

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, AT HYDERABAD**

**C.P.No.329/2016  
[CP(TCAA)No.28/HDB/2017]**

Date of order: 09.05.2017

NowPos M-Solutions Private Limited  
H.No.8-2-624, Flat No.402, 4<sup>th</sup> Floor,  
Sai Durga Towers,  
Road No.10, Banjara Hills,  
Hyderabad – 500 034.

.... Petitioner/Transferor Company

**Parties Present:**

Counsels for the Petitioner :	Mr. V.S. Raju & V.B. Raju
Counsel for Official Liquidator:	Mr. J. Srinadh Reddy
Counsel for Regional Director:	Mr. B. Appa Rao, Central Govt. Standing Counsel

**CORAM:**

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

**CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL**

**ORDER**

(As per Rajeswara Rao Vittanala, Member (Judicial))



The Company Petition bearing CP.No.329/2016 [CP(TCAA)No.28/HDB/2017] was filed by M/s NowPos M-Solutions Private Limited (Petitioner/Transferor Company) before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh under Sections 391 & 394 of the Companies Act 1956, by seeking the Tribunal to sanction scheme of Amalgamation in question so as to be binding on all the Equity Shareholders/Members, Creditors and employees of the Petitioner/Transferee Company.

2. A Gazette Notification GSR 1134(E) dated 14<sup>th</sup> December, 2016 issued by the Ministry of Corporate Affairs with effective date of 15<sup>th</sup> December, 2016, and in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 & Rule 23A of NCLT Rules R/w Rule 3 of

Companies (Transfer of Pending Proceedings) Rules, 2016, jurisdiction is conferred on this Tribunal in respect of subject cases and thus pending cases also transferred from the Hon'ble High Court to the NCLT. Accordingly, the Hon'ble High Court transferred this case to this Bench. On transfer, case was listed before this Bench on 01.02.2017, 16.02.2017, 28.02.2017, 16.03.2017, 31.03.2017, 17.04.2017, 26.04.2017, 08.05.2017 and finally on 09.05.2017.

3. Heard, Mr V.S. Raju and V.B. Raju, Learned Counsels for the Petitioner/Transferee Company, Mr. B. Appa Rao, Central Government Standing Counsel and have carefully perused all pleadings along with material papers filed in its support.
4. Brief facts of case, which are relevant to the issue in question, are submitted :
  - a. Initially, the Petitioner/Transferor Company filed Company Application No.1271 of 2016 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh for dispensing with the convening of the meeting of the shareholders of the transferor Company for consideration of the proposed scheme of amalgamation of the Petitioner/Transferor Company with M/s Laurus Infosystems (India) Private Limited (Transferee Company) as detailed in the Scheme.
  - b. The said Company Application No.1271 of 2016 was disposed of by Hon'ble High Court vide its Order dated 01.09.2016 dispensing with the conducting of meetings of the shareholders and creditors of Petitioner/Transferor Company. After fulfilling requisite conditions for sanction of scheme in question, the present petition is filed before this Tribunal for sanction of the scheme.
  - c. The Petitioner/Transferor Company is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 09.05.2005 under the name "NowPos Online Services Private Limited". Subsequently, the name of the Company was changed to "NowPos M-Solutions Private Limited" with effect from 04.06.2010. The Registered Office of the





Company is situated at 8-2-624, Flat No.402, 4<sup>th</sup> Floor, Sai Durga Towers, Road No.10, Banjara Hills, Hyderabad – 500034. It is engaged in the business of production and development of internet programs, products, services and application, production and development of computer software, computer graphics, Computer aided designing and analysis etc. The present Authorized Share Capital of the Petitioner Company is Rs.17,00,00,000/- divided into 1,00,00,000 (One crore only) Equity Shares of Rs.10/- each and 70,00,000 (Seventy Lakhs only) optionally convertible redeemable Preference Shares of Rs.10/- each. The Issued, subscribed & Paid up capital of the company is Rs.15,69,01,950/- (Rupees Fifteen Cores Sixty Nine Lakhs One Thousand Nine Hundred and Fifty only) divided into 94,03,770 equity shares of Rs.10/- each and 62,86,425 optionally convertible redeemable preference shares of Rs.10/- each.

5. The object of Scheme of Amalgamation is as follows:

(i) The transferor Company and the Transferee Company are engaged in the business of production and development of Internet programs and computer software and have interdependent and complementary business activities. The transferor Company is also engaged in providing internet based, voice based and video based advertising and the Transferee Company is diversified in networking services and clinical research for pharmaceutical products and health care companies. Hence, to horizon the activities of both the companies, the Board of Directors of both the Companies have decided to amalgamate both the companies to have synergy of operations which aims to cut down the high overhead cost, reducing the additional expenses and optimum utilization of resources.

(ii) The amalgamation will lead to a single company with greater integration, financial strength and flexibility aiding in achieving economies of scale, sourcing benefits, vendor rationalization, more focused operational efforts, simplification of business processes and productivity improvements. It shall create a strategy which will provide



benefits of scale and enhanced capabilities to result in increased business opportunities and reduced expenses. The amalgamated company shall be better positioned to serve the domestic market and enhance the net worth of the stakeholders of the combined company. The Board of Directors of the Petitioner/Transferor Company is of the opinion that the Scheme of Amalgamation would benefit the shareholders, creditors, employees and other stakeholders of both the Companies.

6. The following are brief terms of Scheme of Amalgamation:

- (i) The Scheme provides for transfer of the entire business and undertaking of the Transferor Company, including all secured and unsecured debts, liabilities, losses, duties and all the assets, properties, rights, titles etc. be transferred and/or deemed to be transferred to and vested in the Transferee Company, so as to become the properties, assets, rights, business and undertakings of the Transferee Company from the appointed date. Further, all inter-party transactions between the transferor Company or the Transferee Company shall be considered as intra-party transactions for all purposes.
- (ii) The Transferee Company shall, upon coming into effect of the Scheme, and in consideration for the transfer of and vesting of the entire undertaking of the Transferor Company shall issue and allot 2,50,000 equity shares of Rs.10/- each to the equity shareholders and 62,86,425 optionally convertible redeemable preference shares of Rs.10/- each to the preference shareholders of the Transferor Company, whose names appeared in the Register of members as on the record date in such proportion held by them.
- (iii) The Authorised Share Capital of the Transferee Company shall be Rs.21,00,00,000/- (Rupees Twenty One Crores only) divided into 1,38,65,992 equity shares of Rs.10/- each and 71,34,008 optionally Convertible Redeemable Preference Shares of Rs.10/- each etc.





7. It is further stated that the Hon'ble High Court by Orders dated 01.09.2016 has dispensed with convening the meeting of the equity shareholders of the Petitioner Company as all the equity shareholders has given their no objection by means of affidavits/letters.
8. The Learned Counsel submitted that as per the directions of the Hon'ble High Court, the petitioner got published in Newspaper advertisement of the "Notice of Petition" in English Daily(Business Standard – Hyderabad Edition) and Telugu Daily (Andhra Bhoomi – Hyderabad Edition) on 07.10.2016 and filed a proof of service before the Hon'ble High Court on 07.11.2016. In pursuance to said notification, no objections/oppositions were received about the scheme in question.
9. The learned counsel further submits that pursuant to the Orders dated 30.09.2016 of the Hon'ble High Court, notices were also issued to the Registrar of Companies, Regional Director (SER) and Official Liquidator.
10. The Regional Director (SER), Hyderabad has filed a common affidavit dated 08.05.2017 in C.P.Nos.329/2016 and 330/2016, by inter alia stating that the Petitioner Company is regular in filing statutory returns and no complaints, no investigations and no inspections are pending against it. He further stated that in pursuant to the General Circular No.1/2014 dated 15.01.2014 issued by the Ministry of Corporate Affairs, new Delhi, wherein comments of Income Tax Department is required to be sought under Section 391 or 394 of the Companies Act, 1956, a letter dated 17.10.2016 was issued to the Income Tax Department for submitting their comments/objections, if any, within 15 days. Further, the Petitioner Company vide letter dated 04.10.2016 served the notice of petition on The Deputy Commissioner of Income Tax, Circle 16(1), Hyderabad and no comments/objections of the Income Tax Department are received by their office till date. It is stated that sub-clause (ii) of Clause A of Part-I of the Scheme provides for appointed date as 01.04.2015. Since, the Company has already filed audited Balance Sheet and Profit & Loss Account for financial year ended



31.03.2016, it would be desirable to postpone appointed date to 01.04.2016 in order to avoid revision of accounts. Therefore, he submitted that Tribunal can consider the case as per merits and pass appropriate orders.

11. The Official Liquidator attached to the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh vide his report dated 25.04.2017 inter-alia stated that the affairs of the Petitioner Company appears to have not been conducted in a manner prejudicial to the interests of the members or to public interest.

12. I have carefully gone through all the pleadings, Report of the Regional Director (SER) and Official Liquidator and also relevant provisions of Companies, 1956. I am convinced that the Petitioner Company has complied with all statutory requirements as required under Section 391 & 394 and other relevant provisions of Companies Act, 1956 as detailed supra. The Board of Directors of the Petitioner Company at its meeting held on 24.03.2015 have duly considered the pros and cons of Scheme of Amalgamation in question, after perusing various reports on the issue, and found it is advantageous and beneficial to the Company, its Members, the Secured Creditors and all other concerned parties of the Company, and thus it was approved. I am satisfied that the Scheme of Amalgamation in question is on bonafide reasons meant for favour of all concerned parties of the Companies in question in particular and public in general. It is to be mentioned herein that the Scheme in question is not opposed by any authorities and the Petitioner Company is admittedly following all rules/regulations of Companies Act as stated by Regional Director. Hence, I am of considered view that the Company Petition deserved to be allowed as prayed for.

13. In the result, the C.P.No.329/2016 [CP(TCAA)No.28/HDB/2017] is allowed with the following directions:-

- a) Sanctioned the Scheme of Amalgamation with modification of appointed date as 01.04.2016 instead of 01.04.2015 as proposed (which is placed at Page No.109 along with material papers enclosed with the Petition) and it





ordered that the same is binding on all the Equity Shareholders/Members and Creditors (Secured & Unsecured) of the Petitioner/Transferee Company.

- b) The Petitioner Company is directed to take appropriate steps to submit the said scheme to Registrar of Companies within 30 days from the date of receipt of Copy of this order.
- c) The Petitioner/Transferor Company is directed to issue newspaper publication with respect to approval of scheme of amalgamation, in the same newspapers in which previous publications were issued in order to ensure transparency/dissemination of complete information to all concerned parties about the approval granted by the Tribunal for the Scheme as proposed.
- d) The petitioner/Transferor Company is further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Amalgamation under the Provisions of the Act.
- e) Liberty is granted to any party/parties, who are aggrieved by this order, to seek any direction(s) by way of filing miscellaneous application in the present CP.



CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

*Sd/-*  
**RAJESWARA RAO VITTANALA**  
MEMBER (JUDICIAL)

*V. Annapoorna*  
**V. ANNA POORNA**  
Asst. DIRECTOR  
NCLT, HYDERABAD - 68