IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 483 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 424 OF 2015

Oikos India Private Limited …. Petitioner / Transferor Company

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 484 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.425 OF 2015

Milltech Engineering Private Limited …. Petitioner / Transferee Company

In the matter of the Companies Act, 1956;

And

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

And

In the matter of Scheme of Amalgamation of Oikos India Private Limited with Milltech Engineering Private Limited

Called for Hearing

Mr. Ramesh Saraogi , Advocate for the Petitioner Companies.

Mr. H.V. Mehta I/b Mr. A.A. Ansari for the Regional Director.

Mr. S. Ramakantha, Official Liquidator Present.

Coram: S. C. Gupte, J.

Date: 16th September, 2015

MINUTES OF THE ORDER

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 under Sections 391 to 394 of the Companies Act, 1956 to the Scheme of Amalgamation of Oikos India Private Limited with Milltech Engineering Private Limited.

3. The Transferor Company is engaged in the business of manufacturing of colours/ dealing in the colours and the related activities. The Transferee Company is engaged in the business of trading in Plant and Machinery and the related activities.

4. The Learned Counsel for the Petitioner states that amalgamation will result in to expansion and diversification of activities and increase in turnover, will result in to administrative efficiency and optimum and better utilization of resources and economy and long run advantage to the shareholders of the amalgamated entity. The amalgamation will result in to reducing the number of entities, whereby reducing the overhead expenses and paperwork.

5. The Transferor Company and the Transferee Company has approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition filed by the Petitioner Companies.

6. The learned Advocate for the Petitioner Companies further states that the Petitioner Companies have complied with all directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioner Companies have stated that the Petitioner Companies have complied with all requirements as per the directions of this Court and filed necessary Affidavits of Compliance in this behalf. The Petitioner Companies further undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and Companies Act, 2013 as may be applicable, and the Rules made there under. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 9th September, 2015 stating therein that the Affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Hon'ble Court.

9. The Regional Director has filed an Affidavit on 11th September, 2015 stating therein that save and except as stated in paragraph 6(a), (b), (c), (d) ,(e) and (f) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Paragraph 6(a), (b), (c),(d), (e) and (f) of the said Affidavit, the Regional Director has stated that :-

6(a) The details of Number of Shares of Authorized Share Capital and Paid up Share Capital of Transferor Company is wrongly mentioned in Clause 5.1 of Scheme as 10,000 instead of 1,00,000 which appears to be typographical error. In this regard, it is submitted that the Petitioner Companies may be directed to correct aforesaid error in Scheme.

6(b) Clause No. 13.3 of the Scheme states that the name of the Transferee Company shall stand changed from “Milltech Engineering Private Limited” to “Oikos India Private Limited”. In this connection, Transferee Company may be directed to comply with the provisions of Section 13(2), (3) & (6) along with section 15 of the Companies Act 2013 read with section 21/23 of the Companies Act 1956 in respect of filing of necessary forms with the Registrar of Companies and the proposed new name will be allowed subject to availability of the same, by the Registrar of Companies since under the computerized MCA21 System of allotting the names, it is systemically not possible to reserve the names. Therefore, the name if available at the time of filing of such application, shall be made available by the Registrar of Companies, Mumbai.

6(c) Clause 13.4 of the Scheme provides for insertion of a new object clause in the Memorandum of Association of the Transferee Company. In this regard, the Transferee Company may 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 Companies Act, 1956 and to file amended copy of Memorandum of Association with necessary form with Registrar of Companies.

6(d) Clause No. 15.5 of the Scheme states that the excess, if any, of the value of the net assets of the Transferor Company shall be credited by the Transferee Company to an account to be styled as 'Amalgamation Reserve Account' and the said account shall be treated as free reserve of the Transferee Company. In this regard, it is submitted that surplus / reserve is arising on transfer of capital assets from Transferor Company to Transferee Company and hence that part of the reserve cannot be construed as free reserve and cannot form part of the net worth of the Transferee Company.

6(e)Clause 15.6 of the Scheme provides for adjustment for differences in Accounting policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to compliance of Accounting Standard – 14, the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standard such as AS – 5, etc.

6(f) 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 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 Transferor Company and Transferee Company.

10. As far as observation made in paragraph 6(a) of the Affidavit of Regional Director are concerned the Petitioner Companies are correcting the typographical error in clause no 5.1 of the Scheme of amalgamation. Leave to amend is granted. Amendment to be carried out with in two weeks from today. All consequential amendments are also permitted.

11. As far as observation made in paragraph 6(b) and para 6(c) of the Affidavit of Regional Director are concerned, the Petitioner Companies undertakes to comply with the applicable provisions of the Companies Act, 2013 for filing of all the necessary forms with the Registrar of Companies.

12. As far as the observations in para no. 6(d) is concerned the Petitioner Companies through their Advocate states that the treatment of amalgamation reserve shall be as per the applicable provisions of the Companies Act and applicable Accounting Standards and such amalgamation reserves arising out of the Scheme will not be treated as free reserves and will not form part of net worth of Transferee Company.

13. As far as observation made in paragraph 6(e) of the Affidavit of Regional Director are concerned, the Petitioner Companies through their Advocate undertakes to comply with the requirements of the relevant applicable Accounting Standards.

14. As far as observation made in paragraph 6(f) of the Affidavit of Regional Director are concerned, the Petitioner Companies submits that the Petitioner Companies are bound to comply with all the applicable provisions of the Income Tax Act and all tax issues arising out of the scheme will be met and answered in accordance with the law.

15. The Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director,(Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking given by the Petitioner Companies. The said undertaking given by the Petitioner Companies is accepted.

16. 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. The Petitioner Companies shall correct the authorized share capital and paid up share capital as stated in clause 5.1 of the Scheme of Amalgamation as pointed out in para no. 6(a) of the affidavit of the Regional Director, the correction to be carried out with in seven days from today.

17. Since all the requisite statutory compliance have been fulfilled, Company scheme Petition No. 483 of 2015 and 484 of 2015 are made absolute in terms of prayer clause (a) of the respective Company Scheme Petitions.

18. The Petitioner Companies are directed 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 order.

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

20. The Transferor Company to pay costs of Rs. 10,000/- each to the Regional Director and to the Official Liquidator, High Court, Bombay. The Transferee Company to pay costs of Rs. 10,000/- to the Regional Director . The costs to be paid within four weeks, from the date of the order.

21. Filling and issuance of the drawn up order is dispensed with.

22. 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.)