

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - III**

**Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)
DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)**

CA (CAA)-103(ND)/2018

**IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT,
2013**

In the matter of:

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Arrangements) Rules, 2016.

**AND
IN THE MATTER OF SCHEME OF AMALGAMATION
OF**

**FREECHARGE PAYMENT TECHNOLOGIES
PRIVATE LIMITED**

Company Incorporated under Companies Act, 2013

Having its registered office at:

2nd Floor, Red Fort Capital,

Parsvnath Tower, Bhai Veer Singh Marg,

Near Gole Market,

Delhi-110001.

...TRANSFEREE COMPANY/APPLICANT COMPANY



WITH

ACELYST SOLUTIONS PRIVATE LIMITED
Company Incorporated under Companies Act 1956
Having its registered office at:
2nd Floor, Unit No. 205-206,
Plot No. 1, Vaibhav Chambers,
Bandra Kurla Complex,
Delhi-400051.

...TRANSFEROR COMPANY

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Counsel for the Applicant: Mr. Dayal Deshpande, Ms. Aadity, Mr. Arjun
Krishnan, Advocates



ORDER

Delivered on: 30.07.2018

1. This is an application which is filed by Freecharge Payment Technologies Pvt. Ltd. ("Transferee Company") with which Acelyst Solutions Pvt. Ltd. ("Transferor Company") seeks to be amalgamated, which has its registered office in Mumbai, under Sections 230-232 of Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the "Scheme") proposed between the applicants. The said Scheme is also annexed as Annexure "I" to the application. The Applicant above named has preferred the instant application in effect for the following purpose as evident inter alia from the reliefs sought for in the application, namely:

- (a) Pass an order directing the Applicant to call for and convene a meeting of its members for the purpose of considering and, if thought fit, approving the Scheme approved by the Board of Directors;
- (b) Pass ancillary directions relating to the date, time and location of the meetings so called, and any other directions that this



Hon'ble Tribunal deems fit in the facts and circumstances of this case;

(c) Pass such other and further order(s) as may be deemed fit and proper in the facts and circumstances of this case.

2. Affidavits in support of the above application sworn for and on behalf of the Applicant Company by one Mr. Samarth Govila have been filed, being the authorized signatory of the Applicant Company along with the application. Counsel for the Applicant took us through the submissions made in the application as well as the typed set of documents annexed there with.

3. In relation to the Applicant Company it is represented that the authorized share capital constitutes of 1,006,010,000 ordinary equity shares of INR 10 each amounting to INR 1006,01,00,000/- (Rupees One Thousand and Six Crores and One Lakh Only) and the issued and paid-up share capital constitutes of 581,050,000 ordinary equity shares of INR 581,05,00,000/- (Rupees Five Hundred Eighty-One Crores and Five Lakhs Only). It is represented that as on 21.05.2018 the Applicant Company has 7 shareholders – Axis Bank Ltd. holding 58,10,49,940 equity shares and 10 equity shares held by the other six individuals each. The Applicant Company has produced a certificate from their



Chartered Accountants certifying that the Applicant Company has no secured creditors. The Chartered Accountant has further certified that the Applicant Company has 89 unsecured creditors. The Applicant has not produced consent by way of affidavit from any shareholder or creditor and has not prayed for dispensation of any meetings.

4. In relation to the territorial jurisdiction, Ld. Counsel for the applicant companies submit that since the registered office of the Applicant Company falls within the purview of Registrar of Companies, NCT, New Delhi, this Tribunal has the necessary territorial jurisdiction to entertain the application.
5. We have perused the application and the connected documents/papers filed therewith including the Scheme of Arrangement contemplated between the Applicant Company and Acelyst Solutions Pvt. Ltd.
6. From the certificate of incorporation filed, it is evident that Applicant Company is a company incorporated under the provisions of Companies Act, 2013 on 14.01.2015 with Registrar of Companies, NCT of Delhi and Haryana, New Delhi.



7. The Applicant Company has filed its Memorandum and Articles of Association inter alia delineating its object clause as well as the latest available audited financial statements for the year ended 31.03.2018.
8. The Board of Directors of the Applicant Company vide meeting held on 27.03.2018, have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copy of resolution passed thereon has been placed on record by the Applicant Company.
9. The appointed date as specified in the Scheme is 07.10.2017 subject to the directions of this Tribunal.
10. The Applicant Company has stated in the petition that no investigation proceedings are pending against them under the provisions of the Companies Act, 2013, or any other applicable provisions of the Companies Act, 1956.
11. That the Applicant Companies have complied with the proviso to Section 230 (7) and Section 232 (3) by filing the certificate of the Company's Auditor in relation to compliance with the Accounting Standards under section 133 of the Companies Act, 2013.



12. Taking into consideration the application filed jointly by the Applicant Companies and the documents filed therewith, this tribunal proposes to issue the following directions with respect to calling, convening and holding of the meetings of the equity shareholders, secured and unsecured creditors, or dispensing with the same as well as issue of notices including by way of paper publication as follows:

A) In relation to the Applicant Company:

(i) With respect to Equity shareholders:

It is represented by the Applicant Company that there are 7 equity shareholders in the Applicant Company and no consent affidavits have been filed. In light of the above meeting of equity shareholders is required to be convened.

The meeting will be held at the registered office of the Applicant Company i.e. 2nd Floor, Red Fort Capital Parsvnath Tower, Bhai Veer Singh Marg, Near Gole Market, New Delhi – 110001 at 11:00 am on 16.09.2018.

(ii) With respect to Secured Creditor:



Since it is represented by the Applicant Company that there is no secured creditor in the Applicant Company, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

It is represented by the Applicant Company that there are 89 unsecured creditors in the Applicant Company and no consent affidavits have been filed. In light of the above meeting of unsecured creditors is required to be convened.

The meeting will be held at the registered office of the Applicant Company i.e. 2nd Floor, Red Fort Capital Parsvnath Tower, Bhai Veer Singh Marg, Near Gole Market, New Delhi – 110001 at 12:00 pm on 10.09.2018.

13. The quorum for the meeting of the equity shareholders of the Applicant Company shall be 3 in number or 50% in value terms, whichever is higher and in relation to the unsecured creditors of the Applicant Company shall be 30 in number or 35% in value terms.

14. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of

the applicant companies at least 48 hours before the meetings. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained. However, every endeavour should be made by the applicant / Transferee Company to attain at least the quorum fixed, if not more in relation to approval of the scheme.

15. The Chairperson for the said meetings shall be Saurabh Kalia, Advocate (Phone No.: 011-41039797) and would be entitled to fee of Rs.1,00,000/- and the Alternate Chairperson is Sanjana Saddy, Advocate (Phone No.:011-40196496, email: sanjana@mhcolaw.com) and would be entitled to fee of Rs.75,000/- and the alternate chairperson appointed herein along with Scrutinizer shall ensure that the registers are properly maintained.

16. Mr. Nitin Jaiswal, Company Secretary (Mob: 9971485540) is appointed as a Scrutinizer and would be entitled to fee of Rs.45,000/- for services in addition to meeting incidental expenses. The Scrutinizer along with Chairperson(s) will file their reports within a week from the date of holding of the above said meetings.



17. That individual notices of the said meetings shall be sent by the Applicant Company through registered post or speed post or through courier or through e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme of Amalgamation, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.
18. That the Applicant Company shall publish advertisement with a gap of atleast 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the English Daily “ Indian Express” in English, and “Nav Bharat” in vernacular stating the copies of Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Company.
19. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable to the respective companies under the Act and rules framed there under. The Chairperson shall as aforesaid be responsible to report the result of the

meeting within two weeks of the conclusion of the meeting with details of voting on the proposed scheme.

20. The companies shall individually send notice to Central Government, the Income Tax Authorities, Registrar of Companies NCT Delhi & Haryana, Official Liquidator and Regional Director as well as other sectoral regulators, if any, who may have significant bearing on the operation of the applicant companies or the Scheme per se along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

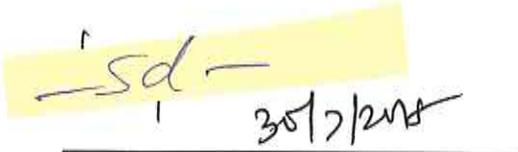
21. The Applicant Company shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor or member of all the companies entitled to attend the meetings as aforesaid.

22. The authorized representative of the Applicant Company shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

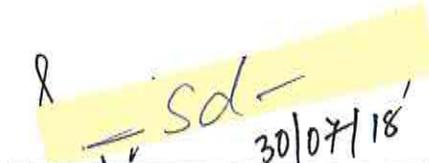


23. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

The application stands allowed on the aforesaid terms.



(DR. V. K. SUBBURAJ)
MEMBER (TECHNICAL)



(R.VARADHARAJAN)
MEMBER (JUDICIAL)

T