

IN THE HIGH COURT OF DELHI AT NEW DELHI

Order Reserved on:14.12.2016

Order Delivered on:10.02.2017

CO. APPL. (M) 166/2016

IN THE MATTER OF:

SMILE MULTIMEDIA PRIVATE LIMITED

.... DEMERGED COMPANY/TRANSFEROR COMPANY-I/APPLICANT
COMPANY-I

AND

DGM INDIA INTERNET MARKETING PRIVATE LIMITED

....TRANSFEROR COMPANY-II/APPLICANT COMPANY-II

AND

NETWORKPLAY MEDIA PRIVATE LIMITED

.... TRANSFEROR COMPANY- III/APPLICANT COMPANY-III

AND

HYKART SALES PRIVATE LIMITED

.... RESULTING COMPANY/APPLICANT COMPANY-IV

AND

SVG MEDIA PRIVATE LIMITED

.... TRANSFEREE COMPANY/APPLICANT COMPANY-V

Through: Mr. Satwinder Singh, Advocate for
the Applicant Companies.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J.

1. The present application has been filed jointly, under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as ‘the Act’) read with Rules 67 to 87 of the Companies (Court) Rules, 1959 and provisions of the Companies Act, 2013, to the extent applicable, by Smile Multimedia Private Limited (hereinafter referred to as ‘Demerged Company/Applicant Company-I’), DGM India Internet Marketing Private Limited (hereinafter referred to as “Applicant Company-II”), Network Play Media Private Limited (hereinafter referred to as “Applicant Company-III”), Hykart Sales Private Limited (hereinafter referred to as “Resulting Company/Applicant Company-IV”) and SVG Media Private Limited (hereinafter referred to as “Applicant Company-V”) seeking directions of this Court to dispense with the requirement of convening and holding meetings of equity shareholders, secured creditors and unsecured creditors of each of the Applicant Companies; and preference shareholders of Applicant Company-V, to consider, and if thought fit, approve, with or without modification, the proposed composite scheme of Arrangement (hereinafter referred to as ‘proposed scheme’) amongst the Applicant Companies.

2. The registered offices of all the Applicant Companies are situated within the National Capital Territory of Delhi, within the jurisdiction of this Court.

3. Applicant Company-I was duly incorporated under the provisions of the Act vide certificate of incorporation dated 08.02.1999 issued by the Registrar of Companies, N.C.T. of Delhi and Haryana.
4. The authorized share capital of Applicant Company-I, as on 31.03.2016, is Rs.50,00,000/- divided into 50,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of Applicant Company-I, as on 31.03.2016, is Rs.35,00,000/-, divided into 35,000 equity shares of Rs.100/- each.
5. Applicant Company-II was duly incorporated under the provisions of the Act vide certificate of incorporation dated 21.03.2007 issued by the Registrar of Companies, N.C.T. of Delhi and Haryana.
6. The authorized share capital of Applicant Company-II, as on 31.03.2016, is Rs.19,00,000/- divided into 1,90,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of Applicant Company-II, as on 31.03.2016, is Rs.18,37,670/- divided into 1,83,767 equity shares of Rs.10/- each.
7. Applicant Company-III was duly incorporated under the provisions of the Act vide certificate of incorporation dated 20.02.2006 issued by the Registrar of Companies, N.C.T. of Delhi and Haryana, under the name and style of 'Goosefish Media Ventures Private Limited'. Subsequently, the name of the

Company was changed to 'NetworkPlay Media Private Limited' and a fresh certificate of incorporation dated 04.05.2010 was issued in this behalf.

8. The authorized share capital of Applicant Company-III, as on 31.03.2016, is Rs.10,00,000/- divided into 6,000 equity shares of Rs.100/- each; and 4,000 0.01% Cumulative Compulsorily Convertible Preference shares of Rs.100/- each. The issued, subscribed and paid-up share capital of Applicant Company-III, as on 31.03.2016, is Rs.5,04,400/- divided into 5,044 equity shares of Rs.100/- each.

9. Applicant Company-IV was duly incorporated under the provisions of the Act vide certificate of incorporation dated 01.07.2011 issued by the Registrar of Companies, N.C.T. of Delhi and Haryana, under the name and style of 'Smile Unique Sales Private Limited'. Subsequently, the name of the Company was changed to its present name and a fresh certificate dated 26.02.2015, consequent upon change of name, was issued in this behalf by the Registrar of Companies, N.C.T. of Delhi and Haryana.

10. The authorized share capital of Applicant Company-IV, as on 31.03.2016, is Rs.3,00,000/- divided into 30,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of Applicant Company-IV, as on 31.03.2016, is Rs.2,00,000/- divided into 20,000 equity shares of Rs.10/- each.

11. Applicant Company-V was originally incorporated under the provisions of the Act vide certificate of incorporation dated 22.05.2007 issued by the Registrar of Companies, N.C.T. of Delhi and Haryana, under the name and style of 'Tyroo Media Private Limited'. Subsequently, the name of the Company was changed to its present name and a fresh certificate dated 28.12.2012, consequent upon change of name, was issued in this behalf.

12. The authorized share capital of Applicant Company-V, as on 31.03.2016, is Rs.5,00,000/- divided into 4,00,000 equity shares of Rs.1/- each; and 1,00,000 3% Cumulative Compulsorily Convertible Preference Shares of Re.1/- each. The issued, subscribed and paid-up share capital of Applicant Company-V, as on 31.03.2016, is Rs.2,13,616/- divided into 1,17,536 equity shares of Re.1/- each; and 96,080 3% Cumulative Compulsorily Convertible Preference Shares of Re.1/- each.

13. Copies of the Memorandum of Association and Articles of Association of the Applicant Companies have been filed on record. The audited balance sheets as on 31.03.2016, pertaining to the Applicant Companies, alongwith the reports of the auditors have also been filed and the same are on record.

14. It has been stated by the Applicant Companies that there are no proceedings pending under Sections 245, 247 and 250A (to the extent not repealed) of the Act, and Sections 210, 214, 215, 216, 217, 219, 220, 223, 224,

225, 227 and Section 228 (to the extent applicable) of the Companies Act, 2013 against the Applicant Companies.

15. It has been stated in the application that the Board of Directors of Applicant Company-I, Applicant Company-IV and the Applicant Company-V in their separate meetings held on 28.07.2016; and the Board of Directors Applicant Company-II and Applicant Company-III in their separate meetings held on 27.07.2016, have approved the proposed scheme. Copies of the resolutions passed at the meetings of the Board of Directors of the Applicant Companies have been placed on record.

16. It has been stated in the present application that the Board of Directors of the Applicant Companies are of the view that the proposed scheme will have the following benefits:

- The demerger of the Demerged Undertaking (*as defined in the proposed scheme*) belonging to the Demerged Company/Applicant Company-I with and into the Resulting Company/Applicant Company-IV, on a going-concern basis, would allow a focused strategy in operations of the Incubator-Service Business of the Demerged Company/Applicant Company-I along with providing scope for independent expansion and creating enhanced value for shareholders.
- The demerger, and vesting of the said Demerged Undertaking of the Demerged Company/Applicant Company-I with and into the Resulting Company/Applicant Company-IV, with effect from the Appointed Date, is in the interests of the shareholders, creditors, employees and all concerned. The restructuring will unlock significant value for the shareholders of the Demerged Company/Applicant

Company-I and would also provide greater business focus for both the Demerged Company/Applicant Company-I and the Resulting Company/Applicant Company-IV.

- The Transferee Company is engaged in the business of advertisements on the websites of various portals through multiple advertising platform. The Transferor Company-II and Transferor Company-III are also engaged in the inter-related business as of the Transferee Company. The Transferor Company-I is the holding company of the Transferee Company which in turn is the holding company of Transferor Company-II and Transferor Company-III. The amalgamation of the Transferor Companies with and into the Transferee Company would enable consolidation of related businesses, bring cost synergies and have focused management attention towards the business thereby enabling better growth in revenues and profits.
- Amalgamation of the Transferor Company-I, Transferor Company-II and Transferor Company-III with and into Transferee Company will result in simplifying the ownership as also improve key financial ratios of the Transferee Company and will enable it to present a healthier balance sheet.
- Consolidation of the businesses and assets of the Transferor Company-I, Transferor Company-II. Transferor Company-III and the Transferee Company would help the Companies in saving various administrative, managerial and other costs and improving organizational efficiency.

17. So far as the share exchange ratio is concerned, the Resulting Company/Applicant Company-IV shall issue its equity shares to the equity shareholders of the Demerged Company/Applicant Company-I, as consideration for the transfer and vesting of the said Demerged Undertaking in the Resulting Company/Applicant Company-IV, in the following manner:

“10,000 equity shares of Rs. 10/- each fully paid-up of the Resulting Company/Applicant Company-IV aggregating to Rs. 1,00,000 to the equity shareholders of the Demerged Company/Applicant Company-I in proportion of their respective shareholding, whose name appear in the Register of Members of the Demerged Company/Applicant Company-I as on the Appointed Date.”

18. Further, the proposed scheme provides that the Transferee Company shall issue and allot equity shares to the shareholders of the Transferor Companies in the following manner:

“69 (Sixty Nine) equity shares of Re. 1/- each fully paid-up of the Transferee Company for every 20 (Twenty) equity shares of Rs. 100/- each fully paid-up held by the equity shareholders of the Transferor Company-I, whose name appear in the Register of Members of the Transferor Company-I as on the Record Date.”

“9 (Nine) equity shares of Re 1/- each fully paid-up of the Transferee Company for every 34 (Thirty Four) equity shares of Rs. 10/- each fully paid-up held by the equity shareholders of the Transferor Company-II, whose name appear in the Register of Members of the Transferor Company-II as on the Record Date.”

“Since the Transferor Company-III is the wholly owned subsidiary of the Transferee Company, the Transferee Company shall not issue any shares to itself, pursuant to the scheme becoming effective and thus any shareholding held by the Transferee Company in the Transferee Company-III shall stand cancelled in the books of the Transferee Company and the Board of the Transferee Company shall pass such accounting entries as may be required as per the applicable accounting standards.”

19. Applicant Company-I has 4 equity shareholders. All the equity shareholders of the Applicant Company-I have given their written consents/NOCs to the proposed scheme. Their written consents/NOCs 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 Company-I to consider and if thought fit, approve, with or without modification, the proposed scheme is dispensed with.

20. Applicant Company-I does not have any secured creditors, therefore the question of requirement of convening a meeting thereof does not arise.

21. Applicant Company-I, as on 01.08.2016, has only 1 unsecured creditor. The sole unsecured creditor of the Applicant Company-I has given its written consent/NOC to the proposed scheme. The written consent/NOC has been placed on record. It has been examined and found in order. In view thereof, the requirement of convening the meeting of the unsecured creditor of Applicant Company-I to consider and if thought fit approve, with or without modification, the proposed scheme is dispensed with.

22. Applicant Company-II has 3 equity shareholders. All the equity shareholders of the Applicant Company-II have given their written consents/NOCs to the proposed scheme. Their written consents/NOCs 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 Company-II to consider and if thought fit approve, with or without modification, the proposed scheme is dispensed with.

23. Applicant Company-II does not have any secured creditors, therefore the question of requirement of convening a meeting thereof does not arise.

24. Applicant Company-II, as on 01.08.2016, has 9 unsecured creditors. Out of the 9 unsecured creditors of the Applicant Company-II, 7 unsecured creditors of the Applicant Company-II have given their written consents/NOCs to the proposed scheme. The written consents/NOCs have been placed on record. They have been examined and found in order. As regards the remaining 2 unsecured creditors, the consents of whom have not been obtained, the Applicant Company-II has placed on record a certificate issued by M/s. AARK & Co., Chartered Accountants certifying that the debt pertaining to the remaining 2 unsecured creditors has been paid off by the Applicant Company-II till 20.10.2016. In view thereof, the requirement of convening the meeting of the unsecured creditors of the Applicant Company-II to consider and if thought fit, approve, with or without modification, the proposed scheme is dispensed with.

25. Applicant Company-III has 2 equity shareholders. Both the equity shareholders of the Applicant Company-III have given their written consents/NOCs to the proposed scheme. Their written consents/NOCs 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 Company-III to consider and if thought fit, approve, with or without modification, the proposed scheme is dispensed with.

26. Applicant Company-III does not have any secured creditors, therefore the question of requirement of convening a meeting thereof does not arise.

27. Applicant Company-III, as on 01.08.2016, has 12 unsecured creditors. 6 out of 12 unsecured creditors of the Applicant Company-III have given their written consents/NOCs to the proposed scheme. The written consents/NOCs have been placed on record. They have been examined and found in order. As regards the remaining 6 unsecured creditors, the consents of whom have not been obtained, the Applicant Company-III has placed on record a certificate issued by M/s. AARK & Co., Chartered Accountants certifying that the debt pertaining to the remaining 6 unsecured creditors has been paid off by the Applicant Company-III till 20.10.2016. In view thereof, the requirement of convening the meeting of the unsecured creditors of the Applicant Company-III to consider and if thought fit approve, with or without modification, the proposed scheme is dispensed with.

28. Applicant Company-IV has 4 equity shareholders. All the equity shareholders of the Applicant Company-IV have given their written consents/NOCs to the proposed scheme. Their written consents/NOCs 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 Company-IV to consider and if thought fit, approve, with or without modification, the proposed scheme is dispensed with.

29. Applicant Company-IV does not have any secured creditors, therefore the question of requirement of convening a meeting thereof does not arise.

30. Applicant Company-IV has only 1 unsecured creditor. The said unsecured creditor of the Applicant Company-IV has given its written consent/NOC to the proposed scheme. The written consent/NOC has been placed on record. It has been examined and found in order. In view thereof, the requirement of convening the meeting of the unsecured creditor of the Applicant Company-IV to consider and if thought fit, approve, with or without modification, the proposed scheme is dispensed with.

31. Applicant Company-V has 5 equity shareholders. All the equity shareholders of Applicant Company-V have given their written consents/NOCs to the proposed scheme. Their written consents/NOCs 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 Applicant Company-V to consider and if thought fit approve, with or without modification, the proposed scheme is dispensed with.

32. Applicant Company-V has 1 preference shareholder. The said preference shareholder of the Applicant Company-V has given its written consent/NOC to

the proposed scheme. The written consent/NOC has been placed on record. In view thereof, the requirement of convening the meeting of the preference shareholder of the Applicant Company-V to consider and if thought fit, approve, with or without modification, the proposed scheme is dispensed with.

33. The Applicant Company-V has 2 secured creditors. Both the secured creditors of the Applicant Company-V have given their written consents/NOCs in writing to the proposed scheme. Their written consents/NOCs have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the secured creditors of the Applicant Company-V to consider and if thought fit approve, with or without modification, the proposed scheme is dispensed with.

34. The Applicant Company-V, as on 01.08.2016, has 186 unsecured creditors. Out of the total 186 unsecured creditors of the Applicant Company-V, 53 unsecured creditors have given their written consents/NOCs in writing to the proposed scheme. The written consents/NOCs have been placed on record. As regards the remaining 133 unsecured creditors, the consents of whom are not obtained, the Applicant Company-V has placed on record a certificate issued by M/s. AARK & Co., Chartered Accountants certifying that debt pertaining to the remaining 133 unsecured creditors has been fully paid off by the Applicant Company-V till 01.11.2016. In view thereof, the requirement of convening the meeting of the unsecured creditors of the Applicant Company-V to consider and

if thought fit approve, with or without modification, the proposed scheme is dispensed with.

35. The application stands allowed in the aforesaid terms and is disposed of accordingly.

SIDDHARTH MRIDUL, J

FEBRUARY 10, 2017

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