

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH AT MUMBAI
COMPANY SCHEME PETITION NO.298 OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 168 OF 2017
Forbes Marshall Steam Systems Private Limitedthe Petitioner/Transferor Company.
AND
COMPANY SCHEME PETITION NO.312 OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 167 OF 2017
Forbes Marshall Private Limited the Petitioner/Transferee Company.

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 other relevant provisions of the
Companies Act,2013.

AND

In the matter of the Scheme of Arrangement between:
Forbes Marshall Steam Systems Private Limited.

AND

Forbes Marshall Private Limited.

AND

their respective Shareholders.

Called for Hearing

Mr. Nitin Gutka, Chartered Accountants for the Petitioner in both the Petition.

Mr. Ramesh Gholap ,Assistant Director in the office of Regional Director in both the
Petitions.

Mr. Santosh Dalvi, Representative of Official Liquidator present in Company Scheme
Petition No. 298 of 2017.

Coram: B. S. V. Prakash Kumar Member (J)

and V. Nallasenapathy Member (T)

Date : 22nd June,2017

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 and other relevant provisions of the
Companies Act,2013 to a Scheme of Arrangement between Forbes Marshall
Steam Systems Private Limited, the Transferor Company and Forbes Marshall

Private Limited, the Transferee Company and their respective shareholders (both the Companies hereinafter referred to as “the Petitioner Companies”) for Amalgamation of Forbes Marshall Steam Systems Private Limited with Forbes Marshall Private Limited and reorganisation and reduction by consolidation of Share Capital of Forbes Marshall Private Limited.

3. The Learned counsel for the Petitioner Companies states that the Transferor Company is presently engaged in the business of manufacturing and selling of Steam Engineering goods. The Transferee Company mainly carries on the business of manufacturing, selling, services and leader in process efficiency and energy conservation for processing industry, with over seven decades of experience in steam engineering and control instrumentation solutions. Its unique complementary expertise enables to engineer customized systems that improve manufacturing processes, conserve energy and are environmentally sustainable.
4. The Learned counsel for the Petitioner Companies states that the circumstances that have necessitated or benefits of Scheme of Arrangement are as follows:-
 - a) The Transferee Company along with its promoters holds 99.63% equity shares of the Transferor Company. Therefore, the operations and management of the Transferor Company is in hands of the Transferee Company.
 - b) Integration of group operations.
 - c) The Arrangement would result in optimum utilisation of management and other resources and would reduce the administrative and compliance costs and other overheads which are presently being multiplied because of separate entities.
 - d) The Transferor Company have financial and other resources which will be easily available to the Transferee Company post-merger for its core business expansion and in the process will provide significant impetus to the growth of the Transferee Company business and reduce risks.

- e) Enhance values of all stake holders in the long run.
 - f) Consolidation of the Share Capital of Forbes Marshall Private Limited for easier administrative management and reducing cost.
5. The Learned counsel for the Petitioner Companies states that the Board of Director of the Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in the respective Company Scheme Application and that the respective Company Scheme Petitions have been filed in consonance with the Orders passed in respective Company Scheme Application.
7. The Learned counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies 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 Companies 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 Companies are accepted.
8. The Regional Director has filed his Report dated 12th June, 2017 stating therein that save and except the observations stated in para IV (a) to (f) 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 (f) 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 :
- a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in*

connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.

- b) Regarding Clause 12 of the Scheme it is submitted the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be credited to appropriate Reserves and Surplus of the Transferee Company.*
- c) As per Clause 2.5 Definitions of the scheme "The Appointed Date" means 1st April, 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 1st April, 2016.*
- d) 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 27th March, 2017 has served a copy Company Scheme Application 167 & 168/2017 along with relevant orders etc., further this Directorate has also issued a reminder 05.06.2017, to I.T Department.*
- e) 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/Tribunal 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.*
- f) That in view of observations made by the Registrar of Companies, Pune, Hon 'ble Tribunal may kindly direct the Company to submit certificate from the auditor of the Company in terms of proviso to Section 232(3) of the Companies Act, 2013.*

9. As far as the observations made in paragraph IV(a) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel undertakes that in addition to compliance of Accounting Standards-14 (Ind AS 103), the Transferee Company shall also pass such accounting entries which are necessary in connection with the Scheme of Arrangement to comply with any other applicable Accounting Standards such AS-5 (Ind AS 8).
10. As far as the observations made in paragraph IV (b) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel undertakes that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be credited to appropriate Reserves and Surplus Account of the Transferee Company.
11. As far as the observations made in paragraph IV(c) of Regional Director Report is concerned, the Petitioner Companies 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 1stApril,2016.
12. As far as the observations made in paragraph IV(d) & (e) of Regional Director Report is concerned, the Petitioner Companies 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.
13. As far as the observations made in paragraph IV (f) of Regional Director Report is concerned, the Learned counsel states that the Petitioner Companies have filed certificate stating that accounting treatment proposed in the scheme of arrangement is in compliance with Accounting Standards prescribed under section 133 of the Companies Act, 2013 issued by the Transferee Company's Auditor with this bench in Company Scheme Petitions and also with Regional Director, Ministry of Corporate affairs.

14. The observations made by the Regional Director have been explained by Petitioner Companies in paragraphs 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
15. The Official Liquidator has filed his report dated 24thMarch,2017 in the Company Scheme Petition No 298 of 2017 stating that the affairs of the Transferor Company have been conducted in proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.
16. 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 forward to oppose the Scheme of Arrangement.
17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.298 of 2017 filed by the Transferor Company are made absolute in terms of prayer clause (a) to (c) and Company Scheme Petition No.312 of 2017 filed by the Transferee Company are made absolute in terms of prayer clauses (a) to (d).
18. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the receipt of this order.
19. The Petitioner Companies 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
20. The Petitioner Companies to pay costs of Rs 25,000/- each to the Regional Director, Western Region, Mumbai in Company Scheme Petition No.298 of 2017 and Company Scheme Petition No.312 of 2017 and costs of Rs. 25,000/-

to Official Liquidator, High Court, Bombay in Company Scheme Petition No. 298 of 2017. Costs to be paid within four weeks from the date of the Order.

21. 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.
22. Any person interested shall be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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