

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT MUMBAI

TRANSFER COMPANY SCHEME PETITION NO.341 OF 2017

IN

B.H.C.COMPANY SCHEME PETITION NO. 892 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 768 OF 2016

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of Global Information Services Private Limited and TBSS Healthcare TPA Services Limited with Tata Business Support Services Limited and Their respective shareholders and creditors

Global Information Services Private Limited)
a Company incorporated under the)
Companies Act, 1956 and having its registered)
office at A-501, 5th Floor , Building No. 4,)
Infinity Park, Gen. A.K. Vaidya Marg, Dindoshi,)
Malad (East), Mumbai- 400 097)

... Petitioner Company/
Transferor Company No. 1

Called for Hearing

Mr. Karthik Somasundram a/w Mr. Anirban Sen i/b. M/s Krishnamurthy and Co.,
Advocates for the Petitioner Company

Mr. Ramesh Gholap, Assistant Director in the office of the Regional Director

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

V. Nallasenapathy, Member (Technical)

Date: 09th March, 2017

1. Heard Counsel for the Petitioner Company, no objector appears before this Tribunal to oppose the Petition and the Scheme nor has any party controverted the averments made in this Petition.
2. Learned Counsel appearing for the Petitioner Company states that the Petition has been filed to seek sanction to the Scheme of Arrangement of Global Information Services Private Limited ("**Petitioner Company**" / "**Transferor Company No. 1**") and TBSS Healthcare TPA Services Limited ("**Transferor Company No.2**") with Tata Business Support Services Limited ("**Transferee Company**") and their respective shareholders ("**Scheme**"), pursuant to the provision of Sections 230-232 and other relevant provisions of the Companies Act, 2013.
3. The Petitioner Company was incorporated mainly for the purpose of carrying on the business of business process outsourcing for insurance companies. The Petitioner Company started its business after incorporation, but has not been carrying on any business since April 2010. The Transferee Company was incorporated mainly for the purpose of providing business of providing business process outsourcing services such as front office services (activities focused on

client's end customers like Customer Acquisition, Customer Management and Loyalty Management). The Transferee Company commenced its business in or around March 14, 1995 and carries on its business operations till date. The Learned Counsel for the Petitioner Company says that the background, circumstances, rationale and significant benefit of the Scheme are as under: "Since, Transferor Company No. 1 is not continuing its business and Transferor Company No. 2 has not commenced any business activity yet and there are no future plans to commence any business operations, it is proposed to amalgamate Transferor Company No. 1 and Transferor Company No. 2 with the Transferee Company. The proposed amalgamation will achieve synergies, enhanced organizational capabilities, management efficiency and would help in reducing the administrative cost since it would eliminate the non-operational subsidiaries. It is, therefore, considered desirable and expedient to amalgamate Transferor Company No. 1 and Transferor Company No. 2 with the Transferee Company in the manner and on the terms and conditions stated in this Scheme. The Scheme is proposed accordingly and will be beneficial for the said companies and all concerned." The Board of Directors of the Transferor Companies and the Transferee Company, have approved the said Scheme by passing their respective Board Resolution which are annexed to the Petition.

4. The Learned Counsel appearing on behalf of the Petitioner Company has stated that the Petitioner Company has complied with all the requirements as per directions of the Hon'ble Bombay High Court and it has filed necessary Affidavits of compliance in this Tribunal. More over the Petitioner Company undertakes 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 a report dated February 23, 2017 and *inter alia* stating therein that save and except as stated in Paragraph IV (1) to (9), of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholder and public. The observations made by the Regional Director in paragraph IV are for the sake of ready reference, reproduced hereunder:

IV. The observation of the Regional Director on the proposed scheme to be considered are as under:-

- 1. The tax implications, 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 Authorities to scrutinize the tax returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
- 2. According to the provisions of Section 232 (10) of the Act, 2013 the Transferee Company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished, whereas the Petitioner has not mentioned.*

In view of above, Petitioner may be asked to amend the scheme accordingly.

- 3. As per the Audited Balance Sheet of the Transferor Company No. 1, Transferor Company No. 2 and the Transferee Company as on 31.03.2016, the authorised share capital is Rs. 20,00,00,000/- (20,00,000 equity shares of Rs. 100/- each), Rs. 1,00,00,000/- (10,00,000 equity shares of Rs. 10/- each)*

and Rs. 170,00,00,000/- (13,00,00,000 equity shares of Rs. 10/- each and 4,00,00,000 preference shares of Rs. 10/- each) respectively. The face value of the equity shares of the Transferor Company No. 1 is Rs. 100/-, whereas the face value of equity shares of Transferor Company No. 2 and Transferee Company is Rs. 10/-.

In this regard it is submitted, approval of shareholder for subdivision is not available.

- 4. The Transferor Company No. 1 has become a wholly owned subsidiary of the Transferee Company as per the unaudited balance sheet dated 30.09.2016. However, as per the audited balance sheet as on 31.03.2016 of the Transferor Company No. 1 is not wholly owned by the Transferee Company.*

In this regard the Transferor Company No. 1 may be asked to submit the share transfer details showing the date from which the Transferor Company No. 1 has become a wholly owned subsidiary of the Transferee Company along with the proof of filing with Registrar of Companies and approval of RBI.

- 5. Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 is not available.*

In this regard Petitioner may be asked to submit the certificate.

- 6. A notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar, Official Liquidators issued by the Transferor Companies or the Transferee Company is not found.*

7. *Objections or suggestions considered by the Companies in their respective general meetings, not found as required under the provisions of Section 233 (1) (b) of the Companies Act, 2013.*
8. *Declaration of solvency filed by each of the Companies involved in the merger, in the prescribed Form in accordance with the provisions of Section 233 (1) (c) before the concerned authority is not available.*
9. *As per the scheme appointed date is 1.04.2016. Petitioner submitted audited balance sheet and profit and loss account as of 31st March 2016. According to provisions of Section 232 (2) (e) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the Company summoned for the purpose approving the scheme is to be circulated for the meeting.*

Details of approval by the General Meeting is not available in the file.

Hon'ble NCLT may be requested to decide on observations on points 6 to 9 on merits.

Save and except as stated in para IV (1) to (9) it appears that the scheme is not prejudicial to the interest of shareholders and public.

6. As far as the observations in paragraph IV (1) of the said report is concerned, the Learned Counsel for the Petitioner Company clarifies that the approval of the scheme by this Tribunal will not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Company after giving effect to the Scheme and all issues arising out of the Scheme will be met and answered in accordance with the applicable law.

7. As far as the observations in paragraph IV (2) of the said report is concerned, the Learned Counsel for the Petitioner Company submits that the provisions of Section 233 are not applicable in the present matter. Further, the Learned Counsel also mentions that the Scheme provides that after the amalgamation is effected, the entire shareholding held by the Transferee Company and its nominee(s) in the Petitioner Company shall stand cancelled and no new shares of the Transferee Company will be issued in lieu thereof.

8. As far as the observations in paragraph IV (3) of the said report is concerned, the Learned Counsel submits that the Scheme is approved by the shareholders of the Petitioner Company and Transferor Company No. 2. The Learned Counsel for the Petitioner Company submits that original consent letters of the Shareholders of the Petitioner Company along with the Board Resolution dated May 16, 2016 of the Transferee Company were filed in Company Summons for Direction No. 768 of 2016 which was allowed by Hon'ble Mr. Justice A.K. Menon on September 29, 2016. The Learned Counsel for the Petitioner Company undertakes to do all necessary compliances on behalf of the Transferee Company to effect reorganisation of its capital structure in terms of the scheme of amalgamation.

9. As far as the observations in paragraph IV (4) of the said report is concerned, the Learned Counsel of the Petitioner Company submits that the Transferee Company had acquired shares in the Petitioner Company from AIG Property Casualty International LLC on May 10, 2016. The Petitioner Company's Counsel further submits that the acquisition of shares by the Transferee Company into the Petitioner Company will reflect in the Annual Return of the Transferee Company when it will be filed after March 31, 2017. The Annual General Meeting of the Petitioner Company has not been convened after June 13, 2016. The

Learned Counsel of the Petitioner Company further submits that the Petitioner Company has filed Form MGT-14 to update the Registrar of Companies on the same. The Reserve Bank of India has been notified of the said transfer of shares by filing Form FC-TRS by the Authorized Dealer bank, ie. Union bank of India on behalf of the Petitioner Company.

10. As far as the observations in paragraph IV (5) of the said report is concerned, the Learned Counsel of the Petitioner Company submits that that the Petitioner Company's statutory auditor certified that the proposed scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.
11. As far as the observations in paragraph IV (6) of the said report is concerned, the Learned Counsel of the Petitioner Company submits that the compliances of Section 233 (1) (a) of the Act is not required to be followed by the Petitioner Company. However, notice of admission of the Company Scheme Petition has been served on the Registrar of Companies, Mumbai and Official Liquidator, High Court, Bombay and copies of the said notices bearing endorsement of the respective regulatory authorities have been filed with this Tribunal.
12. As far as the observations in paragraph IV (7) of the said report is concerned, the Learned Counsel of the Petitioner Company submits that the Petitioner Company is not required to comply with Section 233 (1) (b) of the Act. However, the convening of meetings of the shareholders have been dispensed with by the High Court vide its order dated September 29, 2016 in Company Summons for Direction No. 768 of 2016. The present Petition was thereafter filed in the Hon'ble High Court and after admission of the said Petition, Section 233

(1) (b) of the Act was notified and the matter was transferred to this Tribunal under the provisions of Sections 230 – 232 of the Companies Act, 2013.

13. As far as the observations in paragraph IV (8) of the said report is concerned, the Learned Counsel of the Petitioner Company submits that the compliance of proving solvency of the Petitioner Company in accordance with Section 233 (1) (c) does not arise. However, Learned Counsel of the Petitioner Company submits that the audited and unaudited financial statements which were filed in the Company Summons for Direction No. 768 of 2016 and in the present matter evidently show that the Petitioner Company is a solvent one.
14. As far as the observations in paragraph IV (9) of the said report is concerned, the Learned Counsel of the Petitioner Company submits that since the meeting of shareholders and creditors of the Petitioner Company were dispensed with prior to the notification of Section 232 (2) (e), the applicability of the said provision does not arise.
15. The observations made by the Regional Director have been explained by the Petitioner in paragraphs 6 to 14 above. The clarifications and undertakings given by the Petitioner Company are hereby accepted.
16. 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.
17. Since all the requisite statutory compliances have been fulfilled, Transfer Company Scheme Petition No. 341 of 2017 filed by the Petitioner/ Transferor Company No. 1 is made absolute in terms of prayer clauses A, B and D.

18. The Petitioner Company to lodge a copy of this order along with the sanctioned scheme attached thereto 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.
19. The Petitioner Company is directed to file 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 in addition to physical copy within 30 days of receipt of copy of this order along with the sanctioned scheme, duly authenticated by the Registrar/ Officer of this National Company Law Tribunal.
20. Petitioner Company to pay cost of this Company Scheme Petition of INR 25,000/- to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of the order.
21. All concerned authorities to act on a certified copy of this Order along with the sanctioned scheme, duly certified by the Deputy Director, National Company Law Tribunal.

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

Sd/-
V. Nallasenapathy,
Member (Technical)