

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA (CAA) No. 32/NCLT/AHM/2017



Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.04.2017**

Name of the Company: Accuflow Controls Pvt. Ltd.


Section of the Companies Act: Section 230-232 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	PINAKIN SHAH	PCS		
2.	ISHAN SHAH	ADVOCATE		

ORDER

Learned Advocate Mr. Ishan P Shah with Learned PCS Mr. Pinakin Shah present for Applicant.

Order pronounced in open Court. Vide separate sheet.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 24th day of April, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 24th day of April, 2017

C.A.(CAA) 32/NCLT/AHM/2017

In the matter of: -

Accuflow Controls Private Limited,
A company registered under the
Companies Act, 1956 and having
Its registered office at: Lane 17/331,
Satyagrah Chhavani Society,
Satellite Road,
Ahmedabad – 380 015 (Gujarat).

... Applicant
(Transferor-Company)

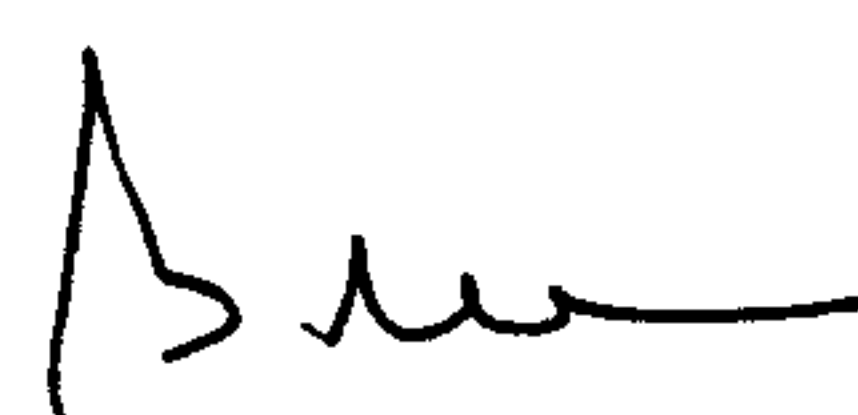
Appearance: -

Mr. Ishan P. Shah, Advocate, with Mr. Pinakin Shah, PCS,
for the Applicant.

FINAL ORDER
(Date:24.04.2017)

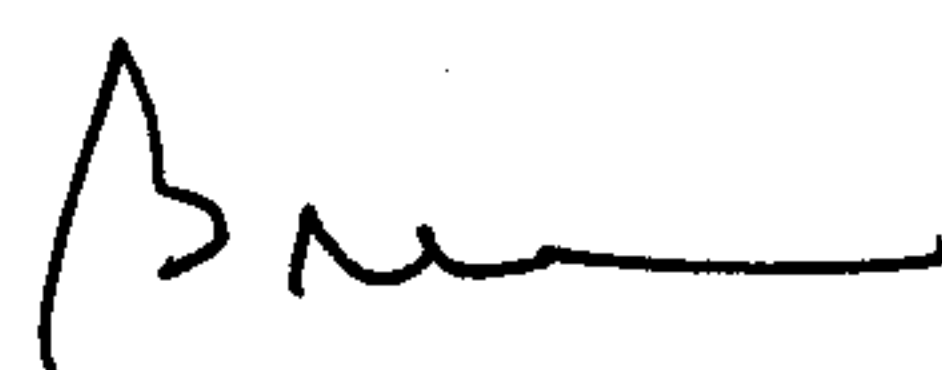
1. Heard learned Advocate, Mr. Ishan P. Shah, Advocate, with Mr. Pinakin Shah, PCS, for the Applicant-company. Perused the application and the supporting affidavit of Mr. Kiran Shah, Director of the Applicant-company, dated 25th March, 2017 and the annexures annexed thereto.
2. M/s Accuflow Controls Private Limited filed this application under Sections 230 and 232 of the Companies Act, 2013 seeking directions for convening meetings of members and unsecured creditors of the applicant-company in respect of a scheme of arrangement in the nature of amalgamation of Accuflow Controls Private Limited with Darling Muesco (India) Private Limited ("Scheme" for short).

3. The Board of Directors of the applicant-company, by its resolution dated 14th March, 2017, approved the Scheme which is at Exhibit 3. It is stated that no investigation or proceedings are pending against the applicant-company.
4. It is stated in the certificate of the Chartered Accountant, vide Exhibit 5, that there are seven equity shareholders of Accuflow Controls Private Limited as on 13.03.2017. The applicant-company requested this Tribunal to give necessary directions for holding the meeting of equity shareholders for the purpose of considering and, if thought fit, approving the Scheme with or without modification(s). Hence, the applicant-company shall hold the meeting of equity shareholders of the applicant-company a per the directions to follow in this order.
5. It is stated in the application that there are no secured creditors of the applicant-company. The Chartered Accountant vide Certificate-Exhibit 4 stated that there are no secured creditors. Hence, there is no need for the applicant to hold the meeting of secured creditors for the purpose of considering and, if thought fit, approving the Scheme with or without modification(s).
6. It is stated in the application that there are 54 unsecured operational creditors of the value of Rs.14.74 lacs, of the applicant-company. The certificate of the Statutory Auditor vide Exhibit 4 also shows that there are 54 unsecured creditors amounting to Rs.14.74 lacs and debt due to the transferee-company is amounting to Rs.24.45 lacs. The applicant-company requested the Tribunal to give necessary directions for conducting meeting of unsecured creditors for the purpose of considering and, if thought fit, approving the Scheme with or without modification(s). Hence, the applicant-company shall hold the meeting of unsecured creditors of the applicant-company a per the directions to follow in this order.




7. Having considered the entire material on record, this Tribunal passes the following order: -

- a. A meeting of the equity shareholders of the Applicant-company shall be convened and held at 97/A, Phase-I, Industrial Estate, Vatva, Ahmedabad – 382445 on 2nd June, 2017, at 10.00 A.M., for the purpose of considering and, if thought fit, approving with or without modification(s) the scheme.
- b. A meeting of the unsecured creditors of the Applicant-company shall be held at 97/A, Phase-I, Industrial Estate, Vatva, Ahmedabad– 382445 on 2nd June, 2017, at 10.30 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the agreement embodied in the scheme.
- c. In view of Sections 230(4) and 232(1) of the Companies Act, 2013 read with Rules 5 and 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and Rules 20 and 22 of the Companies (Management and Administration) Rules, 2014, the Applicant-company is required to provide the facility of postal ballot and e-voting to its shareholders. Accordingly, voting by equity shareholders of the Applicant-company to the scheme shall be carried out through (i) postal ballot and e-voting; and (ii) electronic voting system or ballot or polling paper at the venue of the meeting to be held on 2nd June, 2017. In the case of meetings of unsecured creditors, the voting shall be carried out through ballot/polling paper.
- d. At least one month before 2nd June, 2017, i.e. the date of aforesaid meetings, an advertisement about convening of the said meetings, indicating the day, date, place and time, as aforesaid, shall be published in English daily “Business



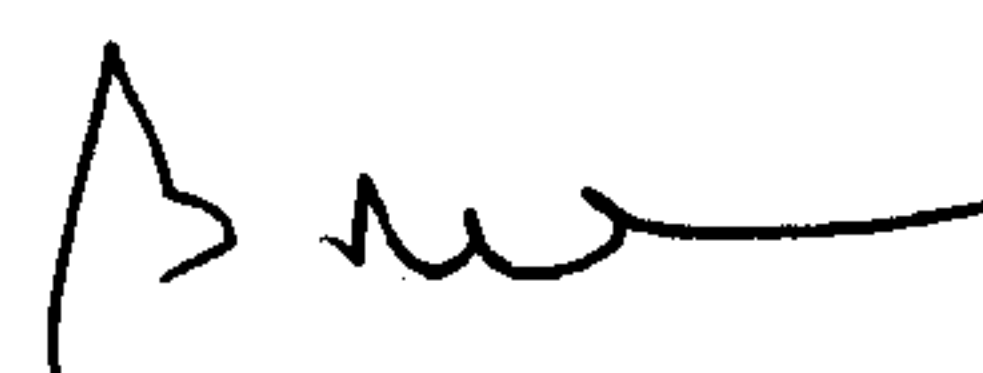
Standard”, Ahmedabad edition and a Gujarati translation thereof in “Jaihind” (Ahmedabad edition). The publication shall indicate the time within which copies of the scheme shall be made available to the concerned persons free of charge from the registered office of the company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and the prescribed form of proxy can be obtained free of charge at the registered office of the Applicant-company in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.

- e. At least one month before 2nd June, 2017, i.e. the date of aforesaid meeting of equity shareholders, a notice in Form No.CAA.2 convening the said meeting indicating the day, date, place and time aforesaid, containing instructions with regard to postal ballot and e-voting (in case of equity shareholders) together with a copy of the scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the equity shareholders of the Applicant-company at their respective registered or last known addresses either by Registered Post or Speed Post /Airmail or by Courier or e-mail. The aforesaid notice and other documents shall also be placed on the website of the Applicant-company, if any, and the same shall be sent to Securities and Exchange Board of India [proviso to Section 230(3)]. The notices shall be sent to the equity shareholders of the Applicant-company with reference to the list of persons appearing on the record of the Applicant-company and its register as on 13.03.2017, being a cut of date as prescribed under Rule 20 of the Companies (Management and Administration)



Rules, 2014. The aforesaid cut of date would be the date determining the eligibility to vote by the equity shareholders.

- f. In addition, at least one month before the date of the aforesaid meetings of the unsecured creditors to be held as aforesaid, a notice convening the said meetings, indicating the day, date, place and time, as aforesaid, together with a copy of the scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the unsecured creditors of the Applicant-company at their respective registered or last known addresses either by Registered Post or Speed Post/Airmail or by Courier. The notice shall be sent to the unsecured creditors of the Applicant-company with reference to the list of the persons appearing on the record of the Applicant-company as on 13.03.2017.
- g. Dr. Maruti Kotwal (Retired I.A.S Officer) Advocate, and, in his absence, Mr. Pavan Godiawala, Advocate, shall be the Chairman of the aforesaid meetings to be held on 2nd June, 2017 and in respect of any adjournment or adjournments thereof.
- h. Mr. Kashyap Mehta, a Practising Company Secretary, is appointed as the Scrutinizer for the meeting of the equity shareholders of the Applicant-company including for conducting the postal ballot and e-voting process and also for the meeting of the unsecured creditors of the Applicant-company.
- i. The Chairman appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the



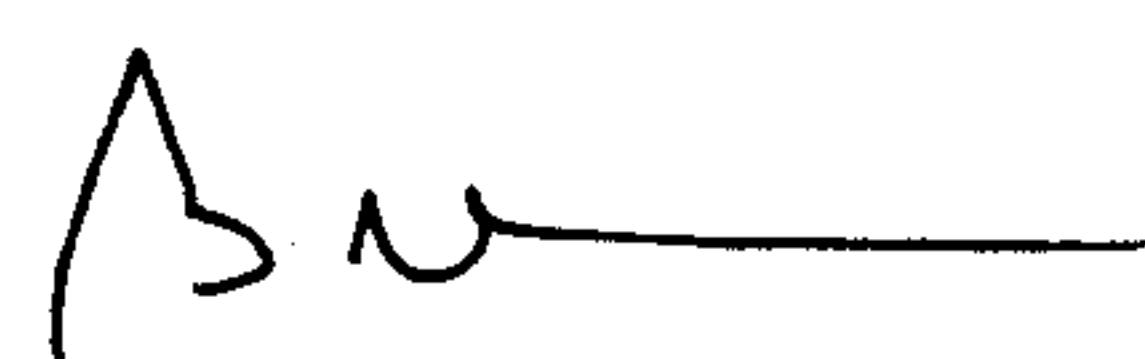
meetings referred to above. The Chairman is free to avail the services of the Applicant-company or any agency for carrying out the aforesaid directions. The Chairman shall have all powers under the Articles of Association of the Applicant-company and also under the Rules in relation to the conduct of meetings, including for deciding any procedural questions that may arise at the meetings or adjournments thereof proposed at the said meetings, amendment(s) to the aforesaid scheme or resolutions, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of the sense of the meeting of equity shareholders by (i) postal ballot and e-voting; and (ii) electronic voting system or ballot or polling paper at the venue of the meeting of the equity shareholders and for the unsecured creditors by polling paper/ballot.

- j. The quorum for the meeting of equity shareholders shall be two (2) persons present in person. The quorum for the meeting of the unsecured creditors shall be ten (10) creditors present in person.
- k. Voting by proxy/authorised representative is permitted, provided that the proxy in the prescribed form/authorisation duly signed by the person entitled to attend and vote at the aforesaid meetings is filed with the Applicant-company at its registered office, not later than 48 hours before the meetings vide Rule 10 of Companies (CAA) Rules, 2016 read with Section 105 of the Companies Act.
- l. The number and value of equity shares of the equity shareholders or the value of unsecured creditors, as the case may be, shall be in accordance with the records or registers of the Applicant-company and where the entries in the records or registers are disputed, the Chairman of



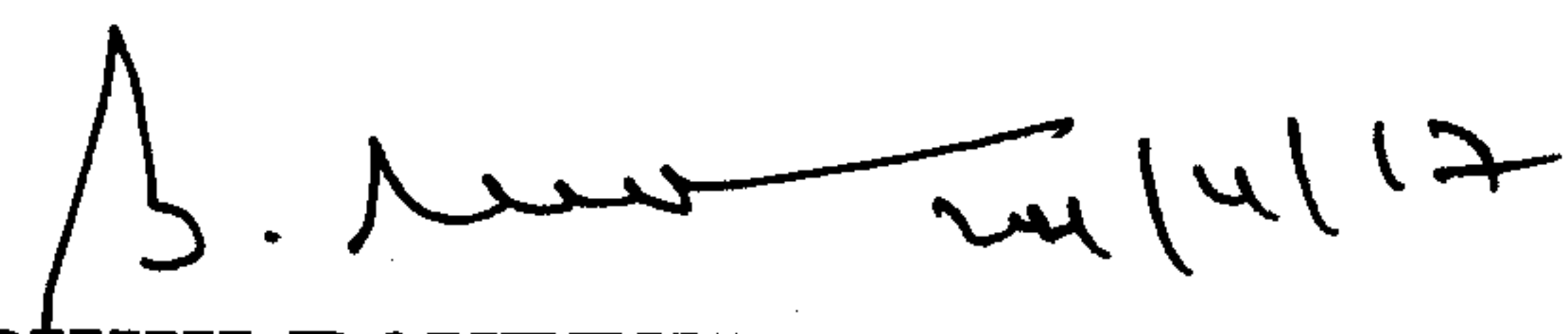
the meetings shall determine the number or value, as the case may be, for purposes of the meetings.

- m. The Chairman to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of Companies (CAA) Rules, 2016.
- n. It is further ordered that the Chairman shall, report to this Tribunal on the result of the meetings in Form No.CAA.4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in Form No.CAA.4 within seven days after conclusion of meetings.
- o. In compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant-company shall send a notice of meeting under sub-section (3) of Section 230 read with Rule 6 of the Companies (CAA) Rules, 2016 in Form No.CAA.3 along with a copy of the scheme of arrangement, the explanatory statement and the disclosures mentioned under Rule 6, to (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, (iii) the Income-tax authorities, (iv) the Reserve Bank of India, and (v) the Official Liquidator stating that representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed scheme. The said notice shall be sent forthwith after notice is sent to the members or creditors of the company by registered post or by speed post or by courier or by hand delivery at the office of the authority as required by sub-rule (2) of Rule 8 of the Companies (CAA)



Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230, shall sent the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed arrangement.

8. This Company Application is disposed of accordingly.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court
on this 24th day of April, 2017.

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