

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

CA(CAA)No. 23/BB/18

Under Section 230 to 232 of Companies Act, 2013

**IN THE MATTER OF SCHEME OF ARRANGEMENT
IN THE MATTER OF
BANGALORE AGROTECH LIMITED
WITH
BHARAT FRITZ WERNER LIMITED
AND
THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS**

Order delivered on: 12th June, 2018

Quoram: Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Petitioner (s) Mr. Vivekananda, Advocate on behalf of VGB Associates

Per: Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

Heard on: 16.04.2018, 02.05.2018

BANGALORE AGROTECH LIMITED

Off Tumkur Road, Peenya,
Yeshwanthpur, Bengaluru-560022

....Applicant Company No. 1/Transferor Company

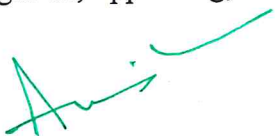
BHARAT FRITZ WERNER LIMITED

Off Tumkur Road, Peenya,
Yeshwanthpur, Bengaluru-560022

....Applicant Company No. 2/Transferee Company

ORDER

This Application is filed jointly on behalf of Applicant Company No. 1 and Applicant Company No. 2 under Section 230 to 232 of Companies Act, 2013 read with Rule 3 Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, praying to dispense with convening of meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company No. 1 and Applicant Company No. 2, or alternatively if the Applicant Companies prayer for dispensation of the said meeting is rejected, direct that the meeting be held on such date and time as may be deemed fit, and if thought fit, approving, with or without modifications, the Scheme, and that a Chairman be



appointed for the meeting and necessary directions be given with regard to issue of notice, convening, holding and conducting of the meeting. The Scheme of Arrangement is shown as **Annexure-L**.

The averments made in the Company Application are briefly described hereunder:-

The Applicant Company No. 1 and Applicant Company No. 2 seek an order to dispense with convening of meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company No. 1 and Applicant Company No. 2, or alternatively if the Applicant Companies prayer for dispensation of the said meeting is rejected, direct that the meeting be held on such date and time as may be deemed fit, and if thought fit, approving, with or without modifications, the Scheme, and that a Chairman be appointed for the meeting and necessary directions be given with regard to issue of notice, convening, holding and conducting of the meeting. The Scheme of Arrangement is shown as **Annexure-L**.

Application has been filed jointly by Applicant Company No. 1 and Applicant Company No. 2 stating that the Applicant Company No. 1/Transferor Company was incorporated on 19th October, 1994 under the name and style of Bangalore Agrotech Limited under the jurisdiction of the Registrar of Companies, Karnataka. The Transferor Company is a wholly owned subsidiary of the Transferee Company.

The main objects of the Applicant Company No. 1/Transferor Company is as follows:

- i) To carry on the business as producers, in vitro micro propagators, developers of specific traits, genetic engineers, breeders, multipliers, growers, agriculturists, consultants, contract producers, collaborators, processors, diverters, distributors, technology developers, technology transferors, importers, exporters, marketers, sellers, manufacturers, dealers, stockists, traders, patentors, of different plants and their cells, tissues, callus, seeds, stems, roots, organs, fruits, flowers, foliage, saplings, sprouts, and whole plants of varieties such as pulses, oil seeds, vegetables, floriculture, ornamental, aromatic and medicinal, forestry, grasses, fodder and of the varieties which may be developed in future as a result of any research done or studies made in any part of the world.
- ii) To act as support service engineers, designers, fabricators, researchers, suppliers, indenting agents, consultants, job workers, turnkey project

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undertakers, technology developers, technology transferors, importers, exporters, marketers, sellers, manufacturers, dealers, stockists, traders of equipment related to tissue culture labs (like grown chambers, growth racks, trolleys, laminar floors, media dispensers, autoclave, hot air oven, clean rooms and related equipments), green houses equipped with facilities (like humidification, cooling, heating, misting, irrigation, fumigation, photocycle and shade systems, like panerls, agrinets, etc.), land hardening related equipment (like pots, pot mixers, racks, trolleys, etc.), chemicals (like growth media conditioners, fertilisers, plant hormones for rooting and shooting such as jelling agents, pesticides and fungicides etc.)

- iii) To carry on the business of research and development activities in the field of tissue culture, floriculture, horticulture, plant breeding, agronomy, agriculture, media recipe, inoculation, plant stock preservation and packaging, mother stock development, production planning of different plants and their cells, tissues, callus, seeds, stems, roots, organs, fruits, flowers, foliage, saplings, sprouts, and whole plants of varieties such as pulses, oil seeds, vegetables, floriculture, ornamental, aromatic and medicinal, forestry, grasses, fodder, etc. and of the varieties which may be developed in future as a result of any research done or studies made in part of the world.

The copy of Memorandum of Association and Articles of Association of the Applicant Company No. 1/Transferor Company is shown as **Annexure-B** and **Annexure-C** respectively.

The latest authorised share capital of the Applicant Company No. 1/Transferor Company is Rs. 10,00,000/- divided into 1,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid-up capital of the Applicant Company No. 1/Transferor Company is Rs.5,00,000/- divided into 50,000 Equity Shares of Rs.10/- each. The Audited balance sheet as on 31st March, 2016 of the Applicant Company No. 1/ Transferor Company is shown as **Annexure-D**. The unaudited balance sheets as on 31st March 2017 of Applicant Company No. 1/ Transferor Company are shown as **Annexure-E**.

It is further stated that, the Board of Directors of the Applicant Company No. 1/ Transferor Company have approved and adopted a Scheme of Amalgamation at their meeting held on 14th February, 2018 by virtue of which the Transferor Company is proposed to be

amalgamated into is proposed to be amalgamated into the Transferee Company subject to confirmation. Copy of the Board Resolution of Applicant Company No. 1/Transferor Company dated 14th February, 2018 approving and adopting the Scheme of Arrangement are shown as **Annexure-K**.

It is further stated that the Chartered Accountant after verification of the books of accounts, other records and documents of the Applicant Company No. 1/Transferor Company has certified that there are 7 Equity Shareholders as on 14th February, 2018 of the Applicant Company No. 1/Transferor Company shown as **Annexure-M**.

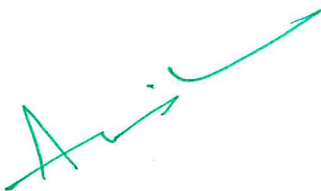
It is further stated that there are no Secured Creditors in the Applicant Company No. 1/Transferor Company as on 14th February, 2018 as certified by the Chartered Accountant shown as **Annexure-P**.

It is further stated that there are no Unsecured Creditors in the Applicant Company No. 1/ Transferor Company as on 14th February, 2018 as certified by the Chartered Accountant shown as **Annexure-Q**.

We have seen the consent affidavits filed by 7 Equity Shareholders of Applicant Company No. 1/Transferor Company i.e., (i) Bharat Fritz Werner Limited, holding 49,940 equity shares of Rs.10/- each through its Board authorised signatory, General Manager-Secretariat & Legal (Company Secretary) Mr. Chinmoy Patnaik,(ii)Mr. Aravinda Y.K. holding 10 equity shares of Rs. 10/- each, (iii)Mr. Chinmoy Patnaik holding 10 equity shares of Rs. 10/- each, (iv) Mr. S. G. Kumar holding 10 equity shares of Rs. 10/- each, (v) Mr. Jayakanth S.R. holding 10 equity shares of Rs. 10/- each, (vi) Ms. Anita Borulkar holding 10 equity shares of Rs. 10 each, and(vii) Mr. Harish Kothari holding 10 equity shares of Rs. 10 each, shown as part of **Annexure-M**.

Furthermore, Application has been filed jointly by Applicant Company No. 1 and Applicant Company No. 2 stating that the Applicant Company No. 2/Transferee Company was incorporated on 17th October, 1961 under the name and style of Bharat Fritz Werner Limited under the jurisdiction of the Registrar of Companies, Karnataka. The Registered office of the Applicant Company No. 2/Transferee Company is at Off Tumkur Road, Peenya, Yeshwanthpur, Bengaluru-560022.

The main objects of the Applicant Company No. 2/Transferee Company is as follows:



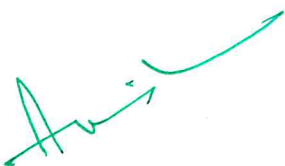
- a) To carry on the business of iron founders, mechanical engineers, manufacturers of all types of implements, machinery, machine tools, small tools, cutting tools and hand tools makers, brass founders, metal workers, iron and steel converters, smiths, wood workers, metallurgists and to buy, sell, repair, convert, alter, export, import, let on hire, and deal in machinery, implements and hardware of all kinds.
- b) To carry on the business of manufacturers of textile machinery, agricultural machinery, mill machinery, hydraulic wind water supply engineers, manufacturers of all types of engineering equipments and fittings of every description, manufacturers of automobiles of all types, steam vehicles of all types, steam vehicles of all kinds and their spare parts of whatsoever description.

The copy of Memorandum and Articles of Association of the Applicant Company No. 2/Transferee Company is shown as **Annexure-F**.

The latest authorised share capital of the Applicant Company No. 2/ Transferee Company is Rs. 18,00,00,000/- divided into 9,00,00,000 Equity Shares of Rs.2/- each and Rs. 2,00,00,000/- divided into 1,00,00,000 convertible preference shares of Rs. 2/- each. The issued, subscribed and paid-up capital of the Applicant Company No. 2/Demerged Company No.2 is Rs. 6,32,81,724/- divided into 3,16,40,862 Equity Shares of Rs.2/- each. The Audited balance sheet as on 31st March, 2017 of the Applicant Company No. 1/Transferee Company is shown as **Annexure-G**. The latest unaudited balance sheet as on 31st March, 2018 of the Applicant Company No. 1/Transferee Company is shown as **Annexure-H**.

It is further stated that, the Board of Directors of the Applicant Company No. 2/Transferee Company have approved and adopted a Scheme of Amalgamation at their meeting held on 14th February, 2018 by virtue of which the Transferor Company is proposed to be amalgamated into is proposed to be amalgamated into the Transferee Company subject to confirmation. Copy of the Board Resolution of Applicant Company No. 1/Transferor Company dated 14th February, 2018 approving and adopting the Scheme of Arrangement are shown as **Annexure-J**.

It is further stated that the Chartered Accountant after verification of the books of accounts, other records and documents of the Applicant Company No. 2/Transferee Company has certified that there are 14 Equity Shareholders as on 14th February, 2018 of the Applicant Company No. 2/Transferee Company shown as **Annexure-N**.

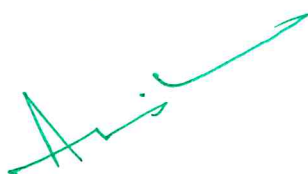


It is further stated that the Chartered Accountant after verification of the books of accounts, other records and documents of the Applicant Company No. 2/Transferee Company has certified that there are 7 Secured Creditor in the Applicant Company No. 2/Transferee Company as on 14th February, 2018, shown at **Annexure-R**.

It is further stated that there are 797 Unsecured Creditors in the Applicant Company No. 2/Transferee Company as on 14th February, 2018 as certified by the Chartered Accountant shown as **Annexure-Q**.

We have seen the consent affidavits filed by 14 Equity Shareholders of Applicant Company No. 2/Transferee Company i.e., (i)Kothari & Company Private Limited, holding 61,17,940 Equity Shares constituting 19.34% of the paid-up share capital(ii)Commercial House Private Limited holding 36,08,549 equity shares constituting 11.40% of the paid-up equity share capital, (iii)Kothari Investment & Industries Private Limited holding 65,32,661 equity shares constituting 20.65% of the paid-up equity share capital, (iv) M.D. Kothari & Co Ltd. holding 23,93,991 equity shares constituting 7.57% of the paid-up equity share capital, (v) Vishnuhari Investments & Properties Limited holding 28,97,537 equity shares constituting 9.16% of the paid-up equity share capital, (vi) Mrs. Prabhawati Devi Kothari holding 40,00,000 equity shares constituting 12.64% of the paid-up equity share capital, and(vii) Mr. Arun Kumar Kothari holding 61,600 equity shares constituting 0.19% of the paid-up equity share capital, (viii) Gillanders Arbhutnot & Co. Ltd., holding 26,81,811 equity share constituting 8.48% of the paid-up equity share capital, (ix)Premier Suppliers Private Limited holding 3,21,451 equity shares constituting 1.02% of the paid-up equity share capital, (x) Kothari Phytochemicals and Industries Limited holding 2,98,504 equity shares constituting 0.95% of the paid-up equity share capital, (xi)Bhaktwatsal Investments Limited holding 2,51,7785 equity shares constituting 0.80% of the paid-up equity share capital, (xii)Kothari Capital and Securities Private Limited holding 14,930 equity shares constituting 0.05% of the paid-up equity share capital, (xiii) G. Das & Co. Private Limited holding 8,18,069 equity shares constituting 2.59% of the paid-up equity share capital, (xiv) Albert David Limited holding 16,42,034 equity shares constituting 5.19% of the paid-up equity share capital, shown as **Annexure-N**. However, the Board Resolutions of the shareholder companies authorising the signatory to sign on their behalf has not been furnished.

None of the seven Secured Creditors and 797 Unsecured Creditors as of 14th February 2018 has submitted any affidavit showing their consent to the Scheme of Amalgamation.



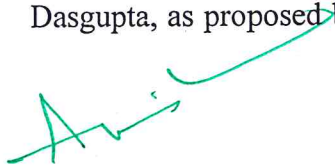
It is further averred in the scheme that the Board of Directors of the Applicant Company No.1 and Applicant Company No.2 are of the opinion that the arrangement would rationalise and streamline entities, eliminate multiple entities, achieve administrative convenience, achieve cost savings from more focussed operational efforts and rationalise, standardise and simplify the business processes, productivity improvements and administrative expenses.

The Applicant Company No. 1 is seeking an order to dispense with convening of meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company on the ground that, there are 7 Equity shareholders, no Secured Creditors and no Unsecured Creditors in Applicant Company No. 1/ Transferor Company and that all the Shareholders of Applicant Company No. 1/ Transferor Company have given their consent by way of affidavits for the proposed scheme of arrangement.

The Applicant Company No. 2 is seeking an order to dispense with convening of meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company on the ground that, there are 14 Equity shareholders, 7 Secured Creditors and 797 Unsecured Creditors in Applicant Company No. 2/ Transferee Company and that all the Shareholders of Applicant Company No. 2/ Transferee Company have given their consent by way of affidavits for the proposed scheme of arrangement.

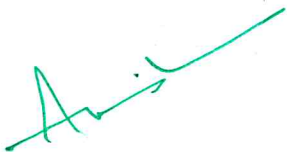
We have heard the Counsel appearing for the Applicant Companies. After hearing the counsel and after perusing the documents filed, the Application is allowed and we pass the following order:

- (1) Holding of the meeting of the Equity Shareholders of the Applicant Company No. 1 is dispensed with.
- (2) The meeting of the Equity Shareholders of the Applicant Company No. 2/Transferee Company be convened and held at **Bharat Fritz Werner Limited, Peenya, Yeshwanthpur, Bengaluru-560022** on **9th day of July, 2018** at **10:00 AM** for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed scheme of amalgamation of Bangalore Agrotech Limited (Applicant Company No. 1/Transferor Company) with Bharat Fritz Werner Limited (Applicant Company No. 2/Transferee Company). Vide Memo dated 06.06.2018, Mr. Sujoy Dasgupta, as proposed by the Counsel for the Applicant is appointed as Chairperson,



the names of Mr. Chinmoy Pattnaik and Mr. Jagannatha are proposed as Alternate Chairman, and Mr. Hemanth, Chartered Accountant in Practice from the firm M/s Vasanth & Co. as Scrutinizer for the Meeting of Equity Shareholders. The quorum for the Meeting of Equity Shareholders is **five**, either in person or through representative. The Notice of the Meeting of Shareholders shall be published in an English Daily "The Hindu" and in Kannada Daily "Udayavani".

- (3) The meeting of the Secured Creditors of the Applicant Company No. 2/Transferee Company be convened and held at **Bharat Fritz Werner Limited, Peenya, Yeshwanthpur, Bengaluru-560022** on **9th day of July, 2018** at **11:00 AM** for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed scheme of amalgamation of Bangalore Agrotech Limited (Applicant Company No. 1/Transferor Company) with Bharat Fritz Werner Limited (Applicant Company No. 2/Transferee Company). Vide Memo dated 06.06.2018, Mr. Sujoy Dasgupta, as proposed by the Counsel for the Applicant is appointed as Chairperson, the names of Mr. Chinmoy Pattnaik and Mr. Jagannatha are proposed as Alternate Chairman, and Mr. Hemanth, Chartered Accountant in Practice from the firm M/s Vasanth & Co. as Scrutinizer for the Meeting of Secured Creditors. The quorum for the Meeting of Secured Creditors is **three**, either in person or through representative. The Notice of the Meeting of Secured Creditors shall be published in an English Daily "The Hindu" and in Kannada Daily "Udayavani".
- (4) The meeting of the Unsecured Creditors of the Applicant Company No. 2/Transferee Company be convened and held at **Bharat Fritz Werner Limited, Peenya, Yeshwanthpur, Bengaluru-560022** on **9th day of July, 2018** at **12:00 noon** for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed scheme of amalgamation of Bangalore Agrotech Limited (Applicant Company No. 1/Transferor Company) with Bharat Fritz Werner Limited (Applicant Company No. 2/Transferee Company). Vide Memo dated 06.06.2018, Mr. Sujoy Dasgupta, as proposed by the Counsel for the Applicant is appointed as Chairperson, the names of Mr. Chinmoy Pattnaik and Mr. Jagannatha are proposed as Alternate Chairman, and Mr. Hemanth, Chartered Accountant in Practice from the firm M/s Vasanth & Co. as Scrutinizer for the Meeting of Unsecured Creditors. The quorum for the Meeting of Unsecured Creditors is **one hundred**, either in person or through



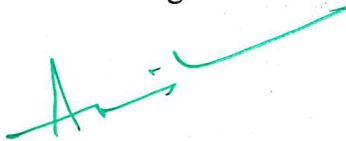
representative. The Notice of the Meeting of Unsecured Creditors shall be published in an English Daily "The Hindu" and in Kannada Daily "Udayavani".

- (5) The Applicant Company No. 2 or its authorized signatory is directed to issue notice(s) to Secured Creditors and Unsecured Creditors of the Applicant Company/Transferor Company by Registered or Speed Post; or Courier; or Air Mail; or email; or hand delivery to their last known address at least 30 clear days before the said meeting of the Creditors of Applicant Company No. 2/Transferee Company as per Form No.CAA2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ensuing convening the said Creditors Meeting of Applicant Company No. 2/Transferee Company at the place, day, date and time, along with a copy of scheme of amalgamation, a copy of Explanatory Statement, pursuant to Section 230 of the Companies Act, 2013 and form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014.
- (6) The Applicant Company No. 2/Transferee Company is directed at least 20 clear days before the Meeting of the Creditors of the Applicant Company No. 2/Transferee Company to be held as aforesaid, to issue a notice convening the said meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of proxy can be obtained free of charge at the Registered Office of the Applicant Company No. 2 as aforesaid.
- (7) The Applicant Company No. 2 is to serve the notice upon the Regional Director, South-East Region, Ministry of Corporate Affairs, Hyderabad pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.
- (8) The Applicant Company No. 2 is to serve the notice upon the Registrar of Companies, Karnataka pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Registrar of Companies, Karnataka within



30 days of the date of receipt of the notice it will be presumed that Registrar of Companies, Karnataka has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

- (9) The Applicant Company No. 2 is to serve the notice upon the Income Tax Authority, within whose jurisdiction that Applicant Company's Assessment are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.
- (10) The Applicant Company No. 2 is to serve the notice upon the other Sectoral Regulators or Authorities if applicable, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from other Sectoral Regulators or Authorities within 30 days of the date of receipt of the notice it will be presumed that the other Sectoral Regulators or Authorities has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.
- (11) The Chairman shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise before or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
- (12) The voting shall be in person or by proxy or authorised representative in case be permitted, provided that the proxy in the Form No. MGT-11 authorization duly signed by the person entitled to attend and vote at the meeting, is to be filed with the Applicant Company at its Registered office, not later than, forty eight hours before the aforesaid meeting in accordance with Rule 10 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
- (13) The said Chairman is to file affidavit not less than seven days before the day fixed for holding of the meeting and do report to this Tribunal that the direction regarding



convening and issuance of notice(s) to all the necessary parties have been duly complied with in conformity with the relevant Provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016. The Chairman shall report the conclusion of the aforesaid meeting as per the Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

In any eventuality when the Applicant Company/Transferor Company approaches this Tribunal for seeking approval of the scheme it would be open for any person who is interested in the scheme of Amalgamation to put forth their contentions before this Tribunal.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL