

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

CP (CAA)No.15/Chd/Hry/2018

**Under Sections 230-232
of the Companies Act, 2013**

In the matter of:

RBS Services India Private Limited

having its registered office at
Building No.7B, DLF Cyber City,
Phase-III, Gurugram-122002, Haryana
PAN: AADCA1780D

...Petitioner /Transferor Company

And

NWM Services India Private Limited

having its registered office at
C/o CE Serviced Offices Pvt. Ltd.
Building 10, Tower A, Level 1,
Phase-III, DLF Cyber City,
Gurugram-122002, Haryana
PAN: AAGCN0009D

...Petitioner /Transferee Company

Judgment delivered on: 09.10.2018

**Coram: HON'BLE MR.JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Petitioners : 1. Mr. Anand Chhibbar, Senior Advocate
2. Mr. Anirudh Das, Advocate
3. Mr. Rohit Khanna, Advocate
4. Mr. Kamaljeet Singh, Advocate
5. Mr. Vaibhav Sahni, Advocate

For the Regional Director,
Northern Region, Ministry of
Corporate Affairs, New Delhi
and the Official Liquidator : Mr. Deepankur Sharma, Advocate

For Income Tax Department : Mr. Yogesh Putney, Advocate

Per R.P. Nagrath, Member (Judicial)

JUDGMENT

This is a joint Second Motion Petition under Section 230 and 232 of the Companies Act, 2013 (for short, the 'Act') filed by the petitioner-companies in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, 'Rules') for the approval of Scheme of Arrangement for Demerger, Annexure-1 (for brevity, 'Scheme') between RBS Services India Private Limited (Transferor Company) with NWM Services India Private Limited (Transferee Company). The joint petition is maintainable in terms of Rule 3(2) of the Rules.

2. The petitioner No.1 Company is part of Royal Bank of Scotland Group (RBS Group) and is engaged in the business of providing back office/IT support service in the nature of information technology and information technology enabled services to the global entities of RBS Company. Petitioner No.2 has been established as a private limited company to carry out the business of providing back office/IT support services in the nature of information technology and information technology enabled services to the Net-West Markets division of RBS Group. The 'Scheme' under consideration seeks to demerge NWM undertaking into Transferee Company. It is further stated that the Residual Undertaking, after the demerger of the NWM Undertaking shall be retained, managed and operated by the Transferor Company. The Residual Undertaking of Transferor Company has been stated below:-

"Residual Undertaking

- (a) *The Residual Undertaking and all assets, liabilities and obligations pertaining thereto shall continue to belong to and be vested in and be managed by the Transferor Company.*
- (b) *All legal, taxation or other proceedings by or against the Transferor Company under any statute, or quasi-judicial authority or tribunal) whether pending on the date of filing of this Scheme or which may be instituted in future whether or not in respect of any matter arising before the Effective Date and relating to the Residual Undertaking (including those relating to any property, right, power, liability, obligation or duties of the Transferor Company in respect of the Residual Undertaking) shall be continued and enforced by or against the Transferor Company. The Transferee Company shall in no event be responsible or liable in relation to any such legal, taxation or other proceeding against the Transferor Company if proceedings are taken up against the Transferee Company in respect of the matters referred to in this Clause, it shall defend the same in accordance with the advice of the Transferor Company and at the cost of the Transferor Company and the latter shall reimburse and indemnify the Transferee Company against all liabilities and obligations incurred by the Transferee Company in respect thereto.”*

3. The petitioner-companies filed First Motion Application being CA (CAA) No.10/Chd/Hry/2018 for seeking dispensation of meetings of equity shareholders of both the petitioner-companies and unsecured creditors of the transferor company. Since there were no secured creditors in any of the petitioner-companies there was nothing to convene their meeting.

4. The First Motion Application was allowed on 04.05.2018 with directions for calling and convening meetings of the equity shareholders and unsecured creditors of the transferor company and the equity shareholders of the transferee company on 30.06.2018 along with other directions as mentioned in the order dated 04.05.2018 passed in the First Motion Application which is at Annexure 9. It was observed in the order dated 04.08.2018, that the resolutions of both the companies were not apostilled and thus their meetings cannot be dispensed with.

5. The affidavits dated 22.05.2018 and 23.05.2018 of the transferor company with regard to compliance of all the directions given in the order dated 04.05.2018 was filed by diary Nos.1846, 1847, 1848, 1849 and 1850 dated 28.05.2018 by Mr. Ajit Sundaresh, Director on behalf of transferor company and Mr. Girish Iyer, Director on behalf of transferee company along with newspaper publications in "Financial Express" (English) (All India Edition) and "Jansatta" (Hindi) (All India Edition) both dated 11.05.2018 and notices sent to the Statutory Authorities including Income Tax Department and Software Technology Parks of India, Office of Deputy Commissioner of Central Tax, Officer of Commissioner of Customs and Office of the Development Commissioner in case of transferor company.

6. Reports dated 30.06.2018 of the Chairperson along with the report of Scrutinizer in respect of the meetings of equity shareholders and unsecured creditors of transferor company and equity shareholders of Transferee Company was received which is attached at Annexures 11, 13 and 15.

7. The Chairperson has reported that the equity shareholders and unsecured creditors of transferor company and equity shareholders of Transferee Company have unanimously approved the Scheme. Thereupon the instant petition was filed in terms of rule 15 of the Rules.

8. The main objects, date of incorporation, paid-up share capital and salient features of the Scheme along with other benefits likely to arise from amalgamation were already discussed in detail in the First Motion order dated 04.05.2018 passed by this Tribunal.

9. The interest of the employees of the Company has also been taken care of in the 'Scheme' which is as under:-

“All employees of Transferor Company pertaining to the NWM Undertaking who are on its payrolls shall become the employees of the Transferee Company, without any break or interruption in their services, on no less favourable terms (including employee benefits such as provident fund, leave encashment and any other retiral benefits) as applicable to such employees with the Transferor Company and in accordance with applicable law. The Transferee Company further agrees that for the purpose of payment of any retirement benefit/compensation, contractual and statutory benefit, incentive plans, terminal benefits, such immediate uninterrupted past services with Transferor Company, shall also be taken into account and accordingly, shall be reckoned from the date of their appointment with the Transferor Company etc.”

10. Annexure 18 is attached as certificates dated 06.04.2018 of S.R. Batliboi & Associates LLP, Chartered Accountants, stating therein that the Scheme is in compliance with the accounting standards prescribed under Section 133 of the Companies Act, 2013 (the “Act”) read with Rule 3 of the Companies (Indian Accounting Standards) Rules, 2015 as amended from time to time (the “applicable Accounting Standards”) and other generally accepted accounting principles. Similar certificate by the Auditor of Petitioner No.2 Company is at Annexure-19.

11. The accounts of the transferor company have been audited upto 31.03.2017 and provisional accounting statement as on 28.02.2018 are at Annexure 3 and 4 respectively. The transferee company was incorporated on 07.03.2018, therefore, the provisional balance sheet as on 11.05.2018 has been attached as Annexure 6.

12. The petitioner-companies have filed a Valuation Report dated 28.03.2018. A copy of the Valuation Report is attached at Annexure 17. The Share Entitlement Ratio under the Scheme has been determined as follow:-

“1 fully paid up equity share having face value of INR 10/- each of the Resulting Company for 6 fully paid up equity share of INR 10/- each in RBSSIPL;”

13. When the matter was listed on 10.07.2018, it was adjourned for hearing to 04.09.2018 and the following order was passed:-

“The petition be listed for hearing on 04.09.2018. The notice of hearing is directed to be published in Delhi Financial Express (English – All India Edition) and Jan Satta (Hindi – All India Edition) which were the newspapers where the notice of the first motion petition was directed to be published. The publication be made not less than 10 days before the date fixed for hearing.

Notice of hearing be also issued to the Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs; Income Tax Department through the Nodal Officer – Principal Commissioner of Income Tax, NWR, Ayakar Bhawan, Sector 17-E, Chandigarh by mentioning the PAN of the Petitioner Companies, Registrar of Companies, 4th Floor, IFCI Tower, 61 Nehru Place, New Delhi; Software Technology Parks of India, Department of Information Technology, Government of India, No. 5, Rajiv Gandhi Salai, Taramani, Chennai - 600113, Commissioner of Central Tax, Chennai, Guindy Division, Chennai IV, Commissionerate No. 690, EVR Periyar Building, Anna Salai, Nandanam Chennai – 600035; Commissioner of Customs, Chennai, Chennai Airport, Air Cargo Complex, Meenambakkam, Chennai – 600027, Commissioner of Customs, Chennai, Customs House, New no. 60 – Rajaji Salai, Chennai, Development Commissioner, Noida Special Economic Zone, Noida – Dadri Road, Phase II, Noida 201305, and any other sectoral regulator(s) and any other objectors who may have objections to the proposed Scheme by speed post by attaching copy of the entire petition and paper book and filed affidavit of service along with the postal receipts and tracking reports at least 2 days before the date fixed. The affidavit shall also contain statement to the effect that the petitioner companies have not received any objections to the proposed Scheme. Registry is also directed to report as to whether any objections to the Scheme have been received in this Tribunal.”

14. The authorized representatives of both the petitioner-companies filed joint compliance affidavit of service dated 08.08.2018 by diary no. 2964 dated 13.08.2018 along with copies of newspaper publications dated 03.08.2018 in Financial Express (English – All India Edition) and Jan Satta (Hindi – All India Edition) attached at Annexure F of this affidavit. It is also stated in this affidavit that notices were sent to all the above authorities. The postal receipts and tracking reports in proof of service are at Annexure-B (colly), C (colly), D (colly) and Annexure E (colly). It is also stated that the petitioner-companies have till

date not received any objection to the Scheme from any quarter. The registry also reported on 31.08.2018 that no objection was received from any quarter in this Tribunal to the proposed Scheme. Affidavits dated 28.08.2018 were also filed in this regard by diary No.3230 and 3231 dated 30.08.2018.

15. It is also stated in the affidavit dated 28.08.2018 of the Transferor company that upon sanction of the Scheme, the Transferor Company shall in accordance with law approach the sectoral regulators for transfer/assignment/endorsement of the licenses/permits/set out in Schedule I, II and III of the Scheme. The Transferor Company shall further in terms of the letter dated 19.06.2018 and Instruction Notification dated 03.08.2018 of the Ministry of Commerce and Industry, Govt. of India, approach the office of the Development Commissioner, Noida, SEZ for transfer/assignment/endorsement of the Letter of Approval No.STPF/SEZ/Unit/03/45/611. Copy of the notification is attached as Annexure-I with this affidavit. Similar undertaking is furnished in the affidavit of authorized representative of the Transferee Company in the affidavit dated 28.08.2016 filed by diary No.3230 dated 30.08.2018. These undertakings are taken on record and shall form part of this order.

16. It is further represented that according to the Scheme any pending suits/appeals or other proceedings of whatsoever nature relating to Transferor Company pertaining to the NWM Undertaking, whether by or against Transferor Company and pertaining to the NWM Undertaking, whether pending on the Appointed Date or which may be instituted at any time in the future and shall not abate, be discontinued or in any way prejudicially affected by reason of the demerger of the NWM Undertaking or of anything contained in this Scheme, but the proceedings shall continue and any prosecution shall be enforced by or against the Transferee Company after the Effective Date. The Transferee

Company shall, after the Effective Date, be replaced as party to such proceedings and shall prosecute or defend such proceedings in co-operation with Transferor Company in the same manner and to the same extent as would or might have been continued, prosecuted and/or enforced by or against Transferor Company, as if this Scheme had not been implemented.

17. We have heard the learned Senior Counsel for the petitioner-companies; Mr. Deepankur Sharma, the learned counsel appearing for the Regional Director, Northern Region, Ministry of Corporate Affairs and Official Liquidator and Mr. Yogesh Putney, Advocate for the Income Tax Department and perused the records carefully.

18. Mr. R.K. Srivastava, Deputy Development Commissioner, Noida, Special Economic Zone (SEZ) stated in his report dated 19.06.2018 received by diary No.854 dated 20.06.2018, another copy which was received by diary No.877 dated 25.06.2018 that as per Para 6 of the Instruction No.89 dated 17.05.2018, the reorganization shall be subject to the following safeguard:-

- i) Seamless continuity of the SEZ activities with unaltered responsibilities and obligations for the altered entity.*
- ii) Fulfillment of all eligibility criteria applicable, including security clearances etc., by the altered entity and its constituents;*
- iii) Applicability of and compliance with all Revenue/Company Affairs/SEBI etc. Act/Rules which regulate issues like capital gains, equity change, transfer, taxability etc.*
- iv) Full financial details relating to change in equity/merger, demerger, amalgamation or transfer of ownership etc. shall be furnished immediately to Member (IT), CBDT, Department of Revenue and to the jurisdictional Authority.*
- v) The Assessing Officer shall have the right to assess the taxability of gain/loss arising out the transfer of equity or merger, demerger, amalgamation, transfer and ownerships etc. as may be applicable and eligibility for deduction under relevant sections of the Income Tax Act, 1961.*
- vi) The applicant shall comply with relevant State Government laws, including those relating to lease of land, as applicable.*

vii) The unit shall furnish details of PAN and jurisdictional assessing officer of the unit to CBDT.”

19. Another letter of the Deputy Development Commissioner, SEZ, Noida was filed by diary No.1230 dated 30.08.2018 and another copy by diary No.1255 dated 06.09.2018 wherein it was stated that the Department of Commerce had also issued Instruction No.90 dated 03.08.2018 (Copy of Instruction No.89 and 90 are enclosed with this letter) clarifying the meaning of “prior approval of Board of Approval/Unit Approval Committee”. Further no objection to the Scheme is conveyed from the office of the Development Commissioner subject to compliance of Instruction No.89 dated 17.05.2018 and Instruction No.90 dated 03.08.2018. Copy of the above mentioned letter of the Deputy Development Commissioner dated 30.08.2018 was also filed by diary No.3507 dated 17.09.2018 by the learned counsel for the petitioner-companies, Annexure A along with joint affidavit of Mr. Saurabh Kumar Gupta and Mr. Arvind Singhal, authorized representatives of the transferor and transferee company respectively. It is stated in the affidavit that the petitioner-companies undertake to comply with Instruction No.89 and 90 issued by the Ministry of Commerce and Industry, Government of India (SEZ Section). These undertakings are taken on record and made part of this order.

20. The report of the Registrar of Companies, NCT of Delhi & Haryana is attached with the report of the Regional Director filed vide diary No.3127 dated 24.08.2018 wherein it is stated that no prosecution has been filed against any of the petitioner-companies. Also, no inspection has been carried out against any of the petitioner-companies. It is further, stated that the paid-up share capital of transferor company is ₹11,80,46,830/-, however, as per MCA-21 records, the

paid-up share capital of transferor (which is mentioned as transferee company in the report of the ROC) is ₹12,64,37,140/-. Therefore, the transferor company was directed to clarify the same. Also, as per scheme, nominee shareholder in the Transferor company i.e. N.C. Head Office Nominees Limited will not be entitled to receive equity shares of the Transferee company. In this regard, consent may be obtained from such shareholder.

21. The Regional Director in paragraph 12 to 15 while addressing the observations made in the Report of Registrar of Companies stated that as per reply of the petitioner-company, resolution for increase of authorized share capital of the Transferee Company was passed by the shareholders of the Transferee Company in their meeting held on 05.06.2018 and the Transferee Company has filed eform SH 7 vide SRN G89077432 dated 08.06.2018 for increase in authorized share capital from ₹10,000,000 to ₹20,000,000. Also, the petitioner-company in its reply has submitted that the difference of ₹ 83,90,310 in paid up share capital of Transferor Company is on account of buy back of equity shares held during September 2017 for which the Transferor Company has duly filed forms MGT – 14, SH-8, SH-9 and SH-11.

22. The Scheme provides that upon the Scheme coming into effect, the shareholders of the Transferor Company as on the Record date shall be entitled to receive equity shares of the Transferee Company. In this regard, the respective Board of Directors of the Transferor Company and the Transferee Company have together determined that the nominee shareholder in the Transferor Company, i.e., N.C. Head Office Nominees Limited, (holding 0.08% of the share capital of the Transferor Company as a nominee of RBS Netherlands Holdings B.V.) will not be entitled to receive equity shares of the Transferee Company pursuant to the

Scheme. Further, it is stated that the petitioner-company has submitted an affidavit dated 04.04.2018 by the authorized representative of NC Head Office Nominees Limited that the Scheme has been considered by the Company and approved. It is stated in Para 15 of the report of Regional Director **that Petitioner Transferor Company has filed an undertaking by way of an affidavit that if there is any non-compliance/ violation reported with regard to CSR activities, the Petitioner Transferor Company undertakes to take all necessary steps to make good the non-compliance violation as per procedure prescribed under the Companies Act, 2013 or any other law as applicable.**

23. It is also stated in the affidavit of the Regional Director that Clause 4 defines the effective date as date of registration of the order of the Hon'ble NCLT approving the Scheme with the Registrar of Companies and goes on to state that reference to "Scheme becoming effective" shall mean such effective date. This is sharply different from the provisions of Section 232 (6) of the Companies Act, 2013.

24. The petitioner-companies filed response to the observations of the Regional Director by diary no. 3160 dated 27.08.2018, it is stated that the effective date of the Scheme cannot be determined with certainty in advance, hence this clause was provided in the Scheme. Accordingly upon sanction of the Scheme and filing of the sanction order with the ROC, the Scheme shall be effective from the Appointed Date i.e. 1st April, 2018, in accordance with the provisions of Section 232 (6) of the 2013 Act, Therefore, it was submitted that on a combined reading of the definition of the Appointed Date and Effective Date at Clause 4 of Part I of the Scheme read with provisions of Section 232 (6) of the

2013 Act, the Scheme shall be effective from the Appointed date i.e. 01st April, 2018 and no other date.

25. Further, the Income Tax Department by letters dated 27.08.2018 have conveyed their no-objection to the Scheme. The petitioner-companies have also filed affidavits dated 28.08.2018 by diary Nos.3230 and 3231 both dated 30.08.2018 affirming that upon sanction of the Scheme, they will in accordance with law, approach the necessary authorities for transfer/assignment/endorsement of licenses/permissions set out at Schedules I to III of the Scheme.

26. In view of the above, there is no impediment in the sanction of the Scheme. The Scheme (Annexure-1) is approved. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes or any other charges/payments in accordance with law or granting exemption in respect of any permission/compliance with any other requirement which may be specifically required under any law. The Companies are also directed to comply with the provision of FEMA and RBI guidelines wherever applicable.

THIS TRIBUNAL DO FURTHER ORDER:

- i. That all the property, rights and powers of the NWM Undertaking of Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the NWM Undertaking Transferor Company but subject nevertheless to all charges now affecting the same; and

- ii. That all the liabilities and duties of the NWM Undertaking Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and
- iii. That all the proceedings now pending by or against the NWM Undertaking be continued by or against the Transferee Company; and
- iv. That all the employees of the NWM Undertaking shall be transferred to the Transferee Company in terms of the 'Scheme'; and
- v. That the Transferee Company do, without transfer application, allot to the existing members of the Transferor Company shares of transferee company to which they are entitled under the said Scheme of Amalgamation/Demerger; and
- vi. That the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme'; and
- vii. That the Petitioner Companies do, within 30 days after the date of receipt of this order of this Tribunal, cause a certified copy of this order to be delivered to the Registrar of Companies for registration; and
- viii. That the Transferee Company shall deposit an amount of ₹1,00,000/- (Rupees One Lac only) in the Prime Minister Relief Fund and ₹40,000/- (Rupees Forty thousand only) in favour of "The Company Law Tribunal Bar Association" Chandigarh within a period of three weeks from the date of receipt of certified copy of this order; and

- ix. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

27. As per the above directions Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 formal orders be issued on the petitioners on filing of the Schedule of 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.

Pronounced in open Court.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

Oct.,09, 2018
Anchal