

## COMPETITION COMMISSION OF INDIA

14<sup>th</sup> August, 2012

Combination Registration No. C-2012/07/69

1. On 16<sup>th</sup> July, 2012, the Competition Commission of India received a notice for a proposed transaction under sub-section (2) of Section 6 of the Competition Act, 2002 (hereinafter referred to as the "Act") jointly filed by the Aditya Birla Nuvo Limited (hereinafter referred to as "ABNL"), Peter England Fashions and Retail Limited (hereinafter referred to as "PEFRL"), Indigold Trade and Services Limited (hereinafter referred to as "ITSL"), Pantaloon Retail (India) Limited { hereinafter referred to as "PRIL"} and Future Value Fashion Retail Limited (hereinafter referred to as "FVFRL"){hereinafter collectively referred to as the "parties"}. The said notice has been filed pursuant to a Memorandum of Understanding (hereinafter referred to as "MOU"), dated 14<sup>th</sup> June, 2012, executed by and among ABNL, Future Corporate Resources Limited (hereinafter referred to as "FCRL")<sup>1</sup>, PIL Industries Limited (hereinafter referred to as the "PIL")<sup>2</sup>, PRIL, ITSL, PEFRL and FVFRL.
2. It has been stated in the notice that ABNL, through its wholly owned subsidiary PEFRL, proposes to acquire the Pantaloons Format Business of PRIL by way of a demerger on a going concern basis and merger of FVFRL into PEFRL, pursuant to a scheme of demerger and merger under Sections 391-394 of the Companies Act, 1956, for which the parties have signed the said MOU. In addition to the said demerger and merger, the MOU also contemplates that as a part of the scheme, ITSL and/or its affiliates make voluntary open offer in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and further acquire shares of PEFRL, if required.

<sup>1</sup> Future Corporate Resources Limited is one of the promoters of PRIL

<sup>2</sup> PIL Industries Limited is also one of the promoters of PRIL



3. Further, as stated at page 10 of the notice, PEFRL on 14<sup>th</sup> June, 2012, has also agreed to invest an amount of ₹ 800 crore in optionally fully convertible debentures (hereinafter referred to as “OFCDs”) of PRIL which would convert into approximately 13.15 per cent of the equity share capital of PRIL, unless such OFCDs are cancelled upon completion of the demerger or redeemed earlier and that the subscription to the OFCDs is covered under Item 1 of Schedule I of The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as the “Combination Regulations”).
4. It has, however, been stated at page 9 of the notice that the said scheme including the proposal of demerger and merger is yet to be approved by the Board of Directors of the parties. It has been further stated by the parties that they are in discussions and are yet to finalise the exact scope of the assets to be acquired and the share entitlement ratio. Therefore, according to the parties, the terms of the proposed transaction are subject to the agreement by the parties in the scheme and other definitive documents to be executed by the parties.
5. In terms of Regulation 14 of the Combination Regulations, on 20<sup>th</sup> July, 2012, the parties were required to remove defect(s) and provide certain information and document(s), and the reply of the parties was received on 6<sup>th</sup> August, 2012. In their reply dated 6<sup>th</sup> August, 2012, it has been inter –alia submitted by the parties that they are in discussion and are in the process of finalising the details of the transaction. It has also been stated therein that the share entitlement ratio, the valuation reports and fairness opinion are under preparation and will be provided upon being finalized and approved by the Board of Directors of the respective parties. The parties have also stated that the scheme is under finalisation and is yet to be approved by the Board of Directors of the parties and that they are still negotiating and finalizing the terms of the Implementation Agreement and other ancillary documents.
6. In addition to their reply dated 6<sup>th</sup> August, 2012, the parties have also submitted, vide their letter dated 13<sup>th</sup> August, 2012, that the obligation to notify the proposed



transaction was triggered upon signing of the MOU and the Subscription and Investor Rights Agreement and, therefore, the notice was duly filed by them on 16<sup>th</sup> July 2012, within the stipulated time period as provided under the Act. It has also been stated in the said letter that as the proposed transaction involves a series of inter-connected steps or individual transactions proposed to be undertaken by the parties pursuant to the MOU, the parties treated the execution of the binding MOU and the Subscription and Investor Rights Agreement as the first trigger for the notification to the Commission and accordingly a composite notice was filed with the Commission. The parties have stated that they entered into the binding MOU and the Subscription and Investor Rights Agreement and took concrete steps in filing the notice in accordance with the provisions of sub-section (2) of Section 6 of the Act. In addition, the parties in the said letter also sought an extension of time in terms of sub-regulation (5) of Regulation 14 of the Combination Regulations until 29<sup>th</sup> August, 2012 to provide the required information and document(s) sought vide Commission's letter dated 20<sup>th</sup> July, 2012 and requested the Commission to grant the same.

7. In this regard, the contention of the parties that upon signing of the MOU and the Subscription and Investor Rights Agreement, the provisions of sub-section(2) of Section 6 of the Act have been triggered does not hold good in this case primarily because the signing of the MOU and Subscription and Investor Rights Agreement are only the steps towards the negotiations between the parties in relation to the finalization of the scheme, valuation, exact scope of the assets to be acquired, share entitlement ratio and also approval of the same by the Board of Directors of the respective parties. Further, it is also observed from the terms and conditions in the MOU, that the said MOU is an interim arrangement since it will terminate immediately on execution of the implementation agreement or if the scheme does not get approval by the Board of Directors of the respective parties.
8. Further, it is also observed that the said MOU is not a binding agreement in view of its terms and conditions contained therein, inter-alia, such as subscription amount of the OFCDs has been kept in the escrow account by the parties, the release of which is in itself contingent on the approval of the scheme including the proposal of demerger and merger by the Board of Directors of the respective parties or PEFRL issuing early redemption notice to PRIL.



9. In this regard, it is also observed that the proposed scheme, inter-alia, relates to the acquisition of the Pantaloons Format Business and FVFRL by ABNL, through its indirectly wholly- owned subsidiary PEFRL, pursuant to a Court sanctioned scheme of demerger and merger under Sections 391-394 of the Companies Act, 1956. It is relevant to mention here that the copies of the resolution(s) of the Board of Directors of the parties which have been submitted along with the notice, do not pertain to the approval of the proposal relating to demerger or merger pursuant to a Court sanctioned scheme under Sections 391-394 of the Companies Act, 1956, as provided under sub-section (2) of Section 6 of the Act.
10. It is also pertinent to note that in terms of Regulation 31 of the Combination Regulations, for mergers or amalgamations referred to in clause (c) of Section 5 of the Act, the notice referred to in sub-section (2) of section 6 of the Act shall have to be filed only in regard to the proposals approved by the Board of Directors on or after the 1<sup>st</sup> day of June, 2011 and that the approval by the Board of Directors in this regard refers to the final decision of the Board of Directors. In this regard, it is observed from the notice and other documents place on record that the final decision of the Board of Directors of the parties involved is yet to be taken as regard the scheme of the proposed demerger and merger under Sections 391-394 of the Companies Act, 1956. Accordingly, it is observed that the notice for the proposed combination, which has been jointly given by the parties pursuant to the execution of the MOU itself while awaiting the final decision of the Board of Directors of the respective parties to the proposal of demerger and merger is not in accordance with the provisions of the Regulation 31 of the Combinations Regulations.
11. Therefore, in the instant case, as the parties have filed the notice of the proposed combination after the execution of the MOU itself, while the approval of the Board of Directors of the respective parties to the proposal of the scheme including the proposal of demerger and merger under Sections 391-394 of the Companies Act, 1956 is yet to be taken, the Commission is of the view that the parties have given the notice prior to the triggering of the relevant provisions of sub-section (2) of Section 6 of the Act. In view of the foregoing, the notice given for the proposed combination, at this stage, is not in accordance with sub-section (2) of Section 6 of the Act and the provisions of the Regulation 31 of the Combination Regulations.



12. Considering the facts on record and the information provided in the notice jointly given by the parties for the proposed combination, the Commission hereby decides that the notice given by the parties is not a valid notice in terms of sub-regulation (1) of Regulation 14 read with sub-regulation (1) of Regulation 5 of the Combination Regulations.
13. The Secretary is directed to communicate the decision of the Commission to the parties accordingly.



Certified True Copy

*[Handwritten Signature]*  
21/8/12  
ANIL K. VASHISHT  
Office Manager  
Competition Commission of India  
New Delhi