

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
PUBLIC INTEREST LITIGATION
W.P. (C) NO. 1038 OF 2020**

IN THE MATTER OF:

BINOY VISWAM

...PETITIONER

Versus

RESERVE BANK OF INDIA
AND OTHERS

...RESPONDENTS

**COUNTER AFFIDAVIT ON BEHALF OF THE RESERVE
BANK OF INDIA, RESPONDENT NO. 1**

do hereby solemnly affirm on oath and state as under:

1. That I am working as General Manager in the Department of Payment and Settlement Systems, Reserve Bank of India, New Delhi Regional Office (hereinafter interchangeably referred to as “the Reserve Bank” or “RBI”).
2. That I have read and understood the contents of the present Writ Petition under reply. I am fully aware of the facts of this case and am competent and authorized 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 Petition merely because the same has not been specifically denied or adverted to or dealt with in this counter affidavit.

PRELIMINARY SUBMISSIONS:

3. That the Reserve Bank of India is a body corporate constituted under Section 3 of the Reserve Bank of India Act, 1934 to regulate the issue of bank notes and keeping of the reserves with a view to securing monetary stability in India and to operate the currency and credit system of the country to its advantage. The Reserve Bank regulates and supervises commercial banks and cooperative banks in the country in accordance with the provisions of the Banking Regulation Act, 1949. The Reserve Bank exercises control over the volume of credit in order to ensure economic stability. The Reserve Bank is also the statutory regulatory authority for payment and settlement systems under the Payment and Settlement Systems Act, 2007 (hereinafter referred to as “PSS” Act). The Reserve Bank has also been vested with the powers, *inter-alia*, to determine policy and issue directions to the payment system operators under the provisions of the PSS Act.

4. That the present Writ Petition is wholly misconceived, devoid of any merits, both in law and on facts as against the answering respondent and as such, the Petition is not maintainable against the answering respondent in view of the facts and circumstances narrated hereinafter.
5. It is respectfully submitted that the regulation of payment and settlement systems in the modern age is a highly technical and complex subject. Any regulatory measure has to be taken with utmost care and circumspection, since any disruption in the payment and settlement system of the country can have devastating and wide-ranging implications on the economy.
6. That during the last decade there have been significant developments in the financial sector. Accordingly, the Indian financial landscape has undergone significant transformation and technological upgradation has been one of the key factors of this metamorphosis. The last decade and the present one has seen a gradual, if not paradigm shift from paper-based economy to digital economy and this development is lending credence to our banking system. Payment systems have been one of the beneficiaries of this development as well. The payment systems are vital parts of the economic and financial infrastructure. Their efficient functioning, allowing transactions to be completed safely and on time, makes a key contribution to overall economic performance.

7. That the Central banks have come to view payment systems as a key area of strategic interest, both as part of their responsibilities for financial stability and for the implementation of monetary policy. Though the Indian payment systems have always been dominated by paper-based transactions, e-payments were not far behind. RBI has played a pivotal role in facilitating digital payments by introducing systems like Real Time Gross Settlement (“RTGS”), National Electronic Funds Transfer (“NEFT”) and Electronic Clearing Service (“ECS”) which have encouraged individuals and businesses to switch to electronic methods of payment. Keeping all these developments in view, the Government thought it necessary to enact a specific legislation to regulate the various payment and settlement systems in the country. Accordingly, the Payment and Settlement Systems Act, 2007 was enacted in 2007. Under the PSS Act, the RBI is given the power to regulate and supervise the payment systems in India.
8. That the PSS Act, 2007 has been enacted to govern and regulate the activities which involve payment and settlement of transactions. Some of the important provisions of the PSS Act are reproduced as under:
- (i) Section 2 (1) (i) of the PSS Act defines a ‘payment system’ to mean a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them,

but does not include a stock exchange. It is further stated by way of an explanation that a “payment system” includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.

- (ii) Section 2 (1) (n) of the PSS Act defines ‘Settlement’ as the settlement of payment instructions received and these include settlement of securities, foreign exchange or derivatives or other transactions. Settlement can take place either on a net basis or on a gross basis.
- (iii) Section 2 (1) (p) of the PSS Act defines ‘System participant’ as a bank or any other person participating in a payment system and includes the system provider.
- (iv) Section 2 (1) (q) of the PSS Act defines ‘System provider’ as a person who operates an authorised payment system.
- (v) As per Section 3 (1), the Reserve Bank shall be the designated authority for the regulation and supervision of payment systems under this Act.
- (vi) With regards to the provisions of Section 4 of the PSS Act, no person other than the RBI can commence or operate a payment system in India unless authorised by RBI. Accordingly, RBI has authorised, as payment system operators, National Payments Corporation of

India (“NPCI”), Clearing Corporation of India Ltd. (“CCIL”), Pre-paid Payment Instrument (“PPI”) Issuers, Card Payment Network Operators, Cross-border in-bound Money Transfer Operators, Automated Teller Machine (“ATM”) Network Operators, Instant Money Transfer (“IMT”) Operator, Trade Receivables Discounting System (“TReDS”) Operators, White Label ATM Operators (WLAOs), and Bharat Bill Payment Operating Units (“BBPOUs”).

- (vii) All entities operating payment systems or desirous of setting up such systems are required to apply to the RBI for authorisation under the PSS Act. Any unauthorised operation of a payment system would be an offence under the PSS Act and accordingly liable for penal action under that Act.
- (viii) As per Section 5 (1) of the PSS Act, any person desirous of commencing or carrying on a payment system may apply to the Reserve Bank for an authorisation under this Act.
- (ix) In terms of Section 7 (1), the Reserve Bank may, if satisfied, after any inquiry under section 6 or otherwise, that the application is complete in all respects and that it conforms to the provisions of this Act and the regulations, issue an authorisation for operating the payment system under this Act having regard to the following considerations, namely:- (i)

the need for the proposed payment system or the services proposed to be undertaken by it; (ii) the technical standards or the design of the proposed payment system; (iii) the terms and conditions of operation of the proposed payment system including any security procedure; (iv) the manner in which transfer of funds may be effected within the payment system; (v) the procedure for netting of payment instructions effecting the payment obligations under the payment system; (vi) the financial status, experience of management and integrity of the applicant; (vii) interests of consumers, including the terms and conditions governing their relationship with payment system providers; (viii) monetary and credit policies; and (ix) such other factors as may be considered relevant by the Reserve Bank.

- (x) Under Section 8 (1), if a system provider, (i) contravenes any provisions of this Act, or (ii) does not comply with the regulations, or (iii) fails to comply with the orders or directions issued by the designated authority, or (iv) operates the payment system contrary to the conditions subject to which the authorisation was issued, the Reserve Bank may, by order, revoke the authorisation given to such system provider under this Act.
- (xi) Under Sections 17 and 18 of the PSS Act, RBI has power to issue directions to the authorised

payment system operator or system participants.

- (xii) Sections 20 and 21 of the PSS Act are about the duties of system provider.
- (xiii) Under Section 22 of the PSS Act, the system provider is required to keep the documents and its contents, provided to it by the system participants, as confidential and is prohibited from disclosing the same, except in accordance with the provisions of law.
- (xiv) Section 38 of the PSS Act is about the power of Reserve Bank to frame Regulations. Under the PSS Act, two Regulations have been made by the RBI, namely, the Board for Regulation and Supervision of Payment and Settlement Systems Regulations, 2008 and the Payment and Settlement Systems Regulations, 2008. They together provide the necessary statutory backing to the RBI for overseeing the payment and settlement systems in the country.

9. That in exercise of the powers conferred upon RBI under Section 7 of the PSS Act, RBI has granted authorisation to NPCI to operate various retail payment systems in India. In terms of this authorisation and based on the approvals given by RBI from time to time, NPCI operates different payment systems, including Unified Payments Interface (UPI). Approval to go-live for UPI was accorded by RBI to NPCI

on August 24, 2016. The letter dated August 24, 2016 issued by RBI to NPCI is attached herewith and marked as **Annexure R-1**. (Page Nos 31 to 31).

10. It is pertinent to mention here that UPI is a real-time payment system developed by the NPCI for facilitating inter-bank transactions and works by instantly transferring funds between two bank accounts on a mobile platform. UPI connects multiple bank accounts into a single mobile application (of any participating bank), merging several banking features, seamless fund routing and provide for merchant payments into one hood. Further, both person to person (i.e. P2P) and person to merchant (i.e. P2M) payment transactions can be done using a UPI application. UPI also permits real time push transactions, i.e. the customer initiates the transaction to pay the beneficiary; and pull transactions, i.e. the beneficiary initiates the request to receive or collect payment. UPI has many unique features including immediate money transfer through mobile device round the clock 24x7 and 365 days with single click 2 factor authentication. Different bank accounts can be accessed using a single UPI application and payment can be made using a Virtual Payment Address (VPA), wherein the customer need not part with any other information such as Card number, Account number, IFSC code, etc.
11. That the various players in the UPI payment system are NPCI, payer Payment Service Provider (PSP) bank, payee PSP bank, remitter bank, beneficiary bank, customer,

merchant and Third-Party App Provider (TPAP). NPCI is the owner and operator of UPI, i.e. NPCI is the system provider as per the PSS Act. The system rules, principles and procedural guidelines for operation and participation in UPI are formulated by NPCI. This also includes decision to on-board an entity on to UPI, which is taken by NPCI in terms of the extant UPI procedural guidelines. PSPs provide the front-end / application for the customer. Only banks are allowed to act as PSPs and therefore, all the services under UPI are presently offered by banks in their capacity as PSP banks, i.e. PSP banks are the system participants of UPI.

12. That as mentioned above, UPI operates on a bank-led model wherein only banks can become the members of UPI. Thus, any non-bank like Amazon Pay (India) Private Limited (hereinafter referred to as Amazon), Google India Digital Services Private Limited (hereinafter referred to as Google) or WhatsApp Application Services Private Limited (hereinafter referred to as WhatsApp) cannot be a direct participant but have to be sponsored by a bank. It is submitted that the NPCI initially launched UPI under the single PSP model, in terms of which, a third party could also connect to the UPI platform through a single sponsor PSP bank. Subsequently, NPCI approached the answering Respondent with a proposal of multibank model in UPI which was taken note of vide letter dated August 22, 2017. Accordingly, NPCI introduced multibank model under UPI on September 15, 2017, wherein a large merchant / technology player, referred to as Third Party App Provider

(TPAP), having access to a large customer base, can connect to the UPI system operated by the NPCI through multiple PSP banks. The TPAPs provide the necessary customer interface, while the transactions are processed through the sponsor PSP bank/s. The decision to allow or otherwise an entity to operate on UPI is solely taken by NPCI as per the system rules / guidelines / procedures governing the UPI payment system, which have been framed by NPCI as an operator of UPI. NPCI has, accordingly, allowed Amazon under the single sponsor bank model of UPI, Google and WhatsApp under the multi-bank model to operate as TPAPs. The letter dated August 22, 2017 addressed by RBI to NPCI is annexed herewith and marked as **Annexure R - 2**. (Page Nos. 33).

13. In this connection, it is pertinent to take note of Sections 20 and 21 of the PSS Act that empower the system providers, i.e. the authorised payment system operators to frame and formulate their own system Rules and Regulations for operating the payment system operated by them. The said Sections are reproduced as under:

Section 20 – Every system provider shall operate the payment system in accordance with the provisions of this Act, the regulations, the contract governing the relationship among the system participants, the rules and regulations which deal with the operation of the payment system and the

conditions subject to which the authorization is issued, and the directions given by the Reserve Bank from time to time.

Section 21(1) – Every system provider shall disclose to the existing or potential system participants, the terms and conditions including the charges and the limitations of liability under the payment system, supply them with copies of the rules and regulations governing the operation of the payment system, netting arrangements and other relevant documents.

Section 21(2) – It shall be the duty of every system provider to maintain the standards determined under this Act.

14. It is important to note that the RBI does not give any approval / authorisation to TPAPs (as they do not operate a payment system) and thus they are not system providers as defined in Section 2(q) of the PSS Act, i.e. authorised payment system operators, and therefore they do not fall under the regulatory domain of RBI directly. On the other hand, NPCI is the system provider of UPI and, therefore, comes under the regulatory radar of RBI. Since it was NPCI that allowed Amazon, Google and WhatsApp to operate under UPI, the responsibility to ensure that these entities comply with all the Rules / Regulations / Guidelines governing UPI lies with NPCI.

PARAWISE REPLY ON MERITS:

15. Without prejudice to the submissions made hereinabove and relying upon the same, I crave leave of this Hon'ble Court to deal with *in seriatim*, the various averments made in the Petition. It is submitted that save and except what is specifically admitted herein below, all the averments and allegations made in the present Petition against the answering Respondent, RBI are denied.
16. That with reference to Para 1 of the writ petition, the contents of the same are wrong and hence denied. It is submitted that in view of the statements made hereinbefore especially those made in Paras 10 to 14 of the present counter affidavit, the Petitioner is not entitled to any relief as sought in the petition against the answering respondent.
17. That with reference to Paras 2 to 8 of the writ petition, it is submitted that the same are matters of record and the answering respondent has no comments to offer in this regard. However, the Petitioner may be put to strict proof thereof.
18. That with reference to the averments made in Para 9 (a) and 9 (b) of the writ petition it is submitted that in recent times, there has been considerable growth in the payment ecosystem in the country, particularly in the realm of digital transactions. Such systems are also highly technology dependent, which necessitate adoption of safety and security measures, which are best in class, on a continuous basis. Ensuring safety and security of the payment systems has always been the cornerstone of the RBI's approach

towards payment system regulation and development. In order to ensure better monitoring and protection to privacy of the citizens, it was considered important to have unfettered supervisory access to data stored with the system providers as also with their service providers / intermediaries / third party vendors and other entities in the payment ecosystem. RBI had, therefore, vide Circular DPSS.CO.OD No.2785/06.08.005/2017-2018 dated April 6, 2018, issued directions under section 10(2) read with section 18 of the PSS Act, 2007, mandating all system providers to, *inter-alia*, ensure that the entire data relating to payment systems operated by them is stored in a system only in India. This data should include the full end-to-end transaction details / information collected / carried / processed as part of the message / payment instruction. In order to clarify certain implementation issues raised by the Payment System Operators (PSOs) and to facilitate and ensure expeditious compliance by all PSOs, RBI had issued Frequently Asked Questions (herein after referred to as FAQs) on Storage of Payment System Data on June 26, 2019.

19. That the averment made in Para 9 (c) of the writ petition, do not call for any response on behalf of the answering respondent.
20. That the averments made in Para 10 of the writ petition, do not call for any response on behalf of the answering respondent.

21. That with reference to Paras 11 to 15 of the writ petition, it is submitted that the same are matters of record and needs no reply by the answering respondent.
22. That the contents of Paras No. 16 and 17, except those which are a matter of record, are absolutely wrong and hence denied. It is submitted that multiple players with niche roles are part of each digital transaction and many of such players have global presence. With the increase in intermediation and rapid adoption of technology, there are growing concerns about the un-regulated players capturing personal information of the customers while carrying the payment transaction messages. To counter this and also to ensure better monitoring over data stored with the system providers as also with their service providers / intermediaries / third party vendors and other entities in the payment ecosystem, RBI vide Circular dated April 6, 2018, mandated all system providers to ensure that the entire data relating to payment systems operated by them is stored in a system only in India. This data should include the full end-to-end transaction details / information collected / carried / processed as part of the message / payment instruction. The system providers were required to submit a System Audit Report (SAR) on completion of this requirement. The audit was required to be conducted by CERT-IN empaneled auditors. The SAR duly approved by the Board of the system providers was to be submitted to the Reserve Bank not later than December 31, 2018. Further, RBI had also issued FAQs on Storage of Payment System Data on June 26, 2019 in order to clarify certain implementation issues

raised by PSOs. It is denied that the FAQs have diluted or toned down the circular dated April 06, 2018, which have been issued as directions to the system providers under the provisions of PSS Act.

23. The petitioner's allegation that the Circular was toned down by issuing the FAQs in order to oblige WhatsApp and Google is baseless and the answering respondent denies the same. It is submitted that processing of payment transactions and payment data storage are two completely different aspects and the RBI Circular dated April 6, 2018 pertained only to payment data storage. Therefore, it was clarified vide the FAQs as under:

“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.”

The deadline to report compliance to the RBI Circular has ended on October 15, 2018. The circular places the onus on the system providers, which in the case of UPI is NPCI, to ensure that the entire data (i.e. end-to-end transaction details / information collected / carried / processed as part of the message / payment instruction) related to the payment systems operated by them is stored only in India. Therefore, RBI has been following up with NPCI relating to the status of compliance of UPI TPAPs with respect to the RBI Circular.

Compliance of Amazon with RBI Circular – NPCI had, vide letter dated November 16, 2018, informed that Amazon was compliant with the RBI Circular.

Compliance of Google with RBI Circular – NPCI had, vide letter dated January 31, 2020, informed that they had assessed the System Audit Report of Google conducted by CERT-In empaneled auditor Ernst & Young and observed that Google Pay was fully compliant to the RBI Circular with entire payment data stored in a system only in India.

Compliance of WhatsApp with RBI Circular – It may be recalled here that when the Writ Petition (C) no. 921/2018 (*Centre for Accountability and Systemic Change Vs. Union of India*) was listed before this Hon'ble court on August 02, 2019, the Senior Counsel appearing for WhatsApp made submissions to the effect that the company had complied with the directions contained in the RBI Circular and had

submitted the SAR to NPCI. In that connection, it was orally indicated by this Hon'ble Court during the hearing that the SAR be reviewed by the NPCI and then forwarded to the Reserve Bank of India. It was also directed by this Hon'ble Court that the Reserve Bank may inform this Hon'ble Court as to whether WhatsApp is compliant with the RBI Circular within six weeks after receipt of the SAR from NPCI.

In this regard, NPCI had, vide communication dated September 12 and October 24, 2019, forwarded to the Reserve Bank the SAR and the Post Change Review Report submitted by WhatsApp, along with its comments on compliance status of WhatsApp with the RBI Circular. In accordance with the directions of this Hon'ble Court, 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. Accordingly, RBI had, vide letter dated November 1, 2019, advised NPCI 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 answering respondent had also filed its response before this Hon'ble Court vide reply dated November 7, 2019 in the

case of Centre for Accountability and Systemic Change Vs. Union of India W.P. (C) No. 921 of 2018.

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. NPCI had stated 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 Vulnerability Assessment / Configuration Assessment reports from third party auditor. NPCI had further, vide letter dated January 31, 2020, informed that they had reviewed the Post Change Review Report-II from the CERT-In, empaneled auditor of WhatsApp highlighting the closure of the two items, and found the same in order. RBI had, vide letter 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.

Thereafter, NPCI had, vide letter dated June 5, 2020, informed that they had reviewed the Post Change Review Report-III from the CERT-In empaneled auditor (M/s Deloitte) of WhatsApp certifying the compliance with the remaining three items and found the same to be in order. NPCI had stated that as WhatsApp has fully complied with the requirements of the RBI circular dated April 6, 2018, they are giving ICICI Bank (being the sponsor bank for WhatsApp) the approval to go live of WhatsApp on UPI.

Subsequently, NPCI had, vide letter dated November 20, 2020, informed that they had approved WhatsApp to go live on UPI for a maximum registered base of only twenty million to start with.

It may also be noted that Amazon was permitted by NPCI to operate as an UPI TPAP only after compliance with the RBI circular dated April 6, 2018. Whereas the other two TPAPs, i.e. WhatsApp (Beta Mode with a cap of one million users) and Google, were already functioning as UPI TPAPs at the time of issuance of the RBI circular. In this regard, while 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. Therefore, RBI always weighs and explores the available regulatory options to ensure expeditious and complete compliance with the circular requirements

especially in the light of the fact that developing the trust of citizens in various digital payment platforms takes time and any decision taken in haste could undo the work done in the recent years.

A copy of the NPCI letter dated January 31, 2020 is annexed herewith and marked as **Annexure R - 3**. (Page Nos. 34).

The reply dated November 7, 2019 filed before this Hon'ble Court is annexed herewith and marked as **Annexure R - 4** (Page Nos. 35 to 41).

A copy of the letter dated January 31, 2020 from RBI to NPCI is annexed herewith and marked as **Annexure R – 5** (Page Nos. 42).

The letter dated November 20, 2020 from NPCI is annexed herewith and marked as **Annexure R – 6** (Page Nos.43 to 44).

Note: The petitioner has inadvertently in Para 16 mentioned the date of the FAQs as June 22, 2019 instead of June 26, 2019.

24. That with reference to Para 18 of the writ petition, it is submitted that the same are matters of record and needs no reply from the answering respondent.
25. That the contents of Para No. 19, except those which are matter of record, are absolutely wrong and hence denied. The answering respondent craves leave of this Hon'ble Court to refer and rely upon the submissions made hereinbefore in the present counter affidavit.

26. That with reference to Paras No. 20 to 23 of the Writ Petition, it is submitted that the same being matter of record do not call for any response on behalf of the answering Respondent.
27. That with reference to Para 24 of the writ petition, it is submitted that the same do not call for any response on behalf of the answering respondent.
28. That with reference to Paras No. 25 and 26 of the writ petition, it is submitted that since NPCI is the owner and operator of UPI and has allowed WhatsApp to operate under UPI, it would be more appropriate for them to respond on the status of compliance of WhatsApp with the system rules / procedural guidelines governing UPI.
29. That with reference to Para No. 27 of the Writ Petition, it is submitted that the same being matter of record do not call for any response on behalf of the answering Respondent.
30. That the contents of Paras No. 28 to 30, except those which are matter of record, are absolutely wrong and hence denied. It is denied that the RBI has turned blind eye and has compromised with the interest of the Indian users. It is also denied that the RBI has responsibility to conduct audit of the members of UPI ecosystem. The answering respondent refers and relies on the submissions made in Paras 22 and 23 of this counter affidavit. The same has not been repeated herein for the sake of brevity.

31. That with reference to Para 31 of the writ petition, it is submitted that the same do not call for any response on behalf of the answering respondent.
32. That the contents of Para No. 32, except those which are matter of record, are absolutely wrong and hence denied. The answering respondent again refers and relies on the submissions made in Para 23 of this counter affidavit.
33. That with reference to Paras No. 33 to 37 of the Writ Petition, it is submitted that the same being matter of record as well as of fact do not call for any response on behalf of the answering Respondent.
34. That the contents of Paras No. 38 to 41, except those which are matter of record, are absolutely wrong and hence denied. It is submitted that RBI's directions issued vide circular dated April 6, 2018 on Storage of Payment System Data pertain only to payment data storage and not data sharing or privacy. RBI has not issued any instructions on data sharing by TPAPs or the participants of UPI. Matters related to data privacy and data sharing come under the domain of the Government of India. While 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. Therefore, RBI always weighs and

explores the available regulatory options to ensure expeditious and complete compliance with the directions issued vide circular dated April 06, 2018. Accordingly, as WhatsApp and Google were already functioning as TPAPs and providing customer services at the time of issuance of the circular, no disruptive action against them was contemplated in the interest of the general public. The same approach was followed by RBI with all the non-compliant entities which are similarly placed. It may also be noted that NPCI was advised not to permit full scale operations of WhatsApp till the time they are fully compliant with the requirements of the RBI directions. NPCI subsequently allowed 'go live' of WhatsApp on UPI only after ensuring that WhatsApp was fully compliant with the circular.

35. That the averments made in Para 42 of the writ petition do not call for any response on behalf of the answering respondent.

REPLY TO THE GROUNDS:

36. That the Ground A & B of the Petition are denied. However, it is submitted that the averments made in the preceding paragraph no. 34 of the present Counter Affidavit are reiterated and the same may be treated as reply to the grounds also.
37. That with reference to Ground C & D of the Petition, the content of the preliminary submissions of the present Counter Affidavit is reiterated.

38. That the contents of Ground E - J are absolutely wrong and hence denied. The answering respondent craves leave of this Hon'ble Court to refer and rely upon the submissions made in the Paras 22 and 23 of the present counter affidavit.
39. That with reference to contents of Ground K of the Writ Petition, it is submitted that the same do not call for any response on behalf of the answering Respondent. As mentioned earlier, it would be appropriate for NPCI to respond on the status of compliance of WhatsApp with the system rules / procedural guidelines governing UPI.
40. That the contents of Ground L are absolutely wrong and hence denied. The contents of the Para 23 of the present Counter Affidavit is reiterated.
41. That with reference to Ground M of the Petition, it is submitted that the same do not call for any response on behalf of the answering respondent.
42. That with reference to Ground N of the Petition, it is submitted that the same do not call for any response on behalf of the answering respondent. However, the contents of Para 34 of the present counter are reiterated.
43. That the contents of Ground O are absolutely wrong and hence denied. The allegations made against the answering respondent are baseless. The answering respondent craves leave of this Hon'ble Court to refer and rely upon the

submissions made in the Para 23 of the present counter affidavit.

44. That with reference to Ground P to T of the Petition, it is submitted that the same do not call for any response on behalf of the answering respondent. However, it is denied that the answering respondent turned blind eye to the public interest.
45. That with reference to Ground U of the Petition it is submitted that the answering respondent refers and relies on the submissions made in para 23 of the present counter affidavit. The same is not being repeated here in for the sake of brevity.
46. That the contents of Ground V are absolutely wrong and hence denied. It is submitted that RBI's directions issued vide circular dated April 6, 2018 on Storage of Payment System Data pertain only to payment data storage and not data sharing or privacy. RBI has not issued any instructions on data sharing by TPAPs or the participants of UPI. Matters related to data privacy and data sharing come under the domain of the Government of India.
47. That with reference to Ground W - BB of the Petition, it is submitted that the same do not call for any response on behalf of the answering respondent.

48. That with reference to Paras 43 to 45 of the writ petition, it is submitted that the same do not call for any response on behalf 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 petitioner is not entitled to any of the reliefs prayed in the writ petition as against the answering Respondent. The petition filed by the petitioner is devoid of any merit and is liable to be dismissed with cost. 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 08th day of December 2020.


DEPONENT