

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

NEW DELHI

CA (CAA)-63(ND)/2017

**Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013**

**In the matter of:**

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

**AND**

**IN THE MATTER OF SCHEME OF AMALGAMATION**

**OF**

**EBOT IT SERVICES PRIVATE LIMITED  
(APPLICANT-1/TRANSFEROR COMPANY)**

**WITH**

**YESPAY IT SERVICES (INDIA) PRIVATE LIMITED  
(APPLICANT-2/ TRANSFEREE COMPANY)**

AND

**Their respective Shareholders and Creditors**

**MEMO OF PARTIES**

**EBOT IT SERVICES PRIVATE LIMITED**

Company registered under the Companies Act, 1956

Having Registered Office at:

L-2A, Hauz khas Enclave,

New Delhi-110016

.....Applicant Company1/ Transferor Company

**YESPAY IT SERVICES (INDIA) PRIVATE LIMITED**

Company registered under the Companies Act, 1956

Having Registered Office at:

L-2A, Hauz khas Enclave,

New Delhi-110016

.....Applicant Company 2/ Transferee Company

**For the Applicants: Ms. Shweta Bharti, Advocate**

**Mr. Jyoti Kumar, Advocate**

**Mr. Pranav Shangari, Advocate**

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## ORDER

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### **Order Delivered on:**

1. This is an application which is filed by the applicant companies herein, Ebot IT Services Private Limited (for brevity "Applicant Company 1/ Transferor Company"), and Yespay IT Services (India) Private Limited (for brevity "Applicant Company 2 /Transferee Company") under sections 230-232 of Companies Act, 2013,(hereinafter called to brevity The "Act") and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (hereinafter for brevity called the "Rules "in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the "SCHEME" ) proposed between the applicants. The said Scheme is also annexed as Annexure "A-1" to the application. The applicants above named have preferred the instant application in effect for the following purpose as evident from the reliefs sought for in the Application, namely:-

- Dispensing with the requirements for convening the meeting of the equity shareholders of the Transferor Company and also to dispense with the requirement of issue and publication of notices for the same.

- Dispensing with the requirements for convening the meeting of the equity shareholders of the Transferee Company and also to dispense with the requirement of issue and publication of notices for the same.
- Issuing/ passing necessary directions/ orders as it may deem fit for the purpose of convening meeting of the shareholders/ members for any class thereof of the Transferor company and the Transferee company including the requirement of issue and publication of notices for the same, appointment of chairperson, Alternate Chairperson and scrutinizer for the meeting or meetings to be held and fixing the time period within which the chairperson shall person the result of the meeting to this Hon'ble Tribunal.
- Issuing direction for permitting the filing of application, petition, other documents as may be required, for the purpose of sanctioning the proposed scheme of amalgamation between Ebot IT Services Private Limited and Yespay IT Service (India) Private Limited and their respective shareholders.
- Pass such other and further order (s) as may be deemed fit and proper in the facts and circumstances of this case.

2. An Affidavit in support of the above application sworn for and on behalf of the Applicant-1/ Transferor Company has been filed by the one Mr. Rahul Patni, being the Director of the Transferor Company and for the Applicant-2/ Transferee Company, has been filed by the one Mr. Sanjay Aggarwal, being the Director of the Applicant-2/ Transferee Company along with the application. Counsel for the joint applicants took us through the averments made in the application as well as the



typed set of documents annexed there with. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that a joint application filed by the applicants are maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 and it is also represented that the registered office of all the applicant companies are situated within the territorial jurisdiction of this Tribunal and falling within Registrar of Companies, NCT, New Delhi.

3. In relation to Ebot IT Services Private Limited being the Applicant-1/ Transferor Company, in the Scheme marked as Annexure – “A-1”, it represented that it is having 2 (Two) Equity Shareholders .It is further represented by the counsel for Applicants that the Applicant-1/ Transferor Company as on 31.03.2017 has no Secured and Unsecured Creditor. In relation to the shareholders of the Applicant/ Transferor Company-1, the Applicant-1 / Transferor Company seeks dispensation from convening and holding of the meetings in view of consent affidavit being obtained and are placed on record.
  
4. In relation to Yespay IT Services (India) Private Limited being the Applicant/ Transferee Company in the Scheme marked as Annexure-“A-1”, Learned Counsel represents that company is having 2 (Two) Equity Shareholders. It is further



represented by the counsel for Applicants that the Applicant-2/Transferee Company as on 31.03.2017 has no secured and Unsecured Creditor. In relation to the Equity Shareholders, Secured and Unsecured creditors of the Applicant-2/ Transferee Company, Applicant-2/ Transferee Company seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent affidavit having been obtained and are placed on record or there being none which obviates the necessity of convening a meeting.

5. Learned Counsel for the Applicants also represents that the provisions of Section 233 of 2013 Act will not apply to Scheme as stated by affidavit filed by the applicants dated 04.07.2017. The registered office of all the applicant Companies are situated within New Delhi and are subject to the jurisdiction Registrar of Companies, NCT, New Delhi and hence are amenable to the territorial jurisdiction of this Tribunal.
6. We have perused the joint application and the connected documents / papers filed therewith including the Scheme of Amalgamation contemplated between the Applicant companies.
7. From the certificate of incorporation filed, it is evident that Applicant-1/ Transferor Company was incorporated in the name and style of Ebot It Services Private Limited on 5<sup>th</sup> December, 2007 under the Companies Act, 1956 in the NCT of Delhi.

8. The Authorized Share Capital of the Applicant-1/ Transferor Company is Rs.30,00,000 and the Issued, Subscribed and Paid-up Share Capital of the Applicant-1/ Transferor Company is Rs.27,00,000 divided into 2,70,000 Equity Shares of Rs.10/- each.
9. The Applicant-1/ Transferor Company is engaged in the business of operation of call centers, information centers, infocom centers in the field of InfoTech and communication in India and abroad and to carry on activities in the field of software development, software designing, computer application, office automation and projects integration.
10. From the certificate of incorporation filed, it is evident that the Applicant-2/ Transferee Company was incorporated on 3<sup>rd</sup> April, 2006 under the Companies Act, 1956 as Yespay IT Services (India) Private Limited in the NCT of Delhi.
11. The Authorized Share Capital of the Applicant-2/ Transferee Company is Rs.7,50,000 and the Issued, Subscribed and Paid-up Share Capital of the Applicant-2/ Transferee Company is Rs.1,00,000 divided into 10,000 Equity Shares of Rs.10/- each.



12. The Applicant-2/ Transferee Company is engaged in the business of operation of call centers, information centers, infocom centers in the field of InfoTech and communication in India and Abroad. It carries on business in the field of information technology, communication technology data entry management, data systems. System integration and office automation.

13. Both the applicants have filed their respective Memorandum and Articles of Association as well as their last available audited financial statements for the year ended 31.03.2016 for Applicant Companies In addition the Applicant companies has also provided the provisional financial statements for the period ending 31.03.2017

19. The appointed date as specified in the Scheme is 01.04.2017 subject to the directions of this Tribunal.

20. The Board of Directors of the Applicant companies vide separate meetings held on 27.04.2017, have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions passed thereat have been placed on record by the companies.

21. Both the companies have submitted that no investigation proceedings are pending against them under Sections 210 or any other applicable provisions of the Companies Act, 2013.

22. Taking into consideration the application filed jointly by the Applicant Companies and the documents filed therewith, this Tribunal finds that the consent affidavits placed on record do not seem to be in consonance with Rule 126 of National Company Law Tribunal Rules, 2016 read with OXIX Rule 3 of Code of Civil Procedure, 1908. According to the well laid principles of the Highest Court of the land, the reasons for verification of affidavits are to enable to the court to find out which facts can be said to be proved on the affidavit evidence and essence of such verification is to enable the court to find out as to whether it will be safe to act on such affidavit evidence. From the perusal of the four affidavits, two each filed on behalf of the Transferor and Transferee company shareholders respectively, it is seen that while the deponent stated in the affidavit even though a company, which seems on the face of Affidavit not represented by any individual. Further the companies based in United Kingdom seems to have signed the affidavit there and nothing is stated anywhere to the contrary in the affidavit and the said signature are curiously attested by a Notary Public based at Indore, Madhya Pradesh, India. Hence the affidavits of the equity shareholders suffer from the mischief of lack of proper verification with the result that the affidavit cannot be relied on for the purpose of dispensing with the meetings and in the circumstances, this Tribunal propose to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, secured and Unsecured Creditors, or dispensing with the same as well as issue of notices including by way of paper publication as follows:-

**A) In relation to the Applicant-1 / Transferor Company:**

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(i) With respect to Equity shareholders:

Meeting of the Equity shareholders of the Applicant-1 /Transferor Company is directed to be held at 11:30 AM at its registered office at L-2A, Hauz khas Enclave, New Delhi-110016 on 9<sup>th</sup> October, 2017 subject to the notice of meeting being issued. The quorum for the meeting of the Equity shareholders of Applicant-1 /Transferor Company shall be 2 in number or 100% in value in terms of the total equity share capital for the equity shareholdings meeting.

(ii)With respect to Secured Creditors:

Since it is represented by the Applicant-1/ Transferor Company that there is no Secured Creditor in the Company, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Applicant-1/ Transferor Company that there is no Unsecured Creditor in the Company, the necessity of convening a meeting does not arise.

**B) In relation to Applicant-2/ Transferee Company:**



(i) With respect to Equity shareholders:

Meeting of the Equity shareholders of the Applicant-2 /Transferee Company is directed to be held at 12:30 PM at its registered office at L-2A, Hauz khas Enclave, New Delhi-110016 on 9<sup>th</sup> October, 2017 subject to the notice of meeting being issued. The quorum for the meeting of the Equity shareholders of Applicant-2 /Transferee Company shall be 2 in number or 100% in value in terms of the total equity share capital for the equity shareholdings meeting.

(ii) With respect to Secured Creditors:

Since it is represented by the Applicant-2/ Transferee Company that there is no Secured Creditor in the Company, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Applicant-2/ Transferee Company that there is no Unsecured Creditor in the Company, the necessity of convening a meeting does not arise.

C) Ms. Vasudha Sen, Advocate (9560137778) appointed as the Chairperson and Mr. Mansumyer Singh, Advocate (9873331132) is appointed as the Alternate Chairperson and Scrutinizer for the meeting of Equity Shareholders as may have been directed to be convened by this Tribunal as above of the Applicant Companies.



D) The fee of the Chairperson for the aforesaid meetings shall be Rs. 75,000 and the fee of the Alternate Chairperson and Scrutinizer shall be Rs. 50,000 in addition to meeting their incidental expenses. The Chairpersons will file their reports within a week from the date of holding of the above said meetings.

E) That individual notices of the said meetings shall be sent by the Applicant Companies through registered post or speed post or through courier or through e-mail , 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme of Amalgamation , copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.

F) That the Applicant Companies shall publish advertisement with a gap of atleast 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the Business Standard in English (Delhi Edition), and Jansatta in Hindi (Delhi Edition) stating the copies of Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies.

G) Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable to the respective companies under the Act and rules framed there under. The Chairperson shall as aforesaid be responsible to report the result of the meeting within two weeks of the conclusion of the meeting with details of voting on the proposed scheme.

H) The companies shall individually send notice to Central Government, the Income Tax Authorities, Registrar of Companies NCT Delhi & Haryana as well as other sectoral regulators who may have significant bearing on the operation of the applicant companies or the Scheme per se along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

I) The applicant companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor or member of all the companies entitled to attend the meetings as aforesaid.

J) The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

K) All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

The application stands allowed on the aforesaid terms.

This is the modified order passed on 01.09.2017 along with necessary modifications incorporated, pursuant to an application filed in Company Application No. 23/C-III/ND/2017 in relation to the original order passed on 26.07.2017.

Sd—

(R.VARADHARAJAN)

MEMBER (JUDICIAL)

U.D Mehta