THE HON'BLE SRI JUSTICE S.V. BHATT

COMPANY PETITION No.52 OF 2016

ORDER:

The instant company petition is filed under Sections 100 to 104 of the Companies Act, 1956 (for short, 'the Act') by Ocean India Private Limited (for short referred as 'petitioner Company') for approving reduction of share capital, as resolved on 16.12.2015 by special resolution of the general body of the company.

The ancillary prayers are to approve the form of minutes under Section 103(1)(b) of the Act as set out in paragraph 22; to dispense with the requirement of settling the list of creditors etc.

The resolution dated 16.12.2015 for which approval of this Court is sought reads as follows:

> "**Resolved that** pursuant to the provisions of Section 100 to 104 of the Companies Act, 1956 and other applicable provisions in the Articles of Association under Article No.32 of the Company and subject to the requisite approvals and subject to sanction of the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh (hereinafter referred as 'Hon'ble High Court'), and subject to such terms, conditions or modifications if any, as may be prescribed by such authorities while granting such approvals, consents or permissions and which may be agreed to, by the Board of Directors of the Company (hereinafter referred to as 'the Board' which expression shall be deemed to include any Committee of Directors constituted by the Board), consent of the members of the Company is accorded to reduce the Company's issued and subscribed share capital of the Company be reduced from 719,942,130 (Rupees seven hundred and nineteen million nine hundred and forty two thousand one hundred and thirty only) comprising of 71,994,213 (seventy one million nine hundred and ninety four thousand two hundred and thirteen) equity shares of Rs.10/- (Rupees ten only) to Rs.287,976,852 (Rupees two hundred eighty seven million nine hundred and seventy six thousand eight hundred and fifty two only) comprising of 71,994,213 (Seventy one million nine hundred ninety four thousand two hundred thirteen) equity shares of Rs.4 (Rupees four only), the amount by which the equity capital is so reduced being in excess of the requirements of the Company and that
> such reduction be effected by canceling and returning
> Rs.6 (Rupees six only) paid up amount in cash for every fully paid up equity share of Rs.10 each of the Company.
>
> RESOLVED FURTHER THAT upon the reduction being confirmed by the High Court of Judicature at Hyderabad
> for the States of Telangana and Andhra Pradesh, the shareholders holding paid up equity shares of the Company as on the date as determined by the Board, be returned a sum of Rs.6 per equity share in cash for the reduction of face value of the equity shares held by them."

The petitioner company was incorporated on 02.07.2007 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.777,500,000/-, divided into

77,750,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of petitioner Company as on 31.03.2015 is Rs.719,942,130/- divided into 71,994,213 equity shares of Rs.10/- each. The Memorandum and Articles of Association of petitioner Company is annexed as Annexure B to this petition. Article 32 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:

> "The Company has turned operationally profitable in past years and is expecting to have reasonable profitability and cash surplus in future, which could sufficiently meet requirements of the business. In view of this, the Company intends to return excess capital to its shareholders.
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> Thus from a financial perspective, it is proposed to reduce the paid up equity share capital through reducing the amount paid up on each equity share with nominal value of Rs.10/- (Rupees ten only) each to one Equity Share with nominal value of Rs.4 (Rupees four only) each. The reduction in paid up value from Rs.10 per share to Rs.4 per share is sought to be paid out in cash to the shareholders".

On 16.12.2015, 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 H.
On 16.12.2015, 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-74647389.

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 17.12.2015 is filed as Annexure J and while considering reduction
of share capital, it is stated that sufficient provision for the debts shown in Annexure J is made. 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 16.12.2015. 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 18.02.2016 ordered publication of notice in two newspapers viz., Business Standard and Eenadu of Vigaz Editions. 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.**
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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--
>
> > (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, or is 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 annexures and Special Resolution No.C-74647389 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 22 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.

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).