*****

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No.171 of 2015 (O&M)
Date of decision:11.03.2016

IN THE MATTER OF :

Fullerton Securities and Wealth Advisors Limited, having its Registered Office at SCO 41-42-43, Sector 31, Gurgaon, Haryana – 122004.

...Petitioner Company

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Deepak Suri, Advocate,
for the petitioner-company.

Mr. Deepak Aggarwal, Advocate,
for the Official Liquidator.

*****

Rakesh Kumar Jain, J.

This petition is filed under Sections 100 to 105 of the Companies Act, 1956 (hereinafter referred to as the "Act") for confirming the reduction of share capital of the petitioner-company.

The petitioner-company was incorporated on 08.02.2008 as a company limited by shares, under the provisions of the Act, having its registered office at Gurgaon. The main objects of the petitioner-company to carry on its business are set out in its Memorandum and Articles of Association, which is attached as Annexure P-1 with the petition.

The present Authorized Share Capital of the petitioner-company is ₹2,55,00,00,000/- divided into 25,50,00,000 equity shares of

*****

₹10/- each. The issued, subscribed and paid-up share capital is ₹2,30,74,68,130/- divided into 23,07,46,813 equity shares of ₹10/- each.

The petitioner-company has incurred significant losses on account of adverse market conditions and has accumulated losses of ₹1,60,87,14,465/- as on 31.03.2014. The petitioner-company has voluntarily surrendered its stock broking and depository participant licenses which have been approved by Securities and Exchange Board of India, Bombay Stock Exchange, National Stock Exchange and the Central Depository Services (India) Limited. The petitioner-company transferred all active demat accounts to Edelweiss Securities under the due process as advised by the Central Depository Services (India) Limited. The mutual fund business has also been sold to and taken over by SMC, a registered mutual fund advisor. Since the scale of operations has substantially reduced, it was decided to reduce share capital of the petitioner-company.

The petitioner-company intends to carry out financial restructuring by wiping out its losses amounting to ₹1,221,875,000/- and repatriating to its Equity Shareholders to the paid-up value of ₹575,000,000/- by setting it off against Equity Share Capital so as to have a clear and true representation in the balance sheet.

The meeting of the Board of Directors of the petitioner-company was held on 04.02.2015, in which reduction of Share Capital under Sections 100 to 105 of the Act to set off losses of ₹1,221,875,000/- and repatriation to the Equity Shareholders of the petitioner-company to the paid-up value of ₹575,000,000/- was approved.

*****

Article 7 of the Articles of Association of the petitioner-company provides that the petitioner-company shall have the power to reduce its Share Capital. Article 7 of the Articles of Association is reproduced as under:-

> "The Company shall have power to reduce the Share Capital in the manner provided in Section 100 to 105 of the Act or any statutory modifications thereof."

An Extraordinary General Meeting of the Equity Shareholders of the petitioner-company was convened on 02.03.2015, in which the special resolution was unanimously passed, which reads as under:-

> "Resolved that pursuant to Sections 100-105 of the Companies Act, 1956, Articles of Association of the Company and also the corresponding Section 66 of the Companies Act, 2013, and rules made thereunder as and when this corresponding section is notified in the official gazette by the Central Government and Articles of Association of the Company, Companies (Court) Rules and other applicable provision and subject to the confirmation by Hon'ble High Court of Punjab and Haryana at Chandigarh (hereinafter referred to as High Court), and further subject to such approvals, consents, permission or sanctions of any other authority, body, institution (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 be hereby reduced by Rs. INR 1,796,875,000 i.e. from Rs.2,307,468,130/- to Rs.510,593,130/- and that such reduction be effected by repatriating to the equity shareholders, the paid-up value thereon to the extent of Rs.575,000,000 and writing off the accumulated losses for an amount of Rs.1,221,875,000/-.
>
> Resolved further that the Board of Directors may assent from time to time on behalf of all persons concerned to any

*****

> modification or amendment or addition to this reduction or to any conditions or limitations which either the Board of Directors or a committee of the concerned Board of Directors or any person authorized in that behalf by the concerned Board of Directors may deem fit, approve or impose.
>
> Resolved further that Mr. Rajeev Kakar and Mr. Sallil S Fozdar of the Company are hereby severally authorized to make, sign and verify the Application/Petition to the High Court, to appoint attorneys, consultants, etc. and to do all such acts, deeds and things, as may be necessary and expedient, to give effect to this resolution."

Vide order dated 03.07.2015 passed in CP No.93 of 2015, this Court directed the petitioner-company to file the list of unsecured creditors, duly authenticated by the person authorized in this behalf. It was further directed that a meeting of unsecured creditors be convened at the registered office of the petitioner-company, which was held on 22.08.2015 at 12.00 p.m. for the purpose of considering and, if thought fit, approving with or without modifications, the said reduction of share capital. The Chairman and Co-Chairman were appointed by this Court for convening the said meeting. As directed, the Chairman has filed the report on 27.08.2015 and on 01.09.2015, this Court, while disposing of the Company Petition No.93 of 2015, directed to file a fresh petition regarding reduction of capital share.

The gist of the proposed share capital reduction is that the subscribed, issued and paid-up equity share capital of the petitioner-company be reduced by ₹1,796,875,000/- i.e. from ₹2,307,468,130/- to ₹510,593,130/- and the said reduction be effected by repatriating to the equity shareholders, the paid-up value thereon to the extent of ₹575,000,000/- and writing off the accumulated losses for an amount of

₹1,221,875,000/-.

The petitioner-company has submitted the form of the proposed minutes (Annexure P-13) of the proposed reduction, which is to be registered under Section 103(1) of the Act and to be confirmed, stating that the proposed reduction would not be unjust or un-equitable against the shareholders of the petitioner-company rather it is purely a domestic matter and within the powers of the petitioner-company and its members to consider and pass a resolution to reduce its share capital nor does it violate any provision of the Act or the Rules and Regulations made under the Act.

The form of minutes of the proposed reduction to be registerd with the Registrar of Companies is as follows:-

> "The subscribed, issued and paid up equity share capital of the Company be hereby reduced by Rs. INR 1,796,875,000 i.e. from Rs.2,307,468,130/- to Rs.510,593,130/- and that such reduction be effected by repatriating to the equity shareholders, the paid-up value thereon to the extent of Rs.575,000,000 and writing off the accumulated losses for an amount of Rs.1,221,875,000/-."

Notice in this petition was issued to the Regional Director, Ministry of Corporate Affairs, Noida and the Official Liquidator. Notice was also directed to be published in the newspapers, namely, "Indian Express (English)" and "Jansatta (Hindi), both Delhi/National Capital Region and in the official gazette of the Government of Haryana and was also directed to be uploaded on the official website of the Official Liquidator. Affidavit of publication has been filed.

No objection has been filed or received.

The Official Liquidator has filed report dated 03.12.2015 of

*****

Mr. A.K.Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi. The Regional Director has not taken any objection to the said reduction of share capital. The learned counsel for the Official Liquidator has submitted that the Official Liquidator too has no objection to the proposed reduction.

Accordingly, for the reasons stated above, the reduction of share capital of the petitioner-company, as resolved in the Extraordinary General Meeting of the Equity Shareholders of the petitioner-company convened on 02.03.2015 is confirmed and form of minutes under Section 103(I)(b) of the Act is hereby approved.

The petitioner-company shall deliver to the Registrar of Companies a certified copy of this order including the minutes, as approved, as per form No.30 of the Companies (Court) Rules, 1959, within a period of four weeks from the date of obtaining the certified copy.

The notice of registration of this order and the minutes as approved by this Court shall be published in the newspapers, namely, “Indian Express (English)” and “Jansatta (Hindi), both Delhi/National Capital Region and in the Official Gazette of the Government of Haryana within two weeks from the date of receipt of certified copy of the registration from the Registrar of Companies.

The present petition stands disposed of in the above terms.

March 11, 2016 **(Rakesh Kumar Jain)**
vinod* **Judge**