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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 25.09.2012

+ **CO.PET NO. 327/2012**

| EGON Zehnder Information and Research Services Pvt. Ltd. ____

..... Petitioner

Through Mr. Mahesh Agarwal, Advocate, With
Mr. Rajeev Kumar, Advocate for
Petitioner.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This petition has been filed under Sections 80 and 100 to 104 of the Companies Act, 1956 (for short 'Act') by EGON Zehnder Information and Research Services Private Limited (Petitioner Company) seeking approval of this Court to the proposed reduction of Capital Redemption Reserve as resolved by its Special Resolution dated 22nd May, 2012.

2. The registered office of the Petitioner Company is situated at New Delhi, within the jurisdiction of this Court.

3. Details with regard to the date of incorporation of the Petitioner Company, its authorized, issued, subscribed and paid up capital have been given in the petition.

4. Copies of the Memorandum and Articles of Association of the Petitioner Company as well as the latest audited balance sheet of the Petitioner Company for the year ended 31st October, 2011 have also been enclosed with the petition.

5. A copy of the Resolution passed by the Board of Directors of the Petitioner Company on 15th May, 2012 proposing the Reduction of Capital Redemption Reserve has been placed on record.

6. By this petition, the Petitioner Company proposes as under:-

- *The Capital Redemption Reserve Account as on October 31, 2011 of the Petitioner Company be hereby reduced by Rs. 1,52,97,968/- i.e. from Rs. 2,55,00,000/- to Rs. 1,02,02,032/- and that such amount as has been reduced/cancelled be utilized for adjusting / writing off the deferred tax assets aggregating to Rs. 61,96,754/- as on October 31, 2011 and Impairment in the value of assets due to a change in the accounting estimate of useful life of fixed assets amounting to Rs. 91,01,214/-.*

7. Reasons for the reduction of Capital Redemption Reserve have been stated in paras 8 and 9 of the petition. It is also stated that reduction of Capital is in the interest of the shareholders and creditors of the Company.

8. A copy of the special resolution of the Petitioner Company passed in accordance with the provisions of Section 189 of the Act at the Extraordinary General Meeting of the Petitioner Company held on 22nd May, 2012, has been placed before this Court.

9. It was submitted that the reduction of the Capital does not involve either diminution of liability in respect of the unpaid share capital or payment to any shareholder of any paid up Share Capital, and hence, there is no requirement to comply with Section 101 (2) of the Act. In view of the same the requirement to comply with Section 101 (2) of the Act was dispensed with vide order dated 19th July, 2012.

10. By the same order, notice was directed to be issued to the Regional-Director (Northern Region). Notice was accepted by

Mr. K.S. Pradhan, Deputy Registrar of Companies on behalf of the Regional Director and Registrar of Companies. Further, it was also directed that the notice of hearing of the Petition be published in 'The Indian Express' (English, Delhi Edition) and 'Jansatta' (Hindi, Delhi Edition). Affidavit of service and publication of notice has been filed by the Petitioner Company showing compliance regarding service of the petition on the Registrar of Companies and the Regional Director, Northern Region, and also regarding publication of citations in the aforesaid newspapers on 10th August, 2012.

11. The Regional Director, Northern, Ministry of Corporate Affairs has filed his Affidavit dated 20th September, 2012. The relevant portion of the said affidavit reads as under:

"3. That the Deponent craves leave to submit that as per Article 1 of Articles of Association of the Company permits the Company for Reduction of Capital.

4. That the Deponent craves leave to submit that at para 13 of the Petition provides as under:-

"Resolved That pursuant to the Provisions of Section 80, 100 to 104 and other applicable provisions, if any of the Companies Act, 1956, the Article 1 of the Article of Association of the Company read with Article 46 of Table "A" in the Schedule -I to the Companies Act, 1956 and subject to the approval/confirmation of the Hon'ble Court of Judicature at New Delhi or any other regulatory authority as may

be prescribed under the Companies Act, 1956, an amount not exceeding Rs. 2,55,00,000/- (Rupees Two Crore Fifty Five lacks only) in aggregate out of the balance standing in the Capital Redemption Reserve Account as on October 31, 2011 be reduced to adjust the following:-

- a. Deferred Tax Assets aggregating to Rs. 61,96,754/- as on October 31, 2011.*
- b. Impairment in value of assets due to a change in the accounting estimate of the Company amounting to Rs. 91,01,214/- in the extent of which the value has been lost for the assets. ”*

5. That the Deponent craves leave to submit that the proposed Reduction of Share Capital has been consented by the equity shareholders of the Company by a Special Resolution duly passed at the AGM held on 22.05.2012.

12. No objection has been received to the proposed reduction of Capital from any other party. Mr. Rajeev Vasudeva, Director and Authorized Signatory of the Petitioner Company has filed an affidavit dated 21.09.2012 confirming that no objection has been received by the Petitioner or their legal counsel pursuant to the notice of hearing published in the aforesaid newspapers.

13. In view of the facts and circumstances of the present case, the Resolution dated 22.05.2012 and the Form of Minutes proposed at “Annexure K” to be registered under Section 103 (1)

(b) of the Act for reduction of Capital Redemption Reserve of the Petitioner Company are approved. Henceforth, the deferred tax assets to the tune of Rs. 6,196,754/- (Rupees Sixty One Lakhs Ninety Six Thousand Seven Hundred and Fifty Four Only) as appearing in the Annual Accounts of the Company on 31st October, 2011 and Impairment in value of assets due to a change in the accounting estimate of the useful life of fixed assets to the tune of Rs.9,101,214/- (Rupees Ninety One Lakhs One Thousand Two Hundred and Fourteen Only) be adjusted/set off against Capital Redemption Reserve of Rs.25,500,000/- (Rupees Two Crores Fifty Five Lakhs Only) as appearing in the Annual Accounts of the petitioner Company on 31st October, 2011 and consequently, the Capital Redemption Reserve shall be reduced accordingly. The Annual Accounts of the Petitioner Company as on October 31, 2012 will incorporate the above reduction/adjustments.

14. The order passed today and the minute approved by this Court shall be registered in accordance with Section 103 of the

Act by the Registrar of Companies and shall be published in

terms of sub-Section (3) of Section 103 in the ‘The Indian Express’ (English) and ‘Jansatta’ (Hindi) by the Petitioner Company.

15. The formality of adding the words ‘AND REDUCED’ to the name of the Company be dispensed with.

16. Learned counsel for the Petitioner Company states that the Petitioner Company would voluntarily deposit a sum of Rs. 1,00,000/- with the Common Pool Fund of the Official Liquidator within three weeks from today. The said statement is accepted.

17. The petition is allowed in the above terms.

Order Dasti.

INDERMEET KAUR, J

SEPTEMBER 25, 2012

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