(14)

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH - I, CHENNAI

CP(CAA)/35(CHE)2022 in CA(CAA)/109(CHE)2021

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of *Scheme of Amalgamation*

of

PRICOL WIPING SYSTEMS INDIA LIMITED
CIN NO: U35999TZ2017PLC008923
No.109, Race Course,
Coimbatore – 641 018

... Applicant / Transferor Company

And

PRICOL LIMITED
CIN NO: L34200TZ2011PLC022194
No.109, Race Course,
Coimbatore – 641 018

... Applicant/ Transferee Company

And

Their Respective Shareholders and Creditors

*Order Pronounced on **29th November 2022***

CORAM

JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant(s): *V.Srinivasan, Advocate*

ORDER

***Per:* SAMEER KAKAR, MEMBER (TECHNICAL)**

The hearing of this Petition has been conducted through video conferencing platform.

2. The present Company Petition has been filed by the Transferor Company above named for the purpose of the approval of the Scheme of Amalgamation of **PRICOL WIPING SYSTEMS INDIA LIMITED** (for brevity "Transferor Company") with **PRICOL LIMITED** (for brevity "Transferee Company") under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') (hereinafter referred to as the 'SCHEME') pursuant to the Scheme proposed by the Petitioner Companies and the said Scheme is also annexed at Page Nos. **379 to 399** of the Transferor Company typeset filed along with the Petition.

3. **1ST MOTION APPLICATION – IN BRIEF**

3.1. The Transferor Company have filed the First Motion Application vide CA(CAA)/109/(CHE)/2021 seeking directions for dispensation of meeting of Equity Shareholders and Secured Creditors of the Transferor Company and convening holding and conducting of meeting of the Unsecured Creditors of the Transferor Company.

3.2. Based on such application moved under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal, vide order dated 1st December 2021 dispensed

the meetings of Equity shareholders and Secured Creditors of the Transferor Company and directed to convene the meetings of the Unsecured Creditors of the Transferor Company on 15.02.2022 at No.109, Race Course, Coimbatore – 641 018 at 11:00AM.

3.3. Accordingly, the Tribunal has appointed Mr.P.Krishnamoorthy, Director of the Transferor Company as Chairperson and V.Krishnamoorthy, PCS as the Scrutinizer for the aforesaid meetings. Subsequently, the second motion petition was filed before this Tribunal by the Transferor Company on 23.02.2022 for sanction of the Scheme of Amalgamation by this Tribunal.

3.4. The Chairperson has submitted his Report on the above said meetings with the Tribunal. From the Chairperson's report, it is observed that the Unsecured Creditors of the Transferor Company had consented in favour of the Scheme. The said Chairperson's report is annexed at Page Nos. 420 to 430 of the Transferor Company to the typed set filed along with the Petition.

4. RATIONALE OF THE SCHEME

4.1. The rationale and benefits of the Scheme as submitted by the Learned Counsel for the Transferor Company would *inter alia* result in the following benefits;

a) The Transferor Company is the 100% wholly owned subsidiary of the Transferee Company. The Transferor Company and Transferee Company propose through this Scheme (as defined hereinafter) to amalgamate the Transferor Company into and with the Transferee Company, which would result in consolidation of their respective financial strength into one entity.

b) The amalgamation will enable the Transferee Company to harness and optimize the synergies of both the companies by combining their respective expertise, resources, network and experience and achieve higher financial returns.

c) The proposed amalgamation is in the best interest of shareholders. Creditors, employees of the Transferor Company and Transferee Company.

d) The Amalgamation will lead to better and more economic control and efficient management with greater focus and attention and optimum utilization of available financial resources. The merged entity will have higher efficiencies and better leveraging for financial benefits, and contributing to significant future growth. The Reasonable size of operations that will improve the stature of the company and integration of

administrative practices and implementation of uniform management practices;

e) The Transferor Company and Transferee Company intend that the amalgamation in accordance with this Scheme shall take effect from the Appointed Date (as defined hereinafter), but will be operative from the Effective Date (as defined hereinafter).

5. In the second motion application filed by the Transferor Company, this Tribunal vide order dated 30.03.2022 directed the Transferor Company to issue notice to the Statutory / Regulatory Authorities viz. (i) Regional Director (Southern Region), (ii) RoC, Coimbatore, (iii) Official Liquidator (iv) Income Tax Office, Corporate Circle 1, Coimbatore and other sectoral regulators, who may govern the working of the respective companies, as well as for paper publication to be made in "News Today ", English (All India Edition) and "Makkal Kural" Tamil (Tamil Nadu Edition). Since News Today has been closed, the Learned Counsel for the Applicant filed an application bearing Comp.Appl /4(CHE)/2022 seeking permission to effect advertisement in English Newspaper "Business Line"(All India Edition) and the same was allowed by this Tribunal vide order dated 27.04.2022.

6. In compliance to the said directions issued by this Tribunal, the Petitioner Company have filed an affidavit of service before the

Registry of this Tribunal on 17.05.2022 and a perusal of the same discloses that the Petitioner Companies have effected paper publications as directed by the Tribunal in "Business Line" (All India Edition) in English on 29.04.2022 and "Makkal Kural" (Tamil Nadu Edition) in Tamil on 28.04.2022. It is also seen that notices have been also served to (i) Regional Director, Southern Region, on 06th April 2022, (ii) Registrar of Companies, Coimbatore on 07th April 2022, (iii) Official Liquidator on 06th April 2022 (iv) Income Tax Office, Corporate Circle 1, Coimbatore on 07th April 2022 and the proof of the same by way of affidavits have been enclosed with the separate typed set. Pursuant to the service of notice of the petition the following statutory authorities have responded as follows:

7. STATUTORY AUTHORITIES

7.1. REGIONAL DIRECTOR

The Regional Director, Southern Region *(hereinafter referred to as 'RD')* Chennai to whom the notice was issued in the Second motion, has filed his Report before this Tribunal on 25.05.2022 Vide SR.No.3263 and has stated in Para 7 of the RD Report that as per Clause 3.21 of Part-3 of the Scheme provides for the protection of employees of the Transferor Company. All staff and employees of the Transferor Company, in service on the Effective Date, shall be deemed to have become staff and employees of the

Transferee Company, with effect from the Appointed Date or date of joining whichever is later, without any break in their service and other benefits.

7.1.1. It is further averred in para 8 of the RD Report that as per Clause 3.18 of Part-3 of the scheme, the Transferee Company holds 100% of the issued, subscribed, and paid-up share capital of the Transferor Company. Hence, no shares shall be issued to the Transferor Company as consideration and the shares held by the Transferee Company shall stand cancelled without any further application, act or deed upon effectiveness of the scheme.

7.1.2. It is further averred in para 10 of the RD Report that as per Clause 3.17 of Part 3 of the Scheme provides for clubbing of Authorized Share Capital of the Companies, as such the Authorized Share Capital of the Transferor Company shall stand be altered and merged with the Authorized Share Capital of the Transferee Company. Clause V of the MOA of the Transferee Company shall be altered as the Authorized Share Capital of the Company shall be Rs. 79,45,00,000 divided into 79,45,00,000 equity shares of Re. 1 each. It is prayed that the Hon'ble NCLT, Chennai may direct the Transferee Company to remit the difference in fee / stamp

duty, if any and also to file the amended MOA and AOA on the above with the Registrar of Companies.

7.1.3. It is further observed that as per para 12 of the RD report wherein it has been stated that as per the Report of the RoC, Coimbatore, the Transferor Company and Transferee Company have filed their statutory returns up to 31.03.2021 and has reported that there are no prosecution / complaint/inspection or Investigation is pending against the Companies.

7.1.4. Thus, after examining the Scheme, except the observations made in para 10 of the RD Report, the Regional Director in their Report has stated that they have decided not to make any objection to the Scheme.

7.1.5. In relation to the observation made by the RD in para 10 of the report, it is seen that applicant company had filed a document dated 21.07.2022 vide S.R.No.4519 wherein it was stated that the petitioner will comply all the required statutory formalities.

7.2. OFFICIAL LIQUIDATOR

In relation to the Official Liquidator, *(hereinafter referred to as 'OL')* to whom the notice was issued has filed

the Report before this Tribunal on 20.06.2022 vide SR.No.3720 has stated that they have appointed A.N.Sankaran & Co, Chartered Accountants from the panel maintained by their office to verify into the affairs of the Transferor Company. The Chartered Accountants in their report submitted before the Official Liquidator have observed as follows;

- The Chartered Accountant Firm verified the books and accounts and other records of the Transferor Companies and submitted their report on 17.05.2022 and the copy of the same is enclosed as Annexure-A for kind perusal of this Tribunal. It is observed from the scrutiny/inspection that:
- The Company is maintaining proper books of account and statutory records as per requirements of the Companies Act, 2013 and has been written up in accordance with normally accepted Accounting principles.
- All entries have been made in the statutory registers in accordance with requirements of the Companies Act, 2013 prescribed under the Act and no discrepancies were noted.
- The Transferor Companies (1 & 2) have filed its Income Tax returns up to Assessment Year 2021-22 (F.Y.2020-21) and AY 2022-23 (FY 2021-22).They have filed Annual returns with Registrar of Companies (AOC-4 and MGT-7) for FY 2020-21 and AOC-4 for FY 2021-22.

- The accounts and records of the company have been audited and the auditor's report, qualificatory in nature, are produced in the relevant place.
- There are no disputed statutory liabilities of the 2nd Transferor Company as on date as per books and records informed given to the Chartered Accountant
- The Company has filed various returns with registrar of Companies and no case has been pending against the company or any of its directors/officers and no prosecution has been launched under any of the sections of the Companies Act against the company or any of its directors as per information received from the Company. There are no complaints of any nature against the company or its directors.
- The Company has filed its Income Tax returns upto AY 2021-22 returning Loss.
- The Chartered Accountants have examined the records and the documents of the Registrar of Companies, Chennai and nothing adverse or objectionable affecting the interest of the company or its members or creditors.

7.2.1. Further in Para 5 of the OL report it was submitted that on examination / scrutiny of the books of accounts, records, register etc. the Chartered Accountants are of the opinion that the business has not been carried on with intent to defraud the creditors or any other person or for any fraudulent purpose attracting the penal provisions of Sections 339 of the companies Act, 2013. Neither has any person or Officer or Director of the Company misapplied or diverted or

retained or became liable or accountable for any money property of the company or has been found guilty or any misappropriation, breach of trust in relation to the company under Section 340 of the Companies Act, 2013. But regarding 'public interest, the Chartered Accountants have concluded that considering the huge Carried Forward Loss is transferred to Transferee Company which the Transferor Company could not have set off, because of declining turnover and mounting losses, the Chartered Accountants conclude that the affairs of M/s. Pricol Wiping Systems India Limited were conducted in a manner prejudicial to Public Interest.

7.2.2. Further in para 6 of the OL Report, it was submitted that the Official Liquidator has sent a letter to the Transferor Company on 24.05.2022 wherein sought some clarifications as regards to the observations made by the auditor in his report as stated above. In response to this office letter dated 24.05.2022, the Transferor Company has furnished clarifications for the observations made by the auditor to this office on 09.06.2022. The replies of the Transferor Company for the observations of the auditor are satisfactory and the copy of the reply of the Transferor Company dated 09.06.2022 is enclosed as Annexure-B.

7.2.3. From the above observations made by the Chartered Accountant, the Official Liquidator sought to take on record and consider the report of the Chartered Accountant and has also sought to fix the remuneration payable to the Auditor who has investigated into the affairs of Transferor Company. In this regard, this Tribunal hereby directs the Transferor Companies (1&2) to pay a sum of ***₹25,000/- + GST (Rupees Twenty Five Thousand Plus GST)*** to the Official Liquidator for the payment of fees payable towards the Auditor who has investigated into the affairs of the Transferor Company.

7.3. OTHER STATUTORY AUTHORITIES

In relation to the other statutory authorities to whom notices have been issued, neither they have filed any reply nor raised any objections to the Scheme and in the circumstances, this Tribunal presumes that other statutory Department viz. The Income Tax Department do not have any objection to the sanction of the Scheme.

7.3.1. Despite notice having been served on 07.04.2022, and Paper Publication issued on 29.04.2022 in *Business Line in English (All India Edition) on 28.04.2022 and Makkal Kural in*

Tamil on 28.04.2022 (Tamil Nadu Edition), there is no representation from the Department of Income Tax and this Tribunal in terms of Section 230(5) of the Companies Act, 2013 presumes that the Department of Income Tax does not have any objection to the sanction of the Scheme.

7.3.2. In Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi has made the following observations with regard to the right of the IT Department in the Scheme of Amalgamation,

> *"taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in RE: Vodafone Essar Gujarat Limited v. Department of Income Tax (2013)353 ITR 222 (Guj) and the same being also affirmed by the Hon'ble Supreme Court and as reported in (2016) 66 taxmann.com.374(SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15,2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutory dues from the transferor or transferee or any other person who is liable for payment of such tax dues, the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned."*

8. ACCOUNTING TREATMENT

8.1. The Learned Counsel for the Transferor Company have stated that the Statutory Auditors of the Transferor Company have examined the Scheme and has certified that the Transferor Company have complied with proviso to Section 230 (7) / Section 232 (3) and the Accounting Treatment contained in the proposed Scheme of Arrangement is in compliance with the Applicable Indian Accounting Standards. The Certificates issued by the Statutory Auditors certifying the Accounting Treatment of the Transferor Company are placed at Page **Nos.431 to 432** of the Transferor Company typed set filed in CP(CAA)/35/(CHE)/2022.

9. OBSERVATIONS OF THIS TRIBUNAL

9.1. After analyzing the Scheme in detail, this Tribunal is of the considered view that the scheme as contemplated amongst the Transferor Company seems to be *prima facie* beneficial to the Company and will not be in any way detrimental to the interest of the shareholders of the Company. In view of the absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the Scheme of Amalgamation

appended at **Page Nos.379 to 399** of the Transferor Company typeset filed along with the Petition as well as the prayer made therein.

9.2. The Learned Counsel for the Petitioner companies submitted that no investigation proceedings are pending against the Transferor or Transferee Companies under the provisions of the Companies Act, 1956 or the Companies Act, 2013 and no proceedings against the petitioner companies for oppression or mismanagement have been filed before this Tribunal or erstwhile Company Law Board.

9.3. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

9.4. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any

permission/compliance with any other requirement which may be specifically required under any law.

10. **THIS TRIBUNAL DO FURTHER ORDER:**

(i) That all properties, right and interest of the Transferor Company shall, pursuant to section 232(3) of the Companies Act,2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Transferee Company.

(ii) That all the liabilities, powers, engagements, obligations and duties of the Transferor Company shall pursuant to Section 232(3) of the Companies Act,2013 without further act or deed be transferred to the Transferee Company and accordingly the same become the liabilities and duties of the Transferee Company.

(iii) That the Appointed date for the Scheme shall be **1st April 2021** as mentioned in clause 2.5 of Part 2 of the SCHEME itself.

(iv) Since the Transferor Company is the 100% wholly owned subsidiary of the Transferee Company, there shall be no issue of shares as consideration for the amalgamation of the Transferor Company with the Transferee Company.

(v) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.

(vi) That all the employees of the Transferor Company in service on date immediately preceding the date on which the Scheme finally takes effect shall become the employees of the Transferee Company without any break or interruption in their service.

(vii) That the Transferee Company shall file the revised Memorandum and Articles of Association with the Registrar of Companies, Coimbatore and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company after setting off the fees paid by Transferor Company.

(viii) That the Transferor Company and the Transferee Company, shall within thirty days of the date of receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without winding up and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file kept by him in relation to all the Transferee Company and the files relating to the said company shall be consolidated accordingly.

(ix) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

11. Accordingly, the Company Petition stands **allowed** on the aforementioned terms.

- Sd -	- Sd -
SAMEER KAKAR MEMBER (TECHNICAL)	**JUSTICE RAMALINGAM SUDHAKAR** PRESIDENT

SriramAnanth.V