IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 213 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTIONS NO. 887 OF 2014

PCS TECHNOLOGY LIMITED …………. Petitioner Company

In the matter of:

The Companies Act, 1956 (1 of 1956) and the Companies Act, 2013 (18 of 2013);

AND

In the matter of:

Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 (1 of 1956) and Section 52 of the Companies Act, 2013;

AND

In the matter of:

The Scheme of Amalgamation and Arrangement between PCS International Limited, Mauritius (‘**the Transferor Company’**) and PCS Technology Limited (**‘the Transferee Company’**)

AND

Their respective Shareholders.

Called For Hearing

Ms. Amrita Hajarnis i/b. ***Patrick Fernandes***, Advocate for the Petitioner.

Mr. G.Hariharan i/b Mr. A.A.Ansari for the Regional Director.

CORAM: S.J. Kathawalla, J.

DATE: 8th May, 2015

P.C.:

1. Heard learned counsel for 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 read with Sections 100 to 103 of the Companies Act, 1956 (1 of 1956) and Section 52 of the Companies Act, 2013 to the Scheme of Amalgamation and Arrangement between PCS International Limited, Mauritius (The Transferor Company) and PCS Technology Limited (The Transferee Company) and its respective shareholders.

3. The Learned Advocate for the Petitioner/ Transferee Company states that the Petitioner and Transferor Company are primarily engaged in the business activities i.e. computer hardware, IT and IT enabled services.

4. The Learned Advocate for the Petitioner states that the amalgamation of the Transferor Company with the Petitioner will result in simplification of corporate structure leading to elimination of duplication in administrative cost and eliminating the overlapping business or businesses which are no longer pursued by the Transferor Company.

5. The Learned Advocate for the Petitioner states that the Board of Directors of the Transferor Company and the Transferee Company have passed a resolution approving the Scheme of Amalgamation and Arrangement which is annexed to the Petition.

6. The Learned Counsel for the Petitioner further states that a Special Resolution under Section 100 of the Companies Act, 1956 has been passed by Equity Shareholders of the Petitioner Company on January 23, 2015 whereat the requisite majority of the Equity Shareholders of the Petitioner Company have approved the said reduction of the Securities Premium Account of the Petitioner Company, which is annexed as Exhibit “**N**” of the Petition and that

the Scheme includes reduction of the Securities Premium Account. The said reduction shall be effected as an integral part of the Scheme and the same does not involve either diminution of liability in respect of unpaid share capital or payment to any Shareholder of paid up share capital and that the said utilization would not in any way adversely affect the operations of the Petitioner Company or the ability of the Petitioner Company to honour its commitments or to pay its debts in the ordinary course of business and accordingly the interests of the creditors of the Petitioner Company are not affected by such utilization and the procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with as per order dated December 12, 2014 in Company Summons for Direction No. 887 of 2014.

7. The Learned Advocate for the Petitioner further states that, the Petitioner Company has complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the orders passed in the said Company Summons for Direction.

8. The Learned Advocate appearing on behalf of the Petitioner Company has stated that the Petitioner Company has complied with all requirements as per the directions of the Court and it has filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Company also undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and the Companies Act, 2013 and the rules made thereunder whichever is applicable. The said undertaking is accepted.

9. The Regional Director has filed affidavit dated 6th May, 2015 stating therein that save and except as stated in para 6(a) to (d) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In para 6(a) to (d) of the said affidavit has stated that:

"6. That the Deponent further submits that,

(a) As per clause 11.2 of the scheme, all the assets recorded in the books of the Transferor Company and transferred to and vested in Transferee Company pursuant to this scheme shall be recorded by

Transferee Company at their respective fair values, In this regard it is suggested that, the same be transferred on the book value basis.

(b) Transferee Company shall ensure that the Transferor Company is complying with all the statutory requirement as per Mauritius Law to strike off the name of the Transferor Company from the record of Registrar of Companies, Mauritius.

(c) The Transferee Company shall file a copy of the order with Reserve Bank of India together with the copy of the scheme petition within 30 days from the date of approval of the scheme by the Hon'ble High Court.

(d) That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation the decision of the Income Tax Authority is binding on the petitioner company."

10. So far as the observation made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Advocate undertakes that all the assets recorded in the books of the Transferor Company and transferred to and vested in Transferee Company pursuant to this scheme shall be recorded by Transferee Company at their respective book values.

11. So far as the observation made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Advocate undertakes that the Transferor Company would comply with all the statutory requirements as required by the Mauritius Law to strike off the name of the Transferor Company from the record of Registrar of Companies, Mauritius.

12. So far as the observation made in paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Advocate

undertakes that the Transferee Company would file a copy of the order with Reserve Bank of India together with the copy of the scheme within 30 days from the date of receipt of the order from the Hon'ble High Court.

13. So far as the observation made in paragraph 6(d) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the Petitioner Company is bound to comply with all the applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

14. The Learned Counsel for the 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 Petitioner. The said undertakings given by the Petitioner Company are accepted.

15. 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 any public policy.

16. Since all requisite statutory compliances have been fulfilled, Company Petition No.213 of 2015 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) and (f) of the said Petition.

17. The Petitioner Company is directed to lodge a copy of this order and the Scheme of the Amalgamation and Arrangement, 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.

18. The Petitioner is directed to file a copy of this order along with a copy of the Scheme of Amalgamation and Arrangement with the concerned Registrar of Companies, electronically, along with Form INC-28 in addition to the physical copy as per relevant provisions of the Companies Act, 1956 or Companies Act 2013 whichever is applicable.

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

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

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

(S. J. Kathawalla, J.)