

IN THE HIGH COURT OF DELHI

COMPANY APPLICATION (MAIN) NO. 135/2010

Reserved on 20th August, 2010

Date of pronouncement: 8 October, 2010

In the matter of

The Companies Act, 1956:

And

**Application under Section 391 to
394 of the Companies Act, 1956**

Composite Scheme of Amalgamation and Arrangement between:

M/s. Dish TV India Limited .. Applicant/Demerged
Company

M/s. Agrani Satellite Services Limited .. Applicant/Transferor
Company

AND

M/s. Integrated Subscriber Management Services Limited
.. Applicant/Resulting/
Transferee Company

**Through Mr. P. V. Kapoor, Sr. Adv.
with Mr. Suman Doval, Mr. Sumit
Babbar, Mr. A. Anand, Ms. Ekta
Kalra Sikri, Advocates for the
applicants**

**Mr. Vibhu Bhakru with Mr. Pawan
Sharma, Ms. Anuradha, Mr. Vijaya
Lakshmi Menon, Ms. Ekta, Ms.
Mehak Khanna, Ms. Vrinda, Ms.
Madhumeet Chauhan, Advocates
for the objector**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 to 394 of the Companies Act, 1956 by the applicant companies seeking directions of this court to dispense with the

requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the transferor company and the resulting/transferee company and for convening of separate meetings of the equity shareholders, secured and unsecured creditors of the demerged company to consider and approve, with or without modification, the proposed Composite Scheme of Amalgamation and Arrangement between M/s. Dish TV India Limited (hereinafter referred to as the demerged company); M/s. Agrani Satellite Services Limited (hereinafter referred to as the transferor company) and M/s. Integrated Subscriber Management Services Limited (hereinafter referred to as the resulting/transferee company).

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

3. The demerged company was originally incorporated under the Companies Act, 1956 on 10th August, 1988 with the Registrar of Companies, Maharashtra under the name and style of Navpad Texturisers Private Limited. The company changed its name to ASC Enterprises Private Limited after passing the necessary resolution to this effect and obtained the fresh

Certificate of Incorporation on 29th September, 1995. The company again changed its name to ASC Enterprises Limited and obtained the fresh Certificate of Incorporation on 13th December, 1995. Thereafter, the company shifted its registered office from the State of Maharashtra to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 4th October, 1999. The company finally changed its name to Dish TV India Limited and obtained the fresh Certificate of Incorporation on 7th March, 2007.

4. The transferor company was incorporated under the Companies Act, 1956 on 30th June, 2000 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The resulting/transferee company was originally incorporated under the Companies Act, 1956 on 25th June, 2001 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Agrani Telecom Limited. The company changed its name to Integrated Subscriber Management Services Limited after passing the necessary resolution to this effect and obtained the fresh Certificate of Incorporation on 15th September, 2003.

6. The authorized share capital of the demerged company, as on 31st March, 2010, is Rs.1,35,00,00,000/- divided into 1,35,00,00,000 equity shares of Rs.1/- each. The present issued and subscribed capital of the company is Rs.1,06,34,36,875/- divided into 1,06,34,36,875 equity shares of Rs.1/- each. The paid up capital of the company is Rs.1,06,23,90,063.25 divided into 1,06,02,26,536 equity shares of Rs.1/- each fully paid up amounting to Rs.1,06,02,26,536 /-; 22,33,431 equity shares of Rs.1/- each Rs.0.75 paid up amounting to Rs.16,75,073.25; and 9,76,908 equity shares of Rs.1/- each Rs.0.50 paid up amounting to Rs.4,88,454/-.

7. The authorized share capital of the transferor company, as on 31st March, 2010, is Rs.1,00,00,00,000/- divided into 10,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.94,40,10,040/- divided into 9,44,01,004 equity shares of Rs.10/- each.

8. The authorized share capital of the resulting/transferee company, as on 31st March, 2010, is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each.

9. Copies of the Memorandum and Articles of Association of the demerged company, the transferor company and the resulting/transferee company have been filed on record. The audited balance sheets, as on 31st March, 2009, of the demerged company, the transferor company and the resulting/transferee company, along with the report of the auditors, have also been filed.

10. A copy of the Composite Scheme of Amalgamation and Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavits. It is submitted by the applicants that the main object of the Scheme is: (1) demerger of the Non DTH Business of the demerged company into resulting/transferee company; and (2) post demerger, amalgamation of the transferor company with the resulting/transferee company. It is further submitted that the transferor company and the resulting/transferee company are wholly owned subsidiaries of the demerged company. It is claimed that the proposed demerger will facilitate the demerged company to focus on its core DTH business and the proposed amalgamation will result in simplification of group structure and cost efficiency.

11. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme and in consideration of the demerger of the Non DTH Business of the demerged company into the resulting/transferee company, the resulting/transferee company shall issue and allot 1,00,000 equity shares of Rs.10/- each to the demerged company.

It is further provided that after amalgamation, the transferor company shall become a wholly owned subsidiary of the resulting/transferee company and since the resulting/transferee company is not permitted to issue shares to itself under the provisions of the Act, no new shares shall be issued or allotted by the resulting/transferee company, as consideration of amalgamation of the the transferor company.

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

13. The Board of Directors of the demerged company in their meeting held on 11th June, 2010 and the Board of Directors of the transferor company and the resulting/transferee company in their separate meetings held on 10th June, 2010 have

unanimously approved the proposed Composite Scheme of Amalgamation and Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the demerged company, the transferor company and the resulting/transferee company have been placed on record.

14. The transferor company has 8 equity shareholders and 1 unsecured creditor. All the equity shareholders and the only unsecured creditor have given their consents/no objections in writing to the proposed Composite Scheme of Amalgamation and Arrangement. 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 unsecured creditor of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Composite Scheme of Amalgamation and Arrangement is dispensed with. There is no secured creditor of the transferor company.

15. The resulting/transferee company has 7 equity shareholders and 1 secured creditor. All the equity shareholders and the only secured creditor have given their consents/no objections in writing to the proposed Composite Scheme of Amalgamation and Arrangement. 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 secured creditor of the resulting/transferee to consider and, if thought fit, approve, with or without modification, the proposed Composite Scheme of Amalgamation and Arrangement is dispensed with.

16. The resulting/transferee company has 147 unsecured creditors having an outstanding balance of Rs.95,19,50,668.84. Learned counsel for the applicants submits out of 147 unsecured creditors, 119 are the ex-employees of the company having an outstanding balance of Rs.3,39,587/- and 29 are the trade creditors having an outstanding balance of Rs.95,16,11,081.84. Learned counsel further submitted that all the necessary formalities have been completed in respect of the former employees for their exit and their full and final settlement cheques have been prepared but since they are yet to collect the said cheques, therefore, their names are still appearing in the books of the resulting/transferee company. He has further submitted that out of 29 trade creditors, 19 trade creditors representing a total debt of Rs.83,05,87,239.74, which constitutes 87.25% in value of the total unsecured debt of the resulting/transferee company, have given their consents/no objections in writing to the proposed Composite Scheme of

Amalgamation and Arrangement. 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 unsecured creditors of the resulting/transferee company to consider and, if thought fit, approve, with or without modification, the proposed Composite Scheme of Amalgamation and Arrangement is dispensed with.

17. The demerged company has 2,26,611 equity shareholders and a direction is sought to convene and hold their meeting to seek their approval to the proposed Composite Scheme of Amalgamation and Arrangement. Considering the facts and circumstances aforesaid, the meeting of the equity shareholders of the demerged company is directed to be held on 11th November, 2010 at 10.00 am at National Cooperative Union of India, 3, Siri Institutional Area, August Kranti Marg, New Delhi. Mr. Aman Ahluwalia, Advocate, (Mobile No. 9811974545) is appointed as the Chairperson and Mr. Om Prakash Shekhawat, Advocate, (Mobile No. 9810019306) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the equity shareholders of the demerged company shall be 5000 in number and more than 15% in value of the total equity share capital.

18. The demerged company has 7 secured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Composite Scheme of Amalgamation and Arrangement. Considering the facts and circumstances aforesaid, the meeting of the secured creditors of the demerged company is directed to be held on 11th November, 2010 at 12.00 noon at National Cooperative Union of India, 3, Siri Institutional Area, August Kranti Marg, New Delhi. Mr. Pradeep Pragyan Sharma, Advocate, (Mobile No. 9818007007) is appointed as the Chairperson and Ms. Madhurima Panwar Mridul, Advocate, (Mobile No. 9811119448) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the secured creditors of the demerged company shall be 3 in number and more than 15% in value of the total secured debt.

19. The demerged company has 481 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Composite Scheme of Amalgamation and Arrangement. Learned counsel for the applicant prays that the requirement of sending individual notices to the unsecured creditors, having an unsecured debt of less than Rs.50,000/- may kindly be dispensed with, since they constitute only 0.09% of the total unsecured debt of the

demerged company. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the demerged company is directed to be held on 11th November, 2010 at 1.00 pm at National Cooperative Union of India, 3, Siri Institutional Area, August Kranti Marg, New Delhi. Mr. Yogesh Jagia, Advocate, (Mobile No. 9810043405) is appointed as the Chairperson and Mr. Amit Sachdeva, Advocate, (Mobile No. 9810902869) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the demerged company shall be 50 in number and more than 15% in value of the total unsecured debt. The requirement of sending individual notices to the unsecured creditors, having an unsecured debt of less than Rs.50,000/-, is also dispensed with.

20. In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the meetings is filed with the registered office of the demerged company at least 48 hours before the meetings. The Chairpersons and

Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

21. The Chairpersons and Alternate Chairpersons shall ensure that notices for convening the aforesaid meetings of the equity shareholders, secured and unsecured creditors of the demerged company, along with copies of the Composite Scheme of Amalgamation and Arrangement and the statement under Section 393 of the Companies Act, 1956, shall be sent to (1) the equity shareholders; (2) secured creditors; and (3) unsecured creditors having an unsecured debt of Rs.50,000/- and above of the transferee company by UPC at their registered or last known addresses at least 21 days before the date appointed for the meetings, in their presence or in the presence of their authorized representatives. Notice of the meetings shall also be published in the Delhi editions of the newspapers "Business Standard" (English) and "Business Standard" (Hindi) in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meetings.

22. The Chairpersons and Alternate Chairpersons will be at liberty to issue suitable directions to the management of the demerged company so that the aforesaid meetings of the equity shareholders, secured and unsecured creditors of the demerged

company are conducted in a just, free and fair manner.

23. The fee of the Chairpersons for the aforesaid meetings shall be Rs.50,000/- each and the fee of the Alternate Chairpersons shall be Rs.45,000/- each, in addition to meeting their incidental expenses. The Chairpersons will file their reports within two weeks from the date of holding of the aforesaid meetings.

24. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

October 8 , 2010
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