

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

PRINCIPAL BENCH

NEW DELHI

C.A (CAA)47/PB /2017

**Present: CHIEF JUSTICE (Rtd.) SHRI M.M. KUMAR, HON'BLE
PRESIDENT & SHRI R. VARADHARAJAN, MEMBER (JUDICIAL)**

In the matter of:

Sections 230 and 232 and other applicable sections and provisions of the
Companies Act, 2013 read Companies (Compromises, Arrangements, and
Amalgamations) Rules, 2016

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT

OF

Tolexo Online Private Limited

A company incorporated under the provisions of The Companies Act, 2013

Having registered office at:

1st floor, 29-Daryaganj,

Netaji Subhash Marg,

New Delhi-110002

CIN: U72200DL2014PTC267665

..... Applicant/Transferor Company

AND

Indiamart InterMesh Limited

A company incorporated under the provisions of The Companies Act, 2013

Having registered office at:

1st floor, 29-Daryaganj,

Netaji Subhash Marg,

New Delhi-110002

CIN: U74899DL1999PLC101534

..... Applicant/ Transferee Company

ADVOCATES FOR THE APPLICANTS:

Ms. Aanchal Dutta

Ms. Swati Sumbly



ORDER

1. This is an application jointly filed by the Applicant Companies herein, namely Tolexo Online Private Limited (Transferor Company), and Indiamart Intermesh Limited (Transferee Company) Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (for brevity 'The Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'The Rules') in relation to the Scheme of Arrangement (for brevity the 'Scheme') proposed between the applicants. The 'Scheme' is also annexed to the application. The applicants above named have preferred the instant application for the following purpose as is evident from the reliefs sought in the Application, namely: -

(a) Necessary Directions may be given by this Hon'ble Tribunal; for dispensing with the holding, convening and conducting the meetings of the Shareholders of the Applicant/ Transferor Company to consider and approve the proposed Scheme of Arrangement;

(b) Necessary Directions may be given by this Hon'ble Tribunal; for dispensing with the holding, convening and conducting the meetings of the Unsecured Creditors of the Applicant/ Transferor Company to consider and approve the proposed Scheme of Arrangement;

(c) Necessary Directions may be given by this Hon'ble Tribunal; for dispensing with the holding, convening and conducting the meetings of

the Shareholders and Unsecured Creditors of the Applicant/ Transferee Company to consider and approve the proposed Scheme of Arrangement;

(d) To appoint the Chairman and Co- Chairman for the meetings to be held.

(e) Necessary directions be given to publish the notice of the meetings held in the English newspaper and Hindi newspaper; and

(f) This Hon'ble Tribunal may pass any other/ further orders as may be deemed fit and proper in the facts and circumstances of the case.

2. An Affidavit in support of the joint application sworn for and on behalf of Transferor Company and Transferee Company has been filed by Mrs. Preeti Jain and Mr. Anil Dwivedi, being the authorized representative of the respective Companies along with the application. Counsel for the applicants took us through the averments made in the application as well as typed set of documents annexed there with. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that the application is maintainable in view of Rule 3(2) of the Rules and it is also represented that the registered offices of all the Applicant Companies are situated within the territorial jurisdiction of this Tribunal and it falls within domain of Registrar of Companies, NCT, New Delhi.



3. In relation to Tolexo Online Private Limited being the Transferor Company, in the Scheme, it is represented that it has Three Equity Shareholders holding 53,860,000 shares as on 28.03.2017 and One Preference Shareholder. It is further represented by the counsel for Applicants that the Transferor Company as on 28.03.2017 has no Secured Creditor and 66 Unsecured Creditors. In relation to Equity Shareholders and Preference Shareholder, since consent from all of them has been obtained and since there is no Secured Creditor, a prayer has been made for dispensing with holding of their respective meetings. In relation to Unsecured Creditors of the Transferor Company, a prayer has been made for direction for convening and holding of the meeting for approval to the proposed Scheme.

4. In relation to Indiamart Intermash Limited (Transferee Company), Learned Counsel represents that the company has 54 Equity Shareholders holding 9,168,989 equity shares as on 28.03.2017 and 5 Preference Shareholders. It is further represented by the counsel for Applicants that the Transferee Company as on 28.03.2017 has no Secured creditors and 26 Unsecured Creditors. In relation to the Equity Shareholders, Preference shareholders and Unsecured Creditors, Transferee Company seeks directions for convening and holding of their respective meetings. There is no Secured

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Creditor in the company therefore, the question of convening their meeting does not arise.

5. Learned Counsel for the Applicants further represents that the Transferor Company is 100% wholly owned subsidiary of Transferee Company therefore provisions of Section 233 of the Act would apply to the present Scheme, but according to Rule 25 sub-rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, the companies can, at their discretion, opt to file application under section 230 & 232 of the Act and in the present matter the Applicants have chosen to file their applications before this Tribunal. Therefore, in the light of the notification of the provisions for Sections 230 to 232 of Companies Act, 2013 and as well as Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 framed thereunder this Tribunal proceeds to entertain the above joint application. Further, the registered office of both the applicants is situated within New Delhi and subject to the territorial jurisdiction of Registrar of Companies, NCT of Delhi and Haryana as well as that of this Tribunal.





6. We have perused the application and the connected documents / papers filed along with the Scheme of Arrangement by way of Demerger contemplated between the Applicant Companies.
7. From the certificate of incorporation filed, it is evident that the Transferor Company/Applicant Company No.1 was incorporated on 28th May, 2014 with the name and style of "Tolexo Online Private Limited" under the Companies Act, 2013. The authorized capital of the Applicant Company No.1, as on 01.01.2017 is Rs. 80,00,00,000/- (Rs Eighty Crores) divided into 55,000,000 equity shares of Rs. 10/- each and 25,000,000 0.1% Optionally Convertible Redeemable Preference Shares of Rs. 10 each. The Issued, Subscribed and Paid- up capital of the Company is also Rs. 68,64,50,000/- (Sixty- Eight Crores, Sixty Four Lacs, Fifty Thousand only) divided into 53,860,000 equity shares of Rs. 10 each and 1,47,85,000 0.01% Optionally Convertible Redeemable Preference Shares of Rs. 10 each.
8. The main objects of the Transferor Company are set out in its Memorandum of Association which inter alia, are as follows:
- *To carry on the business or profession of, in India and abroad, providing a platform, technology and/or other mechanism/service including through any future and known or unknown technology to*

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facilitate and process internet and/or mobile and/or electronic and /or other existing and future technology based payments for transactions, commerce, electronic commerce, mobile commerce, any type of commerce whether by and between businesses, by and between individual consumers, or by and between businesses and individual consumers and the likes and incidental and ancillary activities thereto including without limitation displaying thereto including without limitation displaying advertisement and promotions.

- To carry on in India and abroad, the business of operating, maintaining, marketing and otherwise dealing in all types of electronic, technological, wireless application protocol (WAP), 3G and internet properties including web-sites and portals on the World Wide Web and providing internet, wireless application protocol (WAP), 3G or other existing and future, whether known or unknown, technology based/other software, media, medium and information technology services or information technology enables services of all kinds and establishing, developing, undertaking, designing, producing, conceptualizing, marketing, selling and licensing software products of all descriptions, applications and specifications and for the said purpose to act as consultant, provider of professional services, know how provider, licensor and to do all*

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other acts or things necessary for the attainment of the foregoing objects in India and abroad including registering with Software Technology Parks, Hardware Technology Parks and Export Oriented Units or any other appropriate authority.

- *To carry on the business or profession of, in India and abroad, either on its own or through franchisee arrangements, licenses, agents, stockists, resellers, distributors, contractors or otherwise, of procuring, storing, warehousing, dispatching, promoting, packaging, formulating, buying, selling, exchanging, altering, importing, exporting, assembling, repairing, marketing, advertising, distributing or otherwise dealing in whole or in part, on a wholesale basis or otherwise, all kinds of services, goods and merchandise and generally to carry on business as wholesale merchants, importers and exporters, couriers, warehousing agents, including sourcing, procuring and placing contracts for all or any kinds of services, goods, materials and items whatsoever in nature.*
- *To carry on in India and abroad, the business & profession of rendering, technical device in constructing, furnishing, running and management of business, either on its own or through franchisee arrangements, licenses, agents, stockiest, resellers, distributors, contractors or otherwise, of operating , establishing, providing and managing, e-commerce and m- commerce websites, supermarkets,*

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hypermarkets, stores, direct to home and mail order services and dealing in all kinds of goods, materials and items in India or in any other part of the World.

- *To carry on in India and abroad, the business & profession of developing, designing, planning, executing, consultancy services or otherwise deal in, operate provide and facilitate in any manner the entire range of information technology enabled services, websites, mobile websites, web enabled services, value added services including (a) all services relating to access, storage, distribution and transmission of internet, web page hosting, website designing, electronic commerce services in various forms., including mobile, voice, email, chat and collaborative browsing, data storage, data transmission, data base and data processing services, computer hardware and software systems and all kind of communications as are in use or may be developed in future, (b) establishment and operation of customer call centres, customers service centers, technical support centers, billing payment processing, claims processing, inbound and outbound logistics, order fulfillment, packaging, warehousing and inventory management, document processing and digitizing, and (c) rendering of consultancy services in relation to any of the foregoing, including support and incidental services, in India and abroad.*

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9. From the certificate of incorporation filed, it is evident that the Transferee Company was incorporated with Registrar of Companies, NCT of Delhi & Haryana under the name and style of “Indiamart Intermesh Limited” on 13th September 1999 as a public limited company. The authorized capital of Transferee Company as on 01.01.2017 is Rs. 86,22,04,884/- (Rs. Eighty Six Crores Twenty Two Lacs Four thousand Eight Hundred Eighty Four only) divided into 20,000,000 equity shares of Rs. 10/- each, 1,493,903 0.01% Series-A Cumulative Convertible Preference Shares (CCPS) of Rs. 328 each and 1,722,047 0.01% Series-B Cumulative Convertible Preference Shares (CCPS) of Rs. 100 each. The issued, subscribed and Paid- up capital of the company is also Rs. 753,894,774/- divided into 9,168,989 equity shares of Rs. 10/- each, 1,493,903 0.01% Series A Cumulative Convertible Preference Shares(CCPS) of Rs. 328 each and 1,722,047 0.01% Series B Cumulative Convertible Preference Shares (CCPS) of Rs. 100 each.

10. The main objects of the Transferee Company as set out in its Memorandum of Association, are as under:

- *To design, develop, host promote and maintain web pages and websites and to carry on business of Internet and web advertising, web content design and development, web publishing, networking, network integration, e- mail and messaging solution, web enabled automation*

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systems and solutions, Intranet, Extranet, E- business, E- commerce, Electronic Data Interchange (EDI) solutions, Cyber Solutions and all other Internet related products and services.

- To carry on turnkey, on-site, off-shore or subcontract the business of developing, designing, programming, maintenance of software and to buy, sell, import, export, design, develop, implement or undertake projects in the field of computer hardware, system or application software, peripherals, electronic and web enabled devices and to carry on business of management and consultancy services relating to Information Technologies and Electronic Systems.*
- To buy sell, export, import, trade, auction, whole sale through e-commerce, web shopping, web auction, mail order, teleshopping, electronic trading, physical trading of any products and services.*

11. It has been submitted that pursuant to the scheme of Arrangement, paid-up equity share capital and 0.01% optionally convertible redeemable preference shares along with the securities premium account of Applicant/ Transferor Company shall be reduced in accordance with the provisions of Section 66 of the Companies Act, 2013 and Section 52 of the Companies Act 2013 and any other applicable provisions of the Act. The order of this Hon'ble Tribunal sanctioning this Scheme of Arrangement shall be deemed to also be the order under Section 66 of the Companies Act, 2013 for the




purpose of confirming capital reduction. The capital reduction would not involve either the diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital. The applicant Transferor Company further submits that pursuant to reduction in share capital and securities premium of the Transferor Company, the Transferor Company may not be required to add "And Reduced" as suffix to its name and the Transferor Company shall continue under its existing name.

12. It is further submitted that capital reduction and reorganisation of the share capital and securities premium of the Transferor Company in the manner provided in the Scheme of Arrangement

- (i) Shall not affect the authorised share capital of the Applicant/ Transferor Company and the unissued authorised share capital shall be available to Applicant/ Transferor company for issue and allotment; and
- (ii) Shall be effected upon the scheme becoming effective with effect from Record Date as mentioned in the Scheme of Arrangement.

13. All the applicants have filed their respective Memorandum and Articles of Association as well as the last available audited financial statements as on 31st March 2016.



14. The Board of Directors of the Transferor Company and, vide separate meetings held on 29.03.2017, have unanimously passed resolutions and approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions have also been placed on record by the companies.
15. Both the companies have submitted that no investigation proceedings are pending against them either under Sections 235 to 251 of the Companies Act, 1956 or any other law.
16. Taking into consideration the averments made in the application and the documents filed therewith; and further the submissions made by learned counsel we propose to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, Secured and Unsecured Creditors or dispensing with the same as well as issue of notices including paper publication which are as follows:-

A. In relation to the Transferor Company:-

- (i) With respect to Equity Shareholders and Preference Shareholders the holding of meeting is dispensed with as their consent letters have been placed on record.

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- (ii) With respect to Secured Creditors the question of dispensing with the meeting does not arise because there is no Secured Creditor in the Transferor Company.

- (iii) With respect to Unsecured Creditors being 66 in number, the meeting is to be convened at 7th Advant Navis Business Park, Plot No. 7, Sector 142, Noida 201301 on July 14th, 2017 at 2.00 PM. The quorum for the Unsecured Creditors' meeting shall be 35 in number.

B. In relation to the Transferee Company: -

- (i) With respect to Equity Shareholders, being 54 in number, the meeting is also to be convened at 7th Advant Navis Business Park, Plot No. 7, Sector 142, Noida-201301 on July 14th, 2017 on 10.00 AM. The quorum for the Equity Shareholders' meeting shall be 30 in number.

- (ii) With respect to Preference Shareholders Series -A, the meeting is to be convened at 7th Advant Navis Business Park, Plot No. 7, Sector 142, Noida-201301 on July 14th, 2017 on 12.00 Noon. The quorum for the Preference Shareholders Series-A meeting shall be 1 in number.




- (iii) With respect to Preference Shareholders Series -B, the meeting is to be convened at 7th Advant Navis Business Park, Plot No. 7, Sector 142, Noida-201301 on July 14th,2017 on 12.30 PM. The quorum for the Preference Shareholders Series-B meeting shall be 2 in number.

- (iv) With respect to Secured Creditors the question of convening such a meeting does not arise because there is no Secured Creditor in the Transferee Company.

- (v) With respect to Unsecured Creditors being 26 in number, the meeting is to be convened at 7th Advant Navis Business Park, Plot No. 7, Sector 142, Noida-201301 on July 14th ,2017 on 01.00 PM. The quorum for the Unsecured Creditors' meeting shall be 14 in number.

C. In case the Quorum as noted above for the above meetings of the applicant companies are not present at the meetings, then the meetings shall be adjourned for half an hour, and thereafter, the person 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 meeting, is filed with registered office of the applicant companies at least 48

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hours before the meetings. The Chairperson and the Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained.

D. Sh. Varinder Ganda, Sr. Advocate (Phone: 9810099873) is appointed as the Chairperson and Sh. Sumant Batra, Advocate (Phone: 9810028892) is appointed as Alternative Chairperson for the meetings as may have been directed to be convened by this Tribunal as above of the applicant companies.

E. The fee for the Chairperson for the aforesaid meetings shall be Rs. 1,50,000/- and the fee for the Alternate Chairperson shall be Rs. 75,000/- in addition to meeting their incidental expenses. Mr. Shyam Aggarwal, CS is appointed as a Scrutinizer and would be entitled to fee of Rs.75,000/- for his services in addition to meeting his incidental expenses. The Chairperson will file their reports within two weeks from the date of holding of the above said meetings.

F. The individual notices of the said meetings shall be sent by the applicant companies through registered post or speed post or through courier or through e-mail 30 days in advance before the scheduled date of the meeting, indicating

the day, date, place and time as aforesaid, together with a copy of scheme of amalgamation, a copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall be sent alongwith and in addition to above any other documents as may be prescribed under the Act may also be duly sent with the notice.

G. That the applicant companies shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date, place and time as aforesaid, to be published in the English Daily 'Business Standard' and Hindi Daily 'Jansatta' (Delhi Edition) stating the copies of Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the applicant companies.

H. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable to the respective companies under the Act and rules framed there under. The Chairperson shall be responsible to report the result of the meeting within two weeks of the conclusion of the meeting with a vote on the proposed Scheme.





- I. The companies shall individually send notice to the Central Government, the Income Tax Authorities, concerned Registrar of Companies, NCT of Delhi & Haryana, Official Liquidator and other sectoral regulators who may have significant bearing on the operation of the applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.
- J. The applicant companies further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor of the applicant companies entitled to attend the meetings as aforesaid.
- K. The authorized representative of the applicant companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.
- L. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies

(Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

The application stands allowed in the aforesaid terms.

19.05.2017


CHIEF JUSTICE (Rtd.) M.M. KUMAR

PRESIDENT



R. VARADHARAJAN

MEMBER (JUDICIAL)