In the High Court of Judicature at Madras

Dated : 07.12.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Company Petition No.211 of 2016

Harland Clarke Holding Software
India Pvt. Ltd., having its regd.
office at Suite 305, Delta Wing,
III Floor, Raheja Towers, No.177,
Anna Salai, Chennai-2 rep.by
its Director Mr.Ramesh Ranga
Vithal Donnipadu

...Petitioner

PETITION under Sections 100 to 104 of the Companies Act, 1956 praying (a) that the fully paid up equity share capital be reduced from Rs.10,25,680/- (Rupees Ten Lakhs Twenty Five Thousand Six Hundred Eighty only) made up of 1,02,568 (One lakh Two Thousand Five Hundred Sixty Eight) equity shares of Rs.10/- each (Rupees Ten only) to Rs.4,10,280 (Rupees Four Lakhs Ten Thousand Two Hundred and Eighty only) divided into 41,028 (Forty one Thousand and Twenty Eight only) equity shares of Rs.10/- as resolved by Special Resolution dated 19.4.2016 at its Extra-ordinary General Meeting thereof held on 19.4.2016 at Chennai and the same 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 proposed minutes be approved by this Court; and (d) that the petitioner be not required to add the words 'and reduced' to its name as the last words thereof.

For Petitioner : Mr.Gaurav Chatterjee
For Regional Director : Mr.Venkatasamy Babu, CGSC

ORDER

This is a petition filed under Sections 100 to 104 of the Companies Act, 1956 for confirming the reduction of share capital account by approving the minute to the effect that

> *"The capital of Harland Clarke Holding Software India Private Limited is henceforth Rs.4,10,280/- (Rupees four lakhs ten thousand two hundred and eighty only) divided into 41,028 (Forty one thousand and twenty eight only) equity shares of Rs.10/- reduced from Rs.10,25,680/- (Rupees ten lakhs twenty five thousand six hundred and eighty only) made up of 1,02,568 (One lakh two thousand five hundred and sixty eight only) equity shares of Rs.10/- each (Rupees ten only). At the date of registration of this minute, the issued equity share capital shall be deemed to be equal to the amount of subscribed and paid up equity share capital and the remaining equity shares shall be*

unissued out of the authorized share capital of the company".

2. The petitioner company was originally incorporated on 3.9.2003 under the provisions of the Companies Act, 1956. On 25.1.2008, the petitioner changed its name from M/s.Sanskriti Educational Services Private Limited to KU Education Digital India Private Limited. Again, the petitioner changed its name to Harland Clarke Holding Software India Private Limited, on 1.5.2012. The copies of relevant certificates of incorporation are filed in Annexures 1 to 3. The petitioner was originally located in the State of Himachal Pradesh and with effect from 9.6.2010, the petitioner shifted its registered office to Chennai. Again on 1.10.2015, the petitioner shifted its registered office to Suite 305, Delta Wing, III Floor, Raheja Towers, No.177, Anna Salai, Chennai-2.

3. The nature of business carried on is detailed in the memorandum of association, which is marked as Annexure 1. The objects, with which, the petitioner company was incorporated, were to establish and run, in India and other countries, web based teaching in various academic disciplines such as mathematics, science, commerce, engineering, law, languages, arts, religion or other fields of education and to provide educational content and other products of all kinds and

description to enable and help students in the learning process within the courses offered as well as self study purposes.

4. As on 31.3.2015, the authorized equity share capital of the petitioner company was Rs.15,00,000/- divided into 1,50,000 equity shares of Rs.10/- each. The authorized preference share capital of the petitioner company as on 31.3.2015 and 29.2.2016 is 26,000 optionally convertible redeemable cumulatively participating preference shares of Rs.42/- each, aggregating to Rs.10,92,000/-. The issued, subscribed and fully paid up share capital of the petitioner as on 31.3.2015 and 29.2.2016 is 1,02,568 equity shares of Rs.10/- each, aggregating to Rs.10,25,680/-. Article 5B of the Articles of Association of the petitioner read with Regulation 46 of Table A of Schedule - 1 to the Companies Act, 1956 enables the petitioner to reduce its capital account in a manner permitted by law by passing a Special Resolution. The Board of Directors of the petitioner at their meeting held on 18.4.2016 and the shareholders of the petitioner vide their meeting held on 19.4.2016, passed a special resolution deciding to reduce the paid up equity share capital of the petitioner. The copy of the Special Resolution is filed in Annexure 12.

5. It has been stated by the petitioner that since the petitioner has surplus funds, in order to to restructure the capital and return the funds to the shareholders, it has been proposed to reduce the share capital and that upon confirmation of the scheme of reduction of share capital of the petitioner, the resident and non resident shareholders of the petitioner will be paid a sum of Rs.1,418.61 Ps per equity share towards extinguishment of the equity share capital held by them inclusive of an amount of Rs.1,408.61 Ps per share over and above the face value of the equity share of Rs.10/- each. The price of Rs.1,418.61 Ps per equity share proposed to be paid to the shareholders of the petitioner is based on the valuation report dated 4.4.2016 given by the independent chartered accountant on the basis of the balance sheet dated 31.3.2015 and unaudited balance sheet dated 29.2.2016. The copy of the valuation report is filed in Annexure 9. In case of non resident shareholders of the petitioner, the amount towards extinguishment of share capital held by them shall not exceed the price arrived at as per internationally accepted pricing methodology for valuation of shares on arm's length basis in accordance with existing foreign exchange control norms. It has been further stated that the proposed reduction would not affect the petitioner's ability to repay its debts during its normal course of business. It is also stated that the proposed

reduction does not involve the diminution of any liability in respect of unpaid capital and that the petitioner company has no secured loans. The copy of the auditor's certificate indicating to that effect is filed in Annexure 11.

6. At the meeting on 18.4.2016, the Board of Directors of the petitioner company decided to reduce the equity share capital. A copy of the Board Resolution is filed in Annexure 8. The equity shareholders of the petitioner company have duly passed a Special resolution at the Extraordinary General Meeting held at Chennai on 19.4.2016 wherein the equity shareholders unanimously passed the Special Resolution approving the reduction of capital. The extract of the Special Resolution marked as Annexure 12 is follows:-

> *"Resolved that pursuant to Article 5B of the Articles of Association of the company and Sections 100 to 104 and other relevant provisions of the Companies Act, 1956, as amended from time to time (the Companies Act) and subject to confirmation by the shareholders of the company and approval by the Hon'ble High Court of Judicature at Madras (the Court), the issued, subscribed and paid up equity share capital of the company be reduced from 1,02,568 (one lakh two thousand five hundred and sixty eight only) (the fully paid equity shares) to 41,028 (forty one*

thousand and twenty eight only) (the residual fully paid equity shares) by refunding Rs.1,418.61 Ps (Rupees one thousand four hundred and eighteen and sixty one paisa only) per equity share upon 61,540 (sixty one thousand five hundred and forth only) equity shares and that the Board be and is hereby empowered to take necessary action in this regard.

Further resolved that a draft of the scheme of reduction of the issued, subscribed and paid up equity share capital of the company pursuant to Sections 100 to 104 of the Companies Act, 1956 and subject to approval of the Court be and is hereby approved.

Further resolved that the capital clause of the memorandum of association of the company be accordingly altered after the Court passes the order for reduction of share capital under the Companies Act.

Further resolved that pursuant to the reduction of the issued, subscribed and paid up equity share capital of the company being confirmed by the Court, the share certificates in respect of the residual fully paid equity shares be issued in accordance with the Companies Act, 2013."

7. The Special Resolution passed in the minutes of the said meeting is also enclosed to this petition. It is also

stated by the petitioner that as the reduction of capital does not involve any cash outflow, the same 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 Special Resolution passed unanimously approving the reduction of capital, this petition is filed before this Court for approval of the share capital as per the resolution. The petitioner also seeks liberty of this court for dispensing with the words 'and reduced' as contemplated in Section 102(3) of the Act.

8. It is seen from the averments in the petition that as part of re-constructing of its finances, the petitioner has proposed to reduce the equity share capital from Rs.10,25,680/- divided into 1,02,568 equity shares of Rs.10/- each to Rs.4,10,280/- divided into 41,028 equity shares of Rs.10/- each. Further, there are no secured creditors. The petitioner company has also complied with all the formalities for such reduction. 9. The Regional Director has filed his report dated 17.8.2016 stating that the Company is regular in filing its Statutory Returns and that no inspection/investigation proceedings are ordered against the petitioner company.

10. It is worthwhile to mention here that this Court, by order dated 31.8.2016, recorded the submission of the learned counsel for the petitioner that they would file a certificate

of the Chartered Accountant stating that there are no unsecured creditors, that a provision was made for payment of the statutory taxes and that the net worth of the petitioner company is positive and there are enough funds for them to meet the statutory liabilities. Therefore, this Court directed the certificate of the Chartered Accountant to be filed on the above aspects, which should be accompanied by an affidavit of the Director of the petitioner company evidencing what is stated before this Court at the bar by the learned counsel for the petitioner.

11. Pursuant to the same, the Director of the petitioner filed an affidavit dated 27.9.2016 along with a certificate on net worth issued by the Chartered Accountant. This affidavit was taken on record on 6.10.2016 and the learned counsel for the Regional Director, Ministry of Corporate Affairs, was directed to examine the affidavit and give his comments. Though the learned counsel had appeared for the Regional Director and accepted notice, on the next hearing date i.e on 21.10.2016, as there was no affidavit filed by the Regional Director, notice was ordered to the Regional Director and the order was directed to be communicated to the Regional Director for examining the affidavit filed by the petitioner.

12. Accordingly, the Regional Director filed an additional affidavit on 3.11.2016, the operative portion of which, reads as follows :

> *'It is submitted that the petitioner company has filed the affidavit stating in para 3 of the said affidavit that it has no unsecured creditors save and except accrued expenses and provisions for tax, etc. and has also furnished a certificate from an auditor dated 31.8.2016 regarding the company's net worth. The company has also stated in para 3 of its affidavit that the net worth of the company is positive. The company has also furnished bank balance statement as on 8.9.2016 and annexed the same with its affidavit.*
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> *It is submitted that as the company has furnished the requisite certificate of net worth and also about the unsecured creditors as directed by this Hon'ble High Court, this directorate does not have objection to the scheme. It is prayed that the Hon'ble High Court be plased to take the above submissions of the company and this directorate into consideration and pass such order or orders as deemed fit and proper.'*

13. As stated in the petition and as seen from the balance sheets filed, the decision taken for reduction of share capital is purely a commercial decision to have a true reflection of

the financial position of the company. Considering the fact that such move has been approved by the overwhelming majority of the equity shareholders, apart from the fact that such reduction does not involve any cash out flow to prejudice the rights of the creditors, 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.

14. 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 for any creditor to object, the procedure laid down under Section 100 of the Companies Act, 1956, is 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 19.4.2016 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, is dispensed with. In the light of the above-said facts, the prayer sought for herein is granted.

15. Consequently, the above Company petition is ordered.

Sd/ T.S.S.J

07.12.2016

//Certified to be a true copy//

Dated this the day of 2017

S.s/16.02.2017 COURT OFFICER

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