

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

CSP 906/230-232/NCLT/MB/MAH/2017
CSP 907/230-232/NCLT/MB/MAH/2017
CSP 908/230-232/NCLT/MB/MAH/2017

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

CSP 906/230-232/NCLT/MB/MAH/2017
CSP 907/230-232/NCLT/MB/MAH/2017
CSP 908/230-232/NCLT/MB/MAH/2017

Under Section 230-232 and Section 66 and
other applicable provisions of the Companies
Act, 2013

In the matter of

M/s. Future Retail Limited
.....Petitioner in CSP 908/2017
(First Demerged Company)

M/s. Bluerock eServices Private Limited
.....Petitioner in CSP 907/2017
(Second Demerged Company)

M/s. Praxis Home Retail Limited
.....Petitioner in CSP 906/2017
(Resulting Company)

Order delivered on: 10.11.2017

Coram:

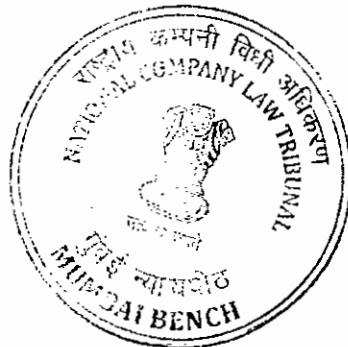
Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioners:

Mr. Gaurav Joshi and Ms. Alpana Ghone with Mr. Hemant Sethi i/b M/s. Hemant Sethi &
Co., Advocates for the Petitioners

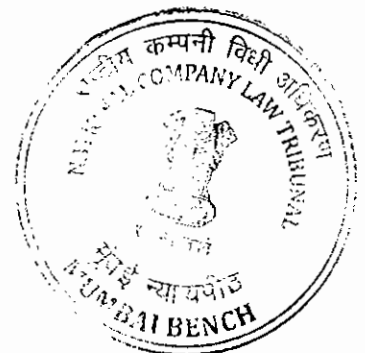
Per: Bhaskara Pantula Mohan, Member (J)



ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Composite Scheme of Arrangement between M/s. Future Retail Limited (First Demerged Company or FRL) and M/s. Bluerock eServices Private Limited (Second Demerged Company or BSPL) and Praxis Home Retail Limited, (Resulting Company or PHRL).
2. The Petitioner Companies have approved the said Composite Scheme of Arrangement by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The First Demerged Company currently operates multiple retail formats in the Indian consumer market under different brand names including: Big Bazaar; FBB; Food Bazaar; Foodhall; Home Town; easyday; eZone etc. The Second Demerged Company is engaged in the business of operating a web portal for online sale of furniture & furnishing products and providing services for operation & maintenance of IT enabled platforms and the Resulting Company is proposed to be engaged in Home Retail Business through retail outlets and online portal upon the Scheme becoming effective.
4. The rationale of the Composite Scheme of Arrangement is as under:
 - spin off specialty retail business and focusing on large format and small format pure retail businesses from FRL;
 - consolidation of offline and online Home Retail Business under a single entity;
 - attribution of appropriate risk and valuation to the respective businesses based on risk-return profile and cash flows;
 - more focused leadership and dedicated management; and
 - greater visibility on the performance of Home Retail Business and e-Commerce Home Retail Business.
5. The Authorised Share Capital of the First Demerged Company is ₹ 2500,00,00,000/- comprising of 1250,00,00,000 equity shares of ₹ 2/- each and the Issued Share capital is ₹ 98,55,37,076/- comprising of 49,27,68,538 equity

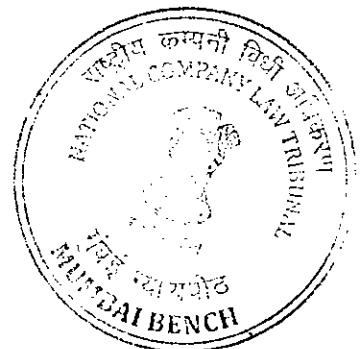
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shares of ₹ 2/- each and the Subscribed and Paid Up Share capital is ₹ 98,53,28,334/- comprising of 49,26,64,167 equity shares of ₹ 2/- each, fully paid up.

6. The Authorised Share Capital of the Second Demerged Company is ₹ 30,00,00,000/- comprising of 3,00,00,000 equity shares of ₹ 10/- each and the Issued, Subscribed and Paid- up Share Capital of the Second Demerged Company is ₹ 22,45,20,990/- comprising of 2,24,52,099 equity shares of ₹ 10/- each, fully paid up.
7. The Authorised Share Capital of the Resulting Company on the date of filing petition was ₹ 1,00,00,000/- comprising of 10,00,000 equity shares of ₹ 10/- each and the Issued, Subscribed and Paid- up Share Capital of the Second Demerged Company is ₹ 5,00,000/- comprising of 50,000 equity shares of ₹ 10/- each, fully paid up. Currently the Authorised Share Capital of the Resulting Company is ₹ 24,00,00,000/- comprising of 1,77,00,000 equity shares of ₹ 10/- each and 6,30,000 preference shares of ₹ 100/- each.
8. The averments made in the Petition and the submissions made by the Learned Representative for the Petitioners are:
 - a. The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
 - b. The Regional Director has filed his Report on 13th day of October, 2017 *inter alia* stating therein that save and except as stated in paragraph IV of the said report, 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:-
 - a) *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 Court may not deter the Income Tax Authority to scrutinize the tax return filed by*

Applm:



*the Petitioner Companies after giving effect to the scheme.
The decision of the Income Tax Authority is binding on the
Petitioner Companies.*

- b) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the Petitioner Companies vide letter dated 21.08.2017 has served a copy of scheme application no. 826 to 828 of 2017 along with relevant orders etc. Further this Directorate has also issued a reminder on 12.10.2017 to IT Department.*
- c) In addition to compliance of AS-14 (IND-AS 103) the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8), etc.*
- d) Petitioner Companies in the clause 16 of the scheme inter alia mentioned that upon coming into effect of the Scheme and in consideration for the transfer and vesting of the e-Commerce Home Retail Business Undertaking in PHRL, PHRL shall, without any further application or deed, issue and allot 9% Redeemable Preference Shares (hereinafter referred to as 'Preference Shares'), 6,30,000 (Six Lacs Thirty Thousand) Preference shares of the face value of INR 100/- (Rupees One Hundred only), each fully paid-up, of PHRL to be issued on a proportionate basis to members of his / her / their respective heirs, executors, administrators or as the case may be, successors holding fully paid-up equity shares in BSPL on the Record Date.*

In this regard, petitioner companies have to undertake to reclassify the share capital of the resulting company or issue / increase preference share capital.

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e) ROC Mumbai vide report / letter No. ROC/JTA(C)/u/s.230(Amlga)/212866/957 dated 13.10.2017 has mentioned that there are no complaints, no prosecution, no technical scrutiny pending. He has mentioned in vide point no. (32) as follows:

- 1st Demerged Company to comply the requirements of Companies Act, 2013 and to recover the excess remuneration paid to Shri. Rakesh Biyani as its Joint Managing Director in excess of the limits of the Companies Act.
- Section 232 (6) of the Companies Act, 2013 shall prevail for the effective date regarding para 1.7 of the scheme.

- c. Apropos observations made in paragraph IV (a) and (b) of the Report of Regional Director is concerned, the Petitioner Companies undertakes to comply with all applicable provisions of the Income-tax Act and all tax implications arising out of the Scheme of Arrangement will be met and answered or complied with in accordance with applicable law.
- d. Apropos observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies submits that in addition to accounting treatment given in the Scheme, the Petitioner Companies shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other applicable accounting standards.
- e. Apropos observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Resulting Company has already increased its authorized share capital to ₹ 24,00,00,000/- comprising of 1,77,00,000 equity shares of ₹ 10/- each and 6,30,000 preference shares of ₹ 100/- each. The Resulting Company undertakes to take the necessary steps and compliances applicable under the Companies Act, 2013 to reclassify its share capital as may be necessary to comply with requirements of Scheme.

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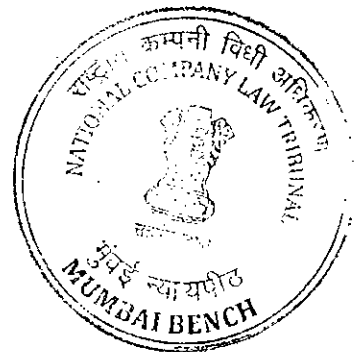


f. Apropos observations made in paragraph IV (e) of the Report of Regional Director is concerned, the First Demerged Company undertakes to comply with the requirements of the Companies Act, 2013 in relation to the excess remuneration paid to Shri. Rakesh Biyani. Further, the arrangement embodied in the composite scheme of arrangement shall take effect from the Appointed Date as stipulated in clause 1.3 and 1.4 of the Scheme.

g. No objector has approached, neither to the Petitioner nor before Tribunal, to oppose this Scheme of Arrangement.

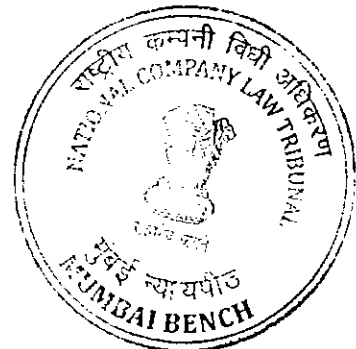
9. From the material on record, the Scheme of Arrangement appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Companies, **do Order that:**

- a. All the assets and liabilities including taxes and charges if any, and duties of the 'Home Retail Business Undertaking' of the First Demerged Company and the e-Commerce Home Retail Business Undertaking of the Second Demerged Company be transferred to the Resulting Company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the assets, liabilities including taxes and charges if any, and duties of the Resulting Company.
- b. The cancellation and reduction in paid up share capital of the Resulting Company shall be effected as an integral part of the Scheme in accordance with the provisions of Sections 230 to 232 read with Section 66 of the Act and any other applicable provisions of the Act and this order of the NCLT shall be deemed to be also the Order under Section 66 of the Act for the purpose of confirming the reduction. Notwithstanding the reduction in the equity share capital of the Resulting Company, the Resulting Company shall not be required to add "And Reduced" as suffix to its name. The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions / statements which the Petitioners undertakes herein.



- c. In lieu of consideration of the Scheme, 1 fully paid up Equity Share of ₹ 5/- each of the Resulting Company will be issued and allotted for every 20 fully paid up equity shares of ₹ 2/- each held in the First Demerged Company and 6,30,000 fully paid 9% Redeemable Preference Shares of ₹ 100/- each of the Resulting Company shall be issued on a proportionate basis to the shareholders of the Second Demerged Company.
- d. Petitioner Companies are directed to lodge a copy of this Order along with a copy of the Scheme of Arrangement 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, duly certified by the Deputy Director or Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- e. The Petitioner Companies to lodge a copy of this order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, 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.
- f. Each Petitioner Company to pay costs of ₹ 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the receipt of the duly Certified Copy of this Order.
- g. All authorities concerned, to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- h. Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.

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- i. The Scheme is sanctioned and the appointed date of the Scheme is fixed as 1st August, 2017 for demerger of the Home Retail Business Undertaking of the First Demerged Company into the Resulting Company and 15th April, 2016 for demerger of the e-Commerce Home Retail Business Undertaking of the Second Demerged Company into the Resulting Company.

10. Ordered accordingly. Consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Date: 10.11.2017

Certified True Copy

Date of Application 20.11.17

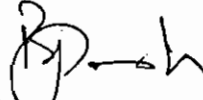
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Fee Paid Rs. 40/-

Applicant called for collection copy on 20.11.17

Copy prepared on 20.11.17

Copy Issued on 20.11.17



Assistant Registrar

National Company Law Tribunal, Mumbai Bench

