IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY PETITION NO. 15 OF 2016. IN COMPANY APPLICATION NO. 28/2016

BELLSOFT INDIA SOLUTIONS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 having its registered office at 109,1st Floor, Kamat Tower Patto, Panaji, Goa. .... Petitioner/Demerged Company.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Vinita Palyekar, Advocate for the Petitioner/Demerged Company.
Mr. Mahesh Amonkar, Central Govt. Standing Counsel for the Regional Director.

Ms. Trupti Sharma, Registrar of Companies.

CORAM :- F.M. REIS, J.

Date : - 7th October, 2016.

ORAL ORDER :

Upon hearing Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the Petitioner/Demerged Company, Mr. Mahesh Amonkar, learned Central Govt. Standing Counsel for the Regional Director and upon perusal of the petition, the scheme and the documents filed by the Petitioner/ Demerged Company, it is ordered as follows :

1. It appears that the sanctioning of the Scheme will be for the benefit of the Petitioner/Demerged Company and its members and will

also enable the Resulting Company to carry on its business activity efficiently and work profitably.

From the material on record, the Scheme appears to be fair, reasonable and is not violative of any provision of law in force and is not contrary to public policy.

2. The Regional Director has filed an Affidavit dated 12th August, 2016 stating therein that save and except what is stated in para 6(i) to 6 (v) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

3. As far as the observations made in paragraph 5(ix) of the said Affidavit pertaining to the comments/views/remarks on tax aspects if any on the Scheme and the same to be communicated to the Directorate of Regional Director within 15 days from the date of service of notice, are concerned, the Learned Senior Counsel for the Petitioner/Demerged Company states that as evident from the said Affidavit that till finalizing of the said Affidavit, the office of the Regional Director, Western Region, Ministry of Corporate Affairs, has not received any comments/views/remarks from the concerned Income Tax Authority with respect to the Scheme.

4. The Learned Senior Counsel appearing for the

petitioner/Demerged Company submits that the Registered Office of the Resulting Company being situated in Mumbai, Maharashtra, the Resulting Company had simultaneously filed a Company Petition bearing Company Scheme Petition No. 429 of 2016 connected with Company Summons for Direction No. 285 of 2016 before the High Court of Bombay seeking approval of the Scheme. The learned Senior Counsel places on record a Copy of the Final Order dated 22nd of September, 2016 passed by the High Court of Bombay in the said Company Petition, granting sanction to the Scheme which is marked "X" for identification.

5. As far as the objection of the Regional Director with respect to the Resulting Company, as evident from the final order dated 22/09/2016 in Company Scheme Petition No.429/2016, that under the Scheme, the Training Division of the Petitioner/Demerged Company is going to merge in the Resulting Company and on going through the main objects of the Resulting Company, it is observed that objects of the Training Division of the Petitioner/Demerged Company have not been given in the main objects of the Resulting Company. The learned Senior Counsel further submits that the Resulting Company has given an undertaking before the High Court

of Bombay, at final disposal of the its Company Scheme Petition No. 429 of 2016 that the Resulting Company shall alter its main objects after complying with the provisions of Section 13 of the Companies Act, 2013 and Rules made there under. The same is evident from the Final Order dated 22nd of September, 2016 passed by the High Court of Bombay in Company Scheme Petition No. 429/2016.

6. As far as the objection of the Regional Director with respect to the Resulting Company, as evident from the final order dated 22/09/2016 in Company Scheme Petition No.429/2016 that upon perusal of the Scheme it is observed that the authorized share capital of the Resulting Company is found insufficient to issue equity shares to the shareholders of the Petitioner/Demerged Company, the Resulting Company is compulsorily required to increase its share capital to enable itself to issue shares by filing requisite e-forms and fees with the Registrar of Companies, Mumbai. The learned Senior Counsel submits that the Resulting Company has given an undertaking before the High Court of Bombay, at final disposal of the its Company Scheme Petition No. 429 of 2016 that the Resulting Company will comply with the said requirement by increasing its share capital. The same is evident from the Final Order dated 22nd of

September, 2016 passed by the High Court of Bombay in Company Scheme Petition No. 429/2016.

7. As far as the objection of the Regional Director with respect to the Resulting Company, as evident from the final order dated 22/09/2016 in Company Scheme Petition No.429/2016 that the Tax implication, if any, arising out of the scheme is subject to final decision of Income Tax Authority and approval of the scheme by this Court may not deter the Income Tax Authorities to scrutinize the tax return filed by the Resulting Company after giving effect to the Scheme and that the decision of the Income Tax Authority is binding on the Resulting Company and the same has been accepted by the Resulting Company as evident Final Order dated 22nd of September, 2016 passed by the High Court of Bombay in Company Scheme Petition No. 429/2016.

8. The learned Senior Counsel further submits that the Petitioner/Demerged Company is bound to comply with all applicable provisions of Income Tax Act, 1961 and all tax issues arising out of the said Scheme will be met and answered in accordance with law by the Petitioner/Demerged Company. The said undertaking is accepted.

9. As far as the objection of the Regional Director with respect to the Resulting Company, as evident from the final order dated 22/09/2016 in Company Scheme Petition No.429/2016 that the Resulting Company is to issue new shares to the foreign entity as they are major shareholder of the Demerged Company and hence RBI approval under FEMA may be required, the learned Senior Counsel points out that the Resulting Company has given an undertaking before the High Court of Bombay, at final disposal of the its Company Scheme Petition No. 429 of 2016 that the Resulting Company will comply with the such requirement by issuing new shares to the foreign entity of the Petitioner/Demerged Company and seeking the necessary approval, if required, from the RBI. The same is evident from the Final Order dated 22nd of September, 2016 passed by the High Court of Bombay in Company Scheme Petition No. 429/2016.

10. Moreover, the Petitioner/Demerged Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and the relevant provisions of the Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted.

11. In view of the above, the Scheme deserves to be sanctioned, subject to the above.

12. Subject to the above, the Company Petition is made absolute in terms of the prayer clauses (a) and (b).

13. Filing and issuance of drawn up decree is dispensed with.

14. Costs of Rs.25,000/- to be paid to the Regional Director within four weeks from the date of receipt of this order.

15. All the concerned Regulatory Authorities to act on duly authenticated copy of this Order and the Scheme duly authenticated by the Authorized Officer of this Court.

Certified copy expedited.

F.M. REIS, J.

ssm.