

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME PETITION NO. 805 OF 2017

CONNECTED WITH

COMPANY SCHEME APPLICATION NO. 630 OF 2017

Barclays Shared Services Private Limited
[CIN: U72900MH2007PTC293350]

...Petitioner Company
(Transferor Company)

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME PETITION NO. 807 OF 2017

CONNECTED WITH

COMPANY SCHEME APPLICATION NO. 631 OF 2017

Barclays Technology Centre India Private
Limited [CIN: U72200PN2007FTC132479]

...Petitioner Company
(Transferee Company)

In the matter of the Companies Act, 2013;

And

In the matter of Petition under Sections 230-
232 of the Companies Act, 2013;

And

In the matter of Scheme of Amalgamation
between Barclays Shared Services Private
Limited and Barclays Technology Centre
India Private Limited.

Order delivered on 2nd November, 2017

Coram:

B.S.V. Prakash Kumar, Member (J)
V. Nallasenapathy, Member (T)

For the Petitioner Companies: Mr. Simil Purohit along with Mr. Tapan Deshpande and Ms. Priya Patwa, Advocates i/b. Cyril Amarchand Mangaldas.

For Regional Director: Mr. S. Ramakantha.

Per: B.S.V. Prakash Kumar, Member (J)

ORDER

1. Heard the Advocate for the Petitioner Companies. No one appears before this Tribunal to oppose the present Company Scheme Petitions seeking sanction to the Scheme of Amalgamation between Barclays Shared Services Private Limited (“**Transferor Company**”) and Barclays Technology Centre India Private Limited (“**Transferee Company**”) (both the Transferee Company and the Transferor Company collectively referred to as the “**Petitioner Companies**) (“**Scheme**”), nor has any party controverted the averments made in the Petitions.
2. The Advocate appearing for the Petitioner Companies states that the Petitions have been filed to seek sanction to the Scheme, pursuant to the provisions of Sections 230 - 232 and other relevant provisions of the Companies Act, 2013.
3. The Transferor Company was incorporated to engage *inter alia*, in the business of providing Information Technology (IT) and Information Technology enabled services (ITeS) to the Barclays Group and back office data processing operations, and utilities to various affiliate entities and also to carry out transaction processing, web enabled customer care, data digitalization, software development and other IT infrastructure related activities, remote processing centre, receiving, collecting, compiling, retrieving, accumulating and assimilating data, information, statistics and

details to its clients. The Transferee Company is primarily engaged in the business of Information Technology (IT) and Information Technology enabled services (ITeS) including development, maintenance and enhancement of software for new technologies and platform and up-gradation or modification of existing software applications and systems to Barclays Group entities worldwide. The software services provided by the Transferee Company cover support for development, maintenance and enhancement of software and up-gradation, modification of existing software based on specific instructions from the Group. The software services are rendered by the Transferee Company to support the internal software related requirements of the Barclays Group and are not for sale to any third party customers. The Learned Advocate for the Petitioner Companies says that the background, circumstances, rationale and benefits of the Scheme are that the Transferee Company and the Transferor Company are both companies that are wholly owned within the Barclays Group of companies the ultimate parent of which is Barclays PLC, which is incorporated and registered in England. Since the Transferor Company and the Transferee Company provide services only to companies within the Barclays Group, the proposed Scheme will allow the Barclays Group to streamline its holding in India, simplify shareholding structure by eliminating cross-holdings and reduce shareholding tiers. Further, the Scheme shall enable both the Transferor Company and the Transferee Company to realise the substantial benefits of greater synergies between their businesses, simplification of management structure, leading to better service delivery and the ability to tap a larger, single employee base for seamless execution, stream-lined administration and a reduction in costs from more focused operational efforts, rationalization, standardisation and simplification of business processes, and the elimination of duplication,

and rationalization of administrative expenses. The Scheme will also result in reduction of multiplicity of legal and regulatory compliances required at present to be carried out by both the Transferor Company and the Transferee Company. The increased asset base of the Transferee Company would have better financial viability and clearer focus which would be in the interests of all creditors, including the creditors of the Transferor Company. The banks, creditors and financial institutions, if any, of both the Transferor Company and the Transferee Company are not adversely affected by the proposed Amalgamation as their position and security is maintained. The Boards of Directors of the Transferor Company and the Transferee Company, have approved the Scheme by passing their respective board resolutions which are annexed to the Company Scheme Petitions.

4. The Advocate for the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal and have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted.
5. The Regional Director has filed his Report dated 12th October, 2017 *inter alia* stating therein that save and except as stated in paragraph IV (a) to (e) of the said Report, it appears that the Scheme was not prejudicial to the interests of the shareholders and the public. The observations made by the Regional Director in paragraph IV of the Report are, for the sake of ready reference, reproduced hereunder:

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

- (a) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
- (b) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the company vide letter dated 05.07.2017 has served a copy company scheme application No. 630 & 631 of 2017 along with relevant orders etc., further the Regional Director has also issued a reminder 21.09.2017 to IT Department.*
- (c) *In addition to compliance of AS-14 (IND AS-103) the Petitioner Companies 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.,*
- (d) *Petitioner in clause 15 of the scheme has inter alia mentioned that Upon the Scheme becoming effective with effect from the Appointed Date, the name of the Transferee Company may be changed to the following name: "Barclays Global Service Centre Private Limited", or such other name as may be approved by the Registrar of Companies Pune, subject to the Transferee Company filing all the necessary forms and applications with the Registrar of Companies, Pune in this regards. Approval of the shareholders of the Transferor Company and the Transferee Company to the Scheme shall be considered as the approval required under the Act for the name change.*
- In this regard, Petitioner Companies have to undertake to mention the reason for change of name for justification and further state that the Transferee Company shall use the new name only after the requisite form is filed before the Registrar of companies and the same is approved.*
- (e) *Foreign bodies corporates are holding 66% shares of Transferor Company and 99% of Transferee Company. Hence notice to Reserve Bank Of India is to be submitted by the Petitioner Companies."*

6. As far as the observation in paragraph IV (a) of the said Report is concerned, the Advocate for the Petitioner Companies on instructions states that the Scheme is in compliance with the provisions of the Income Tax Act, 1961. The tax implication, if any, arising out of the Scheme shall, in any event, be subject to the final decision of the Income Tax Authority and the final orders, if any, in any appeals that may be preferred therein.

Sanction to the Scheme by this Tribunal will not limit the powers of the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Companies.

7. As far as the observation in paragraph IV (b) of the said Report is concerned, the Advocate for the Petitioner Companies states that the notices of the hearing of the Petitions have been given to the Income Tax Authorities and requisite affidavits proving service of the notices have been filed before this Tribunal.
8. As far as the observation in paragraph IV (c) of the said Report is concerned, the Advocate for the Petitioner Companies states that the Petitioner Companies undertake that, in addition to compliance with AS-14 (IND AS- 103) the Petitioner Companies 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) and all the Accounting Standards, as are applicable under law.
9. As far as the observation in paragraph IV (d) of the said Report is concerned, the Advocate for the Petitioner Companies on instructions submits that the justification and reason for the change of name of the Transferee Company to the name "Barclays Global Service Centre Private Limited" as set out in Clause 15 of the Scheme is that the proposed new name of the Transferee Company clearly identifies the business activity of the Transferee Company subsequent to the sanction to the Scheme to reflect that the Company provides services to a global organisation. The Advocate for the Transferee Company on instructions states that the Transferee Company undertakes to this Tribunal that the Transferee

Company shall use the new name only after the requisite form is filed before the Registrar of Companies and the same is approved.

10. As far as the observation in paragraph IV (e) of the said Report is concerned, the Advocate for the Petitioner Companies on instructions states that Reserve Bank of India is not a Sectoral Regulator of the Petitioner Companies, and in view thereof, notice under Section 230 (5) of the Companies Act, 2013 was not required to be given to Reserve Bank of India. In any event as observed by this Tribunal, the Petitioner Companies have given notice to the Reserve Bank of India. The Advocate for the Petitioner Companies on instructions states that the Transferee Company undertakes to this Tribunal that the Transferee Company will seek requisite approval from the appropriate authority, including Reserve Bank Of India, before issuing shares to the foreign shareholders of the Petitioner Companies in terms of the Scheme.
11. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 6 to 10 above. The clarifications and undertakings given by the Petitioner Companies, are hereby accepted.
12. The Official Liquidator has filed his Report stating that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 805 and 807 of 2017 are made absolute in terms of prayer clauses (a) to (c) and (a) to (b), respectively.
15. The Transferee Company to lodge a certified copy of this order along with the sanctioned Scheme attached thereto with the concerned Collector of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified copy of this order.
16. The Petitioner Companies are directed to file a copy of the certified copy of this order along with a copy of the sanctioned Scheme attached thereto with the concerned Registrar of Companies, electronically, along with e-form INC 28 within 30 days of receipt of the certified copy of this order along with the sanctioned Scheme.
17. The Petitioner Companies to individually pay costs of the Company Scheme Petition of INR 25,000/- to the Regional Director, Western Region, Mumbai. The Transferor Company to pay the costs of the Company Scheme Petition of INR 25,000/- to the Official Liquidator, High Court, Bombay as well. Costs to be paid within four weeks from the date of the order.
18. All concerned authorities and persons are to act on a copy of this order along with the sanctioned Scheme, duly certified by the officer of National Company Law Tribunal, Mumbai Bench.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
B.S.V. Prakash Kumar
Member (Judicial)