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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CSP NO. 568 OF 2017

IN

CSA NO. 263 OF 2017

In the matter of Section 230 to Section 232 read with  
Section 52 and other applicable provisions of Companies  
Act, 2013;

AND

In the scheme of Amalgamation and Arrangement  
between TLG India Private Limited ('the Transferee  
Company') and CNC Communications & Network  
Consulting India Private Limited ('the Transferor  
Company 1') and Expicient Software Private Limited  
( 'the Transferor Company 2') and Flip Media Private  
Limited ('the Transferor Company 3') and Indigo  
Systems & Technology Consulting (India) Private  
Limited ('the Transferor Company 4')

**TLG India Private Limited**.....the First Petitioner Company / Transferee Company

**CNC Communications & Network Consulting India Private Limited** ....the Second  
Petitioner Company/ Transferor Company 1

**Expicient Software Private Limited**....the Third Petitioner Company/ Transferor  
Company 2

**Flip Media Private Limited**....the Fourth Petitioner Company/ Transferor Company 3

**Indigo Systems & Technology Consulting (India) Private Limited**....the Fifth  
Petitioner Company/ Transferor Company 4

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V .Nallasenapathy** Hon'ble, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co

Mr. S Ramakantha, Joint Director in the office of Regional Director

Per: **V .Nallasenapathy, Member (T)**

Judgment/Order delivered on 24<sup>th</sup> August, 2017  
Order

1. Heard the learned Counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation and Arrangement

between TLG India Private Limited ('the Transferee Company') and CNC Communications & Network Consulting India Private Limited ('the Transferor Company 1') and Expicient Software Private Limited ('the Transferor Company 2') and Flip Media Private Limited ('the Transferor Company 3') and Indigo Systems & Technology Consulting (India) Private Limited ('the Transferor Company 4').

3. The Counsel for the Petitioners submit that TLG India Private Limited is engaged in business of advertising contractors and agents and undertake promotional campaigns of every nature. CNC Communications & Network Consulting India Private Limited is engaged in the business of strategic communications consulting market. Expicient Software Private Limited is engaged in the business of management consultancy. Flip Media Private Limited is engaged in the business of setting up IT data centre, research and development centre and data transmitting infrastructure from various places to data centre. Indigo Systems & Technology Consulting (India) Private Limited in the business of dealing in Computer Software and Hardware.

4. The Counsel for the Petitioners submit that the rationale for the scheme are as under –

The Transferor Companies and the Transferee Company are part of the same business group. The Scheme of Amalgamation & Arrangement envisaged:

- a) The consolidation will lead to stronger and wider capital and financial base for future growth/expansion.
- b) The amalgamation will lead to better leverage of facilities and better infrastructure for administration.
- c) The amalgamation will result in economy of scale and reduction in administrative, managerial and other expenditure, operational rationalization and optimal utilization of various resources.
- d) Duplication of administrative functions will be eliminated resulting in reduced expenditure.
- e) The amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by both the Transferor Companies and Transferee Company.
- f) There would be improvement in financial structure and management of the Transferee Company.
- g) The consolidation would result in increase in long term value for shareholders and investors.



5. The Counsel for the Petitioners state that the Board of Directors of the Petitioner Companies in their respective Board meetings have approved the said Scheme of Amalgamation & Arrangement which are annexed to the Company Scheme Petition.
6. The Counsel appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the orders passed in Company Summons for Direction.
7. The Counsel appearing on behalf of the Petitioners further state that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.
8. The Official Liquidator has filed his report on 9<sup>th</sup> August, 2017 stating that the affairs of the Second, Third, Fourth and Fifth Petitioner Companies have been conducted in a proper manner and that the Second, Third, Fourth and Fifth Petitioner Companies may be ordered to be dissolved.
9. The Regional Director has filed a Report dated 24 July, 2017 stating therein, that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV, of the said Report it is stated that:
  - (a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc;*
  - (b) *As per Clause 1.2, Definitions of the Scheme, “Appointed Date” means the 1<sup>st</sup> April, 2016 or such other date as may be fixed or approved by the Hon’ble High Court of Bombay or National Company Law Tribunal or any other appropriate authority. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1<sup>st</sup> April, 2016;*
  - (c) *regarding Clause 13.5 & 13.6 of the Scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against Securities Premium Account of the Transferee Company;*
  - (d) *In view of the objection raised by the ROC Mumbai, mentioned at para 11 (b) &(c) above Hon’ble NCLT may pass appropriate orders/ orders as deem fit;*



- (e) *As per existing practice, the Petitioner Companies are required to serve Notice of Scheme of Arrangements to the Income tax Department for their comments. It appears that the company vide letters dated 5<sup>th</sup> May 2017, have served a copy company scheme application No. 263/2017 along with relevant orders etc., further the Regional Director has also issued a reminder dated 19<sup>th</sup> July 2017, to the IT Department;*
  - (f) *The tax issue if any arising out of the scheme is subject to final decision of I.T. Authorities. The approval of the scheme by this Hon'ble Court may not deter the IT Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the IT Authority is binding on the petitioner company.*
  - (g) *As per Clause 15.1 of the Scheme (utilisation of Securities Premium Account) it is stated that "upon the scheme being effective the debit balance in the Capital Reserve Account after giving effect to clause 13.6 shall be adjusted against the Securities Premium Account of the Transferee Company mentioned at 13. 5 of the Scheme" In this regard, it is submitted that in view of prayer clause (c) clause 15.1 needs to be deleted. Accordingly, Hon 'ble NCLT may pass appropriate orders as deem fit.*
10. In so far as observation made in paragraph IV (a) of the Report of Regional Director is concerned, the Counsel for the Petitioners submit that the Petitioner Companies undertake to pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.
  11. In so far as observation made in paragraph IV (b) of the Report of Regional Director is concerned, the Counsel for the Petitioners submit that the Petitioner Companies clarify that the Appointed Date of the scheme shall be construed as 1<sup>st</sup> April, 2016.
  12. In so far as observation made in paragraph IV (c) of the Report of Regional Director is concerned, the Counsel for the Petitioners submit that in terms of clause 13 of the Scheme, the Transferee Company shall account for the Amalgamation in its books of accounts with effect from the Appointed Date as per the "Pooling of Interest Method" (AS-14) which states that any difference which arises between the amount recorded as share capital issued (plus any additional consideration in the form of cash or other assets) and the amount of share capital of the transferor company should be adjusted in reserves. Further, auditor of the Petitioner Companies, S.R. Batliboi & Associates LLP, has duly certified that the accounting treatment proposed in the Scheme is in compliance with applicable Accounting Standards prescribed under section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rules, 2014 and Other Generally Accepted Accounting Principles. Hence, there is no requirement to amend the accounting treatment mentioned in the Scheme.



13. In so far as observation made in paragraph IV (d) of the Report of Regional Director is concerned, the Counsel for the Petitioners submit that the Petitioner Companies shall comply with objection raised by the ROC Mumbai, mentioned at para 11 (b) & (c) above.
14. In so far as observations made in paragraph IV (e) and IV (f) of the Report of Regional Director are concerned, the Counsel for the Petitioners submit that the Petitioner Companies undertakes to comply with all applicable provisions of the Income-tax Act 1961 and all tax issue arising out of the Scheme will be met and answered in accordance of law.
15. In so far as observation made in paragraph IV(g) of the Report of Regional Director is concerned, the Counsel for the Petitioners submit since the auditor of the Petitioner Companies, S.R. Batliboi & Associates LLP, has duly certified the accounting treatment proposed in the Scheme by stating that there is no violation of applicable Accounting Standards prescribed under section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rule, 2014 or other generally accepted accounting principles. Hence, upon the scheme being effective the debit balance in the Capital Reserve Account after giving effect to clause 13.6 shall be adjusted against the Securities Premium Account of the Transferee Company mentioned at 13.5 of the Scheme.
16. The Counsel for the Petitioners further submit that Section 52 of the Companies Act, 2013 Act expressly provides that provisions of the said Act relating to the reduction of share capital of a Company shall, except as provided in Section 52 apply even for adjustment of Share Premium Account as if it were the paid up share Capital of the Company and in the circumstances utilization in the aforesaid circumstances as proposed would attract provisions of Sections 66 of the Companies Act 2013 for which the Transferee Company has passed Special Resolution in its Extraordinary General Meeting held on 23<sup>rd</sup> May 2017 as required under Section 66 of the Companies Act, 2013.
17. The observations made by the Regional Director have been explained by the Petitioners in paragraphs 10 to 15 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
18. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
19. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 568 of 2017 has been made absolute in terms of prayer of the petitions mentioned therein.
20. The Petitioners are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies,

electronically, along with E-Form INC-28 within 30 days from the date of issuance of the order by the Registry.

21. The Petitioner Companies to file a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
22. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai within four weeks from the date of the receipt of the order.
23. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

**V. Nallasenapathy, Member(T)**

Sd/-

**B.S.V. Prakash Kumar, Member (J)**