IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 189 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 108 OF 2014

Vertex Customer Solutions India Private Limited

..Petitioner Company

In the matter of the Companies Act, 1956;

AND

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

AND

In the matter of Vertex Customer Solutions India Private Limited;

AND

In the matter of the Scheme of Amalgamation of Vertex Customer Solutions India Private Limited and Vertex Customer Management India Private Limited and their respective creditors and shareholders

<u>Called for Hearing</u>

Mr. Virag Tulzapurkar, Senior Advocate along with Mr. Puneet Arora and Mr. Abhishek Seth i/b. M/s Arora & Co., Advocates for the Petitioner Company

Mr. Shyam Mehta, Senior Advocate along with Mr. M. S. Bharadwaj i/b Mr. M. Chandanamuthu for Regional Director

S. Ramakantha, O.L. a/w Ms. Yogini D. Choahan, Assistant Official Liquidator for O. L.

CORAM: S. J. KATHAWALLA J.
DATE: 26th MARCH, 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 the Scheme of Amalgamation of Vertex Customer Solutions India Private Limited with Vertex Customer Management India Private Limited and their respective Creditors and Shareholders.

3. The learned Counsel for the Petitioner Company states that the Petitioner/ Transferor Company is in the business of setting up computer centers for training, software development and data processing and for this purpose to acquire, purchase or take or give on lease or on hire, computer system of any description including computer accessories, computing and management service equipments, Data Processing, Data Analyzing and selling computer time and to tender the Professional and other services connected with the activities of computer center and to rent out computer systems, computing and management service equipment and to provide services in respect of data processing, information processing, data preparation, other data processing, Voice and Non-Voice business, Logistics, B.P.O services, Management information and consultancy services, and that the Transferee Company is in the business of providing services in the field of customer relationship management, managing call

centres, Business Solutions, software developments, information-technology (IT) enabled services, and computer consultancy.

4. The proposed Scheme of Amalgamation will be beneficial as the amalgamation will result in integration of processes, rationalization of the business operations, synergies of operations, pooling of resources, more productive utilization of the said resources, optimization of costs and resources, cost and operational efficiencies, greater management focus, organized approach, greater financial strength and economies of scale as both the Transferor Company and the Transferee Company are in similar line of businesses. The amalgamation will enable the Transferee Company to undertake large scale operations with the help of a larger asset base, and to utilize the potential for growth and diversification, and also result in increase in the overall profitability as the administrative expenses and various managerial costs will be streamlined and optimized. The amalgamation would also result in consolidation and streamlining the holding of the shareholders for a better and a more efficient control since the Transferor company is a wholly owned subsidiary of the Transferee company.

5. The Transferor Company and the Transferee Company have approved the Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petition respectively.

6. The learned Counsel for the Petitioner Company submits that the Petitioner Company has complied with all the directions passed in Company Summons for Direction and the Company Scheme Petition has been filed in consonance with the Order passed in the Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioner has stated that the Petitioner has complied with all the requirements as per directions of this Court and has filed necessary Affidavits of compliance in the Court.

Moreover, the Petitioner Company through its 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 an Affidavit on 31st July, 2014 stating therein that save and except as stated in Paragraphs 6 (a), (b), (c), (d) & (e) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. Paragraphs 6 (a), (b), (c), (d) & (e) of the said affidavit of the Regional Director reads as under:

   (a) Clause 12.1.5 of the Scheme states that the difference, being the excess of book value of assets over the book value of liabilities of the Transferor company recorded by the Transferor company in its books of account, shall be credited to General Reserve Account. In this regard, it is submitted that the reserve, if any, arising out of the scheme be credited to Capital Reserve Account of the Transferee company and such reserve shall not form part of the free reserve of the Transferee Company.

   (b) Clause 12.1.6 of the Scheme provides for adjustment for differences in Accounting Policies between the Transferor company and the Transferee company. In this regard, it is submitted that the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standard such as AS-5, etc.

   (c) It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of the Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to this scheme of

amalgamation. The decision of the Income Tax Authority is obligatory on the Petitioner Company.

(d) *It is observed that Clause 3(b) of the Scheme provides for appointed date as 01/04/2011. There is no justification for taking retrospective date as Appointed Date. The Board of Directors of the Petitioner company have approved the scheme on 05/11/2013. By the time, the audited balance sheet as at 31/03/2012 and 31/03/2013 were adopted and approved by the shareholders of the company and as such as required under Section 391(2) of the Companies Act, 1956, the latest financial position is to be considered for the purposes of amalgamation. It is therefore more appropriate to have a latest practicable appointed date which is very close to 31/03/2013. It is further noticed that the transferor company is 100% subsidiary of Transferee company and therefore it would be more appropriate to merge the accounts of the Transferor company with the Transferee company as per the latest audited balance sheet which is as at 31/03/2013. It is further observed that the Transferor company has been incurring losses for the past few years and as such the retrospective date of Appointed date may have an impact on revenue. Further, the Transferee company is not within the jurisdiction of this Hon'ble Court and hence financial position of the Transferee company could not be ascertained. Hence, it would be more appropriate to have the appointed date as 01/04/2013 or such other date as the Hon'ble Court may direct.*

(e) *Clause 19 of the Scheme provides for Modification of Scheme wherein the Board of Directors of the Transferor Company and the Transferee Company have been authorised to make any amendments to the 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 further approval from the Hon'ble High*

Court. The Transferor and Transferee Company shall be directed to undertake to this effect.

9. As far as the observations made in paragraph no. 6 (a) of the Affidavit of the Regional Director is concerned, the Petitioner Company in paragraph 4 of its Affidavit dated 1st August 2014 undertakes that the reserve if any, arising out of the Scheme will be credited to the Capital Reserve Account of the Transferee Company and such reserve will not be part of the free reserves of the Transferee Company.

10. In so far as the observations made in paragraph No. 6 (b) of the Affidavit of the Regional Director is concerned, the Petitioner Company in paragraph 6 of its Affidavit dated 1st August 2014 undertakes that the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with all applicable Accounting Standards such as AS – 5, etc.

11. As far as the observations made in paragraph no. 6 (c) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company is bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of the Scheme will be met and answered in accordance with law/ Income Tax Authority.

12. In so far as the observations made in paragraph No. 6 (d) of the Affidavit of the Regional Director dated 31st July 2014 is concerned, after hearing the parties, this Court sanctions the Scheme with the appointed date of 1st April 2011 subject to the following conditions:

    a) The issue regarding the liability, if any, of the Petitioner or Transferee Company towards payment of income tax or any other tax that may arise pursuant to the sanction of the Scheme, are left open to the Income Tax Department to decide in accordance with law at the appropriate stage without being bound by the appointed date of 1st April 2011 fixed by the Scheme;

b) In the event of the Petitioner or Transferee Company filing revised income tax returns, the validity and permissibility thereof will be decided by the Income Tax Department, and while doing so, the Income Tax Department will not be bound by the appointed date of 1st April 2011 fixed by the Scheme;

c) The Income Tax Department shall not be bound by the appointed date of 1st April 2011 fixed under the Scheme while carrying out pending and/or future assesmments of the Transferor and Transferee companies whether on the basis of the income tax returns already filed or revised returns, if any, that may be filed, or otherwise, and shall carry out such assessments without being bound by the appointed date of 1st April 2011 fixed by the Scheme;

d) The question whether the accumulated loss of the Petitioner Company can be deemed to be the loss of the Transferee Company is kept open for the Income Tax Authority to decide at the appropriate stage in accordance with law;

e) In the event Clauses 15.1 to 15.6 of the Scheme or any part thereof being found to be contrary to and/or inconsistent with the provisions of any statute, rule or regulation, the latter shall prevail.

13. The Learned Counsel for the Petitioner Company states that Clause 19 of the Scheme gives power to the Board of Directors of the Petitioner Company to amend any part of the Scheme. The Learned Counsel for the Petitioner Company states that the Petitioner Company has filed a further affidavit dated 8th February 2014 of its Authorised Signatory Mr. Mahesh Gupta in support of Company Summons for Direction No. 108 of 2014

inter alia stating that such power to amend the Scheme is subject to approval of the High Court. It is therefore clarified that the power vested under Clause 19 of the Scheme will be subject to approval of the High Court.

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 submission and undertakings given by the Petitioner Company in paragraphs 9, 10, 11, 12 and 13 above. The said undertakings given by the Petitioner Company are accepted.

15. The Official Liquidator has filed its Report on 19th August, 2014 in the Petition inter alia 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.

16. From the material on record, the Scheme appears to be fair, reasonable and is not violative of any provisions of law and is not contrary to public policy. Company Scheme Petition No. 189 of 2014 is made absolute in terms of prayer clauses (a), (e) and (g).

17. The Petitioner Company is directed to lodge a copy of this order and Scheme duly authenticated by the Company Registrar, High Court (OS), Bombay, with the concerned Superintendant of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within sixty (60) days from the date of this order.

18. The Petitioner Company is further directed to file a certified copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form 21/ INC 28, in addition to physical copy as per provisions of Companies Act, 1956/ 2013, whichever is applicable.

19. The Petitioner to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four (4) weeks from the date of the order.

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

21. All 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.)