

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

C.P.(CCA)No.48/230/HDB/2017

Date of order: 03.05.2017

Heritage Foods Retail Limited
CIN U15400AP2008PLC062054
a company incorporated under the
Companies Act, 1956, having its
registered office at #6-3-541/C,
Punjabgutta,
Hyderabad-500082

... Petitioner/Transferee Company/Demerged Company

Parties Present:

Counsel for the Petitioner : Mr. Ramachandra Rao Gurram

CORAM

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

ORDER

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

1. The present Company Petition bearing C.P.(CAA)No.48/230/HDB/2017 is filed by Heritage Foods Retail Limited , under Sections 52, 66, 230 to 232 and other applicable provisions of Companies Act, 2013 by inter-alia seeking the Tribunal to sanction the Composite Scheme of Arrangement as enclosed, so as to bind on all the Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors and Employees of the Transferee Company and also on the Company itself and pass such further or other Order(s) as this Hon'ble Tribunal may deem fit and proper.



2. Heard, Mr. Ramachandra Rao Gurram and have carefully perused all pleadings, extant provisions along with material papers filed in their support.
3. Brief facts, which are relevant to the issue in question, are as follows:
 - a) Heritage Foods Retail Limited ('Petitioner Company' or '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 Transferor Company. The

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Registered Office of the Petitioner Company is situated at #6-3-541/C, Punjagutta, Hyderabad - 500082.

- b) The authorized, issued, subscribed and paid-up share capital of the Petitioner Company as on 30th September, 2016 is as under:

Particulars	Rupees
<u>Authorised Share Capital</u>	
1,50,00,000 equity shares of INR 10 each	15,00,00,000
Total	15,00,00,000
<u>Issued, Subscribed & Fully Paid-up Share Capital</u>	
1,65,600 equity shares of INR 10 each	16,56,000
Total	16,56,000

Subsequent to the above date and till the date of filing the petition, there has been no change in the issued, subscribed and paid up capital of the Petitioner Company. The entire paid up equity share capital of the Petitioner Company is held by the Transferor Company along with its nominees. The Petitioner Company is engaged in the business of trading and dealing in goods and produce, and processing, packaging and selling agri products. The Petitioner Company is a wholly owned subsidiary of the Transferor Company.



c) Heritage Foods Limited ('**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 Transferor Company was changed to 'Heritage Foods Limited' on 16th day of August, 2013. The Registered Office of the Transferor Company is situated at #6-3-541/C, Punjagutta, Hyderabad - 500082.

- d) 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 into 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.

- e) The Registered Office of the Resulting Company is situated at Knowledge House, Shyam Nagar, Off Jogeshwari – Vikhroli Link Road, Jogeshwari (East), Mumbai – 400 060.
- f) The Resulting Company is currently operates multiple retail formats in the Indian consumer market under different brand names including: Big Bazaar; FBB; Food Bazaar; Foodhall; Home Town; easyday and eZone.
- g) The Composite Scheme of Arrangement involving the Transferor Company, the Resulting Company and the Petitioner Company would inter-alia facilitate each business to be effectively integrated for achieving growth for each of the verticals independently; enhance management focus and operational flexibility; facilitate investment by strategic players etc.
- 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 Transferor 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) The Company has earlier approached the Tribunal by filing an application bearing C.A.(CAA)No. 6/230/HDB/2017 by seeking directions to permit them to hold meeting of the shareholders and to dispense with meeting of the unsecured creditors to consider and if thought fit to approve or modify the Composite Scheme of Arrangement. The Tribunal disposed of said CA by an order dated 10th February, 2017 ("Order") by directing the Transferor Company 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 and also appointed Sri K. Ram Murthy, Advocate, to act as chairperson of the said meeting and should report the result thereof to the Tribunal by 5th April, 2017. Further, the Hon'ble Tribunal has 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 section 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. The order of the Tribunal was advertised in Business Standard and Andhra Bhoomi Newspapers on March 10, 2017.

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. The said Chairperson K. Ram Murthy reported the result of the meeting to this Hon'ble Tribunal on 22nd March, 2017. The 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 is 1,42,77,489 with a face value of Rs.10/- each, representing approximately 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 all the persons who have attended the meeting and it was resolved unanimously by 99.9985% votes in favour, out of the total number of votes cast. The resolution passed by approving the Scheme of Amalgamation in question. The Petitioner Company has sent notices to the Central Government and other regulatory authorities as per Rule 8 of the Companies



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(Compromises, Arrangements and Amalgamations) Rules, 2016 and waited for thirty days as required under the said rule.

4. It is stated that the scheme inter-alia envisages Retail, Bakery and Agri business verticals (including their respective assets and liabilities) of Transferor Company shall be transferred on a going concern basis as a slump sale to Transferee Company or Demerged Company, a wholly owned subsidiary of Heritage Foods Retail Limited shall discharge the consideration of Rs.135 Crores (One Hundred and Thirty Five Crores) by way of issue of 1,40,00,000 (One Crore Forty Lakhs) equity shares of Transferee Company, at face value of Rs.10/- each with a premium of Rs.86.43 to Transferor Company.

5. The Retail Undertaking of Transferee Company shall be further transferred to Future Retail Limited by way of demerger. The Vetca Undertaking will be retained in M/s Heritage Foods Retail Limited. In consideration for the demerger of the Retail Undertaking of HFRL into FRL in terms of the Scheme, FRL will issue an aggregate of 1,78,47,420 (One Crore seventy eight lakhs forty seven thousand four hundred and twenty) equity shares of the face value of INR 2/- (Rupees Two), each, fully paid up to the equity shareholders of M/s Heritage Foods Retail Limited as on the Record Date on a proportionate basis. M/s Heritage Foods Limited is currently the beneficial owner of 100% of the equity shares of M/s Heritage Foods Retail Limited.



6. The Demerger Appointed Date is the close of business on March 31, 2017. 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 (i.e. M/s Heritage Foods Retail Limited, a wholly owned subsidiary company of M/s Heritage Foods Limited) shall be reduced.

7. It is stated that the objects for which the Company was formed are as set forth in the company's Memorandum of Association. The main objects of the Company in brief are to carry on business as merchants, traders, commission agents, buying and selling agents, brokers, importers, buyers, sellers, exporters, dealers and to import, export, buy, sell, barter, exchange, or

otherwise trade and deal in goods, produce, articles and merchandise of any kind whatsoever in India or anywhere in the world as allowed under Trade Laws etc .

8. The Transferee Company is, *inter alia*, engaged in trading and dealing in goods and produce, and processing, packaging and selling agri products. Transferee Company or Demerged Company is a wholly owned subsidiary of the Transferor Company. That Transferor Company, Transferee Company or Demerged Company and Resulting Company are in similar lines of Business etc . That in view of the advantages arising out of the Composite Scheme of Arrangement, the Board of Directors of the Transferor Company and the Transferee Company or Demerged Company and Resulting Company at their respective Board Meetings held on 7th November, 2016, approved the Composite Scheme of Arrangement between Transferor Company, the Transferee Company or Demerged Company and the Resulting Company.

9. Definitions, share capital and date of taking effect has been explained in detail in part I of Scheme. The amounts of general corporate nature or multipurpose borrowings, if any, of the Demerged Company as stand in the same proportion which the value of assets transferred in the demerger bears to the total value of assets of such Demerged Company immediately before the demerger.



10. With effect from the Slump Sale Appointed Date and till the Effective Date, the Transferor Company shall carry on, and shall be deemed to have carried on, all the business, activities and operations relating to the Retail Undertaking and/or the VetCa Undertaking, and shall hold and stand possessed of and shall be deemed to have held and stood possessed of the assets, properties and liabilities of each of the Retail Undertaking and/or the VetCa Undertaking, on account of and / or on behalf of and / or for the benefit of and / or in trust for, the Transferee Company.

11. In consideration of the transfer of and vesting of the Retail Undertaking and the VetCa Undertaking with the Transferee Company in accordance with this 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. And 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, 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).

12. It is stated that All costs, charges, and all expenses of the Transferor Company, the Demerged Company and the Resulting Company arising out of, or incurred in carrying out and implementing this Scheme and matters incidental thereto, shall be borne and paid by the Transferor Company and the Resulting Company as mutually agreed between parties.



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 objection(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; (e) The Securities and Exchange

Board of India; (f) National Stock Exchange; and (g) Bombay Stock Exchange.

14. 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.
15. 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 has 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.
16. 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.
17. 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.
18. 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 Scheme in question.



19. 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. 48 of 2017 is allowed with the following directions:

- a) The Composite Scheme of Arrangement as enclosed at page 124, (Exhibit 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 present 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 Companies is directed to take appropriate action in accordance with law.
- c) The Petitioner Company is further directed to intimate all concerned about the sanction of above Scheme in approved mode of communication.



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Sd/= **RAJESWARA RAO VITTANALA**
MEMBER (JUDICIAL)

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