



NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

12. C.A(CAA)/119/MB/2024

CORAM:

SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (T)

SHRI KULDIP KUMAR KAREER
HON'BLE MEMBER (J)

**ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 12.08.2024**

NAME OF THE PARTIES: - FSN DISTRIBUTION LIMITED

Section: 230-232, Sec 234 of Companies Act, 2013

ORDER

C.A.(CAA)/119(MB)2024

Presence

Sr. Adv. Gaurav Joshi a/w Mr. Peshwan Jehangir, Mr. Mehul Shah, Mr. Aman Yagnik, Mr. Jamsheed, Ms. Roselin Alex and Ms. Ishrita Bagchi

..... Applicant Companies.

Heard the submission of the counsel for the Applicant Companies. The detailed order will follow vide separate order sheet.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)
JAGDISH

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

C.A.(CAA)/119(MB)2024

**IN THE MATTER OF SECTIONS
230 TO 232 AND OTHER
APPLICABLE PROVISIONS OF
THE COMPANIES ACT, 2013**

AND

**IN THE MATTER OF THE
SCHEME OF ARRANGEMENT
BETWEEN FSN DISTRIBUTION
LIMITED AND NYKAA E-RETAIL
LIMITED AND THEIR
RESPECTIVE SHAREHOLDERS
AND CREDITORS (“SCHEME”)**

FSN Distribution Limited, a company incorporated under the provisions of the Companies Act, 2013, having its Corporate Identification Number U51909MH2021PLC364942 and having its registered office at 104, Vasan Udyog Bhavan, Sun Mill Compound, Tulsi Pipe Road, Lower Parel, Mumbai – 400013, Maharashtra, India.

**...First Applicant Company/
Demerged Company**



Nykaa E-Retail Limited, a company incorporated under the provisions of Companies Act, 1956 having its Corporate Identification Number U74999MH2017PLC291558 and having its registered office at 104, Vasan Udyog Bhavan, S Bapat Road, Lower Parel, Mumbai - 400013, Maharashtra, India.

**...Second Applicant Company/
Resulting Company**

*...collectively referred to as the
Applicant Companies*

Order delivered on 12.08.2024

Coram:

**Anil Raj Chellan
Member (Technical)**

**Kuldip Kumar Kareer
Member (Judicial)**

For the Applicant Companies:

Mr. Gaurav Joshi, Senior Advocate
a/w Mr Peshwan Jehangir, Mr Mehul
Shah, Mr Aman Yagnik, Mr Jamsheed
Dadachanji, Ms Roselin Alex, Ms
Ishrita Bagchi i/b Khaitan & Co for the
Applicant Companies

ORDER

Per: Coram

1. The Applicant Companies have proposed the Scheme of Arrangement between FSN Distribution Limited (“**First Applicant Company**” or “**Demerged Company**”) and Nykaa E-Retail Limited (“**Second**



Applicant Company” or “Resulting Company”) and their respective shareholders and creditors under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (“**Scheme**”).

2. The registered offices of the Applicant Companies are situated in Mumbai, Maharashtra and hence the subject matter of the captioned Company Scheme Application is within the jurisdiction of the Hon’ble National Company Law Tribunal, Mumbai Bench.
3. The Scheme provides for the demerger, transfer and vesting of the Demerged Undertaking (*as defined in the Scheme*) from the First Applicant Company into the Second Applicant Company on a going concern basis. The Scheme also provides for various other matters consequent and incidental thereto.
4. The Learned Counsel for the Applicant Companies state that *vide* resolution passed by the Board of Directors of the Applicant Companies at their respective meetings held on 1 February 2024 for the First Applicant Company and 5 February 2024 for the Second Applicant Company, the Scheme has been approved. The Board Resolutions are annexed to the Company Scheme Application and marked as Exhibit A7, and Exhibit A8, respectively.
5. The Appointed Date means the opening business hours of 1 April 2024 or such other date as may be mutually agreed by the respective Board of the Parties or as may be directed by the Appropriate Authority. The Effective Date means the opening hours of the first day of the month immediately succeeding the month in which the Tribunal sanctions the Scheme.



6. The Learned Counsel for the Applicant Companies submit that the consideration for the demerger, transfer and vesting of the Demerged Undertaking (*as defined in the Scheme*) from the First Applicant Company into the Second Applicant Company as mentioned in Clause 7 of the Scheme is as under:

*“1 (One) fully paid-up equity share of INR 10 (Indian Rupees Ten only) each of the Resulting Company (“**Resulting Company New Equity Shares**”), credited as fully paid up, for every 1 (One) equity share of INR 10 (Indian Rupees Ten only) each of the Demerged Company.*

7. The Learned Counsel for the Applicant Companies submit that the circumstances and / or reasons and / or grounds that have necessitated and / or justified the Scheme and some of the major benefits which would accrue from the Scheme are briefly stated below:

1. *“The demerger of the entire activities, business, operations and undertaking of the Demerged Company forming part of the e-B2B Business from the other businesses of the Demerged Company, pursuant to the Scheme, will enable the Demerged Company and the Resulting Company to concentrate its resources and managerial bandwidth entirely to such businesses which would enable focused strategy, better coordination and cohesiveness in their working and assist in standardization of its business processes.*
2. *The proposed restructuring pursuant to the Scheme is expected, inter alia, to result in following benefits:*
 - (i) *consolidating similar businesses having similar risk and return profiles to enhance operational synergies*



- (ii) *effective utilization of warehouse and office spaces by consolidating businesses;*
- (iii) *onboarding brands in e-B2B business and giving access to new age consumer-first brands to Pan India market (including tier 2 & 3 cities);*
- (iv) *Optimization in technology and overhead costs;*
- (v) *effectively utilising cash flows of different businesses and limiting restrictions arising out of different terms of different lenders for different businesses;*
- (vi) *enabling focused growth strategy for each of the businesses for exploiting opportunities specific to each business;*
- (vii) *creating greater visibility on performance of each of the businesses; and*
- (viii) *enhancing operational efficiency.*

3. *The Scheme is in the best interests of the shareholders, employees and the creditors of each of the Parties.*

8. The Learned Counsel for the Applicant Companies submits that the First Applicant Company is *inter alia* engaged in the business of selling beauty, hygiene and wellness products through its distribution network to the wholesalers and retailers using online and offline channels of sales. Whereas the Second Applicant Company is *inter alia*, engaged in the business of selling beauty, hygiene and wellness products through online channels i.e. through its online platforms or websites and other online applications.

9. The Learned Counsel for the Applicant Companies submits that the share capital structure of the First Applicant Company as on the date of its Board approving the scheme is as under:



Particulars	Amount in INR
Authorized Capital	
1,50,000 equity shares of INR 10 each fully paid up	15,00,000
TOTAL	15,00,000
Issued, Subscribed and Paid-up Share Capital	
10,000 equity shares of INR 10 each fully paid up	1,00,000
TOTAL	1,00,000

Subsequent to the above date, there has been no change in the authorised, issued, subscribed and paid-up share capital of the First Applicant Company till the date of filing this Company Scheme Application with the Hon'ble Tribunal.

10. The Learned Counsel for the Applicant Companies submits that the share capital structure of the Second Applicant Company as on the date of approval of the Scheme by the Board of the Second Applicant Company is as under:

Particulars	Amount in INR
Authorised Capital	
1,20,00,000 equity shares of INR 10 each fully paid up	12,00,00,000
TOTAL	12,00,00,000
Issued, Subscribed and Paid-up Share Capital	
95,10,000 equity shares of INR 10 each fully paid up	9,51,00,000
TOTAL	9,51,00,000

Subsequent to the above date, there has been no change in the authorized, issued, subscribed and paid-up share capital of the Second



Applicant Company till the date of filing this Company Scheme Application with the Hon'ble Tribunal.

11. The Learned Counsel for the Applicant Companies submits that as on 18 March 2024, the First Applicant Company has 7 (Seven) (including nominee) Equity Shareholders holding 10,000 equity shares of INR 10/- each. The certificate issued by M/s. SAP & Associates, Practicing Company Secretaries, certifying the names of equity shareholders, number of equity shares and percentage holding held by each of them as on 18 March 2024, of the First Applicant Company is annexed to the Company Scheme Application and marked as “**Exhibit A11**”. The consent affidavits received from the Equity Shareholders of the First Applicant Company are annexed to the Company Scheme Application and marked as “**Exhibit A12 Colly**”. Accordingly, the requirement to convene and hold a meeting of the Equity Shareholders of the First Applicant Company is dispensed with.

12. The Learned Counsel for the Applicant Companies submits that as on 30 April 2024, the Second Applicant Company has 7 (Seven) (including nominee) Equity Shareholders holding 95,10,000 equity shares of INR 10/- each. The certificate issued by M/s. SAP & Associates, Practicing Company Secretaries, certifying the names of equity shareholders, number of equity shares and percentage holding held by each of them as on 30 April 2024, of the Second Applicant Company is annexed to the Company Scheme Application and marked as “**Exhibit A13**”. The consent affidavits received from the Equity Shareholders of the Second Applicant Company are annexed to the Company Scheme Application and marked as “**Exhibit A14 Colly**”. Accordingly, the requirement to convene and hold a meeting of the Equity Shareholders of the First Applicant Company is dispensed with.



13. The Learned Counsel for the Applicant Companies submits that as on date, there are no Preference Shareholders of the Applicant Companies. The certificate(s) issued by M/s. Shreekumar Nair & Co, Chartered Accountants, certifying that the Applicant Companies do not have preference shares are annexed to the Company Scheme Application as **Exhibit “A15”** and **Exhibit “A16”** respectively. Accordingly, the requirement of convening and holding the meeting of the Preference Shareholders of the Applicant Companies does not arise.

14. The Learned Counsel for the Applicant Companies submits that as on 31 March 2024, there is 1 (One) Secured Creditor of the First Applicant Company having an outstanding amount of INR 14,47,29,836. The certificate issued by M/s. Shreekumar Nair & Co, Chartered Accountants, certifying the list of Secured Creditors of the First Applicant Company is annexed to the Company Scheme Application and marked as **Exhibit “A17”**. The First Applicant Company has received in-principle approval from the sole Secured Creditor of the First Applicant Company. It is submitted that such in-principle approval from the sole Secured Creditor of the First Applicant Company is placed on record at **Annexure 1** [pg. 7] to the Additional Affidavit filed with the Hon’ble Tribunal on 10 August 2024. August 2024. Accordingly, the requirement of convening and holding a meeting of the Secured Creditor of the First Applicant Company has been dispensed with.

15. The Learned Counsel for the Applicant Companies submits that as on 31 March 2024, there are 6 (Six) Secured Creditors of the Second Applicant Company having an outstanding amount of INR



339,48,86,748. The certificate issued by M/s. Shreekumar Nair & Co, Chartered Accountants, certifying the list of Secured Creditors of the Second Applicant Company is annexed to the Company Scheme Application and marked as **Exhibit “A18”**. The Second Applicant Company has received consent/ in-principle approvals from all the Secured Creditors of the Second Applicant Company. It is submitted that the said consent/in-principle approvals from the Secured Creditors of the Second Applicant Company are placed on record at **Annexure 2 Colly** [pg. 8] to the Additional Affidavit filed with the Hon’ble Tribunal on 10 August 2024. Accordingly, the requirement of convening and holding a meeting of the Secured Creditors of the Second Applicant Company has been dispensed with.

16. The Learned Counsel for the Applicant Companies submits that as on 31 March 2024, there are 121 (One Hundred and twenty one) Unsecured Creditors of the First Applicant Company having an outstanding amount of INR 3,67,08,31,100. The certificate issued by M/s. Shreekumar Nair & Co, Chartered Accountants, certifying the list of Unsecured Creditors of the First Applicant Company is annexed to the Company Scheme Application and marked as **Exhibit “A19”**. It is submitted that a meeting of the Unsecured Creditors of the First Applicant Company be convened and held on 15 October 2024 or such other later date as may be decided by the First Applicant Company, at 11:00 am (IST) at 3rd floor, Marathon Chambers, Mafatlal Mills, Lower Parel, Mumbai, Maharashtra 400013, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the proposed Scheme.
17. The Learned Counsel for the Applicant Companies submits that as on 31 March 2024, there are 1,040 (One thousand and forty only)



Unsecured Creditors of the Second Applicant Company having an outstanding amount of INR 227,97,26,502. The certificate issued by M/s. Shreekumar Nair & Co, Chartered Accountants, certifying the list of Unsecured Creditors of the Second Applicant Company is annexed to the Company Scheme Application and marked as **Exhibit “A20”**. It is submitted that a meeting of the Unsecured Creditors of the Second Applicant Company be convened and held on 15 October 2024 or such other later date as may be decided by the Second Applicant Company, at 11:45 am (IST) at 3rd floor, Marathon Chambers, Mafatlal Mills, Lower Parel, Mumbai, Maharashtra 400013, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the proposed Scheme.

18. In terms of the meetings to be convened of Unsecured Creditors of the Applicant Companies, it is hereby directed as under:
 - i. At least one month before the meeting of the Unsecured Creditors of the Applicant Companies to be held as aforesaid, notice convening the said meetings at the day, date and time as fixed in accordance with para nos. 16 and 17 above, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the prescribed Form of Proxy, shall be sent to the respective Unsecured Creditors of the Applicant Companies, by electronic mail to their registered e-mail address, as per the records available with the respective Applicant Companies. The Applicant Companies shall ensure that, the Unsecured Creditors of the respective Applicant Companies whose e-mail address' are not available with the Applicant Companies or who have not received



notice convening said meetings, can access / download the said notices from the website of FSN E-Commerce Ventures Limited at <https://www.nykaa.com/>.

- ii. At least 30 (Thirty) days before the meetings of the Unsecured Creditors of the Applicant Companies to be held as aforesaid, notice convening the said meetings, at the date and time fixed in accordance with para nos.16 and 17 above be published each in 'Business Standard' in English and 'Navshakti' in Marathi having circulation in Maharashtra, stating that copies of the Scheme and the said statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 can be obtained free of charge from the registered office of the respective Applicant Companies, or by emailing the Applicant Companies at nykaacompanysecretary@nykaa.com.

19. The Applicant Companies undertake to:
 - (i) Issue notice convening meetings of the Unsecured Creditors of the Applicant Companies as per Form No CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
 - (ii) Issue statement containing all the particulars as per Section 230 of the Companies Act, 2013;
 - (iii) Advertise the notice convening meetings as per Form No. CAA.2 (Rule 7) of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016; and
 - (iv) Publish the notice convening the meeting of the Unsecured Creditors of the Applicant Companies on the website of FSN E-Commerce Ventures Limited at <https://www.nykaa.com/>.



The undertaking is accepted.

20. Mr. Dheeraj Jain, having email id- contact@dheerajjain.com and mobile no. 9814312232, is hereby appointed as the Chairperson for the meetings of the Unsecured Creditors of Applicant Company No. 1 and Applicant Company No. 2. He shall be paid Rs. 1,00,000/- as remuneration by the Applicant Companies for the respective meetings.
21. Mr. S.N. Viswanathan (Membership No. ACS No. 61955) of M/s. S. N. Ananthasubramanian & Co, Practicing Company Secretaries, failing whom, Mr. Prakash Shenoy (Membership No. FCS No. 12625) of M/s. SAP & Associates, Practicing Company Secretaries, is hereby appointed as a Scrutinizer for the meetings of the Unsecured Creditors of the Applicant Companies.
22. The Chairperson appointed for the aforesaid meetings to issue notice of the meetings of the Unsecured Creditors of the Applicant Companies referred above. The Chairperson shall have all powers under the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as may be applicable for meeting of the Unsecured Creditors, in relation to the conduct of the meetings including for deciding procedural questions that may arise at the meetings or at any adjournment thereof or any other matter including, any amendment to the Scheme or resolution, if any, proposed at the meetings by any Unsecured Creditor(s).
23. The quorum for the aforesaid meetings of the Unsecured Creditors shall be as prescribed under Section 103 of the Companies Act, 2013.



24. The value and number of the Unsecured Creditors shall be in accordance with the books/ records maintained by the Applicant Companies and where the entries in the books/ records are disputed, the Chairperson of the meeting shall determine the value and number for the purpose of the aforesaid meetings and his decision in that behalf would be final.
25. The Chairperson shall file a compliance report not less than 7 (Seven) days before the date fixed for holding of the meetings of the Unsecured Creditors for the Applicant Companies and report to this Tribunal that the directions regarding the issue of notices and advertisements have been duly complied with, as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
26. The voting by authorized representative, in case of a body corporate be permitted, provided that the authorization duly signed by the person entitled to attend and vote at the meeting is filed with the respective Applicant Company, in physical at its registered office, at least 48 (Forty-Eight) hours before the aforesaid meetings, as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
27. The Chairperson shall report to this Tribunal, the result of the aforesaid meetings within 30 (Thirty) days of the conclusion of the said meeting of the Unsecured Creditors of the Applicant Companies, and the said report shall be verified by his undertaking as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
28. The Applicant Companies shall serve notice upon: (i) the Central Government through the Regional Director, Western Region, Ministry of Corporate Affairs; (ii) the Registrar of Companies, Mumbai; (iii) the Goods & Services Tax Authority of the First Applicant Company at Office of the



Commissioner of CGST & C.Ex., Mumbai Central 115, GST Bhavan, M.K. Road, Churchgate, Mumbai - 400020 (27AAECF6680N1Z0); (iv) the Goods & Services Tax Authority of the Second Applicant Company at Office of the Commissioner of CGST & C.Ex., Mumbai Central 115, GST Bhavan, M.K. Road, Churchgate, Mumbai - 400020 (27AAFNCN5072P1ZV); (v) the Income Tax Authority having jurisdiction over the First Applicant Company at Ward 6(3)(1), Aayakar Bhawan, Mumbai having PAN (AAECF6680N); (vi) the Income Tax Authority having jurisdiction over the Second Applicant Company at Circle 7(1)(1), Aayakar Bhawan, Mumbai having PAN (AAFNCN5072P); (vii) Principal CCIT, Mumbai 3rd Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai – 400 020, Maharashtra; and (viii) any other sectoral regulator, as applicable, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 (thirty) days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

29. The Applicant Companies shall file Affidavit of Service with this Tribunal evidencing compliance with the directions given in this Order.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)



NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

8. Company Application/321/2024 In C.A.(CAA)/119(MB)2024

CORAM:

SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (T)

SHRI KULDIP KUMAR KAREER
HON'BLE MEMBER (J)

**ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 09.10.2024**

NAME OF THE PARTIES: - Nykaa E- Retail Limited
IN THE MATTER OF
FSN DISTRIBUTION LIMITED

Section: - Rule 11 of NCLT Sec. 230-232, Sec 234 of the Companies Act, 2013

ORDER

Company Application/321/2024: -

Presence: -

Adv. Roselin Alex a/w Adv. Ishrita Bagchi Applicant Companies.

This application has been filed by the Applicant/Petitioner seeking modification of the order dated 12.08.2024, whereby Mr. Dheeraj Jain was appointed as chairperson for the meeting of unsecured creditors of the applicant companies No.1 and Applicant Companies No. 2. However, Mr. Dheeraj Jain has expressed his inability to act as chairperson for the proposed meetings of the aforesaid companies due to some personal reasons, therefore, the instant application has been filed by the applicant to appoint an alternate chairperson. In view of the facts and circumstances



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mentioned in the application, we deem it appropriate to appoint **Mr. P Ganesh**, as a chairperson, Group CFO and Director of First Applicant Company; Group CFO and Authorised Signatory, Second Applicant Company. The meeting will be held within a period of Sixty days from the date of communication of this order to the aforesaid chairperson. The **Company Application /321/2024 is allowed and disposed of in the aforesaid terms.**

Sd/-
ANIL RAJ CHELLAN
Member (Technical)
Jagdish

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)