

Examiner Judicial Dept
IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY PETITION 197-198/2007

DATE OF DECISION 27th MAY, 2008

In the matter of The Companies Act, 1956;

And

Application under Sections 391 (1) to 394 of the Companies Act,
1956;

Scheme of Arrangement of :

Direct Internet Limited ... Transferor Company A

TATA Communication Ltd. (Formerly known as
Videsh Sanchar Nigam Limited) ... Transferor Company B

And

VSNL Internet Services Limited ... Transferee Company

**Through : Mr. Rajiv Nayyar, Sr. Advocate
with Mr. Rishi Aggarwal,
Mr. Sharad and Mr. Akshay
Ringe, Advocates for the
companies.**

**Mr. R.D. Kashyap, Dy. ROC as
representative of the
Regional Director (NR).
Ms. Manisha Tyagi for the
Official Liquidator.**

S N AGGARWAL, J. [Oral]

1 These are company petitions under Sections 391-394 of the Companies Act, 1956 for sanctioning the composite scheme of arrangement among TATA Communication Ltd. (Formerly known as Videsh Sanchar Nigam Limited) (hereinafter to be referred as the 'transferor company B'); Direct Internet Limited (hereinafter to be

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referred as the 'transferor company A') and VSNL Internet Services Limited (hereinafter to be referred as the 'transferee company')

2 The transferor company B has its registered office in Mumbai and sanction to the proposed scheme of arrangement to the extent it provides for vesting of retail business undertaking of Tata communications Limited into VSNL Internet Services Limited (transferee company) has already been granted by the High Court of Judicature at Bombay vide its order dated 25.04.2008 passed in the Co. P. No. 740/2007. This order was passed by the Bombay High Court in a petition for sanction of scheme filed by the transferor company B.

3 The petitions filed before this Court are by the transferor company A and the transferee company. The registered offices of both these companies are situated at Delhi, within the jurisdiction of this Court.

4 The proposed composite scheme of arrangement is broadly divided into two parts. The said scheme envisages:-

Part A:- Amalgamation of the Direct internet undertaking of Direct Internet Limited (transferor company A with the transferee company)

Part B:- Transfer and vesting of retail business undertakings of the transferor company B [TATA Communication Ltd. (Formerly known as Videsh Sanchar Nigam Limited)] in the transferee company.

5 The Board of Directors of the transferor company A as well as the Board of Directors of the transferee company in their separate Board meetings held on 30.01.2007 have passed separate resolutions approving the proposed composite scheme of arrangement among the transferor and the transferee companies. The Board resolutions passed

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by these companies are at pages 46 to 49 of the paper book of these petitions.

6 Since all the shareholders and the creditors of the transferor company A and transferee company had given their consent to the proposed composite scheme of arrangement, this Court vide its order passed on 17.07.2007 in Co. A (M) Nos. 110-111/2007 had dispensed with the holding of meetings by the shareholders, secured and unsecured creditors of the said companies.

7 After filing of these petitions, this Court vide its order passed on 10.08.2007 issued notices to the Official Liquidator and also to the Regional Director (Northern Region). Citations of these petitions were got published in 'Statesman' (English Edition) and 'Jansatta' (Hindi Edition) in accordance with the Companies (Court) Rules, 1959. The affidavit of service and the newspapers' clippings showing service of notices on the Official Liquidator and the Regional Director and publication of citations have been placed on record.

8 In response to the notices of these petitions served upon the Official Liquidator and the Regional Director, the Official Liquidator as well as the Regional Director have filed their reports. The Regional Director in para 4.1 of his affidavit has stated that the petitioner company may be asked to furnish an undertaking that they shall comply with the Accounting Treatment as prescribed under Accounting Standard 14 issued by the Institute of Chartered Accountants of India. To meet this objection of the Regional Director, the affidavit of Mr. Sandeep Kohli has been filed on behalf of the companies wherein in

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para 2 of the said affidavit, an undertaking has been given to the Court that the accounting for amalgamation of the transferor company A with the transferee company shall comply with the Accounting Standard 14 issued by the Institute of Chartered Accountants of India. This undertaking given on behalf of the petitioner companies meets the objection of the Regional Director regarding Accounting Treatment for amalgamation of the transferor company A with the transferee company.

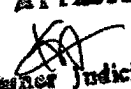
9 The Regional Director has also taken an objection in para 5.2 of his affidavit to the effect that under the scheme of arrangement under Sections 391/394 of the Companies Act, 1956, shares are allotted to the equity shareholders of the demerged/transferor company by the resulting/transferee company. The Regional Director has pointed out that in the proposed scheme of arrangement, the transferee company shall pay an amount of Rs.350 crores to the transferor company B instead of allotting shares to the shareholders of the said company in consideration of transfer of retail business undertaking of the transferor company B. The Regional Director has further taken an objection that the proposed scheme of arrangement does not disclose from where the amount of Rs.350 cores agreed to be paid by the transferee company to the transferor company B would come. To meet this objection, response has been filed on behalf of the companies on whose behalf these petitions have been filed. It is revealed from the response filed by the companies that the amount of Rs.350 crores has been agreed to be paid by the transferor company B to the transferee company out of

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which the transferee company shall pay Rs.287 crores to the transferor company B in consideration of vesting of its retail business undertaking in the transferee company. The transferor company B who has agreed to pay Rs. 350 crores to the transferee company is not before the Court. The proposed scheme of arrangement has already been approved by the Bomaby High Court vide order passed in the Company Petition filed by the transferor company B. Hence the source from where money would come has been adequately explained by the companies who are before this Court. The objection taken by the Regional Director that instead of making cash payment, shares should have been allotted by the transferee company to the shareholders of the transferor company B is dealt with in a judgment of the Punjab & Haryana High Court in *Heavy Cycles Industries Ltd., (1989) 34 CLA 155*, wherein it has been held that when cash consideration is being paid for transfer/ demerger of a unit, this by itself would not frustrate or invalidate the proposed scheme. A similar view was taken by this Court in an unreported judgment dated 25.05.2006 in Co. P. No. 67/2006.

10 No other objection to the proposed scheme has been taken either by the Official Liquidator or by the Regional Director (Northern Region). Ms. Manisha Tyagi, the learned counsel appearing on behalf of the Official Liquidator and Mr. R. D. Kashyap, Dy. Registrar of Companies appearing as representative of Regional Director (Northern Region) have submitted that they have no objection to the sanction of the proposed composite scheme of arrangement among the transferor and the transferee companies.

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11 The Official Liquidator in para 16 of his report has stated that in his view the affairs of the transferor company A does not appear to have been conducted in a manner prejudicial to the interest of the members, creditors of public interest.

12 The Petitioner Companies have stipulated the salient features of Composite Scheme of Arrangement and have also produced a copy of the proposed Composite Scheme of Arrangement. The proposed Composite Scheme of Arrangement intends to amalgamate the "Direct Internet Undertaking" of the Transferor Company-A with the Transferee Company and it further provides for transfer and vesting of the "Retail Business Undertakings" of The Transferor Company-B into the Transferee Company. According to the Petitioners the Composite Scheme of Arrangement would enable better and more economic and efficient management, control and running of the businesses of the Petitioner Companies. The Scheme would assist in the exploitation and realization of the potential of businesses of the Petitioner Companies to the fullest extent and would facilitate the optimum growth and development of the said businesses. According, to the Petitioners the business of the companies would be carried out more profitably and that the scheme would contribute in furthering and fulfilling the object of the Petitioner companies. The scheme would also strengthen and consolidate the position of the Petitioner Companies and the same would have beneficial impact on the Petitioner companies, their shareholders and all concerned.

13 The Petitioner Companies have contended that no proceedings

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under Sections 235 to 251 of the Companies Act, 1956 are pending against the Transferor Company-A and the Transferee Company.

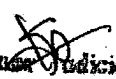
14 Para 9.1 of the proposed composite scheme of arrangement contains a provision that on the said scheme being operative, all staff, workmen and employees of the transferor company A in service on the effective date shall become the staff, workmen and employees of the transferee company on such date without any break or interruption in their service and on the terms and conditions of their employment not less favourable than those subsisting with reference to the transferor company A as on the said date. This Court is of the opinion that no prejudice is likely to be caused to the employees of the transferor company by approving the proposed scheme of amalgamation which provide for amalgamation of the transferor companies with the transferee company.

15 In the facts and circumstances mentioned above, there does not appear to be any legal impediment in sanctioning the proposed composite scheme of arrangement. Consequently, sanction is hereby granted to the proposed scheme under Section 391 and 394 of the Companies Act, 1956 for amalgamation of the transferor companies with the transferee company. The certified copy of this order shall be filed with the Registrar of Companies within five weeks. It is clarified that this order should not be construed as an order granting exemption from payment of stamp duty if payable in accordance with law in regard to increase in the share capital of the transferee company. Upon sanction becoming effective and from the appointed date, the

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transferor Company A shall stand dissolved without their formal winding up.

16 The transferee company is directed to deposit Rs.20,000/- towards costs in the Common Pool Fund of the Official Liquidator within a period of three weeks from today.

15 In view of the above, both these petitions stand disposed of.

May 27, 2008
'a'

Sd/-
S.N. AGGARWAL, J.

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Authenticated Under Section 70
of The Indian Evidence Act.