THE HON'BLE SRI JUSTICE S.V. BHATT

COMPANY PETITION No.334 OF 2015

ORDER:

The instant company petition is filed under Section 101 of the Companies Act, 1956 (for short, 'the Act') by Watermarke Villas Private Limited (for short referred as 'petitioner company') for approving reduction of share capital, as resolved on 28.10.2015
by special resolution of the general body of the company.
The ancillary prayers are to dispense with the applicability of procedure stipulated under Section 101(2) and (3) of the Act; to dispense with the requirement of adding the word "and reduced" as part of its corporate name; and to approve the proposed minutes.

The resolution dated 28.10.2015 for which approval of this Court is sought reads as follows:

> "**Resolved that** pursuant to the provisions of Article 63 of the Articles of Association of the Company¸ and subject to the provisions of Sections 66(1)(b)(ii) of the Companies Act, 2013 (the 'Act') and subject to such other approvals, permissions and sanctions, as may be necessary, and subject to such conditions and modifications as may be prescribed or imposed while granting such approvals, permissions and sanctions the members hereby approves the reduction of its equity 1,74,331 (one lakh seventy four thousand three hundred and thirty one) shares of face value of Rs.10/- each and 16,249 (sixteen thousand two hundred and forty nine) face value of Rs.10/- each with premium of Rs.9,990/- (nine thousand nine hundred and ninety only) aggregating to Rs.16,23,27,510/- (Rupees sixteen crores twenty three lakhs twenty seven thousand five hundred ten) (the "**Capital Reduction**") from the shareholders of the company on a proportionate basis which is within the Company's fully paid up equity share capital and free reserves/Net Worth as per Audited provisional Balance Sheet as on September 30, 2015.
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> "**Resolved further** that the Share Premium Account which comprised of a sum of Rs.16,36,27,388/- (Rupees sixteen crores thirty six lakhs twenty seven thousand three hundred eighty eight) as on 30.09.2015 shall be reduced by a sum of Rs.16,23,27,510/- (Rupees sixteen crores twenty three lakhs twenty seven thousand five hundred ten) which constitutes the premium relating to 16,249 shares of a face value of Rs.10/- each."

The petitioner company was incorporated on 21.03.2007 under the Act.

The main objects of petitioner company are as follows:

> "a) To purchase, buy, acquire, receive, sell, lease for purpose of investment or resale or otherwise and speculate in land and house or other properties of any kind, tenure and any interest therein and to acquire, sell and deal in freeholds, leaseholds, or other property of any description, or any interest therein and generally to deal in, traffic and speculate by way of sale, lease, exchange or otherwise with land.
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> b) To develop the properties for residential township, flats, row houses or villas, Export Processing Zones, Integrated Infrastructure Development Centers, Industrial Growth Centers, Industrial Estates, Industrial Parks, Software Technology Parks, Industrial Theme Parks, Warehousing, Malls, Multiplexes for the purpose of maintaining and operating and/or sale, lease or deal with such properties in any other manner.
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> c) to carry on the business of real estate including procurement,

> development and sale of land and buildings of residential, commercial, retail and industrial nature as an entity, instrument or vehicle for foreign direct investment (FDI) in Real Estate in India in accordance with the laws of the time being in force in India."

The authorized capital of petitioner company is Rs.55,00,000/-, divided into 5,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of petitioner company as on 30.09.2015 is 20,52,630/-, divided into 2,05,263 equity shares of Rs.10/- each. The Memorandum and Articles of Association of petitioner company is annexed as Annexure P-1 to this petition. Article 63 of 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 in paragraph 6 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:

> "As on 30.09.2015, the company had cash on hand of Rs.28,78,29,998/-. These funds are no longer required for the purposes of business, as the entire developmental activity has been completed. As a matter of fact, the petitioner-company would be receiving more funds from the sale of the remaining stock-in-trade which it is holding. As such there are surplus funds in the company which are no longer needed in the business which the petitioner company wants to return to the shareholders. In view of the same, the equity share capital of the petitioner company was decided to be reduced by 1,74,331 shares of a face value of Rs.10/- each and by 16,249 shares with a face value of Rs.10/- each and with premium of Rs.9,990/- each. This amounts to Rs.16,23,27,510/- out of the total sum of Rs.16,36,27,388/- standing to the credit of the share premium account."

On 03.09.2015, 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 P5.
On 29.10.2015, the extraordinary general body meeting of shareholders was convened. Special resolution accepting the proposed reduction of share capital was passed as Special Resolution No.C-68867191.

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. The list of creditors as on 30.09.2015 is filed as Annexure P-10 and while considering reduction of
share capital, sufficient provision for an amount of Rs.1,67,27,934/- for settling the claims of creditors is made and it is set apart. 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 29.10.2015 and the reduction is not going to adversely affect the liability or obligation of the petitioner company in any manner. The learned senior 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 and have taken a well informed judgment accepting the proposal and the interests of creditors are properly safeguarded.

Section 100 of the Act reads thus:

> **Special resolution for reduction of share capital.**
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> (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--
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> (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
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> (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid- up share capital which is lost, or is unrepresented by available assets; or
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> (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.
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> (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 annexures and Special Resolution No.C-68867191, the scheme for reduction of share capital is approved along with incidental prayers made in this company petition. The petitioner is directed to conform to all the statutory requirements in accordance with law.

The company petition is, accordingly, allowed.

S.V.BHATT, J

Date:19.04.2016
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[1] 2004(4) ALT 757

[2] AIR 1998 ORI 153

[3] (2014) 186 COMP CAS 311 (MAD).