

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME APPLICATION NO 193 OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 read with Section 52 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Scheme of Arrangement between Endurance Web Solutions Private Limited having CIN U72200MH2012PTC290955 (the Demerged Company) with Directi Web Technology Private Limited having CIN U72300MH2012PTC226415 (the Resulting Company) and their respective Shareholders

Endurance Web Solutions Private Limited, a company incorporated }  
under the Companies Act, 1956 with CIN U72200MH2012PTC290955 }  
and having its Registered Office at Unit No.501, 5<sup>th</sup> Floor, IT Building 3, }  
Nesco IT Park, Nesco Complex, Western Express Highway, Goregaon }  
(East), Mumbai – 400063, Maharashtra. }

.....**The First Applicant Company**

Directi Web Technology Private Limited, a company incorporated }  
under the Companies Act, 1956 with CIN U72300MH2012PTC226415 }  
and having its Registered Office at Unit No.501, 5<sup>th</sup> Floor, IT Building 3, }  
Nesco IT Park, Nesco Complex, Western Express Highway, Goregaon }  
(East), Mumbai – 400063, Maharashtra. }

..... **The Second Applicant Company**

The First Applicant Company and the Second Applicant Company are collectively hereinafter referred as the “**Applicant Companies**”

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the Applicant Companies

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

**DATE: 1<sup>st</sup> March, 2017**

## MINUTES OF THE ORDER

1. The Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Arrangement between Endurance Web Solutions Private Limited ('the Demerged Company' or 'the First Applicant Company') and Directi Web Technology Private Limited ('the Resulting Company' or 'the Second Applicant Company') their respective shareholders. The Scheme inter-alia provides for demerger of the Hosting Division of the First Applicant Company into the Second Applicant Company.
2. The Counsel for the Applicant Companies further submits that the First Applicant Company is, inter alia, engaged in the business of web hosting services and selling domain names. The First Applicant Company has decided to segregate its Hosting Division and Domain dimension business. Accordingly, the First Applicant Company has decided to demerge the Hosting Division into the Second Applicant Company on a going concern basis.
3. The proposed demerger and restructuring would result in the following benefits:
  - (a) Operational rationalization, organizational efficiency and optimal utilization of various resources due to pooling of management, administrative and technical skills of various resources of both the Applicant Companies, better administration, and cost reduction, including reduction in managerial, administrative and other common costs;
  - (b) Segregate the Hosting Division and Domain Division;
  - (c) Focused attention approach on each business better alignment, coordination and streamlining of day to day operations of both the companies, leading to improvement in overall working culture and environment;
  - (d) Facilitates monetisation of the business dimension, creation of value for various stakeholders and shareholders of both the companies, as a result of all of the foregoing;
  - (e) Greater administrative efficiency; and

(f) Retention of the identity and track record of Hosting Division of the First Applicant Company.

4. The meeting of the Equity Shareholders of the First Applicant Company be convened and held at Unit No. 501, 5<sup>th</sup> Floor, IT Building 3, Nesco IT Park, Nesco Complex, Western Express Highway, Goregaon (East), Mumbai – 400063 on Monday, the 17<sup>th</sup> day of April, 2017 at 01:00 p.m. and of the Second Applicant Company be convened and held at Unit No. 501, 5<sup>th</sup> Floor, IT Building 3, Nesco IT Park, Nesco Complex, Western Express Highway, Goregaon (East), Mumbai – 400063 on Monday, the 17<sup>th</sup> day of April, 2017 at 02:00 p.m. or immediately after the conclusion of meeting of the equity shareholders of the First Applicant Company for the purpose of considering and, if thought fit, approving with or without modification(s), the Scheme.
5. That at least 30 clear days before the said Meeting of the Equity Shareholders of the First Applicant Company and the Second Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14<sup>th</sup> December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post / Hand Delivery or through Email (to those shareholders whose email addresses are duly registered with the Applicant Companies for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the First Applicant Company and the Second Applicant Company, at their last known address or email addresses as per the records of the Applicant Companies and Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Companies as aforesaid.
6. That at least 30 clear days before the meeting of the Equity Shareholders of the First Applicant Company and the Second Applicant Company to be held as aforesaid, a

notice convening the said Meeting, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the respective Registered Offices of the Applicant Companies as aforesaid.

7. That the Notice of the Meeting shall be advertised in two local newspapers viz. 'Free Press Journal' in English and 'Navshakti' in Marathi, both circulated in Mumbai, not less than 30 days before the date fixed for the meeting.
8. That Mr. Amit Pareek, Director of the First Applicant Company, and failing him, Mr. Shashank Mehrotra, Director of the First Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the First Applicant Company to be held at Unit No.501, 5<sup>th</sup> Floor, IT Building 3, Nesco IT Park, Nesco Complex, Western Express Highway, Goregaon (East), Mumbai – 400063 on Monday, the 17<sup>th</sup> day of April, 2017 at 01:00 p.m. or any adjournment or adjournments thereof.
9. That Mr. Amit Pareek, Director of the Second Applicant Company, and failing him, Mr. Shashank Mehrotra, Director of the Second Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Second Applicant Company to be held at Unit No.501, 5<sup>th</sup> Floor, IT Building 3, Nesco IT Park, Nesco Complex, Western Express Highway, Goregaon (East), Mumbai – 400063 on Monday, the 17<sup>th</sup> day of April, 2017 at 02:00 p.m. or immediately after the conclusion of meeting of the equity shareholders of the First Applicant Company or any adjournment or adjournments thereof.
10. That Mr. Hemant Toprani, Practicing Company Secretary is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the First Applicant Company to be held at Unit No.501, 5<sup>th</sup> Floor, IT Building 3, Nesco IT Park, Nesco Complex, Western Express Highway, Goregaon (East), Mumbai – 400063 on Monday, the

17<sup>th</sup> day of April, 2017 at 01:00 p.m. or any adjournment or adjournments thereof and his remuneration is fixed as Rs.25,000/-.

11. That Mr. Hemant Toprani, Practicing Company Secretary is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the Second Applicant Company to be held at Unit No.501, 5<sup>th</sup> Floor, IT Building 3, Nesco IT Park, Nesco Complex, Western Express Highway, Goregaon (East), Mumbai – 400063 on Monday, the 17<sup>th</sup> day of April, 2017 at 02:00 p.m. or immediately after the conclusion of meeting of the equity shareholders of the First Applicant Company or any adjournment or adjournments thereof and his remuneration is fixed as Rs.25,000/-.
12. That the Chairman appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof .
13. That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
14. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Companies at their respective Registered Offices not later than 48 hours before the aforesaid meeting.
15. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books/ register of the Applicant Companies and where the entries in the books / register are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

16. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
17. That the Chairman of the meeting to report to this Tribunal, the results of the aforesaid meeting within thirty days of the conclusion of the meeting.
18. The Counsel for the Applicant Companies submits that there are no Secured Creditors in both the Applicant Companies, therefore the question of sending notices to the Secured Creditors does not arise. The Counsel for the Applicant Companies further submit that since the Scheme is an arrangement between the Applicant Companies and their respective shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This Bench hereby directs the First Applicant Company and the Second Applicant Company to issue notices to all its Unsecured Creditors, whose amount due and payable as on 31st January, 2017 and shall be sent by Courier / Registered Post / Speed Post / Hand Delivery or through Email (to those Unsecured Creditors whose email addresses are duly registered with the Applicant Companies for the purpose of receiving such notices by email), addressed to the Unsecured Creditors of the First Applicant Company and the Second Applicant Company, at their last known address or email addresses as per the records of the Applicant Companies, as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the First Applicant Company and the Second Applicant Company.
19. That the First Applicant Company is directed to serve notices along with copy of Scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant Company's assessments are made, (ii) to the Central Government through the office of Regional Director, Western region, Mumbai, and (iii) Registrar of Companies, as per Rule 8 of the Companies (Compromises, Arrangements and

Amalgamations) Rules, 2016 with the direction that they may submit their representations, if any, within a period of thirty days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served to the First Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

20. That the Second Applicant Company is directed to serve notices along with copy of Scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Second Applicant Company's assessments are made, (ii) to the Central Government through the office of Regional Director, Western region, Mumbai, and (iii) Registrar of Companies, as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with the direction that they may submit their representations, if any, within a period of thirty days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served to the Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
21. The First Applicant Company and the Second Applicant Company to file affidavit of service proving dispatch of the notices issued to their respective Equity Shareholders, notices to the Unsecured Creditors and notices to Regulatory Authorities not less than seven days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices and publication of notice in newspapers have been duly complied with.

Sd/-

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