In the High Court of Judicature at Madras

Dated : 28.4.2015

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The Honourable Mr.Justice **V.RAMASUBRAMANIAN**

Company Petition No.142 of 2015

M/s.Escapade Real Estate private Limited,
a Company incorporated under
the Companies Act, 1956 and
having its Registered Office at
No.3, Old No.25, Ganapathy Colony,
3rd Lane, Off Cenatoph Road,
Teynampet,
Chennai-600 018,rep.by its
Director, Mr.Piyush Jagdish Bhatt ...Petitioner

PETITION under Sections 100 to 104 of the Companies Act, 1956 and Section 52 of the Companies Act, 2013 read with Rules 46 and 47 of the Companies (Court) Rules, 1959 for confirming Reduction of Class B Equity Share Capital.

For Petitioner : Mr.K.Ramasamy
For the Regional Director
Ministry of Corporate Affairs : Mr.Gopi Krishnan, ACGSC

ORDER

This petition is filed for reduction of the petitioner's share capital in terms of the resolutions passed at the Extraordinary General Meetings of each class of Equity Shareholders held on 12th March 2015 and to approve the form of minute to the effect that,

> "The paid up equity Share Capital of the Company is henceforth reduced to Rs.1,65,00,000/- (Rupees one Crore Sixty-Five Lakh Only) comprising of 2,00,000/- (Two Lakh) Class A equity shares of Rs.10/- (Rupees Ten) each fully paid up, 4,50,000 (Four Lakh Fifty Thousand Only) Class B equity shares of Rs.10/- (Rupees Ten) each fully paid up and 10,00,000 (Ten Lakh) Class C equity shares of Rs.10/- (Rupees Ten Only) each fully paid up.
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> At the date of registration of this minutes, 2,00,000 (Two Lakh) Class A equity shares of Rs.10/- (Rupees Ten Only) each, 4,50,000 (Four Lakh Fifty Thousand) Class B equity shares of Rs.10/- (Rupees Ten Only) each and 10,00,000 (Ten Lakh) Class C equity shares of Rs.10/- Rupees Ten only) each have been issued and are deemed to be fully paid up and the remaining 33,50,000 (Thirty Three Lakh and Fifty Thousand) equity shares are un-issued."

2. A copy of the provisional financial statements as on 31.12.2014 is annexed as Annexure 2.

3. The petitioner is engaged in buying, selling, hiring or otherwise dealing in the movable and immovable properties and real estate services thereto. As the petitioner has capital in excess of its needs, the Board of Directors of the petitioner company thought it fit to reduce the Class B equity share capital. The nature of business carrying on is detailed in the memorandum of association, which is annexed as Annexure 1.

4. The authorized capital of the petitioner company as on 31.12.2014 is Rs.5,00,00,000/- divided into 10,00,000 (Ten Lakhs) Class A Equity shares of Rs.10/- each, 20,00,000 (Twenty Lakhs) Class B Equity Shares of Rs.10/- each, and 20,00,000 (Twenty Lakhs) Class C Equity Shares of Rs.10/- each and the issued, subscribed and paid up share capital of the petitioner as on 31.12.2014 is Rs.2,20,00,000/- divided into 2,00,000 Class A Equity shares of Rs.10/- each, 10,00,000 Class B Equity Shares of Rs.10/- each, and 10,00,000 Class C Equity Shares of Rs.10/- each . The petitioner company is in a sound financial position as seen from the financial statements as on 31.12.2014. The petitioner company has adequate assets over and above its current liabilities to satisfy their creditors. Therefore, the reduction of equity share capital will not in any way cause any prejudice to the creditors of the petitioner company. The shareholders of the petitioner company are only interested in disposing off their shares held with the petitioner company and therefore, the petitioner intends to provide its shareholders a convenient exit

option. Further, the proposed reduction of equity share capital does not involve diminution of any liability in respect of unpaid capital. The proposed reduction also would not, in any way, adversely affect the ability of the petitioner to honour its commitments to pay its debts in the normal course of business.

5. In the meeting held on 12.3.2015, the Board of Directors of the petitioner company decided to reduce the Class B equity Share Capital by way of payment of money to its shareholders. The certified copy of the Board resolution is marked as Annexure 3. Accordingly, Extraordinary General Meeting was held on 12.03.2015 wherein each Class of Equity shareholders unanimously passed the special resolutions approving the the reduction of Class B Equity Share capital. The resolutions passed are as follows:-:-

> **Special Resolution of Class A Equity Shareholders:**
>
> RESOLVED THAT pursuant to the provisions of Sections 100 to 104 and any other applicable provisions of the Companies Act, 1956 and Section 52 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 and Article 39 of the Articles of Association of the Company and subject to the approval of (i) Class B Equity Shareholders of the Company by way of special resolution in the Extraordinary General Meeting (ii) Class C Equity Shareholders of the Company by

way of special resolution in the Extraordinary General Meeting (iii) and of the Hon'ble High Court of Tamil Nadu at Chennai/Madras and other appropriate authorities in this regard, if any, consent of the members of the Company, be and is hereby accorded to reduce the issued, subscribed and paid up Class B equity share capital of the company in extinguishing upto 5,50,000 Class B equity shares of Rs.10/- each at a premium of Rs.390/- per share from Heirloom Read Estate Private Limited

RESOLVED FURTHER THAT for the purpose of giving effect to this resolution, the Board and is hereby authorize to make such applications to the Court as may be required and agree to any other modifications or conditions that may be suggested, imposed or stipulated by the Court or any other Statutory/Government Authority or effect such modifications as may be considered in the best interest of the company and to give such directions or instructions as they, from time to time, may think fit or proper (including directions for settling any question, doubt or difficulty which may arise in this regard) and to do all such acts, deeds, matters and things as the Board, in its absolute discretion may consider necessary expedient usual or proper.

RESOLVED FURTHER THAT the Board of Directors be and is also hereby authorized to delegate this authority to such persons thought fit by them;

RESOLVED FURTHER THAT none of the Directors are Key Managerial personnel of the company and their relative are interested or concerned in this resolution."

Special Resolution of Class B Equity Shareholders:

RESOLVED THAT pursuant to the provisions of Sections 100 to 104 and any other applicable provisions of the Companies Act, 1956 and Section 52 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 and Article 39 of the Articles of Association of the Company and subject to the approval of (i) Class A Equity Shareholders of the Company by way of special resolution in the Extraordinary General Meeting (ii) Class C Equity Shareholders of the Company by way of special resolution in the Extraordinary General Meeting (iii) and of the Hon'ble High Court of Tamil Nadu at Chennai/Madras and other appropriate authorities in this regard, if any, consent of the members of the Company, be and is hereby accorded to reduce the issued, subscribed and paid up Class B equity share capital of the company by extinguishing upto 5,50,000 Class B equity shares of Rs.10/- each at a premium of

Rs.390/- per share from Heirloom Read Estate Private Limited

RESOLVED FURTHER THAT for the purpose of giving effect to this resolution, the Board and is hereby authorize to make such applications to the Court as may be required and agree to any other modifications or conditions that may be suggested, imposed or stipulated by the Court or any other Statutory/Government Authority or effect such modifications as may be considered in the best interest of the company and to give such directions or instructions as they, from time to time, may think fit or proper (including directions for settling any question, doubt or difficulty which may arise in this regard) and to do all such acts, deeds, matters and things as the Board, in its absolute discretion may consider necessary expedient usual or proper.

RESOLVED FURTHER THAT the Board of Directors be and is also hereby authorized to delegate this authority to such persons thought fit by them;

RESOLVED FURTHER THAT none of the Directors are Key Managerial personnel of the company and their relatives are interested or concerned in this resolution."

Special Resolution of Class C Equity Shareholders:

RESOLVED THAT pursuant to the provisions of Sections 100 to 104 and any other applicable provisions of the Companies Act, 1956 and Section 52 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 and Article 39 of the Articles of Association of the Company and subject to the approval of (i) Class A Equity Shareholders of the Company by way of special resolution in the Extraordinary General Meeting (ii) Class B Equity Shareholders of the Company by way of special resolution in the Extraordinary General Meeting (iii) and of the Hon'ble High Court of Tamil Nadu at Chennai/Madras and other appropriate authorities in this regard, if any, consent of the members of the Company, be and is hereby accorded to reduce the issued, subscribed and paid up Class B equity share capital of the company by extinguishing upto 5,50,000 Class B equity shares of Rs.10/- each at a premium of Rs.390/- per share from Heirloom Read Estate Private Limited

RESOLVED FURTHER THAT for the purpose of giving effect to this resolution, the Board and is hereby authorize to make such applications to the Court as may be required and agree to any other modifications or conditions that may be suggested, imposed or stipulated by the Court or any other Statutory/Government Authority or effect such modifications as may be considered in the best interest of the company and to give such directions or instructions as they, from time to time, may think fit or proper (including directions for settling any question, doubt or difficulty which may arise in this regard) and to do all such acts, deeds, matters and things as the Board, in its absolute discretion may consider necessary expedient usual or proper.

RESOLVED FURTHER THAT the Board of Directors be and is also hereby authorized to delegate this authority to such persons thought fit by them;

RESOLVED FURTHER THAT none of the Directors are Key Managerial personnel of the company and their relatives are interested or concerned in this resolution."

6. The resolution passed in the minutes of the said meeting is also enclosed to this petition in Annexure 3. It is also stated by the petitioner that the reduction of capital will not affect the normal operations of the company or its ability to honour its commitments in the ordinary course of business. In the light of the resolutions passed unanimously approving the reduction of Class B Equity Share Capital, this petition is filed before this Court for

reduction. The petitioner also seeks liberty of this court for dispensing with the words 'and reduced' as contemplated in Section 102(3) of the Act.

7. In Comp.A.Nos.340 and 341 of 2015, the petitioner sought for permission to dispense with the procedure of settlement of list of creditors and unsecured creditors in terms of provision under Section 101(2) of the Companies Act, 1956. Since the reduction involves neither diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, warranting cash out flow, as already stated in view of the fact that such reduction is not going to have an impact on the creditors, this Court dispensed with the settlement of the list of creditors and unsecured creditors and also dispensed with notice to the creditors by order dated 30.03.2015.

8. Notice was issued to the Regional Director for filing his objection. The Regional Director filed his report stating that as per the records there are no complaints/prosecutions and inspection or investigation proceedings are pending against the petitioner.

9. As stated in the petition and as seen from the balance sheet filed, the decision taken to have a true reflection of the financial position of the company is purely a commercial decision. Considering the fact that such

move has been approved by the overwhelming majority of the shareholders, apart from the fact that such reduction does not involve any cash out flow to prejudice the rights of the creditors, I do not find any impediment in granting the relief prayed for herein. Consequently, this petition seeking approval to the resolution passed is hereby granted.

10. Clause (a) of Sub-Section (2) of Section 102 of the Companies Act, 1956, provides that the Court may, for any special reason, if it thinks proper so to do, direct the company to add the words "and reduced" to its name on the last words thereof during the period commencing from the date of the Court's order till such time as the court specifies in its order. The purpose of such inclusion is only to put on notice the investing public the state of affairs of the company and that it has gone for reduction of the capital. Taking note of the circumstances warranting the course for reduction of capital, there being no cash outflow or any creditor to object, the procedure laid down under Section 100 fully complied with, there is no impediment in granting the prayer confirming the reduction of share capital as resolved by the company in its special resolutions dated 12.3.2015 confirmed so as to be binding on all the shareholders and creditors of the petitioner company. The words "and reduced" pursuant to the reduction approved, are dispensed with. In the light of the above-said facts, the prayer sought for herein is granted and the petition is allowed.

11. Consequently, the petition is ordered to the effect that approving the resolutions passed on 12.03.2015 for the reduction of the paid up equity share capital of Rs.1,65,00,000/-, comprising of 2,00,000/- (Two Lakh) Class A equity shares of Rs.10/- (Rupees Ten) each fully paid up, 4,50,000 (Four Lakh Fifty Thousand Only) Class B equity shares of Rs.10/-(Rupees Ten) each fully paid up and 10,00,000 (Ten Lakh) Class C equity shares of Rs.10/- (Rupees Ten Only) each fully paid up and on the date of registration of the minutes, 2,00,000 (Two Lakh) Class A equity shares of Rs.10/- (Rupees Ten Only) each, 4,50,000 (Four Lakh Fifty Thousand) Class B equity shares of Rs.10/- (Rupees Ten Only) each, and 10,00,000 (Ten Lakh) Class C equity shares of Rs.10/-(Rupees Ten only) each have been issued and are deemed to be fully paid up and the remaining 33,50,000 (Thirty Three Lakh and Fifty Thousand) equity shares are un-issued. The words “and reduced” , pursuant to the reduction, are dispensed with. In the light of the above-said facts, the prayer sought for herein is granted and the petition is allowed.

28.4.2015

msk

<u>**V.RAMASUBRAMANIAN,J**</u>

msk

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