IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 668 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 627 OF 2015.

P N WRITER & COMPANY PRIVATE LIMITED

....Petitioner/ the Transferor Company
(the Demerged Company)

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 669 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 628 OF 2015

WRITER BUSINESS SERVICES PRIVATE LIMITED

....Petitioner/ the Transferee Company
(the Resulting Company)

In the matter of the Companies Act, 1 of 1956 and other relevant provision of Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provision of Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between P N WRITER & COMPANY PRIVATE LIMITED (the Demerged Company) and WRITER BUSINESS SERVICES PRIVATE LIMITED (the Resulting Company)

<u>Called for hearing</u>

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners.

Mrs. Ashwini Singh i/b Mr. A.A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator.

CORAM: S. C. Gupte, J.

DATE: 23rd October, 2015

PC:

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 Petitions.

2. The sanction of the Court is sought to a Scheme of Arrangement of M/s P N Writer & Company Private Limited and M/s. Writer Business Services Private Limited and their respective shareholders and creditors, under Sections 391 to 394 and other relevant provision of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the Transferor Company is engaged in the business of Relocation services (hereinafter referred to as 'Relocations Business'), and Information Management services business ('hereinafter referred to as 'IMS Business'). PNW & Co carries out Cash Management Business (hereinafter referred to as 'Safeguard Business') through its subsidiary Writer Safeguard Private Limited. PNW& Co also carries on Realty business by itself and through its subsidiaries. The Relocation, IMS and Safeguard Business are together referred to as "Services Business" and Transferee Company is not carrying on any business activity. The proposed scheme of Arrangement will have the benefit as per the opinion of the management, that achieving better focus and management over the businesses as part of Group restructuring exercise, PNW Co proposes to hive off the Services Business to a separate entity. To achieve this end, it is proposed to demerge the Services Business Undertaking from PNW Co ("Demerged Company") to WBSPL ("Resulting Company") and therefore, with a view to effect such plan, the Board of Directors of Demerged Company and the Resulting Company propose that the Services Business Undertaking from the Demerged Company be transferred to and vested in the Resulting Company on a going concern basis, to be undertaken through this Scheme (as defined hereinafter) under the provisions of Sections 391-394 of the Companies Act,1956 and other relevant provisions of the Companies Act, 1956 or Companies Act, 2013 (as maybe applicable and together defined hereinafter as the "Act"), for such

consideration and in such manner as provided for in this Scheme (as defined hereinafter) and accordingly, this Scheme under Sections 391 to 394 of the Act has been proposed to provide for transfer of Services Business Undertaking of the Demerged Company by way of demerger to the Resulting Company and that upon the sanction of the Scheme by the High Court (as defined hereinafter) and the Scheme becoming effective on the Effective Date (as defined hereinafter), the Services Business Undertaking of the Demerged Company shall stand transferred to, and be vested in, the Resulting Company on and from the Appointed Date for all intent and purposes and that this Scheme also makes provision for various other matters consequential or related thereto and otherwise integrally connected therewith and that the Demerger of the Services Business Undertaking (also referred to as "the Demerged Undertaking") from the Demerged Company to the Resulting Company shall comply with the provisions of Section 2(19AA) of the Income Tax Act, 1961, such that all the properties of the Demerged Undertaking, being transferred by the Demerged Company, immediately before the Demerger shall become the properties of the Resulting Company by virtue of such Demerger and all the liabilities relatable to the Demerged Undertaking, being transferred by the Demerged Company, immediately before the Demerger shall become the liabilities of the Resulting Company by virtue of such Demerger and the properties and the liabilities relatable to the Demerged Undertaking being transferred by Demerged Company shall be transferred to the Resulting Company at the values appearing in the books of account of the Demerged Company immediately before the Demerger for this purpose, any change in the value of assets consequent to their revaluation, if any, shall be ignored and that the Resulting Company shall issue, in consideration of the Demerged Undertaking, shares to the shareholders of the Demerged Company on a proportionate basis and that the Shareholders holding at least 75% value of shares of the Demerged Company shall become the shareholders of the Resulting Company by virtue of the Demerger, otherwise than as a result of the acquisition of the property or assets of the Demerged Company or any undertaking thereof by the Demerged Company and the transfer of the Demerged Undertaking shall be on a going concern basis.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Arrangement and by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioners have stated that the Petitioner Companies have complied with all requirements as

per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

7. The Regional Director has filed an Affidavit on 17th day of October, 2015 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

(a) Clause no.13.1 of the Scheme provides for issue of shares upon coming into effect of this Scheme. The authorised share capital of resulting Company may not be sufficient to issue further shares as provided in Clause 13.7 of the Scheme. The Resulting Company shall, if and to the extent required, increase and/ or reclassify its authorised Share Capital to facilitate issue of New Shares under this Scheme as provided in Clause 13.7 of the Scheme. In this connection, the Resulting Company may be directed to comply with provisions of Section 61/64 of the Companies Act, 2013 corresponding to section 94/97 of the Companies Act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

(b) Clause 14 of the Scheme provides for adoption of new clause in the Memorandum of Association of the Resulting Company. In this regard, the Resulting company may be directed to pass necessary resolution for amendment of object clause and it may further be directed to comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to Section 40 read with Section 18 of the Companies Act, 1956 and to file amended copy of Memorandum of Association with necessary form with Registrar of Companies.

(c) It is respectfully submitted that 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 High court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Resulting company after giving effect to the Scheme, The decision of the Income Tax Authority is binding on the petitioner companies.

(d) Clause 17 of the Scheme provides for Modification and amendments to Scheme wherein the Board of Directors of Demerged Company and Resulting Company have been authorized to make any amendment to Scheme, if necessary, after the Scheme is approved by the Hon'ble High Court such liberty shall not be excised by the Board of Directors without obtaining prior approval from the Hon'ble High Court. The Petitioner Companies may be directed to undertake to this effect.

8. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted that the Resulting Company will comply with provisions of Section 61/64 of the Companies Act, 2013 corresponding to section 94/97 of the Companies Act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

9. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Resulting company will pass necessary resolution for amendment of object clause and the Resulting Company will also comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to Section 40 read with Section 18 of the Companies Act, 1956 and file amended copy of Memorandum of Association with necessary form with Registrar of Companies.

10. So far as the observation in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Companies are 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.

11. So far as the observation in paragraph 6(d) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Board of Directors of Demerged Company and Resulting Company will not modify or amend the Scheme without the approval of the High Court.

12. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, 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 Petitioners. The above undertakings are accepted.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 668 of 2015 are made absolute in terms of prayers clause (a), (c) and (d) and 669 of 2015 is made absolute in terms of prayer clauses (a) and (c).

15. The Petitioner Companies to file 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 the Order.

16. The Petitioners are directed to file a certified copy of order along with a copy of the Scheme of Arangement with the concerned Registrar of Companies, electronically, along with E Form INC- 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of the Order.

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

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

(S. C. Gupte, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.