IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.112 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.20 OF 2015

PIERBURG PUMP TECHNOLOGY INDIA PRIVATE LIMITED

.....Petitioner/the Transferor Company.

In the matter of the Companies Act I of 1956

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956

AND

In the matter of the Scheme of Amalgamation of:

Pierburg Pump Technology India Private Limited.

WITH

KSPG Automotive India Private Limited.

Called for Hearing

Mr. Rajesh Shah i/b M/s. Rajesh Shah & Co, Advocates for the Petitioner in the Petition.

Ms. Jyotsna Pandhi i/b Shri. A. A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator, present for Official Liquidator, High Court, Bombay

CORAM: S. J. KATHAWALLA, J

DATE : 10th APRIL,2015

PC:

1. Heard learned counsel for parties. 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 a Scheme of Amalgamation of Pierburg Pump Technology India Private Limited with KSPG Automotive India Private Limited.

3. The learned Advocate for the Petitioner Company states that the Petitioner Company is presently not engaged in any business activities.The Transferee Company mainly carries on business of manufacture and sale of Bearings, Vacuum Pumps, Oil Pumps, Water Pumps and Exhaust Gas Recirculation Systems for use in Automotive Industry.

4. The learned Advocate for the Petitioner Company further states that the amalgamation would reduce the administrative costs and other overheads which are presently being duplicated because of separate entities. Since the Transferee Company holds 100% share capital of the Petitioner Company the amalgamation will ensure simplification of holding and investment structure of the Transferee Company.

5. The learned Advocate for the Petitioners further states that the Petitioner Company is a wholly owned subsidiary of the Transferee Company and as per clause 9 of the scheme no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and in view of the averments made in paragraphs (22) and (23) of the Company Scheme Petition, interalia stating and there is no reorganization of the share capital of the Transferee

Company and the creditors of the Transferee Company are not likely to be affected by the Scheme and also in view of the observation of this Court in Mahaamba Investments Limited Vs IDI Limited (2001) Company Cases 105, filing of a separate Company Summons for Direction and Company Scheme Petition in relation of the said Scheme by Mist Agro Private Limited, the Transferee Company was dispensed with pursuant to the order dated 23rd January, 2015 in Company Summons for Direction No. 20 of 2015 filed by the Petitioner/ Transferor Company.

6. The Petitioner Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the Company Scheme Petition.

7. The Learned Advocate appearing on behalf of the Petitioner states that the Petitioner Company has complied with all the directions passed in Company Summons for Direction and that the Petition has been filed in consonance with the orders passed in Company Summons for Direction.

8. The Learned Advocate appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per directions of this Court and it has filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Company undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rule made there under whichever is applicable. The said undertaking is accepted.

9. The Official Liquidator has filed his report on 7th April, 2015 in Company Scheme Petition Nos. 20 of 2015, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

10. The Regional Director has filed his Affidavit on 6th April,2015, *inter alia,* stating therein that save and except as stated in paragraphs 6 (a) & (b) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a), and (b) of the said Affidavit, the Regional Director has stated that :

"6. That the Deponent further submits that:-

a) *Clause 10.5 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 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 AS-5 etc.*

b) *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 company after giving effect to the amalgamation The decision of the Income Tax Authority is binding on the petitioner company."*

11. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(a) of his affidavit is concerned, the Transferee Company through its advocate undertakes that in addition to accounting treatment given in the scheme the Transferee Company

shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.

12. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(b) of his Affidavit is concerned, the Petitioner Company submit that the Petitioner is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

13. 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 and submissions made by the Petitioner Company through their advocate. In view thereof, the said undertakings are accepted.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition is made absolute in terms of prayer clauses (a) to (c).

16. The Petitioner Company to lodge a copy of this order and the 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 the order.

17. Petitioner is directed to file/lodge 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 physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

18. The Petitioner to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai, and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

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

(S. J. KATHAWALLA , J)