IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 79 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 708 OF 2014

United Exchange of India Limited …Petitioner / Transferor Company

WITH

COMPANY SCHEME PETITION NO. 80 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 709 OF 2014

BSE Limited …Petitioner / Transferee Company

In the matter of:

The Companies Act, 1956 (1 of 1956);

AND

In the matter of:
Sections 391 to 394 of the Companies Act, 1956;

In the matter of:
The Scheme of Amalgamation of United Stock Exchange of India Limited with BSE Limited and their respective shareholders and creditors.

CALLED FOR HEARING:

Mr. Rohan Rajadhyaksha along with Mr. Molla Hasan i/b AZB & Partners, Advocates for Petitioners in both Petitions.

Mr. S. Ramakantha, Official Liquidator, present in Company Scheme Petition No. 79 of 2015.

Mr. D. R. Shah i/b A. A. Ansari for the Regional Director in both the Petitions.

CORAM: S. J. Kathawalla J.

DATE: 24th April, 2015

P.C.:

1. Heard learned counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of United Stock Exchange of India Limited with BSE Limited and their respective shareholders and their creditors.

3. The Learned Counsel for the Petitioners states that the Transferor Company is a stock exchange recognized by the Securities Exchange Board of India ("SEBI") and is engaged in the business of offering trading platform in the currency futures & options in the currency derivatives segment. The Transferee Company is a stock exchange recognized by SEBI and is engaged in the business of providing stock exchange services. The Transferee Company provides a market/ platform for trading in equities including small and medium enterprise (SME) equities, debt instruments, equity derivatives, currency derivatives, interest rate derivatives and mutual funds.

4. The Learned Counsel for the Petitioners states that the amalgamation of the Transferor Company with the Transferee Company would enable meaningful consolidation in the currency derivative sector and improve liquidity in the exchange. Further, the amalgamation will result in focused operational efforts, realizing operational synergies in terms of compliance and governance costs. The consolidation pursuant to the amalgamation will lead to efficient utilization of

capital and create a stronger, broader-base, for the future growth of the amalgamated entity. The amalgamation will boost longevity and increase the long term value for the shareholders of the Transferor Company and the Transferee Company thereby increasing the goodwill for the exchanges and will lead to an increase in the public shareholding of the Transferee Company. The successful consummation of the amalgamation will improve the financial position of the combined entity thereby releasing better value for the existing shareholders of both the entities. Further, given that the Scheme involves the amalgamation of one stock exchange into another which are governed and regulated by the same regulatory body, i.e., SEBI, the proposed amalgamation will lead to long terms benefits which will be in the best interest of the public at large.

5. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioners have passed respective resolutions for approval of the Scheme of Amalgamation which are annexed to the respective Petitions.

6. The Learned Counsel for the Petitioners further states that the Petitioners have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in the respective Company Summons for Directions and seeks sanction to the said proposed Scheme of Amalgamation.

7. The Learned Counsel appearing on behalf of the Petitioners have stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioners undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 1956/ 2013 and the rules made thereunder whichever is applicable. The undertaking is accepted.

8. The Official Liquidator has filed his report on 8th April, 2015 in Company Scheme Petition No. 79 of 2015 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

9. The Regional Director has filed an affidavit on 22nd April, 2015 stating therein that save and except what is stated in paragraphs 6 (a), (b) & (c) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a), (b) & (c) of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

(a) The Shares of Transferor Company are held by Foreign Body Corporate/ Non Resident Indian. Hence, while giving effect to the Scheme, by issuing new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company has to comply with the provisions of FEMA/ RBI regulations as applicable in this regard.

(b) Clause 17.4 of the scheme states that the fair value of shares issued in excess of the face value of shares shall be recorded as Securities Premium in the financial statements of the Transferee Company. In this regard, it is submitted that the Transferee Company has not received any revenue or cash while issuing new shares in exchange of issue of new shares for transferring the assets and liabilities of Transferor companies to Transferee Company. In view of the above, the excess of the fair value of shares issued over the face value of shares shall be recorded as Capital Reserve of Transferee Company and it shall not form part of Securities Premium account of Transferee Company.

(c) Clause 20 of the Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of Transferor Company and Transferee Company have been authorized to make any amendments to Scheme, if necessary, after the Scheme is approved by the Hon'ble High Court. Such liberty shall not be exercised by the Board of Directors

without obtaining prior approval from the Hon'ble High Court. The Petitioner Company may be directed to undertake to this effect."

10. So far as the observation made by the Regional Director in paragraph 6(a) of the affidavit of the Regional Director is concerned, the Petitioner/ Transferee Company through its Counsel undertakes that while giving effect to the Scheme, by issuing new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company shall comply with the provisions of FEMA/ RBI regulations as may be applicable in this regard.

11. So far as the observation made by the Regional Director in paragraph 6(b) of the affidavit of the Regional Director is concerned, the Petitioner/ Transferee Company through its Counsel undertakes that the excess of the fair value of shares issued over the face value of shares shall be recorded as Capital Reserve of Transferee Company and it shall not form part of Securities Premium account of Transferee Company.

12. In response to the observation made by the Regional Director in paragraph 6(c) of the said Affidavit, the Petitioner/ Transferee Company through its Counsel undertakes not to make any amendments to the Scheme, after the Scheme has been approved by this Court without obtaining prior approval from this Court.

13. The Learned Counsel of Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Learned Counsel appearing for the Petitioners. All the abovementioned undertakings are accepted.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. No other party has come forward to oppose the Scheme in the Court.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 79 of 2015 filed by the Transferor Company is made absolute in terms of the prayer made under clause (a) and the Company Scheme Petition No. 80 of 2015 filed by the Transferee Company is made absolute in terms of the prayer made under clause (a).

16. The Transferee Company is directed to lodge a copy of this Order and the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.

17. The Petitioners are directed to file a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form 21 or INC 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/ 2013, which ever is applicable.

18. The Petitioners to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition No. 79 of 2015 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

19. Filing and issuance of the drawn up order is dispensed with.

20. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(S. J. Kathawalla J.)