

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

CA(CAA)/16/BB/17

DATED: THURSDAY THE 15TH DAY OF JUNE, 2017

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

IN THE MATTER OF COMPANIES ACT, 2013

SECTIONS 230 and 232 OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF AEQUUS AEROSPACE PRIVATE LIMITED

CA (CAA) 16/BB/2017

1. Aequs Aerospace Private Limited

Admin Building, Quest Special Economic Zone

No.437/A, Hattargi Village, Hukkeri Taluk

Belgaum- 591243

-APPLICANT/TRANSFEROR COMPANY No.1

PARTIES PRESENT:

Mr. SAJIL.P.JOHN

SPJ Legal, Advocate

Unit No.1002, 10th Floor,

#30, Prestige Meridian, M.G.Road

Bangalore 560001

Heard on: 05.04.2017, 18.04.2017, 24.04.2017, 02.06.2017

ORDER

This Application is filed on behalf of the Applicant Company under Section 230 and 232 of the Companies Act, 2013 read with Rule 3 of the Company (Compromises, Arrangement and Amalgamation) Rules, 2016, praying to order to dispense with the convening of meeting of Shareholders, Secured Loan Creditors and Unsecured Creditors (Unsecured Loan Creditors and Unsecured Trade Creditors) or alternatively direct that the meeting of Shareholders, Secured Loan Creditors and Unsecured Creditors (Unsecured Loan Creditors and Unsecured Trade Creditors) of the Applicant Company be held for considering the Scheme of Amalgamation, where under Aequs Aerospace Private Limited (Applicant/Transferor Company No.1) and AeroStructures Manufacturing India Private Limited which is Transferor Company No.2 to be merged with Aequs Private Limited which is Transferee Company. The Scheme of Amalgamation shown as **Annexure-M**.

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




The Applicant seeks an order to dispense with the convening of meeting of Shareholders, Secured Loan Creditors and Unsecured Creditors (Unsecured Loan Creditors and Unsecured Trade Creditors) or alternatively direct that the meeting of Shareholders, Secured Loan Creditors and Unsecured Creditors (Unsecured Loan Creditors and Unsecured Trade Creditors) of the Applicant Company be held for approving the Scheme of Amalgamation of Aequs Aerospace Private Limited and AeroStructures Manufacturing India Private Limited with Aequs Private Limited which is Transferee Company in terms of Scheme of Amalgamation shown as **Annexure-M**.

Application is filed by the applicant company alleging that the Applicant Company was incorporated on 13th September, 2012 as per the provisions of the Companies Act, 1956 under the name and style Aerospace Manufacturing Holdings Private Limited with Registrar of Companies, Karnataka. Subsequently on 5th March, 2014 the name of the company was changed to Aequs Aerospace Private Limited. The Registered office of the Applicant Company is situated at Admin Building, QuEST Special Economic Zone, No.437/A, Hattargi Village, Hukkeri Taluk, Belgaum-591243.

The main objects of the Applicant Company are to carry on in India or elsewhere the business of the investment company in all its branches and to sell, purchase, exchange, subscribe, acquire, undertake, underwrite, hold, auction, convert or otherwise to deal in all types of shares, securities, stocks, bonds, fully convertible debenture, partly convertible debentures, nonconvertible debentures, debentures stocks, warrants and similar instruments whether issued by government, semi government, local authorities and other similar organisations at national and international levels, to carry on undertake as its principal business, business of finance, Investment and hire purchase, leasing and to finance lease operations of all kinds, to act as adviser and/or consultants on all matters and problems relating to administration, management, organization, project implementation, engineering services, financial tie-ups, storage, process, systems, finance and accounts, training of personnel, marketing, distributing etc., The copy of Memorandum and Articles of Association of the Applicant Company shown as **Annexure-A**.

The latest authorized share capital of Applicant Company is Rs.54,21,03,000/- divided into 5,42,10,300 Equity Shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.53,31,94,430/- divided into 5,33,19,443 Equity Shares of Rs.10/- each fully paid up. The Audited balance sheet as on 31st March, 2016 shown as **Annexure -B**.




It is further stated that, the Board of Directors of the Applicant Company has approved and adopted a Scheme of Amalgamation at its meetings held on 9th September, 2016 and 24th January, 2017 by virtue of which Aequs Aerospace Private Limited (Applicant/Transferor Company No.1) and Aerostructures Manufacturing India Private Limited which is Transferor Company No.2 to be merged with Aequs Private Limited which is Transferee Company subject to confirmation. A copy of the Board Resolutions of the Applicant Company dated 9th September, 2016 and 24th January, 2017 approving and adopting the scheme of Amalgamation shown as **Annexure-K**.

It is further averred in the scheme that the amalgamation of both the Transferor Companies and Transferee Company would inter alia have the following benefits:

1. Simplification of the group structure by streamlining and restructuring the business operations into separate business verticals.
2. Value consolidation with respect to aerospace business vertical.
3. Ease in administration, elimination of duplication and rationalisation of administrative expenses.
4. Greater efficiency in cash management of the amalgamated entity and unfettered access to cash flow which can be deployed more efficiently.

It is further stated that the Chartered Accountant after verification of the books of accounts and other records and documents of the Applicant Company has certified the number of shareholders of the Applicant Company as on 31st December, 2016. Certificate issued by the Chartered Accountant is marked as **Annexure-N**.

It is further stated that there is only one Secured Loan Creditor in the Applicant Company as certified by the Chartered Accountant shown as **Annexure-P**.

It is further stated that there is only one Unsecured Loan Creditor in the Applicant Company as on 31st December, 2016 as certified by the Chartered Accountant shown as **Annexure-Q**.

It is further stated that there are eight Unsecured Trade Creditors in the Applicant Company as on 31st December, 2016 as certified by the Chartered Accountant shown as **Annexure-R**.

We have heard the Counsel appearing for the Applicant Company. The Application is filed by the Applicant Company which is a Transferor Company No.1 to dispense with convening of meeting of Shareholders, Secured Loan Creditor and Unsecured Creditors (Unsecured Loan Creditors and Unsecured Trade Creditors) or alternatively direct that the

meeting of Shareholders, Secured Loan Creditor and Unsecured Creditors of the Applicant Company be held for approving the Scheme of Amalgamation, where under Aequs Aerospace Private Limited and Aerostructures Manufacturing India Private Limited are to be merged with Aequs Private Limited in terms of Scheme of Amalgamation shown as **Annexure-M**.

We have seen the consent letters filed. They are not in affidavit form as contemplated in the Section 230(9) of Companies Act, 2013. Similarly Shareholders have given consent letters and not affidavits. Hence we pass the following order.

The meeting of the Shareholders of the Applicant Company be convened and held at Admin Building, QuEST Special Economic Zone, No.437/A, Hattargi Village, Hukkeri Taluk, Belgaum-591243, on Tuesday the 1st August, 2017 at 10:00 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed scheme of amalgamation of **Aequs Aerospace Private Limited** (Applicant/Transferor Company No.1) and **Aerostructures Manufacturing India Private Limited** (Transferor Company No.2) to be merged with **Aequs Private Limited** (Transferee Company).

Mr.Ravi Hugar, Director failing whom Mr.Arvind.S.Melligeri, Director as proposed by the Applicant Company is appointed as Chairperson and Ms.Nagashree, Advocate as Scrutinizer for the Meeting of Shareholders. The remuneration of Chairperson and Scrutinizer is fixed at Rs.20,000/- and Rs.10,000/- respectively for convening the meeting of Shareholders.

The meeting of the Secured Loan Creditor of the Applicant Company be convened and held at Admin Building, QuEST Special Economic Zone, No.437/A, Hattargi Village, Hukkeri Taluk, Belgaum-591243, on Tuesday the 1st August, 2017 at 11:00 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed scheme of amalgamation of **Aequs Aerospace Private Limited** (Applicant/Transferor Company No.1) and **Aerostructures Manufacturing India Private Limited** (Transferor Company No.2) to be merged with **Aequs Private Limited** (Transferee Company).

Mr.Ravi Hugar, Director failing whom Mr.Arvind.S.Melligeri, Director as proposed by the Applicant Company is appointed as Chairperson and Ms.Nagashree, Advocate as Scrutinizer for the Meeting of Secured Loan Creditor. The remuneration of Chairperson and




Scrutinizer is fixed at Rs.20,000/- and Rs.10,000/- respectively for convening the meeting of Secured Loan Creditor.

The meeting of the Unsecured Creditors (Unsecured Loan Creditors and Unsecured Trade Creditors) of the Applicant Company be convened and held at Admin Building, QuEST Special Economic Zone, No.437/A, Hattargi Village, Hukkeri Taluk, Belgaum-591243, on Tuesday the 1st August, 2017 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 **Aequs Aerospace Private Limited** (Applicant/Transferor Company No.1) and **Aerostructures Manufacturing India Private Limited** (Transferor Company No.2) to be merged with **Aequs Private Limited** (Transferee Company).

Mr.Ravi Hugar, Director failing whom Mr.Arvind.S.Melligeri, Director as proposed by the Applicant Company is appointed as Chairperson and Ms.Nagashree, Advocate as Scrutinizer for the Meeting of Unsecured Creditors (Unsecured Loan Creditors and Unsecured Trade Creditors). The remuneration of Chairperson and Scrutinizer is fixed at Rs.20,000/- and Rs.10,000/- respectively for convening the meeting of Unsecured Creditors (Unsecured Loan Creditors and Unsecured Trade Creditors).

The quorum for the Meeting of Shareholders is two.

The quorum for the Meeting of Secured Loan Creditor is one (Canara Bank).

The quorum for the Meeting of Unsecured Creditors (Unsecured Loan Creditors and Unsecured Trade Creditors) is two (coming to at least 50% of the value).

The Notice of the Meeting of Equity Shareholders, Secured Loan Creditor and Unsecured Creditors (Unsecured Loan Creditors and Unsecured Trade Creditors) shall be published in an English Daily "The Hindu" and in Kannada Daily "Udayavani".

The Applicant Company or its authorized signatory is directed to issue notice(s) to Shareholders, Secured Loan Creditor and Unsecured Creditors (Unsecured Loan Creditors and Unsecured Trade Creditors) 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 Shareholders, Secured Loan Creditor and Unsecured Creditors (Unsecured Loan Creditors and Unsecured Trade Creditors) as per Form No.CAA2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ensuing convening the said meeting of Shareholders, Secured Loan Creditor and Unsecured Creditors






(Unsecured Loan Creditors and Unsecured Trade Creditors) at the place, day, date and time, along with a copy of scheme of amalgamation, a copy of Explanatory Statement, pursuant to be sent under 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.

The Applicant Company is directed at least 30 clear days before the Meeting of the Shareholders, Secured Loan Creditor and Unsecured Creditors (Unsecured Loan Creditors and Unsecured Trade Creditors) of the Applicant Company to be held as aforesaid, 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 as aforesaid.

The Applicant Company 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.

The Applicant Company 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.

The Applicant Company 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.





The Applicant Company to serve the notice upon the Reserve Bank of India, 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 Reserve Bank of India within 30 days of the date of receipt of the notice it will be presumed that Reserve Bank of India has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the Official Liquidator 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 Official Liquidator within 30 days of the date of receipt of the notice it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the Securities Exchange Board of India, 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 Securities Exchange Board of India within 30 days of the date of receipt of the notice it will be presumed that Securities Exchange Board of India has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the other sectoral regulators or authorities, stock exchange 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, stock exchange within 30 days of the date of receipt of the notice it will be presumed that the other sectoral regulators or authorities, stock exchange has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

The said Chairperson 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).

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.

The said Chairperson 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 approaches this Tribunal for seeking approval of the scheme it would be open for any person who are interested in the Scheme of Amalgamation to put forth their contentions before the Tribunal.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 15th DAY OF JUNE, 2017