

January 29, 2022

General Manager
Department of Corporate Services,
BSE Ltd.
Phiroze Jeejeebhoy Towers,
Dalal Street, Mumbai 400 001

Scrip Code: 502865

Subject: Intimation of order of the Hon'ble National Company Law Tribunal, Mumbai Bench ('Hon'ble NCLT') approving the Composite Scheme of Arrangement between Aquaignis Technologies Private Limited, Euro Forbes Financial Services Limited, Eureka Forbes Limited, Forbes & Company Limited and Forbes Enviro Solutions Limited and their respective Shareholders.

With reference to the above cited subject, please take note that the Hon'ble NCLT has vide order dated January 25, 2022 approved the Composite Scheme of Arrangement between Aquaignis Technologies Private Limited, Euro Forbes Financial Services Limited, Eureka Forbes Limited, Forbes & Company Limited and Forbes Enviro Solutions Limited and their respective Shareholders.

We enclose herewith copy of the order uploaded on the website of Hon'ble NCLT on January 28, 2022.

We request you to take the same on record.

Thanking you,

Yours Faithfully,

For Forbes & Company Limited


Pankaj Khattar
Head Legal & Company Secretary

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (CAA)/209/MB-IV/2021

In

CA(CAA)/55/MB-IV/2021

In the matter of

The Companies Act, 2013

AND

In the matter of

Sections 230 to 232 of

The Companies Act, 2013

And

other applicable provisions of

The Companies Act, 2013 read with

Companies (Compromises, Arrangements
and Amalgamation) Rules, 2016

AND

In the matter of

Composite Scheme of Arrangement for

Merger of

Aquaignis Technologies Private Limited

(The Transferor Company 1' for Part II of
the Scheme or 'First Applicant Company')

And

Euro Forbes Financial Services Limited

(The Transferor Company 2' for Part II of
the Scheme or 'Second Applicant

Company')

With

Eureka Forbes Limited

(The Transferee Company 1' for Part II of
the Scheme or 'Transferor Company 3' for
Part III of The Scheme or 'Third Applicant
Company')

followed by merger of

**EFL with and into Forbes & Company
Limited**

('FCL' or 'Transferee Company 2' for Part
III of the Scheme or 'Demerged Company'
for Part IV of the Scheme or 'Fourth
Applicant Company')

And demerger of the demerged undertaking
(as defined in the scheme) of FCL

Into

Forbes Enviro Solutions Limited

('FESL' or 'Resulting Company' for Part
IV of the Scheme or 'Fifth Applicant
Company')

And

Their respective Shareholders
('The Scheme' or 'This Scheme')

Aquagnis Technologies Private Limited

[CIN: U31908MH2012PTC331823]

...First Applicant Company/
Transferor Company No.1

Euro Forbes Financial Services Limited

[CIN: U67190MH2011PLC214424]

...Second Applicant Company/
Transferor Company No.2/

Eureka Forbes Limited, ...Third Applicant Company
[CIN: U27109MH1931PLC353890] Transferor Company No.3/
Transferee Company No.1

Forbes & Company Limited, ...Fourth Applicant Company/
[CIN: L17110MH1919PLC000628] Transferee Company No.2/
Demerged Company

Forbes Enviro Solutions Limited, ...Fifth Applicant Company
[CIN: L17110MH1919PLC000628] Resulting Company

(Collectively known as Applicant Companies)

Order Delivered on:25.01.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing)

For the Petitioner Companies: Mr. Ashish Kamata/wHarsh
Rupareliai/b M/s ARCH and
Associates, Advocates.

For the Regional Director (WR): Ms. Rupa Sutar, Deputy
Director.

For Central GST : Ms. Maya Majumdar, Advocate.

ORDER

Per: Rajesh Sharma, Member (Technical)

1. The Bench is convened through video conferencing today.

2. Heard Learned Counsel for Petitioner Companies. No objector has come before the Tribunal to oppose the petition and nor has any party controverted any averments made in the petition.
3. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (“Act”) and in the matter of Composite Scheme of Arrangement for merger of Aquaignis Technologies Private Limited (‘ATPL’ or ‘the Transferor Company 1’ for Part II of the Scheme or ‘First Petitioner Company’) and Euro Forbes Financial Services Limited (‘EFFSL’ or ‘the Transferor Company 2’ for Part II of the Scheme or ‘Second Petitioner Company’) with and into Eureka Forbes Limited (‘EFL’ or ‘Transferee Company 1’ for Part II of the Scheme or ‘Transferor Company 3’ for Part III of the Scheme or ‘Third Petitioner Company’) followed by merger of EFL with and into Forbes & Company Limited (‘FCL’ or ‘Transferee Company 2’ for Part III of the Scheme or ‘Demerged Company’ for Part IV of the Scheme or ‘Fourth Petitioner Company’) and demerger of the demerged undertaking (as defined in the scheme) of FCL into Forbes Enviro Solutions Limited (‘FESL’ or ‘Resulting Company’ for Part IV of the Scheme or ‘Fifth Petitioner Company’) and their respective Shareholders (‘Scheme’).
4. The Learned Counsel for the Petitioner Companies submits that First Petitioner Company is engaged in manufacturing of electric water purifiers, no operation in the Second Petitioner Company, Third Petitioner Company is engaged in manufacturing, selling, renting and servicing of vacuum cleaners, water filter cum purifiers, water and waste water treatment plant, trading in electronic air cleaning systems, small household appliances, digital security system and fire extinguishers, Fourth Petitioner Company is engaged in the business of providing engineering services, which primarily

includes products such as threading tools and carbide tools, real-estate activities of developing properties under real estate projects and Fifth Petitioner Company is engaged in the business of manufacturing of RO systems, Water Treatment Plants (WTP), Sewage Treatment Plants (STP), Effluent Treatment Plant (ETP) and AMC Contracts, trading of spares and drinking water (PDW).

5. The Learned Counsel for the Petitioner Companies submits that the rationale mentioned in the Scheme is as under:

A. Part II of the Scheme of Arrangement would facilitate as under:

- i. EFL owns 100% of the equity share capital in ATPL and EFFSL and all the companies are part of Shapoorji Pallonji Group (“SP Group”).
- ii. ATPL is engaged in business complementary to the business of EFL and Merger of ATPL into EFL would benefit EFL in expansion of water purifier business with reduction in administrative costs in addition to consolidation and simplification of group structure. Currently, no business operations are carried out in EFFSL and accordingly, Merger of EFFSL into EFL would benefit simplification and consolidation of group structure and facilitate management in achieving administrative efficiency at SP Group level.

B. Part III and Part IV of the Scheme would facilitate as under:

- i. FCL and EFL are companies belonging to the SP Group. FCL owns 100% share capital of EFL, and EFL in turn holds 100% of the share capital of ATPL, EFFSL and FESL.

ii. Both FCL and EFL, are also operating companies engaged into varied businesses. The nature of risk, competition, challenges, opportunities and business methods for the business carried on by EFL is separate and distinct from the business carried on by FCL. The business carried on by FCL and EFL are capable of attracting separate set of investors, strategic partners, lenders and other stakeholders. There is also a difference in the manner in which the business of FCL and EFL are required to be handled and managed. In order to lend greater / enhanced focus to the operations of the business of EFL, it is proposed to re-organize / restructure the group structure via this Scheme.

C. The proposed restructuring pursuant to this Scheme is expected, inter-alia, to result in the following benefits:

- i. Consolidation and simplification of group structure and reduction of administrative costs by Merger of ATPL and EFFSL into EFL and EFL into FCL;
- ii. Segregation of business of EFL into FESL in the manner provided in this Scheme;
- iii. Unlock the value for the shareholders of FCL by listing of the shares of FESL;
- iv. Allowing managements of the each of FCL and FESL/EFL to pursue independent growth strategies;
- v. 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;

- vi. Provide scope of separate companies for independent collaboration and expansion.

The Scheme is in the interest of the shareholders, creditors, lenders and various other stakeholders of the respective companies. It is not prejudicial to the interests of shareholders, creditors, lenders and various other stakeholders of the respective companies.

6. All the Petitioner Companies have approved the Scheme by passing their respective Board Resolutions dated September 8, 2020 and have approached the Tribunal for sanction of the Scheme. Further, the Board of Directors vide resolution passed by circulation dated October 10, 2021 had modified the Scheme and the modified scheme was duly approved by the shareholders and creditors in their respective court convened meeting held in accordance with directions of the Hon'ble Tribunal.
7. The Hon'ble NCLT vide its order dated October 6, 2021 has directed following with respect to meeting of Equity Shareholders and Creditors of the Applicant Companies.

Sr no	Name of the Company	Meeting of equity shareholders	Date of Meeting of the Secured Creditors	Date of Meeting of the Unsecured Creditors	Result
1	ATPL	Dispensed	November 22, 2021	November 22, 2021	Scheme was approved the by Equity Shareholders of Fourth Petitioner Company and creditors
2	EFFSL	Dispensed	No Creditors and therefore no meetings were held		
3	EFL	Dispensed	November 22, 2021	November 22, 2021	
4	FCL	November 22, 2021	November 22, 2021	November 22, 2021	

5	FESL	Dispensed	No Secured Creditors and therefore no meeting were held	November 22, 2021	of the respective Companies.
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8. With respect to directions in CA (CAA)/55/MB-IV/ 2021 dated 6th October 2021 of this Hon'ble Tribunal for the Secured Creditors of the respective Petitioner Companies, the Learned Counsel for the Petitioner Companies submits that Petitioner Companies had sent notices to all the Secured Creditors of the First, Third and Fourth Petitioner Company as on 31st March 2021 and in case of the Second Petitioner Company and Fifth Petitioner Company, there are no Secured Creditors as on 31st March 2021. In case of the First Petitioner Company and the Third Petitioner Company, all the Secured Creditors as on 31st March 2021 attended the meeting of Secured Creditors held in accordance with directions of the Hon'ble Tribunal on 22nd November 2021 and casted their vote through remote e-voting in favour of the Scheme. In case of the Fourth Petitioner Company, the Learned Counsel for the Petitioner Companies submits that it has 5 (Five) Secured Creditors as on 31st March 2021 out of which 3 (Three) Secured Creditors had casted their vote through remote e-voting in favour of the Scheme and the 2 (Two) Secured Creditors have given their consent through email. The Learned Counsel of the Petitioner Company submits that all the Secured Creditors of the respective Petitioner Companies have given their unanimous approval to the Scheme through voting in favour at the respective meetings and through e-mail. In this regard, the respective Petitioner Companies have also filed an Affidavit on 16th December 2021 with the Hon'ble Tribunal.

9. The Learned Counsel for the Petitioner Companies submits that the present Petition has been filed in consonance with the order delivered on October 6, 2021 passed by this Tribunal in CA(CAA)/55/MB/2021.
10. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of Compliance with this Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the relevant Rules made there under. The said undertaking is accepted.
11. The Regional Director, Western Region has filed its report dated December 14, 2021 (“Report”) praying that this Tribunal may pass such orders as it thinks fit, save and except as stated in paragraphs IV (a) to (l) and in response to the observations of the Regional Director, the Petitioner Companies have filed their responses vide its Affidavit in reply to the Observations of the Regional Director dated 15th December 2021 as under:

Para No.	Regional Director Report / Observation dated 14th December 2021	Response from the Petitioner Companies
IV(a)	<i>In 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</i>	It is submitted that in addition to compliance with Indian Accounting Standard (Ind AS) 103, Business Combinations, the Third Petitioner Company, Fourth Petitioner Company and Fifth Petitioner Company, being the respective Transferee Company / Resulting Company for the Scheme undertakes to

	<i>AS-8) etc.</i>	pass such accounting entries which are necessary to comply with all other applicable Accounting Standards such as IND AS-8 etc for the purpose of giving effect to the present Scheme.
IV(b)	<i>The Petitioners 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 Amalgamation. Further, the approval of the scheme by this 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 such Authorities is binding on the Petitioner Company(s)</i>	<p>It is submitted that the Petitioner Companies have served notices to the concerned authorities as per the provisions of section 230(5) of the Companies Act, 2013. A copy of the Affidavit of Service dated October 25, 2021 filed by the Fourth Petitioner Company and Affidavit of Service dated October 26, 2021 filed by the other Petitioner Companies with this Hon'ble Tribunal which was already annexed as Annexure 30, Annexure 31, Annexure 35, Annexure 40 and Annexure 42 of the main Company Petition.</p> <p>Further, it is submitted that the approval of the Scheme by this Hon'ble Tribunal may not deter the authorities to deal with any of the issues arising after giving effect to the Scheme.</p>
IV(c)	<i>Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company</i>	It is submitted that as mentioned in Para 33 of the main Company Petition filed by the Petitioner Companies, the Petitioner Companies have modified the Scheme,

<p><i>Application & Company Petition, are one and same and there is no discrepancy/ any change/ changes made, for changes if any, liberty be given to Central Government to file further report if any required.</i></p>	<p>vide board resolution (through circulation), dated October 10, 2021, annexed as Annexure 22 to the main Company Scheme Petition. Further, the Petitioner Companies have filed an affidavit dated 20th October, 2021 with the Hon'ble Tribunal on 21st October, 2021. It is further submitted that in terms of Para 11 of Part 1-A of the Master Circular on Scheme of Arrangements (SEBI/HO/CFD/DIL1/CIR/P/2020/249 dated 22nd December, 2020) issued by SEBI, the Fourth Petitioner Company had sought specific consent to the amendment to the Scheme from the BSE / SEBI. A copy of the Observation letter/ No Objection letter dated November 23, 2021 received from BSE Limited is annexed as Annexure 23 to the main Company Petition.</p> <p>It is further submitted that a copy of the modified Scheme as approved by the Board of the Petitioner Companies on October 10, 2021 and a copy of the Scheme after incorporating the comments received from BSE Limited is annexed as Annexure 24 and Annexure 25 to the main Company</p>
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		<p>Petition. Further, the Notices sent to the respective shareholders and creditors for the court convened meetings as per the directions of the NCLT and regulatory authorities were filed along with the modified Scheme. The modified scheme was duly approved by the shareholders and creditors in their respective court convened meeting held in accordance with directions of the Hon'ble Tribunal.</p>
<p>IV(d)</p>	<p><i>As per Definition of the Scheme,</i></p> <p><i>“Appointed Date” means the Effective Date or the first day of the calendar month immediately succeeding the month in which the Effective Date occurs, as may be decided by the Board.</i></p> <p><i>“Effective Date” means the last of the dates on which the conditions specified in Clause 41 are complied with. Any references in this Scheme to the date of “coming into effect of this scheme” or</i></p>	<p>It is submitted that “Appointed Date” means the Effective Date or the first day of the calendar month immediately succeeding the month in which the Effective Date occurs, as may be decided by the Board and “Effective Date” means the last of the dates on which the conditions specified in Clause 41 are complied with. Any references in this Scheme to the date of “coming into effect of this scheme” or “effectiveness of this scheme” or “Scheme taking effect” shall mean the Effective Date. Para 41 of the Scheme is reproduced as under:</p> <p>“41. SCHEME CONDITIONAL ON APPROVALS / SANCTIONS</p>

<p><i>“effectiveness of this scheme” or “Scheme taking effect” shall mean the Effective Date.</i></p> <p><i>Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	<p>The Scheme is conditional upon and subject to:</p> <p>41.1. The approval by the requisite majorities of the respective members and / or creditors (including but not limited to secured and unsecured) of ATPL, EFFSL, EFL, FCL and FESL, as required under the Act and directed by the NCLT.</p> <p>41.2. The sanction or approval of the authorities concerned being obtained and granted in respect of any of the matters for which such sanction or approval being required.</p> <p>41.3. The sanction of the Scheme by the NCLT under Sections 230 to 232 of the Act and other applicable provisions of the Act.</p> <p>41.4. The requisite orders of the NCLT being obtained for sanctioning the Scheme under Section 230 read with Section 232 of the Act being filed with the concerned Registrar of Companies.”</p> <p>Further, as per the General Circular No.09/2019 (F. No. 7/12/2019/CL-1)</p>
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		<p>dated August 21, 2019 issued by the Ministry of Corporate Affairs, it is clarified that the Appointed Date under section 232(6) of the Companies Act, 2013 can be tied to the occurrence of an event or fulfilment of any preconditions as may be agreed between the parties. The Petitioner Companies hereby undertakes to comply with the requirements of the General Circular No.09/2019 (F. No. 7/12/2019/CL-1) dated August 21, 2019 issued by the Ministry of Corporate Affairs in relation to the Appointed Date and the Effective Date.</p>
IV(e)	<p><i>Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any paid by the transferee company on its authorized capital which shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation and therefore, petitioners to affirm that they</i></p>	<p>It is submitted that the Petitioner Companies hereby undertakes to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 regarding set-off of fees paid by the Transferor Companies against any fees payable by the Transferee Company on its authorized capital subsequent to the Scheme.</p>

	<i>comply the provisions of the section.</i>	
IV(f)	<p><i>As per Clause 6, 18 and 30 of the Scheme,</i></p> <p><i>CHANGE IN OBJECT CLAUSE OF EFL</i></p> <p><i>With effect from the Appointed Date, and upon the Scheme becoming effective, the main object clause of the Memorandum of Association of EFL shall be altered and amended, without any further act or deed, to include the objects as required for the purpose of carrying on the business activities of ATPL and EFFSL.</i></p> <p><i>With effect from the Appointed Date, and upon the Scheme becoming effective, the main object clause of the Memorandum of Association of FCL shall be altered and amended, without any further</i></p>	<p>The change in object clause of the respective Petitioner Companies shall be effected as an integral part of the Scheme.</p> <p>The Petitioner Companies hereby undertakes to comply with the provisions of Section 13 and Section 14 of the Companies Act, 2013 and applicable rules and regulations and undertakes to file e-Form MGT 14 for giving effect to such change in object clause.</p>

act or deed, to include the objects as required for the purpose of carrying on the business activities EFL.

With effect from the Appointed Date, and upon the Scheme becoming effective, the main object clause of the Memorandum of Association of FESL shall be altered and amended, without any further act or deed, to include the objects as required for the purpose of carrying on the business activities of FCL in relation to the Demerged Undertaking

Petitioner Company shall undertake to comply with the provisions of Section 13 and 14 of the Companies Act, 2013 and other applicable provisions of the Act.

The Hon'ble NCLT may kindly direct the Petitioner

	<i>Companies to file Form MGT-14 for change of object clause.</i>	
IV(g)	<p><i>Clause 38 of the Scheme:</i></p> <p><i>CHANGE OF NAME OF FESL:</i></p> <p><i>Upon this scheme becoming effective, without any further act, instrument or deed, the name of FESL shall be changed to "Eureka Forbes Limited". Further, the name "Forbes Enviro Solutions Limited" wherever occurs in the memorandum of association and articles of association of FESL shall be substituted by such name.</i></p> <p><i>The approval and consent of this scheme by the shareholders of FESL shall be deemed to be the approval of shareholders by way of special resolution under section 13 of the Companies Act, 2013 for change of name of FESL as</i></p>	<p>In so far as observations made in paragraph IV(g) of the Report of the Regional Director is concerned, the Petitioner Companies states that the Business Undertaking of the Third Petitioner Company i.e., Eureka Forbes Limited, will be merged with Fourth Petitioner Company upon effectiveness of Part III of the Scheme. Further upon effectiveness of Part IV of the Scheme, demerged undertaking (as defined in the Scheme) of Fourth Petitioner Company will be transferred to the Fifth Petitioner Company. The name of the Third Petitioner Company carries a legacy of over decades in the field of manufacturing, selling, renting and servicing of vacuum cleaners, water filter cum purifiers, water and waste water treatment plant, trading in electronic air cleaning systems, small household appliances, digital security system and fire extinguishers, etc. The Demerged Undertaking of the Fourth Petitioner Company proposed to be transferred to the Fifth Petitioner Company</p>

<p><i>contemplated herein and shall be deemed to be sufficient for the purpose of effecting the amendments in the memorandum of association and articles of association of FESL in relation to the change of name of FESL in accordance with provisions of the Companies Act, 2013. The sanction of this scheme by the NCLT shall be deemed and no further resolution(s) would be required to be separately passed to be complying with the provisions of the Companies Act, 2013, for the purpose of effecting the change in name of FESL.</i></p> <p><i>The Board of Directors and the shareholders of EFL shall not have any objection to the adoption and use of the name "Eureka Forbes Limited" by FESL pursuant to the scheme.</i></p> <p><i>That the adoption of new</i></p>	<p>comprises of manufacturing, selling, renting and servicing of vacuum cleaners, water filter cum purifiers, water and waste water treatment plant, trading in electronic air cleaning systems, small household appliances, digital security system and fire extinguishers, etc, which are over the years marketed under the name of the Third Petitioner Company.</p> <p>The Petitioner Companies further state that the change of name of Fifth Petitioner Company to "Eureka Forbes Limited" would only be beneficial and in the interest of the shareholders, creditors and general public who purchase the products of the Third Petitioner Company since the Demerged Undertaking of the Fourth Petitioner Company, being the business carried by Third Petitioner Company, shall be carried on by the Fifth Petitioner Company upon coming into effect of this Scheme.</p> <p>It is further submitted that the name of the Fifth Petitioner Company shall be independently changed to Eureka Forbes Limited and the Fifth Petitioner Company</p>
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<p><i>name of Demerged Company & Amalgamated Company shall create confusion in the minds of general public and other stakeholders. Besides it will also create confusion with the regulators like Income Tax, GST, MCA etc which give impression that Petitioner Company is still in existence however it is not in existence.</i></p> <p><i>Further, as per clause 8(2)(8) of the Companies (Incorporation) Rules, 2014, "The names released on change of name by any company shall remain in data base and shall not be allowed to be taken by any other company including the group company of the company who has changed the name for a period of three years from the date of change subject to specific direction from the competent authority in the course of compromise,</i></p>	<p>undertakes to comply with the directions of the concerned Registrar of Companies in this matter.</p> <p>Without prejudice to the above, Rule 8(2)(8) of the Companies (Incorporation) Rules, 2014 provides for “subject to directions of the competent authority under the Scheme of Compromise or Arrangement”, the Petitioner Companies would like to place reliance on judgements wherein it was held that it is a settled law that Chapter V and erstwhile provisions of Sections 391-394 of the Companies Act, 1956 (corresponding to present provisions of Section 230-232 of the Companies Act, 2013) is a complete code by itself on the subject of arrangement/ compromise and reconstruction. Further, the Judicial Precedents have held that Chapter V is a complete code by itself on the subject of arrangement/compromise and reconstruction comprehensive enough to include a change in the name consequent on the amalgamation or arrangement. Further, the reliance in placed on the following judgements:</p>
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<p><i>arrangement and amalgamation.</i></p> <p><i>The Hon'ble NCLT may not allow the change of name of the Petitioner Company.</i></p> <p><i>Petitioner Company have to amend the Scheme accordingly.</i></p> <p><i>In this regards, Petitioner Companies have to undertake to comply with the Provisions of Section 13, 14 of the Companies Act, 2013 and application of other provisions and rules.</i></p>	<ul style="list-style-type: none">• Hon'ble Bombay High Court judgement in the matter of PMP Auto Industries Limited (1994) 80 Comp Cases 289 (Bom.)• Hon'ble Bombay High Court judgement in the matter of Vasant Investment Corporation Limited V/s. Official Liquidator, Colaba Land and Mill Co. Limited (1961) 51 Company Cases 20• Hon'ble Madras High Court judgement in the matter of Regional Director V/s. Michelin India Private Limited and Michelin India Tamil Nadu Tyres Private Limited in C.P. 391 and 392 of 2014• Hon'ble NCLT, Mumbai Bench Order in the matter of Scheme of Arrangement between Sunways (India) Private Limited and Sunways Laboratories Private Limited in C.P./ (C.A.A.) / 3 / MB / 2021 <p>Further, the Petitioner Companies submits that the reliance is also placed on Order of Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi in the matter of Ambuja Cements Limited in Company Appeal No. 19 of 2021, wherein</p>
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		<p>principles laid down relied down in the Hon'ble Supreme Court in the matter of 'Gammon India Ltd.' vs. 'Commissioner of Customs' Mumbai in (2011) 12 SCC 499, to show that the precedent law must be followed by all concerned, deviation from the same should be only on a procedure known to law. The key principles followed by the Hon'ble NCLAT are as follows:</p> <ul style="list-style-type: none">• Precedents which enunciate rules of law, form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, because consistency in interpretation of law alone can lead to public confidence in our judicial system.• Precedent law must be followed by all concerned; any deviation from the same should only be vide a lawful procedure.• A coordinate Bench of a court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. <p>Placing reliance on the above judicial</p>
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		<p>pronouncements, the Petitioner Companies submits that the change of name of the Fifth Petitioner as a part of this Scheme of Arrangement be allowed as it shall be in the best interest of shareholders, creditors and general public since the Third Petitioner Company is engaged in the business of manufacturing, selling, renting and servicing of vacuum cleaners, water filter cum purifiers, water and waste water treatment plant, trading in electronic air cleaning systems, small household appliances, digital security system and fire extinguishers, etc. The Petitioner Companies hereby undertakes to comply with the provisions of Section 13 and Section 14 of the Companies Act, 2013 and applicable rules and regulations for giving effect to such change of name of the Fifth Petitioner Company as a part of this Scheme.</p>
IV(h)	<p><i>Clause 10, 22, 34 of the Scheme: -</i> ACCOUNTING TREATMENT <i>EFL shall account for amalgamation of ATPL and EFFSL in its books of</i></p>	<p>It is submitted that the Composite Scheme of Arrangement shall be accounted for by the Petitioner Companies in its books of accounts as per Companies (Indian Accounting Standards) Rules, 2015 ("Ind AS") as notified under Section 133 of the Companies Act, 2013 and the clarifications</p>

<p><i>accounts as per Appendix C to Ind AS 103, Business Combination of entities under common control, prescribed under the Companies (Indian Accounting Standards) Rules, 2015 ("Ind AS"), as amended, as notified under Section 133 of the Companies Act, 2013 and other generally accepted accounting principles in India.</i></p> <p><i>All assets and liabilities of ATPL and EFFSL, shall be recorded in the books of accounts of EFL at their existing carrying amounts and in the same form in which they appeared in the consolidated financial statement of EFL.</i></p> <p><i>The identity of the reserves pertaining to ATPL and EFFSL shall be preserved and shall appear in the merged financial statements of EFL in</i></p>	<p>issued by the Institute of Chartered Accountants of India from time to time and in accordance with this Scheme and undertakes that the Capital Reserve or any other reserves arising from such accounting for the Scheme, if any, shall be governed by the provisions of the Companies Act, 2013 and shall not be available for distribution of dividend.</p>
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<p><i>the same form in which they appeared in the consolidated financial statements of EFL and it shall be aggregated with the corresponding balance appearing in the financial statements of EFL.</i></p> <p><i>To the extent that there are inter-company loans, deposits, obligations, balances or other outstanding including any interest thereon, as between the ATPL, EFFSL and EFL, the obligations in respect thereof shall come to an end and there shall be no liability in that behalf and corresponding effect shall be given in the books of account and records of EFL for the reduction of such assets or liabilities as the case may be.</i></p> <p><i>Pursuant to the scheme becoming effective, no shares of EFL shall be issued and allotted in respect of shares</i></p>	
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held by it in ATPL and EFFSL and the investment in the shares of the ATPL and EFFSL appearing in the books of account of EFL shall stand cancelled.

The financial information in the financial statement of EFL in respect of prior period, would be restated as if the business combination had occurred from the beginning of preceding period in the financial statements, irrespective of the actual date of the combination.

ACCOUNTING

TREATMENT

FCL shall account for amalgamation of EFL in its books of accounts as per Appendix C to Ind AS 103, Business Combination of entities under common control, prescribed under the Companies (Indian

Accounting Standards) Rules, 2015 ("Ind AS") as notified under Section 133 of the Companies Act, 2013 and the clarifications issued by the Institute of Chartered Accountants of India. The amalgamation shall be accounted by FCL on the date as determined in accordance with Ind AS.

ACCOUNTING

TREATMENT

Upon the Scheme becoming effective, FESL and FCL shall account for Demerger in their respective books of account as under:

In the books of FESL,

FESL shall give effect to the accounting treatment in its books of account in accordance with the "Acquisition Method" of accounting under IndAS 103 (Accounting for Business

Combinations) and any other relevant Indian Accounting Standards (Ind-AS) notified under the Companies (Indian Accounting Standards) Rules, 2015 read with section 133 of the Companies Act, 2013, and generally accounted accounting principles in India, as amended from time to time.

In the books of FCL

FCL shall account for transfer of Demerged Undertaking to FESL in its books of accounts as per Companies (Indian Accounting Standards) Rules, 2015 ("Ind AS") as notified under Section 133 of the Companies Act, 2013 and the clarifications issued by the Institute of Chartered Accountants of India and on the date as determined in accordance with Ind AS.

	<p><i>Petitioner Companies have to undertake that the surplus shall be credited to Capital Reserve Account arising out of amalgamation and deficits shall be debited to Goodwill Account.</i></p> <p><i>Further Petitioner Companies have to undertake those reserves shall not be available for distribution of dividend.</i></p>	
<p>IV(i)</p>	<p><i>As per clause 36 of the Scheme: -</i></p> <p><i>REDUCTION IN PAID UP SHARE CAPITAL FESL AND CANCELLATION OF INTER-COMPANY INVESTMENTS</i></p> <p><i>The existing share capital i.e. shares held by the shareholders of FESL viz. FCL (upon Part III of the Scheme becoming effective) prior to Part IV of the Scheme becoming effective shall stand cancelled without any further</i></p>	<p>It is submitted that the reduction of existing share capital of the Fifth Petitioner Company is effected as an integral part of the Scheme under Sections 230 to 232 of the Companies Act, 2013 and the approvals accorded to the Scheme by the Shareholders of the respective Petitioner Companies shall be construed or deemed to be the consent required under the provisions of Section 66 of the Companies Act, 2013 and therefore, no separate compliance shall be required under Section 66 of the Companies Act, 2013.</p> <p>Further, it is submitted that the reduction of existing equity share capital of the Fifth</p>

<p><i>application, act, instrument or deed, as an integral part of this Scheme.</i></p> <p><i>The share certificate(s) in relation to the shares held by the existing shareholders of FESL (i.e. FCL), 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 FESL, in lieu of share certificates already held by existing shareholders of FESL in FESL.</i></p> <p><i>The said cancellation of investments held by FCL in FESL and the said reduction in the share capital of FESL shall be debited/ credited to capital reserve in the books of FESL and shall be effected as an integral part of the Scheme and the orders of the NCLT sanctioning the Scheme shall</i></p>	<p>Petitioner Company (i.e., the equity shares held by the Fourth Petitioner Company in the Fifth Petitioner Company) is being undertaken to mirror the shareholding pattern of Fourth Petitioner Company and the Fifth Petitioner Company (i.e., the Resulting Company) pursuant to the demerger in order to achieve a simplified shareholding structure and reduce the shareholding tiers. The cancellation of shares held by the Holding Company in its wholly-owned subsidiary as a part of the Scheme will not be detrimental to the interests of the stakeholders of the Fourth Petitioner Company and would rather result in value creation for the shareholders of the Petitioner Companies.</p>
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	<p><i>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.</i></p> <p><i>Notwithstanding the reduction of capital of FESL, FESL shall not be required to add "And Reduced" as suffix to its name.</i></p> <p><i>In this regards, Petitioner Companies have to undertake to comply with the Provisions of Section 66 of the Companies Act, 2013 and application of other provisions and rules.</i></p>	
IV(j)	<p><i>Observation from BSE :-</i></p> <p><i>BSE has submitted observation vide its letter dated 23.11.2021 which are as follows:</i></p> <p><i>"Company shall ensure that the Provision of Para 33.7 of</i></p>	<p>The Petitioner Companies here by submits that they had carried out changes suggested BSE in its observation and Para 33.7 was deleted. Further, the Scheme after incorporating the comments received from BSE Limited was attached as Annexure 25 to the main Company Petition.</p>

	<p><i>the draft scheme is deleted”</i></p> <p><i>“Company shall ensure that it follows the process of listing of scheme of. Forbes Enviro Solutions Limited and open offer as per the stipulated Provisions”</i></p> <p><i>Hon'ble NCLT may consider the observations pointed out by BSE.</i></p>	<p>Further, the respective Petitioner Company undertakes to follow the process of listing of shares of Forbes Enviro Solutions Limited and open offer as per the stipulated provisions of the relevant law, wherever applicable.</p>
<p>IV(k)</p>	<p><u>STATUS OF ROC REPORT:</u></p> <p><i>ROC, Mumbai Report dated 07.12.2021 has interalia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection and no complaints pending against Petitioner Companies.</i></p> <p><i>Further mentioned that :</i></p> <p><i>1. Interest of the Creditors should be protected.</i></p> <p><i>2. The Transferor Company No. 3 & Resulting Company</i></p>	<p>The Petitioner Companies hereby undertakes that the interest of the creditors shall be duly protected under scheme.</p> <p>The Petitioner Companies further submits upon the Scheme becoming effective, the open charges in the name of the Third Petitioner Company shall be transferred and continue to be operative and effective in the name of the Fifth Petitioner Company and are duly covered under the Scheme.</p>

	<p><i>has huge number of open charges.</i></p> <p><i>Hon'ble Tribunal may consider the observations pointed out by ROC, Mumbai in their report and decide the matter on merits.</i></p>	
IV(1)	<p><i>In response to the notice to Income Tax department, they have issued letter to the Petitioner Company dated 26.10.2021.</i></p> <p><i>Hon'ble NCLT may kindly direct the Petitioner Companies to comply with the instructions of IT and obtain NOC from IT as may be required.</i></p>	<p>It is submitted that the Fourth Petitioner Company had served notices upon the respective income tax department on October 20, 2021 in accordance with directions of this Hon'ble Tribunal and received letter from income tax department on October 26, 2021 seeking detail(s) / information(s). The Fourth Petitioner Company hereby submits that they have filed response to the detail(s) / information(s) called for by the respective Income Tax department on November 3, 2021 and December 13, 2021. The copy of acknowledgement for responses submitted with the Income tax Department are annexed herewith as Annexure A1 & A2 to this Affidavit. Further, it is submitted that the approval of the Scheme by this Hon'ble Tribunal may not deter the Income-tax authorities to deal with any of the issues</p>

		arising after giving effect to the Scheme.
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12. The Regional Director has filed its supplementary report dated December 16, 2021 and has stated that *“the Company in its affidavit in Rejoinder dated 15.12.2021 has submitted replies on all the observations made by the Regional Director in its Report / Representation dated 14.12.2021, in para IV(a) to (l), which appears to be satisfactory, except (g). Copy of Affidavit in Rejoinder of the Company is enclosed herewith and marked as Annexure – ‘A’. The Directorate reiterates the submission made in its representation dated 14.12.2021”*. The clarifications and undertakings given by the Petitioner Companies are accepted by this Tribunal.
13. The Third Petitioner Company and Fifth Petitioner Company have received notice/ letter from GST authorities on November 23, 2021, November 11, 2021 seeking clarifications. The Third Petitioner Company and the Fifth Petitioner Company hereby submits that they have filed response by way of an Affidavit to the said notice/ letter on December 14, 2021 before this Tribunal. Further, it is submitted that the approval of the Scheme by this Tribunal may not deter respective GST authorities to deal with any of the issues arising after giving effect to the Scheme.
14. The Fourth Petitioner Company has received notice from the Income Tax Department on October 26, 2021 seeking certain detail(s) / information(s). The Fourth Petitioner Company hereby submits that they have filed response to the detail(s) / information(s) called for by the Income Tax department on November 3, 2021 and December 13, 2021. Further, it is submitted that the approval of the Scheme by this Tribunal may not deter the Income-tax authorities to deal with any of the issues arising after giving effect to the Scheme.

15. The Official Liquidator, High Court, Bombay, has filed his report dated December 14, 2021, inter alia, stating therein that the affairs of the Petitioner Companies have been conducted in a proper manner, not prejudicial to the interest of the shareholders of First Petitioner Company, Second Petitioner Company, Third Petitioner Company and that the First Petitioner Company, Second Petitioner Company and Third Petitioner Company may be ordered to be dissolved without winding up 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. Upon effectiveness of the Part II of the Scheme all the assets and properties comprised in the First Petitioner Company and Second Petitioner Company of whatsoever nature and wheresoever situated, shall, under the provisions of Sections 230 to 232 and all other applicable provisions, if any, of the Act, without any further act or deed, be and stand transferred to and vested in the Third Petitioner Company or be deemed to be transferred to and vested in Third Petitioner Company as a going concern so as to become the assets and properties of Third Petitioner Company. Upon effectiveness of the Part III of the Scheme all the assets and properties comprised in the Third Petitioner Company of whatsoever nature and wheresoever situated, shall, under the provisions of Sections 230 to 232 and all other applicable provisions, if any, of the Act, without any further act or deed, be and stand transferred to and vested in the Fourth Petitioner Company or be deemed to be transferred to and vested in Fourth Petitioner Company as a going concern so as to become the assets and properties of Fourth Petitioner Company Further, upon the coming into effect of this Scheme and with effect from the Appointed Date, all liabilities relating to and comprised in the Third Petitioner Company including all secured and unsecured debts (whether in Indian rupees or foreign currency), sundry creditors, liabilities

(including contingent liabilities), duties and obligations and undertakings of Third Petitioner Company of every kind, nature and description whatsoever and howsoever arising, raised or incurred or utilized for its business activities and operations shall, pursuant to the sanction of this Scheme by the Tribunal under and in accordance with the provisions of Sections 230 to 232 and other applicable provisions, if any, of the Act, without any further act, instrument, deed, matter or thing, be transferred to and vested in or be deemed to have been transferred to and vested in Fourth Petitioner Company, along with any charge, encumbrance, lien or security thereon, and the same shall be assumed by Fourth Petitioner Company to the extent they are outstanding as on the Effective Date so as to become as and from the Appointed Date the liabilities of Fourth Petitioner Company on the same terms and conditions as were applicable to Third Petitioner Company and the Fourth Petitioner Company shall meet, discharge and satisfy the same and further it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such liabilities have arisen in order to give effect to the provisions of this Clause.

17. Upon effectiveness of Part IV of the Scheme, all the assets and properties comprising Demerged Undertaking (defined in the Scheme) of the Fourth Petitioner Company of whatsoever nature and wheresoever situated, shall, under the provisions of Sections 230 to 232 and all other applicable provisions, if any, of the Act, without any further act or deed, be and stand transferred to and vested in the Fifth Petitioner Company or be deemed to be transferred to and vested in Fifth Petitioner Company as a going concern so as to become the assets and properties of Fifth Petitioner Company. Further, upon the coming into effect of this Scheme and with effect from the Appointed Date, all liabilities relating to and comprised in the Demerged undertaking of Fourth Petitioner Company including all secured and

unsecured debts (whether in Indian rupees or foreign currency), sundry creditors, liabilities (including contingent liabilities), duties and obligations and undertakings of Demerged Undertaking of Fourth Petitioner Company of every kind, nature and description whatsoever and howsoever arising, raised or incurred or utilized for its business activities and operations shall, pursuant to the sanction of this Scheme by the Tribunal under and in accordance with the provisions of Sections 230 to 232 and other applicable provisions, if any, of the Act, without any further act, instrument, deed, matter or thing, be transferred to and vested in or be deemed to have been transferred to and vested in Fifth Petitioner Company, along with any charge, encumbrance, lien or security thereon, and the same shall be assumed by Fifth Petitioner Company to the extent they are outstanding as on the Effective Date so as to become as and from the Appointed Date the liabilities of Fifth Petitioner Company on the same terms and conditions as were applicable to Demerged Undertaking of Fourth Petitioner Company, and Fifth Petitioner Company shall meet, discharge and satisfy the same and further it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such liabilities have arisen in order to give effect to the provisions of this Clause.

18. Upon effectiveness of the Scheme the name of the Fifth Petitioner Company i.e. "Forbes Enviro Solutions Limited" shall be changed to Eureka Forbes Limited. Further, the name "Forbes Enviro Solutions Limited" wherever occurs in the memorandum of association and articles of association of FESL shall be substituted by such name.
19. As consideration under the Scheme for Part II of the Scheme, the Third Petitioner Company shall not discharge any consideration since, First and

Second Petitioner Company are wholly-owned subsidiaries of the Third Petitioner Company.

20. As consideration under the Scheme for Part III of the Scheme, the Fourth Petitioner Company shall not discharge any consideration since, Third Petitioner Company is a wholly-owned subsidiary of the Fourth Petitioner Company.
21. As consideration under the Scheme for Part IV of the Scheme, the Fifth Petitioner Company shall issue and allot 15 (Fifteen) fully paid-up Equity Shares of INR 10/-each of Fifth Petitioner Company shall be issued and allotted to the Equity Shareholders of Fourth Petitioner Company, against 1(One) fully paid-up Equity Shares of INR 10/- each held by them in Fourth Petitioner Company.
22. Since all the requisite statutory compliances have been fulfilled, CP(CAA)/209/MB-IV/2021 is made absolute in terms of the prayer clauses of the said Company Scheme Petition.
23. The modified Scheme of Arrangement annexed at Annexure 25 to the Petition is hereby sanctioned with the Appointed Date as defined in Clause 1.3 of the Scheme.It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors and Employees.
24. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with e-form INC-28 within 30 days from the date of receipt of the Order along with a copy of the Scheme duly certified by the Deputy Director or Assistant Registrar, of the National Company Law Tribunal, Mumbai Bench.

25. On filing of this Order with the concerned Registrar of Companies as instructed in paragraph 24 above, the First Petitioner Company, Second Petitioner Company and Third Petitioner Company shall stand dissolved without being wound-up.
26. The Petitioner Companies to lodge a copy of this Order along with the Scheme duly authenticated/certified by the Deputy Director or the Assistant Registrar, of this Tribunal with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 working days from the date of receipt of the certified Order from the Registry of this Tribunal.
27. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the Deputy Director or the Assistant Registrar of this Tribunal.
28. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.
29. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
30. Ordered accordingly.

Sd/-

Kishore Vemulapalli
Member (Judicial)
25.01.2022

Sd/-

Rajesh Sharma
Member (Technical)