(16)

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

CP(CAA)/81(CHE)2022 in CA(CAA)/29(CHE)2022

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of *Composite Scheme of Arrangement* of

PRICOL CORPORATE SERVICES LIMITED
CIN NO: U74140TZ2006PLC013190
No.109, Race Course,
Coimbatore – 641 018

... Applicant / 1st Transferor Company

TARGET MANPOWER SERVICES LIMITED
CIN No: U74910TZ2013PLC019905
No.109, Race Course,
Coimbatore – 641 018

... Applicant / 2nd Transferor Company

And

PRICOL HOLDINGS LIMITED
CIN NO: U65921TZ1981PLC001043
No.109, Race Course,
Coimbatore – 641 018

... Applicant/ Transferee Company

And
Their Respective Shareholders

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

CORAM

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

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

COMMON 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 Petitioner Companies above named for the purpose of the approval of the Composite Scheme of Amalgamation of **PRICOL CORPORATE SERVICES LIMITED** (for brevity "Transferor Company-1") and **TARGET MANPOWER SERVICES LIMITED** (for brevity "Transferor Company-2")with **PRICOL HOLDINGS 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. **301 to 326** of the Petitioner Companies typeset filed along with the Petition.

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

3.1. The Transferor Company (1 & 2) and Transferee Company have filed the First Motion Application vide CA(CAA)/29/(CHE)/2022 seeking directions for dispensation

of meeting of Equity Shareholders of the Transferor Company (1&2) and Transferee Company, dispensation of meeting of secured Creditors of the Transferor Company-1 and dispensation of meeting of Unsecured Creditors of the Transferee 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 13thJuly 2022 dispensed the meetings of Equity shareholders of the Transferor Company (1 & 2) and Transferee Company, Secured Creditors of the Transferor Company-1 and Unsecured Creditors of the Transferee Company. It was represented that there are no Unsecured Creditors in respect of the Transferor Company (1& 2) and there is no Secured Creditors in respect of the Transferor Company-2 and Transferee Company. Subsequently, the second motion petition was filed before this Tribunal by the petitioner companies on 20.07.2022 for sanction of the Composite Scheme of Amalgamation by this Tribunal.

4. STEPS UNDER THE SCHEME:

This Composite Scheme of Arrangement provides for:

a) Amalgamation of Pricol Corporate Services Limited (PCSL) and Target Manpower Services Limited (TMSL) with Pricol Holdings Limited (PHL);

b) Conversion of Pricol Holdings Limited to Pricol Holdings Private Limited ;

c) This Scheme also makes provisions for various other matters consequential or related to the above and otherwise integrally connected herewith :

Pursuant to Sections 230 to 232 read with Section 13 & 14 and other applicable provisions of Companies Act, 2013.

5. RATIONALE OF THE SCHEME

5.1. The rationale and benefits of the Scheme as submitted by the Learned Counsel for the Petitioner Companies would *inter alia* result in the following benefits;

a) The Scheme will lead to better and more economic control and management and enable the businesses of the said Companies to be carried on more conveniently and advantageously with greater focus and attention;

b) TMSL is a subsidiary of PCSL. The management of all the 3 companies are presently controlled by the same promoters group: The amalgamation of PCSL and TMSL with PHL will facilitate consolidation of resources and strengthen the

financial position and will reduce unnecessary various multiple regulatory compliances which in turn will create enhanced value for the shareholders and to reap the benefits of synergies, focused strategy in operations, to obtain greater facilities, for raising capital, securing and conducting trade on favourable terms and other benefits which would be in the interest of all the companies, their shareholders, creditors and all stakeholders connected with them.

c) The conversion of PHL from Public Limited into Private Limited will facilitate simpler regulatory compliances

6. In the second motion application filed by the Petitioner Companies, this Tribunal vide order dated 21.09.2022 directed the Petitioner Companies 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 "Business Standard", English (All India Edition) and "Dina Mani" Tamil (Tamil Nadu Edition).

7. In compliance to the said directions issued by this Tribunal, the Petitioner Companies have filed an affidavit of service before the Registry of this Tribunal on 25.10.2022 and a perusal of the same discloses that the Petitioner Companies have effected paper publications as directed by the Tribunal in "Business Standard" (All India Edition) in English and "Dina Mani" (Tamil Nadu Edition) in

Tamil on 11.10.2022. It is also seen that notices have been also served to (i) Regional Director, Southern Region, on 06th October 2022, (ii) Registrar of Companies, Coimbatore on 07th October 2022, (iii) Official Liquidator on 06th October 2022 (iv) Income Tax Office, Corporate Circle 1, Coimbatore on 07th October 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:

8. STATUTORY AUTHORITIES

8.1. REGIONAL DIRECTOR

The Regional Director, *(hereinafter referred to as 'RD')* Chennai to whom the notice was issued in the Second motion, has filed his Report before this Tribunal on 03.11.2022 Vide SR.No.5909 and has stated in Para 7 of the RD Report that as per Clause 3.25 of Part-III and clause 4.25 of Part-IV of the Scheme provides for the protection of employees of the Transferor Company (1&2). All staff and employees of the Transferor Company(1&2), 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.

8.1.1. It is further averred in para 8 of the RD Report that as per Clause 3.16 of Part 3 of the Scheme, the Transferee Company shall issue and allot to the Shareholders of 1st Transferor Company of fully paid up equity share of Rs. 100 each for every 19 fully paid up equity shares of Rs. 10 each held by them in the 1st Transferor Company, as consideration upon effectiveness of the Scheme of Amalgamation. Further, it is also submitted that no shares shall be issued to the 2nd Transferor Company as the 1st Transferor Company holds 100% of its paid-up capital, as it is amalgamating with the Transferee Company and the 1st Transferor Company becomes the subsidiary of the Transferee Company post amalgamation.

8.1.2. It is further averred in para 10 of the RD Report that as per Clause 3.16 (b) of Part 3 of the Scheme, the equity shares held by the 1st Transferor Company in the Transferee Company shall be deemed to be extinguished and cancelled without any consideration. Further, as per Clause 4.16 (a) of Part-4 of the Scheme, the entire share capital of the 2nd Transferor Company is held by the 1st Transferor Company and its nominees shall stand extinguished and cancelled.

8.1.3. It is further averred in para 11 of the RD Report that as per Clause 5.26 of Part V of the Scheme provides for clubbing of Authorized Share Capital of the Companies, as such the Authorized Share Capital of the 1st and 2nd Transferor Company shall stand 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. 2,80,00,000 divided into 2,80,000 equity shares of Rs. 100 each. It is prayed that the Hon'ble NCLT, Chennai may direct the Transferee Company to pay the difference in fee / stamp duty and also to file the amended MOA and AOA with Registrar of Companies in connection with the proposed increase of Authorized Share Capital.

8.1.4. It is further observed that as per para 13 of the RD Report that as per Clause 5.1 of Part-5 of the Scheme deals with conversion of the Transferee Company from Public Limited to Private Limited, wherein the Transferee Company has stated that the requisite forms required to be filed with the Registrar of Companies for the said conversion will be taken care of and to comply with the provisions of the Companies Act, 2013 and the rules made thereunder.

8.1.5. It is further observed that as per para 14 of the RD report wherein it has been stated that as per the Report of the RoC, Coimbatore, the Transferor Company (1 & 2) 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.

8.1.6. Thus, after examining the Scheme, except the observations made in para 11 of the RD Report, the Regional Director in their Report has stated that they have decided not to make any objection to the Scheme.

8.1.7. In relation to the observation made by the RD in para 11 of the report, it is seen that applicant company had filed a synopsis dated 07.11.2022 vide S.R.No.5934 wherein it was stated that Transferee Company will comply all the statutory post sanction requirement and will file required forms with the Registrar of Companies.

8.2. 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 07.11.2022 vide SR.No.5927 has stated that they have appointed M/s. VSV

Associates, Chartered Accountants from the panel maintained by their office to verify into the affairs of the Transferor Companies. 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 (1 & 2) and submitted their report on 02/11/2022 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 books of accounts, statutory registers and records of the Transferor Companies (1&2) for the last five years were perused and found in order.
- There are no legal proceedings pending against the Transferor Companies (1 & 2) as on date.
- 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.
- As far as statutory liability is concerned, there are no disputed statutory liabilities of the 1 Transferor Company as on date as per books and records and inform given to the Chartered Accountant except with respect to TDS (Income Tax) defaults amounting to Rs 2,15,027/- as on the date of this report.
- 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 Chartered Accountants have conducted a search on the records filed by the 1 and 2nd Transferor Companies with Registrar of Companies, Tamil Nadu, Coimbatore, on the MCA portal in respect of e-filing made by the companies and available for public inspection.
- With regard to share exchange ratio is concerned, on merger, the shareholders of the 1 Transferor Company will be allotted 1 (One) fully paid equity shares of Rs. 100 each of the Transferee Company for every 19 (Nineteen) fully paid up equity shares of Rs. 10 each in the Transferor Company whose name recorded in the Register of Members, on a date to be fixed by the Board of Directors of M/s. Pricol Holdings Limited (PHL) The equity shares so issued and allotted, shall rank pari passu in all respects with the existing equity shares of the Transferee Company.
- The Chartered Accountant have scrutinized the records of the 1st and 2 Transferor Companies and have not come across any act of misfeasance, diversion of funds and other matters which would attract the provisions of Section 339/340 of the Companies Act, 2013.

8.2.1. Further in Para 4 of the OL report it was submitted that The Chartered Accountants are of the opinion that the affairs of M/s Pricol Corporate Services Limited (1"Transferor Company) and M/s. Target Manpower Services Limited (2 Transferor Company) have not been conducted in a manner prejudicial to the interest of its members or creditors to the public and to all stakeholders.

8.2.2. 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 ***₹50,000/- + GST (Rupees Fifty Thousand only 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.

8.3. 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.

8.3.1. Despite notice having been served on 07.10.2022, and Paper Publication issued on 11.10.2022 in *"Business Standard" English (All India Edition) and "Dina Mani" Tamil (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.

8.3.2. 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."*

9. VALUATION REPORT

9.1. The Learned Counsel for the Petitioner Companies invited the attention of this Tribunal to the Valuation Report obtained from one CA. Pragadeesh kanna.M, Registered Valuer dated 24.12.2021wherein it has been recommended by the Independent Valuer that :

- 1 (one) fully paid-up Equity Share of face value of Rs. 100/- of Pricol Holdings Limited (PHL) shall be issued and allotted for every 19 (Nineteen) fully paid-up Equity Shares of face value Rs. 10/- of Pricol Corporate Services Limited (PCS).

10. ACCOUNTING TREATMENT

10.1. The Learned Counsel for the Petitioner Companies have stated that the Statutory Auditors of the Petitioner Companies have examined the Scheme and has certified that the Petitioner Companies 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 Petitioner Companies are placed at Page Nos.356 to 361 of the Petitioner Companies typed set filed in CP(CAA)/81/(CHE)/2022.

11. OBSERVATIONS OF THIS TRIBUNAL

11.1. After analyzing the Scheme in detail, this Tribunal is of the considered view that the scheme as contemplated amongst the petitioner companies 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 Arrangement appended at **Page Nos.301 to 326** of the Petitioner Companies typeset filed along with the Petition as well as the prayer made therein.

11.2. 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.

11.3. 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.

11.4. 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.

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

(i) That all properties, right and interest of the Transferor Companies (1 & 2) 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 Companies (1 & 2) 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 2.3 of Part 2 of the SCHEME itself.

(iv) That the Transferee Company do without further application allot to such members of the Transferor Company (1), as have not given such notice of dissent, as is required by Clause 3.16 of Part 3 the SCHEME herein the shares in the Transferee Company to which they are entitled under the said SCHEME.

(v) That with respect to Transferor Company 2, there will be no issue of shares of Transferee Company as per Clause 4.16 of Part 4 of the Scheme since Transferor Company 2 is the wholly owned subsidiary of Transferor Company 1.

(vi) That all proceedings now pending by or against the Transferor Companies (1 & 2) be continued by or against the Transferee Company.

(vii) That all the employees of the Transferor Companies (1 & 2) 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.

(viii) 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 Companies (1 & 2).

(ix) That the Transferor Companies (1 & 2) 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 Companies (1 & 2)shall be dissolved without winding up and the Registrar of Companies shall place all documents relating to the Transferor Companies (1 & 2) 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.

(x) That the Transferee Company is directed to file the necessary application before the concerned authorities for the conversion of Public Limited Company to a Private Limited Company.

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

13. Accordingly, the Company Petition stands **allowed** on the

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

SriramAnanth.V