

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – II

CP(CAA)/56/MB/2022
Connected with
CA(CAA)/1096/MB/2020

In the matter of

The Companies Act, 2013;

and

In the matter of

*Sections 230-232 and other
relevant provisions of the
Companies Act, 2013;*

and

In the matter of

*Scheme of Merger by
Absorption of*

*Oberthur Technologies India
Private Limited (First
Transferor Company) and
Oberthur Technologies
Software Factory Private
Limited (Second transferor
Company)*

with

*Idemia System India Private
Limited (Transferee
Company)*

*and their respective
shareholders*

(‘Scheme’)

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Oberthur Technologies India Private Limited

having it's registered office at 507, 5th Floor, Plot
No. 31, 1, Sharda Chamber, Narsi Natha Street, Bhat Bazar
Masjid, Chinchbunder, Mumbai,
Maharashtra, India 400009.

CIN:U72200MH2004FTC337707 ...First Petitioner Company/ First
Transferor Company

Oberthur Technologies Software Factory Private Limited

having it's registered office at 507, 5th Floor, Plot
No. 31, 1, Sharda Chamber, Narsi Natha Street,
Bhat Bazar Masjid, Chinchbunder, Mumbai,
Maharashtra, India 400009.

CIN:U72900MH2009PTC337704 Second Petitioner Company/Second
Transferor Company

Idemia Syscom India Private Limited

having it's registered office at 507, 5th Floor,
Plot No. 31, 1, Sharda Chamber, Narsi Natha Street,
Bhat Bazar Masjid, Chinchbunder, Mumbai,
Maharashtra, India 400009.

CIN: U73100MH1996PTC10169 ...Third Petitioner Company/
Transferee Company

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(hereinafter together known as 'Petitioner Companies')

Order delivered :- 30.09.2022

Coram:

Hon'ble Justice P.N. Deshmukh (Retd.) : Member (Judicial)

Hon'ble Shyam Babu Gautam : Member (Technical)

Appearances (via videoconferencing):

For the Petitioners: Mr Hemant Sethi, Ms Vidisha Poonja i/b Hemant

Sethi & Co., Advocates

For the Regional Director (WR): Ms. Rupa Sutar, Deputy Director

ORDER

Per: Justice P.N. Deshmukh, Member Judicial

1. This Court is convened by video conference today.
2. Heard Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.
3. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to the said

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Scheme of Merger by Absorption of Oberthur Technologies India Private Limited (First Transferor Company) and Oberthur Technologies Software Factory Private Limited (Second transferor Company) with Idemia System India Private Limited and their respective shareholders.

4. The Petitioner Companies have approved the Scheme by passing the Board Resolutions at their respective board meetings held on 7 September, 2020 and have approached the Tribunal for sanction of the Scheme.
5. The Learned Counsel for the Petitioner Companies submits that the rationale mentioned in the Scheme is as under:

The Transferor Companies and Transferee Company are a part of the same group i.e IDEMIA Group, a global leader in augmented identities. With a view to maintain a simplified corporate structure and eliminate duplicate corporate procedures, it is proposed to merge and merger by absorption of all the undertakings of the Transferor companies into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations.

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Further the merger by absorption would 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.

The merger by absorption of the First Petitioner Company and the Second Petitioner Company with the Transferee Company would inter alia have the following benefits:

- i. Greater integration and greater financial strength and flexibility for the Transferee Company, which would result in maximising overall shareholder value and will improve the competitive position of the combined entity.*
- ii. Improved organisational capability and leadership, arising from the pooling of human capital that has the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.*
- iii. Cost savings are expected to flow from more focused operational efforts, rationalisation, standardisation and simplification of business processes, and the elimination of duplication, and rationalisation of administrative expenses.*
- iv. The Transferee Company will have the benefit of synergy, optimum use of human relations, expertise, and stability of operations and would help to achieve economies of scale through efficient utilisation of resources and facilities since they are in the same line of business.*

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- v. *Facilitate greater efficiency in cash management of the Transferee company and access to cash flow generated by the combined business.*
- vi. *Ensuring a streamlined group structure by reducing the number of legal entities in the group structure.*

In view of the aforesaid, the Board of Directors of the First Petitioner Company, the Second Petitioner Company and the Transferee Company have considered and proposed the merger by absorption of the entire undertaking and business of the First Petitioner Company and the Second Petitioner Company with the Transferee Company in order to benefit the stakeholders of all the companies. Accordingly, the Board of Directors of the First Petitioner Company, the Second Petitioner and the Third Petitioner Company have formulated this Scheme of Merger by Absorption for the transfer and vesting of the entire undertaking and business of the First Petitioner Company and the Second Petitioner Company with and into the Third Petitioner Company pursuant to the provisions of Section 230 to Section 232 and other relevant provisions of the Companies Act, 2013.

- 6. The Learned Counsel for the Petitioner Companies further submits the following:
 - i. The First Petitioner Company is presently engaged in the business of supply of banking cards and SIM cards and their related services. The Second Petitioner Company is presently not engaged

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in any business operations and the Third Petitioner Company is engaged in the business of manufacturing, personalization and supply of Smart Cards, SIM cards, banking cards and provide value added and software development services.

ii. The First Petitioner Company is the group company of the Third Petitioner Company and the Second Petitioner Company is the wholly-owned subsidiary company of the Third Petitioner Company.

7. The Learned Counsel for the Petitioner Companies further submits that the present Company Petition is filed in consonance with Section 230-232 of the Companies Act, 2013 and in terms of order pronounced on 25 March 2022 in CA(CAA)/1096/MB/2020.

8. Learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have made requisite filings to demonstrate compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all

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the statutory requirements, if and to the extent applicable, as may be required under the Companies Act, 2013 and the rules made thereunder. The said undertaking is accepted.

9. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed a Report dated 3rd June, 2022 *inter-alia* stating in paragraphs IV (a) to (j). In response to the observations made by the Regional Director, the Petitioner Companies have also given necessary clarifications and undertakings vide their rejoinder affidavit dated 5th July 2022. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies is summarized in the table below:

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Para	Observation by the Regional Director	Undertaking of the Petitioner Companies / Rejoinder
IV(a)	In compliance of AS-14(IND AS-103),the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS 8) etc.	As regards the observation made in Paragraph IV (a) of the said Report is concerned, the Petitioner Companies hereby undertake that in compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the Scheme to comply with all applicable Accounting Standards such as AS-5 (IND AS-8), etc. to the extent applicable.

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IV(b)	<p>The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or arrangement. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).</p>	<p>As regards the observation made in Paragraph IV (b) of the said Report is concerned, the Petitioner Companies submit that notices as required under Section 230 (5) of the Companies Act, 2013 have been served upon the Regional Director, Registrar of Companies, Income Tax Authorities, Official Liquidator and GST authorities by the Petitioner Companies. Further, the Petitioner Companies undertake that the approval of the Scheme by this Tribunal shall not deter the regulatory authorities to deal with any issues arising after giving effect to the Scheme.</p>
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IV(c)	<p>Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.</p>	<p>As regards the observation made in Paragraph IV (c) of this Report is concerned, the Petitioner Companies hereby undertake and confirm that the setting off of fees paid by the Transferor Companies on its Authorised Share Capital shall be in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013. Further, the Transferee Company shall pay the balance/difference amount of the fees and stamp duty on it's increased Authorised Share Capital.</p>
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IV(d)	The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.	As regards the observation made in Paragraph IV (d) of this Report is concerned, the Petitioner Companies confirm that the Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one and the same and that there is no discrepancy or deviation.
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IV(e)	<p>As per Definitions of the Scheme,</p> <p>Appointed Date For the purpose of this Scheme and for Income Tax Act, 1961, the “Appointed Date” means (1st April 2021);</p> <p>AND</p> <p>Effective Date means last of the dates on which the certified copies of the order sanctioning this Scheme of Amalgamation, passed by the NCLT or such other competent authority, as may be applicable, are filed with the Registrar of Companies and if the Certified Copies are filed on different dates, the the Any references in this Scheme to the “date of coming into effect</p>	<p>As regards the observation made in Paragraph IV (e) of this Report is concerned, the Petitioner Companies confirm that the Appointed Date i.e. 1st April 2020 as mentioned in the Scheme is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall take effect from such Appointed Date. Further, the Petitioner Companies undertakes to comply with the requirements clarified vide circular No.7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs. The Petitioner Companies submit that the Company Scheme Application was filed on 23rd September 2020 whereas the Appointed Date mentioned in the Scheme is 01st April 2020. The Appointed date as fixed in the Scheme precedes the date of filing of the Application however</p>
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	<p>of the Scheme” or “effectiveness of this Scheme” or “Scheme taking effect” shall mean the Effective Date;</p> <p>The Appointed Date is 01.04.2020 which is antedated more than two years which needs to be changed</p> <p>Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>	<p>the Appointed Date is not antedated beyond a year and therefore, the Scheme is in compliance with the Circular.</p>
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IV(f)	<p>Clause 17 of the Scheme; ACCOUNTING TREATMENT</p> <p>Notwithstanding anything to the contrary herein, upon this Scheme becoming effective, the Transferee Company shall give effect to the accounting treatment in the books of accounts in accordance with the accounting standards specified under Section 133 of the Act read with the Companies (Indian Accounting Standards) Rules, 2015, or any other relevant or related requirement under the Act, as applicable on the Appointed Date.</p> <p>The Transferor Companies and Transferee Company,</p>	<p>As regards the observations made in Paragraph IV (f) of the said Report is concerned, the Petitioner Companies undertakes that upon the Scheme becoming effective, the Petitioner Companies shall account for the amalgamation of the Transferor Companies pursuant to the Scheme in accordance with AS-14 (Ind AS 103) prescribed under Section 133 of the Act, as notified by the Companies (Indian Accounting Standards) Rules, 2015, and generally accepted accounting principles and shall credit surplus (if any) or debit the deficit (if any) pursuant to the Scheme of Arrangement to its Capital Reserve Account. Further, the Capital Reserve arising out of amalgamation shall not be available for distribution of dividend.</p>
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	<p>being entities under common control, the accounting would be done at book values for the all the assets and liabilities acquired by the Transferee Company of the Transferor Company by applying the pooling of interest method as set out in Appendix C of Indian Accounting Standard ('IND AS') 103 'Business Combinations'.</p> <p>The pooling of interest method is considered to involve the following:</p> <ul style="list-style-type: none">(i) The assets and liabilities of the combining entities are reflected at their carrying amounts.(ii) No adjustments are made to reflect fair values, or recognise any new assets or liabilities. The only	
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	<p>adjustments that are made are to harmonise accounting policies.</p> <p>(iii) The financial information in the financial statements in respect of prior periods should be restated as if the business combination had occurred from the beginning of the preceding period in the financial statements, irrespective of the actual date of the combination. However, if business combination had occurred after that date, the prior period information shall be restated only from that date.</p> <p>Petitioner Companies have to undertake that the sur-</p>	
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	<p>plus/deficit shall be adjusted to Capital Reserve Account.</p> <p>Further Petitioner Companies have to undertake that reserve shall not be available for distribution of dividend.</p>	
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IV(g)	Petitioner Companies shall undertake to comply with the directions of Income Tax Department, if so required.	As regards the observation made in Paragraph IV (g) of the said Report is concerned, the Petitioner Companies undertake that all applicable provisions under the Income Tax Act, 1961 to the extent applicable shall be complied with by the Petitioner Companies.
IV(h)	Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.	As regards the observation made in Paragraph IV (h) of the said Report is concerned, the Petitioner Companies undertake that all the necessary directions of the concerned sectoral regulatory if so required and extent applicable, shall be complied with by the Petitioner Companies.

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IV(i)	Petitioner Companies have Foreign Shareholders, hence they shall undertake to obtain approval from RBI, FEMA and FERA, if required.	As regards the observation made in Paragraph IV (i) of the Report is concerned, the Petitioner Companies submit that the Petitioner Companies shall comply with the applicable provisions of FEMA / FERA / RBI Guidelines, to the extent applicable, with regards to issuance of shares to foreign/ non-resident shareholders, if any.
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IV(j)	<p>STATUS OF ROC REPORT:-</p> <p>ROC Mumbai report dated 21.03.2022 interalia mention that there is no investigation/inspection/inquiry proceedings and compliant against the present scheme are pending. Further, the ROC Mumbai report made the following observations; Further mentioned that:-</p> <ol style="list-style-type: none"> 1. Petitioner Companies has not filed Form GNL - 1. 2. Interest of the Creditor should be protected. 3. As per provisions of Section 232(3)(i) of the Companies Act, 2013 where the Transferor Company is dissolved, the fee, if any, paid by the Transferor Company 	<p>As regards the observation made in Paragraph IV (j) of the Report is concerned the Petitioner Companies submits the following:</p> <ol style="list-style-type: none"> 1. The Petitioner Companies submit that the required Form GNL-1 has been filed with the Registrar of Companies as under; <ol style="list-style-type: none"> a) Oberthur Technologies India Private Limited, vide SRN F13829973 b) Oberthur Technologies Software Factory Private Limited, vide SRN F13828744 c) Idemia Syscom India Private Limited, vide SRN F13829353 <p>Further, the copies of challans for Form GNL 1 are annexed as Annexure A to the Affidavit-in Rejoinder.</p>
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<p>on it's authorised capital shall be set-off against any fees payable by the Transferee Company subsequent on it's authorised capital the amalgamation. Therefore, remaining fee, if any after setting -off the fees already paid by the Transferor Company on it's authorised capital, has to be paid by the transferee company on the increased authorised capital subsequent to the amalgamation.</p> <p>4. Authorized and paid up share capital of the Resulting Company does not match with the Scheme and master data</p>	<p>2.The Petitioner Companies hereby clarify and submit that there are no Secured Creditors in the Petitioner Companies. Further, notices have duly been served upon the Unsecured Creditors of the Petitioner Companies. In any event, the Petitioner Companies undertake to protect the interest of the creditors in normal course of business.</p> <p>3.The Petitioner Companies hereby undertake and confirm that the setting off of fees paid by the Transferor Companies on its Authorised Share Capital shall be in accordance with the provision of Section 232(3)(i) of the Companies Act, 2013. Further, remaining fee, if any, after setting-off the fees already paid by the Transferor Companies on its authorised capital, shall be paid by the Transferee Company on the</p>
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	<p>of the company as per MCA portal.</p>	<p>increased authorised capital subsequent to the amalgamation.</p> <p>4.The Transferee Company undertakes to get the paid-up share capital rectified in the master data on the MCA portal. Further, the Petitioner Companies submit and clarify that the details mentioned in the Scheme are correct and final.</p>
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10. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above. The clarifications and undertakings given by the Petitioner Companies are accepted by this Tribunal.
11. The Official Liquidator has filed his report dated 14 July 2022 inter-alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner.
12. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
13. Since all the requisite statutory compliances have been fulfilled, Company Petition CP(CAA)/56/MB/2022 connected with CA(CAA)/1096/MB/2020 is made absolute in terms of prayer in the Petition.
14. The Scheme is sanctioned hereby, and the Appointed Date of the Scheme is fixed as 1st April, 2020.

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15. The Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with e-Form INC-28, within 30 days from the date of receipt of the order by the Registry, duly certified by the Deputy/ Assistant Registrar of this Tribunal.
16. The Petitioner Companies are directed to lodge a certified copy of this Order and the Scheme duly authenticated by the Deputy / Assistant Registrar of this Tribunal, with the concerned Superintendent of Stamps for adjudication of stamp duty payable, if any, within 60 working days from the date of receipt of certified copy of the certified order from the Registry of this Tribunal.
17. All concerned regulatory authorities to act on a copy of this Order duly certified by the Deputy Registrar/Assistant Registrar of this Tribunal along with copy of the Scheme.
18. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.

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19. Any concerned Authorities are at liberty to approach this Tribunal
for any further clarification as may be necessary.

20. Ordered Accordingly.

Sd/-

SHYAM BABU GAUTAM
MEMBER TECHNICAL

Sd/-

JUSTICE P.N. DESHMUKH
MEMBER JUDICIAL