

IN THE HIGH COURT OF DELHI AT NEW DELHI
COMPANY JURISDICTION

COMPANY PETITION No. 284 of 2006

(Connected with Company Application (M) 141 No. of 2006)

(Under Sections 391 to 394 of the Companies Act, 1956 (1 of 1956)

(The said Act)

IN THE MATTER OF

Sections 391 to 394 of the Companies Act, 1956

AND IN THE MATTER OF

Scheme of Amalgamation between Satcom Broadband Equipment Limited
and Bharti Broadband Limited and Bharti Airtel Limited

AND IN THE MATTER OF:

Satcom Broadband Equipment Limited

a Company incorporated under the Companies Act, 1956

having its Registered Office at,

H-5/12, Qutab Ambience,

Mehrauli Road,

New Delhi – 110 030

.....Petitioner /Transferor Company No.1

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MEMO OF PARTIES

1. Satcom Broadband Equipment Limited,
a Company incorporated under the Companies Act, 1956
having its Registered Office at,
H-5/12, Qutab Ambience
Mehrauli Road, New Delhi – 110 030

.....Transferor Company No.1

2. Bharti Broadband Limited,
a Company incorporated under the Companies Act, 1956
having its Registered Office at,
H-5/12, Qutab Ambience,
Mehrauli Road, New Delhi – 110 030

.....Transferor Company No. 2



3. Bharti Airtel Limited
a Company incorporated under the Companies Act, 1956
having its Registered Office at,
H-5/12, Qutab Ambience,
Mehrauli Road, New Delhi – 110 030

.....Transferee Company

[Signature]
Petitioner

Place :
Date :

FILED THROUGH:
[Signature]
Rahul Dhawan, Advocate
Counsel for Petitioner, 10, Lawyers' Chamber,
High Court, New Delhi.

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EXAMINED *3/2/12*

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High Court of Delhi.
Authorised Under Section 79
-New Evidence Act.

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IN THE HIGH COURT OF DELHI AT NEW DELHI
ORIGINAL JURISDICTION

CP Nos.284/2006, 285/2006 & 286/2006

Date of Decision: 17th April, 2007

In the matter of The Companies Act, 1956;

CP No.284/2006

Satcom Broadband Equipment Limited... Petitioner/Transferor
Company No.1

Bharti Broadband Limited ... Transferor Company No.2.

And

Bharti Airtel Limited ... Transferee Company
Through: Mr.Sandeep Sethi, Sr. Advocate with
Mr.Lakshay Sawhney, Advocate for the
petitioner.
Mr.R.D. Kashyap, Dy. ROC.
Ms.Manisha Tyagi, Advocate for the
Official Liquidator.


CP No.285/2006

Satcom Broadband Equipment Limited... Transferor Company No.1

Bharti Broadband Limited ... Petitioner/Transferor
Company No.2

And

Bharti Airtel Limited ... Transferee Company
Through: Mr.Sandeep Sethi, Sr. Advocate with
Mr.Lakshay Sawhney, Advocate for the

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petitioner.

Mr.R.D. Kashyap, Dy. ROC.

Ms.Manisha Tyagi, Advocate for the
Official Liquidator.

CP No.286/2006

Satcom Broadband Equipment Limited... Transferor Company No.1

Bharti Broadband Limited ... Transferor Company No.2

And

Bharti Airtel Limited ... Petitioner/Transferee

Company

Through: Mr.Sandeep Sethi, Sr. Advocate with
Mr.Lakshay Sawhney, Advocate for the
petitioner.

Mr.R.D. Kashyap, Dy. ROC.

Ms.Manisha Tyagi, Advocate for the
Official Liquidator.

In the matter of Scheme of Amalgamation of:-

Satcom Broadband Equipment Limited ... Transferor Company No.1

Bharti Broadband Limited ... Transferor Company No.2


And

Bharti Airtel Limited ... Transferee Company

ANIL KUMAR, J.

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1. These are the petitions under Sections 391 and 394 of the

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Companies Act, 1956 for sanctioning the scheme of amalgamation of Satcom Broadband Equipment Limited (Transferor Company No.1) Bharti Broadband Limited, (Transferor Company No.2) and Bharti Airtel Limited, (Transferee Company).

2. The registered offices of the Transferor Company Nos.1 & 2 and Transferee Company are situated at Delhi within the jurisdiction of this Court.

3. The petitioner companies had filed Company Application Nos.141, 142 & 143/2006 which were allowed by order dated 25th August, 2006 read with order dated 20th September, 2006. While allowing the applications, the requirement of conducting statutory meetings of equity shareholders of the Transferor Company Nos.1 & 2 was dispensed with on account of consent given by the equity shareholders of the Transferor Company Nos. 1 & 2. The consent of equity shareholders of the transferee company was directed to be obtained through postal ballot. The statutory meeting of the unsecured creditors of the transferor company Nos. 1 & 2 and the

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transferee company and a joint meeting of the secured creditors including the debenture holders of the transferee company was directed to be held. There were no secured creditors in the Transferor Company Nos. 1 & 2 and consequently there was no requirement to convene and hold the meeting of secured creditors of the Transferor Company Nos.1 & 2.

4. The Chairperson for holding the statutory meetings of unsecured creditor of the Transferor Company No.1, filed his report stipulating that the meeting of unsecured creditors was held at 10:30 AM on 5th November, 2006 at H-5/12, Qutab Ambience, Mehrauli Road, New Delhi Delhi and 8 unsecured creditors amounting to an aggregate value of Rs.10,19,835/- voted at the meeting. There were no invalid votes and no votes against the scheme of amalgamation were cast and, therefore, the said scheme had been approved by requisite majority in number and value.

5. The Chairperson for holding the statutory meetings of unsecured creditor of the Transferor Company No.2, filed his report

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stipulating that the meeting of unsecured creditors was held at 12:00 Noon on 5th November, 2006 at H-5/12, Qutab Ambience, Mehrauli Road, New Delhi Delhi and 23 unsecured creditors amounting to the aggregate value of Rs.82,67,411/- voted at the meeting. There were no invalid votes and 23 valid votes in favour and no vote against the scheme of amalgamation were cast and, therefore, the said scheme had been approved by requisite majority in number and value.

6. The Chairperson for holding the statutory meetings of unsecured creditors of the Transferee Company filed his report stipulating that the meeting of unsecured creditors was held at 10:30 AM on 4th November, 2006 at H-5/12, Qutab Ambience, Mehrauli Road, New Delhi and 101 unsecured creditors voted at the meeting. There were 3 invalid votes and 98 valid votes. The 98 unsecured creditor representing Rs.6,206,404,046/- of unsecured debt voted in favour and no vote against the scheme of amalgamation were cast and, therefore, the said scheme had been approved by requisite majority in number and value.

7. The Chairperson for holding the joint statutory meetings of secured creditors and the debenture holders of the Transferee Company, filed his report stipulating that the meeting of secured creditors including debenture holders was held at 3:00 PM on 4th November, 2006 at H-5/12, Qutab Ambience, Mehrauli Road, New Delhi Delhi and 16 secured creditors including debenture holders voted at the meeting representing Rs.26,663,807,721/- of the secured debt which was 100% in value of present and voting. There were no invalid votes. No votes against the scheme of amalgamation were cast and, therefore, the said scheme had been approved by requisite majority in number and value.

8. The chairperson appointed as scrutinizer for conducting the business of passing the resolution by the equity shareholders of the transferee company through postal ballot filed his report stipulating that 792 valid postal ballots were received amounting to 1,464,559,793 valid votes of the transferee company and that the scheme was served upon the each equity shareholders along with Postal Ballots Notices and dispatched individually to each equity

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shareholder Under Postal Certificate, thus, the said scheme was taken to be served and read by all the equity shareholders of the transferee company.

9. After the present petitions were filed citations were directed to be published by order dated 24th November, 2006 in "The Statesman" (English) and "Jansatta" (Hindi), in terms of Companies (Court) Rules, 1959. Affidavits dated 18th December, 2006 has been filed on behalf of the petitioner companies about the publication of the citations in "The Statesman" (English) and "Jansatta" (Hindi) on 12th December, 2006. The paper cuttings containing the publication of the said citations were also produced along with the affidavit.

10. The notices were issued to the Official Liquidator and the Regional Director (Northern Region). Pursuant to the notice issued to the Official Liquidator, a report dated 12th April, 2007 has been filed by the Official Liquidator. The Official Liquidator sought information from the petitioner companies by Official Liquidator's letter No.OL/Tech/Amal/1697 dated 26th December, 2006 which

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information was furnished by the Petitioner Companies.


11. The Transferor Company no.1 was incorporated on 5th March, 2002 under the name and style of "CMax Infocom Private Limited" by the Registrar of Companies, Maharashtra. The company was converted into a public limited company and a certificate was issued by the Registrar of Companies, Maharashtra on 1st February, 2005. The name of the company was, subsequently, changed to its present name and a fresh certificate of incorporation was issued by ROC, Maharashtra dated 28th June, 2005. Thereafter, the registered office of transferor company No.1 was shifted from State of Maharashtra to NCT of Delhi & Haryana, at New Delhi vide Company Law Board order dated 9th November, 2005 which was registered with by ROC, NCT of Delhi & Haryana. The Registered Office of the company is situated at H-5/12, Qutab Ambience, Mehrauli Road, New Delhi within the jurisdiction of this Court. The authorised share capital of the Transferor Company No.1 as on 31.03.2006 is Rs.25,00,00,000/- divided into 2,50,00,000 equity shares of Rs.10/- each. The issue, subscribed and paid up share capital of the Transferor Company No.1

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is Rs.24,85,92,000/- divided into 2,48,59,200 equity shares of Rs.10/- each.

12. The Transferor Company No.2 was incorporated on 10th November, 1993 under the name and style of "Comsat Max Private Limited" by the Registrar of Companies, Delhi & Haryana. Thereafter, the company was converted into a deemed public limited company under the provisions of section 43A on 16th November, 1995. The registered office of transferor company No.2 was thereafter shifted from NCT of Delhi to State of Maharashtra vide Company Law Board order dated 29th May, 1998. The transferor company No.2 was converted to public limited company and then the name of the company was changed from "CMax Infocom Limited" to its present name "Bharti Broadband Limited" and a fresh certificate of incorporation was issued by ROC, Maharashtra dated 23rd June, 2005. The registered office of transferor company No.2 was, thereafter, shifted from State of Maharashtra to NCT of Delhi & Haryana, at New Delhi vide Company Law Board order dated 9th November, 2005 which was registered with by ROC, NCT of Delhi &

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Haryana on 23rd December, 2005. The Registered Office of the company is situated at H-5/12, Qutab Ambience, Mehrauli Road, New Delhi within the jurisdiction of this Court. The authorised share capital of the Transferor Company no.2 as on 31.03.2006 is Rs.32,00,00,000/- divided into 3,20,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Transferor Company no.2 is Rs.29,20,00,000/- divided into 2,92,00,000 equity shares of Rs.10/- each.

13. The Transferee Company was incorporated on 7th July, 1995 under the name and style of "Bharti Tele Ventures Limited" by the Registrar of Companies, NCT Delhi and Haryana at New Delhi. The name of the company was changed to its present name by a special resolution on 22nd, March, 2006 and a fresh certificate of incorporation was issued by ROC, NCT of Delhi & Haryana dated 24th April, 2006. The registered office of the company is situated at H-5/12, Qutab Ambience, Mehrauli Road, New Delhi within the jurisdiction of this Court. The authorised share capital of the Transferee Company as on 31.03.2006 is Rs.25,00,00,00,000/-

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divided into 250,00,00,000 equity shares of Rs.10/- each. The issued subscribed and paid up share capital of the Transferee Company is Rs.18,93,87,93,040/- divided into 189,38,79,304 equity shares of Rs.10/- each fully paid up.

14. The Official Liquidator has considered the accounts of Transferor Company Nos.1 & 2 and the transferee company as on 31st March, 2006.

15. The official Liquidator has also considered the report of the Chairperson of the meetings of unsecured creditors of the transferor company Nos.1 & 2 and the Transferee Company. The official Liquidator has also considered the report of the Chairperson appointed as scrutinizer for obtaining the consent of the equity shareholders of the transferee company through postal ballot and also the report of chairperson of the joint meetings of secured creditors including debenture holders of the transferee company.

16. The Official Liquidator in its report has stated that he has not

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received any complaint against the scheme of amalgamation from any person/parties interested in the scheme in any manner and on the basis of information submitted by the petitioner companies, it was inferred that the affairs of the Transferor Company Nos. 1 & 2 do not appear to have been conducted in a manner prejudicial to the interest of the members, creditors or public interest in accordance with the provisions of Section 394(1) of the Companies Act, 1956.

17. The Regional Director in its affidavit has referred to Clause 6(a) of Part III and Part IV of the Scheme of Amalgamation deposing that the employees of the transferor companies namely Satcom Broadband Equipment Ltd, transferor company No.1, and Bharti Broadband Ltd, transferor company No.2, shall become the employees of the transferee company, Bharti Airtel Ltd., without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation.

18. The objection of the Regional Director is that in the meeting of shareholders of the transferee company out of 792 shareholders, 2

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shareholders entitled together to get 60 votes voted against the scheme.

19. An affidavit in reply to the objections taken by the Regional Director has been filed of Sh. Jitin Wasan, authorised representative of the transferee company deposing that there are 48,651 shareholders holding 1,853,366,767 shares. 792 postal valid votes were cast giving consents in favour of the Scheme of Amalgamation having total value of Rs.1,464,559,793. 790 shareholders voted in favour of scheme comprising of 99.75% shareholders having total shares of Rs.1,464,559,733. Thus 99.999996% had approved the Scheme of Amalgamation and only 0.25% had cast the vote against the scheme holding 00.000004% shares. Thus it is inevitable to infer that the Scheme of Amalgamation has been approved by an overwhelming majority.

20. The other objection of the Regional Director is in relation to para 2(a) of Part VI of the Scheme of Amalgamation contemplating that all the licences and other authorizations to which the transferor

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company No.1 and transferor company No.2 are entitled to, shall stand vested and permitted or continued pursuant to the sanction of the Scheme in the transferee company. It is contended that the transferee company is liable to take necessary approvals from the Ministry of Telecommunications for transfer of licenses after the sanction of the scheme pursuant to the Ministry of Telecommunications letter No.820-1/2003-LR dated 9th June, 2003 contemplating that the licensee may transfer the licence with prior written approval of the licensor, even in the case of Scheme of Amalgamation under Section 391/394 of the Companies Act, 1956. The letter No.820-1/2003-LR dated 9.6.2003 is as under:-

Annexure to letter no. 820-1/2003-LR dtd 09.06.2003

"Amended clause in the Licence for Provision of Internet Service with regard to 'Transfer of Licence'.

Transfer of License :

The Licensee may transfer or assign the License Agreement with prior written approval of the Licensor to be granted on fulfilment of the following conditions :-

- (i) When transfer or assignment is requested in accordance with the terms and conditions on fulfilment of procedures of Tripartite Agreement if already executed amongst the Licensor, Licensee and Lenders; or

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(ii) Whenever amalgamation or restructuring i.e. merger or demerger is sanctioned and approved by the High Court or Tribunal as per the law in force; in accordance with the provisions; more particularly of Sections 391 to 394 of Companies Act, 1956; and

(iii) The transferee/assignee is fully eligible in accordance with eligibility criteria contained in tender conditions or in any other document for grant of fresh license in that area and shows its willingness in writing to comply with the terms and conditions of the license agreement including past and future roll out obligations; and

(iv) All the past dues are fully paid till the date of transfer/assignment by the transferor company and thereafter the transferee company undertakes to pay all future dues inclusive of anything remained unpaid of the past period by the outgoing company."


21. The conditions imposed for transfer of licence even in case of Scheme of Amalgamation or restructuring in accordance with the provision of Section 391-394 of the Companies Act, 1956 is that the licensee will be entitled to transfer or assign the licence agreement only with prior written approval of the licensor on fulfilment of the conditions stipulated therein.

22. It is contended by the transferee company that it is engaged in offering various telecom services to its customer base in India and the

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transferor company No.2 has also provided internet services to its customer base in India and is holding licenses issued by the Department of Telecommunications. According to the Scheme of Amalgamation the DoT licence for Value Added Services (VSAT) No.815-11/93-TM dated 22.8.1994 and amendment dated 30.1.2002 and another DoT licence for internet service Licence No.820-263/2002-LR dated 19.4.2002 will vest with the transferee company.


23. The transferee company in its affidavit dated 16th April, 2007 has categorically stated that as per the above letter dated 9th June, 2003 No.820-1/2003-LR the transferee company will be obliged to apply for transfer of licence of transferor company No.2 after the Scheme of Amalgamation is sanctioned and approved by the Court and the transferee company undertakes that it will duly comply with the procedure notified by MoT for transfer of licence and shall make an application for transfer of licences of the transferor company No.2. In view of the undertaking given by the transferee company that it will file an application in accordance with the letter No.820-1/2003-LR dated 9th June, 2003 for transfer of licence of transferor No.2 to the

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transferee company, after the sanction of the Scheme of Amalgamation, the objection does not survive. It is however, clarified that Ministry of Telecommunications shall be liable to transfer the licences of transferor No.2 in favour of transferee company only in accordance with the terms and conditions for transfer of licence and not merely because the Scheme of Amalgamation is sanctioned by this Court. In case the licenses are not transferred by the Ministry of Telecommunication or concerned authority, the scheme shall stand modified to that extent that the said licenses will not be transferred pursuant to the present scheme as contemplated under para 2(a) of Part VI of the scheme.

24. The petitioner companies have also stated that no proceedings are pending against them under Section 235 to 251 of the Companies Act, 1956.

25. Therefore, having regard to the averments made in the petitions, the material placed on record and the affidavits filed on behalf of the petitioners, the prayer made in the petitions are to be allowed. There

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is no legal impediment to sanction the scheme of amalgamation which is annexed as Annexure 'A' to the petitions subject to such modification as detailed hereinabove.

26. Consequently, sanction is hereby granted to the scheme of amalgamation under Section 391 and 394 of the Companies Act, 1956. The Transferee Company will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within five weeks. It is also clarified that this order will not be construed as an order granting exemption from payment to stamp duty, if any, payable in accordance with law. Upon sanction becoming effective and from appointed date, the Transferor Company stands dissolved without being wound up. Cost of Rs.50,000/- be paid by the petitioners to the official liquidator which will be deposited in the Common Pool of the Official Liquidator.

27. The petitions are disposed of with these directions.

Sd-

ANIL KUMAR, J.

April 17, 2007
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