IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 53 OF 2015

In the matter of Companies Act, 1956;

And

In the matter of Sections 100 to 104 of the Companies Act, 1956

And

In the matter of Reduction of Share Capital of Marine Drive Hospitality & Realty Private Limited

Marine Drive Hospitality & Realty Private Limited, a company incorporated under the provisions of Companies Act, 1956, having its registered office at DB House, General A. K Vaidya Marg, Goregaon (East) Mumbai 400063) …………....Petitioner Company

Called for Hearing

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

CORAM: S.J. KATHAWALLA, J

DATE: 13th FEBRUARY 2015

PC:

1. Heard the learned counsel for the Petitioner. No objector has come before the court to oppose the Scheme for 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 10 of the Articles of Association of the Petitioner Company empowers the Petitioner Company to reduce its Share Capital by passing a Special Resolution in any manner for the time being authorised by law.

3. The reason for reduction is that Petitioner Company is currently carries out activity dealing in real estate. The Petitioner Company has been incurring losses over the last few years resulting in accumulation of substantial losses which is evident as the Company has the accumulated losses of Rs. 383,186,478 (the Debit balance in the Profit and Loss Account) as on 30.09.2014 and in consequence thereof the Board of Directors have approved the proposed reduction of share capital at their meeting held on 24th November, 2014, subject to confirmation by the shareholders and the Court.

4. The Counsel for the Petitioner having passed Special Resolutions with requisite majority at its Extraordinary General Meeting and class meeting of Preference Shareholders held on 18th December, 2014 by the Equity Shareholders and class Preference shareholders and inter-alia resolved that (a) the Redeemable Optionally Convertible Cumulative Preference Share Capital (ROCCPS) “Series - C” of the Company, held by D B Realty Ltd. (DBRL) shall be reduced from existing Rs. 217,629,710/- consisting of 21,762,971 ROCCPS (Series C) of Rs.10 each, to Rs. 2,176,297.10 consisting of 2,176,2971 ROCCPS (Series C) of Rs.0.10 each, by cancelling Rs 9.90 on 21,762,971 ROCCPS (Series C), (b) the Compulsory Convertible Cumulative Preference Share Capital (CCCPS) - “Series C” of the Company held by DBRL be and is hereby reduced from existing Rs.

92,600,800/- consisting of 9,260,080 CCCPS (Series C) of Rs.10 each, to Rs. 926,008/- consisting of 9,260,080 CCCPS (Series C) of Rs. 0.10 each, by cancelling Rs 9.90 on 9,260,080 CCCPS (Series C) (c) the Cumulative Redeemable Convertible Preference Shares (CRCPS) of the Company held by DBRL shall be reduced from existing Rs. 74,442,560/- consisting of 7,444,256 CRCPS of Rs.10 each, to Rs. 744,425.60 consisting of 7,444,256 CRCPS of Rs. 0.10 each, by cancelling Rs 9.90 on 7,444,256 CRCPS. Further the proposed reduction of ROCCPS – Series C, CCCPS - Series C and CRCPS held by DBRL, from Rs.10/- per share to Rs. 0.10 per share fully paid up by cancelling by Rs. 9.90 per share, so as to reduce the said paid up capital (ROCCPS – Series C, CCCPS - Series C and CRCRS) of the Company to the extent of Rs. 380,826,340 (rounded off) to write off accumulated losses of Rs. 380,826,340 out of total accumulated losses of Rs. 383,186,478 as per provisional balance sheet as on 30.09.2014. Consequently, it would result in the reduction of paid up share capital of the company to Rs. 416,495,050 from Rs. 797,321,390/-. Further the 21,762,971 Redeemable Optionally Convertible Cumulative Preference Shares (Series C) held by DBRL with reduced paid-up value of Rs. 0.10 per share will be consolidated into Rs. 2,176,300/- consisting of 217,630 (rounded off) Redeemable Optionally Convertible Cumulative Preference Shares (Series C) of Rs. 10/- each fully paid-up. The 9,260,080 Compulsory Convertible Cumulative Preference Shares (Series C) held by DBRL with reduced paid-up value of Rs.0.10 per share will be consolidated into Rs. 926,000/- consisting of 92,600 (rounded off) Compulsory Convertible Cumulative Preference Shares (Series C) of Rs. 10/- each fully paid-up. Further 7,444,256 Cumulative Redeemable Convertible Preference Shares (CRCPS) held by DBRL with reduced paid-up value of Rs.0.10 per share will be consolidated into Rs. 744,430/- consisting of 74,443 (rounded off) Cumulative Redeemable Convertible Preference Shares (CRCPS) of Rs. 10/- each fully paid-up. The counsel for the Petitioner further submits as stated in paragraph 21 of the Petition the proposed reduction would not in any way adversely affect the interests of any of the Petitioner Company's Secured and Unsecured Creditors 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) are not attracted.

5. 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.

6. Since the requisite statutory procedure has been fulfilled, the Company Scheme Petition is made absolute in terms of prayer clauses (a) and (b).

7. Petitioner to publish notices about registration of Order and minutes of reduction by the concerned Registrar of Companies, Maharashtra in the same newspapers i.e., 'Free Press Journal', in English language and translation thereof in 'Navshakti', in Marathi language both having circulation in Mumbai

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

9. All concerned regulatory authorities to act on authenticated copy of order and the form of minutes annexed as 'Exhibit K' to the Petition, duly authenticated by the Company Registrar, High Court, Bombay.

(S.J. KATHAWALLA, J)