chairperson and Ms. Tanya Khanna, Advocate, (Mobile No. 9650313588) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the secured creditor of the transferor company no. 1 shall be 01 in number.

18. The transferor company no. 1 has 107 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the transferor company no. 1 shall be held on 21st August, 2015 at 10:00 a.m. at Lecture Room – II (Basement), India International Centre (IIC), 40 Max Mueller Marg, New Delhi – 110003. Mr. Rajeev Kumar, Advocate, (Mobile No. 9810466870) is appointed as the Chairperson and Ms. Shrishti Sharma, Advocate, (Mobile No. 9582249534) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the transferor company no. 1 shall be 25 in number and more than 25% in value of the total unsecured debt.

19. The transferor company no. 2 has 10 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the transferor company no. 2 shall be held on 21st August, 2015 at 4:30 p.m. at Lecture Room – II (Basement), India International Centre (IIC), 40 Max Mueller Marg, New Delhi – 110003. Mr. Rajeev Sharma, Advocate, (Mobile No. 9810104886) is appointed as the Chairperson and Mr. Sameer Sharma, Advocate, (Mobile No. 9213857751) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the transferor company no. 2 shall be 3 in number and more than 25% in value of the total unsecured debt.

20. The transferee company has 252 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the transferee company shall be held on 21st August, 2015 at 2:30 p.m. at Lecture Room – II (Basement), India International Centre (IIC), 40 Max Mueller Marg, New Delhi – 110003. Mr. Rajeev Bansal, Advocate, (Mobile No. 9810114141) is appointed as the Chairperson and Mr. Ranjan Roy, Advocate, (Mobile No. 9810157399) is appointed as the

Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the transferee company shall be 50 in number and more than 25% in value of the total unsecured debt.

21. 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 offices of the applicant companies at least 48 hours before the meeting. The Chairpersons and Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

22. The Chairpersons and Alternate Chairpersons shall ensure that notices for convening the aforesaid meetings of the secured and unsecured creditors of the transferor company no. 1 and unsecured creditors of the transferor company no. 2 and the transferee company, along with copies of the Scheme of Amalgamation and the statement under Section 393 of the Companies Act, 1956, shall be sent to the secured and unsecured creditors of the transferor company no. 1 and unsecured creditors of the transferor company no. 2 and the transferee 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 “Indian Express” (English) and “Jansatta” (Hindi) editions in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meetings.

23. 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 transferor company no. 1 and unsecured creditors of the transferor company no. 2 and the transferee company are conducted in a just, free and fair manner.

24. 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.

25. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

July 22, 2015