IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.09.2015

Coram

The Honourable Mrs.Justice PUSHPA SATHYANARAYANA

C.P.No.148 of 2015

M/s.Habasit Iakoka Private Limited
a company registered under
the Companies Act, 1956,
having registered office at
P.B.No.3215, Goldwins,
Civil Aerodrome Post,
Coimbatore,
Tamil Nadu – 641 014
represented by its
Managing Director
Mr.Ashok Malhotra ..Petitioner

Petition under Sections 100 to 104 of the Companies Act, 1956 read with Rules 11(a)(3) and 46 of the Companies (Court) Rules, 1959, praying

(a) That the reduction of the paid-up Equity share capital of the petitioner company duly resolved on by the special resolution, by paying of an aggregate amount of Rs.39,99,99,600/- (Rupees Thirty nine crores Ninety nine lakhs Ninety nine thousand and Six hundred only) to its two shareholders being Rs.29,62,960/- (Rupees Twenty nine lakhs sixty two thousand and Nine hundred and sixty only) from its paid-up share capital and Rs.39,70,36,640/- (Rupees Thirty nine crores seventy lakhs thirty six thousand six hundred and forty only) from its general reserves and reduce the paid-up share capital of the petitioner company from Rs.90,00,000/- (Rupees Ninety lakhs only) comprising 9,00,000/- (Nine lakhs) equity shares of Rs.10/- (Rupees Ten only) each to Rs.60,37,040/- (Rupees Sixty lakhs thirty seven thousand and forty only) comprising 6,03,704 (Six lakhs three thousand seven hundred and four only) equity shares of Rs.10/- (Rupees Ten only) each and approved by the shareholders of the petitioner at the Extraordinary General Meeting of the company held on 17th February 2015 at Coimbatore be confirmed by this Court so as to be binding on all shareholders and creditors of the petitioner and the petitioner;

(b)That to this end all inquiries and directions necessary and proper be made and given;

(c)That the procedure of settlement of list of creditors and notice to such creditors, as provided for in Rules 49 to 58 of the Companies (Court) Rules, 1959 be dispensed with;

(d)That the proposed minutes be approved by this Court; and (e)That the petitioner be not required to add the words "and reduced" to its name as the last words thereof.

For Petitioner : Mr.P.H.Aravindh Pandian, SC
for
Ms.M.T.Parimala Devi

Mr.D.Simon
Central Government Standing Counsel for Regional Director.

ORDER

This petition is filed under Sections 100 to 104 of the Companies Act, 1956 read with Rules 11(a)(3) and 46 of the Companies (Court) Rules, 1959, for confirming the reduction of equity share capital as approved by the equity shareholders of the petitioner company and to approve the form of minute to the effect that,

> *"The paid-up share capital of Habasit Iakoka Private Limited is henceforth Rs.60,37,040 (Rupees Sixty lakhs thirty seven thousand and forty only) divided into 6,03,704 (Six Lakhs three thousand seven hundred four only) shares of Rs.10/- (Rupees Ten only) each reduced from Rs.90,00,000/- (Rupees Ninety lakhs only) divided into 9,00,000 (Nine Lakhs*

Only) shares of Rs.10/- (Rupees Ten only) each. At the date of registration of these minutes 6,03,704 (Six lakhs three thousand seven hundred and four only) shares of Habasit Iakoka Private Limited have been issued and are fully paid-up".

2. The petitioner company was incorporated on 15th October 1992 and is presently engaged in the business of manufacture, fabricate, assemble, design, develop, improve, produce, import, export and distribute as wholesale and retail dealers, merchants, commission agents, brokers of all type of Transmission Systems and Transmission belts made of Synthetic fabrics Polyamide strips, Leather Chromed or natural, Synthetic and/or natural Rubber and Chemicals and Solvents and of all types and modes of Transmission Systems. The nature of business carried on and the object of the petitioner company is detailed in the Memorandum of Association. Certified copy of the Certificate of incorporation and the Memorandum and Articles of Association is marked as Annexure-1. The authorised share capital of the petitioner Company is Rs.1,00,00,000/- (Rupees One crore only) divided into 10,00,000 (Ten lakhs only) equity shares of Rs.10/-(Rupees Ten only) each. The issued,

subscribed and paid-up capital of the petitioner company is Rs.90,00,000/- (Rupees Ninety Lakhs only) divided into 9,00,000 (Nine lakhs only) equity shares of Rs.10/- each. The petitioner company has no preference share capital or any other unclassified share capital. Certified copy of the Financial Statements for the financial year ended 31st December 2013, is marked as Annexure-2. Certified copy of the unaudited Financial Statements for the financial year ended 31st December 2014 is marked as Annexure - 3.

3. On 17.02.2015, the Board of Directors of the petitioner company convened the Meeting and resolved to reduce the share capital. The certified copy of the Board resolution dated 17.02.2015 is marked as Annexure - 4. Accordingly Extra-ordinary General Meeting was held on 17.02.2015, wherein shareholders of the petitioner company unanimously passed the special resolution approving the reduction of share capital. The special resolution passed on 17.02.2015 marked as Annexure – 5 reads as follows:-

> ***"RESOLVED THAT*** *pursuant to Sections 100 and other applicable provisions, of the Companies Act, 1956, read with Article 9 of the Company's*

Articles of Association <u>AND Subject To (a)</u> such sanctions and approvals of appropriate authorities as may be required (b) the confirmation by the Hon'ble Madras High Court, in terms of Section 100 of the Companies Act 1956, and (c) such terms and conditions as may be prescribed/stipulated by the above authorities and/or the Hon'ble Madras High Court while granting approval/confirmation and which may be agreed to by the Board of Directors of the Company (hereinafter referred to as "the Board" which expression shall include a Committee of Directors constitiuted by the Board), the Company's issued and subscribed equity share capital of Rs.90,00,000/- (Rupees Ninety lakhs only) consisting of 9,00,000 (Nine Lakhs Only) equity shares of Rs.10/- (Rupees Ten only) fully paid-up be reduced to Rs.60,37,040 (Rupees Sixty lakhs thirty seven thousand and forty only) consisting of 6,03,704 (Six lakhs three thousand seven hundred and four only) issued, subscribed and paid-up equity shares of the Company of Rs.10/- (Rupees Ten only) each fully paid-up; the amount by which the equity share capitsl is so reduced being in excess of the wants of the Company and that *such reduction be effected by cancelling and extinguishing 2,96,263 (Two lakhs ninety six thousand two hundred and sixty three only) issued and subsribed equity shares held by Habasit Holding AG and 33 paid-up equity shares held by Habasit AG, Switzerland.*

Resolved Further that upon the above reduction being confirmed by the Madras High Court, the above two overseas promoter shareholders holding 8,99,900 (Eight lakhs ninety nine thousand and nine hundred only) fully paid-up equity shares and 100 (One hundred only) fully paid-up equity shares respectively as 17th February, 2015 (hereinafter referred to as the "Record date"), be returned and paid the sum of Rs.1,350/- (Rupees One thousand and three hundred and fifty only) per equity share for the cancellation and extinguishment of 2,96,263 (Two lakhs ninety six thousand two hundred and sixty three only) equity shares held by Habasit Holding AG, Switzerland amounting to Rs.39,99,55,050/- (Rupees Thirty nine crores ninety nine lakhs fifty five thousand and fifty only) and 33 (Thirty three only) equity shares held by Habasit AG, *Switzerland amounting to Rs.44,550/- (Rupees forty four thousand five hundred and fifty only) inclusive of a premium of Rs.1,340/- (Rupees One thousand three hundred and forty only) over the face value per equity share of Rs.10/- (Rupees ten only) each and thus reducing the paid-up capital of the Company by Rs.29,62,960/- (Rupees Twenty nine lakhs sixty two thousand nine hundred and sixty only) and general reserves by Rs.39,70,36,640/- (Rupees Thirty nine crores seventy lakhs thirty six thousand six hundared and forty only).*

Resolved Further that upon the extinguishment of such share capital, the issued, subscribed and paid-up equity share capital of the Company shall stand reduced to the extent of the face value of equity shares so extinguished on the Record Date.

Resolved further that consequential amendments be made in the Capital Clause of the Memorandum and Articles of Association of the Company after the reduction of equity share capital as indicated above becomes operative and effective.

Resolved Further that for the purpose of giving full effect to the above resolution, Mr.Ashok Malhotra, Managing Director of the Company is herby authorized and empowered to do all such acts, matters and things including signing vakalatnama, pleadings, company petition, applications, affidavits and any other documents that may be required for effecting the foregoing resolution.

Resolved Further that the Board of Directors of the Company may settle any question, difficulty or doubt that may arise in this regard as they may in their absolute discretion deem fit."

4. The petitioner company has no secured creditors. From the unaudited financial statement for the year ended 31st December 2014 (Annexure-3), it is seen that a sum of Rs.12,43,52,998/- is due and payable by the petitioner company to various members of the Habasit Group of Companies overseas including its holding company in Switzerland. An aggregate sum of Rs.78,49,053/- is due and payable by the petitioner company to its unsecured trade creditors and Government

authorities in respect of its statutory liabilities like Employee State Insurance, Provident Fund, Tax Deducted at Source etc.. As of 31st December, 2014, there are 27 trade creditors to whom Rs.25,72,379/- was due and payable and 9 Habasit Group Companies to whom Rs.12,43,52,998/- was due and payable. The petitioner company has already remitted all statutory dues to the Government in full as of 17.02.2015, being the date of the Board Meeting of the Petitioner Company. In the light of the special resolution passed unanimously approving the reduction of share capital, this petition is filed before this Court for reduction of equity share capital and to end all inquiries and directions necessary and proper be made and given, and for dispensing with the procedure of settlement of list of creditors and notice to such creditors, as provided for in Rules 49 to 58 of the Companies (Court) Rules, 1959 and also for approving the proposed minute. The petitioner also seeks liberty of this court for dispensing with the words 'and reduced'.

5. In Comp.A.No.344 of 2015, the petitioner has sought for permission to dispense with the procedure of settlement of the list of

creditors and notice to such creditors as contemplated in Rules 49 to 58 of the Companies (Court) Rules 1959. This Court, vide order dated 31.03.2015, has dispensed with the settlement of the list of creditors and notice to such creditors as contemplated in Rules 49 to 58 of the Companies (Court) Rules 1959.

6. Publication containing the advertisement of hearing of the petition was effected in one issue of English daily "The Hindu Business Line", Tamil Nadu Edition, on 09.04.2015 and also in another issue of Tamil daily “Malai Murasu”, Tamil Nadu Edition on 09.04.2015.

7. Notice has been issued to the Regional Director, Ministry of Corporate Affairs, Chennai, for filing his objection. The Regional Director has filed his report dated 10.08.2015, wherein he has raised his objections, which are as follows:

> *"3. It is respectfully submitted that para 11 of the petition proposes to reduce the share capital to the extent of Rs.29,62,960/- (Rupees Twenty Nine lakhs sixty two thousand Nine hundred and sixty only) from the present share capital of Rs.90,00,000/- (Rupees Ninety*

lakhs only). After reducing the above amount from the share capital account the balance available under the share capital will be of Rs.60,37,040/- (Rupees Sixty lakhs thiry seven thousand and forty only). In this connection it is pertinent to point out that in the process of repaying part of the capital to the two foreign share holders the company will be paying a premium of Rs.1,340/- for every Rs.10/-share totaling to Rs.39,70,36,640/-. This amount will be in foreign exchange outgo to the two foreign shareholders and hence permission of RBI under Foreign Exchange Management Act amended from time to time and also the rules framed thereunder as amended is required. Whether the company has obtained the said permission is not clear from the petition for reduction of capital or its attachments. The company may be directed to obtain the necessary permission from RBI to remit the amount of Rs.39.70 crores (approximately) before the approval of the scheme of reduction of capital to the foreign shareholders.

4. ROC, Coimbatore has also reported that the legal position regarding obtaining *previous approval if any from the Reserve Bank of India for the return of capital in foreign exchange remains to be clarified by the company. The company must clarify the position as to the requirements of the above law. He has also further reported that the company has not filed Copy of the petition through GNL-1 in the portal of MCA-21 and hence, the company may be directed to file the copy of the petition in the portal by filing GNL-1 which is a permanent record and without the above further information cannot be uploaded in the system in this respect.*

5. The petitioner company in para 13 of the petition has stated that it does not have any Secured Creditor. As for the Unsecured trade creditors including its group companies the company in para 13 of the petition has stated that the unsecured trade creditors to the extent of Rs.12,51,06,953/- has conveyed their written consent to the proposed reduction of capital. However in the same para the company has stated that a sum of Rs.4,99,12,858/- is due to the unsecured trade creditors numbering 8 in all as on 17.02.2015.

The contradiction regarding the dues to the unsecured trade creditors which is substantial needs to be clarified by the company."

8. In view of the above objections made by the Regional Director (SR), Ministry of Corporate Affairs, Chennai, the petitioner company submitted their reply affidavit to the Regional Director (SR). On perusal of the same, the Regional Direction (SR) has filed an affidavit dated 29.09.2015 stating no objection to the petition by giving following reasons:

"2. *It is respectfully submitted that I have been served with a copy reply affidavit of the petitioner company wherein the company has stated that it is not necessary to obtain the prior permission of RBI under FEMA Act, 1999. In the light of the submissions of the company, this directorate has no objection and the matter may be decided on merits by this Court.*

3. It is respectfully submitted that the company has filed the GNL 1 form intimating the amalgamation to the Registrar of Companies as required under the Companies (Registration offices

> *and Fees) Rules 2014 on 25.08.2015 only i.e., long after the filing the petition before this Court and that too after filing the affidavit of the Regional Director dated 10.08.2015 before this Court. The company may be advised to file the documents etc., as per the provision of the Companies Act, 2013 and rules framed thereunder in time in future without fail. "*

9. As stated in the petition and as seen from the financial statements filed, the decision taken to have a true reflection of the financial position of the company is purely a commercial decision.

10. Considering the objections raised by the Regional Director, and the reply affidavit filed by the Regional Director (SR), Ministry of Corporate Affairs, Chennai dated 29.09.2015 and also considering the fact that such move has been approved by the overwhelming majority of the shareholders, this Court does not find any impediment in granting the relief prayed for herein. Consequently, this petition seeking approval to the resolution passed is hereby granted.

11. 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 and the procedure laid down under Section 100 of the Companies Act,1956 fully complied with, there is no impediment in granting the prayer confirming the reduction of capital as resolved by the company in its special resolution dated 17.02.2015, so as to be binding on all the shareholders and creditors of the petitioner company. The words “and reduced” pursuant to the reduction approved, is dispensed with. In the light of the above said facts, the prayers sought for herein are granted and the petition is allowed.

12. A certified copy of the order including the minutes as approved be delivered to the Registrar of Companies within twenty one days and the notice of the registration order by the Registrar of Companies and of the said minutes as approved by this Court be published in one issue of English daily "The Hindu Business Line" and also in one issue of Tamil Daily 'Dina Thanthi" within four weeks from the date of receipt of copy of the order.

13. The petitioner company is hereby directed to pay a sum of Rs.5,000/- (Rupees five thousand only) towards fee to the Central Government Standing Counsel for Regional Director.

30.09.2015

Index : yes / no
Internet : yes / no
cla/mra

PUSHPA SATHYANARAYANA, J.,

cla/mra

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