

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH  
TRANSFERRED COMPANY SCHEME PETITION NO. 207 OF 2017

HIGH COURT COMPANY SCHEME PETITION NO.718 OF 2016

In the matter of the Companies Act, 1956;

And

In the matter of Section 391 & 394 of Companies Act, 1956(corresponding Sections 230 to 232 of the Companies ac, 2013);

And

In the matter of Scheme of Amalgamation of Swadhaar Information and Management Services Private Limited With Swadhaar FinServe Private Limited And Their Respective Shareholders

**SWADHAAR INFORMATION AND )**  
**MANAGEMENT SERVICES PRIVATE )**  
**LIMITED**, a company incorporated under )  
the provisions of Companies Act, 1956, )  
having its Registered office at Flat No. 603, )  
6<sup>th</sup> Floor, 517, Shree Prasad House, 35<sup>th</sup> )  
Road, TPS III, Bandra (West), Mumbai- )...Petitioner Company  
400 050

**Called for Hearing**

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

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

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

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

**Date : 8th March 2017**

**MINUTES OF ORDER**

1. Heard the learned counsel for the Petitioner Company. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Swadhaar

Information and Management Services Private Limited with Swadhaar FinServe Private Limited And their Respective Shareholders.

3. Learned Counsel for the Petitioner further states that since the Transferor Company is wholly owned subsidiary of the Transferee Company and all the shares of the Transferor Company are presently held by the Transferee Company, and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Transferor Company by the Transferee Company and there would be no reorganization of the Share Capital in the Transferee Company and also in view of the judgment of the Hon. Bombay High Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by Swadhaar FinServe Private Limited, the Transferee Company was dispensed with, by an order dated 22<sup>nd</sup> July, 2016 passed in CSD No. 629 of 2016 by High Court.
4. The learned Counsel for the Petitioner submits that the Petitioner Company is presently engaged in the business of being a business correspondent or business facilitators for banks, financial institutions and other service providers. The Transferee Company is also engaged in the business of being a business correspondent or business facilitator for banks, financial institutions and other service providers.
5. The Rational for the scheme of amalgamation is that RBL Bank Limited ('RBL bank') has acquired 30% equity stake in SFPL. For the above acquisition, RBL bank had sought approval from Reserve Bank of India ('RBI') which was given vide a letter dated 09th October 2015. In the said letter RBI has directed disposition of stake of SFPL in SIMS within one year of acquisition by RBL Bank. Hence, the Board of Directors of SFPL has decided to merge SIMS into SFPL. Further, since SFPL and SIMS are into a similar line of business, the amalgamation shall facilitate consolidation of all the undertakings/business of representing as business correspondent in order to enable effective management

and unified control of operations and create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.

6. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the Company Scheme Petition.
7. Counsel appearing on behalf of the Petitioner further states that the Petitioner Company has complied with all requirements as per directions of High Court and they have filed necessary affidavits of compliance in the High Court. Moreover, the Petitioner Company 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 undertakings given by the Petitioner Company is accepted.
8. The Official Liquidator has filed his report dated 20<sup>th</sup> February 2017 stating that the affairs of the Petitioner/Transferor Company have been conducted in a proper manner and that Petitioner/Transferor Company may be ordered to be dissolved.
9. The Regional Director has filed his Report dated 20<sup>th</sup> February 2017 stating therein, save and except as stated in paragraph IV, it appears that the scheme is not prejudicial to the interest of shareholders and public.

In paragraphs IV, of the said affidavit it is stated that:-

1. *The Tax implication if any arising out of this scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the transferee Company after giving effect to the Scheme. The decision of Income Tax Authority is binding on the petitioner company.*



2. *According to the provisions of Section 230(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 company has not mentioned .*

*In view of above, petitioner may be asked to amend the Scheme accordingly.*

3. *Petitioner in clause 3 in Part 1 under the heading definitions and share capital it is inter alia mentioned that SFPL had provided a loan to SwadhaarFinserve Employee Welfare Trust (EWT) for subscription of shares issued to it. Therefore, in accordance with the guidance note on accounting for share based payments issued by Institute of Chartered Accountants of India (ICAI) the face value of equity shares to EWT till 31.03.2016 have been duly shown as deduction from the issued, subscribed and paid up capital.*

*In this regard it is submitted that Minutes of approval of shareholders in general meeting is not submitted.*

4. *Certificate by 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.*

*Petitioner may be asked to submit the certificate.*

5. *Petitioner inter alia mentioned in the Preamble of the Scheme that, RBL Bank Limited formerly known as Ratnakar Bank Limited ('RBL bank') has acquired 30% equity stake in SFPL. For the above acquisition, RBL bank had sought approval from Reserve Bank of India ('RBI') which was given vide a letter dated 09<sup>th</sup> October 2015. In the said letter RBI has directed disposition of stake of SFPL in SIMS within one year of acquisition by RBL Bank. Hence, the Board of Directors of SFPL has decided to merge SIMS into SFPL.*

*In this regard it is submitted that, copy of notice served to RBI is not available as, according to the petitioner amalgamation is as per the direction of RBI vide its letter dated 09.10.2015*

6. *Petitioner interalia mentioned in the Preamble of the Scheme that SFPL was registered as a Non-Banking Financial Company ('NBFC') on 09<sup>th</sup> May, 2008. The Company has deregistered as NBFC on 21<sup>st</sup> January, 2016 and hence the Company has discontinued all lending operations. Copy of letter dated 21.01.2016 is not available.*
7. *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.*
8. *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.*
9. *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.*
10. *As per the Scheme Appointed date is 01/04/2016. Petitioner submitted Audited balance sheet and Profit and loss Account as on 31<sup>st</sup> 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 purposes of 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 point 7 to 10 on merits.*



*Save and except as stated in para IV (1) to (10) it appears that the Scheme is not prejudicial to the interest of shareholders and public.*

10. As far as the observations made in in paragraph IV (1) of the Report of Regional Director is concerned, the Petitioner Company undertakes to comply with all applicable provisions of the Income Tax Act and all tax implications, if any, arising out of the Scheme will be met and answered in accordance with law.
11. In so far as observations made in paragraph IV (2) of the Report of Regional Director is concerned, the Counsel for the Petitioner submits that in terms of clause 6.2 of the Scheme, the entire issued, subscribed and paid up capital of the Transferor Company is held by the Transferee Company and upon the Scheme becoming effective no shares of the Transferee Company will be allotted in lieu or exchange of its holding in the Transferor Company and the entire share capital of the Transferor Company shall stand cancelled. Therefore the question of Transferee Company as a result of compromise or arrangement, holding 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 does not arise. Therefore, the question of amending the Scheme does not arise.
12. In so far as observations made in paragraph IV (3) of the Report of Regional Director is concerned, the Counsel for the Petitioner submit that the shareholders approval for loan to EWT, the Transferee Company in its meeting of the Board of Directors held on 22<sup>nd</sup> February, 2010 approved for providing loan to SwadhaarFinserve Employee Welfare Trust (EWT) for subscription of shares issued to it. The Counsel for the petitioner further submits that the face value of the equity shares issued to EWT has been deducted from the issued, subscribed and paid up capital of the SFPL, in accordance with Clause 45 of “Employee Share based payment plan administered through a Trust” under the Guidance Note on Accounting for Employees Share based payment [GN(A) 18

(Issued 2005)] issued by the Institute of Chartered Accountants of India which is inter alia produced below:

*“45. For the purpose of preparation of consolidated financial statements as per Accounting Standards (AS) 21, ‘Consolidated Financial Statements’, issued by the Institute of Chartered Accountants of India, the trust created for the purpose of administering employee share-based compensation, should not be considered. This is because the standard requires consolidation of only those controlled enterprises which provides economic benefits to the enterprise and, accordingly, consolidation of entities, such as, gratuity trust, provident fund trust, etc., is not required. The nature of a trust established for administering employee share-based compensation plan is similar to that of a gratuity trust or a provident fund trust as it does not provide any economic benefit to the enterprise in the form of, say, any return on investment.”*

13. In so far as observations made in paragraph IV (4) of the Report of the Regional Director is concerned, the Counsel for the Petitioner submits that Certificate dated 21<sup>st</sup> February 2017 by Company’s Auditor has already been filed with the office of Regional Director. The same is also annexed to the Affidavit in rejoinder as Annexure-B.
14. In so far as observations made in paragraph IV (5) of the Report of Regional Director is concerned, the Counsel for the Petitioner submits that Reserve Bank of India (‘RBI’) vide letter dated 09<sup>th</sup> October 2015 gave approval to RBL Bank for the acquisition of 30% stake in SFPL (transferee company). However, RBI also directed to RBL Bank that within one year of their acquisition of shares in SFPL, SFPL (transferee company) should dispose of its stake in SIMS (transferor company). Therefore, the Board of Directors of SFPL decided to merge SIMS into SFPL to dispose of its stake in SIMS more particularly described in para 5 of this order. In so far as service of notice upon RBI is concerned, both the Companies are not NBFCs and therefore



there is no requirement of sending notices to Reserve Bank of India. Further, RBL Bank which is regulated by RBI is only an investor in the Transferee Company and not a party to the present petition. In view of the above the counsel for the petitioner submits that no further compliances are required to be done by the Petitioner qua the Reserve Bank of India as it has ceased to be an NBFC.

15. In so far as observations made in paragraph IV (6) of the Report of Regional Director is concerned, the copy of letter dated 21<sup>st</sup> January, 2016 is annexed as Annexure-C to the affidavit in rejoinder and the same is self explanatory.
16. In so far as observations made in paragraph IV (7) of the Report of Regional Director is concerned, the Counsel for the Petitioner submits that pursuant to letter dated 1<sup>st</sup> November 2016 issued by the Regional Director, the Petitioner has in response by their letter dated 22<sup>nd</sup> November, 2016 informed the Regional Director that notice of the Petition has been served upon the Official Liquidator. Further, the acknowledgement of service of notice is annexed to the affidavit of service a copy whereof was served along with other documents to the Regional Director. Similarly the notice to the Registrar of Companies was duly served and forms part of Report of Regional Director filed in this Hon'ble Tribunal.
17. In so far as observations made in paragraph IV (8)& (9) of the Report of Regional Director is concerned, the Counsel for the Petitioner submits convening and holding of meeting of Equity shareholders was dispensed with in pursuance of order dated 22<sup>nd</sup> July, 2016 passed by the High Court. The Application and Petition was filed under the provisions of Section 391/394 of the Companies Act, 1956 and therefore the provisions of section 233(1)(b)& (c) of the Companies Act, 2013 are not applicable.
18. In so far as observations made in paragraph IV (10) of the Report of Regional Director is concerned, the Counsel for the Petitioner submit that provisions of



232(2)(e) are not applicable in the facts of present case as the provisions applies only in case if the Tribunal under the Companies Act, 2013 directs convening of the meeting of the shareholders. In the present case the Scheme was filed under the Companies Act, 1956 and by order dated 22<sup>nd</sup> July, 2016 the meeting of the Equity Shareholders was dispensed with in view of consent given by all the Equity Shareholders. Therefore, the question of approval of scheme by the General Meeting does not arise.

19. The observations made in by the Regional Director have been explained by the Petitioner in paragraph 10 to 18 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
20. 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.
21. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No.207 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the Petition.
22. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.
23. The Petitioner Company 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.
24. The Petitioner Company to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay.

25. Costs to be paid within four weeks from today.
26. 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.
27. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

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

Sd/-

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