IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.140 OF 2016
CONNECTED WITH
COMPANYSUMMONS FOR DIRECTION NO. 191 OF 2016

In the matter of Companies Act, 1956 (1 of 1956) and Companies Act, 2013;

And

In the matter of Sections 100 to 104 of the Companies Act, 1956 read with Section 52 of the Companies Act, 2013 (Corresponding to Section 78 of the Companies Act, 1956);

And

In the matter of reduction of amounts in the share capital account and utilisation of the securities premium account of Hershey India Private Limited

Hershey India Private Limited, a Company incorporated under the Companies Act, 1956 and having its Registered Office at Chemtex House, Hiranandani Gardens, Powai, Mumbai 400 076 } ….. Petitioner Company

Called For Hearing

Mr. Rajesh Shah i/b M/s Rajesh Shah & Co., Advocate for the Petitioner.

CORAM: B P Colabawalla, J.

DATE: 22nd April, 2016

1. Heard counsel for the Petitioner. No objector has come before the Court to oppose the reduction of the amounts in the share capital account of, and utilisation of amounts in the securities premium account of, Hershey India Private Limited, the Petitioner Company, and nor has any party or person controverted, or objected to, any averments made in the Petition.

2. The sanction of the Court has been sought for the reduction of the amounts in the share capital account of and utilisation of amounts in the securities premium account of, the Petitioner Company, under section 100 to 104 of the Companies Act, 1956 read with Section 52 of the Companies Act, 2013 (Corresponding to Section 78 of the Companies Act, 1956), as approved in the special resolution passed by its equity shareholders at the Extra Ordinary General meeting held on 2nd day of March, 2016.

3. Learned Counsel for the Petitioner Company submits that Article 36 of the Articles of Association of the Petitioner Company empowers and authorises the Petitioner Company to reduce the amounts in its share capital account and utilise the amounts in its securities premium account.

4. Learned Counsel for the Petitioner Company submits that the Petitioner Company, having passed the special resolution in its extraordinary general meeting of its equity shareholders held on 2nd day of March, 2016, being Exhibit 'F' to the Company Scheme Petition, seeks to reduce the amounts in its share capital account,

as on 31st March, 2016, from Rs. 617,49,03,020 (Indian Rupees Six hundred seventeen crore forty nine lakh three thousand twenty) divided into 61,74,90,302 (sixty one crore seventy four lakh ninety thousand three hundred two) equity shares of Rs. 10 (Indian Rupees Ten) each to Rs. 251,71,40,900 (Indian Rupees Two hundred fifty one crore seventy one lakh forty thousand nine hundred) divided into 25,17,14,090 (twenty five crore seventeen lakh fourteen thousand ninety) equity shares of Rs. 10 (Indian Rupees Ten) each fully paid up by cancelling Rs. 365,77,62,120 (Indian Rupees Three hundred sixty five crore seventy seven lakh sixty two thousand one hundred twenty) of the paid-up equity share capital and the number of existing shares being proportionately reduced; and utilise Rs. 252,91,37,880 (Indian Rupees Two hundred fifty two crore ninety one lakh thirty seven thousand eight hundred eighty) from the amounts lying in the securities premium account of the Company, in each case, which is lost or is unrepresented by available assets and to set off the losses incurred by the Company (i.e., Rs. 618,69,00,000 (Indian Rupees Six Hundred Eighteen Crores Sixty Nine Lakhs).

5. Learned Counsel for the Petitioner Company submits that the Petitioner Company shall not be required to add the words "And Reduced", as suffix, to its name, and that the reduction of the amounts in the share capital account of, and utilisation of amounts in the securities premium account of, the Petitioner Company, be effective in accordance with the provisions of the Companies Act, 1956 and Companies Act, 2013, as applicable.

6. Learned Counsel for the Petitioner Company further submits that there are no secured creditors of the Petitioner Company, and as far as unsecured creditors are concerned, the proposed reduction of the amounts in the share capital account of,

and utilisation of amounts in the securities premium account of, the Petitioner Company neither involves any financial outlay / outgo on the part of the Petitioner Company nor does it directly or indirectly involves any outflow from the Petitioner Company's assets to its shareholders and is only in the nature of a book entry adjustment. Consequently, such reduction and utilisation will not cause any prejudice to the creditors of the Petitioner Company and also no compromise or arrangement is contemplated to be made with the creditors of the Petitioner Company. Accordingly, the procedure prescribed under Section 101(2) of the Companies Act, 1956 has been dispensed with through order of this Court dated 1st April, 2016 passed in the Company Summons for Direction No. 191 of 2016.

7. Learned Counsel for the Petitioner Company further submits that they have 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, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or the Companies Act, 2013, whichever is applicable, and the rules made thereunder. The Undertaking is accepted.

8. No person or party has come forward to oppose the proposed reduction of the amounts in the share capital account of, and utilisation of amounts in the securities premium account of, the Petitioner Company. Further, the requisite statutory procedures have been fulfilled. Accordingly, the Petition is approved and made absolute in terms of the prayers set out in items (a), (b) and (c) of the paragraph setting out the prayers of the Petitioner Company, and hence the reduction of share capital of, and utilization of the amounts lying in the securities premium account of, the Petitioner Company, as resolved on 2 March, 2016 by the special resolution

of the members of the Petitioner Company is confirmed and the proposed Form of Minutes (annexed as Exhibit 'I' of the Petition) is approved; and the Petitioner Company is dispensed with from adding "and reduced" as suffix to its name, and the Petitioner Company is allowed to continue with its existing name.

9. The Petitioner is directed to file a copy of this order along with a copy of the Form of Minutes with the concerned Registrar of Companies, electronically, along with E-Form / INC-28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956 or the Companies Act, 2013, whichever is applicable, and the rules made thereunder.

10. All concerned regulatory authorities shall act on a copy of this order and the Form of Minutes annexed as Exhibit- 'I' to the Petition, duly authenticated by the Company Registrar, High Court, Bombay.

11. Filing and issuance of the drawn up order is dispensed with.

12. Petitioner to publish notices of registration of the Order and form of minutes of reduction of capital by concerned Registrar of Companies once each in the same newspapers viz. "Free Press Journal", in English language and translation thereof in "Navshakti", in Marathi language. Both having circulation in Mumbai within 14 days of registration.

(B. P. Colabawalla, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

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