

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
BENCH AT, HYDERABAD**

C.P.No 19/230/HDB of 2017

Date of order : 03.05.2017

Heritage Foods Limited
CIN L15209TG1992PLC014332
a company incorporated under the
Companies Act, 1956, having its
registered office at #6-3-541/C,
Punjagutta,
Hyderabad - 500082. ... Petitioner/Transferor Company

Parties Present:

Counsel for the Petitioner : Mr. Ramachandra Rao Gurram

CORAM

Mr. Rajeswara Rao Vittanala, Member (Judicial)

ORDER

(As per Rajeswara Rao Vittanala, Member (Judicial))

1. The present Company Petition bearing C.P.No.19/230/HDB/2017 is filed by Heritage Foods Limited under Sections 52 and 66, 230 to 232 and other applicable provisions of Companies Act, 2013 inter-alia seeking that the Composite Scheme of Arrangement may be sanctioned by the Tribunal as to be binding on all the Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors and Employees of the said company and on the company itself and pass such further or other Order(s) be made and/or directions be given as this Hon'ble Tribunal may deem fit and proper.

2. Brief facts, which are relevant to present issue, are as follows:



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- a. Heritage Foods Limited ('Petitioner/Transferor Company') was incorporated under the Companies Act, 1956 in the name of 'Heritage Foods (India) Limited' on 5th day of June, 1992. The name of the Petitioner Company was changed to 'Heritage Foods Limited' on 16th day of August, 2013. The Registered Office of the Petitioner Company is situated at #6-3-541/ C, Punjagutta, Hyderabad - 500082.
- b. The shares of the Petitioner Company are currently listed on the National Stock Exchange of India Limited ('NSE') and BSE Limited ('BSE'). Subsequent to the above date and till the date of filing the instant Petition, there has been no change in the issued, subscribed and paid up capital of the Petitioner Company.
- c. The Petitioner Company is engaged in 6 (six) key business verticals viz. Dairy business vertical, Retail business vertical, Agri business vertical, Bakery business vertical, Veterinary care business vertical, Renewable energy business vertical.
- d. Heritage Foods Retail Limited (the 'Transferee Company') was incorporated under the Companies Act, 1956 in the name of 'Heritage Foods Retail Limited' on 1st day of December, 2008. It is a wholly owned subsidiary of the Petitioner Company. The registered office of the Transferee Company is situated at #6-3-541/ C, Punjagutta, Hyderabad - 500082. The entire paid up equity share capital of the Transferee Company is held by the Petitioner Company along with its nominees.
- e. Future Retail Limited ('Resulting Company') was incorporated in 2007 as a company under the name 'Bharti Retail Private Limited' under the provisions of Companies Act, 1956 vide certificate of incorporation dated 7th February 2007. The Resulting Company was later converted to a public company under the name 'Bharti Retail Limited' vide certificate of



incorporation dated 21st May 2009. The name of the Resulting Company was further changed to 'Future Retail Limited' vide certificate of incorporation dated 25th May 2016.

f. The Registered Office of the Resulting Company is situated at Knowledge House, Shyam Nagar, Off Jogeshwari – Vikhroli Link Road, Jogeshwari (East), Mumbai – 400 060. The Resulting Company is currently operates multiple retail formats in the Indian consumer market under different brand names including Big Bazaar, FBB, Food Bazaar, Food Hall, Home Town, easyday and eZone.

g. The Composite Scheme of Arrangement involving the Transferor Company, the Transferee Company and the Petitioner Company would have the following benefits:

- i) facilitate each business to be effectively integrated for achieving growth for each of the verticals independently;
- ii) enhance management focus and operational flexibility;
- iii) facilitate investment by strategic players;
- iv) create a platform to enhance financial flexibility to pursue growth;
- v) consolidation of the retail operations of the Resulting Company and the Transferee Company;
- vi) unlocking of value; and
- vii) synergies expected to bring in cost savings in the marketing, selling and distribution expenses for the Petitioner Company.

h) In view of the aforesaid, the Board of Directors of the Petitioner Company vide its resolution dated 7th day of November, 2016 approved the Composite Scheme of Arrangement among Heritage Foods Limited and Heritage Foods Retail Limited and Future Retail Limited and their



respective Shareholders and Creditors. The Board of Directors of the Resulting Company and the Transferee Company have also approved the Scheme at their meeting held on 7th day of November, 2016.

- i) No investigation or proceedings under the Companies Act, 1956 / Companies Act, 2013 have been instituted or are pending in relation to the Petitioner Company.
- j) It is submitted that the Tribunal by an order dated 10th February, 2017 allowed Company Application No C.A. (C.A.A) No. 6/230/HDB/2017 by directing to convene a meeting of shareholders of Company for the purposes of considering and if thought fit approving with or without modifications the said Composite Scheme of Arrangement. The Order further appointed Sri K. Ram Murthy to act as Chairperson of the said meeting and should report the result thereof to the tribunal by 5th April, 2017. The Hon'ble Tribunal has also dispensed with the meeting of secured creditors and unsecured creditors of the Transferor Company.
- k) It is submitted that on 17th February 2017 notice of the meeting was sent individually to the shareholders whose names appeared on the Register of Members as on 11th February, 2017 as directed by the Order together with a copy of the Composite Scheme of Arrangement and the statement required by Sections 231, 232 read with Section 230 of the Act and a form of proxy. The notice of the meeting was also advertised on 18th February, 2017 as directed by the said Order in Business Standard and Andhra Bhoomi newspapers.

- l) On 20th March, 2017, a meeting of shareholders of the transferor company was duly convened in accordance with the said order, was held at Auditorium Hall, 2nd Floor, Training Block, National Institute for Micro, Small and Medium



Enterprises, Yousufguda, Hyderabad – 500 045 and K. Ram Murthy acted as the chairperson of the meeting.

- m) The said Chairperson K. Ram Murthy reported the result of the meeting to this Hon'ble Tribunal on 22nd March, 2017. It is stated the said meeting was attended by 63 shareholders out of which, 49 shareholders were personally present, 14 shareholders attended through proxy and 163 shareholders e-voted. The total number of shares in respect of which vote was cast 1,42,77,489 with a face value of Rs.10/- each, representing 61.54% of the total issued, subscribed and paid up share capital of the Transferor Company. The Composite Scheme of Arrangement was read and explained by the chairperson appointed by this Hon'ble Tribunal, to the meeting and it was resolved unanimously by 99.9985% votes in favour, out of the total number of votes cast. The resolution passed and approved the scheme in question.



3. As stated supra, all stake holders of Company are put under due notice as per law, of the proposed Scheme of amalgamation and the Chairman appointed by the Tribunal has also conducted the required meeting of Shareholders as per due process of law. As such the scheme in question has the approval of majority of all stake holders of Company. All statutory compliances have been made by the Company for approval of the scheme in question.
4. The Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad, has filed a sworn affidavit dated 22nd March, 2017, by inter-alia stating that the Companies involved in the proposed Scheme of Arrangement have not opposed the scheme in question and submitted that they are regular in filing statutory returns and no complaints, no

investigations/inspections are pending against them. So he submits that Tribunal can consider the scheme as per merits.

5. The Deputy Commissioner of Income Tax, Circle -2(2), Hyderabad Vide his letter (file) No.DC-2(2)/281/AACCHI365A/2016-17 dated 20th April, 2017 addressed to Principal officer, M/s Heritage Foods Retail Limited, granting permission to transfer of assets of Retail Undertaking (Comprising of retail, agri & bakery) in favour of M/s Future Retail Limited.
6. The Competition Commission of India, by its letter bearing Combination Registration No. C-2016/12/462/5291 dated 17-03-2017 by intimating that proposed combination has been approved by the Commission under Section 31(1) of Competition Act, 2002 on 13.02.2017.
7. It is further filed proof to show paper publication in relation to date of hearings as 27.04.2017 is issued in English Daily of "Business Standard" (National Edition) and in Telugu Daily "Andhra Bhoomi" (State Edition) on 22.04.2017. And confirmed that in pursuance to the said notice, no objection (s) have been received from any sources including statutory authorities for the sanction of Scheme in question.

8. I have carefully perused all the terms and conditions of the Composite Scheme of Arrangement in question. In case of consideration of the scheme of arrangement, primary issues arise for consideration are – whether the scheme proposed is bonafide in nature of interest of all stake holders of company and in general interest of company itself; secondly, concerned authorities have any objections(s) for such scheme(s). In the instant case, as stated supra, that Transferee company has in compliance with Section 230(5) of the Companies Act, 2013 read with Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, has issued

the notice to the respective statutory authorities in Form No.CAA.3 on February 17, 2017 by way of registered post as a way of service upon (a) The Regional Director; (b) The Registrar of Companies; (c) The Competition Commission of India; (d) The Commissioner of Income Tax; € The Securities and Exchange Board of India; (f) National Stock Exchange; and (g) Bombay Stock Exchange.

9. As stated supra, all stake holders of company are put under due notice as per law, of the proposed Scheme of Arrangement and the Chairman appointed by the Tribunal has also conducted the required meeting of shareholders as per due process of law. As such, the scheme in question has the approval of majority of all stake holders of the company. All statutory compliances have been made by the company for approval of the scheme in question.

10. In view of the above facts and circumstance of the case, I am of the considered view that the Company petition deserved to be allowed as prayed for. Hence, the Company petition bearing CP No. 19/230/HDB of 2017 is allowed with the following directions:



a) The Composite Scheme of Arrangement as enclosed at page 139 of CP, as approved by the Board of Directors is hereby sanctioned and further declare it is binding on all the Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors and Employees of the Petitioner Company and also on the Petitioner Company itself.

b) The Applicant Company is further directed to file a certified copy of this order along with approved Composite scheme of Arrangement with the Registrar of Companies, Ministry

of Corporate Affairs, Hyderabad, within a period 30 days from the date of receipt of copy of this order. And the Registrar of Company is directed to take appropriate action in accordance with law.

- c) The Applicant Company is further directed to intimate all concerned about the sanction of above Scheme in approved mode of communication.



Sd/=
 RAJESWARA RAO VITTANALA
 MEMBER (JUDICIAL)

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 V. ANNA POORNA
 Asst. DIRECTOR
 NCLT, HYDERABAD - 68

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