

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

CSA NO. / 790 / 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Merger of Johnson Controls Marine & Refrigeration India Limited ('the Transferor Company') with Johnson Controls (India) Private Limited ('the Transferee Company') and their respective Shareholders and Creditors

Johnson Controls Marine & Refrigeration India Limited, a Company incorporated under the Companies Act, 1956, and having its registered office at 501A, Business Plaza, 5th Floor, 36/3B, The Westin, Koregaon Park Annexe, Mundhwa Road, Ghorpadi, Pune-411001, Maharashtra

..First Applicant Company

AND

Johnson Controls (India) Private Limited, a Company incorporated under the Companies Act, 1956, and having its registered office at 401-501, 4th and 5th Floor, B Wing, Andheri Kurla Road, Andheri (East), Mumbai,-400093, Maharashtra

.. Second Applicant Company

Order delivered on 18th September, 2017

Coram:

Hon'ble **M.K Shrawat**, Member (J)

Hon'ble **Bhaskara Pantula Mohan**, Member (J)

For the Applicant(s): Mr. Hemant Sethi i/b Hemant Sethi & Co

Per : Bhaskara Pantula Mohan, Member (J)

ORDER

1. The Counsel for the Applicants states that the present Scheme is a merger of Johnson Controls Marine & Refrigeration India Limited ('the Transferor Company') with

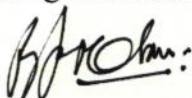


Johnson Controls (India) Private Limited ('the Transferee Company') and their respective Shareholders and Creditors.

2. The Transferor Company and the Transferee Company are related parties since Johnson Controls International plc, Ireland, is the ultimate holding company and they are under common control.
3. The Transferor Company being loss making entity, its revenue has been reducing over the years, and its cash flow has been negative in the past, whereas on the other hand, the Transferee Company having huge cash surplus, the rationale for the scheme of merger, inter alia, is that it would enable the Transferee Company to run the business of the Transferor Company profitably, that it would enable the Transferor Company and the Transferee Company to utilize the financial resources as well as the managerial, technical, distribution and marketing resources of each other and it would be beneficial for the effective management and controlled supervision of the Transferee Company, thereby protecting the interest of the Transferor Company. By the proposed scheme of merger, (a) facilities such as manpower, office space and other infrastructure could be better utilized by the Transferee Company and duplication of facilities could be avoided resulting in optimum use of facilities to the advantage of the Transferee Company; (b) employees of the Transferor Company would be provided an opportunity to be gainfully employed by the Transferee Company; (c) the liabilities of the Transferor Company would be duly discharged by the Transferee Company; (d) the unutilised assets of the Transferor Company could be put to better use by the Transferee Company; (e) the Transferee Company will be able to ensure better turnover and profits and would ultimately contribute substantially to the future business expansion and will be able to exploit the market to the fullest possible extent; (f) significant impetus will be provided to the growth of the Transferee Company and will lead to synergies of operations and a stronger and wider capital and financial base for future growth/expansion of the Transferee Company; (g) efficiency of combined business will increase by pooling of resources and their optimum utilisation, thereby availing synergies from combined resources; (h) consolidation of business for cost control will be provided; and (i) enhanced value will be created for shareholders and allow a focused growth strategy which would be in the best interests of all the stakeholders.
4. That the meeting of the equity shareholders of the First Applicant Company be convened and held at 501 A, Business Plaza, 5th Floor, 36/3B, The Westin,

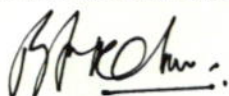
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- Koregaon Park Annexe, Mundhwa Road, Ghorpadi, Pune-411001 on November 8, 2017 at 2.30 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Merger of Johnson Controls Marine & Refrigeration India Limited with Johnson Controls (India) Private Limited and their respective Shareholders and Creditors.
5. That the meeting of the preference shareholders of the First Applicant Company be convened and held at 501 A, Business Plaza, 5th Floor, 36/3B, The Westin, Koregaon Park Annexe, Mundhwa Road, Ghorpadi, Pune-411001 on November 8, 2017 at 4.00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Merger of Johnson Controls Marine & Refrigeration India Limited with Johnson Controls (India) Private Limited and their respective Shareholders and Creditors.
 6. The Counsel for the First Applicant Company submits that there are no secured creditors in the First Applicant Company.
 7. That the meeting of the unsecured creditors of the First Applicant Company be convened and held at 501 A, Business Plaza, 5th Floor, 36/3B, The Westin, Koregaon Park Annexe, Mundhwa Road, Ghorpadi, Pune-411001 on November 8, 2017 at 11.30 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Merger of Johnson Controls Marine & Refrigeration India Limited with Johnson Controls (India) Private Limited and their respective Shareholders and Creditors.
 8. That the meeting of the equity shareholders of the Second Applicant Company be convened and held at 401-501, 4th and 5th Floor, B Wing, Andheri Kurla Road, Andheri (East), Mumbai - 400093 on November 9, 2017 at 2.30 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Merger of Johnson Controls Marine & Refrigeration India Limited with Johnson Controls (India) Private Limited and their respective Shareholders and Creditors.
 9. That the meeting of the unsecured creditors (including debenture holder) of the Second Applicant Company is dispensed with, in light of the consent letters submitted by the creditors having at least 90% in value of the unsecured creditors (including debenture holder) of the Second Applicant Company, for agreeing and



confirming with the Scheme. The Second Applicant Company undertakes to give individual notices to all its Secured creditors .

10. That at least one month before the said meetings of the shareholders and creditors of the First Applicant Company, and of the shareholders of the Second Applicant Company to be held as aforesaid, a notice convening the said meetings at the place date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post or through Email (to those shareholders / creditors (as applicable) whose email addresses are duly registered with the First Applicant Company and the Second Applicant Company for the purpose of receiving such notices by email), addressed to each of the shareholders and creditors of the First Applicant Company, and of the shareholders of the Second Applicant Company, at their last known address or email addresses as per the records of the Applicant Companies.
11. That at least one month before the said meetings of the shareholders and creditors of the First Applicant Company, and of the shareholders of the Second Applicant Company to be held as aforesaid, a notice convening the said meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the registered office of the First Applicant Company and Second Applicant Company as aforesaid.
12. That the notice of the meetings of the First Applicant Company shall be advertised in two local newspapers viz. "*Sakal Times*" in English and "*Sakal*" in Marathi, both having wide circulation in Pune, not less than 30 days before the date fixed for each meeting as aforesaid.
13. That the notice of the meeting of the Second Applicant Company shall be advertised in two local newspapers viz. "*Financial Express*" in English and "*Maharashtra Times*" in Marathi, both having wide circulation in Mumbai, not less than 30 days before the date fixed for the meeting as aforesaid.

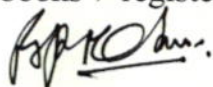


14. That Mr. Yogesh Gulavani, Senior Manager (Finance) of the First Applicant Company, failing him, Mr. Edison Pinto, Senior General Manager (Sales) of the First Applicant Company, and failing him, Mr. Rajendra Gautam, General Manager (Project) of the First Applicant Company shall be the Chairman of the aforesaid meeting of the equity shareholders of the First Applicant Company to be held at 501 A, Business Plaza, 5th Floor, 36/3B, The Westin, Koregaon Park Annexe, Mundhwa Road, Ghorpadi, Pune-411001, on November 8, 2017 at 2.30 p.m. or any adjournment or adjournments thereof.
15. That Mr. Yogesh Gulavani, Senior Manager (Finance) of the First Applicant Company, failing him, Mr. Edison Pinto, Senior General Manager (Sales) of the First Applicant Company, and failing him, Mr. Rajendra Gautam, General Manager (Project) of the First Applicant Company shall be the Chairman of the aforesaid meeting of the preference shareholders of the First Applicant Company to be held at 501 A, Business Plaza, 5th Floor, 36/3B, The Westin, Koregaon Park Annexe, Mundhwa Road, Ghorpadi, Pune-411001, on November 8, 2017 at 4.00 p.m. or any adjournment or adjournments thereof.
16. That Mr. Yogesh Gulavani, Senior Manager (Finance) of the First Applicant Company, failing him, Mr. Edison Pinto, Senior General Manager (Sales) of the First Applicant Company, and failing him, Mr. Rajendra Gautam, General Manager (Project) of the First Applicant Company shall be the Chairman of the aforesaid meeting of the unsecured creditors of the First Applicant Company to be held at 501 A, Business Plaza, 5th Floor, 36/3B, The Westin, Koregaon Park Annexe, Mundhwa Road, Ghorpadi, Pune-411001, on November 8, 2017 at 11.30 a.m. or any adjournment or adjournments thereof.
17. That Mr. Vijay Nair, Senior Finance Manager of the Second Applicant Company, and failing him, Mr. Tushar Mahajan, Finance Manager of the Second Applicant, failing him, Mr. Shivanand Shetty, Senior General Manager- Operations Planning & Commercial of the Second Applicant Company, and failing him, Mr. Pritesh Sangani, Business Process Manager, SEA & India, India Compliance of the Second Applicant Company shall be the Chairman of the aforesaid meeting of the equity shareholders of the Second Applicant Company to be held at 401-501, 4th and 5th



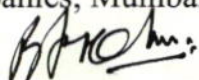
Floor, B Wing, Andheri Kurla Road, Andheri (East), Mumbai - 400093, on November 9, 2017 at 2.30 p.m. or any adjournment or adjournments thereof.

18. That the Chairman appointed for the aforesaid meetings to issue the advertisement and send out the notices of the meetings referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).
19. That the quorum of the aforesaid meetings of the shareholders and creditors (as the case may be) shall be as prescribed under Section 103 of the Companies Act, 2013.
20. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorization duly signed by the person entitled to attend and vote at the meetings, are filed with the First Applicant Company at its registered office at 501A, Business Plaza, 5th Floor, 36/3B, The Westin, Koregaon Park Annexe, Mundhwa Road, Ghorpadi, Pune – 411001 and Second Applicant Company at its registered office at 401-501, 4th and 5th Floor, B Wing, Andheri Kurla Road, Andheri (East), Mumbai - 400093, Maharashtra, respectively, not later than 48 hours before the aforesaid meetings.
21. That the value and number of the shares of each equity shareholder shall be in accordance with the books / register of the First Applicant Company and Second Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
22. That the value and number of the shares of each preference shareholder shall be in accordance with the books / register of the First Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
23. That the value of each unsecured creditor shall be in accordance with the books / register / financial statements of the First Applicant Company and where the entries in the books / register / financial statements are disputed, the Chairman of the



meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

24. That Mayekar & Associates, Practicing Company Secretaries, Firm U.I.N - P2005MH007400, having their office at Nidhi Apartment No. 1, Flat No. 51, Liberty Garden Road No.3, Malad (West) I Mumbai - 400064, is hereby appointed as Scrutinizer of the abovementioned meeting of the First Applicant Company and the Second Applicant Company.
25. That the remuneration of the Scrutinizer appointed above for all the above meetings is fixed at Rs. 20,000 excluding applicable taxes.
26. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
27. That the Chairman of the meetings to report to this Tribunal, the results of the aforesaid meetings within thirty (30) days of the conclusion of the meetings.
28. The First Applicant Company is directed to serve notices along with copy of Scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Pune, and (iv) the Reserve Bank of India, with a direction that they may submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
29. The First Applicant Company are also directed to serve notice along with copy of scheme upon Official Liquidator. M/s Shah & Gutka, Chartered Accountants are appointed to assist the Official Liquidator to scrutinize books of accounts of the First Applicant Company for the last 5 years. The First Applicant Company to pay fees of Rs 1,50,000/- .
30. The Second Applicant Company is directed to serve notices along with copy of Scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Second Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Mumbai, and (iv) the Reserve Bank of India, with a direction that they



may submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

31. The First Applicant Company and Second Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, creditors, publication of notices in newspapers and to the regulatory authorities as stated in clauses above and to report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 18.09.2017