

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**

**CP (CAA) No. 33/BB/2022**

**(Second Motion)**

**U/s. 230-232 of the Companies Act, 2013**

**IN THE MATTER OF:**

**EXPLEO INDIA INFOSYSTEMS PRIVATE LIMITED**

Registered Office at Plot No. 25/1, Rajiv Gandhi Infotech Park,  
Midc Phase III, Hinjewadi, Pune - 411057, Maharashtra

**... NON-PETITIONER/TRANSFEROR COMPANY 1**

**EXPLEO TECHNOLOGIES INDIA PRIVATE LIMITED**

Registered Office at Unit No 201(2A), XYLEM, Plot No 4 & 4A,  
2nd Floor, Dyavasandra Industrial Area, ITPB Main Road,  
Mahadevapura, Bengaluru - 560 048

**... PETITIONER COMPANY NO. 1/TRANSFEROR COMPANY 2**

**EXPLEO ENGINEERING INDIA PRIVATE LIMITED**

Registered Office at Unit No 201(2A), XYLEM, Plot No 4 & 4A,  
2nd Floor, Dyavasandra Industrial Area, ITPB Main Road,  
Mahadevapura, Bengaluru - 560 048

**... PETITIONER COMPANY NO. 2/TRANSFEROR COMPANY 3**

**SILVER SOFTWARE DEVELOPMENT CENTRE PRIVATE LIMITED**

Registered Office at Unit No 201(2A), XYLEM, Plot No 4 & 4A,  
2nd Floor, Dyavasandra Industrial Area, ITPB Main Road,  
Mahadevapura, Bengaluru - 560 048

**... PETITIONER COMPANY NO. 3/TRANSFEROR COMPANY 4**

**EXPLEO SOLUTIONS LIMITED**

Registered Office at 6A, Sixth Floor, Prince Infocity II,  
No. 283/4, Rajiv Gandhi Salai (OMR),  
Kandanchavadi, Chennai - 600096

**... NON-PETITIONER/TRANSFEREE COMPANY**

**Order delivered on: 28<sup>th</sup> February, 2023**

**CORAM:**

1. Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner Companies

: Shri. Saji P. John, Adv.

For the ROC/RD

: Shri. Hemanth Rao, Adv.

For IT

: Shri. Ganesh R Ghale, Adv.

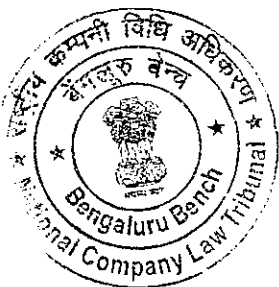


**ORDER****Per: Manoj Kumar Dubey, Member (Technical)**

1. This is a joint second motion petition filed on 28.06.2022 by Expleo Technologies India Private Limited (for brevity, the "Petitioner Company No.1/ Transferor Company No.2"), Expleo Engineering India Private Limited ((for brevity, the "Petitioner Company No.2/ Transferor Company No.3") and Silver Software Development Centre Private Limited ("for brevity, the "Petitioner Company No.3/ Transferor Company No.4") under Sections 230 and 232 of the Companies Act, 2013 (for short to be referred hereinafter as the 'Act') and in terms of Rule of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, 'Rules') by inter alia seeking for the sanction of Scheme of Amalgamation (for brevity 'Scheme') of Transferor Companies with Transferee Company.
2. The petitioner companies filed First Motion Application bearing CA (CAA) No. 01/BB/2022 before this Tribunal. And based on such application moved under section 230-232 of the Companies Act, 2013 necessary directions were issued vide order dated 20.04.2022 and CA 40 of 2022 dated 28.04.2022. Details of the First Motion order are as under:

<b>CA (CAA) 01/BB/2022 - 20.04.2022</b>			
	Transferor Co.2	Transferor Co.3	Transferor Co.4
<b>Equity Shareholders</b>	Meeting Dispensed (Consent Obtained)	Meeting Dispensed (Consent Obtained)	Meeting Dispensed (Consent Obtained)
<b>Secured Creditors</b>	No Secured Creditors	No Secured Creditors	No Secured Creditors
<b>Unsecured Trade Creditors</b>	Convened Meeting on 10.06.2022	Convened Meeting on 10.06.2022	Convened Meeting on 10.06.2022

Pursuant to the First Motion Application, the Tribunal directed to convene the meetings of and Unsecured Creditors of the Transferor Company 2, 3 & 4 on 10.06.2022. In compliance to the Order dated 20.04.2022, the aforesaid meetings were held on 10.06.2022. Further, the new chairperson was appointed to convene the meetings of Unsecured Creditors for Transferor Company 3 and 4 vide order dated 28.04.2022. The report of the Chairperson (Mr. Chintan Chinnappa) dated 16.06.2022 and the report of the Scrutinizer (Mr.Chethan Jeevandas Nayak) dated





11.06.2022 is attached along with the petition wherein it is stated that in respect of the meeting of Unsecured Creditors of Petitioner Company No.1, the members were permitted to exercise their vote by way of in person or through representative. In the First motion order dated 20.04.2022, the quorum for the meeting of the Unsecured Creditors was fixed 40% in person or through representative. On a consolidated basis, valid votes were cast by Unsecured Creditors for Rs.9,99,40,667.04 (representing 90.750% in value). The votes by the creditors for Rs. 9,99,40,667.04 in value were casted in favour of the resolution (representing 99.996% of total voting) and there was 1 (One) vote casted against the resolution (representing 0.004%). Therefore, the resolution approving Scheme of Transferor Companies and Transferee Company was approved by the Unsecured Creditors of Petitioner Company No.1 with requisite majority. It is further stated that the report of the Chairperson (Mr. Srinandan Karthikeyan) dated 16.06.2022 and the report of the Scrutinizer (Mr.Parameshwar Ganapati Bhat) dated 11.06.2022 is attached along with the petition wherein it is stated that in respect of the meeting of Unsecured Creditors of Petitioner Company No.2, the members were permitted to exercise their vote by way of in person or through representative. On a consolidated basis, valid votes were cast by both Unsecured creditors holding Rs. 47,650/- in value, constituting 100% of the value of unsecured creditors of the Company, who voted in favour of the resolution. In the First Motion order dated 20.04.2022, it was prescribed that the quorum for the meeting will be 40% of the total value of the unsecured creditors, therefore this requirement is fulfilled. Therefore the resolution approving Scheme of Amalgamation of Transferor Companies and Transferee Company was approved by the unsecured creditors of Petitioner Company No.3 with requisite majority. Moreover, the report of the Chairperson (Mr. Srinandan Karthikeyan) dated 16.06.2022 and the report of the Scrutinizer (Mr.Parameshwar Ganapati Bhat) dated 11.06.2022 is attached along with the petition wherein it is stated that in respect of the meeting of Unsecured Creditors of Petitioner Company No.3, the members were permitted to exercise their vote by way of in person or through representative. On a consolidated basis, valid votes were cast by both





Unsecured creditors holding representing to Rs 3,04,880 in value, constituting 100% of the value of unsecured creditors of the Company, who approved the resolution. In the First Motion order dated 20.04.2022, it was prescribed that the quorum for the meeting will be 40% of the total value of the unsecured creditors, therefore this requirement is fulfilled. Therefore the resolution regarding Scheme of Amalgamation of Transferor Companies and Transferee Company was approved by the unsecured creditors of Petitioner Company No.4 with requisite majority.

3. When the petition was listed on 22.07.2022, through video conferencing, the following notice were issued:-

*“Admit & Issue notice. The Registry is directed to issue notice on all the statutory authorities viz. the Registrar of Companies, Karnataka, the Regional Director, Hyderabad, Designated Nodal Officer, The Commissioner of Income Tax, and the office of Official Liquidator and the learned counsel for the Petitioner is permitted to collect notices and serve it on the said Statutory Authorities along with company petition and material papers by Speed post as well as by authorized email and to file proof of service of notice along with tracking report in the NCLT Registry, by way of Compliance Affidavit well before the next date of hearing. The applicant is directed to take paper publication in one Kannada Daily and one English Daily vastly circulated in the region where the company is located. Accordingly, notice is issued to you to submit your reply on the above subject to the Bench in the matter on or before 19.09.2022. Next date of hearing of the above case is fixed on 21.09.2022 for hearing.”*

4. In pursuant to the aforesaid notice, the authorized signatory of the petitioner companies has filed copies of proof of service of notices vide diary No. 3772 dated 07.09.2022, on the aforesaid authorities and also copies of paper publication of notice of hearing. Further, an affidavit regarding no objectors has been filed vide diary no. 146 dated 06.01.2023.
5. The main objects, dates of Incorporation, authorized, issued and paid-up share capital, rationale of the scheme and interest of employees have been discussed in detail in first motion order dated 20.04.2022.
6. The Board Resolution of the Petitioner Company approving the Scheme is annexed as Annexure L of the Petition.
7. It is further submitted that the Certificate of Statutory Auditors of the Transferee Company, stating that, the proposed accounting treatment contained in the aforesaid Scheme is in compliance with SEBI (Listing Obligations and Disclosure requirements) Regulations, 2015 and circulars





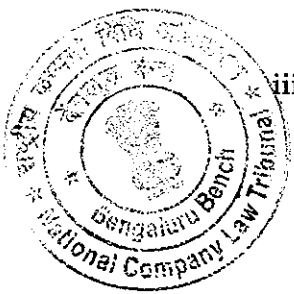
issued thereunder and all the applicable Indian Accounting Standards notified by the Central Government under the Companies Act, 2013. The aforesaid certificate is attached as Annexure T of the Petition.

8. The audited financial statement as on 31.03.2021 and Unaudited financial statement as on 31.12.2021 of the Petitioner Companies are attached as Annexures C, E and G of the Petition.
9. As per the Scheme, the "Appointed Date" means April 1, 2022; or such other date as may be approved by the NCLT for the purpose of this Scheme;
10. The Share Exchange Report for Amalgamation of the Transferor Companies with the Transferee Company has been attached as Annexure – M of the Petition.
11. In pursuant to the notice, the Regional Director (RD) and the Registrar of Companies (ROC) has filed its Common report vide Diary No. 5154 dated 30.11.2022. Both RD and ROC has raised the following observation vide para 2;

- i. *As per Clause 1.3 of Part-A of the Scheme, appointed date is mentioned as **01.04.2022**. However, the Petitioner Company No.2, 3 and 4 of Karnataka have filed their return for the year 2020-21 only. Petitioner Companies may be directed to file their due statutory Returns for the year 2021-22 immediately and furnish the copies of proof of filing, before the scheme is allowed*

- ii. *As per clause 2 of the scheme, the entire shares of Transferor Company.2 and Transferor Company.3 are held by the Transferor Company.1 along with its nominee and the entire shares of Transferor Company.4 are held by the Transferor Company.2 along with its nominee. However, as per shareholder list attached to the latest Annual Return filed by the companies, Silver Atena Limited, UK and Expleo International, France are the holding companies of Transferor Company 2 and Transferor Company 3 respectively. The petitioner companies have to explain this and provide documentary evidence of share transfer, if any, pursuant to 31.03.2021*

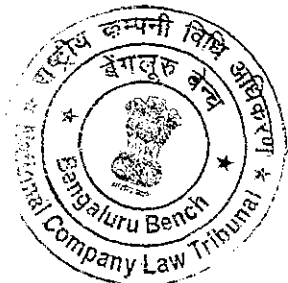
- iii. *The Transferor Company No.2 is engaged in the business of providing software development and engineering consultancy services with area of focus in the field of Aerospace, Automobiles, Defense and Rail and*





*the Transferor Company no.3 and Transferor Company no.4 are engaged in the business of providing engineering consultancy services and software development services respectively. The Transferee Company is engaged in the business of data communications, productions or telecommunication and management consultancy services for digital transformation services to the banking, financial services and insurance industry worldwide. Hence the object of Transferee Company needs to be altered suitably to enable it to carry out the objects of Transferor Companies after the scheme is sanctioned*

- iv. *The scheme provides that all the executives, staff, workmen and other employees of the Transferor Company 2, Transferor Company 3 and Transferor Company 4 shall be absorbed into the transferee Company. As the Transferor Companies are situated in Bangalore and the Transferee Company in Chennai, the petitioner companies are required to explain as to what measures are being taken for implementation of this clause.*
- v. *As per the Independent Auditor's Report for the financial year 2020-21, the Transferor Company 2 has outstanding disputed statutory dues to the tune of Rs.2,15,99,220. Further, as per note no. 9 of the Balance Sheet for the financial year ending 31.03.2021, the Transferor Co.2 has statutory liability to the tune of Rs. 4,86,93,439. The Transferor Co.2 may be directed to settle the dues or furnish an undertaking to the effect that it shall pay the undisputed dues at the earliest and disputed dues as and when claims are crystalized*
- vi. *As per note 32 of the financial statements for the year ending 31.03.2021, the Transferor Company 2 has Related Party Transactions. Hence, the Petitioner company shall furnish an undertaking with regard to the compliance of section 188 of the Companies Act, 2013 before the Hon'ble NCLT.*
- vii. *As per independent audit report of Transferor Co.3 for the year ended 31.03.2021, the company had sold its business on slump sale on a going concern to Expleo Technology India Private Limited in an earlier year and is yet to decide on the future course of business. Further, as per independent audit report of Transferor Company 4 of year ending*





31.03.2021, due to accumulated losses, negative net worth and excess current liabilities, there is a doubt on company's ability to continue as a going concern. Petitioner Company to furnish proper justification with supporting documents.

- viii. As per note 26.1 of the financial statements of Transferor Company 2 as on 31.03.2021, the company has not spent the prescribed amount for the purpose of CSR as per section 135(5) of Companies Act, 2013. The company has to explain as to how it has complied with Section 135(6) of the Companies Act, 2013. If not, the prescribed amount needs to be transferred to a fund specified in schedule VII and an affidavit to this extent needs to be submitted to NCLT. If not complied with already, the company needs to transfer the amount and file adjudication application before Registrar of Companies and furnish necessary proof of the said documents.
- ix. The Transferor Company 2 is a profit making company whereas the Transferor company 3 and Transferor Company 4 are loss making companies. There may be a negative outflow of the tax liability once the scheme is approved. Petitioner Company to furnish their comments with proper justification before the Hon'ble NCLT.
- x. Clause 39 of the scheme provides for Clubbing of the Authorised Share Capital wherein it is stated that the authorized share capital of the Transferee Company shall automatically stand increased without any payment of stamp duty and fees. Transferee Company be advised to furnish an undertaking that it will make a separate request letter to jurisdictional ROC for clubbing of authorised Share Capital within one month from the order or else interest will be levied as per the provisions of Section 403 of the companies Act, 2013.
- xi. As per Balance Sheet as at 31.03.2020, the Paid up Share capital of Expleo Technologies India Private Limited (Transferor Company No.2) of Karnataka is Rs.14,03,97,780/- and there appears to be no Company Secretary in the Company. Petitioner Company may be advised to state how the company has complied with the provisions of section 203 of the Companies Act (from the date of increase of paid up capital of the Company from Rs.5.00 Crore and more) and if no Company Secretary





was appointed, the company may be advised to file Adjudication Application before the Registrar of Companies and furnish the proof of filing, before the scheme is allowed.

xii. *Expleo Technologies India Private Limited (Transferor Company No.2) of Karnataka in its reply has stated that the Income Tax Department has not accepted the transfer price adopted by the company and has made an adjustment to the prices charged by the company to its associate company for the financial year 2009-10 (AY 2010-11) which is disputed by the company. Consequently, the company has filed an appeal before the commissioner of Income Tax (Appeals) against the said order of the assessing Authority. As the Income Tax Department has not accepted the transfer price adopted by the company and has made an adjustment to the prices charged by the company to its associate company for the FY 2016-17 (AY 2017-18) and this has resulted in the tax demand including penalty for Rs. 1,62,49,877/- for the AY 2017-18 which is disputed by the company. Company has filed an appeal before the Commissioner of Income Tax (Appeals) (National Faceless Appeal Centre) against the said order of the Assessing Authority. Hon'ble Tribunal may be pleased to advise the Income Tax Authorities to be present in the matter of obtaining their comments and any objections with respect to the proposed scheme be furnished, before the scheme is allowed.*

xiii. *Official Liquidator in his report submitted to Hon'ble NCLT (Bengaluru Bench) pointed out certain observations. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish their reply to the Hon'ble Tribunal with supporting documents to the observations pointed out by Official Liquidator, before the scheme is allowed.*

**12.** Subsequently, reply affidavit to the common report of RD & ROC have been filed by the petitioner company vide diary No. 5173 dated 01.12.2022, inter alia stating as under:-

**Reply to point 2(i) of the report:** The Petitioner Companies submitted that the petitioner companies duly filed the statutory returns for the year 2021-22. Proof of filing of returns is furnished as Annexure 1 to the reply.







**Reply to point 2(ii) of the report:** The Petitioner Companies submitted that that the entire shares of Transferor Company No.2 and Transferor Company No.3 are held by Transferor Company No.1 and its nominees. The shares were acquired by the Transferor Company No. 1 on 02.07.2021. As the shares were transferred after 31.03.2021, the same is reflected in the Annual Return filed by the Transferor Company No.2 and Transferor Company No. 3 for the year 2021-22. Copy of the Form MGT-7 (Annual Return) filed along with the details of share transfer is furnished Annexure 2 to the reply.

**Reply to point 2(iii) of the report:** It is submitted that the Transferee Company will amend its Memorandum of Association to enable it to carry on the business of Transferor Companies as and when required. An undertaking to that effect by Transferee Company is produced as Annexure 3 to the reply.

**Reply to point 2(iv) of the report:** The Petitioner Companies submitted that Transferee Company will maintain physical offices in Bangalore location to enable working of executives, staff, workmen and other employees of the Transferor Companies, pursuant to the sanction of the Scheme by this Hon'ble Tribunal an undertaking in this regard by the Transferee Company is produced as Annexure 3 to the reply.

**Reply to point 2(v) of the report:** The Petitioner Companies submitted that there are no undisputed statutory dues in the Transferor Company 2, including the statutory liability to the tune of Rs. 4,86,93,439. It is undertaken that the statutory dues shall be discharged by the Transferor Company, or the Transferee Company post as and when crystallized. An undertaking to this effect by the Transferee Company is produced as Annexure 3 to the reply.

**Reply to point 2(vi) of the report:** The Petitioner Companies submitted that the the Transferor Company No. 2 has Related Party Transactions and all the said Transactions are entered in the normal course of business and are on arm's length basis and in compliance with the provisions of the Companies Act, 2013. The related party





transactions have been disclosed in Point No. 32 of the Notes to financial Statements and in Form AOC -2 in Directors Report of the Transferor Company No. 2. Relevant extracts of Related Party Transactions disclosed in the Notes to Financials and form AOC -2 of Director's Report for the Transferor Company No.2 was furnished along with Company Petition at Annexure – C2 to the reply.

**Reply to point 2(vii) of the report:** The Petitioner Companies submitted that both Transferor Company 3 and Transferor Company 4 have assets/ resources which are capable of being run independently as a business on a going concern basis. Given this, there are significant benefits on amalgamation of the Transferor Companies with the Transferee Company as envisaged in the Scheme.

**Reply to point 2(viii) of the report:** The Petitioner Companies submitted that as per the erstwhile provisions pertaining to CSR, i.e. upto 21.01.2021, the Company was required to state the CSR contribution made for the Financial Year in the Directors' Report. In case the Company does not spend such CSR contribution during the Financial Year, the Company was required to state the same in the Directors' Report with reasons for not spending it. With effect from 22.01.2021, based on the amendments made to Section 135 of the Companies Act, 2013 the Company is required to spend the CSR Contribution for the Financial Year towards eligible Projects specified under Schedule VII. In case the Company does not spend CSR Contribution during the Financial Year, the Company is required to transfer the unspent CSR Contribution amount within 6 months to the Fund specified in Schedule VII to comply with Section 135. ETIPL has stated the reason for not spending CSR Contribution in its Directors' Report for the FY – 2019-20 and for prior financial years in accordance with the then prevailing provisions of Companies Act, 2013. However, pursuant to the amendments made in Companies Act, 2013 mentioned above, the Company has complied with the provisions and made contributions towards Funds specified in Schedule VII in FY 2020-21 and FY 2021-22.





Receipts for contributions made are produced as Annexure 4 to the reply.

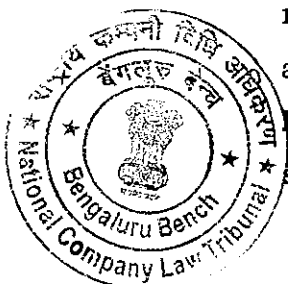
**Reply to point 2(ix) of the report:** The Petitioner Companies submitted that Para 3 of the Preamble to the Scheme provides for the rationale for Merger. It is specifically provided that by this merger, it is envisaged to achieve synergies in operational process, making available assets, financial, managerial and technical resources, personnel, capabilities, skills, expertise and technologies of the Transferor Companies to the Transferee Company, optimum utilization of available resources and enhances focus to the core operations of the Transferee Company. Moreover, there is no restriction under the Companies Act, 2013 with respect to merging of loss-making entities to a profit-making entity. The Board of Directors of Petitioner Companies in their commercial Wisdom have decided to go with merger for the reasons stated above.

**Reply to point 2(x) of the report:** The Petitioner Companies submitted that Transferee Company hereby undertakes to submit request letter to Jurisdictional ROC for clubbing of authorised capital and pay differential fees/ stamp duty, if any, upon clubbing of Authorized Share Capital of Transferor Companies with Transferee Company. An undertaking by the Transferee Company in this regard is produced as ANNEXURE 3 to the reply.

**Reply to point 2(xi) of the report:** The Petitioner Companies submitted that the Transferor Company No. 2 has filed an Adjudication Application on 30.11.2022 under Section 454 of the Act before the jurisdictional Registrar of Companies for violation of Section 203 of the Act. Form GNL-1 and Proof of filing is produced as Annexure 4 to the reply.

**Reply to point 2(xii) of the report:** The Petitioner Companies submitted that the Transferor Company 2 has duly submitted its responses to the observations made by the jurisdictional income tax authorities. The same is annexed as Annexure 5 to the reply.

**Reply to point 2(xiii) of the report:** The Petitioner Companies submitted that the Petitioner Companies had filed Reply Affidavit to



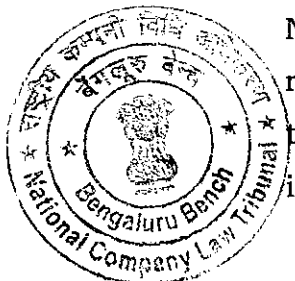


the observations in the Report of Official Liquidator with this Hon'ble Tribunal vide Diary No. 2903111/00738/2022 on 14.11.2022.

- 13.** The Income Tax department has filed its report vide diary No.4215 and 5516 dated 06.10.2022 and 19.12.2022 for Transferor Company No. 2 and 4 respectively wherein it is observed that there is demand outstanding and pending proceedings against the Transferor Company No.2. Further, it is stated that there is no outstanding demand and no proceedings against the Transferor Company No.4.

The Petitioner Companies filed a reply to IT Report vide diary No 4346 dated 12.10.2022 wherein it is stated that the demand for Assessment Year ("AY") 2021-22 of INR 4,22,780, the Petitioner Company No. 1 had received intimation under Section 143(1) on 13.06.2022 with an additional demand of INR 4,22,780 on account of difference in interest calculation u/s 234A, 234B and 234C. The Petitioner Company No. 1 had received notice u/s 143(2) on 28.06.2022 and Notice u/s 142(1) on 01.08.2022 seeking documents and information called for as per the said Notice. Accordingly, the Petitioner Company No. 1 replied to Assessment Unit, Income Tax Department on 16.08.2022 by submitting the documents online, called for as per the Notice. A copy of the said Reply filed with Income Tax Department and the filing acknowledgement from Website are attached as Annexure 2. The assessment is currently ongoing.

Further, the demand of INR 1,06,53,300 for AY 2017-18, the Petitioner Company No. 1 had received the Penalty order dated 30.03.2022 u/s 270A with a demand of INR 1,06,53,300 on account of under reporting of income in AY 2017-18. The Petitioner Company No. 1 had filed an appeal with CIT(A) against the said penalty order and a stay application on the demand raised, on 27.04.2022. A copy of the appeal and stay application is attached herewith as Annexure 3A. Physical documents pertaining to the said stay of demand have also been submitted with the Jurisdictional AO on 28.04.2022. Further, the Company sent an email on 29.04.2022 to National Faceless Scheme Authority and also to the Jurisdictional AO requesting for stay of demand. The said proceeding is ongoing. A copy of the mail sent to National Faceless Scheme Authority and Jurisdictional AO is attached as Annexure 3B.





It is also submitted that the TDS Demands of INR 6,27,350, that the said demand is no longer reflected in TRACES portal as the same has been rectified by filing revised return. Copy of the Current/pending TDS demands is produced as Annexure 4. TDS Demand of INR 6,27,350 is not reflected in the same. For the latest correction returns filed for F.Y 2021-22 (27Q - Q1 & Q2), a default of INR 17,720 is reflected. The company undertakes to resolve the same at the earliest. Further, as per Clause 9 of the Scheme of Amalgamation produced at ANNEXURE A of the Company Petition, it is provided that the Transferee Company will absorb the Tax Liabilities of the Transferor Companies, if any, once the ongoing proceedings attain finality.

14. Official Liquidator (OL) has filed its report vide diary No. 4678 dated 01.11.2022. Subsequently, the petitioner companies also filed their reply to OL vide diary no.4879 dated 15.11.2022. The official liquidator has not made any adverse action.
15. It is noted that the Tribunal has given four opportunities to the Income Tax Department w.e.f 21.09.2022 to file their reports. However, even after availing substantial time the Income Tax Department has not filed the report with respect to Petitioner Company No. 2. Therefore, the matter was reserved on 09.01.2023 with direction to file report within one week. However, even after passage of more than a month, it has not been filed by the I.T department. Therefore, it is presumed that the Income Tax Department has no objection to the Scheme of Amalgamation in so far as Petitioner Company No.2 is concerned. In any case, as per Clause 9 of the Scheme the Transferee will absorb the tax liabilities of the Transferor Companies.
16. The reports of the RoC, RD, OL and IT are taken on record. Similarly, reply filed by the petitioner companies to the above mentioned reports are also taken on record.
17. In view of the above discussion, we conclude that the objections/observations to the Scheme received from RD, ROC, IT and OL have been adequately replied by the petitioner companies and hence there is no impediment in approval of the Scheme.





18. The Scheme in question as annexed at Annexure-A is approved and we hereby declare that the same is to be binding on all the shareholders and creditors of the Transferor Companies as well as Transferee Company. While approving the Scheme, it is clarified that this order should not be construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. With the sanction of the Scheme, the Transferor Companies, namely Expleo India Infosystems Private Limited (Transferor Company No.1), Expleo Technologies India Private Limited (Transferor Company No.2), Expleo Engineering India Private Limited (Transferor Company No.3) and Silver Software Development Centre Private Limited (Transferor Company No.4) shall stand dissolved without undergoing the process of winding up resulting in increase in the authorised share capital of the Transferee Company, namely Expleo Solutions Limited (Transferee Company).

**AND THIS TRIBUNAL DOES FURTHER ORDER:**

- (i) That the petitioner companies do, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company and the files relating to Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- (ii) That the Transferee Company shall deposit an amount of Rs.75,000/- with the Pay & Accounts Office, Chennai in respect of the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad and Rs.25,000/- in favour of The Prime Minister's National Relief Fund, within a period of four weeks from the date of receipt of certified copy of this Order; and





(iii) That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.

(iv) The approval /sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act,2013 and that the authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.

19. As per the directions, Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the petitioner companies on filing of the Schedule Property i.e., (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company by way of affidavit of the Transferor Company respectively.

20. Accordingly, CP (CAA) No.33/BB/2022, is disposed of. Copy of this Order be communicated to the Counsel for the Petitioner Company.

-Sd-

(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)

-Sd-

(T.KRISHNAVALLI)  
MEMBER (JUDICIAL)



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*Prasanna*  
07/03  
for DEPUTY/Asst. REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
Bengaluru Bench

