

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

CSP NO 540 OF 2017  
IN  
CSA NO 230 OF 2017

In the matter of the Companies Act, 2013

And

In the matter of Section 230 to Section 232 and other  
applicable provisions of Companies Act, 2013

And

In the matter of Scheme of Amalgamation amongst EPS ATM  
Services Private Limited and Electronic Payment and Services  
Private Limited and their respective shareholders

EPS ATM Services Private Limited .....Petitioner/Transferor Company

Electronic Payment and Services Private Limited... Petitioner /Transferee Company

Order delivered on 30<sup>th</sup> November, 2017

**Coram:**

Hon'ble B.S.V. Prakash Kumar, Member (J)

Hon'ble V .Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co.

Mr. S. Ramakantha, Joint Director in the office of Regional Director

Mr. Ramesh Gholap, Deputy Registrar of Companies

Mr. Santosh Dalvi, Assistant in the office of Official Liquidator

**Per: V. Nallasenapathy, Member (T)**

**ORDER**

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation amongst EPS ATM Services Private Limited and Electronic Payment and Services Private Limited and their respective shareholders.
3. The learned Counsel for the Petitioners submit that the Transferor Company is engaged in the business of providing services namely operation, maintenance, repairs, etc. covered under ATM Operations and management services. The Transferee Company is engaged in the business of providing an integrated solution

which includes operation, maintenance and management of ATMs in all developed as well as remote areas.

4. The amalgamation of EPS ATM Services Private Limited with Electronic Payment and Services Private Limited would have the following benefits:
  - a. The consolidation of the activities by way of an amalgamation will lead to synergies of operations and a stronger and wider capital and financial base for future growth/expansion.
  - b. The Amalgamation will result in economies of scale, reduction in overheads, administrative, managerial and other expenditure, operational rationalization, organizational efficiency, and optimal utilization of various resources.
  - c. The managerial expertise of the companies will be combined giving additional strength to the Transferee Company. Consequently, the Transferee Company will offer a strong financial structure to all creditors including the creditors of the Transferor Company, facilitate resource mobilisation and achieve better cash flows.
  - d. Duplication of administrative functions will be eliminated together with the multiple record-keeping, resulting in reduced expenditure.
  - e. The Amalgamation will result in a significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by both the Transferor and the Transferee Companies.
  - f. The banks, creditors and institutions, if any, are not affected by the proposed amalgamation as their security is maintained.
  - g. The increased asset base of the Transferee Company and greater revenue inflow would be to the benefit of all the shareholders and creditors of the Transferor Company and the Transferee Company, who would continue to be associated with the Transferee Company.
  - h. The Amalgamation shall result in the combination of manpower of both the companies and a single management structure for the companies.
  - i. The combined managerial and technical expertise would enable the Transferee Company to develop a business model that would be competitive and cogent.
5. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Scheme Application and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Scheme Application .

6. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Court/Tribunal and they have filed necessary Affidavits of compliance in the Court/Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.
7. The Regional Director has filed his Report stating therein that save and except as stated in paragraph IV of the said Report, 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:

- (a) It is observed from the main objects of the Transferor Company that it had been allowed as assignee by M/s CISB Bureaus Facility Services Private Limited (CISB), Parent/Promoter Company for deployment of ATMs on an outstanding model for 26 Public Sector Banks in the State of Maharashtra. No consent or NOC of the Company in respect of this merger has been enclosed with Scheme. The Petitioner Companies may be directed to produce the same.*
- (b) As per the existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. The Petitioner Companies served copy of the Scheme along with relevant orders etc to Income Tax Department. Further, the Office of the Regional Director, WR has also issued reminders on **18-10-2017 and 24-10-2017**.*
- (c) 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 Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner company.*

- (d) *Regarding Clause 11.5 of the Scheme, it is stated that the surplus/deficit, if any arising out of the Scheme shall be booked into the Reserve Account of the Transferee Company and shall not be allowed to use the Securities Premium Account for above purpose as stated in the Scheme. The said Company shall be directed to follow provisions contained in Para No. 37 and 38 of Accounting Standard – 14 and make compliance of the said Accounting Standard. As Security Premium Account is not available for the above purposes, there will be no question of reduction of Share Capital of the Transferee Company.*
- (e) *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.*
- (f) *In accordance to proviso to Section 233(3) of the Companies act, 2013, the Company may be directed to file a Certificate from the Company's Auditors to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act 2013.*
- (g) *As regards Para No. 7 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation for setting-off of fees paid by the Transferor Company on its Authorized Share Capital in accordance to the provisions of Section 232(3)(i) of the Companies Act, 2013.*
8. As far as observations made in paragraph IV (a) of the report of Regional Director is concerned, the Counsel for the Petitioners clarifies that M/s CISB Bureaus Facility Services Private Limited (CISB), being one of the equity shareholders in the Transferee Company has voted in favor of the proposed Scheme of

Amalgamation in the equity shareholders meeting of the Transferee Company and has not raised any objection on the said merger.

9. As far as observations made in paragraph IV (b) & (c) of the report of Regional Director is concerned, the Petitioners submits that the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
10. As far as observations made in paragraph IV (d) & (e) of the Report of Regional Director is concerned, the Transferee Company undertakes that in addition to compliance of AS-14 (IND AS-103), to the extent applicable, 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-14, AS-5 etc.
11. In so far as observations made in paragraph IV (f) of the report of Regional Director is concerned, the Counsel for the Petitioners clarifies that the certificate issued by the Auditor that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act 2013 is annexed as Annexure- H to the Petition.
12. In so far as observations made in paragraph IV (g) of the report of Regional Director is concerned, the Transferee Company clarifies that in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation shall be set-off of fees paid by the Transferor Company on its Authorized Share Capital in accordance to the provisions of Section 232(3)(i) of the Companies Act, 2013.
13. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 8 to 12 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

14. The Official Liquidator has filed his report stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved without winding up.
15. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 540 of 2017 filed by the Transferor and Transferee Company are made absolute in terms of prayer clause (a).
17. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
18. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with E-form INC 28 within 30 days from the date of issuance of the order by the Registry.
19. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Transferor Company to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay.
20. The costs to be paid within four weeks from the date of receipt of Order.
21. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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