

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH AT MUMBAI

CSP NO.386 OF 2017

In the matter of the Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 230 to 232 read with Section 66 of  
the Companies Act, 2013.

AND

In the matter of the Scheme of Arrangement between  
Adonis Electronics Private Limited and its Shareholders &  
Creditors.

ADONIS ELECTRONICS PRIVATE LIMITED. ....the Petitioner Company.

**Order delivered on 24<sup>th</sup> August, 2017**

Coram:

**Hon'ble B. S. V. Prakash Kumar, Member (J)**

**Hon'ble V. Nallasenapathy Member (T)**

For the Petitioner(s): Mr. Nitin Gutka, Chartered Accountants for the Petitioner

Mr S. Ramakantha, Joint Director in the office of Regional  
Director for the Petitioner.

**Per: B. S. V. Prakash Kumar, Member (J)**

**ORDER**

1. Heard learned counsel for parties. No objector has come before the Hon'ble Tribunal to oppose the Scheme of Arrangement nor has any party controverted any averments made in the Company Scheme Petitions.
2. The sanction of the Hon'ble Tribunal is sought under Sections 230 to 232 read with Section 66 of the Companies Act, 2013 to a Scheme of Arrangement between Adonis Electronics Private Limited and its Shareholders & Creditors (the Company hereinafter referred to as "the Petitioner Company").
3. The Learned counsel for the Petitioner Company states that the Petitioner Company is presently carrying on business of installation of air conditioners and LED at customers locations and provides after sales and services of all electronics products including warranty services. It has also entered into long term after sales and service contracts on Pan India basis with MIRC Electronics Limited of all its products.

4. The Learned counsel for the Petitioner Company states that the circumstances that have necessitated or benefits of Scheme of Arrangement are as follows:-
- a) There are contractual obligations towards consumers and buyers of electronic items of its customers for agreed period and it cannot afford to scale down its operations and support set up. Due to continuous losses, the Company was not able to raise finance required for expansion of business from banks and financial institutions as the business has long gestation period and cash losses in short and medium terms. Hence the Petitioner Company financed expansion by issuing 12,15,523 0% Fully Convertible Unsecured Debenture of Rs. 100/- each to financial investors.
  - b) Specified Unsecured Creditors has given advances of Rs 26.50 crores as on 30<sup>th</sup> November 2016 over a period of time to the Company to ensure assured and efficient after sales and services to its customers from the Company. However, level of service contracts was too low and hence the company continued to incur losses even at operation level in spite of full support from the major customer including Mirc Electronics Limited. However, due to decrease in sales and services of Specified Unsecured Creditors lead to ballooning of advances.
  - c) As of March, 2016 the Company has accumulated losses of Rs 46.28 crores. There is possibility of turnaround in the operation in the current financial year of the Company, however accumulated losses and liabilities needs to be addressed to have sustained profitable operation hence forth.
  - d) The Board of Directors has approved the following steps to realign and restructure its liabilities which would lead to positive net worth and in the process, increase its capability to raise finance.
    - i. Write back off outstanding of various creditors/employees amounting to Rs. 12.11 crores as on the Appointed Date to be credited to Reserve and Surplus.
    - ii. 0% Fully Convertible Unsecured Debentures of Rs. 12,15,52,300/- divided into 12,15,523 0% Fully Convertible Unsecured Debentures of Rs. 100/- each shall be reclassified as 12,15,523 Equity Share



Capital of Rs 100/-each and simultaneously written off as part of reduction of share capital.

- iii. Conversion of Specified Unsecured Creditors amounting to Rs. 26.50 Crores out of balance outstanding of Unsecured Creditors into long term Preference Share Capital on terms and condition as mentioned in Schedule A with effect from the Appointed Date.

e) The above realignment and restructuring of liabilities of the Company will benefit all the stakeholders in long run and create strong foundation for sustainable growth without infusion of funds from present stakeholders.

- 5. The Learned counsel for the Petitioner Company states that the Board of Director of the Petitioner Company have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the Company Scheme Petition.
- 6. The Learned counsel for the Petitioner Company further states that the Petitioner Company have complied with all the directions passed in the Company Scheme Application and that the Company Scheme Petition have been filed in consonance with the Orders passed in Company Scheme Application.
- 7. The Learned counsel appearing on behalf of the Petitioner Company states that the Petitioner Company have complied with all requirements as per directions of the Tribunal and they have filed necessary affidavits of compliance in the Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and rules made there under whichever are applicable. The said undertakings given by the Petitioner Company are accepted.
- 8. The Regional Director has filed his Report dated 24<sup>th</sup> August, 2017 stating therein that save and except the observations stated in para IV (a) to (d) of the report, it appears that Scheme is not prejudicial to the interest of shareholders and public. The Tribunal may take this report on record and consider the observation made in para IV (a) to (d) and pass such other order or orders as

deem fit in the facts and circumstances of the case. In paragraphs IV of the said Report, the Regional Director, has observed that:

1. *As per Definition and Share Capital Clause 1.4 of the Scheme "Appointed Date" means 1<sup>st</sup> December, 2016 or such other date as may be fixed by the Tribunal; In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1<sup>st</sup> December, 2016.*
2. *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. it appears that the company vide letter dated 22nd March 2017 has served a copy Company Scheme Application no 260 of 2017 along with relevant orders etc., further this Directorate has also issued a reminder 08.08.2017 to IT Department.*
3. *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
4. *In view of observation of ROC Mumbai mentioned at para No, 7*
  - 7(i) *above, It is submitted that the petitioner Company to furnish an undertaking to pay necessary fees and file necessary e-forms{SH-7} for increase in capital*
  - 7(ii) *above. It is submitted that the petitioner Company to furnish an undertaking that the implementation of the scheme does not result in violation of any of the provisions of the Companies Act, 2013.*
9. As far as the observations made in paragraph IV(a) of Regional Director Report is concerned, the Petitioner Company through its Learned Counsel undertakes



that in terms of provision of Section 232(6) of the Companies Act, 2013, the appointed date for the Scheme of Arrangement shall be 1<sup>st</sup> December,2016.

10. As far as the observations made in paragraph IV(b) & (c) of Regional Director Report is concerned, the Petitioner Company through its Learned Counsel undertakes to comply with all applicable provisions of the Income Tax Act,1961 and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.
11. As far as the observations made in paragraph IV(d) of Regional Director Report, the Petitioner Company through its Learned Counsel submit the response to each of the observations of the Registrar of Companies, Mumbai("ROC") as under :
  - i. With reference to the first observation of ROC the Petitioner Company through its Learned Counsel states that clause 3.7 and 9 of the Scheme fairly covers the observation of ROC, Mumbai regarding increase in authorised share capital. However the Petitioner Company through its Learned Counsel undertakes to file necessary e-forms (SH-7) and pay necessary filing fees for increase in authorised share capital of the Petitioner Company.
  - ii. With reference to the second and last observation of ROC. The Petitioner Company through its Learned Counsel undertakes that the implementation of the scheme will not result in violation of any of the provisions of the Companies Act, 2013.
12. The observations made by the Regional Director have been explained by Petitioner Companies in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Company are hereby accepted.
13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forwarded to oppose the Scheme of Arrangement.

14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.386 of 2017 filed by the Petitioner Company are made absolute in terms of prayer clause (a) to (d).
15. The Petitioner Company are further directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy within 30 days from the date of issuance of the order by the Registry
16. The Petitioner Company to pay costs of Rs 25,000/- to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the Order.
17. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai.

Sd/-

**V. Nallasenapathy, Member (T)**

Sd/-

**B.S.V.Prakash Kumar, Member (J)**