IN THE HIGH COURT OF DELHI

COMPANY PETITION NO. 780/2014

Reserved on 26th March, 2015
Date of pronouncement: 5th May, 2015

In the matter of
The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

Petition under Sections 391 to 394 of the Companies Act, 1956

Scheme of Amalgamation of:

American Express Foreign Exchange Services India Limited
Petitioner/Transferor Company

WITH

American Express Services India Limited
Petitioner/Transferee Company

Through A. Das, Advocate for the petitioners
Ms. Aparna Mudiam, Assistant Registrar of Companies for the Regional Director
Mr. Rajiv Bahl, Advocate for the Official Liquidator

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of American Express Foreign Exchange Services India Limited (hereinafter referred to as the transferor company) with American Express Services India Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this court.

3. The transferor company was originally incorporated under the Companies Act, 1956 on 5th September, 1984 with the Registrar of Companies, Tamil Nadu under the name and style of T. T. Travels Private Limited. Thereafter, the word 'Private' was deleted from the name of the company w.e.f. 1st July, 1995. The company changed its name to T. T. Forex Limited and obtained the fresh certificate of incorporation on 30th June, 2000. The company again changed its name to American Express Foreign Exchange Services India Limited and obtained the fresh certificate of incorporation on 19th May, 2003. Thereafter, the company shifted its registered office from the State of Tamil Nadu to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 25th November, 2010.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 31st August, 1999 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Tata Finance American Express Private Limited. The company changed its name to Tata Finance Amex Private Limited and obtained the fresh certificate of incorporation on 12th November, 1999. Thereafter, the word 'Private' was deleted from the name of the company and the company became a deemed public company under Section 43A of the

Companies Act, 1956. The name of the company was changed to Tata Finance Amex Limited and the fresh certificate of incorporation was issued on 26th December, 2001. The company finally changed its name to American Express Services India Limited and obtained the fresh certificate of incorporation on 6th January, 2003.

5. The present authorized share capital of the transferor company is Rs.14,20,00,000/- divided into 1,42,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.13,42,78,600/- divided into 1,34,27,860 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.55,00,00,000/- divided into 5,50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.54,05,01,810/- divided into 5,40,50,181 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, have also been filed.

8. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and

detailed in the petition and the accompanying affidavit. It is claimed that the Scheme will result in faster and effective decision making, better administration and cost reduction, including reduction in administrative and other common costs. It is further claimed that the Scheme will also result in optimal utilization of resources by reallocation towards more productive assets and greater economies of scale.

9. So far as the share exchange ratio is concerned, the Scheme provides that no consideration shall be payable by the transferee company for the shares of the transferor company since the transferee company (itself, through its nominee or jointly with others) is the shareholder of the transferor company, and accordingly no shares shall be allotted by the transferee company either to itself or to the joint holders of shares or to any of its nominee shareholders holding shares in the transferor company.

10. It has been submitted by the petitioners that no proceedings under Sections 235 and 250A of the Companies Act, 1956 are pending against the transferor and transferee companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 7th May, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the

Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The petitioner companies had earlier filed CA (M) No. 123/2014 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 22nd September, 2014 which was modified by order dated 28th November, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the transferor and transferee companies, there being no secured creditors of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 16th December, 2014, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Indian Express' (English) and 'Jansatta' (Hindi) editions. Affidavit of service dated 24th February, 2015 has been filed by the petitioner showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on

20th February, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

14. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 4th March, 2015 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

15. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 3rd March, 2015. Relying on Clause 3.1.2(vii) of Part-III of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 3.8.2 of Part-III of the Scheme, it has been stated that the transferee company shall follow the method of accounting treatment as prescribed for the 'pooling of interest method' under Accounting Standard-14 governed by the Companies (Accounting Standards) Rules,

2006. He further submitted that in Clause 3.3 of Part-III of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

16. Although the Regional Director in his report has not raised any objection to the proposed Scheme, but in para 7 of his report, he has pointed out that the petitioner companies in their reply have submitted that the transferee company is registered as a Tele Marketer with Telecom Regulatory Authority of India (TRAI) and has to comply with norms specified by them along with the governance principles laid down by the corporation. He, therefore, prays that the transferee company may be directed to give an undertaking that "it has complied with norms specified by them along with the governance principles laid down by the corporation (especially around Data integrity & Respect for privacy). In reply, the petitioner companies have filed an affidavit dated 16th March, 2015 of Mr. Manish Motani, authorized signatory of the petitioner companies, undertaking to comply with the norms specified by the Telecom Regulatory Authority of India in terms of the Telecom Commercial Communications Customer Preference Regulations, 2010 and other applicable regulations, rules or guidelines, as also the governance principles laid by the TRAI. The aforesaid undertaking is accepted and the petitioner shall remain bound by the same. In view of the above, the observation made by the Regional Director stands satisfied.

17. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 24th February, 2015 of Mr. Vivek Sehgal, authorized signatory of the petitioner companies, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers. Learned counsel for the petitioner companies also reiterates in Court that no objection has been received pursuant to the publication in the newspaper.

18. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Amalgamation, i.e. 1st April, 2014, the transferor

company shall stand dissolved without undergoing the process of winding up.

19. Learned counsel for the Official Liquidator prays that costs may also be imposed keeping in view the fact that the matter has involved examination of a number of records from the office of the Regional Director and the office of the Registrar of Companies and for filing the reports. He submits that at least costs of Rs.1,00,000/- each be imposed. Learned counsel for the petitioners states that the same is acceptable to him. Looking to the circumstances, the petitioners shall deposit a sum of Rs.1.0 lakh each by way of costs in the Common Pool Fund of the Official Liquidator, within one week from today.

20. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

May 05, 2015