IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 517 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 455 OF 2016

PIRAMAL ENERGY PRIVATE LIMITED ..Petitioner/ Transferor Company 1

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

AND

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

AND

In the matter of Scheme of Amalgamation of Piramal Energy Private Limited and PMP Components (Mauritius) Ltd with PMP Auto Components Private Limited and their respective shareholders and creditors

Called for Hearing

Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., Advocates for the Petitioner Companies in all the Petitions.

Mr. Arun Kumar Roy, i/b Mr. A.A. Ansari for Regional Director in all the Petitions.

Mr. Vinod Sharma, Official Liquidator.

CORAM: S.C Gupte, J

DATE: 9th December, 2016

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 in the matter of Scheme of Amalgamation of Piramal Energy Private Limited and PMP Components (Mauritius) Ltd with PMP Auto Components Private Limited and their respective shareholders and creditors.

3. The Scheme is proposed for the following benefits that shall accrue to the Group: (a) Consolidation of the businesses of the Group (b) Reduction in number of companies and regulatory compliances thereof (c) Ease of management and (d) Reduction of operating and administrative costs.

4. The Petitioner Company had approved the said Scheme of Amalgamation by passing Board Resolution which is annexed to the Company Scheme Petition.

5. The learned Advocate for the Petitioner Company further states that, the Petitioner Company has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Summons for Directions.

6. The Counsel for the Petitioner Company further states that the Petitioner Companies have complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Company through their Counsel undertakes to

comply with all statutory requirements, if any, as required under the Companies Act, 1956 and the rules made there under. The said undertaking is accepted.

7. The Official Liquidator has filed his report on 5th December, 2016 stating therein that the Affairs of the Petitioner Company have been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved by this Court.

8. The Regional Director has filed an Affidavit on 25th October, 2016 stating therein that save and except as stated in paragraph 6 of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director submits that :

(i) That the Petitioner Companies had accepted the purchase method of accounting as set out in AS 14 however the Petitioner Companies should also shall pass accounting entries as mentioned in AS-5 of the Accounting Standards. Therefore, the Deponent prays that the Hon'ble Court may pass such orders as deem fit.

(ii) The Transferor Company 2 is within the jurisdiction of Republic of Mauritius. Hence similar approval be obtained from concerned Hon'ble Supreme Court of the Republic of Mauritius. "Order of this

Hon'ble Court is also subject to the outcome of the orders of the Supreme Court of the Republic of Mauritius".

(iii) Since the Transferor Company 2 is situated in Republic of Mauritius, the FEMA Regulation/RBI Guidance, if any applicable is to be complied with by the Transferor Company 2 and Transferee Company.

(iv) ROC-Mumbai had observation in the point 10 of the report dated 08.09.2016 that " As per MCA Master data, the Authorised and Paid up Share Capital of the Company is Rs. 25,91,00,000/- and Rs. 20,93,32,000/- respectively. However authorized Capital of Transferee Company given in Scheme/Petition which does not agree with MCA Master Data." Therefore, Deponent prays that the Petitioner Companies may be asked to provide clarifications regarding the same.

(v) The Petitioner Companies inter alia has mentioned about the employees clause in Clause No. 13 of the scheme. However, the Petitioner Companies should comply with the law as applicable in the Republic of Mauritius to protect the Employees/Workers interest of Transferor Company 2.

(vi) *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 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 Income tax Authority is binding on the Petitioner Companies.*

9. In so far as observations made in paragraph 6.1 of the Affidavit of Regional Director is concerned, the Petitioner Companies submit that they shall also pass accounting entries as required as per AS-5 of the Accounting Standards.

10. In so far as observations made in paragraph 6.2 of the Affidavit of Regional Director is concerned, the Transferor Company 2 submits that it has obtained approval for sanction of the scheme of amalgamation of PMP Components (Mauritius) Ltd. (Transferor Company 2) with PMP Auto Components Private Limited from concerned Hon'ble Supreme Court of the Republic of Mauritius via, order no SC/COM/MOT/00493/2016 dated 30th May 2016 read with order from Hon'ble Supreme Court of the Republic of Mauritius via order no SC/COM/MOT/00878/2016 dated 09th August, 2016.

11. In so far as observations made in paragraph 6.3 of the Affidavit of Regional Director is concerned, the Transferor Company 2 and the Transferee Company submit that, the FEMA Regulation/RBI Guidance, as applicable,

will be complied with by the Transferor Company 2 and Transferee Company.

12. In so far as observations made in paragraph 6.4 of the Affidavit of Regional Director is concerned, the Transferee Company submits that, the increase in Authorised Capital from Rs. 21,30,00,000/- to 25,91,00,000 was pursuant sanction of scheme of Amalgamation by the Hon'ble High Court of Judicature at Bombay via order dated 22nd April, 2016. Further, the Transferee Company states that the said increase in Share Capital was made effective through Form INC-28 dated 4th June 2016 via SRN G04705711.

13. In so far as observations made in paragraph 6.5 of the Affidavit of Regional Director is concerned, the Petitioner Company submits that, there are no employees in the Transferor Company 2. Hence, there is no requirement to comply with the law as applicable in the Republic of Mauritius to protect the Employees/Workers interest of Transferor Company 2.

14. In so far as observations made in paragraph 6.6 of the Affidavit of Regional Director is concerned, the Petitioner Company submit that, the Petitioners are 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.

15. The learned Counsel for the Regional Director on instruction from Shri R. K. Dalmia, Deputy Director for Regional Director, Wester Region,

in the office of Ministry of Corporate Affairs states that they are satisfied with the undertakings given by the Petitioner Companies.

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. None of the parties concerned have come forward to oppose the Scheme.

17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 517 of 2016, filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the Petition.

18. The Petitioner Company to lodge an authenticated copy of this order and the Scheme 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 receipt of this order.

19. The Petitioner Company is directed to file an authenticated 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 the physical copy as per the relevant provisions of Companies Act, 1956/2013 Act.

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

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

22. All authorities concerned to act on an authenticated copy of this order along with Scheme.

23. It is directed that the scheme shall take effect from the date of the filing of a signed copy of this order with the Registrar of Companies. Learned Counsel for the Petitioner undertakes to file an authenticated copy of the order along with scheme with the Registrar of Companies within a period of one month from today.

(S.C Gupte, J)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

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