IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION 15 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 893 OF 2014

RELIANCE MONEY EXPRESS LIMITED

……. Petitioner Company

And

COMPANY SCHEME PETITION 16 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 894 OF 2014

YOUFIRST MONEY EXPRESS PRIVATE LIMITED

……. Petitioner 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;

AND

In the matter of Scheme of Arrangement

between

Reliance Money Express Limited

and

YouFirst Money Express Private Limited

and

their respective shareholders.

Called for Final Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for the Petitioner.

Ms. S. V. Bharucha i/b Mr. H.P. Chaturvedi for Regional Director in both the Company Scheme Petitions

CORAM: S. J. Kathawalla, J.

DATE: 18th April, 2015

1. Heard 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 Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Arrangement between Reliance Money Express Limited and YouFirst Money Express Private Limited and their respective shareholders.

3. Learned Advocate for the Petitioners states that Transferor Company Reliance Money Express Limited is licensed by the Reserve Bank of India to operate as a Full Fledged Money Changers and also to act as an Indian Agent to Western Union Financial Services, Inc., for the Money Transfer Service Scheme in India and accordingly provides both the services in India and Transferee Company YouFirst Money Express Private Limited has obtained Licence from Reserve Bank of India, to act as a Full Fledged Money Changer. An application has been made to the Reserve Bank to obtain License as a Indian Agent to Western Union Financial Services, Inc., for the Money Transfer Service Scheme in India. Which is under process with the Reserve Bank of India. The proposed Scheme will have the benefit that in optimizing allocation of financial resources in line with requirements and risk quotient of respective businesses and thereby use available resources in development of their respective core businesses; and achieving improved operational and management efficiency by reduction of overheads and other expenses. The Petitioner Companies approved the said Scheme by passing the Board Resolutions which are annexed to the Company Scheme Petitions.

4. The learned Advocate for the Petitioners further states that, Petitioner companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been

filed in consonance with the orders passed in respective Summons for Directions.

5. The 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 Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under. The said undertaking is accepted.

6. The Regional Director has filed an Affidavit on 15th April, 2015 stating therein, save and except as stated in paragraph 6, it appears that the scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said affidavit it is stated that

That the Deponent further submits that:

a) *The Transfer of assets and liabilities of the FFMC and MTSS divisions of the Transferor Company to the Transferee Company is only an arrangement which is not in conformity with the provisions of section 2(19AA) of the Income Tax Act, 1961. The Scheme is not a tax neutral Scheme. Further, it is respectfully submitted that instead of issuing shares to the shareholders of the Transferor Company, the Scheme provides for paying a lump sum consideration of Rs.43 crores to the Transferor Company which is a deviation from the definition of 'Demerger' as defined in Income Tax Act. Further, it is also noticed that instead of transferring assets on book value basis, it is proposed on fair value basis. For this reason, the Scheme is not a tax neutral one.*

b) *It is further submitted that the tax implications, if any, arising out of this scheme shall be subject to final decision of Income Tax Authorities. The approval of the scheme by Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

c) *The deponent further submits that the consideration payable by the transferee company is spread over to a period of 1 year on different dates. The compliance of payment of consideration on due date cannot be overseen at this stage by this Hon'ble Court and this part of the Scheme is a separate contract between the transferor company and the transferor company. In the event of any default is made, then the petitioner companies have to approach to this Hon'ble Court to modify the Scheme.*

d) *Though it has been alleged that the transferee company has made application to RBI to obtain license to act as an Indian agent for doing the business of money transfer service Scheme, but yet not obtained any approval. The approval granted by RBI for doing Money Transfer Service Scheme to the Transferor Company, shall not be transferred to the Transferee Company without prior approval of RBI and the transferee company shall not do any business of Money Transfer Service Scheme as an agent for Western Union Financial services, Inc. until the transferee company itself is granted license or the license granted to transferor company is duly transferred by RBI in favour of transferee company.*

e) *Clause 15 of the Scheme provides for Modification and Amendment 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 Hon'ble High Court. Such liberty shall not be exercised by Board of Directors without obtaining prior approval from the Hon'ble High Court. The Petitioner Companies shall be directed to undertake to this effect.*

7. As far as the observations in paragraph 6 (a) and (b) of the affidavit of the Regional Director is concerned, the petitioners through their counsel submits that the Scheme is not in conformity with the provisions of section 2(19AA) of the Income Tax Act, 1961 and the Scheme is not a tax neutral Scheme. The Petitioners further submits that all tax issues arising out of Scheme of Arrangement will be met and answered in accordance with law. The petitioners through their counsel submits that the petitioners is bound to comply with all applicable provisions of Income Tax Act and all tax issues arising out of Scheme of Arrangement will be met and answered in accordance with law.

8. As far as the observations in paragraph 6 (c) and (e) of the affidavit of the Regional Director is concerned, the petitioners through their counsel submits that if any default is made on compliance of payment of consideration on due dates, the petitioners will approach to the High Court to modify the Scheme. The Learned counsel for the Petitioner Company further states that clause 15 of the Scheme gives power to the Board of the Director of the Petitioner Company to amend any part of the Scheme. The Learned counsel of the Petitioner Company state that such power to amend the Scheme is subject to prior approval of the High Court. It is therefore clarified that the power vested under clause 15 of the Scheme will be subject to the approval of the High Court.

9. As far as the observations in paragraph 6 (d) of the affidavit of the Regional Director is concerned, the petitioners through their counsel submits that the approval granted by RBI for doing Money Transfer Service Scheme to the Transferor Company, shall not be transferred to the Transferee Company without prior approval of RBI and the Transferee Company will not do any business of Money Transfer Service Scheme as an agent for Western Union Financial services, Inc. until the Transferee Company itself is granted license or the license granted to Transferor Company is duly transferred by RBI in favour of the Transferee Company.

10. The Learned Counsel for Regional Director on the instructions of Mr. M Chandanamuthu, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the counsel of the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted

11. 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.

12. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No 15 and 16 of 2015 is made absolute in terms of prayer clauses (a) and (c).

13. The Petitioner Companies 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.

14. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with concerned E-Form INC 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

15. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.

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

17. 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)