

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 176/2015

Reserved on 14th December, 2015
Date of pronouncement: 23rd December, 2015

In the matter of

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

And

**Application under Section 391 of the
Companies Act, 1956 read with Rules 6 and 9
of the Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

AD2C Holdings Private Limited

Applicant/Transferor Company No. 1

Appstudioz Technologies Private Limited

Applicant/Transferor Company No. 2

AD2C (India) Private Limited

Non-Applciant/Transferor Company No. 3

WITH

Affle (India) Private Limited

Non-Applciant/Transferee Company

**Through Mr. Samaksh Goyal, Advocate
for the applicant no. 1**

**Ms. Liza M. Baruah, Advocate for
applicant no. 2**

SUDERSHAN KUMAR MISRA, J.

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

creditors of applicant/transferor company no. 2 and for convening a meeting of the unsecured creditors of the applicant/transferor company no. 2 to consider and approve, with or without modification, the proposed Scheme of Amalgamation of AD2C Holdings Private Limited (hereinafter referred to as the applicant/transferor company no. 1); Appstudioz Technologies Private Limited (hereinafter referred to as the applicant/transferor company no. 2) and AD2C (India) Private Limited (hereinafter referred to as the transferor company no. 3) with Affle (India) Private Limited Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor company nos. 1 & 2 are situated at New Delhi, within the jurisdiction of this Court. However, the registered offices of the transferor company no. 3 and the transferee company are situated at Gurgaon, Haryana and Mumbai, Maharashtra respectively outside the jurisdiction of this Court. Learned counsel for the applicants submitted that separate applications filed by the transferor company no.3 and the transferee company in the courts of competent jurisdiction for sanction of the Scheme of Amalgamation in respect of the transferor company no. 3 and the transferee company have already been approved by the respective High Courts.

3. The applicant/transferor company no. 1 was originally incorporated under the Companies Act, 1956 on 18th November, 2009 with the

Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of AV Mobimasta Marketing Private Limited. The company changed its name to AD2C Holdings Private Limited and obtained the fresh certificate of incorporation on 4th December, 2012.

4. The applicant/transferor company no. 2 was incorporated under the Companies Act, 1956 on 13th June, 2011 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the applicant/transferor company no.1 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.2,50,000/- divided into 25,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the applicant/transferor company no.2 is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The present 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.

7. 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 accounts, as on 31st March, 2015 and 31st July, 2015, of the transferor and transferee companies, have also been filed.

8. 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 applicants that the proposed amalgamation would have greater efficiency in cash management, unfettered access to cash flow generated by the combined businesses which can be deployed more efficiently to fund organic and inorganic growth opportunities. It is further claimed that by the proposed amalgamation benefit of operational synergies to the combined entity in various operational areas can be put to the best advantage of all the stakeholders. It is also claimed that the merger will result in integration of human resources, finance, legal and general management leading to an efficient organization capable of responding swiftly to volatile and rapidly changing market scenario.

9. So far as the share exchange ratio is concerned, the Scheme provides, 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:

“74 equity shares of Rs.10/- each fully paid up of the transferee company for every 21 equity shares of Rs.10/- each fully paid up held in the transferor company no. 1.”

“586 equity shares of Rs.10/- each fully paid up of the transferee company for every 05 equity shares of Rs.10/- each fully paid up held in the transferor company no. 2.”

“48 equity shares of Rs.10/- each fully paid up of the transferee company for every 17 equity shares of Rs.10/- each fully paid up held in the transferor company no. 3.”

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 applicant companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 13th May, 2015 and 5th August, 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.

12. The applicant/transferor company no. 1 has 02 equity shareholders and 01 unsecured creditor. Both the equity shareholders and the sole unsecured creditor 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 creditor of the applicant/transferor company no. 1 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 no. 1, as on 31st July, 2015.

13. The applicant/transferor company no. 2 has 02 equity shareholders. Both 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 applicant/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 applicant/transferor company no. 2, as on 31st July, 2015.

14. The applicant/transferor company no. 2 has 48 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 applicant/transferor company no. 2 shall be held on 9th February, 2016 at 10:00 a.m. at India International Centre, 40, Max

Mueller Marg, New Delhi - 110003. Mr. Gaurav Kumar Sharma, Advocate, (Mobile No. 9990116727) is appointed as the Chairperson and Ms. Shruti Aggarwal, Advocate, (Mobile No. 9810844887) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the applicant/transferor company no. 2 shall be 10 in number and more than 25% in value of the total unsecured debt.

15. In case the quorum as noted above for the above meeting is not present at the meeting, then the meeting 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 meeting is filed with the registered office of the applicant/transferor company no. 2 at least 48 hours before the meeting. The Chairperson and Alternate Chairperson shall ensure that the proxy register is properly maintained.

16. The Chairperson and Alternate Chairperson shall ensure that notices for convening the aforesaid meeting of the unsecured creditors of the applicant/transferor company no. 2, along with copies of the Scheme of Amalgamation and the statement under Section 393 of the Companies Act, 1956, shall be sent to the unsecured creditors of the applicant/

transferor company no. 2 by ordinary post at their registered or last known addresses at least 21 days before the date appointed for the meeting, in their presence or in the presence of their authorized representatives. Notice of the meeting 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 meeting.

17. The Chairperson and Alternate Chairperson will be at liberty to issue suitable directions to the management of the applicant/transferor company no. 2 so that the aforesaid meeting of the unsecured creditors of the applicant/transferor company no. 2 is conducted in a just, free and fair manner.

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

19. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

December 23, 2015