IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 534 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 361 OF 2016

Master Voss International Projects Private Limited ....Petitioner/ Demerged Company

WITH

COMPANY SCHEME PETITION NO. 535 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 362 OF 2016

Prudential Global Logistics Private Limited ....Petitioner/ Resulting Company

In the matter of the Companies Act, 1956 (to the extent not repealed) and/or the Companies Act, 2013 (to the extent notified);

AND

In the matter of Sections 391 to 394, read with Sections 100 to 103 of the Companies Act, 1956 (to the extent not repealed) and the corresponding provisions of the Companies Act, 2013 (to the extent notified, including any statutory modifications(s) or re-enactment(s) thereof;

AND

In the matter of Scheme of Arrangement between Master Voss International Projects Private Limited, the Demerged Company and Prudential Global Logistics Private Limited, the Resulting Company.

<u>Called for Hearing</u>

Mr. Rahul R. Mahajan alongwith Mr. Ajit Singh Tawar and Mr. Vishal Shah, i/b Fortitude Law Associates, Advocates for the Petitioners in both the Petitions.

Mr. Prashant Jadhav, i/b by Mr. A.K. Chaturvedi for the Regional Director in both the Petitions.

CORAM: S.C. GUPTE, J.
DATE: NOVEMBER 22, 2016

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 averment made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394, read with Sections 100 to 103 of the Companies Act, 1956 to a Scheme of Arrangement between Master Voss International Projects Private Limited and Prudential Global Logistics Private Limited and their respective shareholders.

3. The Learned Counsel for the Petitioners states that the Demerged Company is engaged in the business of first class project solution services including project cargo movement, non-containerized freight forwarding business and shipment of heavy lifts to and from India. The Resulting Company is engaged in the business of shipping agents, clearing agents, freight contractors, steamer agents, forwarding agents, licensing agents, general brokers, ship manager, ship repairers, tug owners, travel owners, boar and barge owners, lightman, transporting agents for waterway, dock owners, warehouseman and ship stores merchant.

4. The Petitioner Companies have approved the said Scheme of Arrangement by passing the board resolutions which is annexed to respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioners states that the demerger would have benefits such as synergies in operations of the demerged undertaking, enhanced value for shareholders of both the companies, streamlining operations, achieving better and more efficient management, control and running of the business and offer opportunities to the management of both the

companies to vigorously pursue growth and expansion opportunities and that the reduction of capital of the Demerged Company is expected to give a true and fair picture of the financial condition of the Demerged Company, no negative impact on the net worth and financial ratios of the Demerged Company and no alteration or variation in the rights of the creditors of the Demerged Company.

6. The Learned Counsel for the Petitioner / Demerged Company states that the Scheme includes reduction and cancellation of share capital of the Demerged Company as contemplated under Clause 3 of the Scheme of Arrangement alongwith the adjustment in books of accounts of the Demerged Company as contemplated under Clause 3.2 read with Clause 3.3 of the Scheme of Arrangement and the same shall be effected as integral part of the Scheme as the same does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital and the procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with as per order dated May 4, 2016 passed in Company Summons for Direction No. 361 of 2016.

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

8. The Learned Counsel appearing on behalf of the Petitioners have stated that they have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioners undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under wherever applicable. The said undertaking is accepted.

9. The Regional Director has filed an affidavit on November 17, 2016 stating therein that, save and except as stated in paragraphs 6(i) to (iv), it appears according to the Regional Director that the Scheme is not prejudicial to the

interest of shareholders and public. In paragraphs 6(i) to (iv) of the said affidavit, the Regional Director has stated as under:

(i) *ROC-Mumbai has observed in point no. (11) of its letter no. ROC/STA/(DG)/55113/391/394/506 dated 02.09.2016 that as per MCA Master data, the Authorised and paid up Share Capital of the Resulting Company is Rs. 5,000,000/- and Rs, 22,66,000/- respectively. However, Authorised Capital mentioned in Scheme/Petition does not agree with MCA master data. Hence, the Resulting Company may be asked for the clarification of the same and further the Deponent submits that the Hon'ble High Court may direct the Resulting Company to make default good.*

(ii) *ROC-Mumbai has observed in point no. (21) of its letter no. ROC/STA(DG)/55113/391/394/506 dated 02.09.2016 that the Resulting Company had balance with banks (including foreign currency account) of Rs,. 7,10,63,771/-. The company has not disclosed the foreign currency as per AS-11. In the provisional balance sheet for the year 2016 (as on 29.02.2016), the balance with banks (including foreign currency) is shown as 1,97,51,391/-. Therefore, the Deponent prays that the Hon'ble High Court may direct the Company to make default good in compliance of the AS-11 read with Section 134 & 441 of the Companies Act, 2013 and rules thereof.*

(iii) *In addition to the 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.*

(iv) *That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

10. Insofar as observations made in paragraph 6(i) of the Affidavit of the Regional Director is concerned, the Counsel of the Petitioners seeks leave of this Court to amend the Scheme and the Petition by deleting the Authorised Share Capital of the Resulting Company as appearing in table under Clause 2.2(b) of the Scheme being 25,000 Equity Shares of Rs.100/- each and substituting it as 50,000 Equity Shares of Rs. 100/- each and by deleting the Authorised Share Capital of the Resulting Company as appearing in table under Paragraph 4 of the Company Scheme Petition being 25,000 Equity Shares of Rs.100/- each and substituting it as 50,000 Equity Shares of Rs. 100/- each. Leave to amend the Scheme and the Petition including all consequential amendments is granted. Amendments to be carried within a period of 4 weeks from today.

11. So far as the observation made paragraph 6(ii) of the Affidavit of the Regional Director is concerned, the Petitioner / Resulting Company through its Learned Counsel undertakes to make good the default, if any, in compliance of the AS-11 read with Sections 134 & 441 of the Companies Act, 2013 and rules thereof, if applicable.

12. So far as the observation in paragraph 6(iii) of the affidavit of the Regional Director is concerned, the Petitioners through its Learned Counsel undertakes that in addition to compliance of Accounting Standard-14, the Petitioner Companies shall pass such accounting entries which are necessary in connection with the Scheme of Arrangement to comply with other applicable Accounting Standards such AS-5 etc.

13. So far as the observation in paragraph 6(iv) of the affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner / Transferee Company submit that the Petitioner is bound to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of Scheme will be met and answered in accordance with law.

14. The Learned Counsel for Regional Director on instructions of Mr. Rajesh Kumar Dalmia, Joint Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings and submissions given by the Learned Counsel for the

Petitioners in paragraphs nos. 10 to 13 herein above. The undertakings and submissions given by the Petitioners are accepted.

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, both the Company Scheme Petitions are made absolute in terms of the prayer clause (a) of the respective Company Scheme Petitions.

17. The Petitioner Companies to file a copy of this order and the Scheme of Arrangement 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.

18. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement 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, 2013 and the rules made thereunder.

19. The Petitioners to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four 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 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 the original signed order.

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