

**IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION**

INTERIM APPLICATION No. 25245 OF 2020
IN W.P.(C) NO. 921 OF
2018

IN THE MATTER OF :

CENTRE FOR ACCOUNTABILITY
AND SYSTEMIC CHANGE ...PETITIONER

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

**REPLY AFFIDAVIT ON BEHALF OF THE
RESPONDENT NO. 7 i.e. RESERVE BANK OF INDIA TO
I.A. BEARING NO. 25245 OF 2020 FILED BY THE
PETITIONER IN THE ABOVENOTED WRIT PETITION**

PAPER-BOOK

(FOR INDEX KINDLY SEE INSIDE)

**ADVOCATE FOR THE RESPONDENT NO. 7: RAMESH
BABU M.R.**

INDEX

S.NO.	PARTICULARS	PAGE NO.
1.	Reply Affidavit on behalf of the Respondent No.7, Reserve Bank of India to I.A. bearing No. 25245 of 2020	1- 6
2.	Annexure R-1 True copy of the letter dated January 7, 2020 received from NPCI	7-8
3.	Annexure R-2 True copy of the letter dated May 31, 2020 received from NPCI	9
4.	Annexure R-3 True copy of the letter dated January 31, 2020 sent to NPCI	10
5.	Annexure R-4 True copy of the letter dated June 5, 2020 received from NPCI	11-12
6.	Annexure R-5 True copy of the letter dated February 2, 2018 of NPCI	13
7.	Annexure R-6 True copy of the FAQ dated June 26, 2019	14
8.	I.A. No. _____ of 2020: Application for seeking exemption from notarized Affidavit on behalf of the Respondent No. 7 along with supporting Affidavit	15-19
9.	Proof of service	20

this case and am competent and authorised to file this affidavit on behalf of Respondent No.1. Except as are matters of record or have been specifically admitted hereunder, I do not admit and may not be deemed to have admitted any statement, averment or submission made in the application merely because the same has not been specifically adverted to or dealt with herein this reply.

PARAWISE REPLY

3. That the averments made in Para 1 are statements of fact and as such are not objected to.

4. That the averments made in Paras 2, 3 and 12, except those which are matters of record, are denied. It is specifically denied that RBI has granted permission to WhatsApp to go live for full scale operations on Unified Payments Interface (UPI) payment system. It is submitted that National Payments Corporation of India (NPCI) had, vide communication dated September 12 and October 24, 2019, forwarded to the Reserve Bank the System Audit Report (SAR) and the Post Change Review Report submitted by WhatsApp, along with its comments on compliance status of WhatsApp with the RBI circular dated April 06, 2018 on 'Storage of Payment System Data' (the circular). Reserve Bank had examined the said reports and the responses of NPCI and was concerned that WhatsApp was storing some payment data elements outside India beyond the permitted timelines indicated in the circular and the Frequently Asked Questions on 'Storage of Payment System Data' issued by RBI on June 26, 2019. Accordingly, vide letter dated November 1, 2019, NPCI was advised to ensure that the payment data elements as referred to therein are not stored by WhatsApp outside India beyond

permitted timelines. In addition, NPCI was advised to ensure that WhatsApp does not store any of the payment transaction data elements in hashed / de-identified / encrypted form in its systems outside India. NPCI was also advised not to permit WhatsApp to go live for full scale operations on UPI payment system, till the time they are fully compliant. The same was also communicated to the Hon'ble Court vide our reply dated November 7, 2019. Subsequently, NPCI had, vide letter dated January 7, 2020 communicated that they had received a letter from WhatsApp agreeing to complete all the pending issues by May 31, 2020 and requesting permission to go live. True copy of the letter dated January 7, 2020 received from NPCI is annexed herewith as **Annexure R/1**. (Page Nos. to). NPCI had stated 7 8 that WhatsApp had committed to close (supported by third party audit report) two of the five items of non-compliance identified by RBI (vide letter dated November 1, 2019) by January 2020, and the remaining three by May 31, 2020. NPCI had requested RBI's approval to grant final 'go-live' to WhatsApp on UPI, subject to (a) the third-party audit report confirming closure of the committed 2 items, and (b) acceptable VA / config reports from third party auditor. NPCI had informed that it would work closely with WhatsApp to complete the pending 3 items by May 31, 2020. NPCI had, vide letter dated January 31, 2020 informed that they had reviewed the Post Change Review Report-II from the CERTIn empanelled auditor of WhatsApp highlighting the closure of the two items, and found the same in order. True copy of the letter dated Jan 31, 2020 received from NPCI is annexed herewith as **Annexure R/2**. (Page Nos. to). RBI had, vide letter 9 dated January 31, 2020, advised NPCI that the use of UPI and /

or membership to the same was governed by the framework which was adopted by NPCI. NPCI will have to adopt the parameters laid down, while according permission to WhatsApp to be a part of UPI. RBI had also advised that NPCI needed to ensure conformity to all other requirements governing this system. True copy of the letter dated January 31, 2020 sent to NPCI is annexed herewith as **Annexure R/3**. (Page Nos. to). Thereafter, NPCI 10 had, vide letter dated June 5, 2020, informed that they had reviewed the Post Change Review Report-III from the CERT-In empanelled auditor of WhatsApp certifying the compliance with the remaining three items, and found the same in order. NPCI had stated that as WhatsApp has fully complied with the requirements of the aforementioned RBI circular dated April 6, 2018, they are giving ICICI Bank the approval for go live of WhatsApp on UPI. True copy of the letter dated June 5, 2020 received from NPCI is annexed herewith as **Annexure R/4**. (Page Nos. to).

11 12 The correspondences that had happened between RBI and NPCI post filing of counter affidavit by RBI on November 7, 2019 were on the aforementioned lines. As regards the News Report dated February 8, 2020 in the newspaper “Times of India”, it is denied that NPCI had discussed with RBI the option of allowing WhatsApp to take its payment service to about 10 million from 1 million. It is specifically submitted that no discussion, as mentioned in the newspaper report, took place between RBI and NPCI.

5. That the averments in Para 4 of the Interim Application, except those which are matters of record, are denied.

6. That in respect of the averments in Paras 5 and 6 of the Interim Application, it is submitted that NPCI had issued a letter

dated February 2, 2018 to ICICI Bank, according approval for WhatsApp beta launch on UPI, which was before the issuance of RBI circular on ‘Storage of Payment System Data’ on April 6, 2018. True copy of the letter dated February 2, 2018 of NPCI is annexed herewith as **Annexure R/5**. (Page Nos. to)While 13 it is of utmost importance that the requirement of storage of payment data only in India is met with expeditiously, it has to be ensured that any regulatory measures do not disrupt the ongoing payment transactions under the existing payment and settlement systems of the country or adversely affect the interests of the general public. RBI always weighs and explores the available regulatory options to ensure expeditious and complete compliance with the circular requirements and has been continuously taking up the matter with NPCI, which has resulted in the compliance from WhatsApp, as mentioned in Para number 4 of this reply.

7. That in respect of the averments in Para 7 and 8 of the Interim Application, it is denied that the RBI circular dated April 6, 2018 on “Storage of Payment System Data” has been toned down by FAQs dated June 26, 2019 and it is submitted that Payment System Operators (PSOs) had sought clarification on certain implementation issues, from time to time, from Reserve Bank and the FAQs are intended to provide clarity on those issues to facilitate and ensure expeditious compliance by all PSOs. True copy of the FAQ dated June 26, 2019 is annexed herewith as **Annexure R/6**. (Page Nos. to). The FAQs in no 14 manner dilute the circular and they are merely clarificatory in nature while the circular has been issued in exercise of the statutory powers vested in the answering respondent by the Payment & Settlement Systems Act, 2007.

8. That the averments in Paras 9, 10 and 11 of the Interim Application are not related to the answering respondent and hence denied for want of knowledge and it is submitted that the factual position in respect of the compliance of the answering respondent's circular by WhatsApp, has been brought to the notice of this court in the preceding paragraphs of this reply and by the earlier affidavit dated 07.11.2019 of the answering respondent.

REPLY TO PRAYER CLAUSE

In view of the detailed reply and submissions contained herein above, it is respectfully submitted that the applicant is not entitled to any of the reliefs prayed in the Interim Application. The application filed by the petitioner is devoid of any merit and is

liable to be dismissed. It is prayed accordingly.



DEPONENT

VERIFICATION:

I, the above named deponent, do hereby verify that the facts stated in my above affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom. Verified at New Delhi on this the 27th day of July, 2020.



DEPONENT

NPCI:2019-20:RBI:UPI:065

January 7, 2020

The Chief General Manager
Department of Payments and Settlement Systems
Reserve Bank of India
14th Floor, New Central Office Building
S.B.S. Marg, Fort
Mumbai – 400 001

Dear Sir,

Sub: WhatsApp Go-live on UPI platform

Background:

This refers to our letter NPCI/ 2019-20/ RBI/ UPI/ 053 dated 24th October 2019, apprising RBI on the compliance status of WhatsApp to data storage guidelines and Go-live on UPI platform. Through our letter, we had submitted that WhatsApp does not store the specific data elements i.e. RRN, MCC, Ref URL and transaction currency and has been validated by their CERT-In empanelled auditor M/s Deloitte vide the "Post Change review report" dated 24th October 2019. RBI vide its letter dated 1st November 2019 advised that M/s. WhatsApp shall not be permitted to Go-Live for full scale operations on UPI payment system, till such time they are fully compliant.

Further Update:

Meanwhile, we received the letter from M/s WhatsApp that they agree to complete all the pending things, by May 2020 and they should be permitted to go live. They have now committed in writing to close (supported by third party audit report) 2 things out of 5 points as per RBI letter. They are as follows:

- Expiry time for collect request of non-initiated payment transactions and
- WhatsApp application (client) logs, query screenshot and customer email message stored in support team for 90 days shall not be containing any payment elements data before Go-Live.

The pending 3 things are as well committed to be closed by 31st May 2020. They are as follows:

- 1) Off DB communication – when user is offline more than 24 hours
- 2) Tran ID – needed to chain the transaction between TPAP and PSP and
- 3) VPA (UPI ID) of sender and receiver stored in de-identified formats (unrecoverable to original using one way standard hashing algorithm).

1 of 2



Further, NPCI has also reviewed the Application Security report, Secure Code review report, Black box penetration testing report, Vulnerability Assessment report (VA) and Configuration Assessment report from the CERT-In empanelled third party auditor. The AppSec, source code and black box report is found to be in order and WhatsApp is working to close/mitigate 2 high items in VA and Config report. The reports are available with NPCI and can be send separately to the regulator if desired.

The MEITY (Ministry of Electronics and IT) has also communicated their okay on WhatsApp go live to NPCI as indicated in Annexure 1, in the email correspondence dated 20th December 2019.

This letter has following annexures:

Annexure 1 - Correspondence with M/s WhatsApp (email and Letter)

Annexure 2 - Correspondence between NPCI and RBI on this approval request

Proposal:

We request you to kindly consider the above and provide approval to grant final 'Go-live' to M/s. WhatsApp on UPI platform. We shall provide them approval to go live subject to our receiving (a) Data Localisation - the third party audit report confirming closure of the committed 2 items (b) acceptable VA/config audit reports from third party auditor. We shall work with M/s. WhatsApp closely to complete the pending 3 items of data localisation by 31st May 2020.

Request for your kind approval on this matter.

Yours truly,



Dilip Asbe
Managing Director & CEO

Encl: as above

NPCI:2019-20:RBI:UPI:32

January 31, 2020

The Chief General Manager
Department of Payments and Settlement Systems
Reserve Bank of India
14th Floor, New Central Office Building
S.B.S. Marg, Fort
Mumbai – 400 001

Respected Sir,

Sub: WhatsApp Go-live on UPI platform

This refers to our letter NPCI/ 2019-20/ RBI/ UPI/ 065 dated 7th January, 2020, apprising RBI on the compliance status of WhatsApp to data storage guidelines and Go-live on UPI platform.

2) M/s WhatsApp had committed in writing to close (supported by third party audit report) 2 things out of 5 points as per the letter received by us from your office dated 1st of November 2019. Further, we are now in receipt of the 'Post Change Review Report' from the Cert-In empanelled auditor of WhatsApp highlighting the closure of the following two points, which we have found to be in order:

- Expiry time for collect request of non-initiated payment transactions and
- WhatsApp application (client) logs, query screenshot and customer email message stored in support team for 90 days shall not be containing any payment elements data before Go-Live.

As submitted with your office earlier, WhatsApp has committed to close the remaining 3 points as under by 31st May 2020;

- Off DB communication – when user is offline for more than 24 hours
- Transaction ID – needed to chain the transaction between Third Party Application (TPAP) and PSP
- UPI ID of sender and receiver stored in de-identified formats (unrecoverable to original UPI using one-way standard hashing algorithm).

We submit the above for your kind information and records. We shall work with M/s. WhatsApp closely to complete committed 3 points of data localisation by 31st May 2020.

Yours truly,



Anubhav Sharma
Head – UPI & IMPS

1 of 1



भारतीय रिज़र्व बैंक

RESERVE BANK OF INDIA

www.rbi.org.in

DPSS.CO.OD.No. 1468/06.08.013/2019-20

January 31, 2020

The Managing Director & CEO
National Payments Corporation of India
The Capital, Unit No 1001A, B Wing
10th Floor, Plot No C- 70
G Block, Bandra Kurla Complex
Bandra (E)
Mumbai – 400051

Dear Sir,

WhatsApp Go-live on Unified Payment Interface (UPI) platform

Please refer to your letter NPCI:2019-20:RBI:UPI:065 dated January 7, 2020 on the subject.

2. Use of UPI and / or membership to the same is governed by the framework which is adopted by NPCI. NPCI will have to adopt the parameters laid down, while according permission to Whatsapp to be a part of UPI. NPCI also needs to ensure conformity to all other requirements governing this system.

Yours faithfully

(Sudhanshu Prasad)

General Manager

- iv. Transaction ID – needed to chain transaction between Third Party App (TPAP) and PSP
 - v. UPI ID of sender and receiver stored in de-identified formats (unrecoverable to original UPI using one-way standard hashing algorithm).
- 5) NPCI has reviewed the Post Change Review Report – III certified by the Independent 3rd party CERT-IN empanelled auditor of WhatsApp – M/s Deloitte. We submit herewith that we derive comfort from the reports submitted by M/s Deloitte with regard to WhatsApp's full compliance of the remaining three (3) points on Data Storage guidelines issued by your office and accordingly complies with all the five (5) points in lines with the requirements advised through your letter dated 1st November 2019.

We would like to confirm that Whatsapp has satisfied the Data Localisation requirements based on the Cert-In auditor's reports and we hereby are giving ICICI Bank (PSP bank for Whatsapp) the approval for go live.

Yours truly,



Dilip Asbe
Managing Director & CEO

Encl: as above



February 2, 2018

NPCI:2017-18:UPI/060

Mr. B. Madhivanan
Group Executive
Chief Technology & Digital Officer
 ICICI Bank Ltd.
 Bandra Kurla Complex
Mumbai – 400 051

Dear Mr. Madhivanan,

Sub : WhatsApp beta launch on Unified Payments Interface (UPI)

With reference to your letter dated Feb. 1, 2018, we wish to accord our approval for WhatsApp beta launch on UPI subject to the following:

- This is a beta live – Maximum of 1 Million Indian users on UPI. Since the 1% of the Whatsapp user base in India is still very high, the roll out must be gradual to avoid any glitches / complaints. There must be daily monitoring and update to NPCI if any issue occurs.
- No product or Public launch in paper.
- Beta shall continue till other banks are added
- Functionality dates:

#	Enablement of UPI service in WhatsApp	Date of closure
1	Send money using other UPI VPAs to be enabled on beta App.	Two weeks from Beta launch
2	Collect, Response to Intent Call and QR code (read and generate) enablement on the App.	Latest by 31 st of March 2018
3	Enablement of Call Centre with Toll free number	Latest by 31 st of March 2018

All features must be approved by NPCI before being released to the customers.

Yours truly,

Dilip Asbe
Managing Director & CEO

PAYMENT AND SETTLEMENT SYSTEMS

Payment and settlement systems play an important role in improving overall economic efficiency. They consist of all the diverse arrangements that we use to systematically transfer money-currency, paper instruments such as cheques, and various electronic channels.

FAQS

Storage of Payment System Data

The Reserve Bank of India issued a directive vide [circular DPSS.CO.OD.No 2785/06.08.005/2017-18 dated April 06, 2018](#) on 'Storage of Payment System Data' advising all system providers to ensure that, within a period of six months, the entire data relating to payment systems operated by them is stored in a system only in India.

Payment System Operators (PSOs) have sought clarification on certain implementation issues, from time to time, from Reserve Bank. The FAQs are intended to provide clarity on those issues to facilitate and ensure expeditious compliance by all PSOs.

1. Applicability of the direction

- The directions are applicable to all Payment System providers authorised / approved by the Reserve Bank of India (RBI) to set up and operate a payment system in India under the Payment and Settlement Systems Act, 2007.
- Banks function as operators of a payment system or as participant in a payment system. They are participants in (i) payment systems operated by RBI viz., RTGS and NEFT, (ii) systems operated by CCIL and NPCI, and (iii) in card schemes. The directions are, therefore, applicable to all banks operating in India.
- The directions are also applicable in respect of the transactions through system participants, service providers, intermediaries, payment gateways, third party vendors and other entities (by whatever name referred to) in the payments ecosystem, who are retained or engaged by the authorised / approved entities for providing payment services.
- The responsibility to ensure compliance with the provisions of these directions would be on the authorised / approved PSOs to ensure that such data is stored only in India as required under the above directions.

2. Where should the payment data be stored?

The entire payment data shall be stored in systems located only in India, except in cases clarified herein.

3. Clarification regarding data that needs to be stored in India

The data should include end-to-end transaction details and information pertaining to payment or settlement transaction that is gathered / transmitted / processed as part of a payment message / instruction. This may, inter-alia, include - Customer data (Name, Mobile Number, email, Aadhaar Number, PAN number, etc. as applicable); Payment sensitive data (customer and beneficiary account details); Payment Credentials (OTP, PIN, Passwords, etc.); and, Transaction data (originating & destination system information, transaction reference, timestamp, amount, etc.).

4. Storage of data pertaining to cross-border transactions

For cross border transaction data, consisting of a foreign component and a domestic component, a copy of the domestic component may also be stored abroad, if required.

5. Processing of payment transactions

- There is no bar on processing of payment transactions outside India if so desired by the PSOs. However, the data shall be stored only in India after the processing. The complete end-to-end transaction details should be part of the data.
- In case the processing is done abroad, the data should be deleted from the systems abroad and brought back to India not later than the one business day or 24 hours from payment processing, whichever is earlier. The same should be stored only in India.
- However, any subsequent activity such as settlement processing after payment processing, if done outside India, shall also be undertaken / performed on a near real time basis. The data should be stored only in India.
- In case of any other related processing activity, such as chargeback, etc., the data can be accessed, at any time, from India where it is stored.

6. Can the data processed abroad be retained abroad till the window for customer dispute resolution / chargeback is available?

As indicated above, the payment data sent abroad for processing should be deleted abroad within the prescribed time line and stored only in India. The data stored in India can be accessed / fetched for handling customer disputes whenever required.

7. Can the payment system data be shared with overseas regulators?

The data may be shared with the overseas regulator, if so required, depending upon the nature / origin of transaction with due approval of RBI.

8. Scope and coverage of the System Audit Report (SAR)

The System Audit Report (SAR), from a CERT-In empanelled Auditor, should inter-alia include Data Storage, Maintenance of Database, Data Backup Restoration, Data Security, etc.

9. Clarification in respect of entities earlier permitted to store banking data abroad?

In the case of banks, especially foreign banks, earlier specifically permitted to store the banking data abroad, they may continue to do so; however, in respect of domestic payment transactions, the data shall be stored only in India, whereas for cross border payment transactions, the data may also be stored abroad as indicated earlier.

PRAYER

In view of the aforesaid circumstances, it is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Allow the present Application and exempt the Respondent No. 7 from filing notarized Affidavit;
- b. Pass any other Order this Hon'ble Court may deem fit and necessary, in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE RESPONDENT NO. 7 SHALL DUTY BOUND PRAY

FILED BY



RAMESH BABU M.R.

(ADVOCATE ON RECORD) ADVOCATE FOR THE
RESPONDENT NO. 7

FILED ON: 27.07.2020 NEW

DELHI

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

I.A. NO. _____ OF 2020

IN

INTERIM APPLICATION No. 25245 OF 2020

IN W.P.(C) NO. 921 OF

2018

IN THE MATTER OF :

CENTRE FOR ACCOUNTABILITY

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...PETITIONER

VERSUS


UNION OF INDIA & OTHERS

...RESPONDENTS

AFFIDAVIT

I, Manmohan Singh aged about 55 years, S/o Shri Kanwar Amar Bir, residing at E-90, Second Floor, Ramesh Nagar, New Delhi – 110015, do hereby solemnly affirm on oath and state as under:

1. That I am working as Assistant General Manager with Department of Payment and Settlement Systems of Reserve Bank of India having its office at 6 Sansad Marg, New Delhi 110001. I am fully aware with the facts of the present case and as such am competent as well as authorised on behalf of the Reserve Bank of India i.e. Respondent No. 7 to swear the present Affidavit.
2. That the accompanying Application has been drafted under my instructions and I have read and understood the facts stated therein and state that the facts stated are true and correct to the

best of my knowledge and belief.  **DEPONENT**

VERIFICATION:

I the above deponent do hereby verify that the contents of my above affidavit are true and correct to my knowledge and belief and is based on the records available in my office. No part of the affidavit is false and nothing material has been concealed therefrom.

Verified at New Delhi on this the 27th day of July 2020.

A handwritten signature in black ink, appearing to be 'A. H. Smith', written in a cursive style.

DEPONENT