

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 151/2016

Reserved on 14th July, 2016
Date of pronouncement: 29th August, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Petition under Sections 100 to 105 of the
Companies Act, 1956 and other
applicable provisions of the Companies
Act, 2013**

And

CFR Asset Reconstruction India Limited

.. Petitioner Company

**Through Mr. Ashish Garg and
Mr. Abhishek Saran, Advocates for the
petitioner**

**Ms. Aparna Mudiam, Assistant Registrar
of Companies for the Regional Director**

SUDERSHAN KUMAR MISRA, J.

1. This petition under Sections 100 to 105 of Companies Act, 1956 and other applicable provisions of the Companies Act, 2013 has been filed by CFR Asset Reconstruction India Limited (hereinafter referred to as the 'petitioner company') for confirming the reduction of its issued, subscribed and paid-up share capital.

2. The registered office of the petitioner company is situated at New Delhi, within the jurisdiction of this court.

3. The petitioner company was originally incorporated under the Companies Act, 1956 on 24th August, 2001 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Capital Factors & Recoveries Private Limited. The company changed its name to Capital Factors & Recoveries Limited and obtained the fresh certificate of incorporation on 21st March, 2003. The company again changed its name to Capital Factors & Asset Reconstruction (India) Limited and obtained the fresh certificate of incorporation on 3rd August, 2006. The Company finally changed its name to CFR Asset Reconstruction India Limited and obtained the fresh certificate of incorporation on 8th January, 2014.

4. The authorized share capital of the petitioner company, as on 31st March, 2015, was Rs.10,00,00,000/- divided into 80,00,000 equity shares of Rs.10/- each aggregating to Rs8,00,00,000/- and 20,00,000 12% convertible preference shares of Rs.10/- each aggregating to Rs.2,00,00,000/-. The issued share capital of the company was Rs.8,00,00,000/- divided into 80,00,000 equity shares of Rs.10/- each.

5. A copy of the Memorandum and Articles of Association of the petitioner company has been filed on record. The audited balance sheet, as on 31st March, 2015, of the petitioner company, along with the report of the auditors, has also been filed.

6. It has been submitted by the petitioner that due to change of shareholding of the petitioner companies, the carry forward losses were not allowed to be adjusted against the future profits, accordingly, the provision was made for Deferred Tax Asset which was not allowed, hence, it was written off to the extent of Rs.122.59 lacs. It is further submitted that the equity shareholders holding equity shares of Rs.10/- each will continue to hold the same number of shares, however, the paid up value of each of such shares become Rs.7/- per share. It is further submitted that the company envisages restructuring the capital position by means of accounting adjustment in the books of accounts of the company by reducing the paid up value of the shares for writing off the accumulated losses. It is also submitted that the reduction of share capital would place the company in a position to pay dividend in future or raise further capital in future.

7. It is pleaded that the petitioner company is authorized by virtue of provisions of Article 61 of its Articles of Association to reduce its share capital, as per the provisions of the Companies Act, 1956.

8. The Board of Directors of the petitioner company in their meeting held on 30th July, 2015 have unanimously approved the proposed reduction of the issued, subscribed and paid up share capital of the

petitioner company. A copy of the resolution passed at the meeting of the Board of Directors of the petitioner company is placed on record.

9. A special resolution has been passed at the Annual General Meeting of the equity shareholders of the petitioner company held on 30th September, 2015 confirming the proposed reduction of the share capital. A copy of the minutes of the special resolution passed at the Annual General Meeting is placed on record. The petitioner company has also filed an affidavit dated 18th March, 2016 of Mr. Avadh K. Sharma, Director of the petitioner company stating that the petitioner company is not a listed company, whose shares are listed on a stock exchange for public trading. There is no secured or unsecured creditor of the petitioner company, as on 31st March, 2015.

10. In the aforesaid background, this petition is filed seeking approval of the resolution passed at the Annual General Meeting held on 30th September, 2015. The Form of Minutes proposed to be registered under Section 103(1)(b) of the Act and annexed with the petition is reproduced as under:

“Pursuant to Section 66 of the Companies Act, 2013 and such other applicable provisions of the Act read with Section 100 of the Companies Act, 1956....., the company's issued and subscribed equity share capital of Rs.8,00,00,000/- (consisting of 80,00,000 equity shares of Rs.10/- each fully paid up) be reduced to Rs.5,60,00,000/- (consisting of 80,00,000 issued, subscribed and paid up

equity shares of Rs.7/- each paid up), the amount being reduced the extent of Rs.2,40,00,000/-.”

11. By order dated 23rd February, 2016, notice of this petition was directed to be issued to the Regional Director, Northern Region.

12. In response to the notice issued, Mr. A. K. Chaturvedi, Regional Director, Northern Region, has filed his report dated 10th May, 2016 stating that the Regional Director has no objection to the proposed reduction of share capital of the petitioner company subject to necessary compliance of observations/violations mentioned in para 7 of his report.

13. The Regional Director in para 7 of his report has stated as under:

(a) The Index, Original Application and synopsis thereto is dated 04.02.2016 whereas affidavit furnished by one of the directors of the company namely Sh. Avadh K. Sharma is dated November, 2015 duly notarized by notary public on 23.12.2015;

(b) The company has purportedly passed Special Resolution for the proposed reduction in the AGM held on 30.09.2015 whereas the copy of minutes of the AGM enclosed with the petition reveals that no such special resolution was passed by the members of the company;

(c) As per para 5 of the petition, CFR Project Limited and Global Skills Management Private Limited are also one of the shareholders of the

captioned company whereas as per Annexure P-2 to the petition, the name of such shareholders are not shown;

(d) As per shareholders list Sh. Bharat Sharma, Sh. Mayank Sharma, Sh. Rajiv Jain and Ms. Swati Rawat are nominee shareholders of Avadh K. Sharma & Sons, HUF whereas the company has not filed MGT-6 of such shareholders in terms of the provisions of Section 89(6) of the Companies Act, 1956; and

(e) It has been observed from the previous years' balance sheets that the company has not made any provisions regarding employees benefits such as gratuity, leave encashment etc. in compliance of AS-15 and doubtful debts of Rs.2,74,99,509/- from Escorts Group of companies. Thus, the balance sheet as at 31.03.2015 is prima facie not reflecting the true and fair view of affairs of the company to this extent.

14. In response to the aforesaid observations, the petitioner company has filed an affidavit dated 12th July, 2016 of Mr. Avadh K. Sharma, Director of the petitioner company has submitted that the Board of Directors of the petitioner company in their meeting held on 30th July, 2015 approved the proposed reduction and the same was also approved by the shareholders of the company in their annual general meeting held on 30th September, 2015. Therefore, the affidavit was furnished in November, 2015 and was notarized on 23rd December, 2015 but due to technical error in electronic filing, the documents were accepted in

February, 2016. With reference to the second observation, it has been submitted that the proposed reduction was duly approved in the special resolution passed by the company in the meeting held on 30.09.2015, which was duly reflected in the e-form MGT-14 filed by the company on 30.10.2015. A copy of the said form along with the minutes of meeting has also been placed on record. With reference to the third observation, it has been submitted that CFR Projects Limited and Global Skills Management Private Limited are not the shareholders of the company and the said fact has wrongly been mentioned in the application. A fresh list of shareholders of the company has also been placed on record. With reference to the fourth observation, it has been submitted that the requisite form MGT-6 was duly filed on 23.05.2016 and a copy of the same is also placed on record. With reference to the last observation, it has been submitted that as on the date of filing the balance sheets, there was no employee of the petitioner company, who was covered under the payment of gratuity act or having any leave encashment, therefore, no provision was made for them in the balance sheet. Further, the amount is due and payable from the promoter company but on account of poor financial health and protective order of competent authority, payment has not been realized. Therefore, no provision was made for that amount since the amount is not bad. In view of the submissions made by the petitioner, I feel that the observations made by the Regional Director in para 7 of his report stand satisfied.

15. In view of the averments made in the petition and there being no objection from any creditor or any member of the public, the petition is hereby allowed. The resolution passed by the petitioner company in its Annual General Meeting held on 30th September, 2015 for reduction of its share capital is approved. The 'Form of Minutes' proposed to be registered under Section 103(1)(b) and annexed to the petition as Annexure 'P-4-A', is also approved.

16. A certified copy of this order be delivered to the Registrar of Companies within thirty days from today. The Registrar of Companies, on receipt of the certified copy of this order and minutes approved by this Court, is directed to register the same and effect the necessary alteration with regard to the company.

17. The notice of registration of this order and the resolution of the company shall be published in the 'Business Standard' (English) and (Hindi) within 14 days of the registration aforesaid.

18. The petition stands allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

August 29, 2016