THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY PETITION No. 203 OF 2016

ORDER:

The instant company petition is filed under Sections 100 to 102 of the Companies Act, 1956 (for short, 'the Act') by M/s. Narbada Gems and Jewellery Limited (for short referred as 'petitioner Company') for approving reduction of paid up share capital, as resolved on 23.05.2016 by special resolution of the general body of the company.

The ancillary prayers are to:

a. to confirm the scheme of Reduction of share capital as resolved and passed by the share holders by way of special resolution in their General Meeting held on 23.05.2016 set out in paragraph 9 of this petition,

b. approve the proposed minute as set out in paragraph 11 of this petition.

The petitioner company was incorporated on 16.02.1993 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 as on 31.3.2015 is Rs. 6,50,00,000/- divided into 65,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up Capital of petitioner Company as on 31.03.2015 is Rs.5,39,22,000/- divided into 53,92,200 equity shares of Rs.10/- each. The Memorandum of Association and Articles of Association of petitioner Company are annexed to this petition as Annexure-IV. Article 7 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 31.03.2015, 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 04.08.2016, 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-1.

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 23.05.2016. 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 24.06.2016 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].

[1] 2004(4) ALT 757

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. Further, It is submitted by the learned counsel for the petitioner that the interest of the creditors will not be affected by the proposed reduction of share capital. In that view of the matter, the creditors' interest is not affected in any way. 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.

CHALLA KODANDA RAM, J

Date:15.09.2016
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[2] AIR 1998 ORI 153
[3] 2014 18 CompCas 311 (Mad)

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