

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**CSP NO 877 OF 2017
CSP NO 878 OF 2017
CSP NO 879 OF 2017
CSP NO 880 OF 2017
CSP NO 881 OF 2017**

Under the Sections 230 to 232 of the Companies Act,
2013

AND

In the matter of Scheme of Arrangement between
Sapphire Foods India Private Limited ('Transferee
Company and Resulting Company') and Sapphire
Hospitality And Recreation Private Limited ('Transferor
1 Company') and Hansazone Private Limited ('Transferor
2 Company') and Pizzeria Fast Foods Restaurants
(Madras) Private Limited ('Transferor 3 Company') and
KFCH Restaurants Private Limited ('Demerged
Company') and their respective Shareholders

Sapphire Foods India Private Limited

...Petitioner/ Transferee and Resulting Company

Sapphire Hospitality and Recreation Private Limited

...Petitioner/ Transferor 1 Company

Hansazone Private Limited

...Petitioner/ Transferor 2 Company

Pizzeria Fast Foods Restaurants (Madras) Private Limited

...Petitioner/ Transferor 3 Company

KFCH Restaurants Private Limited

...Petitioner/ Demerged Company

Judgement / Order Delivered on 16thDay of November 2017.

Coram:

Hon'ble B.S.V Prakash Kumar, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co

Mr. Ramesh Golap, Assistant Director in the office of Regional Director

Mr. S. Ramakantha, Joint Director for the Regional Director.

Mr. Santosh Dalvi, Representative from the office of Official Liquidator.

Per: V. Nallasenapathy, Member (T)

ORDER

1. Heard learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions for Scheme of Arrangement between Sapphire Foods India Private Limited, the Transferee and Resulting Company and Sapphire Hospitality and Recreation Private Limited, the Transferor 1 Company and Hansazone Private Limited, the Transferor 2 Company and Pizzeria Fast Foods Restaurants (Madras) Private Limited, the Transferor 3 Company and KFCH Restaurants Private Limited, the Demerged Company and their respective Shareholders.
2. The sanction of the Tribunal is sought under Sections 230 to 232 read with Rule 15(1) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other applicable provisions of Companies Act, 2013 to a Scheme of Arrangement between Sapphire Foods India Private Limited, the Transferee and Resulting Company with Sapphire Hospitality And Recreation Private Limited, the Transferor 1 Company and Hansazone Private Limited, the Transferor 2 Company and Pizzeria Fast Foods Restaurants (Madras) Private Limited, the Transferor 3 Company and KFCH Restaurants Private Limited, the Demerged Company and their respective Shareholders.
3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolution in Board Meeting which is annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on the behalf of Petitioner Companies states that the petitions have been filed in consonance with the order passed in the Company Scheme Application no 699, 700, 701, 702 and 703 of National Company Law Tribunal, Mumbai Bench.

5. The Learned Advocate appearing on the behalf of Petitioner Companies. Further states that the Petitioner Companies have complied with all requirements as per directions of National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the statutory requirements, if any, as required under Companies Act, 2013 and the rules made thereunder. The said Undertaking is accepted.

6. The Learned Counsel for the Petitioners Companies states that, Transferor Companies and Demerged Company are currently engaged in Quick Service Restaurant business serving pizzas, pastas, breads and other food and beverage items which is covered in the main objects of the Transferee and Resulting Company. The Transferee and Resulting Company is engaged in the business of operating franchisee of Quick Service Restaurant (QSR Business) serving burgers, rice meals, wraps, pizzas, pastas, breads and other food and beverage items.

7. The rationale for the amalgamation of Transferor Companies with the Transferee Company and demerger of Demerged Undertaking into Resulting Company is, as under:
 - Offer opportunities to the management of the Transferor Companies, Transferee Company and Demerged Company to vigorously pursue growth and expansion opportunities.
 - Efficient utilization of funds and create a stronger base for future growth of the combined entity.
 - Simplifying and streamlining of activities and a consequential reduction in management time and efforts.
 - Post the amalgamation, the Transferor Companies shall stand dissolved and accordingly, there shall be reduction in regulatory and legal compliances / filings including accounting, reporting requirements, statutory and internal audit requirements, tax filings, etc and consequential reduction in administrative costs of all the companies
 - This will lead to a simplified corporate structure, apart from the combination of the businesses would increase the long term value for its stakeholders.

8. The Regional Director has filed his report dated 15th Day of November, 2017 and has stated that save and except as stated in Paragraph IV, it appears that the Scheme

is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:

“IV. The Observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:-

- (a) *In addition to the compliance of IND AS-103 the Resulting / Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards- etc.,*
- (b) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation / Arrangements to the Income Tax Department for their representations. It appears that the Company vide letter dated 24.07.2017 has served a copy Company Application No. 699 to 703 of 2017 long with relevant orders etc.,*
- (c) *The tax implications if any arising out of Scheme is subject to final decision of Income Tax Authorities. The approval of Scheme by this Hon’ble Court may not deter the Income Tax Authority to scrutinize tax return filed by Transferee Company after giving effect to the Scheme. The decision of Income Tax Authority is binding on Petitioner Company,*
- (d) *As regards Part-C, Clause-8.5 of the Scheme it is submitted that the shareholding pattern of the M/s. KFCH Restaurants Private Limited-KFCH-The Demerged company) indicates that 98.84% of Shareholding is held by M/s. Mauritius Food Corporation Limited holds 98.84% holdings and hold 2 shares along with Sapphire Foods India Private Limited.
In this regards it is submitted that M/s. Sapphire Foods India Private Limited The Transferee / Resulting Company has to issue shares to the Share holders of M/s. KFCH Restaurants Private Limited - KFCH - Demerged Company. Accordingly, the Transferee / Resulting Company to comply with RBI Guidelines as applicable.*
- (e) *Regarding clause 21.9 of the Scheme the shares sought to be issued to the non resident equity shareholders the share exchange price and price per share arrived should be minimum of Fair Price determined as per FEMA Guidelines. Hence, valuer should certify that the price per share is as per FEMA Guidelines.*
- (f) *As regards Part-D, Clause-19 of the Scheme (Combination of Authorised Share Capital), and fee payable by Transferee Company shall be in compliance with the provisions of Section 232 (3) (i) of Companies Act, 2013.*

9. As far as the observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Learned Counsel submits that the Transferee / Resulting Company undertakes to comply with the applicable Accounting Standards such as IND AS, as may be necessary; the Transferee/Resulting Company shall pass such accounting entries as may be necessary in connection with the scheme to comply with the applicable Accounting Standards.
10. As far as the observations made in paragraph IV (b) and IV (c) of the Report of Regional Director is concerned, the learned Counsel submits that the Transferee / Resulting Company undertakes to comply with all applicable provisions of Income Tax Act, 1961. Further, upon the scheme becoming effective, all liabilities of the Transferor Companies shall continue with the Transferee Company. Accordingly, the tax implications, if any, arising out of scheme will be answered in accordance with Law.
11. As far as the observations made in paragraph IV (d) of the Report of Regional Director is concerned, the learned Counsel for the Petitioners clarifies that the Sapphire Foods Mauritius Limited holds entire shareholding apart from 2 shares that are jointly held with Sapphire Foods India Private Limited. Further, the Learned Counsel submits that the Transferee/Resulting Company undertakes to comply with the RBI guidelines for the allotment of shares to the shareholders of the Demerged Company to the extent applicable.
12. As far as the observations made in paragraph IV (e) of the Report of Regional Director is concerned, the learned Counsel for Petitioners clarifies that instead of Clause 8.1 & Clause 21.9 has been erroneously mentioned in the Report of Regional Director. Further, the Learned Counsel submits that the Transferee/Resulting Company has obtained valuation report for arriving at swap ratio for the Scheme of Arrangement. The Transferee Company undertakes to comply FEMA Guidelines for allotment of shares to shareholders of the Demerged Company to the extent applicable.
13. As far as the observations made in paragraph IV (f) of the Report of Regional Director is concerned, the learned Counsel submits that the Transferee Company undertakes to comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013.

14. The Observations made by the Regional Director have been explained by the Learned Counsel for the Petitioner Companies in paragraphs 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
15. The Official Liquidator has filed his report on 3rd day of November, 2017 stating therein, save and except as stated in paragraph (8), (9) and (10) of the said Report the affairs of the Company have not been conducted in the manner prejudicial to the interest of its members and public interest. the Official Liquidator has stated that the observation on proposed Scheme to be considered by Hon'ble NCLT are as under:
- 8 (a) *As per Default statement to Traces site obtained from the company, there are outstanding TDS payable for several years from the Financial Year 2014-15 to 2016-17 which works out for Rs.41.62 lakhs which is listed separately in Annexure "C-1". Though the liability it seems is existing since long time, it has neither been mentioned under disputed / undisputed liabilities in CARO Report or form part of the contingent liability in the Audited Balance Sheet not it is dealt with by payment of the said outstanding TDS.*
- 9 (a) *There is sizeable outstanding income tax demand as per screenshot available on the income tax site in respect of the company for the Assessment Year 2007-08, 2008-09, 2011-12 and 2012-13. For the Assessment Year 2012-13, demand is Rs. 60.40 lakhs (Income Tax demand status as per annexure "C-3") do not figure in the Audited Balance Sheet and CARO Report annexed to the Audit report for the year ended 31.03.2016 and also in earlier years.*
- 9 (b) *As per Default statement to Traces site obtained from the company, there are outstanding TDS payable for several years from the Financial Year 2012-13 to 2016-17 which works out to Rs. 1.91 lakhs which is listed separately in Annexure "C-1". Though the liability it seems is existing since long time, it has neither been mentioned under disputed/ undisputed liabilities in CARO Report or form part of the contingent liability in the Audited Balance Sheet nor it is deal with by payment of the said outstanding TDS.*
- 10 (a) *As per Default statement to Traces site obtained from the company, there are outstanding TDS payable for several years from the Financial Year*

2012-13 to 2016-17 which works out to Rs. 3.80 lakhs which is listed separately in Annexure "C-1". Though the liability it seems is existing since long time, it has neither been mentioned under disputed / undisputed liabilities in CARO Report or form part of the contingent liability neither in the Audited Balance Sheet nor it is dealt with by payment of the said outstanding TDS.

16. So far as the observation in Paragraph 8, 9(b) and 10(a) of the report of the Official Liquidator is concerned, the Learned Counsel for the Petitioners submits that the Transferor Companies have already initiated taking corrective measures including revising of the TDS Returns and / or payment of the liability or any other action that may be required to be undertaken under the provisions of Income Tax Act, 1961. The Company had also sent notice to Income Tax Department for this Scheme of Arrangement and the Company has not received any objection from Income Tax Department on the same. Further, upon the scheme becoming effective, all liabilities of the Transferor Companies shall continue with the Transferee Company and the Transferee Company undertakes to honour the same. Accordingly, the Transferee Company shall comply with the provisions of Income Tax Act, 1961 and tax implications, if any will be answered in accordance with the Law.
17. So far as the observation in Paragraph 9(a) of the report of the Official Liquidator is concerned, the learned Counsel submits that the Second Transferor Company had been acquired recently by the present shareholders. The management of the Company will discuss the matter with the auditors and the matter shall be evaluated. It will be appropriately disclosed in accordance with provisions of applicable accounting standards and the provisions of the Companies Act., Further, upon the scheme becoming effective, all liabilities of the Transferor Companies shall continue with the Transferee Company as stated in Clause 4 of the Scheme of Arrangement. Hence, if the appropriate authorities have any concerns then the Transferee Company shall be responsible to respond to the same.
18. The Observations made by the office of the Official Liquidator have been explained by the Learned Counsel for the Petitioner Companies in paragraphs 16 & 17 above. The clarifications given by the Petitioner Companies are accepted.
19. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of Law and is not contrary to public policy.

20. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 877, 878, 879, 880 and 881 of 2017 are made absolute in terms of prayers stated in the respective Petitions.
21. The Petitioner Companies are directed to file a certified / authenticated copy of this order and the Scheme with the concerned Superintendent of Stamps, within 60 working days from the date of the receipt of certified true Copy of Order, for the purpose of adjudication of stamp duty payable, if any, on the same.
22. The Petitioner Companies are directed to file a certified / authenticated copy of order and the scheme on the receipt of said order from National Company Law Tribunal, Mumbai Bench within 30 working days from the date of the receipt of Certified True Copy of Order with the concerned Registrar of Companies, electronically, along with E-Form INC-28 as per the relevant provisions of the Companies Act, 2013.
23. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai in the Company Scheme Petition No. 877, 878, 879, 880 and 881 of 2017 and Transferor Companies to pay costs of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. The cost to be paid within four weeks from the date of receipt of Certified True Copy of Order.
24. All concerned regulatory authorities to act on a copy of this order along with Scheme duly certified by the Registrar, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapthy, Member (T)

Sd/-

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