IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-II

C.P. (CAA) 27/MB/2025
Connected with C.A. (CAA) 119/MB/2024

[Under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016]

In the matter of

SCHEME OF ARRANGEMENT OF

FSN DISTRIBUTION LIMITED

[CIN: U51909MH2021PLC364942]

...First Petitioner Company/ Demerged Company

WITH

NYKAA E-RETAIL LIMITED

[CIN: U74999MH2017PLC291558]

...Second Petitioner Company/ Resulting Company

THEIR RESPECTIVE SHAREHOLDERS

Order pronounced on:**09.05.2025**

CORAM:

HON'BLE SHRI ASHISH KALIA, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances : (Hybrid)

For the Petitioner(s)	:	Senior Counsel. Mr. Gaurav Joshi, a/w Mr. Mehul Shah, Mr. Peshwan Jehangir, Mr. Aman Yagnik Mr. Jamsheed Dadachanji, Ms. Roselin Alex and Ms. Ishrita Bagchi i/b Khaitan & Co, Advocates.
For RD	:	Mr. Tushar Wagh.

ORDER

[PER: ASHISH KALIA, MEMBER (JUDICIAL)]

1. Heard the Ld. Counsels for the Petitioner Companies.

2. The present Company Petition is filed jointly on 24.12.2024 by FSN Distribution Limited (hereinafter referred to as "Demerged Company") and Nykaa E-Retail Limited (hereinafter referred to as "Resulting Company") under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (hereinafter referred to as "the Act") read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (hereinafter referred to as "the CAA Rules") seeking sanction to the proposed Scheme of Arrangement. Both the Demerged Company and the Resulting Company are hereinafter referred to as "the Petitioner Companies".

3. It is observed that the Board of Directors of the Petitioner Companies in their respective Board meetings held on 01.02.2024 and 05.02.2024 have approved the Scheme and the relevant Board Resolutions are annexed to the Company Scheme Application.

4. It is submitted that the rationale of the proposed Scheme is as under :-
    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 Petitioner Companies.*

5. The Ld. Senior Counsel for the Petitioner Companies submits that the Resulting Company shall, without any further application, act, consent, instrument or deed, issue and allot, on a proportionate basis to each shareholder of the Demerged Company whose name is recorded in the register of members and records of the depository as members of the Demerged Company as on the Effective Date, as under:

1 (One) fully paid-up equity share of Rs. 10 (Ten Rupees) each of the Resulting Company, credited as fully paid up, for every 1 (One) equity share of Rs.10 (Ten Rupees) each of the Demerged Company.

6. The joint Company Petition is filed in consonance with Sections 230 to 232 of the Act along with the order dated 09.10.2024 read with order dated 12.08.2024 passed in CA (CAA) No. 119/(MB)/2024 by this Tribunal.

7. It is submitted that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and have filed necessary affidavits of compliance. Further, it is submitted that the Petitioner Companies, being unlisted entities, there is no requirement to inform/ seek approval from or obtain NOC from the stock exchange(s). Moreover, the Petitioner Companies undertake to comply with all statutory/regulatory requirements, as mandated under the Act and the Rules made thereunder. The undertaking given by the Petitioner Companies is taken on record.

8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its Report dated 02.04.2025, *inter alia*, stating its observations on the Scheme in para 2 of the Report. In response to the observations made by the Regional Director and the RoC, Mumbai, the Petitioner Companies have filed an Affidavit-in-Reply dated 16.04.2025 and have given necessary clarifications and undertakings as shown in the Table below :-

Sr. No.	Observation(s) of the Regional Director/RoC Mumbai.	Response of the Petitioner Companies
2(a)	*In compliance of AS-14 (IND AS-103), the Demerged company and Resulting Company 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.*	As far as the observation of the Regional Director, as stated in paragraph 2(a) of the report is concerned, the Demerged Company and the Resulting Company, respectively, undertake to pass such accounting entries which are necessary in connection with the Scheme to comply with such accounting standards notified under Section 133 of the Act as may be applicable.
2(b)	***<u>As per Definition of the Scheme,</u>*** ***"Appointed Date"*** *means the opening business hours of 01.04.2024 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;* ***"Effective Date"*** *means the opening hours of the first day of the month immediately succeeding the month in which the Tribunal sanctions the Scheme. Reference in this Scheme to the date of "coming into effect of this*	The present Scheme is in compliance with the requirements of circular no. 09/2019 having F.No.7112/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

	Scheme" or "effectiveness of this Scheme" or "effect of this Scheme" or" upon the Scheme becoming effective" shall mean the Effective Date; *In this regard, it is submitted that Section 232 (6) of the Act states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Tribunal taking into account its inherent powers.* *The Demerged company and Resulting Company may be directed to comply with the requirements as clarified vide general circular no. 09/2019 having F.No.7112/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.*	
2(c)	*The Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of Members and Creditors as per Section 230 (6) of the Act in meetings duly held in terms of Section 230(1) read with 7 sub section (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.*	As the captioned Company Scheme Application filed by the Petitioner Companies have been allowed by this Tribunal *vide* its order dated 09.10.2024 read with 12.08.2024. In terms of the said Order, inter alia, the Tribunal directed the

		following: 1. The meetings of equity shareholders of the Petitioner Companies, for the purpose of approving the proposed Scheme, were dispensed in view of consent affidavits provided by all the equity shareholders of the Petitioner Companies. 2. As the Petitioner Companies did not have any preference shareholders, the question of convening and holding meeting of the preference shareholders did not arise. 3. The meetings of secured creditors of the First Petitioner Company, for the purpose of approving the proposed Scheme, were dispensed in view of requisite approval provided by the sole secured creditor of the First Petitioner Company. 4. The meetings of Secured Creditors of the Second Petitioner Company, for the purpose of approving the proposed Scheme, were dispensed in view of requisite

		approval provided by all the secured creditors of the Second Petitioner Company. 5. In compliance with applicable provisions of Sections 230 to 232 and other applicable provisions of the Act and the said Order, the meeting of the Unsecured Creditors of the First Petitioner Company and the Second Petitioner Company were convened and held on Friday, 29.11.2024 at 11.00 a.m. and 11:45 a.m., respectively, for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme. The Scheme was approved with requisite majority at the said meetings of the Unsecured Creditors of the First Petitioner Company and the Second Petitioner Company.
2(d)	*The Resulting Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the Demerged Company and Resulting Company shall ensure compliance of all the provisions of*	The Petitioner Companies undertake to ensure compliance with the provisions of the Income Tax Act, 1961 and Rules thereunder, as applicable.

	Income Tax Act and Rules thereunder;	
2(e)	*The Demerged Company and Resulting Company shall be directed under 230 (5) of Act to serve notices to concerned Authorities which are likely to be affected by the present amalgamation or arrangement. Further, the approval of the scheme by the Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme and the decision of such authorities shall be binding on the Demerged Company and Resulting Company.*	The notices under the provisions of section 230(5) of the Act have been served to the concerned authorities, in compliance with the directions of the Tribunal and no objections have been received from any of the authorities. Further, the Petitioner Companies undertake that the Petitioner Companies shall be bound by any decision of the concerned authorities that is made in accordance with law.
2(f)	*The Demerged Company and Resulting Company shall undertake to comply with the directions of the concerned sectoral Regulators, if so required.*	The Petitioner Companies undertake to comply with the directions of the concerned Sectoral Regulatory, if any, in accordance with applicable law.
2(g)	*The Demerged Company and Resulting Company shall undertake to comply with the directions of the I.T. Department and GST Department, if any.*	The Petitioner Companies undertake to comply with the directions of the Income Tax Department and GST Department, if any, in accordance with applicable law.
2(h)	*It is submitted that the Petitioners has vide letter dated 15.01.2025 has*	The rights of the Creditors shall not be impacted pursuant to the Scheme and there will be no

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<td>submitted list of assets & liabilities of Demerged company as on 31.03.2024 to be transferred to Resulting company and the same is submitted for kind consideration. However, both Petitioners shall undertake to protect the interest of creditors as on appointed date as excess of liabilities are transferred to Resulting company over assets of Demerged undertaking.</td>
<td>reduction in their claims on account of the Scheme. Further the Petitioner Companies states that the Creditors will be paid off in the ordinary course of business and their interest will be protected, as per applicable law.</td>
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<td>2(i)</td>
<td>It is observed from the latest MGT-7 filed for the year ending 31.03.2024 that the Demerged Company and Resulting company has the following corporate body shareholders having more than 10% shareholding:
<table>
<tr><th>Petitioner Company</th><th>Name
of Shareholder</th><th>% of shares held</th></tr>
<tr><td>FSN Distribution Limited (Demerged Company)</td><td>FSN E-Commerce Ventures Limited</td><td>100</td></tr>
<tr><td>Nykaa
E- Retail Limited
(Resulting company)</td><td>FSN E-Commerce Ventures Limited</td><td>100</td></tr>
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Therefore, the Demerged Company and Resulting Company may be directed to clarify the compliance of section 90 of the Act read with rules 2A, 3 & 4 of the Companies</td>
<td>The Petitioner Company has provided the necessary details of the holding reporting company by reporting in Form BEN-2 and filed the same with the Registrar of Companies, on 03.07.2023 vide SRN F62246178. A copy of the Form BEN-2 with paid challan, filed by the Demerged Company is enclosed with Company Petition.

Further, the Resulting Company has provided the necessary details of the holding reporting company by reporting in Form BEN-2 and filed the same with the Registrar of Companies, on 17.05.2023 vide SRN F61393377. A copy of the Form BEN-2 with paid challan, filed by the Resulting Company is enclosed with Company Petition.</td>
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	(Significant Beneficial Owners) Rules, 2018.	
j	*On examination of the report of the Registrar of Companies, Mumbai dated 30.01.2025.It is submitted that no complaint and / or representation regarding the proposed scheme of Arrangement has been received against the Demerged Company and Resulting company. Further, the Demerged Company and Resulting company have filed Financial Statements up to 31.03.2024 further observations in ROC report are as under: -* ***i.*** *That the ROC Mumbai in his report dated 30.01.2025 has stated that no Inquiry, inspection, investigation & prosecution is pending against the Demerged Company and Resulting company.* ***ii.*** *Interest of the Creditor should be protected.* ***iii.*** *May be decided on its merits.* *The Demerged Company and Resulting Company may please be directed to submit reply on the above observations of RoC, Mumbai and the NCLT may consider the scheme on*	As far as the observation made in Paragraph 2(j)(i) of the Report is concerned, the Petitioner Companies state that the said observation is factual in nature. As far as the observation made in Paragraph 2(j)(ii) of the Report is concerned, pursuant to the Scheme, the rights of the Creditors shall not be impacted pursuant to the Scheme and there will be no reduction in their claims on account of the Scheme. Further the Petitioner Companies states that the Creditors will be paid off in the ordinary course of business and their interest will be protected, as per applicable law.

	merit after receipt of reply of Petitioner Company.	

9. The Representative of the Regional Director during the course of final hearing has submitted that the explanations and clarifications given by the Petitioner Companies are found satisfactory and that they have no objection to the Scheme.Further, it is observed that no objector has come before this Tribunal to oppose the Scheme, nor has any party controverted any averments made in the Petition.

10. From the materials available on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law or contrary to public interest/policy.

11. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this Scheme and it shall be open to the Income Tax authorities to take necessary action, if any, as warranted under the applicable provisions of the Income-tax Act,1961.

12. The Petitioner Companies are directed to file a certified 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 physical copy within 30 days from the date of receipt of the Order from the Registry of this Tribunal.

13. The Petitioner Companies are further directed to provide a copy of this Order and the Scheme duly authenticated by the Designated Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of certified copy from the Registry of this Tribunal.

14. All authorities concerned to act on a copy of this Order along with the Scheme duly authenticated by the Deputy Registrar of this Tribunal.

15. Any person interested in the above matter is at liberty to apply to this Tribunal for such directions as may be necessary.

16. The Appointed Date of the Scheme is 01.04.2024.

17. Accordingly, the above **C.P. (CAA) 27/MB/2025 is allowed** and **disposed of.**

Sd/-	**Sd/-**
SANJIV DUTT **MEMBER (TECHNICAL)**	**ASHISH KALIA** **MEMBER (JUDICIAL)**

//LRA-Deepa//