

Assets Purchase Agreement for Purchasing the Assets of a Running Restaurant

ASSETS PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), dated the _____ day of _____, is made by and among:

M/s _____, a Partnership Firm formed under Indian Partnership Act, 1932 having its office at _____, through its partners Mr. _____, son of _____, resident of _____, Mr. _____ son of _____, resident of _____, and Mr. _____ son, of _____, resident of _____, (hereinafter referred to as "Seller" which express shall mean and include its representative, administrator, executors, successors in title, successor in interest, nominee, legal heirs and assigns);

And

M/s _____ being a Company incorporated under the Indian Companies Act, 1956 and having its registered office at _____, through its authorized signatory Mr. _____, duly authorized by the Board vide Resolution dated _____, 2007 (hereinafter referred to as "Purchaser" which expression shall mean and include its successors in interest)

RECITALS

- A. WHEREAS, the Seller is engaged in the business of running a restaurant, managing the same and/ or in marketing there from various Food & Beverages products such as Indian Foods, Pizzas, Burgers, Ice-Creams, Bakery and Confectionary products etc. at _____ (hereinafter referred to as "Restaurant")
- B. WHEREAS, the premises bearing number _____ (hereinafter referred to as the "Premises") where the Seller were running the Restaurant has been taken on lease by the Seller from Mr. _____, the owner of the Premises.
- C. WHEREAS, the Seller is the owner of all the fittings, fixtures, furniture's, furnishings, Kitchen equipments, Air-conditioning, Generator, Delivery Vehicles and other delivery related equipments, Computer Systems, crockery/ cutlery items, linen and all other items fitted or used in the Restaurant, more appropriately described in Annexure A appended hereto and forming a part hereof (hereinafter referred to as the "Assets").
- D. WHEREAS the Seller has taken a term loan of Rs. 35,00,000/- from _____ Bank, _____ Branch for the purpose of meeting the cost of establishment of the Restaurant and had secured the said loan through hypothecation of moveables (Furniture's and Fixtures) at the Restaurant which form a part of the Assets.
- E. WHEREAS, the Seller is not willing to run the Restaurant and as such the Seller desire to sell, and the Purchaser desires to purchase, directly, upon the terms and conditions hereinafter set forth, all of the Assets of the Seller related to the Restaurant in consideration of certain payments by the Purchaser.

NOW, THEREFORE, in consideration of the premises and the agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the Parties agrees as follows:

1. Interpretation

In this Agreement, unless the context otherwise requires:

- a. Words denoting the singular number shall include the plural and vice versa;
- b. Heading and bold typeface are only for convenience and shall be ignored for the purposes of interpretation;
- c. References to the word "include" or "including" shall be construed without limitation;

- d. References to this Agreement or to any other agreement, deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as the same may from time to time be amended, varied or supplemented;
- e. Reference to any Party to this Agreement or any other agreement or deed or other instrument shall include its successors or permitted assigns; and
- f. A reference to a section, paragraph or annexure is, unless indicated to the contrary, a reference to a section, paragraph or annexure of this Agreement.
- g. Words denoting a person shall include an individual, corporation, company, partnership, trust or other entity;
- h. References to dates and times shall be construed to be references to Indian dates and times;
- i. References to the word "days" shall, unless otherwise indicated, mean calendar days;

ARTICLE I

PURCHASE AND SALE; PURCHASE PRICE

1.1. Purchase and Sale of Assets.

At the Closing, the Sellers shall, sell, convey, transfer, assign and deliver to the Purchaser, and the Purchaser shall purchase from the Sellers, the Assets, free and clear of any encumbrances except as mentioned in this Agreement.

1.2. Purchase Price. In full consideration for the transfer of the Assets, the Purchaser will pay the Sellers a total purchase price not exceeding Rs.-/ [Rupees] (the "Purchase Price"). The Purchase Price shall be paid by the Purchaser at the instance and mandate of the Seller to the following:

- i. to Bank, Branch by means of a bank draft, a sum of Rs. _____, being the amount outstanding against Loan A/c No. of the Seller with the Bank,; and
- ii. to Mr., landlord of the Premises, by means of a cheque for a sum of Rs. _____, being the amount outstanding against rent and other dues payable for the Premises in settlement of full and final. An amount of Rs. _____ to be paid in favour of the Seller towards the TDS payments that is required to deducted from the payments being made to Mr. and to be deposited with the authorities by the Seller at its own cost and liability. ; and
- iii. to the Electricity Board, by means of a bank draft, a sum of Rs. _____ being the total outstanding against electricity dues of the Restaurant at the Premises upto _____ payable by the Sellers .

1.3. The Seller agrees that the balance amount of the Purchase Price (if any) after making the payments in accordance with Clause 1.2 shall be retained by the Purchaser with them to be paid in such amounts and to such creditors of the Seller (for the Restaurant and for dues payable prior to the Closing Date) as directed in writing by the Seller. It is further agreed that the Purchaser shall be liable to pay to the creditor's of the Seller only upto the extent of the balance of the Purchase Price available with the Purchaser after making the payments under Clause 1.2.

1.4. The Seller agrees that the above payment of the Purchase Price is being made on the instruction and mandate of the Seller in the manner set out in Clause 1.2 and such payments shall be deemed to be payments made to the Seller by the Purchaser for the Assets purchased under this Agreement.

ARTICLE II

CLOSING AND DELIVERIES

2.1. Closing. The closing of the purchase and sale of the Assets (the "Closing") shall take place on [Date] simultaneously with the execution of this Agreement (hereinafter referred to as the "Closing Date").

2.2. Deliveries.

The Seller has handed over the following to the Purchaser at the time of execution of this Agreement:

- a. a letter of confirmation from Bank, Branch certifying that, upon payment of the outstanding amounts due to them from the Seller, which amounts shall be quantified in the confirmation letter, the encumbrances on the Assets or any part thereof created in their favor by the Seller shall be released.
- b. a letter of confirmation from Electricity Board, certifying that, upon payment of the outstanding amounts due to them from the Seller, which amounts shall be quantified in the confirmation letter, no further amounts shall remain due and payable by the Seller till the closing date.
- c. a letter of confirmation from Mr., landlord of the premises certifying that, upon payment of the outstanding amounts due to him from the Seller, which amounts shall be quantified in the confirmation letter, against the rent for the Premises and other dues, no further amounts shall remain due and payable by the Seller.
- d. a letter of confirmation certifying that, upon payment of the amounts as per Clause 1.2, no further amounts shall remain due and payable by the Purchaser to the Seller or to anyone else claiming through or on behalf of the Seller.
- e. a letter of confirmation certifying that, upon payment of the amounts as per Clause 1.2, the Purchaser will not be deemed to have assumed any liability or obligation of the Sellers and that the Purchaser will not become responsible for any liability or obligation of the Seller.

2.3. Transfer and Delivery of Purchased Assets.

At the Closing, the Seller shall deliver or cause to be delivered to the Purchaser a Bill of Sale, substantially in the form attached hereto as Annexure B, pursuant to which the Seller will record the delivery and conveyance of the Assets to the Purchaser, and the Purchaser shall record the receipt of the same;

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller and its Partners hereby, jointly and severally, represents and warrants to the Purchaser, as of the Closing Date, that:

- 3.1. Organization of the Seller. The Seller is a Partnership Firm duly organised under the laws of India and has the requisite power and authority to own and sell the Assets and to carry on its business as presently conducted.
- 3.2. Authority and Authorization; Enforceability.
 - a. The Seller has full power and authority to execute and deliver this Agreement, and to consummate the transactions contemplated hereby and to fully perform its obligations hereunder.
 - b. This Agreement has been duly and validly executed and delivered by the Seller and the same constitutes a valid and binding obligation of each of the Partners of the Seller, enforceable against each of the Partners of the Seller in accordance with its terms.
 - i. There are no outstanding claims or charge on the Assets, whether direct, indirect, contingent, absolute, accrued or otherwise, nor does there exist any condition, fact or circumstance that will create such claim/ charge on the Assets, except as disclosed in this Agreement.
 - ii. On the Closing Date, the Purchaser will own and possess, all right, title and interest in and to the Assets, free and clear of any encumbrances. No claim by any third party contesting the use or ownership of the Assets has been made, is currently outstanding or is threatened, and, to the knowledge of the Seller, there are no reasonable grounds for any such claim. None of the Partners of the Seller has received any notice of, nor are they aware of, any fact which indicates any

conflict with, any third party with respect to the Assets, nor has any of the Partners of the Seller received any claims against the Assets and, to the knowledge of the Seller, there are no reasonable grounds for any such claim.

- iii. That by the purchase of the Assets under this Agreement and by making the payments in accordance with Clause 1.2, the Purchaser shall not be deemed to have assumed and will not become responsible for any liability or obligation of the Seller to any creditor of the Seller whether pertaining to the Restaurant or the Premises or otherwise.

3.3 Title to Assets.

a. The Sellers:

- i. are the absolute beneficial owner of the Assets, with good and valid title, free and clear of all encumbrances, except such encumbrances that will be released at or subsequent to the Closing; and
 - ii. are exclusively entitled to possess and dispose of the Assets.
- b. The Assets to be transferred to the Purchaser under this Agreement constitute all the assets, properties, rights and interests necessary to conduct the Restaurant business in substantially the same manner as conducted by the Sellers prior to the date hereof.
 - c. The Assets are in good condition, repair and (where applicable) proper working order, having regard to their use and age and such Assets have been properly and regularly maintained.

3.4. Insurance. Annexure C to this Agreement sets forth a list of all insurance policies (specifying the location, insured, insurer, amount of coverage, type of insurance and policy number) maintained by the Sellers relating to the Assets and

- i. all such policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the Closing Date have been paid, and no notice of cancellation or termination has been received with respect to any such policy,
- ii. such policies (A) are sufficient for compliance with all requirements of Law; (B) are valid, outstanding and enforceable policies; (C) provide reasonable and adequate insurance coverage for the Assets; (D) will remain in full force and effect through the respective date set forth in Annexure C without payment of additional premiums; and (E) will not in any way be affected by, or terminate or lapse by reason of, the transactions contemplated by this Agreement.

3.5. Full Disclosure. The Seller has made available to the Purchaser all information, as sought for by the Purchaser. All information, which has been provided to the Purchaser relating to the Assets are true and accurate in all material respects and no material fact or facts have been omitted there from which would make such information misleading.

ARTICLE IV

CONDITIONS TO CLOSING

4.1. Conditions to the Purchaser's Obligations. The obligation of the Purchaser to consummate the transactions contemplated pursuant to this Agreement is subject to the satisfaction or the written waiver by the Purchaser, on or prior to the Closing Date, of each of the following conditions:

- a. Representations and Warranties. Each of the representations and warranties of the Sellers made in this Agreement shall be true and correct, as of the Closing Date as if made on such date.
- b. No Proceeding or Litigation. No action challenging the legality of, or seeking to restrain, prohibit or materially modify, the transactions provided for in this Agreement shall have been threatened or instituted and not settled or otherwise terminated.
- c. Certificate of the Sellers. At the Closing, the Seller shall have delivered to the Purchaser certificates signed by all the Partners of the Seller and dated the Closing Date, certifying that the conditions stipulated in Clause 4.1(a) to Clause 4.1(b) hereof have been satisfied.
- d. Other Deliveries. The Sellers shall have complied with the requirements of Clause 2.2.

ARTICLE V

INDEMNIFICATION

5.1. Indemnification.

From and after the Closing, the Seller and the each of the partners of the Seller, jointly and severally, agrees to indemnify, defend and hold the Purchaser, its Affiliates, successors, assigns and their respective directors, officers, representatives, employees and agents, harmless from and against any and all losses, liabilities, claims, damages, costs and expenses (including, without limitation, legal fees and disbursements in connection therewith and interest chargeable thereon) (collectively, "Claims") that may be incurred or suffered by such Persons resulting or arising from or related to, or incurred or suffered in connection with, (a) the Sellers' operation of the Restaurant on or before the Closing, (b) the failure of the Seller to assume, pay, perform and discharge its liabilities other than those paid off by the Purchaser in accordance with Clause 1.2 of this Agreement, or (c) any breach of any representation, warranty, covenant or agreement made or obligation required to be performed by the Seller under this Agreement.

5.2. Notice of Claim; Right to Participate in and Defend Third Party Claim.

- a. If the Purchaser receives notice of the assertion of any claim, the commencement of any suit, action or proceeding, or the imposition of any penalty or assessment by a third party in respect of which the Purchaser has been indemnified by the Seller (a "Third Party Claim"), then the Purchaser shall promptly provide the Seller with written notice of the Third Party Claim, but in any event not later than 30 calendar days after receipt of such notice of the Third Party Claim. The failure by the Purchaser to notify the Seller of a Third Party Claim shall not relieve the Seller of any indemnification responsibility under Clause 5.1 unless such failure materially prejudices the ability of the Seller to defend such Third Party Claim.
- b. Any indemnifiable claim hereunder that is not a Third Party Claim shall be asserted by the Purchaser by promptly delivering notice thereof to the Seller. If the Seller does not respond to such notice within ten (10) days after its receipt, it shall have no further right to contest the validity of such claim.

ARTICLE VI

ARBITRATION

- 6.1. If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with or arising out of this Agreement, Parties shall promptly and in good faith negotiate with a view to its amicable resolution and settlement.
- 6.2. In the event no amicable resolution or settlement is reached within a period of fifteen (15) days from the date on which the dispute or difference arose, such dispute or difference shall be referred to a mutually acceptance single Arbitrator or, upon the failure of the Parties to agree upon a single Arbitrator, within a period of ten (10) days, each Party shall appoint one arbitrator each and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator under the provisions of the Indian Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be held in New Delhi and the arbitrators shall give a reasoned award. It is agreed that the arbitrators shall also determine and make an award as to the costs of the arbitration proceedings.
- 6.3. Notwithstanding anything contained herein, the Parties shall have a right to institute legal proceedings to prevent any continuing breach of the provisions of this Agreement to seek an injunctive or any other specific relief.

ARTICLE VII

MISCELLANEOUS

7.1. Expenses and Taxes.

- a. Each Party will bear their own legal, accounting and other expenses incurred by such Party in connection with the negotiation, preparation and execution of this Agreement and the documents and transactions contemplated hereby.

- b. The Purchaser shall be responsible for and shall pay any stamp duty and payable in connection with the transactions contemplated pursuant to this Agreement.
- c. The Sellers shall be responsible for and shall pay any capital gains, taxes, sales tax, income tax and similar taxes payable as a result of the consummation of the transactions contemplated in this Agreement.

7.2. Notices

Any notice(s), communication(s), request(s) or instruction(s) contemplated, provided or required to be given hereunder by any Party hereto to the other shall be in writing in English, and shall be deemed sufficiently given if delivered personally; sent by facsimile transmission with confirmatory copies sent by recorded delivery service; or sent by recorded delivery services; the registered mail postage prepaid acknowledgment due;

If to Seller, then at

M/s XYZ & Co.

.....

.....

Tel: -----

Fax: -----

E-mail: -----

If to Purchaser, then at

M/s PQR Private Limited

.....

.....

Tel :

Fax:

All notice(s), communication(s), request(s) or instruction(s) as aforesaid, if delivered personally shall be deemed to have been received at the time of such delivery; if sent by facsimile transmission shall be deemed to have been received (48) forty-eight hours next after the same shall be proved to have been sent; if sent by recorded delivery services shall be deemed to have been received (7) seven days next after dispatch.

7.3.7.3 Applicable Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of India without regard to its principles of conflicts of laws. The courts at shall have exclusive jurisdiction over all disputes or differences arising out of this Agreement.

7.4.7.4 Counterparts. This Agreement may be executed in two counterparts, each of which will be deemed to be an original, and all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET AND SUBSCRIBED THEIR RESPECTIVE HANDS TO THESE PRESENTS ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN:

Signed and delivered by Mr.

(Authorized Signatory for PQR Private Limited)

(.....)

In the presence of:

Witness :

Name :

Address :

Signed and delivered by of M/s XYZ & Co, through its partners Mr., Mr.
and Mr. (.....)

(.....)

(.....)

In the presence of:

Witness :

Name :

Address :