

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO 276 OF 2017
IN
COMPANY SCHEME APPLICATION NO 163 OF 2017

Future Retail Limited

.....Petitioner Company

In the matter of the Companies Act, 2013;

AND

In the matter of Heritage Foods Limited ('Transferor Company') and Heritage Foods Retail Limited ('Transferee Company' or 'Demerged Company') and Future Retail Limited ('Resulting Company' or 'Petitioner Company') and their respective Shareholders

AND

In the matter of Sections 230 read with Section 232 and Section 52 and Section 66 and other applicable provisions of the Companies Act, 2013

Called for hearing

Mr. Gaurav Joshi, Senior Counsel, with Mr. Hemant Sethi, M/s Hemant Sethi & Co., Advocate for the Petitioner

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

Coram: B.S.V. Prakash Kumar, Member (Judicial)

Date: 11th May, 2017

1. Heard the learned counsel for the Petitioner Company. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of this Tribunal is sought under section Sections 230 read with Section 232 and Section 52 and Section 66 of the Companies Act, 2013, to the Composite Scheme of Arrangement among Heritage Foods Limited ('Transferor Company') and Heritage Foods Retail Limited ('Transferee Company' or

‘Demerged Company’) and Future Retail Limited (‘Resulting Company’ or ‘Petitioner Company’) and their respective Shareholders and Creditors.

3. The learned Counsel for the Petitioner Company submit that Petitioner Company currently operates multiple retail formats in the Indian consumer market under different brand names including: Big Bazaar; FBB; Food Bazaar; Foodhall; Home Town and eZone.
4. The Composite Scheme of Arrangement involving the Transferor Company, the Transferee Company and the Petitioner Company would have the following benefits:
 - a. facilitate each business to be effectively integrated for achieving growth for each of the verticals independently;
 - b. enhance management focus and operational flexibility;
 - c. facilitate investment by strategic players;
 - d. create a platform to enhance financial flexibility to pursue growth;
 - e. consolidation of the retail operations of the Petitioner Company and the Transferee Company;
 - f. unlocking of value; and
 - g. synergies expected to bring in cost savings in the marketing, selling and distribution expenses for the Petitioner Company.
5. Petitioner Company has approved the said Scheme by passing the Board Resolution which is annexed to the Company Scheme Petition.
6. The learned Counsel for the Petitioner Company further states that, the Petitioner Company has complied with all the directions passed in Company Scheme Application and that the Company Scheme Petition has been filed in consonance with the orders passed in the Company Scheme Application.
7. The learned Counsel for the Petitioner Company further states that the Petitioner Company has complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Company through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the rules made there under. The said undertaking is accepted.
8. The Regional Director has filed his Report dated 2nd May, 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

1. *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
2. *The Petitioners have submitted the proof of serving notice, upon the Income Tax Authorities for comments on 06.03.2017. This Directorate has also issued a reminder letter to the Income Tax Department dated 02.05.2017.*
3. *Petitioner in clause 13 of the Scheme has inter alia mentioned that in consideration of the transfer of and vesting of the Retail Undertaking and the VetCa Undertaking with the Transferee Company in accordance with the Scheme by way of slump sale as defined under the provisions of section 2(42C) of the Income-tax Act, the Transferee Company shall pay a consideration of INR 135,00,00,000/- (Rupees One Hundred and Thirty Five Crores) subject to adjustment of net working capital between the Slump Sale Appointed Date and the Effective Date, which shall be discharged in the manner specified in Clause 13.2.*

The consideration would be discharged by the Transferee Company, without any further application, deed, action or thing, by way of issuance and allotment of 1,40,00,000 (One Crore Forty Lakhs) equity shares of the Transferee Company, each of a face value of INR 10 (Rupees Ten only) and a premium of INR 86.43 (Rupees Eighty Six and Paise Forty Three), credited as fully paid-up to the Transferor Company.

Upon the issuance of the Equity Shares as per Clause 13.1, the issued, subscribed and paid-up share capital of the Transferee Company shall stand increased to INR 14,16,56,000 (Rupees Fourteen Crores Sixteen Lakhs Fifty Six Thousand) comprising of 1,41,65,600 (One Crore Forty One Lakhs Sixty Five Thousand and Six Hundred only) equity shares having a face value of INR 10 (Rupees Ten only).

In this regard it is submitted that the Transferor Company (Heritage Foods Limited) is selling through slump sale, 2 undertakings to Transferee Company (HFRL) for which consideration is received. Further Transferee Company is allotting shares to Transferor Company. No shares are allotted to shareholders of Transferor Company.

In this regard Petitioner Company undertake to provide accounting standards and accounting principles adopted and the provisions of Companies Act complied with.

4. *Petitioner in clause 31 of the Scheme has inter alia mentioned that on and from the Effective Date, and with effect from the Demerger Appointed Date and after giving effect to Part II and Part III of the Scheme, the issued, subscribed and paid up equity share capital of the Demerged Company shall, without any further application, act, instrument or deed and without any payment, be reduced.*

In this regard it is submitted that in the Scheme not mentioning about the share capital of the demerged company that would be reduced. Therefore the petitioner company undertake to mention the same.

5. *The Transferee Company shall credit its share capital account in its books of account with the aggregate face value of the equity shares issued to the Transferor Company pursuant to Clause 13.2 of the Scheme. Further, the Transferee Company shall credit to its securities premium account, the aggregate premium on securities issued by it pursuant to Clause 13.2 of the Scheme. The securities premium account recorded by the Transferee Company shall be applied as per the provisions of Section 52 of Companies Act, 2013. Petitioner in clause 30 of the Scheme has inter alia mentioned about Accounting Treatment In The Books Of The Shareholders Of Demerged Company the adjustment required in the book value of investment in the Demerged Company for reduction by the value of the net assets transferred by Demerged Company to Resulting Company, shall be recorded as cost of the New Equity Shares issued by the Resulting Company.*

In this regard Petitioner Company undertake to provide the accounting standards and accounting principles adopted and the provisions of the Companies Act complied with.

6. *Petitioner has received NOC from NSE and BSE dated 18.01.2017. However the Petitioner has to undertake to comply with the conditions given in the letter.*
9. *In so far as observations made in paragraph IV (1) and (2) of the Report of Regional Director is concerned, the Petitioner Company through its Counsel undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.*

10. As far as observations made in paragraph IV (3) of the Report of the Regional Director is concerned, the Petitioner Company through its Counsel submit that the Transferor Company and the Transferee Company have obtained certificate from their respective statutory auditors confirming that the accounting treatment contained in the Scheme is in compliance with all the applicable accounting standards notified by the Central Government read with relevant rules issued thereunder. The Counsel for the Petitioner Company further submit that the Slump Sale of Retail Undertaking and VetCa Undertaking by the Transferor Company to the Transferee Company is an arrangement between the Transferor Company and the Transferee Company and their respective shareholders under Section 230 of the Companies Act, 2013 which is analogous to Section 391 of the Companies Act, 1956. The Counsel for the Petitioner Company further submit that the Transferor Company and the Transferee Company are under the jurisdiction of NCLT, Hyderabad Bench and the Petitioner Company shall seek to ensure that the applicable accounting standards and principles and the applicable provisions of the Companies Act are complied with by the Transferor Company and the Transferee Company.
11. As far as observations made in paragraph IV (4) of the Report of the Regional Director is concerned, the Counsel for the Petitioner Company submit that the Transferee Company is under the jurisdiction of NCLT, Hyderabad Bench and utilization of balance in the Securities Premium Account pursuant to Clause 31.2 of the Scheme shall be to the extent of Rs. 121,00,20,000/- (Rupees One Hundred Twenty One Crores and Twenty Thousand) and the paid up equity share capital of the Transferee Company shall be reduced by an amount not exceeding Rs 14,15,00,000/- (Rupees Fourteen Crores and Fifteen Lacs). The Counsel for the Petitioner further submits that the National Company Law Tribunal, Hyderabad Bench, being the jurisdictional bench of the National Company Law Tribunal for the Transferee Company, has already approved the aforesaid reduction of capital of the Transferee Company.
12. As far as observations made in paragraph IV (5) of the Report of the Regional Director is concerned, the Counsel for the Petitioner Company submit that the Transferor Company has obtained certificate from its statutory auditors confirming that the accounting treatment contained in the Scheme is in compliance with all the applicable accounting standards notified by the Central Government read with relevant rules issued thereunder. The Counsel for the Petitioner Company further submit that the Transferor Company is under the jurisdiction of NCLT, Hyderabad Bench and the Petitioner Company shall seek to ensure that the applicable

accounting standards and principles and the applicable provisions of the Companies Act are complied with by the Transferor Company.

13. As far as observations made in paragraph IV (6) of the Report of the Regional Director is concerned, the Counsel for the Petitioner Company undertake that it shall comply with all the conditions given in the requisitions NOC received from BSE and NSE to the extent applicable.
14. The observations made by the Regional Director have been explained by the Petitioner Company in paragraphs 9 to 13 above. The clarifications and undertakings given by the Petitioner Company are hereby accepted.
15. 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. None of the parties concerned have come forward to oppose the Scheme.
16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 276 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clause (a) to (d) of the Petition.
17. The Petitioner Company to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
18. Petitioner Company is directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with E-form INC 28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry.
19. The Petitioner Company to pay costs of Rs. 25,000/- to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of receipt of Order.
20. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
21. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

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