

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME APPLICATION NO 230 (MAH) OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 233 and other applicable provisions of the Companies Act, 2013 ;

AND

In the matter of Scheme of Amalgamation of EPS ATM Services Private Limited ('the Transferor Company') and Electronic Payment and Services Private Limited ('the Transferee Company') and their respective Shareholders

EPS ATM Service Private Limited, a Company }  
Incorporated under the provisions of Companies Act 1956 }  
having its registered office at 518-535, F Wing, 5th Floor, }  
Solaris - I, Saki Vihar Road, Andheri (East), Mumbai – 400072, }  
Maharashtra }  
.....First Applicant Company

AND

Electronic Payment and Services Private, a Company }  
Incorporated under the provisions of Companies Act 1956 }  
having its registered office at 518-535, F Wing, 5th Floor, }  
Solaris - I, Saki Vihar Road, Andheri (East), Mumbai – 400072, }  
Maharashtra }  
.....Second Applicant Company

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the Applicant Company

**Coram: B.S.V. Prakash Kumar, Member (Judicial)**

**V. Nallasenapthy, Member (Technical)**

**Dated: 22<sup>nd</sup> day of March 2017**

**MINUTES OF THE ORDER**

1. The Counsel for the Applicants states that the present Scheme is an Amalgamation of EPS ATM Services Private Limited ('the Transferor Company')

and Electronic Payment and Services Private Limited ('the Transferee Company') and their respective Shareholders. This Scheme of Amalgamation is proposed to merge the Transferor Company with the Transferee Company without winding up of the former pursuant to the relevant provisions of the Act.

2. The Counsel for the Applicants further 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.
3. The Counsel for the Applicants further submit it is proposed to merge the Transferor Company with the Transferee Company without winding up of the former for the purposes of better, efficient and economical management, control and running of their businesses, achieve synergies in business activities, attaining economies of scale, for further development and growth of the business of the Transferee Company and to avoid and eliminate unnecessary duplication of costs of administration, etc. and for administrative convenience. Therefore, with a view to effect such plan, the Board of Directors of Transferor Company and the Transferee Company proposes to merger the Transferor Company with the Transferee Company without winding up of the Transferor Company.
4. That the meeting of the Equity Shareholders of the First Applicant Company be convened and held at 518-535, F Wing, 5th Floor, Solaris - I, Saki Vihar Road, Andheri (East), Mumbai – 400072, Maharashtra on 10<sup>th</sup> May 2017 at 10:00 A.M for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of EPS ATM Services Private Limited and Electronic Payment and Services Private Limited and their respective Shareholders.
5. The First Applicant Company will also obtain the approval of Equity Shareholders to the said Scheme of Amalgamation through Postal Ballot.
6. That the meeting of the Equity Shareholders of the Second Applicant Company be convened and held at 518-535, F Wing, 5th Floor, Solaris - I, Saki Vihar Road, Andheri (East), Mumbai – 400072, Maharashtra on 10<sup>th</sup> May 2017 at 11:00 A.M for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of

EPS ATM Services Private Limited and Electronic Payment and Services Private Limited and their respective Shareholders.

7. That the meeting of the Preference Shareholders of the Second Applicant Company be convened and held at 518-535, F Wing, 5th Floor, Solaris - I, Saki Vihar Road, Andheri (East), Mumbai – 400072, Maharashtra on 10<sup>th</sup> May 2017 at 11:45 A.M for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of EPS ATM Services Private Limited and Electronic Payment and Services Private Limited and their respective Shareholders.
8. The Second Applicant Company will also obtain the approval of equity shareholders and preference shareholders to the said Scheme of Arrangement through Postal Ballot.
9. That at least 30 clear days before the said Meetings of the Shareholders of the First and Second Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14<sup>th</sup> December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the First and the Second Applicant Company for the purpose of receiving such notices by email), addressed to each of the Shareholders of the First and the Second Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.
10. That at least 30 clear days before the meetings of the Shareholders of the First and Second Applicant Company to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the First and Second Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.

11. That the Notice of the Meetings shall be advertised in two local newspapers viz. "Free Press Journal" in English and "Navshakti" in Marathi, both circulated in Mumbai not less 30 days before the date fixed for the meeting.
12. That Mr. Mani Mamallan, Director of the First Applicant Company, and failing him, Mrs. Vidya Rani Mamallan, Director of the First Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the First Applicant to be held at 518-535, F Wing, 5th Floor, Solaris - I, Saki Vihar Road, Andheri (East), Mumbai – 400072, Maharashtra, on 10<sup>th</sup> May 2017 at 10:00 A.M or any adjournment or adjournments thereof.
13. That Mr. Mani Mamallan, Director of the Second Applicant Company, and failing him, Mr. Sanjay Amrit Kapoor, Director of the Second Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders and Preference Shareholders of the Second Applicant Company to be held at 518-535, F Wing, 5th Floor, Solaris - I, Saki Vihar Road, Andheri (East), Mumbai – 400072, Maharashtra on 10<sup>th</sup> May 2017 at 11:00 A.M and 11.45 AM or any adjournment or adjournments thereof.
14. That the Chairman appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meetings referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).
15. That the quorum of the aforesaid meetings of the Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
16. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meetings, are filed with the First and Second Applicant Company at its Registered Office at 518-535, F Wing, 5th Floor, Solaris - I, Saki Vihar Road, Andheri (East), Mumbai – 400072, Maharashtra not later than 48 hours before the aforesaid meeting.

17. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the First and Second Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
18. That Dilip Bramhecha & Associates, Chartered Accountants is hereby appointed as Scrutinizers of the meetings of the Equity and Preference shareholders of the First and the Second Applicant Company proposed to be held on 10<sup>th</sup> May 2017 at 518-535, F Wing, 5th Floor, Solaris - I, Saki Vihar Road, Andheri (East), Mumbai – 400072, Maharashtra and his remuneration is fixed as Rs. 1,00,000/- excluding taxes.
19. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
20. That the Chairman of the meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.
21. The First Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
22. The Second Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon

the Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

23. The First Applicant Company is also directed to serve notice along with copy of scheme upon Official Liquidator. M/s Saket Shantilal Jain & Associates are appointed to assist the Official Liquidator to scrutinize books of accounts of the Applicant Company for the last 5 years. The Transferee Company to pay fees of Rs 90,000/-.
24. The Counsel for the Applicant Company submits that there are no Secured Creditors in the First Applicant Company, therefore the question of sending notices to the Secured Creditors does not arise. The Counsel for the First Applicant Company further submits that since the Scheme is an amalgamation between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby directs the First Applicant Company to issue notice to all its Unsecured Creditors under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
25. The Counsel for the Second Applicant Company further submits that since the Scheme is an amalgamation between the Applicant Company and their respective shareholders only a meeting of the Equity and Preference Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby directs the Second Applicant Company to issue notice to all its Secured and Unsecured Creditors with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
26. The First and Second Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, Creditors, publication of notices in newspapers and to the regulatory authorities as stated in clause 21 and 22 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

**B.S.V. Prakash Kumar, Member (Judicial)**

Sd/-

**V. Nallasenapthy, Member (Technical)**