IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 88 OF 2015

In the matter of Companies Act, 1956;

And

In the matter of Section 52 of the Companies Act, 2013 read with Sections 100 to 103 of the Companies Act, 1956

And

In the matter of Reduction of Share Capital (Share Premium Account) of Emerson Process Management (India) Private Limited

Emerson Process Management (India) Private Limited a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Delphi, B- Wing, 6th Floor, Central Avenue, Hiranandani Business Park, Powai, Mumbai-400076) ………......Petitioner Company

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner

CORAM: S.J. KATHAWALLA, J

DATE: 13th MARCH 2015

PC:

1. Heard the learned counsel for the Petitioner. No objector has come before the court to oppose the proposed Reduction of share Capital and nor any party has contravened any averments made in the Petition.

2. The Counsel for the Petitioner Company submits that Article 50 of the Articles of Association of the Petitioner Company empowers the Petitioner Company to reduce its

Share Capital (Share Premium Account) by passing a special resolution in any manner for the time being authorised by law.

3. The counsel for the Petitioner Company submits that the reason for reduction as mentioned in paragraph 6 and 7 of the Petition is that the Petitioner Company with an objective to expand its operations acquired in October, 2013, 100% of the equity share capital of Virgo Valves and Controls Limited (VVCL) from its existing shareholders for a total consideration of Rs. 19,373,056,815/-. As a result of the said acquisition, VVCL along with its overseas subsidiaries became a 100% owned subsidiary of the Petitioner Company and thereby part of the larger Emerson Group. With an objective to realign the holding structure in line with the principle of having geographical focus and to minimize multiple layer holdings, VVCL transferred its investments in overseas subsidiaries to an Emerson Group company. The cash surplus from sale of the subsidiaries was distributed as special interim dividend by VVCL vide the resolution of the Board of Directors of VVCL dated 16th January, 2015. In light of the aforesaid restructuring resulting into change in business dynamics, the Petitioner Company may have to make a provision towards diminution in the carrying value of its investments in VVCL. Since the Company has sufficient reserves in the form of Share Premium Account it is considered prudent to adjust such diminution in the carrying value of investment in VVCL against the amount standing to the credit of Share Premium Account as on the date of passing of this resolution.

4. The Counsel for the Petitioner states that the Petitioner Company having passed Special Resolutions with requisite majority at its Extraordinary General Meeting held on 28th January, 2015 by the Equity Shareholders, inter-alia resolved that the utilization of amount not exceeding Rs 700 crores (Rupees Seven Hundred Crores) out of the amount standing to the credit of the Share Premium Account towards the impairment

/diminution in the value of investments of the Petitioner Company and the amount of Share Premium Account, so reduced and to the extent utilized shall have due effect from the date of passing of the special resolution and be reflected in the financial year ended 31st March, 2015. The said Special Resolution is annexed at Exhiit-F2 to the Petition.

5. The counsel for the Petitioner further submits that the proposed reduction would not in any way adversely affect the rights and interests of any of the Creditors of the Petitioner Company's as there is no compromise or arrangement with any of the creditors of the Petitioner Company as there is no reduction in the amount payable to any of the creditors of the Petitioner Company and the proposed reduction does not contemplate payment to shareholder of paid up share capital and there is no diminution of liability in respect of unpaid share capital and therefore the procedure prescribed under Section 101(2) of the Companies Act, 1956 are not attracted as averred in paragraph 21 and 22 of the Petition.

6. The Counsel for the Petitioner further submits that the Board of Directors of the Petitioner Company have determined an amount of Rs 241,54,98,664/- towards diminution/impairment in the value of investment for the financial year ending March 31st, 2015 based on the valuation report of M/s SSPA & Co, Chartered Accountants. The said Report was adopted by the Board of Directors of the Petitioner Company in their meeting held on 20th February, 2015. Accordingly a sum of Rs 241,54,98,664/- shall be utilized/applied for the year ending March 31st, 2015 towards diminution/impairment in the value of investment and balance amount upto Rs 458,45,01,336/- during the financial year ending March 31st, 2016 from time to time as per the shareholders resolution and has filed an Affidavit on 9th March 2015 of Mr. Lalit Chhaya , Director-Finance of the Petitioner Company in respect in respect of the same hereinabove.

7. The Counsel for the Petitioner has accordingly tendered revised form of Minutes which is taken on record and marked as “X” for identification.

8. Counsel appearing on behalf of the Petitioner Company states that the Petitioner has complied with all the statutory requirements as per the directions of this Court and they have filed necessary Affidavit of compliance in the Court. Moreover, Petitioner Company also undertakes to comply with statutory requirements, if any, as required under the Companies Act, 1956 and/or Companies Act, 2013 and the Rules made thereunder, as may be applicable.

9. Since the requisite statutory procedure has been fulfilled, the Company Scheme Petition is made absolute in terms of prayer clause (a).

10. Petitioner to publish notices about registration of Order and form of minutes of reduction which is marked ‘X’ for identification in two newspapers namely ‘Free Press Journal’, in English language and translation thereof in ‘Navshakti’, in Marathi language both having circulation in Mumbai.

11. Filing and issue of drawn up order is dispensed with.

12. All concerned regulatory authorities to act on authenticated copy of the order and the form of minutes of reduction which is marked ‘X’ for identification duly authenticated by the Company Registrar, High Court, Bombay.

(S.J. KATHAWALLA, J)