

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (CAA) 126/230-232/NCLT/MB/MAH/2018

Under section 230-232 of the Company Act, 2013

In the matter of

M/s. Techprocess Payment Services Private
Limited

..... 1st Petitioner / Transferor Company

M/s. E-Billing Solutions Private Limited

..... 2nd Petitioner / Transferee Company

Order Pronounced on : 08.10.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

For the Petitioners :

Mr. Hemant Sethi, Advocate i/b. Hemant Sethi & Co. – Advocates for the Petitioner.

For the Regional Director :

Mr. R. S. Meena – Jt. Director (WR).

For the RoC :

Mr. Neemlambuj – CP RoC.

For the Official Liquidator :

Mr. Santosh Dalavi – Representative of OL.

Per : M. K. Shrawat, Member (J)

ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Company Act, 2013, to a Scheme of Merger by Absorption of M/s. TechProcess Payment Services Private Limited (Transferor Company) with M/s. E-Billing Solutions Private Limited (Transferee Company) and their respective shareholders.
2. The Petitioner Companies have approved the said Scheme of Merger by Absorption by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The Transferor Company is engaged in the business of providing payment aggregation services wherein it enables merchants to accept payments through online

payment gateways in partnership with their acquiring banks. Further it also provides recurring payment services to its clients in the form of ECS, NACH, direct debit, e-mandate services and such ancillary activities to payment services. Among others, it acts as an intermediary to facilitate delivery, review and payment of bills payable to any utility provider, service provider or the like, in respect of services/ facilities or utilities availed and to receive and send instructions and/ or communications in respect of the same.

4. The Transferee Company is engaged in the business of enabling online payment collection, payment routing, reconciliation, reporting and settlement for e-commerce businesses wherein such businesses can collect online payment for selling their goods and services. EBS also provides support and services to financial institutions, banks or acquirers enabling them to provide payment gateway services to their customers either directly or through EBS.
5. The proposed Scheme will inter alia have following benefits :
 - a) Simplification of group structure by eliminating multiple companies;
 - b) Achieve operational synergies with respect to commercial contracts (with vendors (especially banks), customers (merchants) and other stakeholders) as both the Transferor Company and the Transferee Company have agreements with same banks but for different commercial terms, and similar online portal for providing services to the merchants;
 - c) Greater integration, greater financial strength and flexibility for the amalgamated entity, which would result in maximising overall shareholder value and will improve the competitive position of the combined entity;
 - d) Improved organizational capability and leadership, arising from combining the human capital of both companies with diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry;
 - e) Greater efficiency in cash management of the Transferor Company and the Transferee Company, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities and to improve shareholder's value; and
 - f) Cost savings are expected to flow from more focused operational efforts, consolidation of online portal (single online portal for merchants of both the

companies), rationalization, standardisation and simplification of business processes, usage of common resource pool like human resource, administration, finance, accounts, legal, sales and marketing, technology and other related functions, leading to elimination of duplication and rationalization of administrative expenses.

6. The averments made in the Petition and the submissions made by the Learned Representative for the Petitioners are:

- a) The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertake to comply with all the statutory requirements if any, as required under the Company Act, 2013 and the Rules made there under whichever is applicable.
- b) The Regional Director has filed his Report dated 19.06.2018 stating therein that, save and except as stated in paragraph IV (a) to (d), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

IV. The observation of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:

- 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 regards Clause 17 of the Scheme regarding change of name of the Transferee Company with effect from the Effective Date, the name of the Transferee Company shall be changed from "E-Billing Solutions Private Limited" to "Ingenico ePayments India Private Limited". In this regard, it is submitted that the same is subject to compliance with the provisions of section 4(2) & (3) of the Companies Act 2013 r/w rule 8(8) of the Company (Incorporation) Rules, 2014;*
- c) The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the*

Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation;

d) As regards Clause 15 of the Scheme, (Increase in the Authorised Share Capital of the Transferee Company) the fees if any payable by the Transferee Company on its Authorized Share Capital, subsequent to amalgamation shall be in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.

- c) Apropos the observations made in paragraph IV(a) of the Report of the Regional Director is concerned, the Transferee Company undertakes that 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 Accounting Standards such as AS-5 (IND AS-8).
- d) Apropos the observations made in paragraph IV(b) of the Report of the Regional Director is concerned, the Petitioner Companies undertake that they will comply with the provisions of section 4(2) & (3) of the Companies Act, 2013 r/w rule 8(8) of the Company (Incorporation) Rules, 2014 in relation to change of name of Transferee Company from “E-Billing Solutions Private Limited” to “Ingenico ePayments India Private Limited” with effect from the Effective Date.
- e) Apropos the observations made in paragraph IV(c) of the Report of the Regional Director is concerned, the Petitioner Companies hereby clarifies that the Scheme enclosed to the Company Scheme Application and the Scheme enclosed to the Company Scheme Petition are one and the same and there is no discrepancy or deviation.
- f) Apropos the observations made in paragraph IV(d) of the Report of the Regional Director is concerned, the Petitioner clarifies that the Authorized Share Capital of Transferor Company shall be merged with that of the Transferee Company in accordance with the provision of Section 232(3)(i) of the Companies Act, 2013.
- g) The Official Liquidator, High Court Bombay has filed his report inter alia stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may ordered to be dissolved without winding-up.

- h) It is also stated that no objector has approached neither to the Petitioners nor before this Tribunal to oppose the Scheme.
7. From the material on record, the Scheme of Merger by Absorption appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Company, **do Order that:**
- a) All the assets and liabilities including taxes and charges, if any, and duties of the Transferor Company, shall, pursuant to S. 232 of the Company Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
 - b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
 - c) In lieu of the consideration of the Scheme the Transferee Company shall issue and allot **7,286** Equity Shares of ₹ 10/- each, credited as fully paid-up, for every **10,000** Equity Shares of ₹ 10/- each of the Transferor Company.
 - d) The Transferor Company shall be dissolved without winding-up after this Scheme becomes effective.
 - e) Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the order.
 - f) Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Company, electronically, along with E-form INC 28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry, duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.
 - g) The Petitioner Companies shall pay costs of ₹ 25,000/- to the Regional Director, Western Region, Mumbai. The cost is to be paid within four weeks from the date of the receipt of Order.

- h) The 1st Petitioner / Transferor Company shall pay costs of ₹ 25,000/- to the Official Liquidator, High Court Bombay. The cost is to be paid within four weeks from the date of the receipt of Order.
- i) All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- j) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- k) Any concerned Authority (i.e. RD, RoC, OL, Income Tax Authority etc.) is at liberty to approach this Bench for any clarification/directions under this Scheme.
- l) The sanctioning of this Scheme shall not deter any concerned Authority (i.e. RD, RoC, OL, Income Tax Authority etc.) from assessing transactions arising out of this Scheme, if need be.
- m) The Scheme is sanctioned hereby, and the appointed date of the Scheme is fixed as **1st April, 2017**.

8. Ordered Accordingly. To be consigned to Records.

Dated : 08.10.2018

SD/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Avinash