IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 20 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 779 OF 2015

Solera Networks India Private Limited……Petitioner

In the matter of the Companies Act, 1956 (1 of 1956);

and

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

and

In the matter of Scheme of Amalgamation of Solera Networks India Private Limited and Blue Coat Network (India) Private Limited and their respective shareholders

**Called for hearing**

Mr. Hemant Sethi and Mr. Ajit Singh Tawar i/b Mr. Hemant Sethi & Co. Advocates, for the Petitioner.

Mr. Dharmesh Joshi i/b Pankaj Kapoor for Regional Director in both the Petitions.

Mr. Vinod Sharma, Official Liquidator, High Court, Bombay, present.

CORAM: A.K. Menon, J.

DATE: 20th October, 2016

PC:

1. Heard the learned counsel for the Petitioner. 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 to the Scheme of Amalgamation of Solera Networks India Private Limited and Blue Coat Network (India) Private Limited and their respective shareholders.
3. The learned Counsel for the Petitioner submits that the Petitioner Company is engaged in the business of software services and solutions.
4. The reason justifying Amalgamation is that both the Companies are contemplating this Scheme of Amalgamation which would *inter alia* have the benefits of Greater integration, financial strength and flexibility for the amalgamated entity, which would result in maximising overall shareholder value, and will improve the competitive position of the combined entity, Cost savings and Simplification of Group Structure.
5. The Transferor Company and the Transferee Company have approved the Scheme by passing the Board Resolutions which are annexed to the Company Scheme Petition filed on behalf of the Petitioner Company.
6. The Counsel for the Petitioner further states that the Petitioner Company has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the orders passed in Company Summons for Direction.
7. The Counsel for the Petitioner further states that the Petitioner Company has complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in

the Court. Moreover, the Petitioner Company through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or Companies Act 2013, as may be applicable and the rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 5th October 2016 stating therein that save and except as stated in paragraphs 6(a) to 6(f) of the said Affidavit, it appears according to Regional Director that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6(a) to 6(f) of the said Affidavit, the Regional Director has stated that :

   *(a)* *The Registered Office of the M/s. Blue Coat Network (India) Private Limited the Transferee Company is situated No. 941, Regus Business Centre (Bangalore) Pvt. Ltd., Level-9, Raheja Towers, 26/27 M.G. Road, Bangllore-560 001 and falls within the Hon'ble High Court of Karnataka. Accordingly, similar approval be obtained by the Transferee Company-from Hon'ble High Court of Karnataka.*

   *(b)* *As the jurisdiction of Transferee Company doesn't fall within the Jurisdiction of this Hon'ble Court, the Transferor Company to furnish an undertaking that it will ensure that the Transferee Company shall record all assets and liabilities at their respective book values as on the Appointed Date.*

   *(c)* *As the jurisdiction of Transferee Company doesn't fall within the Jurisdiction of this Hon'ble Court, the Transferor Company to furnish an undertaking that it will ensure that the Transferee Company shall in addition to compliance of*

*AS-14 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 etc.*

*(d) That as per the audited balance sheet as at 31.03.2015 of M/s. Solera Networks India Private Limited, the Transferor Company indicates that the paid up capital is Rs. 1,00,000 divided into 10,000 Equity Share of Rs. 10/- each out of which 9,990 Equity Share of Rs. 10/- each is held by Solera Network Inc an US based Company. Hence, the Transferor Company to furnish an undertaking that it will ensure that Transferee Company shall comply with FEMA Regulations/RBI Guidelines if any applicable for issue of shares to foreign entities.*

*(e) 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.*

*(f) Further, it is submitted that the "Appointed Date" should not be 01.04.2014. It should be the date and time of final hearing of the Petition, as this requirement is statutory. The reasons are as under:-*

*(i) The expression "Appointed Date" is used to reflect the date of which assets and liabilities of the existing company were to be identified for the purposes of transfer to the Transferee Company/ Resulting Company. The Assets and Liabilities as on the date of*

*"Appointed Date" stands lawfully transferred. Subsequent developments are not in the knowledge of this Hon'ble Court, Shareholders, Creditors etc., As per the Scheme the "Appointed Date" is 01.04.2014. Further, the shareholders, creditors, etc., of the Transferor Company are entitled to know the details of transactions subsequent to the Appointed Date i.e. 01.04.2014, as per statutory requirements the Company has to file balance sheet as at 31.03.2015 and 31.03.2016 (due in September 2016).*

*(ii)* *Further, it is submitted that the Transferor Company is seeking approval which will have retrospective effect. The applicant has to explain and offer explanations to the satisfaction of this court why the "Appointed Date" should be 01.04.2014, and why not any other date. The gap between the date of the audited balance sheet and the appointed date should be reasonable and nearer to the time of final hearing of the Petition and this requirement is statutory" it is pertinent to mention that the company has to file balance sheet as at 31.03.2015 and 31.03.2016 (due in September 2016)*

*(iii)* *The Scheme should be fair and reasonable. As the scheme once approved becomes binding "on the company" the person(s) who have approved the scheme have got the knowledge of developments and financial conditions prevailed to the "Appointed Date" i.e. 01.04.2014 and have no knowledge of subsequent developments / financial status. Hence, the "Appointed Date" should not be 01.04.2014. It should be the date and time of final hearing of the Petition, as this requirement is statutory. Since there is a gap of more than 2 years between the appointed date and the*

> *final date of hearing, the scheme has become obsolete, Accordingly, the company may please be directed to file audited balance sheet as at 31.03.2015 and 31.03.2016 (due in September 2016).*

9. As far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned the Counsel for the Petitioner state that the Scheme filed by the Transferee Company has been sanctioned by the Karnataka High Court on 5th February 2016.

10. As far as observations made in paragraph 6(b) & 6(c) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioner state that clause 10.1 of the Scheme envisage that the Transferee Company will follow AS-14 which applies to Scheme of Amalgamation. Clause 10.1 reads as follows:

    > *On the Scheme becoming effective, the accounting for the amalgamation would be done in accordance with Accounting Standard 14 – Accounting for Amalgamation (AS 14) from the Appointed Date.*

11. Further the Transferee Company undertakes that it will take all assets and liabilities at their respective book values and shall undertake that it shall in addition to compliance of AS-14 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 .

12. As far as observations made in paragraph 6 (d) of Affidavit of the Regional Director is concerned, the Petitioner Company submits that that all compliance as required under FEMA Regulations/RBI to the extent applicable will be done by the Transferee Company.

13. As far as observations made in paragraph 6 (e) of Affidavit of the Regional Director is concerned, the Petitioner Company undertakes to

comply with all applicable provisions of the Income-tax Act, 1961 and all issues arising out of the Scheme will be met and answered in accordance with law.

14. As far as observations made in paragraph 6 (f) of Affidavit of the Regional Director is concerned, the Counsel for the Petitioner state that scheme was approved by the Board of Directors in their meeting held on March 6, 2015 containing the Share Exchange Ratio as per the valuation report based on the available audited financial being 31st March 2014 and therefore the Appointed Date was fixed as 1st April 2014 as per the position of assets and liabilities based on the audited financials and not the provisional financials which are subject to change. Further the shareholders of the Petitioner Company and the Transferee Company have unanimously consented to the proposed scheme with appointed date as 1st April 2014. The appointed date is the cut off date for identifying the date when the assets and liabilities of the Transferor Company would be transferred and vested in the Transferee Company and the swap ratio has been fixed taking into consideration the appointed date being 1st April 2014. In respect of Petition filed by the Transferee Company, the Karnataka High Court has already approved the scheme with Appointed Date as 1st April 2014. The shareholders of the Transferee Company have already approved the scheme, therefore the appointed date cannot be shifted.

15. The Learned Counsel for the Petitioner has relied upon the Judgments passed by this Court in Company Scheme Petition No. 137 of 2014 i.e. Casby CFS Pvt. Ltd. and Company Scheme Petition No. 189 of 2014 i.e. Vertex Customer Solutions India Private Limited dealing with the issue in the present matter and in both the cases this Court had approved the Scheme with a appointed date being a retrospective date keeping it open for the Income Tax Department to determine the Tax Liability in accordance with the law that may arise pursuant to the Scheme is effected. The Counsel for the Petitioner further states that the Notice of the Scheme of Amalgamation was served upon the

respective Income Tax Authority in Pune and the Authorities have given their No Objection to the said scheme after taking into account previous assessment years. As the Scheme is not objected to by anyone therefore this Court sanctions the scheme with Appointed Date being 1st April, 2014.

16. In so far as observations made in paragraph 6 (f) (iii) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioner submits that the Company Scheme Petition was filed on 30th November 2015 contains the audited balance sheet as on March 31, 2015 and a copy of the unaudited Statement of Accounts as on May 31, 2015 as exhibits Exhibit 'D1' and Exhibit 'D2' respectively presenting the latest financial position to this court. The rights of shareholders as to knowledge of subsequent events after the Appointed Date are not in any way prejudiced as the shareholders have themselves approved and adopted the Audited Financials for the Financial Year 2014-15 and 2015-16 in respective AGMs held for the said purpose by the Petitioner Company on 10th August 2015 and 25th September, 2015, therefore the shareholders of the Petitioner Company are aware of all transaction post the appointed date and none of the creditors of the Petitioner Company has opposed the Scheme of Amalgamation. However the Annual returns for the aforesaid period have not been filed with Roc in view of the fact that the status of the Petitioner is shown as 'Amalgamated'. The Petitioner Company has accordingly raised ticket with Ministry of Corporate Affairs for changing the status from 'Amalgamated' to 'Active'. The Petitioner Company undertakes that as soon as the status is changed it will file balance sheets with Registrar of Companies.

17. The Counsel for the Regional Director on instructions of Mr. S Ramakantha, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submissions given by the Petitioner

Company. The said undertakings and Submission given by the Petitioner Company are accepted.

18. The Official Liquidator has filed his report on 19th September 2016 stating therein that the affairs of the Petitioner Company has been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved.

19. 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 public policy. None of the parties concerned has come forward to oppose the Scheme.

20. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the Petition.

21. The Petitioner Company to lodge a copy of this order and the Scheme, 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 receipt of the order.

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

23. The Petitioners to pay cost 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 weeks from today.

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

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

**(A.K. Menon, J.)**

**CERTIFICATE**

I certify that this Order uploaded is a true and correct copy of original signed order.

Uploaded by: - Shankar Gawde, Stenographer