THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

<u>COMPANY PETITION No.272 OF 2016</u>

<u>ORDER:</u>

The instant company petition is filed under Sections 100 to 102 of the Companies Act, 1956 (for short, 'the Act') by Srinivasa Farms Private Limited (for short referred as 'petitioner Company') for approving reduction of paid up share capital, as resolved on 05.04.2016 by special resolution of the general body of the company.

The ancillary prayers are to:

i) To dispense with the requirement of following the procedure laid down under Section 101(2) of the Act, read with Rules 48 to 58 of the Company (Court) Rules, 1959 as the reduction of the share capital does not involve any diminution of liability in respect of unpaid shares;

ii) That the reduction of capital resolved on 06.04.2016, by the share holders of the petitioner company as special resolution set out in paragraph No.9.1 of this petition be confirmed,

iii) To dispense with the requirement of using the word "and reduced" in the name of the petitioner company,

iv) That the minute as set out in paragraph 13 of this petition be approved,

v) That a certified copy of the order made by this Court confirming the Reduction of capital and the approved minute be delivered to the Registrar of Companies, Hyderabad within 30 days from the date of receipt of order made by this Court,

vi) That notice of the registration by the Registrar of Companies of this Order and of the said minute be published within 14 days of the registration in the same newspapers in which the notice of date of hearing of the petition is being published, The petitioner company was incorporated on 28.01.1999 under the Act. The main objects of petitioner Company as set out in the Memorandum of Association are extracted in the petition and the same are not reiterated herein for the sake of brevity.

The authorized capital of petitioner company is Rs.30,00,00,000/- divided into 3,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up Capital of petitioner Company is Rs.19,63,10,150/- divided into 1,96,31.015 equity shares of Rs.10/- each. The Memorandum of Association and Articles of Association of petitioner Company are annexed to this petition as Annexure-B. Article 20 of the Articles of Association of petitioner Company provides for reduction of share capital or share premium account in the manner permitted by law. The details of share pattern are set out of the company petition and after perusing the accompanying annexures, this Court is of the view that those details need not be adverted to.

The petitioner company for the following reasons proposed to reduce the share capital:

> "That as per the un-audited financial statement of the Petitioner Company as on 31.03.2016, the Petitioner Company has paid-up share capital which is in excess of its requirements of funds as the Petitioner Company has surplus funds which is in excess of the needs of the Petitioner Company . The Board of Directors of the Petitioner Company had ascertained the situation and formed an opinion that the same is not required for the business of the Petitioner Company and the paid-up share capital is in excess of the wants and the same may be remitted back to the respective shareholders in proportion of their existing shareholdings by reducing the paid up share capital of the Petitioner Company as per Section 100(1)(c) of the Companies Act, 1956. Furthermore, the proposed reduction would not in any way have any adverse effect on the Petitioner Company's ability to honour its commitments or pay its debts in the ordinary course of business."

On 18.11.2015, the Board of Directors of petitioner Company approved the proposed reduction of share capital and the resolution of Board of Directors is placed as Annexure-A.

The petitioner company further averred that the proposed reduction of share capital and utilization of the share premium account will in no manner prejudice the creditors of the petitioner Company, for the creditors are being paid respective dues on time without either default or delay. It is further stated that the petitioner Company having regard to the available surplus cash balance intends to reduce the share capital and accordingly resolved in the meeting held on 05.04.2016. The reduction is not going to adversely affect the liability or obligation of the petitioner Company in any manner. The learned counsel appearing for the petitioner has drawn the attention of the Court to all the resolutions, details of creditors and the provision made to meet the claims of these creditors and submits that the proposed reduction of share capital is treated equitably to all the share holders. The shareholders in the general body meeting have not only appreciated the proposed scheme of reduction of share capital but also have taken a well informed judgment accepting the proposal and the interests of creditors are properly safeguarded.

This Court by order dated 29.07.2016 ordered publication of notice in two newspapers viz., Business Standard English Daily Edition Hyderabad and Andhra Bhoomi Telugu Daily Editions. Hyderabad Edition. In pursuance thereof, the petitioner has carried out publication and filed proof of publications. Learned counsel for the petitioner submits that he has not received any claims or objections in response to the publication.

Section 100 of the Act reads thus:

Special resolution for reduction of share capital.

(1) Subject to confirmation by the Court, a company limited by shares or a company limited by guarantee and having a share capital, may. if so authorised by its articles, by special resolution, reduce its share capital in any way; and in particular and without prejudice to the generality' of the foregoing power, may--

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;

[b] either with or without extinguishing or reducing liability on any of its shares, cancel any paid- up share capital which is lost, oris unrepresented by available assets; or

[c] either with or without extinguishing or reducing liability on any of its shares, pay off any paid- up share capital which is in excess of the wants of the company; and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act referred to as a resolution for reducing share capital".

The attention of the Court is drawn to the reported decisions in

In Re: Hyderabad Industries Limited[1].

In Re: OCL India Ltd[2].

In Re: Comtec Components Ltd[3].

The propositions of law for which reliance is placed upon are well established, more particularly having regard to the totality of circumstances of the case and also the facts as evidenced by various

[1] 2004(4) ALT 757
[2] AIR 1998 ORI 153
[3] (2014) 186 CompCas 311 (Mad)

annexures and Special Resolution, the scheme for reduction of share capital is approved along with incidental prayers made in this company petition. Further, the creditors interest is not affected as it is submitted that the creditors have already been paid except to the extent of one creditor of M/s. Ricoh India Limited and that no objections have filed by them. In that view of the matter, the creditors' interest is not affected in any way. The form of minutes under Section 103 (1)(A) of the Act as set out in para 13 of the petition be approved and registered. The petitioner is directed to conform to all the statutory requirements in accordance with law.

The company petition is, accordingly, allowed.

CHALLA KODANDA RAM, J

Date:01.09.2016
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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY PETITION No.272 OF 2016

Date:01.09.2016

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