

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 194 of 2009
IN
COMPANY APPLICATION No. 304 of 2009
IN
COMPANY APPLICATION No. 221 of 2009

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IDEA CELLULAR LIMITED - Petitioner(s)
Versus
- Respondent(s)

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Appearance :

SINGHI & CO for Petitioner(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE JAYANT PATEL

Date : 15/09/2009

ORAL ORDER

1. This Court on 8.9.2009 had passed the following order:-

1. Upon hearing Mr. Joshi with Mr. Singhi, it appears that the effective date as per Clause 2.7 of the scheme read with Clause 17 of the scheme, even if this Court sanctions the scheme, the transferor company is not to be dissolved or merged with the transferee company from the date on which the sanction is granted by this Court but is to be merged only when the consequences as contemplated under Clause 17 of the scheme would follow. The said contingency, prima facie, is to follow or may follow even after sanction is granted by this Court. Normally, when this Court is to exercise the powers for grant of sanction, all statutory requirements must be

complied with and the effect of sanction cannot be kept in vacuum for future dates upon the desire or will of the shareholders of the company or the office bearers of the company or the company itself. There has to be certainty about the date and it normally would not be later to the date of sanction in any case.

2. I would have further considered the matter, however, Mr. Joshi, learned counsel for the petitioner states that he would like to rely upon certain orders and also the other material to satisfy the Court that such would be permissible. S.O. to 15th September, 2009."
2. Today, Mr. Joshi, learned Counsel appearing with Mr. Singhi, under the instructions of his client, states that the petitioner has no objection if the effective date is considered as the last date of Clause 17.1 and Clause 17.2 and not of Clause 17.3.
3. It further appears that vide order dated 12.5.2009 passed by this Court in Company Application No.221 of 2009 read with the order dated 15.5.2009 as well as the order dated 15.6.2009 passed in Company Application No.233 of 2009 and the order dated 31.7.2009 passed in Company Application No.304 of 2009, the meetings of the equity shareholders, secured creditors and unsecured creditors were ordered to be held and have been held and the report has been filed by the Chairman at the meetings and hence, the present petition for seeking sanction to the Scheme.
4. Admit.
5. To be advertised in Indian Express (English daily), all Editions in the State of Gujarat and Gujarat Samachar (Gujarati daily), all Editions in the State of Gujarat. Publication be made, keeping 21 days' clear notice. Publication in the Official Gazette is dispensed with.
6. Notice to the Central Government to be issued

through Regional Director, Ministry of Corporate
Affairs, Western Region, Mumbai. Final hearing
is fixed on 28th October, 2009.

15.9.2009

(Jayant Patel, J.)

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ORDINARY ORIGINAL JURISDICTION

COMPANY PETITION NO. 194 OF 2009

Copy applied on 30-11-09, notified on 9-12-09
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CONNECTED WITH

COMPANY APPLICATION NO. 304 OF 2009

CONNECTED WITH

COMPANY APPLICATION NO. 221 OF 2009

Dy. S. O. 09/12/09



In the matter of the Companies Act,
1956;

And

In the matter of Sections 391 to 394 of
the Companies Act, 1956;

And

In the matter of Idea Cellular Limited;

And

In the matter of Scheme of
Amalgamation of Spice Communications
Limited with Idea Cellular Limited;

Idea Cellular Limited,
a company incorporated under the
provisions of the Companies Act,
1956 and having its Registered
Office at Suman Towers, Plot
No.18, Sector No.11, Gandhinagar-
382 011, Gujarat, India.

..... **Petitioner Company**

BEFORE THE HON'BLE MR. JUSTICE S. R. BRAHMBHATT, J

DATE: 26/11/2009

ORDER ON PETITION

The above Petition coming for hearing on 26th day of November, 2009, **UPON READING** the said Petition, the order dated 12th day of May 2009 passed in Company Application No. 221 of 2009 and the order dated 15th day of May 2009 below Note for Speaking to Minutes, whereby meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of Idea Cellular Limited, the Petitioner abovenamed (hereinafter referred to as "the said Company") were ordered to be convened and held for the purpose of considering, and if thought fit, approving, with or without modification(s), the arrangement embodied in Scheme of Amalgamation of Spice Communications Limited with Idea Cellular Limited and reductions of Securities/ Share Premium Account of the said Company by way of Scheme of Amalgamation under sections 391 to 394 of the Companies Act, 1956 ("the said Scheme") and **UPON** reading the order dated 12th day of May 2009 whereby no separate procedure was required to be followed for reductions of Securities/Share Premium Account as the same was part and parcel of the said Scheme and **UPON** reading the order dated 15th day of June 2009 passed in Company Application No. 233 of 2009 whereby the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors were deferred for the period of six weeks from the date on which the meetings were originally ordered to be convened and **UPON** reading the order dated 31st day of July 2009 passed in Company Application No. 304 of 2009 whereby order dated 12th day of May 2009 was modified and the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors were directed to be convened and **UPON** reading the Affidavit of Shri Sanjeev Aga dated 24th day of August 2009, annexing the newspaper cuttings of English daily, Indian Express, all the editions in the State of Gujarat and Gujarati daily Gujarat Samachar, all the editions in the State of Gujarat, all dated the 10th day of August 2009 and also showing the dispatch of the notices convening the said meetings to the Equity Shareholders on 3rd day of August 2009, 4th day of August 2009, 6th day of August 2009 and 7th day of August 2009 and to the Secured Creditors and Unsecured Creditors on 7th day of August 2009 and **UPON** reading the Chairman's Report of Shri Sanjeev Aga dated 6th day of September 2009 stating that the said Scheme has been approved with requisite statutory majority in the meeting of the Equity Shareholders and **UPON** reading the Chairman's Report of Shri Gian Prakash Gupta dated 6th day of September 2009 stating that the said Scheme has been approved unanimously in the meetings of



the Secured Creditors and Unsecured Creditors and **UPON** reading the Affidavit of Shri Vineet Choraria, Authorised Signatory of the said Company, dated 7th day of September 2009, verifying the Petition and **UPON** reading the Affidavit of Shri Vineet Choraria, dated 12th day of October 2009 showing publication of the notice of hearing of this Petition in English daily, Indian Express, all the editions in the State of Gujarat and Gujarati daily Gujarat Samachar, all the editions in the State of Gujarat dated the 24th day of September 2009, (advertisement in the Gujarat Government Gazette having been dispensed with) and also showing the service of notice on the Regional Director, Department of Corporate Affairs and **UPON** hearing Shri Mihir Joshi, Senior Advocate along with Shri Sandeep Singhi, for Singhi & Co., Advocates for the said Company and hearing the submissions of the Assistant Solicitor General of India, Mr. P. S. Champaneri instructed by the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai.



1. **THIS COURT** doth hereby sanction the Scheme of Amalgamation at **Annexure 'E'** to the Petition and annexed as Schedule hereto, and doth hereby declare the same be binding on the said Company and all the Equity Shareholders, Secured Creditors and Unsecured Creditors of the said Company and all persons concerned under the Scheme.
2. That the said Company do within 30 days of the sealing of this order, cause a certified copy of this order to be delivered to the Registrar of Companies, Gujarat, Ahmedabad for registration.
3. That the parties to the said Scheme or other persons interested shall be at liberty to apply to this Court for any directions that may be necessary in regard to the working of the arrangement embodied in the Scheme, as sanctioned hereunder and annexed as Schedule hereto.
4. That the fees of the Assistant Solicitor General of India, appearing for the Regional Director, Ministry of Corporate Affairs, Mumbai, shall be paid by the said Company.

SCHEME

**SCHEME OF AMALGAMATION
OF
SPICE COMMUNICATIONS LIMITED
WITH
IDEA CELLULAR LIMITED**

1 GENERAL AND RATIONALE FOR THE SCHEME

- 1.1 This Scheme (*as defined hereinafter*) is presented under Sections 391 to 394 read with Sections 78 and 100 to 103 and other relevant provisions of the Act (*as defined hereinafter*), for the amalgamation of Spice (*as defined hereinafter*) with Idea (*as defined hereinafter*), reduction of Securities/Share Premium Account of Idea, reorganisation of Reserves of Idea and for other matters consequential, supplemental and/or otherwise integrally connected therewith.
- 1.2 Idea is a leading GSM mobile services operator in India currently operating in 13 service areas covering Delhi, Mumbai, Himachal Pradesh, Rajasthan, Haryana, Uttar Pradesh (East), Uttar Pradesh (West) (including Uttaranchal), Madhya Pradesh (including Chhatisgarh), Gujarat, Maharashtra (including Goa), Andhra Pradesh, Kerala and Orissa. The mobile telephone service in Orissa service area started with effect from 9th April 2009. In addition, Idea directly holds new UASLs (*as defined hereinafter*) issued by the DoT (*as defined hereinafter*) with respect to 8 (eight) service areas/circles including the Punjab and Karnataka service areas. Idea, through its wholly owned subsidiary Aditya Birla Telecom Limited, also holds UASLs for Bihar including the Jharkhand service area.
- 1.3 Spice is a GSM mobile services operator currently operating in the service areas of Punjab and Karnataka in India. Spice also has new UASLs issued by the DoT with respect to 4 (four) service areas, namely, Delhi, Haryana, Maharashtra and Andhra Pradesh. The said new UASLs of Spice are presently non-operational and Spice is yet to roll-out its network in these service areas.



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- 1.4 Pursuant to Share Purchase Agreement dated 25th June 2008 entered into between Idea and MCorpGlobal Communications Private Limited ("MCPL"), Idea acquired 40.8% of the total issued and paid-up share capital of Spice from MCPL. Thereafter, a public offer was made, inter alios, by Idea to the equity shareholders of Spice in accordance with the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. As on date, Idea has acquired 41.09% of the total issued and paid-up share capital of Spice.
- 1.5 TMI India Limited ("TMI India"), a wholly owned subsidiary of TMI Mauritius Limited ("TMI Mauritius"), which in turn is a wholly owned subsidiary of Axiata Group Berhad (earlier known as TM International Berhad, Malaysia ("AGB")) is a strategic investor in Spice. AGB is an investment holding company and has interests in mobile and mobile related companies in 10 (ten) countries. Given the substantial experience of AGB in the telecommunications sector and the strategic stake of TMI India in Spice, Idea proposed to issue and allot 46,47,34,670 equity shares to TMI Mauritius on a preferential basis and in this regard entered into a Subscription Agreement dated 25th June 2008 with AGB and TMI Mauritius. The equity shareholders of Idea in the extraordinary general meeting held on 30th July 2008 approved the issue and allotment of aforesaid equity shares to TMI Mauritius. Pursuant to the approval of the equity shareholders, Idea has allotted the aforesaid equity shares to TMI Mauritius.
- 1.6 It was also proposed to amalgamate Spice with Idea and in this regard a Merger Co-operation Agreement dated 25th June 2008 was executed, inter alios, between Spice and Idea. The Merger Co-operation Agreement, inter alia, sets out the agreement between the parties to co-operate towards the merger of Spice with Idea in accordance with the provisions of Sections 391 to 394 of the Act.
- 1.7 Idea's UASLs in respect of Punjab and Karnataka service areas overlap with corresponding UASLs of Spice (the "Overlapping Idea UASLs"). Similarly, Spice UASLs in respect of Delhi, Haryana, Maharashtra and Andhra Pradesh service areas overlap with corresponding UASLs of Idea (the "Overlapping Spice UASLs"). Idea and Spice were desirous to transfer their Overlapping Idea UASLs and Overlapping Spice UASLs, respectively, to third party through a demerger scheme under Sections 391 to 394 of the Act. In this regard the Scheme of Demerger-Idea (*as defined hereinafter*) and the Scheme of



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Demerger–Spice (*as defined hereinafter*) are currently being contemplated.

- 1.8 This Scheme is proposed to amalgamate Spice with Idea. The amalgamation would, inter alia:
- (a) help Idea’s medium to long term vision of becoming a pan India operator;
 - (b) provide significant capital expenditure advantages as Idea’s operations in the 900MHz GSM spectrum band will increase from the current 7 circles to 9 circles;
 - (c) achieve economies of scale, infrastructure sharing and other operational synergies which would result in optimization of operation and capital expenditure; and
 - (d) lead to increased competitive strength, cost reduction and efficiencies, productivity gains by pooling the financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies of both the companies thereby significantly contributing to future growth and maximizing shareholders value.

2 DEFINITIONS

In this Scheme unless repugnant to the meaning or context thereof, the following expressions shall have the following meanings:

- 2.1 “Act” or “the Act” means the Companies Act, 1956 or any statutory modification or re-enactment thereof for the time being in force.
- 2.2 “Amalgamation Reserve Account” means the amount of amalgamation reserve appearing in the books of Idea.
- 2.3 “Capital Reserve Account” means the amount of capital reserve appearing in the books of Idea.
- 2.4 “ClaridgesCo” means Claridges Communications Private Limited, a company incorporated under the Act and having its registered office at Z-8, Basement, Hauz Khas, South Delhi, New Delhi-110 016, India.
- 2.5 “Delegates” shall have the meaning given in clause 16.1.



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- 2.6 **“DoT”** means the Department of Telecommunications, Ministry of Communications and Information Technology, Government of India.
- 2.7 **“Effective Date”** means the last of the dates on which all conditions, matters and filings referred to in clause 17 hereof have been fulfilled and necessary orders, approvals and consents referred to therein have been obtained.

References in this Scheme to the date of **“coming into effect of this Scheme”** or **“upon the Scheme being effective”** shall mean the Effective Date.

- 2.8 **“High Court”** means the High Court of Delhi at New Delhi having jurisdiction in relation to the Transferor Company and the High Court of Gujarat at Ahmedabad having jurisdiction in relation to the Transferee Company, as the context may admit and shall, if applicable, include the National Company Law Tribunal, and **“High Courts”** shall mean both of them, as the context may require.
- 2.9 **“Overlapping Idea UASLs”** shall have the meaning given in clause 1.7 above.
- 2.10 **“Overlapping Spice UASLs”** shall have the meaning given in clause 1.7 above.
- 2.11 **“Record Date”** shall have the meaning given in clause 11.1.
- 2.12 **“Scheme”** or **“the Scheme”** or **“this Scheme”** means this Scheme of Amalgamation in its present form or with any modification(s) approved or imposed or directed by the High Courts.
- 2.13 **“Scheme of Demerger-Idea”** means the proposed scheme of arrangement as contemplated between the Transferee Company and Vitesse, for demerger of Overlapping Idea UASLs of the Transferee Company and the transfer of the same to Vitesse under sections 391 to 394 of the Act.
- 2.14 **“Scheme of Demerger-Spice”** means the proposed scheme of arrangement as contemplated between the Transferor Company and ClaridgesCo, for demerger of Overlapping Spice UASLs and the transfer of the same to ClaridgesCo under sections 391 to 394 of the Act.



- 2.15 **"Transferee Company"** or **"Idea"** means Idea Cellular Limited, a company incorporated under the Act and having its registered office at Suman Tower, Plot No.18, Sector No.11, Gandhinagar-382 011, Gujarat, India.
- 2.16 **"Transferor Company"** or **"Spice"** means Spice Communications Limited, a company incorporated under the Act and having its registered office at A-30, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi-110 044, India.
- 2.17 **"UASLs"** means unified access service licence issued by the DoT to telecom companies with respect to different service areas.
- 2.18 **"Undertaking of the Transferor Company"** means all the business, undertakings, properties and liabilities, of whatsoever nature and kind and wheresoever situate of the Transferor Company, on a going concern basis, together with all their assets and liabilities and shall mean and include (without limitation):
- (a) the UASLs, as on the Effective Date, which are issued by the DoT to the Transferor Company and authorisations granted by the WPC for earmarking appropriate frequencies/band in respect of the service areas of the aforesaid UASLs;
 - (b) cell sites/towers owned and operated by the Transferor Company within the service areas of the aforesaid UASLs including towers taken on lease and/or leave and licence and/or any other arrangement by the Transferor Company, the towers under construction or which have not become operational within the service areas of the aforesaid UASLs, shelters, diesel generator sets, air conditioners and electrical and civil works and all rights, titles, deposits and interests over the land on which such towers within the aforesaid service areas have been or are proposed to be constructed or erected or installed, including base terminal station equipments, associated antennae, backhaul connectivity to the Transferor Company's network and other requisite equipments and associated electrical and civil works required to provide telecommunication services by the Transferor Company within the aforesaid service areas and all plant and equipment recognised and customarily treated by the telecom operators worldwide as forming part of telecom business including in particular the electrical power connections and such other rights, permissions or approvals whether from Government



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bodies or otherwise, which may be necessary or deemed to be necessary, utilities, engine alternators and power backup equipments, all associated civil and electrical structures as also the mobile tower;

- (c) all properties and assets, movable and immovable, real and personal, in possession or reversion, corporeal and incorporeal, present and future, contingent or of whatsoever nature, wheresoever situate alongwith buildings, sheds, godowns, warehouses, offices, vehicles, investments, interests, current assets (including inventories, sundry debtors, bills of exchange, loans and advances, etc.), stocks and stores, furniture, fixtures, office equipments, appliances, computers, accessories, licences (including National Long Distance licence and International Long Distance licence issued by DoT), permits, quotas, approvals, registrations, leasehold rights, tenancy rights including tenancy rights in relation to office and residential properties, incentives, claims, powers, authorities, allotments, consents, engagements, arrangements, rights, credits, titles, benefits, advantages, subsidies, municipal permissions, brands, other intangibles, industrial and other licences, authorisations, know-how, trade marks, designs, copy rights, patents and other industrial and intellectual properties, trade secrets, confidential information, domain names, powers of every kind, nature and description and all other permissions, rights (including rights under any contracts, Government contracts, memorandum of understanding, etc.), all entitlements, deposits, advances and/or monies paid or received by the Transferor Company, all statutory licences and/or permissions and any financial assets, guarantees issued by the Transferor Company and the benefits of any bank guarantees, deferred tax benefits, privileges, all other claims, rights and benefits, powers and facilities of every kind, nature and description whatsoever, rights to use and avail of telephones, telexes, facsimile connections and installations and utilities, electricity and other services, provisions, funds, benefits of all agreements, contracts and arrangements and all other interest in connection with or relating to the Transferor Company;
- (d) all deposits and balances with the Government, semi Government, local and other authorities and bodies, customers and other persons, earnest moneys and/or security deposits



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paid by the Transferor Company in connection with or relating to the Transferor Company;

- (e) all books, records, files, papers, engineering and process information, records of standard operating procedures, computer programmes alongwith their licences, drawings, manuals, data, catalogues, quotations, sales and advertising materials, lists of present and former customers and suppliers, customer credit information, customer pricing information, and other records whether in physical or electronic form in connection with or relating to the Transferor Company; and
- (f) all debts, liabilities including contingent liabilities, duties, taxes and obligations of the Transferor Company.
- 2.19 "Vitesse" means Vitesse Telecom Private Limited, a company incorporated under the Act and having its registered office at 104, Ashwamegh Avenue, Near Mithakali Underbridge, Navrangpura, Ahmedabad 380 009, Gujarat, India.
- 2.20 "WPC" means Wireless Planning & Coordination Wing of Ministry of Communications, Government of India.

3 DATE OF TAKING EFFECT AND OPERATIVE DATE

The Scheme shall be effective and operative on and from the Effective Date.

SHARE CAPITAL

- 4.1 The share capital structure of the Transferor Company as at 31st March, 2009 was as follows:

Particulars	Amount in Rupees
Authorised:	
75,00,00,000 Equity Shares of Rs. 10/- each	750,00,00,000
1,000 Non-Convertible Redeemable Preference Shares of Rs. 10/- each	10,000



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Total	750,00,10,000
Issued, Subscribed and Paid-up:	
68,99,25,000 Equity Shares of Rs. 10/- each, fully paid-up	689,92,50,000
Total	689,92,50,000

The Transferee Company holds 283,489,350 equity shares (representing 41.09% of the issued and paid-up share capital) of the Transferor Company.

- 4.2 The share capital structure of the Transferee Company as at 31st March, 2009 was as follows:

Particulars	Amount in Rupees
Authorised:	
677,50,00,000 Equity Shares of Rs. 10/- each	67,75,00,00,000
1,500 Redeemable Cumulative Non-Convertible Preference Shares of Rs. 1,00,00,000/- each	15,00,00,00,000
Total	82,75,00,00,000
Issued, Subscribed and Paid-up:	
310,00,95,209 Equity Shares of Rs. 10/- each, fully paid-up	31,00,09,52,090
Total	31,00,09,52,090



5 TRANSFER AND VESTING OF UNDERTAKING OF TRANSFEROR COMPANY

- 5.1 Upon the Scheme being effective and subject to the provisions of this Scheme in relation to the mode of transfer and vesting, the Undertaking of the Transferor Company shall, without any further act, instrument or deed, be and stand transferred to and vested in

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and/or be deemed to have been and stand transferred to and vested in the Transferee Company as a going concern so as to become on and from the Effective Date, the estate, assets, rights, title, interest and authorities of the Transferee Company, pursuant to Section 394(2) of the Act, subject however, to all charges, liens, mortgages, then affecting the same or any part thereof, provided always that the Scheme shall not operate to enlarge the scope of security for any loan, deposit or facility created by or available to the Transferor Company which shall vest in the Transferee Company by virtue of the amalgamation and the Transferee Company shall not be obliged to create any further or additional security therefore after coming into effect of this Scheme or otherwise except in case where the required security has not been created and in such case if the terms thereof require, the Transferee Company will create the security in terms of the issue or arrangement in relation thereto. Similarly, the Transferee Company shall not be required to create any additional security over assets acquired by it under the Scheme for any loans, deposits or other financial assistance availed/to be availed by it.

- 5.2 In particular, upon the Scheme being effective, the UASLs, authorisations and any other licences/approvals granted to the Transferor Company, all municipal approvals, permission for establishing cellular towers (including cell site licences) or receiving stations or any broadband and/or broadcasting approvals for bandwidth and forming part of the Undertaking of the Transferor Company shall vest in the Transferee Company and the concerned licensors and granters of such approvals, clearances, permissions, shall endorse, where necessary, and record the Transferee Company on such approvals, clearances, permissions so as to empower and facilitate the approval and vesting of the Undertaking of the Transferor Company in the Transferee Company without hindrance or let on and from the Effective Date.
- 5.3 With respect to the assets of the Undertaking of the Transferor Company that are movable in nature or are otherwise capable of transfer by manual delivery or by paying over or endorsement and/or delivery, the same may be so transferred by the Transferor Company, and shall, upon such transfer, become the property, estate, assets, rights, title, interest and authorities of the Transferee Company as an integral part of the Undertaking of the Transferor Company on and from the Effective Date.



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- 5.4 With respect to the assets of the Undertaking of the Transferor Company other than those referred to in clause 5.3 above, the same shall, without any further act, instrument or deed, be transferred to and vested in and/or be deemed to be transferred to and vested in the Transferee Company on the Effective Date pursuant to the provisions of Section 394 of the Act. It is hereby clarified that all the investments made by the Transferor Company and all the rights, title and interests of the Transferor Company in any leasehold properties in relation to the Undertaking of the Transferor Company shall, pursuant to Section 394(2) of the Act and the provisions of this Scheme, without any further act or deed, be transferred to and vested in or be deemed to have been transferred to and vested in the Transferee Company.
- 5.5 All debts, outstanding and receivables of the Transferor Company shall on and from the Effective Date stand transferred to and vested in the Transferee Company without any notice or other intimation to the debtors (although the Transferee Company may, if it so deems appropriate, give notice to the debtors that the debts do stand transferred to and vested in the Transferee Company), and the debtors shall be obliged to make payments to the Transferee Company on and from the Effective Date.
- 5.6 For the avoidance of doubt, it is clarified that upon the coming into effect of this Scheme, in accordance with the provisions of relevant laws, consents, permissions, licences, certificates, authorities (including for the operation of bank accounts), powers of attorneys given by, issued to or executed in favour of the Transferor Company, and the rights and benefits under the same shall, and all quality certifications and approvals, trademarks, brands, patents and domain names, copy rights, industrial designs, trade secrets and other intellectual property and all other interests relating to the goods or services being dealt with by the Transferor Company, be transferred to and vested in the Transferee Company.
- 5.7 In so far as the various incentives, service tax benefits, subsidies, grants, special status and other benefits or privileges enjoyed, granted by any Government body, local authority or by any other person, or availed of by the Transferor Company are concerned, the same shall, without any further act or deed, vest with and be available to the Transferee Company on the same terms and conditions on and from the Effective Date.



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- 5.8 With respect to tax payments (including, without limitation, income tax, sales tax, excise duty, customs duty, service tax, VAT, etc.), whether by way of deduction at source, advance tax or otherwise howsoever, made by the Transferor Company in respect of the profits or activities or operation of the business prior to (but not including) the Effective Date or wherever such deduction of tax at source, advance tax, minimum alternate tax stands or any other tax demand adjusted against the refund in any of the tax proceedings and stands refundable to the Transferor Company as on the Effective Date, the same shall, on and from the Effective Date, be deemed to be the corresponding item paid/payable/refundable by/to the Transferee Company, and, shall, in all such tax proceedings, be dealt with accordingly.
- 5.9 On and from the Effective Date, the Transferee Company shall be entitled to carry forward to its account and claim credit for any unutilized Modvat/ Cenvat/ Service Tax Credit under the Modvat/Cenvat Credit Rules framed under Central Excise Act, 1944 or the Service Tax Credit Rules framed under Finance Act, 1994 lying in the registers of or to the account of the Transferor Company as on the Effective Date for the excise duty/ customs duty (including CVD) / service tax paid on inputs/capital goods.
- 5.10 Upon the coming into effect of this Scheme, all debts, liabilities, duties and obligations of the Transferor Company shall, pursuant to the provisions of Section 394(2) and other applicable provisions of the Act, without any further act, instrument or deed be and stand transferred to and vested in and/or deemed to have been stand and transferred to and vested in the Transferee Company, so as to become on and from the Effective Date, the debts, liabilities, duties and obligations of the Transferee Company on the same terms and conditions as were applicable to the Transferor Company and further that it shall not be necessary to obtain the consent of any person who is a party to contract or arrangement by virtue of which such liabilities have arisen in order to give effect to the provisions of this clause.



6 LEGAL PROCEEDINGS

If any suit, appeal or other proceedings of whatsoever nature by or against the Transferor Company is pending, the same shall not be abated or be discontinued or be in any way prejudicially affected by reason of the transfer of the Undertaking of the Transferor Company or anything contained in this Scheme, and the suit,

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appeal or other proceedings may be continued, prosecuted and enforced, as the case may be, by or against the Transferee Company in the same manner and to the same extent as it would be or might have been continued, prosecuted and enforced by or against the Transferor Company, had this Scheme not been made.

7 CONTRACTS, DEEDS, ETC.

7.1 Upon the coming into effect of this Scheme and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements (including inter- connect and roaming agreements), understandings whether written or oral and other instruments, if any, of whatsoever nature to which the Transferor Company is a party or to the benefit of which the Transferor Company may be eligible, and which are subsisting or having effect immediately before the Effective Date, without any further act, instrument or deed, shall continue in full force and effect by, for or against or in favour of, as the case may be, the Transferee Company and may be enforced by or against the Transferee Company as fully and effectively as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obligee or obligor thereto or thereunder.

7.2 Notwithstanding the fact that vesting of the Undertaking of the Transferor Company occurs by virtue of this Scheme itself, the Transferee Company may, at any time after the Effective Date, if so required, under any law or otherwise, take such actions and execute such deeds (including deeds of adherence), confirmations or other writings or arrangements with any party to any contract or arrangement to which the Transferor Company is a party or any writings as may be necessary in order to give formal effect to the provisions of the Scheme. The Transferee Company shall, under the provisions of this Scheme, be deemed to be authorised to execute any such writings on behalf of the Transferor Company and to carry out or perform all such formalities or compliances referred to above on the part of the Transferor Company to be carried out or performed.

8 SAVING OF CONCLUDED TRANSACTIONS

The transfer of properties and liabilities under Clause 5 above and the continuance of the proceedings by or against the Transferee Company under Clause 6 above shall not affect any transaction or proceedings already concluded by the Transferor Company prior to the coming into effect of this Scheme to the end and intent that the



Transferee Company accepts and adopts all acts, deeds and things done and executed by the Transferor Company in respect thereto as done and executed on behalf of itself.

9 EMPLOYEES OF THE TRANSFEROR COMPANY

- 9.1 On and from the Effective Date, the employees of the Transferor Company as at the Effective Date, shall become and be deemed to have become the employees of the Transferee Company on the terms and conditions not less favourable than those on which they are engaged by the Transferor Company, without any break in their services and on the basis of continuity of services.
- 9.2 In so far as the existing provident fund, gratuity fund, pension and/or superannuation fund or any other special fund or trusts, created or existing for the benefit of the employees of the Transferor Company shall, on and from the Effective Date, become the trusts/funds of the Transferee Company, for all purposes whatsoever in relation to the administration or operation of such funds or trusts or in relation to the obligation to make contributions to the said funds or trusts in accordance with the provisions thereof as per the terms provided in the respective trust deeds, to the end and intent that all rights, duties, powers and obligations of the Transferor Company in relation to such funds or trusts shall become those of the Transferee Company.
- 9.3 It is clarified that the services of the employees of the Transferor Company will be treated as having been continuing for the purpose of said fund or funds.

10 BUSINESS AND PROPERTY IN TRUST AND CONDUCT OF BUSINESS FOR THE TRANSFEE COMPANY

With effect from the date of filing the Scheme with the High Courts and up to and including the Effective Date:

- 10.1 The Transferor Company hereby undertakes that it will preserve and carry on its business with diligence and utmost business prudence and agrees that it will not, without the prior consent of the Transferee Company, alienate charge or encumber or otherwise deal with or dispose off any of its properties except in the ordinary course of business or acquire any assets or undertake substantial expansion or change the general character or nature of the business of the Transferor Company.



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- 10.2 The Transferee Company and/or the Transferor Company shall be entitled, pending sanction of the Scheme, to apply to the DoT and/or any other statutory authorities and agencies concerned as are necessary under any law for such consents, approvals and sanctions which the Transferee Company may require to carry on the business of the Transferor Company.

11 ISSUE AND ALLOTMENT OF SHARES/CANCELLATION OF SHARES

- 11.1 Upon the Scheme being effective, and in consideration of the transfer of and vesting of the Undertaking of the Transferor Company in the Transferee Company pursuant to this Scheme, no shares of the Transferee Company shall be required to be issued and allotted in respect of the equity shares of the Transferor Company held by the Transferee Company and these shares shall be deemed to be cancelled and shall stand extinguished without any further act, deed or thing and the Transferee Company shall without any further application, act, instrument or deed, issue and allot to each equity shareholder of the Transferor Company (other than the Transferee Company), whose name is recorded in the register of members of the Transferor Company, on a date (hereinafter referred to as "Record Date") to be fixed in that behalf by the Board of Directors or a committee thereof of the Transferee Company, in the ratio of 49 (forty nine) equity shares in the Transferee Company of Rs.10/- each credited as fully paid-up for every 100 (one hundred) equity shares of Rs.10/- each fully paid-up held by such equity shareholder in the Transferor Company.

- 11.2 The shares issued pursuant to Clause 11.1 above shall be issued in a dematerialised form by the Transferee Company. However, each of the equity shareholders of the Transferor Company holding shares in physical form shall have the option, exercisable by notice in writing by them to the Transferee Company on or before such date as may be determined by the Board of Directors of the Transferee Company or a committee of such Board of Directors, to receive, either in physical form or in dematerialised form, the shares of the Transferee Company. In the event that such notice has not been received by the Transferee Company in respect of any of the equity shareholders of the Transferor Company, the shares of the Transferee Company shall be issued to such equity shareholders of the Transferor Company in physical form. The equity shareholders that exercise the option to receive the shares in dematerialised form shall be required to have an account with a



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depository participant and shall provide details thereof and such other confirmations as may be required. It is only thereupon that the Transferee Company shall issue and directly credit the demat/dematerialised securities account of such equity shareholder with the shares of the Transferee Company.

It is clarified that each equity shareholder holding shares in the Transferor Company in dematerialised form shall be issued the shares of the Transferee Company in dematerialised form in accordance with the records maintained by the depositories on the Record Date.

- 11.3 Where the equity shares of the Transferee Company are to be allotted, pursuant to Clause 11.1 above, to heirs, executors or administrators or, as the case may be, to successors of deceased equity shareholders of the Transferor Company, the concerned heirs, executors, administrators or successors shall be obliged to produce evidence of title satisfactory to the Board of Directors of the Transferee Company.
- 11.4 In the event any equity shareholders' holding in the Transferor Company is such that the member becomes entitled to a fraction of an equity share of the Transferee Company, the Transferee Company shall not issue fractional share certificates to such equity shareholder. The Board of Directors of the Transferee Company shall, instead consolidate all such fractional entitlement(s), if any, arising and thereupon issue and allot equity shares in lieu thereof to a director or an officer of the Transferee Company or such other person as the Board of Directors of the Transferee Company shall appoint, who shall hold the equity shares in trust on behalf of the equity shareholders entitled to fractional entitlements with the express understanding that such director(s) or officer(s) or person(s) shall sell the same in the market at such time or times and at such price or prices and to such person or persons, as it/ he/ they may deem fit, and pay to the Transferee Company, the net sale proceeds thereof, whereupon the Transferee Company shall, distribute such net sale proceeds, subject to taxes, if any, to the equity shareholders of the Transferor Company in proportion to their respective fractional entitlements.
- 11.5 The Transferee Company shall, if and to the extent required, apply for and obtain the consent of the Reserve Bank of India and other concerned authorities, to the issue and allotment of equity shares to the non-resident equity shareholders of the Transferor Company.




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- 11.6 The equity shares of the Transferee Company to be issued to the equity shareholders of the Transferor Company pursuant to Clause 11.1 above shall be subject to the provisions of Articles of Association of the Transferee Company and shall inter-se rank pari passu in all respects with the then existing equity shares of the Transferee Company, including in respect of dividend, if any, that may be declared by the Transferee Company on or after the Effective Date.
- 11.7 The equity shares of the Transferee Company issued pursuant to Clause 11.1 above, shall, subject to applicable regulations, be listed and/or admitted to trading on the Bombay Stock Exchange Limited and The National Stock Exchange of India Limited where the existing equity shares of the Transferee Company are listed and/or admitted to trading. The Transferee Company shall enter into such arrangements and give such confirmations and/or undertakings as may be necessary in accordance with the applicable laws or regulations for complying with the formalities of the said stock exchanges.
- 11.8 The issue and allotment of equity shares by the Transferee Company to the equity shareholders of the Transferor Company as provided in this Scheme as an integral part thereof, shall be deemed to have been carried out without any further act or deed by the Transferee Company as if the procedure laid down under Section 81(1A) of the Act and any other applicable provisions of the Act were duly complied with.
- 11.9 The equity shares to be issued pursuant to this Scheme by the Transferee Company in respect of the equity shares of the Transferor Company which are held in abeyance under the provisions of section 206A of the Act or otherwise shall pending allotment or settlement of dispute by order of Court or otherwise, be held in abeyance by the Transferee Company.
- 11.10 In the event of there being any pending share transfers, whether lodged or outstanding, of any equity shareholder of the Transferor Company, the Board of Directors or any committee thereof of the Transferee Company shall be empowered in appropriate cases, prior to or even subsequent to the Record Date, to effectuate such a transfer as if such changes in the registered holder were operative as on the Record Date, in order to remove any difficulties arising to the transferor or transferee of the shares in the Transferor Company



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and in relation to the equity shares issued by the Transferee Company after the effectiveness of this scheme.

12 ACCOUNTING TREATMENT

In the books of the Transferee Company

- 12.1 The Transferee Company shall account for the amalgamation/merger in its books under the "Pooling of Interest method" in accordance with the applicable Accounting Standard, pursuant to which the assets and liabilities of the Transferor Company will be recorded in the books of the Transferee Company at their carrying amount as on the Effective Date.

Balances lying in the Amalgamation Reserve Account and Capital Reserve Account of the Transferee Company shall be transferred to the General Reserve Account and the shortfall, if any, between the debit to the General Reserve Account as mentioned herein below and the transfers from Amalgamation Reserve Account and Capital Reserve Account will be withdrawn from the balances of the Securities/Share Premium Account of the Transferee Company and credited to the General Reserve Account. The debit to the General Reserve Account shall be an amount equal to (i) and (ii) and reduced by (iii) as under:

- (i) the amount invested by the Transferee Company in the Transferor Company for acquiring 41.09% of the total issued and paid-up equity share capital of the Transferor Company.
- (ii) the amount of the equity shares to be allotted by the Transferee Company in terms of clause 11 of the Scheme.
- (iii) the amount of the share capital of the Transferor Company and held by the Transferee Company being cancelled and extinguished.

- 12.2 Along with clause 12.1 above, the following accounting treatment shall also be made as integral part of the Scheme:

- (a) the amount of loss arising out of impairment, in respect of Overlapping Idea UASLs or sale, disposal or any other arrangement including any expenditure/levies incurred in connection with these UASLs in the event the Scheme of Demerger-Idea not being pursued or the said Scheme of Demerger-Idea not becoming effective for any reason



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whatsoever, shall be debited to the Profit & Loss Account of the Transferee Company and correspondingly an equivalent amount shall be withdrawn from the Securities/Share Premium Account of the Transferee Company and transferred to the credit of the Profit & Loss Account. Such debit and credit shall be reflected below "Profit before exceptional items and Tax".

- (b) the amount equivalent to the impairment in respect of Overlapping Spice UASLs or loss arising out of sale, disposal or any other arrangement including any expenditure/levies incurred in connection with these UASLs in the event the Scheme of Demerger-Spice not being pursued or the said Scheme of Demerger-Spice not becoming effective for any reason whatsoever, shall be withdrawn from the Securities/Share Premium Account of the Transferee Company and transferred to the credit of the General Reserve Account. Thereafter an equal amount shall be withdrawn from the General Reserve Account and credited to the Profit & Loss Account and reflected below the line item "Accumulated Profit/Loss balance of the Transferor Company on Amalgamation" being added to the balance of Profit and loss account of the Transferee Company under the "Pooling of Interest method". In effect, the Balance of Loss pertaining to the Transferor Company being carried forward to the Balance Sheet of the Transferee Company shall stand appropriated to the extent withdrawn from the General Reserve Account for this sub-clause.
- (c) An amount of Rs. 100 Crores shall be withdrawn from the Securities/Share Premium Account of the Transferee Company and transferred to the credit of a reserve called "Business Restructuring Reserve". Such reserve called "Business Restructuring Reserve" shall arise out of this Scheme and shall not be considered as a reserve created by the Transferee Company.
- (d) The Transferee Company shall withdraw from its Business Restructuring Reserve recognized as such under sub-clause (c) above, a sum equal to the debits mentioned below and credit such withdrawn amount to its Profit and Loss Account to off-set the following items :



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- i Any expenses, stamp duties, taxes and any other levies in relation to or arising out of this Scheme;
 - ii Loss on impairment of obsolete /redundant fixed assets of the Transferor Company arising during the financial year in which the Scheme is being given effect to; and
 - iii Losses arising out of re-alignment of the Transferor Company's Financial Statement in accordance with the Transferee Company's accounting policies.
- (e) As and when the Board of Directors of the Transferee Company determines that the balance left in the Business Restructuring Reserve after all accounting adjustments given in sub-clause (d) above is no longer required, the same shall be transferred to the General Reserve Account.


12.3 To the extent the Securities/Share Premium Account is withdrawn as mentioned in clause 12.1 and clause 12.2 above, there shall be reduction of Securities/Share Premium Account which shall be effected as an integral part of this Scheme itself in accordance with the provisions of Section 78 and Sections 100-103 of the Act and as the same does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of paid up share capital the provisions of Section 101 of the Act are not applicable and the order of the High Courts sanctioning the Scheme shall also be deemed to be an order under Section 102 of the Act confirming reduction of Securities/Share Premium Account.



12.4 Notwithstanding the reduction as mentioned above, the Transferee Company shall not be required to add "and reduced" as a suffix to its name and the Transferee Company shall continue in its existing name.

13. **PROCEDURE TO DEAL WITH BALANCES AS BETWEEN THE TRANSFEROR COMPANY AND THE TRANSFEE COMPANY**

To the extent that there are advances, loans, deposits, balances (including any guarantees, or any other instrument or arrangement which may give rise to a contingent liability in whatever form), if

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any, as between the Transferor Company and the Transferee Company, the obligations in respect of the same shall come to an end and there shall be no liability in that behalf on either party and corresponding effect shall be given in the books of accounts and records of the Transferee Company. For the removal of doubt, it is clarified that in view of the above, there would be no accrual of interest or other charges, if any, in respect of any such advances, loans, deposits or balances, on and from the Effective Date.

14. DISSOLUTION OF THE TRANSFEROR COMPANY

Upon the Scheme being effective, the Transferor Company shall be dissolved without winding up pursuant to the provisions of Section 394 of the Act.

15. APPLICATIONS TO THE HIGH COURTS

The Transferor Company and the Transferee Company shall with all reasonable dispatch, make applications/petitions to the respective High Courts under Sections 391 and 394 and other applicable provisions of the Act for sanctioning and carrying out of this Scheme.

16. APPROVALS AND MODIFICATIONS

- 16.1 The Transferor Company and the Transferee Company may mutually agree at any time on behalf of all persons concerned to any modifications or amendments or additions to the Scheme, or to any conditions or limitations which either the Board of Directors of the Transferor Company and the Transferee Company may deem fit or which the High Courts and/or competent authorities, if any, under the law may deem fit to approve of or impose, and which the Transferor Company and the Transferee Company may in their discretion, deem fit, and to resolve all doubts or difficulties that may arise in carrying out and implementing this Scheme and to do all acts, instruments, deeds, matters and things necessary or to review the position relating to the satisfaction of the conditions of this Scheme and if necessary, to waive any of those (to the extent permissible under law) for bringing the Scheme into effect. In the event that any of the conditions that are imposed by the High Courts or other authorities which the Transferor Company and the Transferee Company may find unacceptable for any reason, then the Transferor Company and/or the Transferee Company are at liberty to withdraw the Scheme. The aforesaid powers of the



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Transferor Company and the Transferee Company may be exercised by their respective Board of Directors, or a committee of the concerned Board of Directors, or any director or employee authorized in that behalf by the concerned Board of Directors (hereinafter referred to as the "Delegates").

- 16.2 For the purpose of giving effect to this Scheme or to any modifications or amendments thereof, or additions thereto, the Delegate(s) of the Transferor Company or the Transferee Company may give and are hereby authorised to determine and give all such directions as are necessary including directions for settling or removing any question of doubt or difficulty that may arise and such determination or directions, as the case may be, shall be binding on all parties in the same manner as if the same were specifically incorporated in this Scheme.

17. SCHEME CONDITIONAL ON APPROVALS/SANCTIONS

The Scheme is conditional upon and subject to:

- 17.1 the Scheme being agreed to by the requisite majority of the Members and/or Creditors (where applicable) of the Transferor Company and the Transferee Company as required under the Act and the requisite orders of the High Courts referred to in Clause 15 above being obtained;
- 17.2 the certified copy of the order of the High Courts sanctioning the Scheme being filed with the Registrar of Companies, Gujarat at Ahmedabad and the Registrar of Companies, New Delhi; and
- 17.3 the sanction of the Scheme of Demerger-Spice and the sanction of the Scheme of Demerger-Idea by the Courts and the same being made effective in terms of the Scheme of Demerger-Spice and the Scheme of Demerger-Idea, respectively, or such other arrangement being made by Idea and Spice with respect to Overlapping Idea UASLs and Overlapping Spice UASLs, respectively, in accordance with the prevailing UASL conditions and applicable regulations in the event the Scheme of Demerger- Spice and the Scheme of Demerger- Idea is not pursued or that the said Scheme of Demerger – Spice and the Scheme of Demerger- Idea do not become effective for any reason whatsoever.



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18. COST, CHARGES AND EXPENSES

All costs, charges, taxes including duties, levies and all other expenses, if any (save as expressly otherwise agreed) of the Transferor Company and the Transferee Company arising out of or incurred in carrying out and implementing the Scheme and matters incidental thereto shall be borne and paid by the Transferee Company.

19. EFFECT OF NON RECEIPT OF SANCTION

In the event of this Scheme not becoming effective by 31st December 2009 or by such later date as may be agreed to by the respective Board of Directors of the Transferor Company and the Transferee Company, this Scheme shall become null and void and in that event no rights and liabilities whatsoever shall accrue to or be incurred inter se by the parties or their shareholders or creditors or employees or any other person. In these circumstances and unless otherwise mutually agreed between the Transferor Company and the Transferee Company, each company shall be responsible for its own costs and expenses incurred in relation or in connection with this Scheme.



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WITNESS M. S. SHAH, ESQUIRE, THE ACTING CHIEF JUSTICE at Ahmedabad
aforesaid this 26th day of November, Two Thousand and Nine.



BY THE ORDER OF THE COURT

Sd/- G. K. Vadhyani
REGISTRAR (JUDICIAL)
This 8th day of December 2009

SEALER

Sd/- G. S. Thomas
DEPUTY REGISTRAR
This 9th day of December 2009



ORDER SANCTIONING THE SCHEME OF
AMALGAMATION DRAWN ON THE
APPLICATION OF M/S. SINGHI & CO.,
ADVOCATES FOR THE PETITIONER
HAVING THEIR OFFICE AT 7-8TH FLOOR,
PREMCHAND HOUSE ANNEXE, ASHRAM
ROAD, AHMEDABAD- 380 009

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ASSISTANT REGISTRAR
THIS 9th DEC. DAY OF 2009.