

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Through Physical Hearing/ VC Mode (Hybrid))

C.A. (CAA) No.44/BB/2023
U/ss 230 to 232 and other applicable
Provisions of the Companies Act, 2013
R/w the Companies (Compromises, Arrangements
and Amalgamations) Rules, 2016

IN THE MATTER OF:

Infineon Technologies India Pvt. Ltd.

Registered Office: No. 9th Floor,
Prestige Thirulakshmi,
No.11, Mahatma Gandhi Road,
Bangalore- 560 001. **...Applicant Company No.1 / Transferor Company**

Infineon Technologies Semiconductor India Pvt. Ltd.

Registered Office: No.65/2,
Bagmane Tech Park, Block 'C',
Bagmane Laurel, C.V. Raman Nagar
Bangalore- 560 093. **...Applicant Company No.2/Transferee Company**

Order delivered on: 24.04.2024

CORAM: 1. Hon'ble Shri K. Biswal, 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 has been filed by Infineon Technologies India Private Limited (for brevity, 'Applicant Company No.1/Transferor

Company’) and Infineon Technologies Semiconductor India Private Limited (for brevity, ‘Applicant Company No.2/Transferee Company’) on 11.12.2023 for amalgamation of the Applicant Companies under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (hereinafter referred to as the said Act) R/w the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, *inter alia*, seeking for dispensation of the meeting of the Equity Shareholders of Applicant Companies and direct to convene the meetings of Unsecured Creditors of the Applicant Companies. The Scheme of Amalgamation is placed on record at Annexure-F to the Application.

2. The Applicant Company No. 1, namely, **Infineon Technologies India Private Limited** was incorporated on 19.06.1997 under the provisions of the Companies Act, 1956 with Registrar of Companies, Karnataka bearing CIN:U73100KA1997PTC022413. The Applicant Company No.1 is engaged in the business to carry out research and development activities in the areas of electronic integrated circuits, etc. The Authorized Capital of the Applicant Company No.1 is Rs.2,50,00,000/- divided into 25,00,000 Equity Shares of Rs.10/- each and its Issued, Subscribed and Paid-up Capital is Rs.70,31,250/- divided into 7,03,125 Equity Shares of Rs.10/- each fully Paid-up.
3. The Applicant Company No.2, namely, **Infineon Technologies Semiconductor Private Limited** was incorporated on 12.05.1999 under the provisions of the Companies Act, 1956 with Registrar of Companies, Karnataka bearing CIN:U72200KA1999PTC025189. The Applicant Company No.2 is engaged in the business to carry on all or any of the business of designing, developing producing and marketing of software products etc. The Authorized Capital of the Applicant Company No.2 is Rs.10,00,00,000/- divided into 1,00,00,000 Equity Shares of Rs.10/- each and its Issued, Subscribed and Paid-up Capital is Rs.2,75,89,650/- divided into 27,58,965 Equity shares of Rs.10/- each fully Paid-up.

4. It is submitted that the rationale for Scheme of Amalgamation of the Transferor Company with the Transferee Company is, inter alia, as follows:
 - a. *Simplification of group structure by eliminating multiple and enabling focus on core competencies and unlocking of value;*
 - b. *Greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value;*
 - c. *Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, productivity improvements, improved procurement, usage of common resource pool like human resource, administration, finance, accounts, legal, technology and other related functions, leading to elimination of duplication and rationalization of administrative expenses.*
5. In the meeting held on 30.10.2023, the Board of Directors of the Applicant Company No.1 and Applicant Company No.2, had approved the Scheme. The Extracts of the Resolution of the said Board meeting are marked as **Annexure-E**. As per the Scheme, the 'Appointed Date' means the same date as Effective Date or such other time and date as the Tribunal may direct/fix. Further, 'Effective Date' or "Upon the Scheme becoming effective" or "On the Scheme becoming effective" means the last of the dates on which the certified true copies of the order of the Tribunal sanctioning the Scheme are filed with the Registrar of Companies, Karnataka by the Infineon Technologies Semiconductor India Pvt. Ltd. and Infineon Technologies India Pvt. Ltd. who are parties to this Scheme.
6. The instant Application has been filed seeking for the following reliefs:
 - a. Dispense with the meeting of the Equity Shareholders of the Applicant Company Nos.1 & 2;
 - b. As there are no Secured Creditors in Applicant Company No. 1 & 2, there is no scope for conducting the meeting of Secured Creditors of Applicant Company Nos. 1 & 2.

- c. Direct to convene the meeting of the Unsecured Creditors of the Applicant Company Nos.1 & 2.
7. The learned Counsel for the Applicant Company No.1 has submitted that as per the Certificate dated 06.12.2023 of Parimal Ram & Pattabhi, Chartered Accountants, there are 2 (Two) Equity Shareholders in the Applicant Company No.1 as on 30.11.2023. Both the Equity Shareholders of the Applicant Company No.1 have given their consents by way of Affidavits to the Scheme.
 8. It is submitted that as per the Certificate dated 06.12.2023 of Parimal Ram & Pattabhi, Chartered Accountants, there is “Nil” Secured Creditor in the Applicant Company No.1 as on 30.11.2023.
 9. It is also submitted that as per the Certificate dated 06.12.2023 Parimal Ram & Pattabhi, Chartered Accountants, there are 44 (Forty-Four) Unsecured Creditors in the Applicant Company No.1 as on 30.11.2023.
 - 10.As per the Certificate dated 06.12.2023 of Parimal Ram & Pattabhi, Chartered Accountants, there are 2 (Two) Equity Shareholders in the Applicant Company No.2 as on 30.11.2023. Both the Equity Shareholders of the Applicant Company No. 2 have given their consent by way of Affidavits to the Scheme.
 - 11.As per the Certificate dated 06.12.2023 of Parimal Ram & Pattabhi, Chartered Accountants, there are “Nil” Secured Creditors in the Applicant Company No.2 as on 30.11.2023.
 - 12.It is submitted that as per the Certificate dated 06.12.2023 of Parimal Ram & Pattabhi, Chartered Accountants, there are 108 (One Hundred and Eight) Unsecured Creditors in the Applicant Company No. 2 as on 30.11.2023.
 - 13.It is also submitted vide the Affidavits dated 08.12.2023 of the Authorized Representatives of the Applicant Companies that there are no investigation proceedings are pending against the Applicant Companies or its Directors under the Companies Act, 2013 and the Companies Act, 2013 or under any other law for the time being inforce.

14. It is further submitted vide the Affidavits dated 08.12.2023 of the Authorised Representatives of the Applicant Companies that the Companies are not regulated by any Sectorial Regulators.
15. It is also submitted that the Affidavits dated 08.12.2023 filed by the Authorized Representatives of the Applicant Companies stated that the Scheme does not envisage for Corporate Debt Restructuring or Capital Reduction and the Scheme does provide for any kind of any arrangement with the Creditors of the Applicant Companies under the Scheme and thereby CDR is not applicable to the Scheme. The Scheme does not provides for Reduction of Share Capital of Transferor and Transferee Company.
16. It is submitted that the certificate of the statutory auditors has been filed certifying that the proposed accounting treatment as specified in Clause 11 of the Proposed Scheme is in conformity with Ind AS 103 'Business Combinations' i.e. the applicable Accounting Standards prescribed under Section 133 of the Act and other Generally Accepted Accounting Principles in India.
17. The Applicant Companies have filed Audited Financial Statements for the year ending on 31.03.2023 marked as **Annexure- B1** and **D1** to the Application respectively. The Applicant Companies have also filed Unaudited Financial Statements as on 31.10.2023 marked as **Annexures - B2** and **D2** to the Application respectively.
18. Clause 7.1 of the Scheme states that on the Scheme becoming effective, all staffs, workmen and employees of Transferor Company in service on the Effective Date shall be deemed to have become staffs, workmen and employees of Transferee Company with effect from the Effective Date, without any break or interruption in their service and on the basis of continuity of service, and the terms and conditions of their employment with Transferee Company (i.e. cost to company basis, in monetary terms) shall not be less favourable than those applicable to them with reference to their employment with Transferor Company on the Effective Date.

19. We have heard the Ld. Counsel for the Applicant Companies and have perused the records. In view of the aforesaid discussion, the following directions are issued:

- a. Since Equity Shareholders of the Applicant Company Nos.1 & 2 constituting 100% of the total value as on 30.11.2023 have given their consents to the "Scheme" and also for dispensing their meetings, the meeting of the Equity Shareholders of the Applicant Company Nos.1 & 2 are hereby dispensed with;
- a) Since there are no Secured Creditors in the Applicant Company Nos.1 & 2 as on 30.11.2023, there is nothing to convene their meeting;
- b) Meeting of the Unsecured Creditors of the Transferor Company is to be convened on **20.06.2024** at **11:00 A.M.** through Video Conferencing or Other Audio Visual Means (OAVM) as per the guidelines issued by MCA or physically at the registered office of the Company, 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 40% in total value either personally present or by proxy.
- c) In case the required quorum as noted above for the meetings of the Unsecured Creditors of the Transferor 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 Transferor Company.

- d) Meeting of the Unsecured Creditors of the Transferee Company is to be convened on **20.06.2024** at **12:00 P.M.** through Video Conferencing or Other Audio Visual Means (OAVM) as per the guidelines issued by MCA or physically at the registered office of the Company, 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 40% in total value either personally present or by proxy.
- e) 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.
- f) Shri Aakash Sherwal, Advocate having address at 62/1 Palace Road, Vasanth Nagar, Bengaluru-560052 Email ID- aakashsherwal@gmail.com Mobile No.9999727800 is appointed as the Chairperson for the above meeting to be called for Unsecured Creditors of the Transferor and Transferee Company under this order. He shall be paid fee of Rs.1,25,000/- for his services as the Chairperson.
- g) Shri Pramod S.M., PCS having address at #4272, 2nd Floor, 02nd Stage, Vivekananda Park Road, Bengaluru Email ID: pramod@bmpandco.com. Mobile No.9845657072 is appointed as the Scrutinizer for the above meeting to be called for Unsecured

Creditors of the Transferor and Transferee Company under this order. He shall be paid fee of Rs.75,000/- for his services as the Scrutinizer.

- h) It is further directed that individual notices of the said meeting shall be sent by the Applicant Companies to the creditors through registered post or speed post or through courier, 30 days in advance before the scheduled date of meeting, indicating the day, date and time as aforesaid, together with a copy of the Scheme, copy of explanatory statement required to be sent under the Companies Act, 2013 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;
- i) It is further directed that along with the notice Applicant Companies shall also send, statement explaining the effect of the Scheme on the Creditors, key managerial personnel, promoters and non-promoter members etc., along with effect of the arrangement on any material interests of the Directors of the Company as provided under subsection 3 of the Section 230 of the Act;
- j) That the Applicant Companies shall publish with a gap of at least 30 clear days before the aforesaid meeting, indicating the day, date and time of the meeting to be conducted through video conference/physical mode as aforesaid, to be published in the “*Financial Express*” and “*Kannada Prabha*” both in English and Kannada 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 Applicant Companies;

- k) The Authorized Representative of the Applicant Companies shall furnish affidavit of service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least ten (10) days before the date of proposed meetings;
- l) 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 and the Rules framed there under;
- m) 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, Arrangement and Amalgamation) Rules, 2016 within 07 (seven) days of the conclusion of the meeting;
- n) The Applicant Companies 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) Reserve Bank of India; (iv) Official Liquidator; (v) Principal Chief Commissioner of Income Tax, Karnataka & Goa, being the Nodal Officer (iv) the Jurisdictional Deputy/Assistant Commissioner/Assessing Authority 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 company, failing which it shall be presumed that they have no objection to the proposed Scheme;

o) 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 Applicant Company.

20. With the aforesaid directions, this First Motion Application bearing C.A. (CAA)No.44/BB/2023 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 (i) the Central Government through the office of the Regional Director (South East Region); (ii) Concerned Registrar of Companies; (iii) Official Liquidator; (iv) Reserve Bank of India; (v) Principal Chief Commissioner of Income Tax, Karnataka & Goa, being the Nodal Officer and (vi) the Jurisdictional Deputy/Assistant Commissioner/Assessing Authority by disclosing the PAN numbers of the Applicant Companies in the title of the Second Motion Petition.

Sd/-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

Sd/-
(K. BISWAL)
MEMBER (JUDICIAL)