IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.01.2015

Coram

The Honourable Mr.Justice R.MAHADEVAN

C.P.No.374 of 2014

Sundaram Investment Limited
having its registered office at
''Jayalakshmi Estates''
29, Haddows Road,
Chennai - 600 006
represented by its Director
Mr.H.Lakshmanan ...Petitioner

Petition under Sections 100 to 105 of the Companies Act, 1956 for confirming the reduction of equity share capital account; and for approving the proposed minute; and also that the words ''and reduced'' need not be added to the petitioner company's name consequent to the capital reduction.

For Petitioner :Mr.T.K.Bhaskar
Mr.M.Gopikrishnan
Central Government Standing Counsel
for Regional Director.

ORDER

This petition is filed under Sections 100 to 105 of the Companies Act, 1956 for reduction of the petitioner's 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 issued, subscribed and paid up equity share capital of the Company is Rs.9,43,14,120/- (Nine Crore Forty Three Lakhs Fourteen Thousand One Hundred and Twenty only) divided into 1,88,62,864 (One Crore Eighty Eight Lakhs Sixty Two Thousand Eight Hundred and Twenty Four) equity shares of Rs.5/- each. The same shall stand reduced to Rs.8,70,75,115/- (Rupees Eight Crores Seventy Lakhs Seventy Five Thousand One Hundred and Fifteen only) divided into 1,74,15,023 (One Crore Seventy four lakhs fifteen thousand and twenty three only) fully paid up equity shares of Rs.5/- each".*

2. The petitioner carries on business of trading and investment activities of all kinds and also act as technical advisors or consultants etc., The nature of business carried on and the object of the company is detailed in the Memorandum and Articles of Association,

marked as Annexure -1. Share capital of the Company as on 31st March 2014, is as follows:-

Particulars	***Amount in Rs.***
Authorized share capital	
2,00,00,000 Equity shares of Rs.5 each	10,00,00,000
40,00,000 8% Non-cumulative Redeemable Preference shares of Rs.5 each	2,00,00,000
Total	**12,00,00,000**
Issued, subscribed and paid-up Share Capital	
1,88,62,864 equity shares of Rs.5 each	9,43,14,120
Total	9,43,14,120

A certified copy of the Audited Balance Sheet as on 31st March 2014, is marked as Annexure-2.

3. On 20.08.2014, the Board of Directors of the petitioner company convened the Meeting for the purpose of considering and passing a special resolution providing for the reduction of equity share capital. The certified copy of the Board resolution is marked as Annexure - 8. Accordingly Annual General Meeting was held on on 29th September 2014, wherein shareholders of the petitioner company, including the public shareholders, unanimously passed the special resolution approving the reduction of equity share capital. The special resolution passed on 29th September 2014, marked as Annexure – 12, reads as follows:-

"***RESOLVED THAT*** *subject to the provisions of Section 100 to 105 and other applicable provisions of the Companies Act, 1956, Section 66 of the Companies Act, 2013 as and when the same is notified and other applicable provisions of the Companies Act, 2013 and the Rules made thereunder, Regulation 8 of the Articles of Association of the Company and subject to the confirmation of the National Company Law Tribunal, High Court of Judicature at Madras, or any other jurisdictional authority and subject to the such other consents, approvals, permissions or sanctions of any other authority, body or institution (hereinafter referred to as ''concerned authorities'') as may be required and subject to such other conditions or guidelines, the subscribed, issued and paid up equity share capital of the company be and is hereby reduced by Rs.72,39,005/- (Rupees seventy two lakhs thirty nine thousand five only) from Rs.9,43,14,120/- comprising of 1,88,62,824 equity shares of Rs.5/- each to Rs.8,70,75,115/- comprising of 1,74,15,023 equity shares of Rs.5/- each fully paid up and that such* *reduction be effected by returning the equity capital to 14,139 non-promoter group shareholders holding an aggregate of 14,47,801 equity shares of Rs.5/- each fully paid up constituting about 7.68% of the issued and paid up equity share capital at the rate of Rs.63/- per equity share, involving a total consideration of Rs.9,12,11,463/- (Rupees nine crores twelve lakhs eleven thousand four hundred and sixty three only).*

RESOLVED FURTHER THAT *upon the reduction becoming effective in accordance with the applicable provisions of the Companies Act, 1956, or the Companies Act, 2013, as the case may be, the 14,139 non-promoter share holding an aggregate of 14,47,801 equity shares of Rs.5/- each of the company be returned a sum of Rs.63/- per equity share, and the share capital held by these shareholders be accordingly reduced.*

RESOLVED FURTHER THAT *the entire consideration amount to be returned to the non-promoter group shareholders of the company shall be credited to a* *separate account for payment to such shareholders, to be opened by the company within 10 days from the date on which the reduction becomes effective in accordance with the applicable provisions of the Companies Act, 1956 or the Companies Act, 2013, as the case may be.*

RESOLVED FURTHER THAT *upon the reduction being confirmed by the Hon'ble High Court of Judicature at Madras or the National Comapny Law Tribunal, as the case may be, the Board of Directors of the Comapny shall make payments to each non-promoter group shareholders whose share capital is to be returned, within a period of 30 days from the date of transferring the entire consideration amount into a separate account.*

RESOLVED FURTHER THAT *any claims by the shareholders, after the transfer of the balance funds lying to the credit of the separate account of the company to the investor Education and Protection Fund, shall be made to the Central Government in accordance with rules made under Section 125 of the*

Companies Act, 2013, as amended or any statutory re-enactments thereof, as and when applicable without any further reference to the Company.

RESOLVED FURTHER THAT *for the purpose of giving effect to the above, the Board of Directors of the Company including any constituted committee thereof (Board) or any person or persons authorised by the Board, be and are hereby jointly and severally authorized to give such directions as they may think fit and proper, including appointment of counsel, signing and executing of applications, petitions, affidavits, deeds, documents, writings, including directions for settling any questions of difficulties that may arise and to do all acts, deeds, matters an things of whatsoever nature as the Directors in their absolute discretion consider necessary expedient and proper."*

In the light of the resolution passed unanimously approving the reduction of capital, this petition is filed before this Court for reduction of equity share capital and also for approving the proposed minute. The petitioner also seeks liberty of this court for dispensing with the words 'and reduced'.

4. In Comp.A.No.1147 of 2014, the petitioner has sought for permission to dispense with the procedure of settlement of list of creditors and dispense with notice to creditors. Since the reduction of share capital does not involve the diminution of any liability in respect of unpaid capital and will neither affect its creditors, since it does not amount to repay any fund to any one nor shall affect the liquidity of the Company, Vide order dated 03.12.2014, this Court has dispensed with the settlement of the list of creditors and dispensed with notice to the creditors.

5. Publication containing the advertisement of the petitioner company effected in one issue of English daily ''Business Line'', Chennai Edition, on 16.12.2014 and also in another issue of Tamil daily "Makkal Kural", Chennai Edition on 16.12.2014.

6. Notice has been issued to the Regional Director, Ministry of Corporate Affairs, Chennai, for filing his objection. The Regional Director has filed his report stating that no adverse comments reported in the report of

ROC, Chennai, for the proposed reduction of equity share capital of the petitioner company.

7. 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 the diminution of any liability in respect of unpaid capital and will neither affect its creditors, since it does not amount to repay any fund to any one nor shall affect the liquidity of the Company, 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.

8. 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, viz., such reduction does not involve the diminution of any liability in respect of unpaid capital and will neither affect its creditors, since it does not amount to refund/repay any fund to any one nor shall affect the liquidity of the Company, 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 29.09.2014, 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.

9. 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 ''Business Line'' and also in one

issue of Tamil Daily ''Makkal Kural'' within four weeks from the date of receipt of copy of the order.

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

sd/.R.M.D.J

13.01.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/24.03.2015 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.