

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

T.P.NO. 196/2017 & 197/2017

IN

CoP.NO. 182/2016 & 183/2016

DATED: WEDNESDAY THE 31<sup>st</sup> DAY OF MAY 2017

*PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL  
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL*

IN THE MATTER OF SECTIONS 391 to 394 OF THE COMPANIES ACT, 1956 AND OTHER  
RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013 ALONG WITH THE  
COMPANIES ACT, 1956

AND

IN THE MATTER OF SECTION 230 TO 232 OF THE COMPANIES ACT, 2013 AND  
OTHER RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013 ALONGWITH  
THE COMPANIES ACT, 1956

AND IN THE MATTER OF

SCHEME OF ARRANGEMENT FOR DEMERGER OF RESIDENTIAL SOLUTIONS  
UNDERTAKING OF

INGERSOLL-RAND INTERNATIONAL (INDIA) PRIVATE LIMITED  
INTO

INGERSOLL-RANDCLIMATE SOLUTIONS PRIVATE LIMITED

T.P.NO. 196/2017&197/2017 IN CoP.NO. 182/2016 & 183/2016

1. Ingersoll-Rand International (India) Private Limited,  
8<sup>th</sup> Floor, Tower D, IBC Knowledge Park  
No.4/1,Bannerghatta Main Road,  
Bengaluru-560 029 - PETITIONER/DEMERGED COMPANY
2. Ingersoll-Rand International (India) Private Limited,  
8<sup>th</sup> Floor, Tower D, IBC Knowledge Park  
No.4/1,Bannerghatta Main Road,  
Bengaluru-560 029 - PETITIONER/RESULTING COMPANY

PARTIES PRESENT: 1. Mr. Saji P. John  
SPJ LEGAL, UNIT NO.1002,10<sup>TH</sup> FLOOR,  
#30, PRESTIGE MERIDIAN II M G ROAD  
BENGALURU 560001  
Advocates for the Petitioner Company  
2. Ms.Sinchana M R, Standing Counsel for Central Government  
Advocate for the Regional Director  
3. Mr. Vasant Kumar, Assistant  
Representative for Official Liquidator

Heard on: 10.02.2017, 13.03.2017 & 11.04.2017

## COMMON ORDER

Originally these two Petitions were filed before the Hon'ble High Court of Karnataka and they were numbered as Co.P.No.182/2016 & Co.P.No.183/2016. Subsequently as per Notification No. GSR.1119 (E) dated 7<sup>th</sup> December 2016 issued by the Ministry of Corporate Affairs, New Delhi, the said cases are transferred to this Tribunal and renumbered as T.P No. 196/2017 & T.P No. 197/2017.

These Company Petitions were filed on behalf of the Petitioner Companies under Section 391-394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959, praying to order for sanctioning the Scheme of Arrangement of the Demerged/Transferor Company with the Resulting/Transferee Company and shall be binding upon all the Shareholders and Creditors of both the Companies.

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

The Petitioner Companies seeks an order for sanctioning the Scheme of Arrangement for demerger of Residential Solutions Undertaking of Ingersoll-Rand International (India) Private Limited (Transferor/Demerged Company) into Ingersoll-Rand Climate Solutions Private Limited (Transferee/ Resulting Company). The Scheme of Arrangement is shown as **Annexure A**.

The Transferor/Demerged Company was incorporated on 15<sup>th</sup> March, 2005 as an Unlisted Private Limited Company under the name and style, INGERSOLL-RAND INTERNATIONAL (INDIA) LIMITED. Subsequently, the Company was converted into a Private Limited Company on 5<sup>th</sup> June, 2015 and its name was changed to **INGERSOLL-RAND INTERNATIONAL (INDIA) PRIVATE LIMITED** and obtained fresh Certificate of Incorporation vide bearing CIN no.U72200KA2005PTC035829.

The Registered office of the Transferor/Demerged Company is situated at Ingersoll-Rand International (India) Private Limited, 8<sup>th</sup> Floor, Tower D, IBC Knowledge Park No.4/1, Bannerghatta Main Road, Bengaluru-560 029

The Main objects of the Transferor/Demerged Company as set out in the Memorandum of Association are inter alia, includes:

- i) to carry on in India or elsewhere, the business of computer services in all disciplines (including CAD/CAM/CAE/CASE/RISC workstations and consultancy services) including software development, engineering and testing services, software and technical support,

software design, software distribution, imparting training in computer software and hardware, integration services, quality assurance, customer support and to provide consultancy and advisory services in related areas, carry out research and development and sale of engineering devices.

- ii) To carry on the business of hardware maintenance, setting up of server and network infrastructure, remote network access, linking satellite office, internet access, data storage and security, data warehousing, information, backup and recovery software sale of information, artificial intelligence, impart training in computer hardware & software, provide system integration services, to develop e-commerce activities, to develop consumer oriented electronic commerce in the local and international markets, to provide graphic designs and application designs for developing and updating of websites and generally to carry on business in computer hardware.

A Copy of Certificate of Incorporation, Memorandum and Articles of Association of the Transferor/Demerged Company is shown as **Annexure B in T.P.197/17**.

The Latest Audited Balance Sheet of the Transferor/Demerged Company as on 31<sup>st</sup> March, 2015, the assets and liabilities are as follows:

Liabilities	Amount	Asset	Amount
Share Capital	19,90,000	Fixed Assets	4,22,872
Reserve and Surplus	(60,36,32,277)	Long Term loans and advances	2,39,01,311
Non-Current Liabilities	4,50,00,000	Current Assets	28,54,08,030
Current Liabilities	86,63,74,490		
<b>Total</b>	<b>30,97,32,213</b>	<b>Total</b>	<b>30,97,32,213</b>

The Copy of Audited Balance Sheet as on 31<sup>st</sup> March, 2015 and copy of Unaudited Balance Sheet as on 31<sup>st</sup> March, 2016 are shown as **Annexure C & D in T.P 197/17** respectively.

The Transferee/Resulting Company was incorporated on 9<sup>th</sup> October, 1995 as a Private Limited Company under the name, SERVICE FIRST AIRCON PRIVATE LIMITED. Subsequently the Transferee/Resulting Company shifted its registered address to the State of Maharashtra on 13<sup>th</sup> October, 2005. Thereafter, the name was changed to **INGERSOLL-RAND**

**INTERNATIONAL CLIMATE SOLUTIONS PRIVATE LIMITED** on 30<sup>th</sup> April, 2013, again the Registered Office was shifted back to the State of Karnataka on 20<sup>th</sup> May, 2016 and obtained Fresh Certificate of Incorporation vide bearing CIN No. U24233KA1996PTC093425.

The Registered office of the Transferee/Resulting Company is situated at Ingersoll-Rand Climate Solutions Limited, 8<sup>th</sup> Floor, Tower D, IBC Knowledge Park No.4/1, Bannerghatta Main Road, Bengaluru-560 029.

The Main objects of the Transferee/Resulting Company as set out in the Memorandum of Association are inter alia

- i) To establish and carry on in India or elsewhere the business of manufacturing, assembling, developing, making, importing, exporting, stocking, trading, broking, distribution, supplying, servicing, installing, maintaining, repairing, acquiring, disposing of and dealing in, as principals, agents, wholesalers, retailers or otherwise, air conditioning equipment, temperature control units including, truck, trailer, seagoing container refrigeration, bus air condition units and other related equipment such as controls, setting up training centres for training graduate engineers, providing as principals, agents, contractors or otherwise, technical knowhow support services, consultancy services, and other allied services.
- ii) To arrange, establish, encourage, promote, manage or organize marketing operations in India or abroad for sale of the products whether manufactured by the Company or not.

A Copy of Certificate of Incorporation, Memorandum and Articles of Association of the Transferee/Resulting Company are shown as **Annexure B in T.P.196/17**.

The Latest Unaudited Balance Sheet of the Transferee/ Resulting Company as on 31<sup>st</sup> March, 2015 is as follows:

Liabilities	Amount	Asset	Amount
Share Capital	66,85,570	Fixed Assets	16,56,39,042
Reserve and Surplus	(45,25,08,836)	Long Term loans and advances	23,73,666
Non-Current Liabilities	53,26,48,710	Current Assets	1,71,39,29,407
Current Liabilities	1,79,51,16,671		
<b>Total</b>	<b>1,88,19,42,115</b>	<b>Total</b>	<b>1,88,19,42,115</b>


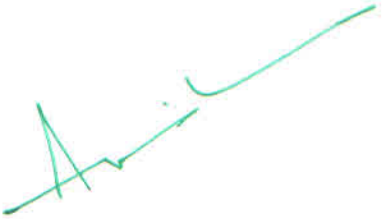
The Copy of Audited Balance Sheet as on 31<sup>st</sup> March, 2015 and copy of Unaudited Balance Sheet as on 31<sup>st</sup> March, 2016 are shown as **Annexure C & D in T.P 196/17** respectively.

The Board of Directors of the Demerged Company and the Resulting Company have decided to demerge the Residential Solution Undertaking of the Demerged Company into the Resulting Company in order to ensure better utilisation of the infrastructural facilities available with the Resulting Company and the Residential Solution Undertaking of the Demerged Company. The Board of Directors anticipate the following benefits pursuant to the proposed scheme some are:

- i) Strengthened position in the industry, in terms of asset base, revenues and integrated supply chain of the combined entity. The resulting Company will have the ability to leverage and optimize on its large asset base, brands and vast pool of intellectual and management capital, which would facilitate enhancement of the shareholder value;
- ii) The consolidation of Residential Solution Businesses in the Resulting Company pursuant to the scheme will result in economies of scales, reduction in overheads including administrative, managerial and other expenditure, operational rationalization, organizational efficiency, pooling of human capital and optimal utilization of resources.

The Board of Directors of the Transferor/Demerged Company and Transferee/ Resulting Company at their respective Board Meetings held on 11<sup>th</sup> May, 2016 & 25<sup>th</sup> May, 2016 adopted the scheme of Amalgamation. Copy of Board Resolution is shown as **Annexure H** at the respective Company Petitions in **T.P.-197/17** and **T.P.-196/17**.

The Transferor/Demerged Company and the Transferee/Resulting Company had filed C.A.No.552/16 & C.A. No.551/2016 respectively before the Hon'ble High Court of Karnataka to dispense with the convening of meeting of Shareholders and Creditors of the Companies. The Hon'ble High Court of Karnataka vide separate order dated 29<sup>th</sup> July, 2016 allowed the Application and dispensed with convening of the Shareholders and Creditor's Meeting. The Counsel for the Petitioner Companies has filed **Memo dated 19<sup>th</sup> August, 2016** in which the copy of the Order of Hon'ble High Court in C.A.No.552/16 & C.A. No.551/16 is annexed with in respective Company Petitions.

It is averred that the Transferee Company and the Transferor Company filed the Petition bearing Co.P No.183/2016 and Co.P.No.182/2016 respectively before the Hon'ble High Court for approving the scheme of Amalgamation on 4<sup>th</sup> August, 2016.

The Hon'ble High Court of Karnataka vide separate Order dated 8<sup>th</sup> August, 2016 in Co.P.No.183/16 & Co.P.No.182/16 directed to have an advertisement of Notice of Petition be carried out in the 'The Hindu', an English daily Newspaper and 'Udayavani', a Kannada daily newspaper on or before 25<sup>th</sup> August, 2016 and also stating the next date of hearing of the present petition on 16<sup>th</sup> September, 2016 and also issued notice(s) to Regional Director with respect to both the Company Petitions. The Hon'ble High Court accepted the **Memo dated 2<sup>nd</sup> September, 2016** for having taken out advertisement on 24<sup>th</sup> August, 2016 in respective Company Petitions.

The Regional Director, Ministry of Corporate Affairs, South East Region, Hyderabad represented by Registrar of Companies has filed Affidavits dated 5<sup>th</sup> April, 2017 making some observations and in furnishing response to the same, the Counsel for the Petitioner Companies have filed a **Memo dated 6<sup>th</sup> March, 2017** which is as follows:

- i) The Notice dated 30<sup>th</sup> August, 2016 was issued to the Income Tax Department giving 15 days' time to offer comments/objections, if any. But no comments/objections have been received from the Income Tax Department till 9<sup>th</sup> March, 2017.
- ii) The objects of the Petitioner Companies from each other. The object of the Demerged Company is to carry on the business of Computer services. The object of the Resulting Company is to deal in refrigeration and air condition products.

The Counsel for the Petitioner Companies has filed the **Memo dated 11<sup>th</sup> April, 2016** in the respective Company Petitions stating that the Main object of the Demerged Company is to carry on the business of Computer services and the Company is also having the business of air conditioners, which is provided in the Clause 3 of the Main objects. The Main Objects of the Resulting Company is to carry on the business of refrigeration and air conditioning products. The scheme of Arrangement provides for Demerger of Residential Solutions Undertaking of the Demerged Company into the Resulting Company. After the Demerger, the Demerged Company will continue in the business of Computer Services. Both the Companies are group Companies and demerger is for integration of the air-conditioning business. Since the Computer Business is continuing with the Demerged Company, there is no need for amending the objects of the Resulting Company.

The Counsel for the Petitioner Companies has also filed the Audited Balance Sheet of the Demerged Company & Resulting Company as on 31<sup>st</sup> March, 2016 along with the Memo **dated 11<sup>th</sup> April, 2016** in the respective Company Petitions.

The Counsel for the Petitioner Companies has filed another Memo **dated 11<sup>th</sup> April, 2016** in the respective Company Petitions stating that the Accounting Treatment contained in the Scheme of Arrangement is in compliance with accounting standards specified under section 133 of the Companies Act, 2013 and the applicable Accounting Standards. The Certificate of Chartered Accountant is also annexed along with this Memo.

After this Petition was transferred from the Hon'ble High Court of Karnataka then the Tribunal directed the Counsel for the Petitioner Company, whether Notice(s) to be issued to the authorities other than those to whom Notice(s) were already issued in pursuant to section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.

The Counsel for the Petitioner Company has filed the **Affidavits dated 23<sup>rd</sup> March, 2017** of the Authorised Signatory of the Petitioner Companies stating that these Petitions were filed before the Hon'ble High Court and notices were served upon the Regional Director Ministry of Corporate Affairs, South Eastern Region, Registrar of Companies, Karnataka and the notice was also issued to the Income Tax department by the Regional Director and also by the Petitioner Companies. It is further submitted that the Petitioner Companies are not required to issue notice to the Securities and Exchange Board of India (SEBI) and Stock exchange since they are unlisted Companies. Further there is no need for issuance of notice to the Reserve bank of India as the Companies are not governed by the RBI, further no notice is required to be issued to the Competition Commission of India as the total assets and turnover does not exceed the prescribed limit for obtaining approval from CCI. It is also submitted that, the Petitioner Companies are not governed by any other sectoral or other regulatory authorities.

After hearing the Counsel for the Petitioner Companies and also considering the material on records,



**THIS TRIBUNAL DO FURTHER ORDER**

While Approving the Scheme, we further clarify 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, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specially required under any law.

The Whole of the property, rights and powers of the of the Residential Solutions Undertaking of the Demerged Company, be demerged without further act or deed into the Resulting Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and vest in the Resulting Company for all the state and interest of the Demerged Company therein but subject nevertheless to all the charges now affecting the same; and

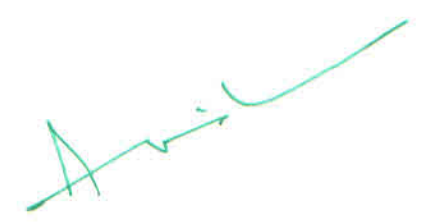

All the liabilities including taxes and charges, if any, and duties of the Residential Solutions Undertaking of the Demerged Company be demerged without further act or deed into the Resulting Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Resulting Company; and

The Share Exchange shall be 'One Equity Share of the Resulting Company of Rs.10/- each fully paid up for every Thirteen Equity Shares of the Residential Solutions Undertaking of the Demerged Company of Rs.10/- each fully paid up.'

All the proceedings now pending by or against the Residential Solutions Undertaking of the Demerged Company, if any, be continued by or against the Resulting Company; and

The tax implications, if any, arising out of the scheme is subject to final decision of Concerned Tax Authorities and the decision of the Concerned Tax Authorities shall be binding.

The Residential Solutions Undertaking of the Demerged Company and the Resulting Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Arrangement to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.



The Scheme shall be effective from the appointed date as mentioned in the scheme of Arrangement i.e. 1<sup>st</sup> April, 2016.

The Residential Solutions Undertaking of the Demerged Company or its authorised signatory is directed that after the completion of the process of Arrangement to handover the possession of the books of accounts and other relevant documents of the Residential Solutions Undertaking of the Demerged Company to the Resulting Company for the purpose of section 239 of the Companies Act, 2013.

Any person shall be at the liberty to apply this Tribunal in the above matter for any directions that may be necessary.

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

DATED THIS THE 31<sup>st</sup> DAY OF MAY, 2017