THE HON'BLE SRI JUSTICE S.V. BHATT

COMPANY PETITION No.68 OF 2016

ORDER:

The instant company petition is filed under Sections 100 to 104 of the Companies Act, 1956 (for short, 'the Act') by M/s Spacenet Enterprises India Limited (for short referred as 'petitioner Company') for approving reduction of share capital, as resolved on 30.09.2015 by special resolution in the Annual General Body Meeting of the Company. The ancillary prayers are to fix the hearing of the petition for reduction of the Company's capital; to dispense with the meeting of creditors; to approve the form of minutes etc.

The resolution dated 30.09.2015 for which approval of this Court is sought reads as follows:

> "**RESOLVED THAT** pursuant to the provisions of Section 100 of the Companies Act, 1956 and other applicable provisions, if any, of the Companies Act, 1956 other applicable provisions, if any, of the Companies Act, 2013 (including any statutory modification(s) or re-enactment thereof for the time being in force), listing agreement with the Stock Exchanges, Clause V (a) of Memorandum of Association, Article 47 of the Articles of Association of the Company and subject to the confirmation of the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh and such other approvals as may be required, from time to time, the approval of the Shareholders be and is hereby given that:
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> a) the reduction in paid up share capital of the Company from Rs.490,185,900/- (Rupees forty nine crores one lakh eighty five thousand nine hundred only) divided into 49,018,590 equity shares of Rs.10/- each to Rs.49,018,590/- (Rupees forty nine crores one lakh eighty five thousand nine hundred only) divided into 49,018,590/- equity shares of Rs.1/- each and that such reduction be effected by canceling the paid up share capital which has been lost or is unrepresented by available assets, to the extent of Rs.9/- per share upon each of the 49,018,590 equity shares of Rs.10/- each which have been issued and by reducing the paid up value of all the shares in the Company's paid up share capital from Rs.10/- per share to Rs.1/- per share.
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> b) the major part of accumulated losses of the Company Rs.441,167,310 out of Rs.660,388,285 shown in the profit & loss account as on 31.3.2015 be written off by utilizing the aforesaid reduction in the paid up capital amount of Rs.441,167,310. An amount of Rs.441,167,310 be written off, out of the accumulated losses of Rs.660,388,285 as shown in the profit and loss account as on 31.03.2015, by utilizing the aforesaid reduction in the paid up capital amount of Rs.441,167,310.
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> c) and reduce the par value of the share from Rs.10/- each to Rs.1/- each, consequent to reduction of capital, on and from the date on which the scheme will come into effect, by way of a reduction on a proportionate basis from each equity shares of Rs.10/- pursuant to the aforesaid reduction.
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> RESOLVED FURTHER THAT pursuant to the reduction of capital of the company, Clause No.V(a) in Memorandum of Association of the Company be altered as given hereunder:
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> The authorized share capital of the Company is Rs.500,000,000/- (Rupees fifty crores only) divided into 500,000,000 (fifty crores only) equity shares of Re.1 (Rupee one only) each with power of the company to consolidate &

> convert, subdivide, reduce or increase the capital to issue any new shares with any preferential or special rights and conditions attached thereto, subject to the provisions of Companies Act, 2013.
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> RESOLVED FURTHER THAT for the purpose of giving effect to the above resolution and for removal of any difficulties or doubts, the Board or the Committee of the Board specially constituted for this purpose or any person(s) whom the Board or the above Committee may nominate, to exercise its powers, including the power, conferred under this Resolution, be and is hereby authorized to do all such acts, deeds, matters, things, as it may in its absolute discretion, deem necessary, expedient, usual or proper and to settle any claim, any question or difficulty that may arise with regard to utilization/adjustment of the paid up share capital account including passing
> of such account entries and/or making such other adjustments in the books of accounts, as considered necessary to give effect to the above resolution or to carry out such modifications/directions as may be ordered by the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh to implement the aforesaid resolutions."

The petitioner company, formerly known as Northgate Com Tech Private Limited, was incorporated on 28.05.2010 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 share capital of petitioner Company is Rs.500,000,000/-, divided into 50,000,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of petitioner Company as on 31.03.2015 is Rs.490,185,900/-, divided into 49,018,590 equity shares of Rs.10/- each. The Memorandum and Articles of Association of petitioner Company is annexed as Annexure-1 to this petition. Article 47 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 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:

> "a. The principal business of the Company is online advertising services. Through this service, it aggregate, position and track internet advertisements for online advertising agencies and other advertisers on websites controlled by third parties or by the Company with the goal of increasing awareness and actions through the internet in respect of the advertised products and earn revenues based on the number of internet user impressions, leads, sales or other actions that these advertisements generate.
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> b. The petitioner Company envisages to restructure the capital position by means of accounting adjustment in the books of account of the company by reducing the paid up share value of the shares and the accumulated losses.
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> c. The reduction of share capital would cause the balance sheet to bring in true and fair representation of the company by the available assets of the company and reflect the real financial position of the company.
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> d. The reduction of share capital would place the company in a position to pay dividend in future or raise further capital in future."

On 05.09.2015, 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 6.

On 30.09.2015, the Annual General Meeting of shareholders was convened and special resolution accepting the proposed reduction of share capital was passed.

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 31.12.2015 is filed as Annexure-9 and while considering reduction

of share capital, it is stated that sufficient provision for the debts shown in Annexure 9 is made. The reduction, it is stated, is not adversely affecting the liability or obligation of the petitioner Company in any manner. It is stated that the proposed reduction of capital neither involves diminution of any liability in respect of unpaid share capital nor the payment to any shareholder of any paid up share capital and that the reduction is not going to adversely affect the interests of the creditors. It is further stated that major part of accumulated losses of the Company be written off by utilizing the reduction in paid up capital amount of Rs.441,167,310/- out of the accumulated losses of Rs.660,388,285/- as shown in the profit and loss account. The learned counsel appearing for the petitioner has drawn the attention of the Court to all the resolutions, details of creditors, the provision made to meet the claims of these creditors and submits that the proposed reduction of share capital treats all the shareholders equitably. 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 15.03.2016 ordered publication of notice in two newspapers viz., Financial Express and Nava Telangana of Hyderabad Editions. In pursuance thereof, the petitioner has carried out publication and filed proof of publications. Learned counsel for the petitioner submits that he or petitioner has not received any claims or objections in response to the publication on the proposed reduction of share capital.

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.

(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, the scheme for reduction of share capital is approved along with incidental prayers made in this company petition. The form of minutes under Section 103 of the Act as set out in para 17 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.

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S.V.BHATT, J

Date:07.06.2016
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[1] 2004(4) ALT 757

[2] AIR 1998 ORI 153

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