IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 108 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 796 OF 2014

GENEXT HARDWARE AND PARKS PVT. LTD. … PETITIONER

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

AND

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

AND

In the matter of Scheme of Arrangement between Magna Warehousing and Distribution Pvt. Ltd. ("Demerged Company")

AND

Genext Hardware and Parks Pvt. Ltd. ("Resulting Company")

AND

their respective shareholders and creditors

Called for Hearing

Ms. Ankita Godbole i/b. Wadia Ghandy & Co., Advocates for the Petitioner

Mr. N.R. Prajapati i/b. Mr. A.A Ansari for the Regional Director

Coram: S. C. Gupte, J.

Date: 17th July, 2015

P.C.

1. Heard learned Counsels appearing for the parties. No objector has come before the court to oppose the Scheme, nor has any party controverted any averments made in the captioned Petition.

2. The sanction of the Court is sought under Sections 391 to 394 read with section 100 to 104 (as per Scheme) of the Companies Act, 1956, to the Scheme of Arrangement ("**Scheme of Arrangement**") between Magna Warehousing and Distribution Pvt. (the "**Demerged Company**") and Genext Hardware and Parks Pvt. Ltd. ("**Resulting Company**") and their respective shareholders and creditors.

3. Learned Advocate for the Petitioner Company submits that the Transferor/Demerged Company is primarily engaged in the business of real estate development and the Petitioner Company is presently engaged in the business of real estate development. Both Tranferor/Demerged Company and the Petitioner Company are group companies of the K. Raheja Corp. Group.

4. The purpose of the Scheme of Arrangement as more particularly set out at Paragraph 3 of the Scheme of Arrangement, is to divest the Hotel and Retail Undertakings ("**Demerged Undertakings**") of the

Transferor/Demerged Company to the Petitioner Company, since such reorganization would ensure optimum running, growth and development of the individual undertakings by the Petitioner Company. As the Transferor/Demerged Company is heavily leveraged and is finding it difficult to raise any further debt for running and growth of the Demerged Undertakings, the Scheme of Arrangement contemplates the transfer of the Demerged Undertakings to the Petitioner Company, which has the necessary capital and funds that are required for the growth of the business from time to time. The Scheme of Arrangement will help in deleveraging the Transferor/Demerged Company's Balance Sheet by reduction of debt and interest outgo and consequently enhance value for the shareholders of the Transferor/Demerged Company.

5. The Petitioner Company has approved the Scheme of Arrangement in its Board Meeting and extracts of the resolutions passed in this regard are annexed to the Company Scheme Petitions.

6. The Learned Advocate for the Petitioner Company states that 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 Order passed in the Company Summons for Direction.

7. The Learned Advocate for the Petitioner Company states that the Petitioner Company has complied with all requirements as per the directions of this Court and has filed the necessary affidavits of compliance in the Court. Moreover, the Petitioner Company through its Advocate undertakes to comply with all statutory requirements, if any,

as required under Companies Act, 1956/2013 and the Rules made thereunder, whichever is applicable. The said undertaking is accepted.

8. The Learned Advocate for the Petitioner Company states that the Transferor/Demerged Company has its Registered Office in Bangalore in the State of Karnataka and has filed appropriate proceedings for sanction of the Scheme of Arrangement by the High Court of Karnataka at Bangalore. Further, the High Court of Karnataka has by its Order dated 9th January, 2015 sanctioned the Scheme of Arrangement, subject to similar sanction being granted by this Court.

9. The Regional Director has filed its Affidavit on 12th June, 2015 stating therein that save and except as stated in paragraphs 6 (a), (b) and (c) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. The aforesaid paragraphs 6(a), 6(b) and 6(c) read as under:

"6. The Deponent further submits that:

(a) The Resulting Company is not having relevant object clause in its Memorandum of Association to run business activities which are demerging from the Demerged Company under this Scheme. In this regard, the Resulting Company may be directed to amend its object clause suitably by adding a new object clause to enable it to do new business. It is further submitted that Resulting Company shall pass necessary resolution for amendment of object clause and it may be further directed to comply with provisions of Sections 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.

(b) The Income Tax Department vide its letter dated 21/04/2015, annexed herewith as Exhibit 'D' has informed its 'No Objection' subject to the conditions stated therein. In this regard the deponent respectfully submits that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authority. 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 Resulting Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Demerged Company and Resulting Company.

(c) Clause 14 of the Scheme provides for Modification and Amendments to the Scheme wherein the Board of Directors of the Demerged Company and Resulting Company have been authorized to make any amendments to Scheme, if necessary, after the Scheme is approved by the Hon'ble High Court. Such liberty shall not be exercised by Board of Directors without obtaining prior approval from the Hon'ble High Court. The Petitioner Company may be directed to undertake to this effect."

10. The Petitioner Company has filed its Affidavit dated 6th July, 2015, in reply to the observations made by the Regional Director ("**Reply**"). As regards the observations at paragraph 6(a), the Learned Advocate for the Petitioner Company states that as more particularly set out at paragraph 3 of the Reply, the Petitioner Company has the necessary objects in its

Memorandum of Association to run the business activities that are demerging from the Transferor/Demerged Company pursuant to the Scheme and that the same have also been set out in the Company Scheme Petition. These objects have been adopted by the Board of Directors of the Petitioner Company at meeting held on 2nd April 2013, and are more particularly set out hereinbelow:

> *"B8. To own construct, take on lease or in any other manner, land or building belonging to the Company and to conceptualise, plan, design, construct and market a mall (shopping centre) for the purpose of operating, franchising and licensing of retail space therein for all kinds of goods, materials and items in India or abroad.*
>
> *C114. To carry on the business of hotel, restaurant, café, tavern, refreshment rooms, boarding and lodging house keepers, club, departmental stores in India and abroad.*
>
> *C116. To provide lodging and boarding, restaurants, eating houses, bar, swimming pool and other facilities to the public including tourists, visitors and other delegates coming to India from foreign countries, and to members of delegations and missions from foreign countries and to encourage and carry on and facilitate tourist trade in India."*

In the circumstances, the Learned Advocate for the Petitioner Company submits that it would not be necessary for the Petitioner Company to amend its objects clause as prayed for in the Regional Director's

Affidavit and prays that necessary order, direction and/or clarification may be passed in this regard.

11. As regards the observations at paragraph 6(b), the Learned Advocate for the Petitioner Company submits that as more particularly set out at paragraph 4 of the Reply, the proposed Scheme is for optimum growth and development which will benefit both the Petitioner Company and the Transferor/Demerged Company. Further, in any event, the Petitioner Company will comply with the applicable provisions of the Income Tax Act, 1961 and all issues concerning taxation arising as a consequence of the said Scheme, including those pertaining to set off losses, shall be dealt with and addressed in accordance with the applicable provisions of the Income Tax Act, 1961 as stated in paragraph (f) of the letter dated 21st April, 2015 issued by the Income Tax Authorities.

12. As regards the observations at paragraph 6(c), the Learned Advocate for the Petitioner Company submits that as more particularly set out at Paragraph 5 of the Reply, the power to amend the Scheme shall be subject to the prior approval of this Court.

13. The Learned Counsel for Regional Director, on the instructions of Mr. Chandana Muthu, Joint Director, Legal, in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the counsel of the Petitioner Company and also accepts the explanation given by the Petitioner Company as mentioned hereinabove in paragraph 10.

14. The said undertakings given by the Petitioner Company are accepted. Moreover, the explanation provided/ submissions made in paragraph 10

are satisfactory. The Petitioner Company has the necessary objects clause to undertake the business activities of the Demerged Undertaking and in these circumstances, no amendments need to be carried out to the Memorandum of Association of the Petitioner Company.

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 public policy.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 108 of 2015, is made absolute in terms of prayer clauses (a) and (c) of the said Petition.

17. The Petitioner Company is directed 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 (sixty) days from the date of the Order.

18. The Petitioner Company is further 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 INC 28 in addition to physical copies as per the relevant provisions of the Companies Act, 1956 / 2013.

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

(S.C. GUPTE, J.)