

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH-V**

C.P.(CAA)/303/MB-V/2023

Connected with

C.A.(CAA)/196/MB-V/2023

*In the matter of*  
Companies Act, 2013

AND

*In the matter of*  
Section 230-232 of the Companies Act,  
2013 and other applicable provisions of  
the Companies Act, 2013 read with the  
Companies (Compromises, Arrangements  
and Amalgamations) Rules, 2016;

*In the matter of*  
Scheme of Arrangement between  
FORBES & COMPANY LIMITED, the  
Demerged Company and FORBES  
PRECISION TOOLS AND MACHINE  
PARTS LIMITED, the Resulting Company  
and their respective shareholders.

FORBES & COMPANY LIMITED, a )  
company incorporated under the )  
Companies Act, 1913 having its )  
registered office at Forbes' Building, )  
Charanjit Rai Marg, Fort, Mumbai 400 )

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001. ) ...Petitioner Company No.1  
[CIN: L17110MH1919PLC000628]  
FORBES PRECISION TOOLS AND )

MACHINE PARTS LIMITED, a company )  
incorporated under the Companies )  
Act, 2013 having its registered office at )  
Forbes Building, Charanjit Rai Marg, )  
Fort, Mumbai 400 001. ) ...Petitioner Company No.2  
[CIN: U29256MH2022PLC389649.]

Order delivered on: 09.02.2024

Coram:

Ms. Reeta Kohli Member (Judicial)

Ms. Madhu Sinha: Member (Technical)

Appearances:

For the Petitioners: Mr Ahmed M Chunawala

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ORDER

***Per:Madhu Sinha, Member (Technical)***

1. The Bench is conveyed by Physical hearing today.
2. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.
3. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Arrangement between FORBES & COMPANY LIMITED, the Demerged Company and FORBES PRECISION TOOLS AND MACHINE PARTS LIMITED, the Resulting Company and their respective shareholders.
4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 26<sup>th</sup> September, 2022 which are annexed to the respective Company Scheme Petitions.
5. The Learned Counsel appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order

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passed in the Company Scheme Application No. 196 of 2023 of the Hon'ble Tribunal.

6. The Learned Counsel appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.
7. The Learned Counsel for the Petitioner Companies states that the First Petitioner Company is engaged in the business of providing engineering services, which primarily includes products such as threading tools and carbide tools and it is also engaged in Industrial Automation, Coding, Medical Devices, Parts and Applications and Ventilator business, Real Estate Business, and Investment Business into Subsidiaries, Joint Ventures and Associates, the Second Petitioner Company is incorporated to carry on the business of manufacturers, importers, exporters, buyers, sellers, traders, dealers, distributors, service providers of engineering and electrical products and services including taps, carbon and/or steel taps, drills, rotary burrs, tools, threading tools, grinding tools, measuring tools, hand tools, precision tools, tools of any kind, jigs, fixtures, dies, spare parts, accessories, filtering materials, designs, patterns, plants, apparatus, equipment, machinery, machine parts and to carry on such other

activities as may be incidental or conducive or advantageously carried on with any of the above activities.

**8. Consideration:**

The Learned Counsel for the Petitioner Companies submits that upon coming into effect of the Scheme and in consideration for Demerger of Demerged Undertaking of the Demerged Company into the Resulting Company, the Resulting Company shall, without any further application or deed, issue and allot equity shares of face value INR 10/- each, credited as fully paid up, to all the equity shareholders of the Demerged Company whose names appear in the register of members of the Demerged Company as on the Record Date or to their respective heirs, executors, administrators or other legal representatives or the successors-in-title, as the case may be, in the following proportion:

*4 (Four) fully paid up equity shares of INR 10/-each of the Resulting Company shall be issued and allotted to the equity shareholders of the Demerged Company for every 1(One) fully paid up equity shares of INR 10/- each held by them in the Demerged Company as on the Record Date*

9. The rationale for the Scheme of Arrangement is as under:

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Petitioner Company No. 1 and Petitioner Company No. 2 are under the same management. The management is of the opinion that the proposed Scheme is likely to result in the following benefits:

Forbes & Company Limited, a company listed on the BSE Limited, is engaged in the business of.

- a. Precision Tools business.
- b. Industrial Automation, Coding, Medical Devices, Parts and Applications and Ventilator business;
- c. Real Estate Business, and
- d. Investment into Subsidiaries, Joint Ventures and Associates.

Forbes Precision Tools and Machine Parts Limited, a wholly owned subsidiary of Forbes & Company Limited is incorporated on 30<sup>th</sup> August 2022 to carry on the business of manufacturers, importers, exporters, buyers, sellers, traders, dealers, distributors, service providers of engineering and electrical products and services including taps, carbon and/or steel taps, drills, rotary burrs, tools, threading tools, grinding tools, measuring tools, hand tools, precision tools, tools of any kind, jigs, fixtures, dies, spare parts, accessories, filtering materials, designs, patterns, plants, apparatus, equipment, machinery, machine parts and to carry on such other activities as may be incidental or conducive or advantageously carried on with any of the above activities.

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The nature of risk, competition, challenges, opportunities and business methods for Precision Tools business is separate and distinct from the remaining business carried out by the Demerged Company.

Each of the varied businesses carried out by the Demerged Company have significant potential for growth and profitability and can attract different set of investors, strategic partners, lenders, etc. Therefore, as these businesses approach their next phase of growth, it would be strategically apt to segregate the Precision Tools business from the remaining business.

The segregation shall enable them to move forward independently, with greater focus and specialization, building on their respective capabilities and their strong brand presence. It will also help to channelize resources required for all the businesses to focus on the growing businesses and attracting right talent and providing enhanced growth opportunities to existing talent in line with a sharper strategic focus on each business segment under separate entity.

The Scheme will also enable the Demerged Company and the Resulting Company to focus and enhance its respective businesses by streamlining operations and its management structure ensuring better and more efficient management control.

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Bifurcation of these businesses will enable unlocking value of its verticals thereby paving way for focused growth with a view to create significant stakeholder value and at the same time allow investors to allocate their portfolio into separate entities, focused on the distinct entities. Further, it will enable independent and distinct capital allocation approach and balance sheet management based on the distinct needs of each business.

Thus, the demerger pursuant to this Scheme is expected, inter-alia, to result in the following benefits:

- i. Create a sector focused Company;
- ii. Unlock the value for the shareholders of the Demerged Company by listing of the shares of the Resulting Company;
- iii. Allowing managements of each, Demerged Company and the Resulting Company, to pursue independent growth strategies;
- iv. Allow in creating the ability to achieve valuation based on respective risk-return profile and cash flows, attracting the right investors and thus enhancing flexibility in accessing capital;
- v. Independent collaboration and expansion

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10. The Regional Director has filed his Report dated 9<sup>th</sup> January 2024 inter-alia making the following observations in paragraphs 2 (a) to (n) which are reproduced hereunder:

<b>Par a</b>	<b>Observation by the Regional Director</b>	<b>Undertaking of the Petitioner Company/Rejoinder</b>
2(a)	<p>That on examination of the report of the Registrar of Companies, Mumbai dated 24.11.2023 for Petitioner Companies falls within the jurisdiction of ROC, Mumbai (Copy enclosed as Annexure A-1). It is submitted that no representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2023.</p> <p>i. That the ROC Mumbai in his report dated 24.11.2023 stated</p>	<p>So far as the observation in paragraph 2(a)(i) of the Report of the Regional Director is</p>

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	<p>that No Inquiry, Inspection, Investigation Prosecutions, Technical Scrutiny, Complaints under CA, 2013 have been pending against the Petitioner Companies.</p> <p>ii. Further ROC has mentioned as follows:</p> <p>a. Demerged Company and Resulting Company has not filed GNL-1 till date.</p> <p>b. Demerged Company and Resulting Company has not</p>	<p>concerned, the Petitioner Companies submits that it is the facts of the case.</p> <p>So far as the observation in paragraph 2 (a)(ii)(a) of the Report of the Regional Director is concerned, the Petitioner Companies have filed GNL-1 vide SRN No. F899806061 dated 09<sup>th</sup> day of January, 2024 for the Petitioner Company No. 1 and SRN No. F89807143 dated 9<sup>th</sup> day of January, 2024 for the Petitioner Company No. 2.</p> <p>So far as the observation in paragraph 2 (a)(ii)(b) of the</p>
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	<p>filed MGT-14 till date.</p> <p>c. Interest of Creditors to be protected.</p> <p>d. NOC from RERA to be obtained.</p>	<p>Report of the Regional Director is concerned, the Petitioner Companies have filed MGT-14 vide SRN No. F31611221 dated 20<sup>th</sup> day of October, 2023 for the Petitioner Company No. 1 and SRN No. AA6114488 dated 9<sup>th</sup> day of November, 2023 for the Petitioner Company No. 2.</p> <p>So far as the observation in paragraph 2 (a)(ii)(c) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the interest of Creditors will be protected.</p> <p>So far as the observation in paragraph 2(a)(ii)(d) of the Report of the Regional Director is concerned, the Petitioner Companies submits that NOC from RERA is not applicable. The Petitioner Company No. 1</p>
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		is transferring Precision Tools business of the Demerged Company and the remaining businesses will remain intact in the Demerged Company / Petitioner Company no. 1.
2(b)	In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the transferee company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS 5 or IND AS-8 etc.	So far as the observation in paragraph 2 (b) of the Report of the Regional Director is concerned, the Petitioner Companies undertakes that in addition to compliance of Ind AS -103 for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 or Ind AS-8 as applicable.
2(c)	The Hon'ble Tribunal may kindly direct the Petitioner Companies to	So far as the observation in paragraph 2 (c) of the Report of

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	<p>file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.</p>	<p>the Regional Director is concerned, the Petitioner Companies undertake that the Scheme enclosed to Company Application &amp; Company Petition, are one and same and there are no discrepancy / any change / changes are made.</p>
<p>2(d)</p>	<p>The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of authorities shall be such binding on the petitioner companies concerned.</p>	<p>So far as the observation in paragraph 2 (d) of the Report of the Regional Director is concerned, the Petitioner Company submits that the Petitioner Companies have served notices under the provisions of section 230(5) of the Companies Act, to all the concerned authorities as directed by the Hon'ble Tribunal which are likely to be affected by the Scheme. Further, the Transferee Company submits that the approval of the Scheme by the</p>

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		Hon'ble Tribunal would not deter such authorities to deal with any of the issues arising after giving effect to the Scheme and the decision of such authorities would be binding on the Petitioner Companies.
2(e)	The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the Act and the Minutes, thereof are duly placed before the Tribunal	So far as the observation in paragraph 2 (e) of the Report of the Regional Director is concerned, the Petitioner Company submits that the meeting of the Equity Shareholders of the Petitioner Company No. 1 was called for and was passed by the requisite majority and that so far as the Petitioner Company No. 2 is concerned the meeting was dispensed with in view of the consent given by the Equity Shareholders.

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2(f)	It is submitted that the Petitioner/Demerged Company and Resulting Company be directed to place on the record of this Tribunal the list of assets to be demerged with complete details of its assets and valuation	So far as the observation in paragraph 2 (f) of the Report of the Regional Director is concerned, the Petitioner Company submits that they given the details of assets and Liabilities to RD dated 24 <sup>th</sup> November, 2023.
2(g)	It is submitted that the Petitioner/Demerged Company and Resulting Company has stated that the scheme is in compliance of Section 2(19AA), in this regard, petitioner company may be directed to place on record that as to how this scheme is in compliance of Section 2(19AA) of the Income Tax Act, 1961;	So far as the observation in paragraph 2 (g) of the Report of the Regional Director is concerned, the Petitioner Companies submits that they will Comply with the provisions of Income Tax Act, 1961 and their Rules thereunder.
2(h) )	As per Definition of the Scheme, <b>“Appointed Date”</b> means 1 <sup>st</sup> April 2023 or such other date as may be	So far as the observation in paragraph 2 (h) of the Report of the Regional Director is concerned, the Petitioner

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<p>fixed or approved by National Company Law Tribunal, Mumbai Bench.</p> <p><b>“Effective Date”</b> means the date on which the certified copy of the order sanctioning this Scheme, passed by the National Company Law Tribunal at Mumbai, is filed with the Registrar of Companies, Mumbai by the Demerged Company and the Resulting Company.</p> <p><b>“Record Date”</b> means the date fixed by the Board of Directors or a committee thereof of the Resulting Company for the purpose of issue of shares of the Resulting Company to the shareholders of the Demerged Company.</p> <p>In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme</p>	<p>Companies submits that the Appointed Date is 1<sup>st</sup> April, 2023. The Petitioner Companies further submits that the Petitioner Companies will comply with the requirements as to Appointed Date as clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry.</p>
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	<p>under this section shall clearly indicate an appointed date from which it shall be effective, and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account of its inherent powers.</p> <p>The Petitioner Companies shall undertake to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>	
2(i)	<p>Petitioner Companies shall undertake to comply with the directions of the Income Tax Department &amp; GST Department, if any.</p>	<p>So far as the observation in paragraph 2 (i) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Petitioner Companies shall</p>

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		ensure compliance of all the provisions of Income Tax Act and GST Act and Rules thereunder.
2(j)	Petitioner Companies shall undertake to comply with the directions of the concerned sectorial Regulatory including RERA as Petitioner Demerged Company is engaged into some construction business activities, if any.	So far as the observation in paragraph 2 (j) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the RERA is not applicable to the Petitioner Companies as it doesn't have any ongoing Real estate Construction of Residential Projects.
2(k)	As per list of shareholders of Demerged Company as on 01.04.2023, Petitioner Demerged Company has non-resident/foreign shareholders, hence Petitioner Companies shall undertake to comply with RBI, FEMA/FERA guidelines.	So far as the observation in paragraph 2 (k) of the Report of the Regional Director is concerned, the Petitioner Companies submits that they undertake to Comply with the Directions of RBI, FEMA/FERA guidelines.
2(l)	Petitioner Companies shall	So far as the observation in

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	<p>undertake to comply with the observations pointed out by BSE Limited vide their observation letter dated 07.07.2023</p>	<p>paragraph 2 (l) of the Report of the Regional Director is concerned, the Petitioner Companies submits that they would comply with the directions of BSE after the Scheme is approved by the National Company Law Tribunal.</p>
2(m)	<p>As per clause 11 of the scheme, Petitioner Companies proposed for reduction of share capital, which is as follows:-</p> <p>a. The existing share capital i.e. shares held by the shareholders of the Resulting Company viz. the Demerged Company prior to the Scheme becoming effective shall stand cancelled without any further application, act, instrument or deed, as an integral part of this Scheme.</p>	<p>So far as the observation in paragraph 2 (m) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the reduction is an integral part of the Scheme and the shares held by the Demerged Company in the Resulting Company would be cancelled. The Petitioner Company further submits that Explanation to section 230(12) submits that the in the provisions of Section 66 of the Company Act, 2013</p>

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	<p>b. The share certificate(s) in relation to the shares held by the existing shareholders of the Resulting Company (i.e. the Demerged Company), shall, without any further application, act, instrument or deed, be deemed to have been automatically cancelled and no new share certificates will be issued by the Resulting Company, in lieu of share certificates already held by existing shareholders of the Resulting Company in the Resulting Company.</p> <p>c. The said cancellation of investments held by the Demerged Company in the Resulting Company and the said reduction in the share capital of the Resulting</p>	<p>will not apply to the reduction of Share Capital.</p>
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Company shall be adjusted to capital reserve in the books of the Resulting Company and shall be effected as an integral part of the Scheme and the orders of the NCLT sanctioning the Scheme shall be deemed to be an order under section 66 of the Act confirming the reduction and no separate sanction under section 66 of the Act will be necessary.

d. Notwithstanding the reduction of capital of the Resulting Company, the Resulting Company shall not be required to add “And Reduced” as suffix to its name.

In this regard, Petitioner Companies shall undertake to comply with provisions of section 66 of Companies Act, 2013 r/w.

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	applicable Rules					
2(n) )	It is observed from Financial Statement as on 31.03.2022 of the Petitioner Companies, details of shareholding is as follows:-				So far as the observation in paragraph 2 (n) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the filing of Form BEN-2 has been filed vide SRN No. H81286098 dated 07 <sup>th</sup> August, 2019 and SRN No. F87741237 dated 14 <sup>th</sup> December, 2023 for M/s FORBES & COMPANY LIMITED and vide SRN No. F87763967 dated 14 <sup>th</sup> December, 2023 and SRN No. F89875793 dated 09 <sup>th</sup> January, 2024 for M/s FORBES PRECISION TOOLS AND MACHINE PARTS LIMITED.	
	<b>Sr. No.</b>	<b>Petitioner Company</b>	<b>Name of Shareholder</b>	<b>% of shares held</b>		<b>Remark</b>
		FORBES & COMPANY LIMITED	SHARPOORJI PALLONJI AND COMPANY PRIVATE LIMITED	72.56 %		
	FORBES	FOR	100%	No		

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	S PRECI SION TOOLS AND MACHI NE PARTS LIMITE D	BES & COM PANY LIMI TED		Form BEN- 2 has been filed by the Petiti oner Com pani es as per recor ds avail able at MCA 21 Porta 1	
No Form BEN-2 has been filed by any of the Petitioner Companies as					

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	<p>per records available at MCA21 Portal, hence Petitioner Companies shall undertake to comply with the provisions of section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and to file Form BEN-2 for declaring name of the significant beneficial owner with concerned ROC.</p>	
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11. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 10 above. The Representative of the RD has submitted that the explanations and clarifications given by the petitioner companies are found satisfactory and that they have no objection to the Scheme.

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12. 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.
13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 303 of 2023 is made absolute in terms of clauses 28. (A) to (C) of the said Company Scheme Petition.
14. Petitioners are 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 receipt of the Order from the Registry.
15. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.
16. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.
17. The Appointed Date is 1<sup>st</sup> April, 2023.

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18. **Accordingly, C.P.(CAA)/303/MB-V/2023 is allowed and disposed.**

SD/-  
Madhu Sinha  
Member (Technical)

SD/-  
Reeta Kohli  
Member (Judicial)

/Priyanka/