

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 31.03.2014
as modified by order dated 21.04.2014

+ **CO.PET.572/2013**

**IN THE MATTER OF RS LIVEMEDIA
PVT. LTD.**

.....Petitioner

Advocates who appeared in this case:

For the Petitioner : Ms. Pooja M. Saigal and Ms. Nivedita H.S.
Bhaskar for the Petitioner.
Mr Atma Sah, Asstt. Registrar of Companies
for Regional Director.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present petition has been filed by the petitioner company under Sections 100-104 of the Companies Act, 1956 (hereinafter referred to as the 'Act') seeking approval/sanction to the proposed reduction of the Subscribed and Paid-up Equity and Preference Share Capital of the petitioner Company.

2. The petitioner proposes to reduce its share capital by cancelling a specified number of shares held by certain shareholders. The petitioner has also determined the amounts payable to the shareholders with respect to the shares proposed to be cancelled reduced. A resolution approving the reduction of share capital had been passed by the members of the petitioner company at the Extra Ordinary General Meeting of the company held on 08.07.2013.

3. Briefly stated, the relevant facts are as under:-

3.1 The petitioner company was incorporated in the year 2006 and is engaged in the business of providing high quality digital signage and advertising and contents through its network of television screens placed in public places.

3.2 During the year 2007 and 2008, DFJ Mauritius Inc., Bay Partners XI, Mauritius (Bay Partners) and SVIC No. 11, New Technology Business Investment (Samsung) became shareholders of the petitioner company. The said entities are hereinafter collectively referred to as 'investor shareholders'. DFJ Mauritius Inc. acquired 1,58,01,640 equity shares and 91,60,310 preference shares, Bay Partners acquired 1,16,02,569 equity shares and Samsung acquired 42,63,937 equity shares.

3.3 The petitioner company has an authorized share capital of ₹7,50,00,000/- divided into 6,50,00,000 equity shares of ₹1/- each and 1,00,00,000 preference shares of ₹1/- each. The subscribed, issued and paid-up share capital of the company is ₹5,08,28,456 divided into ₹4,16,68,146 equity shares of ₹1/- each and 91,60,310 8% non-cumulative convertible preference shares of ₹1/- each.

3.4 The current shareholding pattern i.e. before reduction of share capital as proposed is as under:

Name of Shareholder	Number of shares
Rajan Mehta	1,00,00,000 Equity shares

DFJ Mauritius Inc.	1,58,01,640 equity shares and 91,60,310 preference shares,
Bay Partners XI	1,16,02,569 equity shares
Samsung	42,63,937 equity shares

3.5 The Board of Directors of the petitioner company passed a resolution dated 28.06.2013 proposing the reduction of existing issued, subscribed and paid-up share capital of the Company. As per the Explanatory Statement issued, the object of reduction of share capital was to pay off the capital which is in excess of the requirements of the company, to the investor shareholders, thereby providing partial exit to the investor shareholders.

3.6 It was resolved that the petitioner company would pay consideration to the investors at values less than ₹23.78 per share, determined by an independent valuer, M/s Corporate Professionals Capital Pvt. Ltd. The fair value of shares was determined by the independent valuer, on the basis of Discounted Cash Flow Method.

3.7 The Extra Ordinary General Meeting (EoGM) of the shareholders of the company was held on 08.07.2013. The members of the company approved the reduction of the existing issued, subscribed and paid up share capital from ₹5,08,28,456 to ₹1,25,00,000/- by cancelling 2,97,29,048 equity shares and 85,99,408 Non-Cumulative Convertible Preference shares.

3.8 The shareholding pattern after reduction of share capital would be as under:

Name of Shareholder	Number of shares
Rajan Mehta	1,00,00,000 Equity shares
DFJ Mauritius Inc.	9,67,563 Equity Shares and 5,60,902 Preference Shares
Bay Partners XI	7,10,446 Equity shares
Samsung	2,61,089 Equity shares

4. The proposed reduction of capital entails partially reducing the capital held by the investor shareholders. Although, the equity shares which are proposed to be cancelled/reduced are of one class, the amount payable to each investor shareholder is calculated at a different rate per share. As per the petitioner company, the pricing for shares determined for each investor shareholder is as under:

Name of Shareholder	Number of shares	Price per share	Consideration
DFJ Mauritius Inc. – Equity shares	14,834,077	10.78	252,631,579 (for both Equity and Preference Shares)
DFJ Mauritius Inc. – converted Preference shares	8,599,408		
Bay Partners – Equity shares	10,892,123	23.19	252,631,579
Samsung – Equity shares	4,002,848	23.66	94,736,842
Total	38,328,456		600,000,000

5. It is stated in the petition that the proposed reduction of share capital

does not involve any diminution of liability in respect of the unpaid share capital or any call being waived by the petitioner company. It was further stated that the company had no secured creditor. The petitioner company has 20 unsecured creditors of a total value of ₹8,08,040/- out of which 15 unsecured creditors representing more than 90% of the unsecured debt had given their no objection/consent to the proposed reduction of share capital and the letters of consent from the individual creditors were placed on record.

6. This court, by an order dated 06.11.2013, issued notice in the petition to the Registrar of Companies and the Regional Director, Northern Region, Ministry of Corporate Affairs. This court also directed that the notice of the petition be published in “Business Standard” (English Edition) and “Jansatta” (Hindi Edition). An affidavit of service dated 24.01.2014 was filed by the petitioner *inter alia* affirming that the directions for publication of the notices of the present petition in the aforesaid newspapers was duly complied with and the notices had been published as directed on 04.01.2014. The petitioner has also filed an affidavit dated 10.02.2014 stating that no objections have been received from the general public in pursuance of the publication of the notices.

7. As the company did not have any secured creditor and out of the 20 unsecured creditors, 15 unsecured creditors representing more than 90% of the unsecured debt had given their no objection or consent to the said reduction of capital, the requirement of complying with the provisions of Section 101(2) of the Act was dispensed with by an order dated 06.11.2013.

8. The Regional Director, Northern Region, Ministry of Corporate Affairs has filed its Report dated 11.02.2014 stating its observations on the proposed reduction of share capital. The petitioner has also filed a reply dated 17.02.2014 in response to the Report of the Regional Director Company.

Observations of the Regional Director

9. The Regional Director has essentially made four observations with respect to the proposed reduction of capital. First of all, it has been observed that the petitioner company is an profit making company and the petitioner company had reported income from operations of ₹13.84 crores and net profit of ₹9.83 crores during the year. It is thus, contended that the proposed reduction of capital appeared to be distribution of profits under the guise of reduction of capital. It is further contended that the same was outside the scope of Section 101(1)(a) to 101(1)(c) of the Act.

10. Secondly, it has been observed that preference shares which are proposed to be cancelled/reduced were issued as convertible preference shares and not as redeemable preference shares. It is suggested by the Regional Director that cancelling/reducing the said preference shares without conversion would amount to treating the said shares as redeemable preference shares. It is submitted that as per the RBI guidelines the preference shares would have to be considered as debt capital and the petitioner company would be required to comply with the norms as applicable to External Commercial Borrowing.

11. Thirdly, it is observed that proposed reduction of capital is not

proportionate amongst all shareholders and only shares held by foreign shareholders were being reduced/cancelled.

12. Fourthly, it is contended that Section 100(1)(c) of the Act provides for payment of face value of shares and in the present case the payment proposed to be made was in excess of the aggregate face value of the shares sought to be reduced/cancelled.

Response of the Petitioner

13. The learned counsel for the petitioner has submitted that the observation of the Regional Director that the proposed reduction of capital appears to be a method of distribution of profits and the same does not fall under any of the categories mentioned in section 100 of the Act, is erroneous. It is submitted that section 100(1)(c) of the Act provides that the company limited by shares may reduce its share capital in any way and pay off any paid-up share capital which is in excess of the requirement of the company. It is contended that the methods enumerated in section 100 of the Act, in which the share capital of the company may be reduced, are only illustrative and not exhaustive and do not in any manner circumscribe or restrict the manner in which reduction of share capital may be carried out by a company. In support of this contention, the counsel for the petitioner has relied upon a judgment passed by this Court in the case of **Reckitt Benckiser (India) Ltd.: (2005) 122 DLT 612.**

14. It is submitted by the petitioner that the mechanism adopted by the petitioner company for reduction of share capital is not with intent to distribute the profits to the shareholders but to reflect a true and correct

picture of the financial statements of the Company as the share capital was in excess of requirement of the Company and the value of shares did not represent the value of the company. Further, by way of the proposed capital reduction, the petitioner company was providing a partial exit to the investors from the Company and the Indian promoter/shareholder was not receiving any payment under the proposed reduction. Therefore, the purpose for the reduction of the share capital was to pay off the capital which was in excess of the requirement of the company and not to distribute the profits of the company. The observation of the Regional Director made in this regard were contended to be erroneous.

15. With respect to the observations of the Regional Director that the reduction of preference shares would amount to repayment of debt capital, the petitioner submitted that as per Master Circular on Foreign Investment in India issued by Reserve Bank of India as applicable on 01.07.2013, investments could be made in India under Foreign Direct Investments (FDI) scheme, through fully convertible preference shares. The petitioner also referred to A.P. (DIR Series) Circular no.73 dated 08.06.2007, whereby it was specified that fully convertible preference share capital would be treated as part of share capital. It was, thus, submitted that the preference shares issued by the petitioner were recognized as share capital and were liable to be treated as such. The relevant extract of the Master Circular relied upon by the petitioner is quoted below:-

“2. Entry routes for investments in India

Under the Foreign Direct Investments (FDI) Scheme, investments can be made in shares, mandatorily and fully convertible debentures and mandatorily and fully convertible

preference shares of an Indian company by non-residents through two routes:

- Automatic Route: Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment.
- Government Route: Under the Government Route, the foreign investor or the Indian company should obtain prior approval of the Government of India (Foreign Investment Promotion Board (FIPB), Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & Promotion, as the case may be) for the investment.”

The Master Circular also defined the term ‘Shares’ and the same is quoted below:-

““Shares” mentioned in this Master Circular means equity shares, “preference shares” means fully and mandatorily convertible preference shares and “convertible debentures” means fully and mandatorily convertible debentures [cf. A. P. (DIR Series) Circular Nos. 73 & 74 dated June 8, 2007]”

The relevant extract of the A.P. (DIR Series) Circular no.73 dated 08.06.2007 relied upon by the petitioner is quoted below:-

“(a) Foreign investment coming as fully convertible preference shares would be treated as part of share capital. This would be included in calculating foreign equity for purposes of sectoral caps on foreign equity, where such caps have been prescribed.”

16. With regard to the observation of Regional Director that the proposed entailed selective reduction of share capital, it was submitted by the learned counsel for the petitioner that a decision for reduction of capital was based on commercial considerations undertaken by shareholders who are in the best position to ascertain the necessities and interest of the

company concerned, and it was for the company to decide the manner and mode of reduction of share capital. It was submitted that Section 100 of the Act does not restrict the company from making payment to a selective class of shareholders. It was submitted that the company is permitted to reduce its capital in any manner or extent and the court had to only consider whether the reduction of capital was inequitable or unfair. In support of this contention, the counsel placed reliance on the decision of House of Lords in **British and American Trustee and Finance Corporation v. Couper:** (1894) AC 399 and on the decision of Chancery Division in **Thomas de La Rue & Co. and Reduced:** (1911) 2 Ch. D 361).

17. I have heard the learned counsel for the parties.

18. The first observation made by the Regional Director expresses the apprehension that the proposed reduction of capital is in substance a ruse to distribute profits. The rationale for reduction of capital, that is provided by the petitioner, is that the current capital of the company is in excess of its requirements. It has also been stated that the object of the proposed reduction of share capital is to provide a partial exit to the investor shareholders (i.e. foreign investors). Apparently, the company does not envisage that the current quantum of share capital would be required for its future needs.

19. Section 100(1)(c) of the Act expressly permits reduction of share capital in circumstances where the capital of the company is in excess of the requirement of the company. In the present case, it is the stated case of the petitioner that the present capital of the company is in excess of its

requirements and there is no material on record which would indicate to the contrary. The observation made by the Regional Director is solely premised on the fact that the petitioner company is a profitable one. There is no principle of law which prohibits a profitable company from reducing its share capital and thus the fact that the petitioner company is a profitable one cannot possibly, in absence of any other material fact, lead to the conclusion that the reduction of capital is for a collateral purpose. The fact that the petitioner is a profitable company would only indicate that the company has in addition to its capital also generated further funds and the same would not negate the reason that the petitioner has capital in excess of its requirements. It is also relevant to note that the reduction of capital is not on proportionate basis. Therefore, the ratio of the entitlement of the shareholders to future profits by way of dividends would also stand altered by reason of reduction in capital as proposed. This would not be a feature where the sole intention of proposing reduction of capital was distribution of profits amongst shareholders. It stands to reason that if the company wanted to distribute dividend to its shareholders, the same would have been done proportionately. In this view it does not appear that the sole object of the company is to distribute dividends and not reduce the share capital.

20. The minutes for reduction of capital also indicate that security premium account of the company is not being reduced and thus the payment in excess of the face value of the shares would be paid from other reserves. It has been clarified by the learned counsel for the petitioner that the return of capital to the investor shareholders to the extent of the accumulated profits would be treated as “deemed dividend” in the hands of

Company under Section 2(22)(e) of the Income Tax Act, 1961 and that the petitioner company shall be meeting the liability of the Dividend Distribution Tax that would arise on such deemed dividend as per the income tax laws.

21. For the reasons as indicated above, the approval of reduction in the share capital cannot be withheld on the basis of the above mentioned observation made by the Regional Director.

22. The second observation made by the Regional Director is with respect to considering the preference shares as debt capital. According to the Regional Director the reduction of preference shares capital should be considered as repayment of External Commercial Borrowing (ECB). The learned counsel for the petitioner has referred to relevant guidelines issued by the Reserve Bank of India. The said guidelines indicate that compulsorily convertible preference shares, would be treated as shares. In the present case, the petitioner has been treating the convertible preference shares as equity in conformity with the aforementioned RBI Guidelines. I am unable to appreciate as to how the reduction of capital in the present case can be treated as repayment of ECB. The preference shares issued by the petitioner have to be treated as equity and all statutes, norms and guidelines relating to reduction of equity capital are required to be followed. The present petition has also been filed only for the said purpose. In the case the payment to investor shareholders was considered as repayment of debt, there would have been no requirement for the petitioner to file the present petition. The contention that the preference shares should be first converted into equity and, thereafter, reduced is also without merit.

And, I am unable to follow as to how that would have any material effect in the context of considering whether reduction of capital should be approved or not.

23. Having stated the above, it is clarified that the sanction of this Court for reduction of capital does not absolve the petitioner from complying with the provisions of FEMA or any other statute, rule, regulation or guidelines framed by the Reserve Bank of India or any other authority. The question whether the payment to the foreign shareholders falls foul of any guidelines issued by RBI would be determined by the concerned authority. In this view, the observation made by the Regional Director stands completely addressed.

24. The third observation made by the Regional Director is regarding the disproportionate reduction in share capital. It has been pointed out by the Regional Director that only share capital held by foreign shareholders is being reduced. Although, no observation has been made by the Regional Director in this regard, the perusal of the petition also indicates that the reduction of share capital is not only disproportionate amongst the shareholders of the company but the amounts proposed to be paid to each investor shareholder is also calculated at a different rate per share. Thus, the payouts in respect of shares, which otherwise carry similar rights, are proposed to be different. In the given circumstances, the questions that need to be addressed are:

- (a) Whether it is permissible for a company to reduce its share capital in a disproportionate manner, where only specified shareholders are permitted to participate in the reduction of share capital.

- (b) Whether it is permissible that consideration payable to different shareholders on account of reduction of share capital is calculated at different rates.

25. In order to address the above controversy, it is necessary to state the approach that a Court is required to follow while considering whether reduction of capital be approved or not. It is well settled that the approach of the company would be to determine whether the specified procedure in law has been followed and whether the reduction proposed has consent of the requisite number of creditors and/or shareholders. In the event the proposed reduction of capital meets with the requirement of approval of all necessary persons, then the next question is to determine whether there is any provision in law which would bar or proscribe such reduction of capital. And, lastly the Court must examine whether the proposed reduction in share capital is inequitable to any party and/or prejudicially affects any rights of interest of any person.

26. Indisputably, there is no infirmity in the procedure adopted by the petitioner for reduction of capital. The resolution for the same has been passed by the Board of Directors of the Company. The shareholders of the company have also unanimously passed the resolution for reduction of capital as proposed. The petition has been duly advertised. The requisite procedure having been followed, the next step is to examine whether the reduction of capital in the manner as proposed, is barred, either expressly or impliedly, by any provisions of the Act or any other law.

27. Sub-section 1 of section 100 of the Act enables a company to reduce

it capital provided the same is authorized by its Articles of Association and members of the company approve the same by a special resolution. The opening words of the Section 100(1) are couched in wide terms and do not indicate any limitation except as indicated above. Section 100(1)(c) of the Act provides that a company limited by shares or a company limited by guarantee and having a share capital may reduce its share capital in any way and pay off any paid-up share capital which is in excess of the requirement of the company. Section 100 of the Act is quoted below:-

“100. Special resolution for reduction of share capital.-

(1) Subject to confirmation by the Tribunal, a company limited by shares or a company limited by guarantee and having a share capital, may, if so authorized by its articles, by special resolution, reduce its share capital in any way; and in particular and without prejudice to the generality of the foregoing power, may -

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;

(b) either with or without extinguishing or reducing liability on any of its shares cancel any paid-up share capital which is lost, or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act referred to as “a resolution for reducing share capital.””

28. A plain reading of section 100 of the Act indicates that clauses (a) to (c) of section 100(1) are merely illustrative and not exhaustive. The words “without prejudice to the generality of the foregoing power” expressly indicate that the power of a company to reduce its capital is not circumscribed by clauses (a) to (c) of section 100(1) of the Act. It naturally follows from a plain reading of section 100 of the Act, that a company would be free to reduce its capital and select the manner in which to reduce the same. However, if the same entailed diminution of any liability in respect of unpaid capital or payment to shareholders, the same would affect the rights of the creditors and other provisions of the Act for protecting the interests of the creditors would have to be complied with. Section 101 of the Act, *inter alia*, contains provisions for protection of the rights of the creditors. If the procedure under section 101 of the Act is followed and/or the consents of all creditors are obtained, there would be no impediment to allow reduction of capital even though the same would entail diminution of liability in respect of unpaid capital or payment to shareholders. In the present case, this court on being satisfied that the consent of the creditors had been obtained and their rights were protected, had dispensed with the procedure as prescribed in section 101 of the Act. Therefore, it is now to be considered whether, there is any other reason why the present proposal for reduction of capital, which provides for disbursal of payments to its shareholders, should not be approved.

29. In the case of ***British and American Trustee and Finance Corporation*** (supra), the House of Lords had held that the prescribed majority of the shareholders of a company would be entitled to decide

whether there should be a reduction of capital, and if so, in what manner and to what extent it should be carried into effect. The following passage from the concurring opinion delivered by Lord Macnaghten also supports the view that a selective reduction of share capital on disproportionate basis is not proscribed:-

“If the parties to the transaction come to the conclusion that the bargain is a fair one, why should the Court say that there is a preference on the one side or on the other? If there is nothing unfair or inequitable in the transaction, I cannot see that there is any objection to allowing a company limited by shares to extinguish some of its shares without dealing in the same manner with all other shares of the same class. There may be no inequality in the treatment of a class of shareholders, although they are not all paid in the same coin, or in coin of the same denomination.”

A similar view expressed by Lord Herschelle in his concurring opinion, reads as under:

"If all the shareholders of a company were of opinion that its capital should be reduced, and that this reduction would best be effected by paying off one shareholder and canceling the shares held by him, I cannot see anything in the Acts of 1867 and 1877 which would render it incumbent on the Court to refuse to confirm such a resolution, or which shows that it would be ultra vires to do so. ... There can be no doubt that any scheme which does not provide for uniform treatment of shareholders whose rights are similar, would be most narrowly scrutinized by the Court, and that no such scheme ought to be confirmed unless the Court has satisfied that it will not work unjustly or inequitably. But that is quite a different thing from saying that the Court has no power to sanction it."

30. The decision in *Thomas de La Rue & Co. and Reduced* (supra) also supports the view that matters of adequacy or inadequacy of consideration

are best left to the parties who are participating in the reduction of capital.

31. In the case of **In re Robert Stephen Holdings Ltd.:** [1968] 1 W.L.R. 522, the Chancery Division had approved a scheme where one part of a class of equity shareholders had been treated differently from another part of the same class and observed that the same could be done by a scheme of arrangement. The relevant extract from the said judgment is quoted below:-

“Among the cases cited in the footnote as in support of this proposition is the case to which Mr. Instone referred me, British and American Trustee and Finance Corp. v. Couper. Mr. Instone submitted that a case of fairness had been made out on the facts of this case. I agree, and propose to confirm the reduction. But I want to add this: in cases where one part of a class of equity shareholders has been treated differently from another part of the same class the usual practice is for the company to proceed by way of a scheme of arrangement under section 206 of the Companies Act.”

32. The procedure prescribed for sanction of a scheme under Section 391-394 of the Act, in substance, is similar to the procedure for approval of reduction in share capital. And, I see no reason why approval to the reduction not be granted, in given facts where the shareholders have unanimously consented to a reduction of capital in a particular manner.

33. In the case of **In Re: Westburn Sugar Refineries Ltd.:** (1951) 1 All.E.R. 991 (H.L.), the House of Lords stated the principle in the following manner:

“the general rule is that the prescribed majority of the shareholders is entitled to decide whether there should be a reduction of capital, and, if so, in what manner and to what extent it should be carried into effect.”

34. Although, the decisions referred above are decisions of the Courts in United Kingdom, however, given the language of section 100 of the Act, the abovementioned principles enunciated therein would be equally applicable to reduction of capital under the provisions of the Act.

35. This court in ***Reckitt Benckiser (India) Limited*** (supra), referred to various decisions and held as under:

“(i) The question of reduction of share capital is treated as a matter of domestic concern, i.e. it is the decision of the majority which prevails;

(ii) If a majority by special resolution decides to reduce share capital of the company, it has also the right to decide as to how this reduction should be carried into effect;

(iii) While reducing the share capital the company can decide to extinguish some of its shares without dealing in the same manner as with all other shares of the same class. Consequently, it is purely a domestic matter and is to be decided as to whether each member shall have his share proportionately reduced, or whether some members shall retain their shares unreduced, the shares of others being extinguished totally, receiving a just equivalent

(iv) The company limited by shares is permitted to reduce its share capital in any manner, meaning thereby a selective reduction is permissible within the framework of law.

(v) When the matter comes to the Court, before confirming the proposed reduction the Court has to be satisfied that (i) there is no unfair or inequitable transaction and (ii) all the creditors entitled to object to the reduction have either consented or been paid or secured.”

36. The value of ₹23.78 per share is stated to have been determined by an independent valuer, as a fair value, on the basis of the Discounted Cash

Flow Method and it is the maximum price that can be paid to the investor shareholders. It is relevant to note that although, the petitioner company has adopted differential pricing for the same class of shares, none of the varying rates per share at which the amount payable to shareholders is determined, exceeds ₹23.78.

37. In view of the above discussion, the questions viz.: Whether it is permissible for a company to reduce its share capital in a disproportionate manner and whether it is permissible that consideration payable to different shareholders on account of reduction of share capital is calculated at different rates, must be answered in the affirmative. The mode, manner and incidence of reduction has been regarded as a matter of domestic concern and there is no restriction under the Act which curtails the discretion of a company in adopting the manner in which the company chooses to reduce its capital.

38. Having satisfied itself that condition that the reduction of capital is not barred by any provision of law, it is also incumbent upon the Court to satisfy itself that the scheme is not inequitable and does not unfairly prejudices the rights of any person. It is for the Company to decide for itself the extent, mode and manner of reduction of Share Capital. This is, however, subject to the confirmation of the court, which is required for safeguarding the interests of creditors, minority shareholders and other persons who may be affected by the reduction of capital. The Court thus has to view whether the reduction in capital is fair, just and reasonable keeping in mind that the shareholders are in the best position to ascertain the necessities and interests of the Company. In the present case, the

shareholders have unanimously approved the mode and manner of the reduction in share capital. It cannot be ignored that the shareholders participating in the reduction of capital are financial investors who are presumed to be men of considerable commercial wisdom capable of taking a decision in their best interest. There is no opposition to the proposed reduction from any shareholder, creditor or member of the public and no patent irregularity or illegality in the scheme has been brought to the notice of this Court.

39. The learned counsel for the petitioner has stated that the varying rates per share had been adopted on the basis of time period for which the respective investor shareholders had held their investment in the petitioner company. In view of the fact that the said varying rates had been adopted on the specified basis and were not determined arbitrarily and in view of the fact that the shareholders had agreed to be treated unequally, I do not find the reduction of capital as proposed to inequitable or unfair.

40. In the present case, the proposed reduction in the paid-up share capital of the Company is duly authorized by Article 3.1 of its Articles of Association. The Special Resolution has been unanimously approved and adopted by the shareholders of the Company at the EOGM held on 08.07.2013. None of the creditors have opposed the reduction of capital.

41. In view of the above, the present petition is allowed. The Resolution dated 08.07.2013 and the Form of Minutes proposed to be registered under Section 103(1)(b) of the Act and annexed as Annexure P-9 to this petition, are approved. A copy of the approved minutes be filed with the Registrar of

Companies within six weeks. Notice of this order and the minutes approved by the Registrar of Companies be published by the petitioner company in Business Standard (English) and Jansatta (Hindi). The requirement of adding the words 'AND REDUCED' is also dispensed with.

VIBHU BAKHRU, J

MARCH 31, 2014
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CO.PET. 572/2013**

RS LIVEMEDIA PVT LTD

..... Petitioner

Through: Ms Pooja M. Saigal, Advocate for
petitioner.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.04.2014

CA No.851/2014

This is an application seeking rectification of some typographical error in Para 3.4 and 3.8 of the judgment dated 31.03.2014. The application is allowed and the table indicating the shareholding pattern pre-reduction of capital as mentioned in Para 3.4 of the judgment shall be read as under:-

“Name of Shareholder	Number of shares
Rajan Mehta	1,00,00,000 Equity shares
DFJ Mauritius Inc.	1,58,01,640 equity shares and 91,60,310 preference shares,
Bay Partners XI	1,16,02,569 equity shares
Samsung	42,63,937 equity shares”

instead of

“Name of Shareholder	Number of shares	Percentage of Shareholding
Rajan Mehta	1,00,00,000 Equity shares	80

DFJ Mauritius Inc.	1,58,01,640 equity shares and 91,60,310 preference shares,	49.11
Bay Partners XI	1,16,02,569 equity shares	22.83
Samsung	42,63,937 equity shares	8.39
Total	38,328,456	100”

Similarly, the shareholding pattern post reduction of capital mentioned in Para 3.8 of the judgment shall be read as under:-

“Name of Shareholder	Number of shares
Rajan Mehta	1,00,00,000 Equity shares
DFJ Mauritius Inc.	9,67,563 Equity Shares and 5,60,902 Preference Shares
Bay Partners XI	7,10,446 Equity shares
Samsung	2,61,089 Equity shares”

instead of

“Name of Shareholder	Number of shares	Percentage of Shareholding
Rajan Mehta	1,00,00,000 Equity shares	80
DFJ Mauritius Inc.	9,67,563 Equity Shares and 5,60,902 Preference Shares	12.23
Bay Partners XI	7,10,446 Equity shares	5.68
Samsung	2,61,089 Equity shares	2.09
Total	38,328,456	100”

The judgment dated 31.03.2014 is accordingly modified. The Registry is directed to upload the judgment as modified above on the website of the High Court.

A copy of this order be also filed with the Registrar of Companies along with the judgment dated 31.03.2014.

Dasti.

VIBHU BAKHRU, J

APRIL 21, 2014
MK

