

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 48/2015

Reserved on 28th September, 2015
Date of pronouncement: 10th February, 2016

In the matter of

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

And

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

Scheme of Amalgamation of:

Tata Internet Services Limited

Applicant/Transferor Company

WITH

Tata Teleservices Limited

Applicant/Transferee Company

**Through Mr. Ramji Srinivasan, Sr.
Advocate with Mr. Mansoor Ali, Mr. Nitin
Kala, Ms. Sara Sundaram & Mr. Kunal
Singh, Advocates for the applicant**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 to 394 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 their equity shareholders, preference shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Tata Internet Services Limited (hereinafter referred to as the transferor company) with Tata Teleservices 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 originally incorporated under the Companies Act, 1956 on 21st June, 1999 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of I S P India Private Limited. The company changed its name to Tata Internet Services Private Limited and obtained the fresh certificate of incorporation on 1st May, 2000. The word 'Private' was deleted from the name of the company w.e.f. 17.04.2000.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 23rd March, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Tata Teleservices Private Limited. The word 'Private' was deleted from the name of the company w.e.f. 05.06.1995.

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

6. The present authorized share capital of the transferee company is Rs.1,50,00,00,00,000/- divided into 7,51,36,82,100 equity shares of Rs.10/- each aggregating to Rs.75,13,68,21,000/-; 83,63,17,900 redeemable non-cumulative convertible preference shares of Rs.10/- each aggregating to Rs.8,36,31,79,000/-; 1,50,00,00,000 preference shares of Rs.10/- each aggregating to Rs.15,00,00,00,000/-; 45,20,00,000 compulsorily convertible non-cumulative preference shares of Rs.100/- each aggregating to Rs.45,20,00,00,000/- and 63,00,00,000 unclassified shares of Rs.10/- each aggregating to Rs.6,30,00,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.92,12,46,57,930/- divided into 4,71,23,91,413 equity shares of Rs.10/- each fully paid up aggregating to Rs.47,12,39,14,130/- and 45,00,07,438 compulsory convertible non-cumulative preference shares of Rs.100/- each fully paid up aggregating to Rs.45,00,07,43,800/-.

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 report of the auditors, and unaudited balance sheets, as on 31st December, 2014, 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 submitted by the applicants that the proposed amalgamation is expected to enable pooling of resources of the transferor and transferee companies to their common advantage, resulting in more productive utilization of the said resources, cost and operational efficiencies which would be beneficial for all stakeholders. It is claimed that the amalgamation would result in better utilization of skilled manpower and their services can be optimally utilized thereby reducing costs. It is further claimed that amalgamation will result in reduction of overall administrative and overhead cost by integrating activities at all levels.

9. So far as the share exchange ratio is concerned, the Scheme provides that no shares shall be allotted by the transferee company either to itself or to any other shareholder holding shares in the transferor company, jointly with the transferee company, since the transferee company (either held singly or jointly with any other person) holds all the shares of the transferor company.

10. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or the relevant corresponding provisions of the Companies Act, 2013, as notified, are pending against the applicant companies.

11. The Board of Directors of the transferor company and the transferee company in their separate meetings held on 14th November, 2014 and 10th November, 2014 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 07 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 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured or unsecured creditor of the transferor company, as on 28th February, 2015.

13. The transferee company has 35 equity shareholders and 01 preference shareholder. 31 out of 35 equity shareholders, being 88.57% in number and 98.33% in value, and the sole preference shareholder 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 preference shareholder of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

14. The transferee company has 38 secured creditors and 9660 unsecured creditors, whose consents have not been placed on record. Learned senior counsel for the applicants seeks dispensation of the meetings of the secured and unsecured creditors of the transferee company on the ground that 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. It has been further submitted that the transferor company is a profit making concern and aggregate of assets of both the companies are more than sufficient to meet their combined aggregate liabilities towards their respective creditors. Therefore, the rights of the creditors of the transferee company will not be adversely affected. He, therefore, prays that the requirement of convening and holding the meetings of the secured and unsecured creditors of the transferee company may kindly be dispensed with.

15. In support of his submissions, learned senior counsel placed reliance on the judgments of this Court in **Prasneeta Engineering Private Limited & Anr. [CA(M) 3/2010]**, decided on 19.01.2010; **Imperia Homes Private Limited and Anr. [CA(M) 78/2014]**, decided on 30.04.2014 and **Salasar Stainless Limited [CA(M) 15/2015]** decided on 06.02.2015 wherein, this court under similar circumstances, has dispensed with the requirement of convening and holding the meetings of the secured and unsecured creditors of the transferee company without obtaining their consents/no objections to the proposed Scheme of Amalgamation.

16. 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 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.

17. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

February 10, 2016