

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

COMPANY SCHEME PETITION NO 151 OF 2017

TimesofMoney Private Limited

.....Petitioner/Demerged Company  
AND

COMPANY SCHEME PETITION NO 152 OF 2017

TOM Technology Services Private Limited

.....Petitioner /Resulting Company

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 .

AND

In the matter of Scheme of Arrangement between TimesofMoney Private Limited And TOM Technology Services Private Limited and their Respective Shareholders

**Called for hearing**

Mr. Hemant Sethi, M/s Hemant Sethi & Co., Advocate for the Petitioners in both the Petitions.

**CORAM B.S.V. Prakash Kumar, Member (Judicial)**

**V. Nallasenapathy, Member (Technical)**

**DATE: 3<sup>rd</sup> May, 2017**

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement between TimesofMoney Private Limited And TOM Technology Services Private Limited and their Respective Shareholders.
3. The Counsel for the Petitioners submit that the DemergedCompany is engaged in the business of international remittance which includes the Remittance Business and the Remittance Technology Business the Software Business and domestic payments aggregation business. The Resulting Company has not yet commenced any business operations but has been incorporated to house undertaking pertaining to the Remittance Technology Business of the Demerged Company.
4. The Counsel for the Petitioners submit that the respective Board of Directors feel that the Scheme of Arrangement is beneficial to the respective shareholders, creditors, employees and all stakeholders of the Transferor Company and the

Transferee Company and the proposed Scheme of Arrangement inter-alia is aimed at achieving the following business and commercial objectives:

- (a) *TMPL is engaged in 3 (three) distinct lines of business namely: (i) the Remittance Business; (ii) the Software Business; and (iii) the Remittance Technology Business.*
- (b) *Each of the aforementioned businesses of TMPL have been nurtured and developed from a nascent stage and are currently at different stages of maturity, with differing capital and operating requirements including risk and competition necessitating different management approaches and focus.*
- (c) *This Scheme proposes to demerge the Remittance Technology Business of TMPL, and the estate, assets, contracts, intellectual property rights, rights, title, interest, liabilities and employees pertaining to the Remittance Technology Business and transfer it to the Resulting Company. The proposed demerger of the Demerged Undertaking envisaged in this Scheme, is aimed at achieving the following business and commercial objectives and is expected to result in the following benefits for TMPL and the Resulting Company ie. (i) enhanced strategic flexibility to build a viable technology platform solely focusing on the payment processing sphere (ii) enable dedicated management focus, and resources and skill set allocation to each business, which will in turn accelerate growth and unlock significant value for the shareholders of TMPL. (iii) Provide enhanced strategic flexibility in the operation of each of the aforementioned businesses, and to the shareholders of TMPL (iv) clearly identifying the separate technology business whereby enhancing the growth prospects of the Resulting Company (v) expanding the potential client / customer market for each business vertical (vi) access to various sources of funds and investments for the rapid growth of all businesses, (vii) the Scheme will also provide an opportunity to the investors to select investments which best suit their investment strategies and risk profiles.*

5. Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Directions.
7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Court/Tribunal and they have filed necessary Affidavits of compliance in the Court/Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.

8. The Regional Director has filed his Report dated 13<sup>th</sup> April, 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

- (a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*  
*As per Definition 4.2 of the Scheme, the "Appointed date" for the purposes of this Scheme and the Income-tax Act, means the Effective Date,*  
*As per Definitions 4.6 of the Scheme, the "Effective Date" means the date on which the certified or authenticated copy of the order of the High Court of Bombay sanctioning the Scheme is filed with the Registrar of Companies by TMPL and the Resulting Company. Any references to this Scheme to the date of "coming into effect of this Scheme" or "effectiveness of this Scheme" or "Scheme taking effect" shall mean the Effective Date.*
- (b) *In this regard it is submitted that the financial statements of both the companies to the Scheme is as at 31.03.2016. Further in terms of provisions of section 232(6) of the Companies Act, 2013 the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not a date subsequent to the appointed date. Hence, in the instant case, in view of legal position the appointed date and the effective shall be 31st day of January, 2017. Accordingly, this Hon'ble Tribunal may kindly fix the appointed date as 31st day of January, 2017 and direct the companies to scheme to amend the scheme accordingly.*
- (c) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 21st February, 2017 has served a copy company petition No. 151-152/2017 along with relevant orders etc., to IT Department. Further this directorate has also issued a reminder dated 4.04.2017 to IT Department. However, as on date there is no response from the Income Tax Department.*
- (d) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
- (e) *In view of the objection raised by the ROC Mumbai, mentioned as para 14 above Hon'ble NCLT may pass appropriate order/orders as deem fit.*
- (f) *Perusal of memorandum indicates M/s Network International Investment PTE Limited, Singapore is one of the subscriber to the Memorandum of Association dated 4.08.2016 has subscribed for 9999 equity shares Rs 10/- and Shri Avijit Nanda has subscribed 1 equity shares Rs 10/- on behalf of M/s Times money Private Limited (Nominee of M/s Network International Investment PTE Limited, Singapore).*  
*This certificate of incorporation is issued on 11.08.2016*  
*The consideration of subscription shares has been received on 10.10.2016.*  
*The allotment of shares to the subscribers is on 16.11.2016*

*The allotment of shares should have been within a period of two months from the date of incorporation in compliance with the provisions of section 56(4)(a) of the Companies Act, 2013. Hence the Hon'ble Tribunal may pass appropriate order as deem fit.*

Save and except stated in para IV(s) to (f) it appears that the Scheme is not prejudicial to the interest of shareholders and public.

9. As far as observations made in paragraph IV (a) of the report of the Regional Director is concerned, the Transferee Company through their Counsel undertakes to pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.
10. In so far as observations made in paragraph IV (b) of the Report of the Regional Director is concerned, the Counsel for the Petitioner submits that due to the unique nature of the Scheme where the Transferee Company was only incorporated on August 11, 2016, and as per provisions of Section 96 of the Companies act 2013 the first Annual general Meeting needs to be held within nine months from the end of the first financial year of incorporation which in the present case would be December 2017. There has been no further allotment of shares in the Transferee Company other than the initial subscription shares allotted to its shareholders amounting to INR 1 lakh post approval of the Scheme by the Board of Directors of the Transferee Company. In view thereof the Petitioners are agreeable to having Appointed Date of May 15, 2017.
11. In so far as observations made in paragraph IV (c) & (d) of the report of Regional Director is concerned, the Transferee Company through its Counsel undertakes to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
12. In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Counsel for the Petitioners submit that the Auditors have certified that Accounting Treatment as proposed in the Scheme is in conformity with provisions of Section 133 of the Companies Act, 2013.
13. In so far as observations made in paragraph IV (f) of the Report of the Regional Director is concerned, the Counsel for the Petitioners clarify that allotment of shares were done immediately on receipt of FIRC (foreign inward remittance certificate) dated 08.11.2016 from their Bankers evidencing receipt of consideration from shareholder. Accordingly the allotment was made on 16.11.2016. The Petitioners through their Counsel undertake that if any monetary penalty is levied in this regard the same will be paid. The Counsel for the Petitioners further clarify that one share in the Transferee Company is subscribed by M/s Times money Private Limited (Nominee of M/s Network International Investment PTE Limited, Singapore) represented by Mr Avijit Nanda.

14. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
15. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
16. Since all the requisite statutory compliances have been fulfilled, transferred Company Scheme Petition No. 151 of 2017 filed by the Resulting Company is made absolute in terms of prayer clause (a) to (c). Company Scheme Petition No 152 of 2017 is made absolute in terms of prayer clause (a) of the Petition.
17. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, 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 receipt of the order.
18. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with E-form INC 28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry.
19. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. The costs to be paid within four weeks from the date of receipt of Order.
20. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
21. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

**V. Nallasenapathy, Member (T)**

Sd/-

**B.S.V. Prakash Kumar Member (J)**