

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 883/2015

Reserved on 11th 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 and 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Bharti Infotel Private Limited

Petitioner/Transferor Company

WITH

Bharti Enterprises (Holding) Private Limited

Non-Petitioner/Transferee Company

**Through Mr. Anand M. Mishra, Advocate
for the petitioner**

**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 petition has been filed under Sections 391 and 394 of the Companies Act, 1956 by the petitioner/transferor company seeking sanction of the Scheme of Amalgamation of Bharti Infotel Private Limited (hereinafter referred to as the petitioner/transferor company) with Bharti Enterprises (Holding) Private Limited (hereinafter referred to as the transferee company).

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

3. The petitioner/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 petitioner/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 petitioner/transferor company and the transferee company have been filed on record. The audited balance sheets, as on 31st March, 2014, of petitioner/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 petition and the accompanying affidavit. It is claimed by the petitioner 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 issued, subscribed and paid-up share capital of the transferor company shall stand cancelled/extinguished.

8. It has been submitted by the petitioner that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner/transferor company and the transferee company.

9. The Board of Directors of the petitioner/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 petitioner/transferor company had earlier filed CA (M) No. 152/2015 seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation and to dispense with the requirement of the transferee company to approach this Court for seeking sanction of Scheme of Amalgamation. Vide order dated 2nd November, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditor of the petitioner/transferor company, there being no secured creditors of the petitioner company, to consider and, if thought fit, approve, with or without modification, the

proposed Scheme of Amalgamation. Vide the said order, this Court also dispensed with 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.

11. The petitioner/transferor company has thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 30th November, 2015, 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 (Hindi) Delhi editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 11th December, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

12. The petitioner/transferor company has thereafter filed CA 900/2016 seeking to place on record the amended Scheme of Amalgamation wherein Clause 4 of the Scheme has been amended. The said amended Scheme was approved by the Board of Directors of the transferor and transferee companies in their separate meetings held on 18th January, 2016 and 21st January, 2016 respectively. Copies of the said Board

Resolutions have been placed on record. Vide order dated 11th July, 2016, the said application was allowed and the amended Scheme annexed to the application was taken on record.

13. 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 19th April, 2016 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation 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.

14. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 22nd April, 2016. Although the Regional Director has not raised any objection to the proposed Scheme but in para 7 of his report he has made the following observations:

(i) the index and the application filed under Rules 6 & 9 of the Companies (Court) Rules, 1959, seeking amendment in the proposed Scheme of Amalgamation are dated 3rd March, 2016 whereas the

affidavit in support of the application signed by Ms. Anushree Bhargava, Company Secretary, is dated 2nd March, 2016 and was also notarized on the said date;

(ii) The proposed Scheme does not specify the appointed date whereas every Scheme has to provide a date with effect from which the merger shall take place and the assets and liabilities of the transferor company are deemed to be transferred to the transferee company;

(iii) The transferee company has not yet filed its due balance sheet for the financial year ended on 31.03.2015 thereby prima facie violated the provisions of Section 137 of the Companies Act, 2013.

15. In response to the aforesaid observations, the petitioner/transferor company has filed the affidavit dated 8th July, 2016 of Ms. Anushree Bhargava, Company Secretary. In response to para 7(i), it has been submitted that the petitioner intended to file CA 900/2016 on 2nd March, 2016 and therefore the affidavit in support of application was attested on the same date, but due to paucity of time, the said application was filed on 3rd March, 2016 and the counsel for the petitioner company, under bonafide belief that the dates should be one when the application is filed, has changed the dates in Index as well as in the application from 2nd March, 2016 to 3rd March, 2016. In response to para 7(ii), it has been

submitted that in the Scheme it has been provided that the appointed date means the effective date, which would be the date of filing of the High Court's order sanctioning the Scheme with the ROC or any other date in case such date is specified by the High Court in its order. In response to para 7(iii), it has been submitted that the transferee company has filed its balance sheet on 3rd May, 2016 for the financial year ended on 31.03.2015. A copy of the challan evidencing the filing of balance sheet is placed on record. In view of the aforesaid, the observations made by the Regional Director stand satisfied.

16. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner company, in the affidavit dated 26th April, 2016 of Ms. Anushree Bhargava, Company Secretary of the petitioner company, has submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 11th December, 2015.

17. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the amended Scheme of Amalgamation.

Consequently, sanction is hereby granted to the amended Scheme of Amalgamation, annexed with CA 900/2016, 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/effective date of Amalgamation, the transferor company shall stand dissolved without undergoing the process of winding up.

18. Learned counsel for the Official Liquidator prays that costs of at least Rs.1,00,000/- 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 company states that the same is acceptable to him. As already directed vide order dated 11.07.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

19. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

August 12, 2016