

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 86/2016

Reserved on 29th July, 2016

Date of pronouncement: 12th August, 2016

In the matter of

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

And

**Petition under Sections 391 to 394 read with
Sections 100 to 103 of the Companies Act,
1956**

Scheme of Arrangement between:

SpotOn Media Private Limited

Petitioner/Transferor Company

AND

ValueFirst Digital Media Private Limited

Petitioner/Transferee Company

**Through Mr. Rajeev Kumar, Advocate
for the petitioners**

**Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director**

**Mr. Rajiv Bahl, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Arrangement between SpotOn Media Private Limited (hereinafter referred to as the transferor company) and ValueFirst Digital Media 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 was incorporated under the Companies Act, 1956 on 23rd October, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 17th October, 2003 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of ValueFirst Messaging Private Limited. The company changed its name to ValueFirst Digital Media Private Limited and obtained the fresh certificate of incorporation on 30th July, 2012.

5. The present authorized share capital of the transferor company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,11,130/- divided into 11,113 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.27,13,00,000/- divided into 2,70,74,900 equity shares of Rs.10/- each aggregating to Rs.27,07,49,000/-; 45,100 0.1% cumulative compulsory convertible preference shares of Rs.10/- each aggregating to

Rs.4,51,000/-; 10,000 8% non-cumulative compulsory convertible preference shares of Rs.10/- each aggregating to Rs.1,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.19,66,200/- divided into 1,41,520 equity shares of Rs.10/- each aggregating to Rs.14,15,200/-; 45,100 0.1% cumulative compulsory convertible preference shares of Rs.10/- each aggregating to Rs.4,51,000/-; 10,000 8% non-cumulative compulsory convertible preference shares of Rs.10/- each aggregating to Rs.1,00,000/-.

7. Copies of Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 14/2016, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2015, of the transferor and transferee companies, along with the report of the auditors, had 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 petition and the accompanying affidavit. It has been submitted by the petitioners that the Scheme, *inter alia*, provides for amalgamation of the transferor company into the transferee company and the capital reduction of the transferee company. It is claimed that the proposed amalgamation will enable optimal utilization of existing

resources and provide an opportunity to fully leverage the assets, capabilities, experience, expertise and infrastructure of the applicant companies. It is further claimed that the proposed capital reduction would enable the transferee company to have a rational capital structure which is commensurate with its remaining business and assets.

9. So far as the share exchange ratio is concerned, the Scheme provides that the transferor company is a wholly owned subsidiary of the transferee company and upon coming into effect of this Scheme, no equity shares of the transferee company will be allotted in lieu or in exchange of its holding in the transferor company and the equity share capital of the transferee company shall stand cancelled.

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

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 24th December, 2015 have approved the proposed Scheme of Arrangement. 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 petitioner companies had earlier filed CA (M) No. 14/2016 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, preference shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Arrangement. Vide order dated 27th January, 2016, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, secured and unsecured creditors of the transferor company and equity shareholders, preference shareholders, secured and unsecured creditors of the transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 8th February, 2016, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Business Standard' (English) and 'Jansatta' (Hindi) Delhi editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 25th February,

2016. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

14. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 29th June, 2016 wherein he has stated that he has not received any complaint against the proposed Scheme of Arrangement from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

15. In response to the notices issued in the petition, Mr. Narender Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 11th July, 2016 stating that the Regional Director has no objection to the proposed Scheme of Amalgamation subject to observations made by him in paras 10 & 11 of his report. The Regional Director in para 10 of this report has submitted that since the transferor company is a wholly owned subsidiary of the transferee company, therefore, no shares are required to be issued after amalgamation. In this regard it is submitted that the transferor company became the wholly owned subsidiary of the transferee company only

after the appointed date. Further, in para 11 of his report, the Regional Director has submitted that the transferor company has not yet filed its annual return for the F.Y. ended 31.03.2011 and, thus, prima facie there is violation of Section 92 of the Companies Act, 2013.

16. The petitioner companies vide affidavit dated 11th July, 2016 of Mr. Vishwadeep Bajaj, authorized signatory of the petitioner companies, have filed the response to the aforesaid observations stating that Clause 12 of the Scheme provides that, upon the Scheme becoming effective, no shares of the transferee company will be issued. Therefore, for the purpose of issuance of shares what is relevant is the effective date and not the appointed date. Further, the transferor company became the wholly owned subsidiary of the transferee company well before the date of approval of the Scheme by the Board of Directors of the petitioners companies as well as the date of filing of the petition before the High Court. With regard to the second observation, it is submitted that the transferor company has filed its annual return on 9th July, 2016. A copy of the challan evidencing filing of return has been annexed with the affidavit. In view of the aforesaid facts, the observations made by the Regional Director stand satisfied.

17. No objection has been received to the Scheme of Arrangement from any other party. The petitioner companies, in the affidavit dated 9th

July, 2016 of Sh. Vishwadeep Bajaj, authorized signatory of the petitioner companies, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 25th February, 2016.

18. Considering the approval accorded by the shareholders and creditors of the petitioner companies to the proposed Scheme of Arrangement and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Arrangement. Consequently, sanction is hereby granted to the Scheme of Arrangement under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of arrangement, i.e. 1st April, 2015, the transferor company shall stand dissolved without undergoing the process of winding up.

19. Learned counsel for the Official Liquidator prays that costs of at least Rs.2,50,000/- should be paid by the petitioners keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner companies states that the same is acceptable to him. As already directed vide order dated 29.07.2016, the petitioners shall deposit a sum of Rs.2,50,000/- by way of costs with Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

20. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

August 12, 2016