

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
TRANSFER COMPANY SCHEME PETITION NO. 152 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 643 OF
2016**

Indicus Analytics Private Limited

...Petitioner Company /
Transferor Company

In the matter of the Companies Act 1 of 1956)
(or re-enactment thereof upon effectiveness of
Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the
Companies Act, 1956 (or any corresponding
provision of Companies Act, 2013 as may be
notified);

AND

In the matter of the Scheme of Amalgamation
of Indicus Analytics Private Limited (INDICUS)

with

Nielsen (India) Private Limited (NIELSEN)

and

their respective shareholders and creditors

Called for Hearing

Ms. Shruti Kelji a/w. Ms. Sunila Chavan and Ameya Lambhate, Advocates
for the Petitioner

Mr. Ramesh Gholap, Assistant Director in the office of the Regional
Director

Mr. Raghunath Pola, Deputy ROC in the office of the Registrar of
Companies

Mr. Santosh Dalvi, representative from the office of Official Liquidator

CORAM: B. S. V. Prakash Kumar, Member (Judicial)
V. Nallasenapathy, Member (Technical)

DATE : 22nd June, 2017

1. Heard Advocate for the parties. Neither any objector has come before the Hon'ble Tribunal to oppose the Scheme of Amalgamation nor has any party controverted any averments made in the Petitions.
2. The sanction of the Hon'ble Tribunal is sought under Section 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Indicus Analytics Private Limited (INDICUS) with Nielsen (India) Private Limited (NIELSEN) and their respective shareholders and creditors.
3. The Learned Advocate for the Petitioner states that the Petitioner Company and Transferee Company has been carrying on the business as consultants and undertaking analytical project studies in various fields.
4. The Learned Advocate for the Petitioner states that said Scheme will benefit in consolidation of the business operations of the Transferor Company and Transferee Company by way of amalgamation would lead to a more efficient utilization of resources and create a stronger base for future growth of the amalgamated entity and greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities and benefit of operational synergies to the combined entity and greater leverage in operations, planning and process optimization and cost savings are expected to flow from more focused operational efforts, rationalization and standardization of administrative expenses.
5. The Learned Advocate for the Petitioner Company states that the Petitioner Company is a wholly owned subsidiary of Transferee Company viz. Nielsen (India) Private Limited and no new shares are

being issued and there will be no change in capital structure of the Transferee Company and the Scheme does not affect the rights of the members and interest of the creditors of the Transferee Company and does not involve any re-organization of the paid up Share Capital of the Transferee Company and in view of the judgement of the Hon'ble Bombay High Court in Mahaamba Investment Limited vs. IDI Limited (2001) Company Cases 105 filing of a separate Company Summons for Direction and Company Scheme Petition for sanction of the Scheme by Nielsen (India) Private Limited, Transferee Company was dispensed with vide order dated 22nd July, 2016 passed in High Court Company Summons for Direction No. 643 of 2016.

6. The Learned Advocate for the Petitioner states that the Board of Directors of the Petitioner Company and Transferee Company have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petition.
7. The Learned Advocate for the Petitioner further states that the Petitioner Company has complied with all the directions of the passed in the Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the Orders passed in Company Summons for Direction.
8. The Learned Advocate appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per directions of the Hon'ble Bombay High Court and they have filed necessary affidavit of compliance in the Hon'ble Bombay High Court. Moreover, the Petitioner Company undertakes 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 Company are accepted.
9. The Official Liquidator has filed his report dated 24th April, 2017 in the Transfer Company Scheme Petition No.152 of 2017 stating therein that the affairs of the Transferor Company has been

conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

10. The Regional Director has filed his Report dated 28th April, 2017 stating therein save and except as stated in para IV(a) and IV(f) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Paragraph IV of the said Report, the Regional Director has 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 existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangement to the Income Tax Department for their comments. It appears that the Company vide its letter dated 10/04/2017 has served a copy of Company Petition No.660 of 2016 alongwith relevant orders etc. Further the Regional Director has issued a reminder on 24/04/2017 to IT Department.

(c) The Tax implication, if any arising out of the Scheme is subject to final decision of Income tax Authorities. The approval of the Scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the Tax Return filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.

(d) Regarding 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 Profit and Loss Account of the Transferee Company.

(e) As per Clause 21(e) of the Scheme (Residual Provisions) it is stated that from the "Effective date" and till such time that the names of

bank accounts of the M/s. Indicus Analytics Private Limited, transferor Company are replaced with that of M/s. Nielsen (India) Private Limited, the Transferee Company, the Transferee company shall be entitled to operate the bank accounts of the Transferor Company in tis name, in so far as may be necessary.

In this regards, it is submitted that on the Scheme becoming effective, the Transferor Company shall stand dissolved without being wound up, will not have any legal entity. Subsequent to dissolution of Transferor Company, the Transferee Company cannot transact in any manner whatsoever. Hence, Clause 21(e) of the Scheme should be deleted.

(f) The ROC Mumbai, mentioned in Para 11 above Hon'ble NCLT may pass appropriate orders as deem fit.

ROC Report- Para 11

ROC Mumbai vide report/letter No. ROC/JTA(M)/29651/391/394/2016/632 dated 10/01/2017, has mentioned that no complaints, prosecution and scrutiny, and matter may be decided on merits. However, point No.17 of the said report stated that, the Auditor's Reports dated 25/11/2015 is qualified on certain aspects. The Boards reports dated 31/12/2015 does not offer any explanation on it. Hence, there is violation of Section 134(3)(f)(i) of the Companies Act, 2013.

11. As far as the observations made in paragraph IV (a) of the Report of the Regional Director is concerned, the Petitioner Company undertakes that in addition to compliance of Accounting Standards 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.
12. As far as the observations made in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Company submits that they have served Notice for Scheme of Amalgamation to the concerned Income Tax Department for their comments vide their letter dated 21st November, 2016

alongwith High Court Company Scheme Petition No.660 of 2016 and its original acknowledgements for each Company have been filed by way of an Affidavit of Service dated 27th January, 2017 before this Tribunal.

13. As far as the observations made in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Company submits that the tax implication, if any, arising out of the Scheme is subject to final decision of the Income Tax Authority. The Petitioner Company further submits that the approval of the Scheme by this Hon'ble Tribunal will not deter the Income Tax Authority to scrutinize the tax return filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority shall be binding on the Petitioner Company.
14. As far as the observations made in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Company undertakes 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 Profit & Loss Account of the Transferee Company.
15. As far as the observations made in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Company submits that the Petitioner Company undertakes that upon Scheme becoming effective and subsequent dissolution without winding up of M/s. Indicus Analytics Private Limited, i.e. Transferor Company, the Transferee Company will not transact or operate the bank accounts in Transferor Company's name in any manner whatsoever.
16. As far as the observations made in paragraph IV (f) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Company submits that the approval of the Scheme by this Hon'ble Tribunal will not deter the concerned

Authority/Court/Tribunal from taking necessary action against the Transferee Company for violation of Section 134 (3)(f)(i) of Companies Act, 2013, if any. The decision of the concerned Authority/Court/Tribunal shall be binding on the Transferee Company.

17. The observations made by the Regional Director have been explained by the Petitioner Company in Para 10 to 16. The clarifications and undertakings given by the Petitioner Company 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, the Transfer Company Scheme Petition No.152 of 2017 filed by the Transferor Company is made absolute in terms of prayer clauses (a) to (c).
20. The Petitioner Company is directed to lodge 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 receipt of the order.
21. The Petitioner Company is further directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28 in addition to physical copy, as per the relevant provisions of the Companies Act, 2013.
22. The Petitioner Company to pay costs of Rs.25,000/- each to the Regional Director, Western Region Mumbai and the Official Liquidator, High Court, Bombay in Transfer Company Scheme Petition No.152 of 2017. Costs to be paid within four weeks from the date of the Order.

23. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai.
24. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-
V. Nallasenapathy, Member (T)

Sd/-
B. S. V. Prakash Kumar, Member (J)