

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.09.2016

DELIVERED ON : 06.10.2016

Coram

The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos.258 and 259 of 2016

Pricol Limited
109, Race Course,
Coimbatore - 641 018
represented by its Company Secretary
Mr.T.G.Thamizhanban

.. Petitioner in C.P.No.258 of 2016
/ Transferor Company

Pricol Pune Limited
109, Race Course,
Coimbatore - 641 018
represented by its Authorized Secretary
Mr.T.G.Thamizhanban

... Petitioner in C.P.No.259 of 2016
/ Transferee Company

Petitions filed under Sections 391 to 394 of the
Companies Act, 1956 to sanction the Scheme of Amalgamation.

For Petitioners : Mr.V.Srinivasan

Mr.Venkateswara Babu
Special Panel Counsel
for Regional Director
Ministry of Company
Affairs, Chennai

Mr.Atchuta Ramaiah,
Official Liquidator

C O M M O N O R D E R

1. These company petitions are preferred under Sections 391 to 394 of the Companies Act, 1956 for sanctioning the scheme of amalgamation of the transferor company with the transferee company with effect from 01.04.2015. The scheme of amalgamation (in short scheme) is appended as Annexure '3' to the petitions.

2. The petitioner in C.P.No.258 of 2016 is the transferor company and the petitioner in C.P.No.259 of 2016 is the transferee company.

3. A perusal of the records show that the petitioners have complied with the prescribed procedure. It is stated that the transferor company has six (6) secured creditors. A certificate of the Chartered Accountant confirming the same is appended as Annexure '8' to C.P.No.258 of 2016.

3.1. It is seen that the above-said secured creditors of the transferor company have given their consent to the proposed Scheme, which are appended as Annexure '9' to C.P.No.258 of 2016.

3.2. It is stated that the transferee company has one (1) secured creditor. A certificate of the Chartered Accountant confirming the same is appended as Annexure '6' to C.P.No.259 of 2016.

3.3. It is seen that the above-said secured creditor of the transferee company has given their consent to the proposed Scheme, which is appended as Annexure '7' to C.P.No.259 of 2016.

4. A copy of two separate resolutions of even date, i.e., 27.01.2016, passed by the Board of Directors of both the transferor company as well as the transferee company adopting the scheme is enclosed as Annexure '7' to C.P.No.258 of 2016 and Annexure '5' to C.P.No.259 of 2016.

5. It is stated that the transferor company is a listed company having more than 30,000 equity share holders. This Court, by order dated 22.04.2016 passed in C.A.No.440 of 2016 directed the transferor company to obtain approval from its shareholders via postal ballot/e-voting for the purpose of considering and, if, thought fit, approving with or without modification, the scheme conceived by the petitioner companies involving amalgamation.

5.1. Accordingly, the transferor company, after due compliance with all formalities, had balloting done via post and internet between 24.05.2016 and 22.06.2016. It is averred that after scrutiny of ballots and e-votes, the Chairperson declared the result of the voting on 24.06.2016.

5.2. The Chairperson has filed his report dated 27.06.2016, wherein he states that out of the aggregate valid votes polled, 99.96% were cast in favour of the resolution, while the remaining 0.04% were cast against the resolution.

6. It is stated that the transferee company is a 100% wholly owned subsidiary of the transferor company. The affidavit of the 100% equity shareholder of the transferee company giving its consent to the scheme is appended as Annexure '10' to C.P.No.259 of 2016. This Court, by order dated 22.04.2016, passed in C.A.No.441 of 2016, dispensed with the convening and holding of the meeting of the shareholders of the transferee company for the purpose of considering and, if, thought fit, approving with or without modification, the scheme conceived by the petitioner companies involving amalgamation.

7. It is averred that both the transferor as well as the transferee company have no unsecured borrowings as on 31.03.2016. A certificate of the Chartered Accountant confirming the same is appended as Annexure '10' and Annexure '8' to C.P.Nos.258 and 259 of 2016 respectively.

8. Upon notice being issued, the Regional Director, Ministry of Company Affairs has filed his report stating

that he has no objection to the scheme being sanctioned.

9. The Official Liquidator has also filed his report along with the report of the Chartered Accountant. The Chartered Accountant, in his report, states that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members or to public interest, and that, he has not come across any act of misfeasance by the Directors attracting the provisions of Sections 542 and 543 of the Companies Act, 1956. It is further stated that the records maintained in the office of the Registrar of Companies were also caused to be inspected by the said Chartered Accountant. In the absence of any inference that the affairs of the transferor company were being conducted in a manner prejudicial to the interest of its members or public interest, the Official Liquidator has filed his report before this Court for appropriate orders.

10. I have perused the proposed scheme filed along with the company petitions as also the affidavits placed on record. I find that the Scheme as proposed is not prejudicial to the interest of any person or entity, which has a stake/interest in the petitioner companies. The said scheme, as framed, is not violative of any statutory provisions.

11. The scheme as formulated is fair, just, sound and is not contrary to any public policy or public interest. No proceedings appear to be pending under the provisions of Sections 231 to 237 of the Companies Act, 1956. All the statutory provisions appear to have been complied with.

12. Consequently, there shall be an order approving the scheme of amalgamation between the transferor company, viz., Pricol Limited with the transferee company, viz., Pricol Pune Limited, with effect from 01.04.2015, as per the procedure laid down under Sections 391 to 394 of the Companies Act.

13. Taking note of the report by the Chartered Accountant as enclosed by the Official Liquidator, in terms of the order passed by this Court, the transferor company shall stand dissolved, albeit, without winding up.

14. It is made clear, that this order will not be construed as an order granting exemption from payment of stamp duty or, taxes or, any other charges, if any, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

15. The learned Senior Central Government Standing Counsel will be entitled to a fee of Rs.5,000/-, which shall be paid by the transferee company.

16. The above petitions are disposed of in the aforementioned terms.

Sd/.R.S.A.J

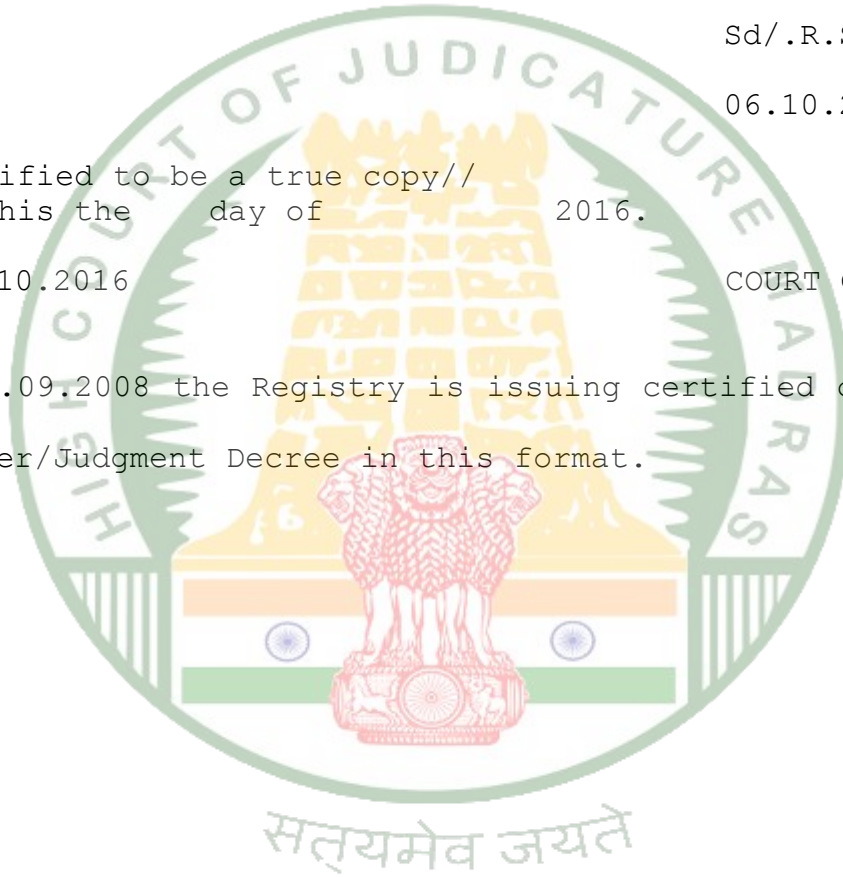
06.10.2016

//Certified to be a true copy//
Dated this the day of 2016.

S.s/24.10.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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