IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 3 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 789 OF 2015

M/S. HEXAGON LOGISTICS PRIVATE LIMITED ……..Petitioner Company

AND

COMPANY SCHEME PETITION NO. 4 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 790 OF 2015

M/S. HEXAGON VITACHEMIE PRIVATE LIMITED …….Petitioner Company

AND

COMPANY SCHEME PETITION NO. 5 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 791 OF 2015

M/S. NIVIA BIOTECH PRIVATE LIMITED ……Petitioner Company

AND

COMPANY SCHEME PETITION NO. 6 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 792 OF 2015

HEXAGON NUTRITION PRIVATE LIMITED ……..Petitioner Company

In the matter of the Companies Act, 1 of 1956

And

In the matter of Application under Sections 391 to 394, of the Companies Act, 1956 or any relevant provision of the Companies Act, 2013;

And

In the matter of **HEXAGON LOGISTICS PRIVATE LIMITED**,
(CIN: U63011MH2008PTC187904)
A company incorporated under the Companies Act, 1956 having its registered office at 404 A, Global Chamber, Adarsh Nagar, Link Road, Andheri. West, Mumbai–400 053

And

In the matter of Scheme of Amalgamation amongst Hexagon Logistics Private Limited & Hexagon Vitachemie Private Limited & Nivia Biotech Private Limited & Hexagon Nutrition Private Limited & their respective shareholders and creditors under Sections 391 to 394 of the Companies Act, 1956.

HEXAGON LOGISTICS PRIVATE LIMITED, ………Petitioner Company

Called for Hearing

Coram : S. C. Gupte J

Date : 5th May, 2016

Sudhan Y. Amare Advocate for the Petitioner

Mr. P. Khosla instructed by Mr. A. A. Ansari on behalf of Regional Director

Mr. Vinod Sharma Official Liquidator

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation 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 Hexagon Logistics Private Limited, Hexagon Vitachemie Private Limited, Nivia Biotech Private Limited with Hexagon Nutrition Private Limited & their respective shareholders and creditors

3. The Counsel for the Petitioners state that with a view to maintain a simple corporate structure and eliminate duplicate corporate procedures it is desirable to merge and amalgamate Hexagon Logistics Private Limited, Hexagon Vitachemie Private Limited & Nivia Biotech Private Limited („Transferor Companies‟) into Hexagon Nutrition Private Limited ("Transferee Company"). The amalgamation of all undertakings of Transferor Companies into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.

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

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

6. The Learned Counsel appearing on behalf of the Petitioners has 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 undertakes 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 7th April, 2016 stating therein, save and except as stated in paragraphs 6a, 6b. & 6c thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 a, b, c. of the said Affidavit, the Regional Director has stated that:-

a) The Part V of the Scheme provides for Accounting Treatment in the books of the Transferee Company post amalgamation. In this regard, it is submitted that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and the Deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.

b) The Part V (iv) of the Scheme provides for adjustment for differences in Accounting Policies between Transferor Companies 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.

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 Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.

8. In so far as observations made in paragraph 6a of the Affidavit of Regional Director is concerned, the Transferee Company through their Counsel undertakes that surplus if any, arising out of this Scheme shall be transferred to Capital Reserve Account and deficit if any be transferred to Goodwill Account of Transferee Company.

9. As far as observations made in paragraph 6b of the Affidavit of Regional Director is concerned, the Transferee Company through their Counsel undertakes that in

addition to the 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 -5.

10. As far as observations made in paragraph 6c of the Affidavit of Regional Director is concerned, the ld Counsel on behalf of the Petitioners clarifies that the approval of the Scheme by this Court will not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the Scheme and all issues arising out of the Scheme will be met and answered in accordance with law.

11. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, 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 Petitioner Companies. The said undertakings given by the Petitioner Company are accepted.

12. The Official Liquidator has filed its report dated 3rd May2016 of companies and has stated that the companies have complied with all the requirements and affairs of the transferee company has been conducted in proper manner and not adverse to the scheme.

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, the Company Scheme Petition No. 3, 4, 5, 6 all of 2016 are made absolute in terms of the

prayer clause (a) of the respective Company Scheme Petition.

15. The Petitioner Companies are directed to lodge a copy of this order and Scheme duly authenticated by the Company Registrar, High Court, 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 Order

16. Petitioner 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 INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

17. The Petitioners in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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 the Scheme duly authenticated by 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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