

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CSA No 27 of 2018

In the matter of the Companies Act,  
2013

AND

In the matter of Scheme of  
Arrangement between Hypercity Retail  
(India) Limited ('Demerged Company' or  
'Applicant Company') and Future Retail  
Limited ('Resulting Company') and their  
respective shareholders

**HYPERCITY RETAIL (INDIA) LIMITED**, a company  
incorporated under the provisions of Companies Act,  
1956 having its registered address at Umang Tower,  
2nd Floor, Mindspace, Off Link Road, Malad (West),  
Mumbai – 400064

.....Demerged                      Company/Applicant  
Company

Order delivered on 8<sup>th</sup> February, 2018

Coram:

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

Hon'ble Shri. **V. Nallasenapathy**, Member (T)

For the Applicant: Mr. Gaurav Joshi, Senior Counsel and Ms. Alpana Ghone,  
Counsel with Mr. Hemant Sethi/b Hemant Sethi & Co.

Per: V. Nallasenapathy, Member (T)

**ORDER**

1. The Counsel for the Applicant states that the present Scheme is a Scheme of Arrangement between wholly owned subsidiary company namely, Hypercity Retail (India) Limited ('Demerged Company' or 'Applicant Company') with its holding company namely Future Retail

Limited ('Resulting Company') and their respective Shareholders under the provisions of Sections 230 to 232 of the Companies Act, 2013.

2. The Counsel for the Applicant further submits that the Applicant Company is engaged in retailing a variety of household and consumer products through hypermarket stores and property options business. The Resulting Company currently operates multiple retail formats in the Indian consumer market under different brand names including: Big Bazaar; FBB; Food Bazaar; Foodhall; easyday; and eZone.
3. The Counsel for the Applicant further submit that the Applicant Company is a wholly owned subsidiary of the Resulting Company and entire share capital of the Applicant Company is owned and controlled by the Resulting Company.
4. The Counsel for the Applicant further submits that the rationale for the Scheme is as under:
  - a) Applicant Company is inter-alia engaged in retailing a variety of household and consumer products through hypermarket stores and property options business. Applicant Company currently operates through 19 such stores located in different cities of India. The entire paid up equity share capital of Applicant Company is held by Resulting Company along with its nominees.
  - b) Resulting Company currently operates multiple retail formats in the Indian consumer market under different brand names including: Big Bazaar; fbb; Food Bazaar; easyday, Foodhall; and eZone.
  - c) Resulting Company has in principle approved sale of all shares of Applicant Company with the Remaining Undertaking of Applicant Company during the financial year 2017-18. The sale of shares is subject to receipt of requisite approvals to this Scheme and the same being made effective, which *inter-alia* contemplates transfer and vesting of Retail Business Undertaking from Applicant Company to Resulting Company.
  - d) Demerger of the Retail Business Undertaking from Applicant Company into Resulting Company shall have the following benefits:
    - i. consolidation of retail operations of Resulting Company and Applicant Company in a single entity;
    - ii. streamlining the operating structure; and
    - iii. synergies expected to bring in cost savings in the marketing, selling and distribution expenses as well as give benefits of the economies of scale to the Company.

5. That the meeting of the Equity Shareholders of the Applicant Company i.e. the Demerged Company be convened and held at 9:30 A.M., on 12<sup>th</sup> March, 2018 at 247 Park, Tower 'C', 4th Floor, Auditorium, LBS Marg, Vikhroli (West), Mumbai – 400 083 for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Arrangement between Hypercity Retail (India) Limited and Future Retail Limited and their respective shareholders.
6. That at least 1 month before the said Meeting of the Equity Shareholders, if any, of the Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14<sup>th</sup> December, 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Hand Delivery / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the shareholders, at their last known address or email addresses as per the records of the company.
7. That at least 1 month before the meeting of the Shareholders, if any, of the Applicant Company to be held as aforesaid, a notice convening the said Meeting, indicating the place, date and time of meeting as aforesaid be published in Free Press Journal (Mumbai Edition) in English Language and a Marathi Translation thereof in Navshakti (Mumbai Edition) stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and/ or at the office of its Advocates, M/s. Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
8. That Mr. C.P. Toshniwal, Director of the Applicant Company and failing him Mr. Harsha Saksena, Director of the Applicant Company and failing

him Mr. RavishankerKejriwal, Authorised Person of the Applicant Company shall be the Chairman of the aforesaid meeting of the Shareholders of the Applicant Company to be held at 247 Park, Tower 'C', 4<sup>th</sup> floor, Auditorium, L.B.S. Marg, Vikroli (West), Mumbai – 400083 on 12<sup>th</sup> March, 2018 at 9:30 A.M. or any adjournment or adjournments thereof.

9. That the Chairman appointed for the aforesaid meeting to issue the advertisement and send out the notices of the meeting referred above shall have all powers as per the Articles of Association of the Applicant Company and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meeting by any person(s).
10. That the quorum of the aforesaid meeting of the Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
11. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meeting, are filed with the Applicant Company at the Registered Office not later than 48 hours before the aforesaid meeting as per the provisions of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.
12. That the value and number of the shares of each Shareholder shall be in accordance with the books / registers of the Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
13. That Mr. AnantGude (Membership No. A 7219 / CP No. 18623), Proprietor – M/s. AnantGude & Associates, Practicing Company Secretary is hereby appointed as Scrutinizer of the meeting of the Shareholders of the Applicant Company proposed to be held at 247 Park, Tower 'C', 4<sup>th</sup> floor, Auditorium, L.B.S. Marg, Vikhroli (West), Mumbai –

400083 on 12<sup>th</sup> March, 2018 at 9:30 A.M. and his remuneration is fixed as Rs. 7,500/- (Rupees Seven Thousand Five Hundred only).

14. That the Chairman of the aforesaid meeting shall file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and to report to this Tribunal that the directions regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
15. That the Chairman of the aforesaid meeting to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.
16. The Applicant Company is directed to serve notices along with copy of the Scheme of Arrangement upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, and (iii) Registrar of Companies, Mumbai, with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
17. The Counsel for the Applicant Company further submits that since the Scheme is an arrangement between the Applicant Company and Resulting Company and their respective shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This Bench hereby directs the Applicant Company to issue notices to all its Secured Creditors to whom the amounts are due and payable, as on 31<sup>st</sup> December, 2017, as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
18. The Counsel for the Applicant Company further submits that since the Scheme is an arrangement between the Applicant Company and

Resulting Company and their respective shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This Bench hereby directs the Applicant Company to issue notices to its Unsecured Creditors having an outstanding balance of Rs. 75,000/- (Seventy Five Thousand Only) or more to whom the amounts are due and payable, as on 31<sup>st</sup> December, 2017, as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon Applicant Company.

19. The Applicant Companies to file affidavit of service in the Registry proving dispatch of notices to the shareholders, creditors, publication of notices in newspapers and to the regulatory authorities and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

**V .Nallasenapathy, Member (T)**  
**Date: 8<sup>th</sup> February, 2018**

Sd/-

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