

THE HON'BLE SRI JUSTICE S.V. BHATT

COMPANY PETITION No.156 OF 2016

ORDER:

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The instant company petition is filed under Sections 100 to 104 of the Companies Act, 1956 (for short, 'the Act') by M/s Nutricircle Limited (for short referred as 'petitioner Company') for approving reduction of share capital, as resolved on 21.08.2015 by special resolution in the Annual General Body Meeting of the Company. The ancillary prayers are to dispense with the meeting of creditors; to approve the form of minutes etc.

The resolution dated 21.08.2015 for which approval of this Court is sought reads as follows:

1. "RESOLVED That pursuant to Section 100 of the Companies Act, 1956 and/or Section 66 other applicable provisions, if any, of the Companies Act, 2013, Article 7 of Articles of Association of the Company and subject to confirmation/approval by the High Court Judicature at Hyderabad, Andhra Pradesh and subject to such other approvals, consents, permissions or sanctions of any other authority, body or institution, Stock Exchange, Government, Registrar, the Securities and Exchange Board of India and the creditors (hereinafter collectively referred to as "the concerned authorities) as may be required, and subject to such other conditions or guidelines, if any, as may be prescribed or stipulated by any of the concerned authorities, from time to time, while granting such approvals, consents, permissions or sanctions, the subscribed, issued and paid up equity share capital of the company with effective from the appointed dated i.e. 01.04.2015 and after securing necessary approvals and permissions:

1. The company out of total accumulated losses of Rs.51,718,238/- (Rupees five crore seventeen lacs eighteen thousand two

hundred & thirty eight only) be and is hereby authorized to set off the accumulated losses of Rs.51,638,200/- (Rupees five crore sixteen lacs thirty eight thousand two hundred only) against the paid up capital of the company of Rs.54,356,000/- (Rupees five crore forty three lacs fifty six thousand only);

2. On appointed date, the subscribed and fully paid up share capital of the company shall stand reduced from Rs.54,356,000/- (Rupees five crore forty three lacs fifty six thousand only) divided into 5,435,600 (Fifty four lacs thirty five thousand six hundred) fully paid up equity shares of Rs.10/- (Rupees ten only), to Rs.2,717,800 (Rupees twenty seven thousand eight hundred only) divided into 2,71,780 (Two lacs seventy one thousand seven hundred and eighty) equity shares of Rs.10/- only each; and
3. Consequently, every shareholder of the company, whose name appears on the Register of Members as on the Record Date, shall receive 5 (five) equity share of Re.10/- (Rupees ten each only) in lieu of every 100 (hundred) equity shares of Rs.10/- (Rupees ten only) each, held earlier in the Company;

RESOLVED FURTHER THAT the reconstruction/ restructuring of capital shall not cause any shareholder to hold any fractional shares in the Company and in respect of the fractional shares, if any, caused by the reconstruction/restructuring of capital, the same shall be rounded off to the nearest whole number.

RESOLVED FURTHER THAT after reduction, the capital of the company will not exceed Rs.2,717,800/- (Rupees twenty seven lacs seventeen thousand and eight hundred only) divided into 271,780 (Two lacs seventy one thousand seven hundred and eighty) equity shares of Rs.10/- (ten only) each.

AND RESOLVED FURTHER THAT the Board

be and hereby authorized to implement, modify, amend and alter the reduction of capital of the company in accordance with the Order of the Hon'ble High Court judicature at Hyderabad in the State of Telangana and such other authorities, Stock Exchange, Government, Registrar, the Securities and Exchange Board of India.

2. TO IMPLEMENT THE REDUCTION OF CAPITAL OF THE COMPANY, WITH OR WITHOUT MODIFICATION, AS A SPECIAL RESOLUTION.

RESORVED THAT the Board be and hereby authorized to implement, modify, amend and alter the any clause or terms of reduction of capital of the company in accordance with the order of the Hon'ble High Court judicature at Hyderabad and such other authorities, Stock Exchange, Government, Registrar, the Securities and Exchange Board of India.

AND RESROVED FURTHER THAT for the purpose of giving effect to the reduction of capital AND as per the direction of the Hon'ble High Court Judicature at Telangana and/or such other authorities, Stock Exchange, Government, Registrar, the Securities and exchange Board of India, the Board be and is hereby authorised to:

- A. fix the Book Closure/Record Date to give effect to the reduction of capital;
- B. make necessary application to the depositories including NSDL/CDSL and Registrar and Share transfer Agent including obtaining new ISIN No; and
- C. Issue new share certificates in accordance with Companies (Share Capital and Debentures) Rules, 2014. AND resolved further that for the purpose of giving effect to this resolution, the Board be and it is hereby authorized to do all such acts, deeds, matters and things as it may, in its discretion, deem necessary".

The petitioner company, formerly known as Shreeyash

Industries Limited, was incorporated on 23.06.1993 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 share capital of petitioner Company is Rs.14,00,00,000/-, divided into 1,40,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of petitioner Company as on 31.12.2015 is Rs.5,43,56,000/-, divided into 54,35,600/-. The Memorandum and Articles of Association of petitioner Company is annexed as Annexure-A1 to this petition. Article 7 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:

- i. The applicant Company has incurred heavy losses in past and has an eroded net worth. The reduction of capital, after full implementation, will result in making its net worth positive. The accumulated losses of the applicant company as on 31.03.2015 which amount to Rs. (51,718,236) has wiped off almost the net worth of the Applicant Company. The carry forward losses on balance sheet is making difficult for the company to either raise new resources or expansion and modernization nor it can share the profits of the company with its shareholders. The

company is therefore unable to raise any finance either from the capital markets or financial institutions whether in the form of equity or debt, to undertake business activities on a larger scale. The proposed reduction would enable the company to show the actual financial position in its balance sheet to depict the representing assets value which in turn will enable it to approach for financial assistance in order to develop its business and thereby increase its net worth to enhance the stakeholder's value.

- ii. This reduction of capital will enable the company to overcome its financial difficulties and improve its working in the future;
- iii. The true financial statement of the company would ensure company to attract new source of avenue and in turn enhancement of its shareholder' value;
- iv. In view of the above, the company is seeking to reconstruct/restructure its capital by way of writing off its accumulated capital loss against the reduction of its paid up capital which is not represented by available assets; and
- v. The reduction of capital will facilitate the company to expand & smoothen the business activities. The experience and expertise of the promoters will bring efficiency and professionalism in the management of the company”.

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On 21.08.2015, 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-A6.

On 21.03.2016, Extraordinary 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 reduction, it is stated, is not adversely affecting the liability or obligation of the petitioner Company in any manner. It is stated that the total accumulated losses of the Company as on 31.03.2015 were Rs.51,718,238/- and the Board of Directors proposed to reduce the share capital of the Company by Rs.5,16,38,200/- which amounts to 95% reduction of capital of the Company. This set off of losses against the subscribed and paid up capital of the Company gives fresh lease of life to the company's modernization process and new business ideology and ventures in the Nutricare products. 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 shareholders. 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 29.04.2016 ordered publication of notice in two newspapers viz., Business Standard English daily and Andhra Bhoomi Telugu Daily 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 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, 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.**^{[\[3\]](#)}

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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 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:14.06.2016

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[\[1\]](#) 2004(4) ALT 757

[\[2\]](#) AIR 1998 ORI 153

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