**IN THE HIGH COURT OF DELHI**
COMPANY APPLICATION (MAIN) NO. 60/2016

**Reserved on 25th April, 2016**
**Date of pronouncement: 30th May, 2016**

**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 Rule 9 of the Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

Augere Wireless Broadband India Private Limited
Applicant/Transferor Company
WITH

Bharti Airtel Limited
Applicant/Transferee Company

**Through Mr. Manu Krishnan and Mr.Kawaljeet Singh, Advocates for the applicants**

**SUDERSHAN KUMAR MISRA, J.**

1. This joint application has been filed under Section 391 of the Companies Act, 1956 read with Rule 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 their equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Augere Wireless Broadband India Private Limited (hereinafter referred to

as the transferor company) with Bharti Airtel 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 25th August, 2010 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 7th July, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Bharti Tele-Ventures Limited. The company changed its name to Bharti Airtel Limited and obtained the fresh certificate of incorporation on 24th April, 2006.

5. The present authorized share capital of the transferor company is Rs.2,50,00,00,000/- divided into 25,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,96,15,380/- divided into 19,61,538 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.25,00,00,00,000/- divided into 5,00,00,00,000 equity shares of Rs.5/- each. The issued, subscribed and paid-up share capital of the company is Rs.19,98,70,00,510/- divided into 3,99,74,00,102 equity shares of Rs.5/- 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 27th December, 2015 of the transferor company and as on 31st March, 2015 of the transferee company, along with the report of the auditors, 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 submitted by the applicants that the transferor company is a wholly owned subsidiary of the transferee company and the proposed amalgamation will result in pooling of resources, creating better synergies across the group, optimal utilization of resources and greater economies of scale. It is claimed that the proposed Scheme will result in faster and effective decision making, better administration and cost reduction.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, no consideration shall be payable by the transferee company for the equity shares of the transferor company, since the transferor company is the wholly owned subsidiary of the transferee company.

10. It has been submitted by the applicants that no proceedings under Sections 235 to 250A of the Companies Act, 1956 or the applicable provisions of the Companies Act, 2013 are pending against the applicant companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 18$^{th}$ January, 2016 and 27$^{th}$ October, 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.

12. The transferor company has 02 equity shareholders; 01 secured creditor and 08 unsecured creditors. Both the equity shareholders, the sole secured creditor and 05 out of 08 unsecured creditors, being 62.5% in number and 99.99% in value, 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, secured and unsecured creditors of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

13. So far as the equity shareholders, secured and unsecured creditors of the transferee company are concerned, the transferee company has not provided the list of its equity shareholders, secured and unsecured creditors. However, it was pleaded by learned counsel for the applicants that since the transferor company is a wholly owned subsidiary of the transferee company; the applicant companies are not proposing any arrangement with their shareholders and creditors; and no new shares will be issued on amalgamation, therefore, the rights of the equity shareholders, secured and unsecured creditors of the transferee company will not be affected. Hence, their consents/NOC are not required to be obtained for the proposed amalgamation. It is further submitted by learned counsel for the applicants that for the financial year ended 31st March, 2015, the transferee company had a profit of Rs.13,200/- crores. Learned counsel also placed on record a certificate dated 30th March, 2016 of VD & Co., Chartered Accountants certifying that the pre and post amalgamation net worth of the transferee company

will remain the same viz. Rs.80,965/- crores. Learned counsel for the applicants therefore seeks dispensation of the meetings of the equity shareholders, secured and unsecured creditors of the transferee company. He further seeks to dispense with the requirement of the transferee company to file the second motion petition seeking sanction of the Scheme.

14. 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.); **C.L. Media Private Limited Company & C.L. Educate Limited Company** (Company Petition No. 74/2014 decided by this Court on 2nd May, 2014) and **Bharti Infotel Private Limited** (CA(M) 152/2015), wherein it has been held that since the transferor company is a wholly owned subsidiary of the transferee company, there is no requirement to file a separate or joint application on behalf of the transferee company for sanction of the Scheme.

15. I have carefully considered the aforesaid case law cited at the Bar. In view of the submissions made at the bar, the settled law on the subject, and considering the Scheme of Amalgamation, the requirement of convening and holding the meetings of the equity shareholders,

secured and unsecured creditors of the transferee company, to consider and if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation, is dispensed with. Further, the requirement of the transferee company to file the second motion petition for sanction of the Scheme of Amalgamation is also dispensed with.

16. The application stands allowed in the aforesaid terms.

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**SUDERSHAN KUMAR MISRA, J.**

**May 30, 2016**