

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
CA (CAA) 10/BB/2017**

DATED: FRIDAY THE 31st 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 FACTORY AUTOMATION
PRIVATE LIMITED**

CA (CAA) 10/BB/2017

**1. Pepperl & Fuchs Factory Automation Private Limited
No.546/1, Ground Floor, 7th Main,
IV Phase, Peenya Industrial Estate,
Bengaluru 560058 - APPLICANT/TRANSFeree COMPANY**

PARTIES PRESENT:

**Mr. SAJI.P.JOHN
SPJ Legal, Advocate
Unit No.1002, 10th Floor,
#30, Prestige Meridian, M.G. Road,
Bangalore 560001**

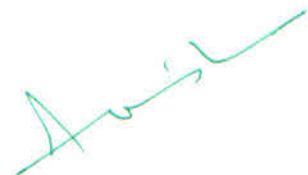
Heard on: 10.03.2017 and 21.03.2017.

ORDER

This Company 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 Shareholders of the Applicant Company or alternatively direct that the meeting of the Equity shareholders of the Applicant Company be held and dispensing with for convening of the Meetings of the Secured and Unsecured Creditors of the Applicant Company for considering the Scheme of Arrangement, where under the Pepperl and Fuchs Factory Automation Private Limited (Transferee Company) to be demerged from the Transferor Company Pepperl and Fuchs (India) Private Limited for purposes of considering the Scheme of Arrangement.

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

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The Applicant seeks an order for dispensing with convening the meeting of Equity Shareholders or alternatively direct that the meeting of the Equity Shareholders of the Applicant Company be held and dispensing with convening of meeting of the Secured and Unsecured Creditors of the Applicant Company for considering the Scheme of Arrangement of Pepperl and Fuchs (India) Private Limited with the Applicant Company/ 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 14th December, 2016 as per the provisions of the Companies Act, 2013 under the name and style of Pepperl and Fuchs Factory Automation Private Limited with the Registrar of Companies, Karnataka vide CIN bearing no. U74999KA2016FTC098443.

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

The main objects of the Applicant Company is to carry on business of manufacturing, distributors, installers, repairers, importers, exporters and dealers of electronic and electric appliances and apparatus of every description, components including but not limited to factory automation components and accessories thereof; and to undertake all consequential and necessary actions required to achieve the said objectives and to manufacture and deal in metals, substances and materials of all kinds which may be useful or conveniently employed in the manufacture of electronic and electric appliances and in machinery apparatus, tools, articles and things used to manufacture of electronic and electric appliances 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.5,00,00,000/- divided into 50,00,000 Equity Shares of Rs.10/- each. The issued,¹subscribed and paid-up share capital is Rs.1,00,000 /- divided into 10,000Equity Shares of Rs.10/- each fully paid up.

The Provisional balance sheet as on 31st December, 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 20th December, 2016 by virtue of which Pepperl and Fuchs Factory Automation Private Limited (Transferee Company) is proposed to be demerged from the Transferor Company subject to confirmation.

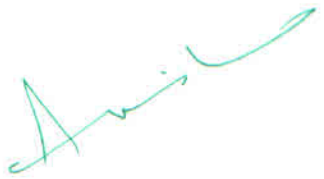

A copy of the Board Resolution of Applicant Company dated 20th December, 2016 in approving and adopting the Scheme of Arrangement shown as **Annexure-E**.

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 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-H**.



It is further stated that there are no Unsecured Creditors 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, there are two shareholders in the Transferor Company and the same shareholders are shareholders of the Applicant Company as well in that proportion. Pursuant to the Scheme, equity shares would be issued by the Applicant Company to the members of the Transferor Company in the share exchange ratio determined i.e. 1 equity share of Rs. 10 each in the Applicant Company for every 3 equity shares of Rs 10 each held in the Transferor Company. The rights of the members of the Applicant Company or the Transferor 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. Consequently, this would not result in any loss of value for the members of either the Transferor Company or the Applicant Company.

We have heard the Counsel appearing for the Applicant/Transferee Company, who has filed the application for dispensing with convening of meeting of Equity Shareholders or alternatively direct that meeting of the Equity shareholders of the Applicant Company be held and dispensing with convening of meeting of Secured Creditors and Unsecured Creditors of the Applicant Company for considering the Scheme of Arrangement of Pepperl and Fuchs (India) Private Limited with the Applicant Company/ 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 and Unsecured Creditors on the ground that there are no Secured and Unsecured Creditors in the Applicant Company. The Chartered Accountant certified there are no Secured and Unsecured Creditors of the Applicant Company shown as **Annexure-H** and **J** respectively.

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, 7th Main, IV Phase, Peenya Industrial Estate,

Bengaluru-560058, on Monday the 15th May, 2017 at 12:00 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).


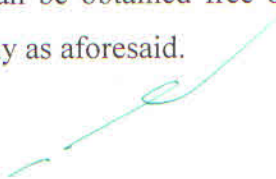
Mr.Indraneel Rajgure, Director failing whom Mr.Thampy Mathew, Director as proposed by the Applicant Company is appointed as Chairperson and Mr. Sharavanan, Chartered Accountant as Scrutinizer for the Shareholders Meeting as suggested by the Counsel in the synopsis. The remuneration of Chairperson and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

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 Notice of the Meeting of the shareholders 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 is directed at least 30 clear days before the Meeting of the Equity Shareholders 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.


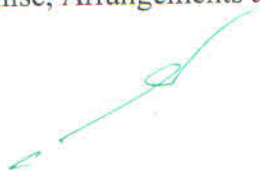


The Applicant Company to serve the notice upon the Regional Director, South-East Region, Ministry of Corporate Affairs, Hyderabad pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by 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.



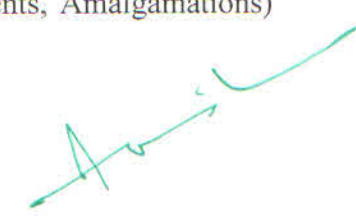

The Applicant Company to serve the notice upon the other sectoral regulators and authorities if applicable, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from other sectoral regulators and authorities within 30 days of the date of receipt of the notice it will be presumed that the other sectoral regulators 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 and Unsecured Creditors is dispensed with accordingly.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 31st DAY OF MARCH, 2017