

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COMPANY SCHEME APPLICATION NO. 167 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 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.

Forbes Marshall Private Limited)
a Company incorporated)
Under the Companies Act, 1956 and)
having its Registered Office at)
A-34/35, MIDC, Pimpri, Pune -411 018)....Applicant Company

Called for Notice of Admission:

Mr. Nitin Gutka, Chartered Accountants, for the Applicant
Company.

Coram: SH. B.S.V. Prakash Kumar Hon'ble Member (Judicial) and
SH. V. Nallasenapathy Hon'ble Member (Technical)

Date: 23rd February, 2017

MINUTES OF ORDER

UPON Application filed by the Applicant Company above named by
Company Notice of Admission **AND UPON HEARING** Mr. Nitin
Gutka., Chartered Accountants for the Applicant Company stating
that this is Scheme of Arrangement between Forbes Marshall

Steam Systems Private Limited and Forbes Marshall Private Limited and their respective shareholders for Amalgamation of Forbes Marshall Steam Systems Private Limited with Forbes Marshall Private Limited and consolidation of Share Capital of Forbes Marshall Private Limited and further stating that the arrangement shall result into consolidation of activities of group into single entity. The Transferee Company along with its promoters holds 99.63% equity shares of the Transferor Company and the operations and management of the Transferor Company is in hands of the Transferee Company. 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. 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 and enhance value of all stakeholders in the long run and consolidation of the Share Capital of Forbes Marshall Private Limited, the Transferee Company is for easier administrative management and reducing cost **AND UPON READING** the Company Application dated 11th day of January, 2017 of Mr. Dharmesh Thaker, Company Secretary of the Applicant Company verified by an Affidavit and the annexures referred to, **IT IS ORDERED THAT:**

1. A meeting of the Equity Shareholders of the Applicant Company, be convened and held at Registered Office of the Applicant Company situated at A-34/35, MIDC, Pimpri, Pune -411 018, on

Wednesday, 29th March, 2017 at 11.30 A.M for the purpose of considering, and if thought fit, approving, with or without modification(s), the proposed 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.

2. A meeting of the 15% Redeemable Cumulative Preference Shareholders of the Applicant Company, be convened and held at Registered Office of the Applicant Company situated at A-34/35, MIDC, Pimpri, Pune -411 018, on Wednesday, 29th March, 2017 at 12.00 noon for the purpose of considering, and if thought fit, approving, with or without modification(s), the proposed 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.
3. A meeting of the 13% Redeemable Cumulative Preference Shareholders of the Applicant Company, be convened and held at Registered Office of the Applicant Company situated at A-34/35, MIDC, Pimpri, Pune -411 018 on Wednesday, 29th March, 2017 at 12.30 P.M for the purpose of considering, and if thought fit, approving, with or without modification(s), the proposed 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.
4. A meeting of the 8% Redeemable Cumulative Preference Shareholders of the Applicant Company, be convened and held at

Registered Office of the Applicant Company situated at A-34/35, MIDC, Pimpri, Pune -411 018, on Wednesday, 29th March, 2017 at 1.00 P.M for the purpose of considering, and if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement between Forbes Marshall Steam Systems Private Limited, the Transferor Company and Forbes Marshall Private Limited, the Transferee and their respective shareholders.

5. At least one month before the date fixed for the meetings of Equity Shareholders, 15% Redeemable Cumulative Preference Shareholders, 13% Redeemable Cumulative Preference Shareholders and 8% Redeemable Cumulative Preference Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meetings at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by Registered Post or by courier or by speed post or by hand delivery to each of the Equity Shareholders, 15% Redeemable Cumulative Preference Shareholders, 13% Redeemable Cumulative Preference Shareholders and 8% Redeemable Cumulative Preference Shareholders of the Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the aforesaid shareholders as per the records of the Applicant Company.

6. At least not less than thirty days before the Meeting of the Equity Shareholders, 15% Redeemable Cumulative Preference Shareholders, 13% Redeemable Cumulative Preference

Shareholders and 8% Redeemable Cumulative Preference Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Arrangement and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid shall be published once each in two local newspapers, viz "The Economic Times" in English Language and translation thereof in "Maharashtra Times" in Marathi Language, both having circulation in Pune.

7. The Applicant Company undertakes to:

- i. issue Notice convening meeting of the Equity Shareholders, 15% Redeemable Cumulative Preference Shareholders, 13% Redeemable Cumulative Preference Shareholders and 8% Redeemable Cumulative Preference Shareholders, as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- ii. issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
- iii. issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014.
- iv. Advertise the notice convening meeting as per Form No. CAA.2 (Rule 7) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

The undertaking is accepted.

8. Mr. Mateesh Rai, Director of the Applicant Company, failing whom Mr. Jehangir Ardeshir, Director of the Applicant Company, failing whom Mr. Kiran Vohra, Director of the Company are appointed as the Chairperson for the meetings of the Equity Shareholders, 15% Redeemable Cumulative Preference Shareholders, 13%

Redeemable Cumulative Preference Shareholders and 8% Redeemable Cumulative Preference Shareholders. The Scrutinizer for the meetings shall be Mr. Manoj Soni, Practicing Company Secretary (Membership No. F6434).

9. The Chairperson appointed for the aforesaid Meetings to issue the advertisement and send out notices of the Meetings referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
10. The quorum for the aforesaid meetings of the Equity Shareholders, 15% Redeemable Cumulative Preference Shareholders, 13% Redeemable Cumulative Preference Shareholders and 8% Redeemable Cumulative Preference Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
11. The voting by proxy or authorised representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meetings, is filed with the Applicant Company at its Registered Office situated at A-34/35, MIDC, Pimpri, Pune -411 018, not later than, 48 hours before the aforesaid meetings as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
12. The value and number of the shares of each Equity Shareholders, 15% Redeemable Cumulative Preference Shareholders, 13%

Redeemable Cumulative Preference Shareholders and 8% Redeemable Cumulative Preference Shareholders shall be in accordance with the books/ register of the Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.

13. The Chairperson to file an affidavit not less than seven days before the date fixed for the holding of the meetings and do report to Tribunal that the direction regarding the issue of the notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
14. The Chairperson to report to this Tribunal, the result of the aforesaid meetings within three days of the conclusion of the meetings, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
15. The Counsel for the Applicant submits that since the scheme is an arrangement between the Transferor Company and the Applicant Company and their respective shareholders only a meetings of Equity Shareholders, 15% Redeemable Cumulative Preference Shareholders, 13% Redeemable Cumulative Preference Shareholders and 8% Redeemable Cumulative Preference Shareholders are proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. This bench hereby directs the Applicant Company to issue notice to its Secured Creditors as required under section 230 (3) of the

Companies Act , 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

16. The Counsel for the Applicant submits that since the scheme is an arrangement between the Applicant Company and their respective shareholders only a meetings of the Equity Shareholders, 15% Redeemable Cumulative Preference Shareholders, 13% Redeemable Cumulative Preference Shareholders and 8% Redeemable Cumulative Preference Shareholders are proposed to be held in accordance with the provisions of Section 230 (1) (b) of the Companies Act, 2013. This bench hereby directs the Applicant Company to issue notice to its Unsecured creditors having balance of Rs. 1,00,000 and above representing 98.14% of total value of unsecured creditors as required under section 230 (3) of the Companies Act , 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

17. The Applicant Company is directed to serve the notices along with the copy of the scheme upon :- (i) concerned Income tax Authority within whose jurisdiction the Applicant Company's assessment are made, (ii) the Central Government through the office of Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, Maharashtra, (iii) Concerned Registrar of Companies, pursuant to Section 230 (5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the

Tribunal from the aforesaid authorities within 30 days from the date of receipt of the notice it will be presumed that the aforesaid authorities has no representations to make on the proposed Scheme of Arrangement as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Applicant Company to file affidavit of service in the Registry proving dispatch of notices upon Secured and Unsecured Creditors and notices to Regulatory authorities as stated in clause 17 above.

Sd/-

B.S.V. Prakash Kumar Member (Judicial)

Sd/-

V. Nallasenapathy Member (Technical)