

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 152/2015

Reserved on 21st September, 2015
Date of pronouncement: 2nd November, 2015

In the matter of

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

And

**Application under Sections 391, 392 & 394 of
the Companies Act, 1956 read with Rules 6 &
9 of the Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

Bharti Infotel Private Limited

Applicant/Transferor Company

WITH

Bharti Enterprises (Holding) Private Limited

Non-Applicant/Transferee Company

Through Mr. Anand M. Mishra,
Advocate for the applicants

SUDERSHAN KUMAR MISRA, J.

1. This application has been filed under Sections 391, 392 & 394 of the Companies Act, 1956 read with Rules 6 & 9 of the Companies (Court) Rules, 1959 by the applicant/transferor company seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Bharti Infotel Private Limited (hereinafter referred to as the applicant/transferor company) with Bharti Enterprises (Holding) Private Limited (hereinafter referred to as the transferee

company) and to dispense with the requirement of the transferee company to approach this Court for seeking sanction of Scheme of Amalgamation.

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

3. The applicant/transferor company was originally incorporated under the Companies Act, 1956 on 4th March, 1983 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Bharti Overseas Private Limited. The company changed its name to Bharti Enterprises Private Limited and obtained the fresh certificate of incorporation on 15th December, 1997. The word 'Private' was deleted from the name of the company w.e.f. 29.01.1998. The company again changed its name to Bharti Enterprises Private Limited and obtained the fresh certificate of incorporation on 9th May, 2000. The word 'Private' was deleted from the name of the company w.e.f. 31.03.2000. The word 'Private' was added in the name of the company w.e.f. 02.03.2001. The company finally changed its name to Bharti Infotel Private Limited and obtained the fresh certificate of incorporation on 3rd June, 2006.

4. The present authorized share capital of the applicant/transferor company is Rs.70,00,00,000/- divided into 70,00,000 equity shares of Rs.100/- each. The present issued, subscribed and paid-up share capital of the company is Rs.46,43,46,200/- divided into 46,43,462 equity shares of Rs.100/- each.

5. Copies of the Memorandum and Articles of Association of the applicant/transferor company and the transferee company have been filed on record. The audited balance sheets, as on 31st March, 2014, of applicant/transferor company and the transferee company, along with the report of the auditors, have also been filed.

6. 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 claimed by the applicant that the proposed amalgamation will reduce managerial overlaps which are necessarily involved in running multiple entities; reduce administrative cost; rationalize the company holding structure and achieve operation and management efficiency.

7. So far as the share exchange ratio is concerned, the Scheme provides that since the transferor company is a wholly owned subsidiary of the transferee company, no shares of the transferee company shall be

allotted in lieu or exchange of its holding in the transferor company and the share capital of the transferor company shall stand cancelled/extinguished.

8. 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/transferor company and the transferee company.

9. The Board of Directors of the applicant/transferor company and the transferee company in their separate meetings held on 5th August, 2015 and 2nd July, 2015 respectively 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.

10. The applicant/transferor company has 02 equity shareholders and 03 unsecured creditors. Both the equity shareholders and all the unsecured creditors 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 unsecured creditors of the applicant/transferor 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 applicant/transferor company, as on 31st July, 2015.

11. The applicant also seeks dispensation of requirement of the transferee company to approach this Court for sanction of Scheme of Amalgamation under Sections 391-394 of the Companies Act, 1956 on the ground that the Scheme does not entail or involve any arrangement between the transferee company and its shareholders since the transferor company is a wholly owned subsidiary of the transferee company; no new shares will be issued by the transferee company in lieu of the shares of the transferor company; and there will be no change in the control and management of the transferee company, therefore, the rights of the shareholders of the transferee company will not be affected in any manner whatsoever by the Scheme. Learned counsel for the applicants has submitted that the present Scheme does not envisage any compromise or arrangement by the transferee company with their creditors and that the assets of both the companies are more than sufficient to meet their respective and combined aggregate liabilities towards their respective creditors, therefore, the rights of the creditors of the transferee company will not be adversely affected.

12. In support of his submissions, learned counsel placed reliance on the judgments of several High Courts, including this Court, in many cases such as **Sharat Hardware Industries Pvt. Ltd.** (1978), 48 Com. Cas 23 (Delhi); **Mahaamba Investments Ltd. V. IDI Limited** (2001) 105 Com Cas. 16 (Bom.); and **C.L. Media Private Limited Company & C.L. Educate Limited Company** (Company Petition No. 74/2014 decided by this Court on 2nd May, 2014), wherein it has been held that there is no requirement to file a separate or joint application on behalf of the transferee company for sanction of the Scheme.

13. I have carefully considered the aforesaid case laws cited at the Bar, wherein the transferee company, being the holding company, has been granted exemption from taking out separate proceedings under Section 391(2) of the Companies Act, 1956. In view of this settled legal position and considering the Scheme of Amalgamation, the requirement of the transferee company having to approach this Court under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation is dispensed with.

14. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

November 02, 2015