

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
CA (CAA)/09/BB/17**

**DATED: FRIDAY THE 31<sup>st</sup> DAY OF MARCH 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  
PEPPERL & FUCHS (INDIA) PRIVATE LIMITED  
CA (CAA) 09/BB/2017**

1. **Pepperl & Fuchs (India) Private Limited**  
No.546/1, Ground Floor, 7<sup>th</sup> Main,  
IV Phase, Peenya Industrial Estate,  
Bengaluru 560058. - **APPLICANT/TRANSFEROR COMPANY**

**PARTIES PRESENT:** Mr. SAJI.P.JOHN,  
SPJ Legal, Advocate  
Unit No.1002, 10<sup>th</sup> Floor,  
#30, Prestige Meridian, M.G.Road  
Bangalore 560001

Heard on: 10.03.2017 and 21.03.2017

**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 Companies (Compromises, Arrangement and Amalgamation) Rules, 2016, praying to order for dispensing with convening of Meeting of Equity Shareholders or alternatively, direct the meeting of Equity shareholders of the Applicant Company be held, dispensing with convening of Meeting of Unsecured Creditors of the Applicant Company or alternative direct that the meeting of Unsecured Creditors be held and Dispensing with for convening of the Meetings of the Secured Creditors of the Applicant Company for considering the Scheme of Arrangement, where under the Pepperl and Fuchs (India) Private Limited (Applicant/Transferor Company) to be demerged into Transferee Company Pepperl and Fuchs Factory Automation Private Limited for purposes of considering the Scheme of Arrangement.




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

The Applicant seeks an order for dispensing with convening the Meeting of Equity Shareholders or in alternatively direct that the meeting of the Equity shareholders of the Applicant Company be held, dispensing with convening the Meeting of Unsecured Creditors of the Applicant Company or in alternatively direct that the meeting of the Unsecured Creditors of the Applicant Company be held for considering the Scheme of Arrangement of Applicant Company/ Pepperl and Fuchs (India) Private Limited with the Pepperl and Fuchs Factory Automation Private Limited in terms of Scheme of Arrangement shown as **Annexure-F**.

The Applicant seeks an order for dispensing with convening of meeting of Secured Creditors of the Applicant Company for considering the Scheme of Arrangement of Applicant Company Pepperl and Fuchs (India) Private Limited with the Pepperl and Fuchs Factory Automation Private Limited in terms of Scheme of Arrangement shown as **Annexure-F**.

An Affidavit of Authorised Signatory is filed along with petition. The averments in the petition that, the Applicant Company was incorporated on 13<sup>th</sup> September 2000 as per the provisions of the Companies Act, 1956 under the name and style of Pepperl and Fuchs (India) Private Limited in the state of Karnataka.

The Registered office of the Applicant Company is situated at No.546/1, Ground Floor, 7<sup>th</sup> Main, IV Phase, Peenya Indl Estate, Bangalore -560058.

The main objects of the Applicant Company is to carry on business of manufacturers, installers, maintainers, repairers, importers, exporters of and dealers in electronic and electric appliances and apparatus of every description, components including but not limited to factory automation components and accessories thereof; and to carry on the business of development, execution, sales, marketing and export of Industrial and Commercial Software etc., The copy of Memorandum and Articles of Association of the Applicant Company is shown as **Annexure-A**.



The latest authorized share capital of Applicant Company is Rs.2,50,00,000/- divided into 25,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.2,45,00,000/- divided into 2450000 Equity Shares of Rs.10/-each fully paid up.

The Audited balance sheet as on 31<sup>st</sup> March, 2016 is marked as **Annexure –B.**



It is further stated that, the Board of Directors of the Applicant Company has approved and adopted a Scheme of Arrangement at its meeting held on 15<sup>th</sup> December, 2016 by virtue of which Pepperl and Fuchs (India) Private Limited (Transferor Company) is proposed to be demerged into Transferee Company subject to confirmation.

A copy of the Board Resolution of Applicant Company dated 15<sup>th</sup> December, 2016 in approving and adopting the Scheme of Arrangement is shown as **Annexure-E.**

It is further averred that, the Management of Pepperl and Fuchs (India) Private Limited is of the opinion that segregation of the Demerged Undertaking into a separate company as per the proposed demerger under this scheme would be in the interests of the stakeholders of Pepperl and Fuchs (India) Private Limited and will also result in interalia:

1. Greater strategic focus on the respective undertakings (Demerged Undertaking and Residual Undertaking);
2. Separate dedicated management to ensure appropriate nurturing and development of each of the undertakings;
3. Unlocking economic value for the shareholders of both the companies;
4. Enhanced focus on markets, customers and product.

It is further stated that the Chartered Accountant after verification of the books of accounts and other records and documents of the Applicant Company had certified the number of shareholders of the Applicant Company as on December 31, 2016. Certificate issued by the Chartered Accountant, M/s Neha Lakhotia & Co., No.9/854, Magadi Road, Bangalore-560023 is marked as **Annexure-G.**




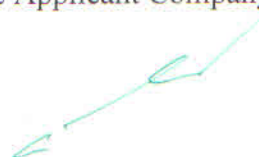
It is further stated that there are no Secured Creditors in the Applicant Company as certified by the Chartered Accountant, M/s Neha Lakhotia & Co., No.9/854, Magadi Road, Bangalore-560023 shown as **Annexure-H**.

It is further stated that there is One Unsecured Creditor in the Applicant Company as on December 31, 2016 as certified by the Chartered Accountant, M/s Neha Lakhotia & Co., No.9/854, Magadi Road, Bangalore-560023 shown as **Annexure-J**.

It is stated that, the shareholders of the Transferee Company and their shareholding percentage are the same as that the Applicant Company. Pursuant to the Scheme, equity shares would be issued by the Transferee Company to the members of the Applicant Company in the share exchange ratio determined i.e. 1 equity share of Rs. 10 each in the Transferee Company for every 3 equity shares of Rs 10 each held in the Applicant Company. The rights of the members of the Applicant Company or the Transferee Company will remain unaffected since the demerger would result in issue of equity shares in the exact same proportion as the current shareholding of the Applicant Company/ Transferee Company and this would not result in any loss of value for the members of either of the Transferee Company /Applicant Company.

We have heard the Counsel appearing for the Applicant Company. The Application filed by the Applicant Company which is a Transferor Company for dispensing with convening the Meeting of Equity Shareholders or in alternatively direct that the meeting of the Equity shareholders of the Applicant Company be held and dispensing with convening the Meeting of Unsecured Creditors of the Applicant Company or in alternatively direct that the meeting of the Unsecured Creditors of the Applicant Company be held for considering the Scheme of Arrangement of Applicant Company/ Pepperl and Fuchs (India) Private Limited with the Pepperl and Fuchs Factory Automation Private Limited in terms of Scheme of Arrangement shown as **Annexure-F**.

The Applicant is seeking an order to dispense with convening of meeting of Secured Creditors on the ground that there are no Secured Creditors in the Applicant Company. The Chartered Accountant certified that there are no Secured Creditors of the Applicant Company shown as **Annexure-H**.





After hearing the counsel and after perusing the documents filed, we pass the following order:-

The meeting of the Equity Shareholders of the Applicant Company be convened and held at No.546/1, 7<sup>th</sup> Main, IV Phase, Peenya Industrial Estate, Bengaluru-560058, on Monday the 15<sup>th</sup> May, 2017 at 10:00 P.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed scheme of arrangement of Pepperl and Fuchs Factory Automation Private Limited (Transferee Company) with Pepperl and Fuchs (India) Private Limited (Transferor Company).

The meeting of the Unsecured Creditor of the Applicant Company be convened and held at No.546/1, 7<sup>th</sup> Main, IV Phase, Peenya Industrial Estate, Bengaluru-560058, on Monday the 15<sup>th</sup> May, 2017 at 11:00 P.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed scheme of arrangement of Pepperl and Fuchs Factory Automation Private Limited (Transferee Company) with Pepperl and Fuchs (India) Private Limited (Transferor Company).

Mr.Indraneel Rajgure, Director failing whom Mr.Thampy Mathew, Director as proposed by the Applicant Company is appointed as Chairperson and Mr. Sharavanan, Chartered Accountant as Scrutinizer for the Shareholders Meeting and Meeting of Unsecured Creditor as suggested by the Counsel in the synopsis. The remuneration of Chairperson and Scrutinizer is fixed at R.20,000/- and Rs.10,000/- respectively for convening the shareholders meeting and meeting of Unsecured Creditor.

The quorum for the Meeting of the shareholders is two as proposed by the Applicant Company in accordance with Section 103 of the Companies Act, 2013.

The quorum for the Meeting of the Unsecured Creditor is one as proposed by the Applicant Company.

The Notice of the Meeting of the shareholders and meeting of Unsecured Creditors shall be published in an English Daily "The Hindu" and in Kannada Daily "Kannada Prabha".

The Applicant Company or its authorized signatory is directed to issue notice(s) to the shareholders 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 Equity shareholders as per Form No.CAA2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ensuing convening the said Equity Shareholders Meeting at the place, day, date and time, along with a copy of scheme of arrangement, a copy of Explanatory Statement, pursuant to be sent under the 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 or its authorized signatory is directed to issue notice(s) to the Unsecured Creditor 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 Unsecured Creditor as per Form No.CAA2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ensuing convening the said Unsecured Creditor Meeting at the place, day, date and time, along with a copy of scheme of arrangement, a copy of Explanatory Statement, pursuant to be sent under the 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 Equity Shareholders and Unsecured Creditor 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 Arrangement 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 other sectoral regulators and 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 and authorities within 30 days of the date of receipt of the notice it will be presumed that the other sectoral regulators, stock exchange and authorities have 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 value and number of the shares of each member shall be in accordance with the books/register of the Applicant Company or depository records and where the entries in the books/register/depository records are disputed, the Chairperson of the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

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.

The Meeting of the Secured Creditors is dispensed with accordingly.

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

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