

BEFORE THE PRINCIPAL BENCH NATIONAL COMPANY LAW TRIBUNAL

AT NEW DELHI

Present: CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE PRESIDENT

& SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

COMPANY PETITION NO. 679 OF 2016

CONNECTED WITH

COMPANY APPLICATION (M) NO. 76 OF 2016

(TRANSFERRED FROM THE FILE OF HON'BLE HIGH COURT OF DELHI)

IN THE MATTER OF SECTION 391-394 OF THE COMPANIES ACT, 1956

(PRESENTLY SECTIONS 230-232 OF THE COMPANIES ACT, 2013)

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

**Clear2Pay India Private Limited,
Having registered office at:
S-405 (LGF), Greater Kailash Part II,
New Delhi – 110048
CIN: U72900DL2004PTC290974**

**.....TRANSFEROR COMPANY /
PETITIONER COMPANY**

AND

Fidelity Information Services India Private Limited,

Having registered office at:

S-405 (LGF), Greater Kailash Part II,

New Delhi – 110048

CIN: U72200DL2002PTC114964

**.....TRANSFEREE COMPANY /
PETITIONER COMPANY**

**ADVOCATES FOR THE PETITIONERS: Mr. D. Bhattacharyya, Advocate
Ms. Deeti Ojha, Advocate
Mr. Piyush Sharma, Advocate**

FOR REGIONAL DIRECTOR,(NR), MCA: Mr. C.Balooni, Company Prosecutor

**FOR OFFICIAL LIQUIDATOR: Ms. Chetana Kandpal, Company Prosecutor,
Office of Official Liquidator, Delhi**




ORDER

1. This petition filed by the companies above named is coming up finally before us on 22.03.2017 for the purpose of the approval of the scheme of Amalgamation, as contemplated between the companies and its shareholders and creditors by way of Amalgamation of the Transferor Company with the Transferee Company. A perusal of the petition discloses that initially the application seeking the dispensation for convening the meeting of equity shareholders, unsecured creditors of both the transferor and Transferee Company and secured creditor of the Transferee Company, there being no secured creditor in the Transferor Company were filed before the Hon'ble High Court of Delhi in CA (M) No.76/2016. The Hon'ble High Court of Delhi vide its order dated 19.07.2016 was pleased to dispense with the requirement of convening of the meetings of the equity shareholders and unsecured creditors of both the Petitioner Companies and of the secured Creditor of the Transferee Company in view of consents having been obtained and produced before it.

2. Under the circumstances, the petitioners have filed their joint petitions for sanction of the Scheme of Amalgamation before the Hon'ble High Court of Delhi under the erstwhile provisions, subsequent to the order of dispensation of the meetings ordered by the Hon'ble High Court of Delhi on 19.07.2016.

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3. On 08.08.2016 the Hon'ble High Court of Delhi ordered Notice in the Second Motion petition in C.P. No.679/2016 moved by the petitioners under Sections 391 to 394 of the Companies Act, 1956 read with relevant Rules of the Companies (Court) Rules, 1959 in connection with the scheme of amalgamation, to the Regional Director, Registrar of Companies and the Official Liquidator. The Petitioners were also directed vide the said order to carry out publication in the newspapers 'Financial Express' in English and 'Jansatta' in Hindi edition returnable on 16.02.2017.
4. While the joint petition in C.P.No.679 of 2016 was pending disposal since the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 had been notified w.e.f. 15.12.2016 wherein the power to consider such schemes have now been vested with the National Company Law Tribunal, the Hon'ble High Court of Delhi pursuant to the notification bearing No. DL.33004/99 dated 7.12.2016 issued by the Ministry of Corporate Affairs has transferred/transmitted the records of the above petition to this Tribunal vide order dated 16.02.2017, for our consideration.
5. In view of the above, the petition of Second Motion as above filed by the joint petitioners before the Hon'ble High Court and subsequently transferred is taken up finally for consideration by us. The joint petitioners it is seen from the records have filed an affidavit dated 15.02.2017 in relation to the compliance of the orders passed by the Hon'ble High Court of Delhi dated 08.08.2016 and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the Hon'ble High Court of Delhi in one issue of the 'Financial Express' on 17.09.2016 in English

Edition and 'Jansatta' in Hindi Edition again on 17.09.2016 in relation to the date of hearing of the petition on 16.02.2017. Further, the affidavit also discloses that notices have been issued to the Regional Director, Northern Region and Registrar of Companies, Delhi & Haryana as well as to the Official Liquidator attached to the High Court, Delhi in compliance with the order dated 08.08.2016 and in proof of the same acknowledgement made by the respective offices have also been enclosed. . Further, it is also seen that pursuant to the directions from Regional Director, Northern Region, a copy of the Company Petition has also been served on the jurisdictional Income Tax Officer of the Transferor Company and the Transferee Company on 15.09.2016 and 16.09.2016 respectively and proof of service is also annexed to the aforesaid affidavit of compliance.

6. The Counsel for the Petitioners represent that no objections from any quarters has been received in relation to the proposed Scheme considered for sanction by this Tribunal. The representation/affidavit of the Regional Director, NR, MCA dated 03.03.2017 and the Report of Official Liquidator dated 02.02.2017 has been placed before us.
7. We have heard counsel for the petitioners and also considered the representations made by the Regional Director, Northern Region vide representation dated 03.03.2017. An examination of the said representation/affidavit of Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi discloses the observations made by the office of Commissioner of Income Tax as follows:

"5. That the Deponent states that in response to the letter dated 07.09.2016 sent by the office of the Deponent to the Pr. Commissioner of Income Tax,





Delhi letter dated 20.09.2016 has been received from the Asstt. Commissioner of Income Tax, Circle-6(1), New Delhi, wherein it is requested that the Hon'ble High Court/Tribunal allows the claim of the department to recover any pending dues from the amalgamated company or from the amalgamating company after the scheme of amalgamation finalizes. The IT Department has further furnished the details of outstanding demand in the case of M/s. Clear2Pay India Pvt. Ltd. as per records/ITD system of the department.”

8. In response to the aforesaid objection raised by Income Tax Department, the Petitioner in Para's 4 and 5 of his reply has stated that:-

4. *“paragraph 5.8 of the Scheme already provides that on sanctioning of the Scheme all tax liabilities of the Transferor Company shall for all purposes be treated as tax liability of the Transferee Company. The said paragraph of the Scheme is quoted below for ready reference:*

5.8 Upon the scheme coming into effect, all taxes / cess / duties, direct and / or indirect, payment by or on behalf of Transferor company including all or any refund and claims, including refunds or claim pending with the revenue authorities and including the right to carry forward accumulated losses, if any, shall for the purposes be treated as the tax / cess / duties/ liabilities





or refunds, claims, accumulated losses and credits of Transferee Company.”

“5. I further undertake that on sanctioning of the Scheme, the Transferee Company will take over and defray all liabilities, including tax liabilities, of the Transferor Company. The Income Tax Authorities will be entitled to proceed against the Transferee Company qua any liability which it would have fastened on to the Transferor Company for the relevant period, and that, which may arise on account of the Scheme being sanctioned. However, this Hon’ble Tribunal may be pleased to keep open the rights and contentions of the Transferee Company as available under law in relation to the demand of the IT Department so that any Order of this Hon’ble Tribunal is not construed as concluding or putting seal over such proceedings by the IT Department.”

9. Both the observations of the Income Tax Department as well as the undertaking and plea of the Petitioners are taken into consideration and the approval of the scheme shall be subject to the same.

10. Further perusal of the above representation of the Regional Director discloses the observation made by the Registrar of Companies that:

“That the Deponent states that the Registrar of Companies) Delhi & Haryana vide para 31 of his report



has made the following observations:

8.1 It has been mentioned in para 17 of the Petition that the Transferor Company is subsidiary of the Transferee Company as its 9,900 equity shares i.e. 99% are held by the Transferee Company. On the Scheme becoming effective the same shall stand cancelled. Further, the balance 100 shares i.e. 1% are held by Clear2Pay Belgium NV, Belgium. The consideration for holding 100 equity shares of the Transferor Company shall be discharged by way of issuance of fresh shares in the Transferee Company. In this regard, it is submitted that the Transferee Company may be asked to give an undertaking in regards to requisite compliances from Reserve Bank of India as required under FEMA for allotment of shares to foreign company."

9. In relation to the above objection raised by the Regional Director, the Petitioner has stated via reply dated 08.03.2017 that:

"With regard to the observations in paragraph 8(i) of the representation/affidavit of the Regional Director, I state that the investment by the foreign/non-resident shareholders in the Transferee and the Transferor Company are under the Automatic Route prescribed by Reserve Bank of India (RBI) and the Petitioner



Companies have complied with the Regulations prescribed by RBI from time to time. The Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations 2000 permits 100% foreign direct investment in Indian companies which engaged in the business of Information Technology Enabled Services which is the business undertaken by the Petitioner Companies.

I further confirm that no approval is required from RBI for issuance shares to non-resident shareholders pursuant to the sanction of the Scheme due to the following reasons:

- (a) The entire (100%) issued and paid up share capital of the Transferee Company is held by Fidelity Information Services Holdings BV, Netherlands and Information Services Luxemburg & Co. CV, Netherlands both being foreign companies (persons resident outside India and thus the question of any increase of the percentage of foreign shareholding in the Transferee Company on account of issuance of shares by the Transferee Company to Clear2Pay*

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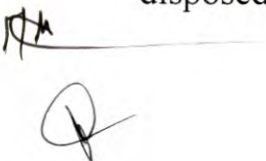
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*Belgium NV (shareholder of the Transferor Company)
does not arise.*

(b) The Petitioner Companies do not engage in agriculture, plantation or real estate business or trading in TDRs and I further undertake that pursuant to the sanction of the Scheme, the Transferee Company shall not engage in agriculture, plantation or real estate business or trading in TDRs. The Scheme envisages winding up of the Transferor Company on sanction.

8. I further confirm that we shall comply with the reporting requirements prescribed under Regulation 7(1)(c) of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000 post issuance of shares after sanctioning of the Scheme by the Hon'ble Tribunal.

11. The above undertakings of the Petitioners are taken into consideration relating to RBI compliances, if any, which the Petitioners in view of the present position of law states is not required and are accordingly disposed off.

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12. That last objection raised by the Regional Director as made in para 9 is to the following effect:

“That the Deponent states that as per clause 7.5 of the Scheme, it has been stated that after taking into consideration the cancellation of inter-company loans, investments and balances between the Transferee Company with Transferor Company, the difference between amount recorded as share capital issued in the books of Transferee Company and respective amounts of share capitals of Transferor Company shall be adjusted from the general reserves in the financial statements of the Transferee Company. In this regard, it is submitted that any difference arising as aforesaid shall be adjusted from the capital reserves and not the general reserves”.


13. In this regard, the Tribunal found no mention has been made by the company in its reply, and in the circumstances we direct the petitioner companies to strictly comply with law and all the accounting standards prescribed by the Central Government under section 133 of the Companies Act, 2013 and not to deviate in any manner from the established position of law and that of accounting standards in dealing

with difference arising out of accounting treatment as envisaged under the scheme.

14. In view of no further or other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled and subject to the directions issued, this Tribunal sanctions the scheme of amalgamation annexed as Annexure-A, to the Company Petition as well as the prayer made therein.

15. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

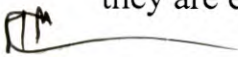
16. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

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THIS TRIBUNAL DO FURTHER ORDER

- (1) That all the property, rights and powers of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and vest in the transferee company for all the estate and interest of the transferor company therein but subject nevertheless to all charges now affecting the same; and
- (2) That all the liabilities and duties of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and
- (3) That all proceedings now pending by or against the transferor company be continued by or against the transferee company; and
- (4) That the Transferee Company do without further application allot to such members of the Transferor Company, as have not given such notice of dissent, as is required by clause 6.3 of the SCHEME OF AMALGAMATION herein the shares in the transferee company to which they are entitled under the said SCHEME OF AMALGAMATION; and





- (5) That transferor company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the transferor company shall be dissolved and the Registrar of Companies shall place all documents relating to the transferor company and registered with him on the file kept by him in relation to the transferee company and the files relating to the said two companies shall be consolidated accordingly; and
- (6) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

Sd/-
(CHIEF JUSTICE M.M.KUMAR)

PRESIDENT

Sd/-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Date: 15.05.2017

U.D. Mehta