IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Through web-based video conferencing platform)

CA (CAA) No.53/BB/2022
U/s. 230 to 232 of the Companies Act, 2013
R/w Rule 3 of the Companies (CAA) Rules, 2016

IN THE MATTER OF:

M/s THERMO KING INDIA PRIVATE LIMITED
Registered office at: 8th Floor, Tower D,
IBC Knowledge Park No. 4/1, Bannerghatta Main Road
Karnataka - 570029

-Applicant Company No.1 /Transferor Company

AND

M/s TRANE TECHNOLOGIES INDIA PRIVATE LIMITED
Registered office at: 8th Floor, Tower D,
IBC Knowledge Park No. 4/1, Bannerghatta Main Road
Karnataka - 570029

-Applicant Company No.2 /Transferee Company

Order delivered on: 1st December, 2022

Coram: 1. Hon'ble Shri. Kishore Vemulapalli, Member (Judicial)
2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

Present:
For the Applicant Companies : Shri. Saji P. John

O R D E R
Per: Manoj Kumar Dubey, Member (Technical)

1. The present First Motion Application is filed by Thermo King India Private Limited (described in short as 'Applicant Company No.1/Transferor Company) and Trane Technologies India Private Limited (described in short as 'Applicant Company No.2/Transferee Company) under Sections 230 to 232 of the Companies Act, 2013 and Rule 3 of the Companies (CAA) Rules, 2016 seeking to dispense with convening the meeting of the Equity Shareholders, and Unsecured Creditors of the Transferor Company, and to dispense with convening the meeting of Equity shareholders and unsecured debenture

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holder of the Transferee Company and to convene the meeting of unsecured creditors of the Transferee Company for the purpose of considering the proposed scheme of Amalgamation. Since there are no secured creditors in the Applicant companies there is nothing to convene their meeting.

2. The Scheme of Amalgamation (for short the 'Scheme') of Thermo King India Private Limited and Trane Technologies India Private Limited has been placed on record at Pg 193 of Application.

3. The Transferor Company is a private limited company incorporated on 30.12.1997 under the Provisions of the Companies Act, 1956 before the registered office at Delhi. Further, with effect from 26.07.2001, the registered office was transferred to the State of Maharashtra under the jurisdiction of Mumbai. Thereafter, with effect from 03.04.2007 the registered office was transferred to the state of Karnataka under Registrar of Companies, Karnataka, bearing Corporate Identification Number (CIN) U51432KA2001PTC042359 having its current registered office at: 8th Floor, Tower D, IBC Knowledge Park No. 4/1, Bannerghatta Main Road, Karnataka - 570029. The copy of Certificate of Registration dated 03.04.2007 issued by the Registrar of Companies, Karnataka is filed in D.No.4685 dated 02.11.2022 and Memorandum and Articles of Association is found attached as Annexure A to the Application. As per the Memorandum of Association, the main objects of Transferor Company is as follows:

1. *"To establish and carry on in India or elsewhere the business of manufacturer, developers, makers, importers, exporters, agents, stockists, traders, brokers, distributors, suppliers, metallurgists, wholesalers, retailers, or otherwise deal in temperature control units including truck, trailer and seagoing container refrigeration and bus-air conditioning units, and construction equipment, utility vehicles powered by gasoline and/ or battery and door hardware, setting up training graduate engineers, providing as principals, agents contractors, or otherwise, technical know-how support services, consultancy services, training services and any other allied services.*
2. *To arrange, establish, encourage, promote, manage and organize marketing operations in India or abroad for sale of the products whether manufactured by the company or not"*

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4. The authorised share capital of the Transferor Company is Rs. 271,500 ,000/- divided into 27,150,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up capital of the Transferor Company is Rs. 271,500 ,000/- divided into 27,150,000 paid up equity shares of Rs. 10/- each.

5. The Transferee Company is a private limited company incorporated on 09.10.1995 under the provisions of the Companies Act, 1956 before the Registrar of Companies, Karnataka, bearing Corporate Identification Number (CIN) U24233KA1996PTC093425 and having its current registered office at 8th Floor, Tower D, IBC Knowledge Park No. 4 /1, Bannerghatta Main Road, Karnataka - 570029. The Transferee Company was originally incorporated in the name and style as "Service First Aircon Private Limited" and was subsequently changed to Ingersoll-Rand Climate Solutions Private Limited. On 24.06.2020, the name was changed to Trane Technologies India Private Limited. The copy of Certificate of Incorporation for change of name dated 24.06.2020 issued by Registrar of Companies, Karnataka and Memorandum and Articles of Association of Association of Transferee Company is found attached at Annexure C of the Application. As per the Memorandum of Association, the main object of the Transferee Company is as follows:

   1. *"To establish and carry on in India or elsewhere the business of manufacturing, assembling, developing, making, buying, selling, leasing, lease broking, letting on hire, hire purchase or on easy payment system, plant, machinery, importing, exporting, stocking, trading, broking, distributing, supplying servicing, installing, maintaining, repairing, acquiring, disposing, of and dealing in, as principals, agents, wholesalers, retailers or otherwise, air-conditioning equipment, air cooling equipment, heating, cooling, air-conditioning ventilation, temperature control units including, truck, trailer, and seagoing container refrigeration, bus air-conditioning units and other related equipment such as controls, setting up training centers for training graduate engineers, providing as principals, agents contractors, or otherwise, technical know-how support services, consultancy services, training services and any other allied services including to arrange, establish, encourage, promote, manage or organize marketing operations in India or abroad for sale of the products whether manufactured by the company or not in respect of these items.*

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2. *To undertake and execute, in India or any part of the world, projects for electrical installation, air-conditioning, refrigeration, heating, cooling, ventilation, humidification, sanitary, thermal and acoustic insulation work and to take up contracts in India or abroad, for design, manufacture supply including to arrange, establish, encourage, promote, manage or organize marketing for sale of the products whether manufactured by the company or not in respect of related to erection of all air-conditioning and air cooling devices and related contracting works thereto."*

6. The authorised share capital of the Transferee Company is Rs. 6,18,88,000/- divided into 61,88,800 equity shares of Rs. 10 each. The issued, subscribed and paid-up capital of the Transferor Company is Rs. 68,38,710/- divided into 6,83,871 paid up equity shares of Rs. 10/- each.

7. The preamble of the proposed reads as under:-

> *"This Scheme of Amalgamation ("Scheme") is presented Sections 230 and 232 and other applicable provisions of the Companies Act, 2013 and the rules and regulations made thereunder, for the merger of Thermo King India Private Limited(**"Transferor Company"**) with Trane Technologies India Private Limited **("Transferee Company")**".*

8. The Board of Directors of the Applicant Companies has unanimously approved the Scheme vide respective Board Resolutions dated 21.04.2022 subject to the sanctioning of the same by this Tribunal. The aforesaid Board Resolutions of the Applicant companies is at Annexure- E of the Application.

9. The Appointed date as stated in the Scheme, *"Appointed Date" means April 1, 2021, or such other date as NCLT, may direct.*

10. The instant Application has been filed with prayer for dispensing with the meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company and to dispense the meeting of Equity shareholders, Secured Creditors, Unsecured Debenture Holder and to convene the meeting of Unsecured Creditors of the Transferee Company, with the following requirements:

1. *Dispense with the meeting of the EQUITY SHAREHOLDERS of the Applicant Company No.1 & 2 under section 230 of the Companies Act, 2013, for the purpose of considering, if thought fit, approving with or without modification(s) the Scheme of Amalgamation of*

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Thermo King India Private Limited with Trane Technologies Private Limited and their respective shareholders.

2. *Dispense with the meeting of the SECURED CREDITORS of the Applicant Company No.1 & 2 under section 230 of the Companies Act, 2013 as there are no secured creditors.*
3. *Dispense with the meeting of the UNSECURED CREDITOTS of the Applicant Company No.1 under section 230 of the Companies Act, 2013, for the purpose of considering, if thought fit, approving with or without modification(s) the Scheme of Amalgamation of Thermo King India Private Limited with Trane Technologies Private Limited and their respective shareholders as there are no unsecured creditors.*
4. *Dispense with the meeting of the UNSECURED DEBENTURE HOLDER of the Applicant Company No.2 under section 230 of the Companies Act, 2013, for the purpose of considering, if thought fit, approving with or without modification(s) the Scheme of Amalgamation of Thermo King India Private Limited with Trane Technologies Private Limited and their respective shareholders.*
5. *Direct to convene the meeting of the* ***Unsecured Creditors*** *of the Applicant Company No.2 under section 230 of the Companies Act, 2013, for the purpose of considering, if thought fit, approving with or without modification(s) the Scheme of Amalgamation of Thermo King India Private Limited with Trane Technologies Private Limited and their respective shareholders.*
6. *Direct for publication of the notice calling the meetings in Bengaluru Editions of 'The Hindu', English Daily Newspaper and 'Udayavani' Kannada Daily Newspaper, respectively.*
7. *Pass such further and other orders as may be deemed necessary."*

11. The Learned Counsel for the Transferor Company submitted that as per Certificate dated 02.08.2022 (Annexure K of the Application) issued by M/s Ladha Singhal & Associates, Chartered Accountants, the number of equity shareholders of the Transferor Company as on 30.06.2022 is 2 (Two) and the 2 (Two) Equity Shareholders of the Transferor Company constituting 100% in value have given their consent to the proposed scheme of Amalgamation and for the dispensation of the meetings of the equity shareholders. The consent affidavits dated 08.07.2022 given by equity shareholders of the Transferor Company is attached as Annexure K to the Application.

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12. Further, as per C.A certificate dated 02.08.2022, issued by M/s Ladha Singhal & Associates, Chartered Accountants there are no Secured Creditors in the Transferor Company. The CA certificate dated 02.08.2022 is annexed as Annexure – M of the Application.

13. Moreover, as per C.A certificate dated 02.08.2022, issued by M/s Ladha Singhal & Associates, Chartered Accountants there are no Unsecured Creditors in the Transferor Company. The CA certificate dated 02.08.2022 is annexed as Annexure – O of the Application.

14. The Learned Counsel for the Transferee Company submitted that as per Certificate dated 02.08.2022 (Annexure L of the Application) issued by M/s Ladha Singhal & Associates, Chartered Accountants, the number of equity shareholders of the Transferee Company as on 30.06.2022 is 12 (Twelve). It is further submitted that the 11 (Eleven) Equity Shareholders the Transferee Company constituting 99.99% in value have given their consent to the proposed scheme of Amalgamation and for the dispensation of the meetings of the equity shareholders. The consent affidavits dated 12.07.2022 given by equity shareholders of the Transferee Company is attached as Annexure K to the Application.

15. Further, as per C.A certificate dated 02.08.2022, issued by M/s Ladha Singhal & Associates, Chartered Accountants there are no Secured Creditors in the Transferee Company. The CA certificate dated 02.08.2022 is attached as Annexure N to the Application.

16. Moreover, as per CA certificate dated 02.08.2022 (Annexure P to the application), issued by M/s Ladha Singhal & Associates, Chartered Accountants, there is 1 (One) unsecured debenture holder in the Transferee Company and the unsecured debenture holder of the transferee company has given their 100% consent to the proposed scheme of Amalgamation and for the dispensation of the meetings of the unsecured debenture holder. The Consent affidavit given by the unsecured creditor are attached as Annexure P to the Application.

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17. Further, as per CA certificate dated 02.08.2022 (Annexure Q to the application), issued by M/s Ladha Singhal & Associates, Chartered Accountants, there are 261 (Two Hundred and Sixty One) unsecured creditors in the Transferee Company for whom convening of meeting has been sought.

18. The Learned Counsel for the Applicant Companies submitted an affidavit stating that Scheme does not provide for any kind of arrangement with the creditors of Applicant Company No.1 and thereby corporate debt restructuring is not applicable to the Scheme.

19. It was further submitted that the Valuation report dated 15.02.2022 is attached as Annexure G to the Application.

20. The Learned Counsel for the Applicant Companies submits that the Certificates of the auditor has been filed stating that the Accounting Treatment contained in the Clause 13 of the Draft Scheme is in compliance with the applicable Accounting Standards under section 133 of the Act, and other generally accepted accounting principles. The aforesaid Certificate dated 18.02.2022 is attached as Annexure – R of the Application.

21. The Applicant Companies have filed a separate affidavit dated 05.09.2022 stating that are no Sectoral Regulators for the Applicant Companies; an affidavit dated 05.09.2022 stating that there are no pending legal proceedings against the Applicant Companies.

22. The Transferor and Transferee Company have filed their Audited financial statements as on 31st March, 2021 which are annexed as Annexure B & D of the Application. The Provisional Financial Statement as on 31.03.2022 of the Applicant Companies are attached as Annexure B1 & D2 of the Application.

23. The Rationale of Scheme as given in the preamble of the Scheme is as follows:

1. *"The Board of Directors of the Transferor and Transferee Companies have decided to merge TKIPL with the Transferee Company to have a more streamlined and efficient structure in India for the group.*
2. *With this objective in mind, it is proposed to merge TKIPL into TTIPL. It is envisaged that the said amalgamation shall also be in the larger interest of the shareholders, creditors and employees of the Transferee Company.*

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The proposed amalgamation shall have the following specific benefits:
a. Streamlined and efficient group structure in India;
b. Consolidation of group entities engaged in like businesses to enhance value to the shareholders; and
c. Avoidance of duplication of efforts and reduction in administrative and running costs, optimization of tax costs and efficient use of resources.

3. In view of the aforesaid, the Board of Directors of the Transferor Company and the Transferee Company have considered and proposed the merger of the entire undertaking of the Transferor Company with the Transferee Company. Accordingly, the Board of the Transferor Company and the Transferee Company have formulated this Scheme for the transfer and vesting of the entire Undertaking of the Transferor Company with and into the Transferee Company in accordance with Sections 230 and 232 and other applicable provisions of the Act.
It is reiterated that this Scheme is in the interest of the shareholders and creditors of the Transferor Company and the Transferee Company and they shall not be prejudiced by the Scheme.

24. Clause 7.1 of the Scheme states that, upon the scheme becoming effective, all staff, workmen and employees of the Transferor Company in service on the Effective Date shall be deemed to have become staff, workmen and employees of the Transferee Company, without any break or interruption in their service and on the terms and conditions of employment which are not less favourable than the terms of employment that were subsisting with reference to the Transferor Company as of the Effective Date.

25. On 27.10.2022, the Tribunal directed the Learned Counsel appearing for the Applicant companies to file Certificate of Incorporation in Bengaluru of Applicant Company No.1 and a memo with regard to date, time and venue of the meeting within one week. The said compliance is produced vide diary No 4685 dated 02.11.2022.

26. We have heard the learned counsel for the Applicant Companies and have perused the records and the supporting documents/papers filed along with the "Scheme" contemplated by the Applicant Companies with the assistance of learned counsel for the Applicant Companies.

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27. In view of the above, following directions are issued with respect to dispensation or calling and convening various meetings, as well as issuance of notices including by way of publication in newspaper:

(a) Since Two Equity Shareholders of Transferor Company, constituting 100% in value have given consent to the Scheme, the meeting of the Equity shareholders of the Transferor Company is dispensed with.

(b) Since there are no secured creditor in the Transferor company there is nothing to convene the meeting.

(c) Since there are no unsecured creditor in the Transferor company there is nothing to convene the meeting.

(d) Since Eleven Equity Shareholders of Transferee Company, constituting 99.99% in value have given consent to the Scheme, the meeting of the Equity Shareholders of the Transferee Company is dispensed with.

(e) Since there are no secured creditor in the Transferee company there is nothing to convene the meeting.

(f) Since one Unsecured Debenture Holder of the Transferee Company have given consent to the Scheme, the meeting of the unsecured Debenture Holder of the Transferee Company is dispensed with.

(g). Meeting of the unsecured creditors of the Transferee Company is to be convened on 23.01.2023 At 11 AM through Video Conferencing or Other Audio Visual Means (OAVM) as per the guidelines issued by MCA or physical meeting at 8th Floor, Tower D, IBC Knowledge Park No. 4/1, Bannerghatta Main Road, Karnataka - 570029 subject to the notice of the meeting being issued through post or electronic mode. The quorum of the meeting of the unsecured creditors, shall be 30% in total value either personally present or through proxy.

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(h). In case the required quorum as noted above for the meetings of the unsecured creditors of the Transferee Company is not present at the commencement of the meetings, the respective meetings shall be adjourned by 30 minutes, and thereafter, the persons present and voting shall be deemed to constitute the quorum. For the purpose of completing the quorum, the valid proxies and Authorized Representatives shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed through email or otherwise at the respective registered office of the Transferee Company. The Chairperson along with Scrutinizer shall ensure that the proxy register is properly maintained. The Scrutinizer is also duty bound to record all proceedings of the meeting conducted through Video Conference.

(i). **Shri. Karan Joseph,** Advocate having address at No: Prestige Sterling Square, Madras Bank road, Off Lavelle Road, Bengaluru 560001 Email mail@karanjoseph.com Mobile No. 9845211270 is appointed as the Chairperson for the above meeting to be called for unsecured creditors under this order. He shall be paid fee of **Rs.1,00,000/-** for his services as the Chairperson. **Shri. Shrinath Bhat, CS** having address at No. "S N Complex", 1st Floor, opp: Canara Bank, 50 ft Main road, Hanumanthnagar, Bangalore – 560019, Email shrinathbhatandco@gmail.com, Mobile No. 8971408308 is appointed as the Scrutinizer for the above meeting to be called for unsecured creditors under this order. Shall be paid fee of **Rs. 60,000/-** for his services as the Scrutinizer.

(j). It is further directed that individual notices of the said meeting shall be sent by the Transferee Company to the respective unsecured creditors through registered post or speed post or through courier or through electronic mode, 30 days in advance before the scheduled date of meeting, indicating the day, date, time and link to the meeting if meeting is conducted through Video Conference as aforesaid, together with a copy of the Scheme, copy of explanatory statement required to be sent under the Companies Act, 2013

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and the applicable Rules, along with the proxy forms and any other documents as may be prescribed under the Act shall also be duly sent with the notice.

(k). It is further directed that along with the notice Transferee Company shall also send statement explaining the effect of the Scheme on the shareholders and Creditors, key managerial personnel, promoters and non-promoter members etc., along with effect of the arrangement for amalgamation on any material interests of the Directors of the Company as provided under sub-section 3 of the Section 230 of the Act.

(l). That the Transferee Company shall publish with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date, time and link of the meeting to be conducted through video Conference as aforesaid, to be published in "Business Standard " (English) and "Kannada Prabha" (Kannada), both in Karnataka Edition. It is to be stated in the advertisement that the copies of "Scheme", the Explanatory Statement required to be published pursuant to Section 230 to 232 of the Act and the form of proxy shall be provided free of charge at the registered office of the Transferee Company. The Transferee Company shall also publish the notice on its respective website, if any.

(m). The Authorized Representative of the Transferee Company shall furnish affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least ten (10) days before the date of proposed meetings.

(n). Voting shall be allowed on the "Scheme" in person or by proxy or through electronic means as may be applicable to the Transferee Company under the Act or there under.

(o). The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA 4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 07

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(seven) days of the conclusion of the meetings. She would be fully assisted by the Authorized Representative/Company Secretary of the Transferee Company and the Scrutinizer, who will assist the Chairperson and Alternate Chairperson in preparing and finalizing the reports.

(p). The Transferee Company shall individually and in compliance of sub-section (5) of section 230 and Rule 8 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016 send notices in Form No. CAA 3 along with a copy of the Scheme, the Explanatory Statement and the disclosures mentioned in Rule 6 of the " Rules" to (i) the Central Government through the office of the Regional Director (South East Region); (ii) Concerned Registrar of Companies; (iii) Official Liquidator (iv) Jurisdictional Assessing Officer, Income Tax Department, Bangalore by mentioning their respective PAN Number; (v) Competition Commission of India (CCI) and other Sectoral Regulators/ Authorities, if any, stating that representations, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representation shall simultaneously be sent to the concerned companies, failing which, it shall be presumed that they have no objection to the proposed Scheme.

(q). The Transferee Company shall furnish copy of the Scheme free of charge within one day of any requisition for the "Scheme" made by any shareholder entitled to attend the aforesaid meetings.

(r). It shall be the responsibility of the Transferee Company to ensure that the notices are sent under the signature and supervision of the authorized representative of the Company on the basis of Board Resolutions.

(s). All the aforesaid directions are to be compiled with strictly in accordance with the applicable laws including forms and formats contained in the "Rules" as well as the provisions of the Companies Act, 2013, by the Transferee Company.

28. With the aforesaid directions, this First Motion Application stands disposed of. A copy of this order be supplied to the learned counsel for the Applicant

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Companies, who in turn shall supply copy of the same to the Chairperson and the Scrutinizer.

29. In view of the above, the First Motion Application bearing CA (CAA) No. 53/BB/2022 stands allowed, giving liberty to the Applicant Companies to file Second Motion Petition with the direction that the Applicant Companies shall make specific prayer for sending notice to the (1) Central Government, (2) Registrar of Companies, (3) Competition Commission of India, (4) Official Liquidator, (5) Jurisdictional Income Tax Authorities by disclosing the PAN numbers of the Applicant Companies in the title of the Second Motion Petition, and (6) Reserve Bank of India.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(KISHORE VEMULAPALLI)
MEMBER (JUDICIAL)