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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 26.09.2016

CO.PET. 462/2016

IN THE MATTER OF:-

HBO INDIA PRIVATE LIMITED ..... **Petitioner**

Through: Mr Rajeev Kumar, Advocate for petitioner.
Mr Sanjay Bose, Dy. Registrar of Companies.
Ms Aparna Mudiam, Assistant Registrar of Companies for the Regional Director.

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J

CO.APPL. 1965/2016

In view of the observations being rendered in the accompanying petition, the same is rendered infructuous.

The application stands disposed of.

CO.APPL. 3640/2016

The present is an application under Rule 7 read with Rule 9 of the Company (Court) Rules, 1959, seeking condonation of 62 days' delay in filing of affidavit by the Regional Director, Northern Region.

For the reasons stated in the application, the same is allowed. Delay condoned.

The Affidavit dated 21.09.2016, by the Regional Director, is taken on record.

The application is disposed of accordingly.

CO.PET. 462/2016

1. The present is a petition filed under Sections 100 to 104 of the Companies Act, 1956 (for short 'Act'), read with Section 52 of the Companies Act, 2013, by HBO India Private Limited (hereinafter referred to as 'Petitioner Company'), seeking approval of this Court to the proposed reduction of Share Capital as resolved by its Resolution dated 06.05.2016.

2. The registered office of the Petitioner Company is situated at New Delhi, within the jurisdiction of this Court.

3. The details *qua* the date of incorporation of the Petitioner Company, its authorized, issued, subscribed and paid up capital have been mentioned in paragraph 2 of the present petition. The Petitioner Company was incorporated on 16.08.2012. The present authorised share capital of the petitioner company is Rs.10,00,00,000/-, divided into 1,00,00,000 equity shares of rs.10/- each. The issued, subscribed and paid up share capital of the petitioner company is Rs.91,25,150/-, divided into 9,12,515 equity shares of Rs.10/- each.

4. Copies of the Memorandum of Association and Articles of Association of the Petitioner Company have been filed and the same are on record. The latest audited balance sheet of the Petitioner Company for the year ended 31.03.2015 and the unaudited/ provisional balance sheet as on 31.03.2016 have also been enclosed with the petition.

5. A perusal of the Articles of Association of the Petitioner Company reveals that Articles 15 and 17 of the Articles of Association of the Petitioner Company provide for reduction of share capital of the Petitioner Company.

6. A copy of the Resolution passed by the Board of Directors of the Petitioner Company dated 22.04.2016 proposing the Reduction of Share Capital has been placed on record.

7. It has been noted that the Petitioner Company proposes to reduce the equity share capital by way of cancellation of equity shares and cash is proposed to be paid to equity shareholders on such cancellation of equity shares, in the manner specified hereinbelow:

- Cash amounting to Rs.9,99,54,554/- on cancellation of 8,57,979 equity shares of Rs.10/- each.
- Securities Premium of Rs.9,13,74,764/- shall be utilized for payment of proportionate premium on 8,57,979 equity shares of Rs.10/- each.

8. In view of the foregoing, the Share Capital Account of the Petitioner Company as on March 31, 2016 is being reduced from Rs.91,25,150/- (Rupees Ninety one lakh twenty five thousand one hundred fifty only) to Rs.5,45,360/- (Rupees Five lakh forty five thousand three hundred sixty only) and the Securities Premium Account is being reduced from Rs.9,13,74,839/- (Rupees Nine crore thirteen lakh seventy four thousand eight hundred thirty nine only) to Rs.76/- (Rupees Seventy six only) and the amount reduced is proposed to be used to pay out the shareholders of the Petitioner Company.

9. The rationale *qua* the proposed reduction of Share Capital whereby the Petitioner Company intends to reduce its issued and paid-up Equity share capital by way of cancellation of Equity shares and paying excess cash in its books to the holders of such Equity shares, is stated to be that, there is availability of excess share capital as against the needs of the business and that the Petitioner Company has no immediate capitalisation or expansion plans, as has been averred on behalf of the petitioner company in paragraph 6 of the present petition.

10. A copy of the special resolution of the Petitioner Company passed at the Extraordinary General Meeting of the Equity Shareholders of the Petitioner Company *qua* the reduction of share capital, held on 06.05.2016 has been filed and the same is on record.

11. A perusal of the record reveals that, Company Application bearing No.1965 of 2016, has been filed on behalf of the Petitioner Company wherein, a prayer has been sought, for dispensation of procedures prescribed under Section 101 (2) of the Companies Act, 1956. It is noted that since the petitioner company has no secured and unsecured creditors, therefore, the procedure prescribed under Section 101 (2) of the Companies Act, 1956 is not required to be followed.

12. Notice was issued to the Regional Director (Northern Region), Ministry of Corporate Affairs vide order dated 24.05.2016, in the present petition. Notice was accepted by Ms. Aparna Mudiam, Assistant Registrar of Companies on behalf of the Regional Director.

13. Further, vide order dated 24.05.2016, it was also directed that the notice of hearing of the Petition be published in 'Business Standard' (English Edition) and 'Jansatta' (Hindi Edition). Affidavit dated 17.09.2016 *qua* service and publication of notice has been filed by the Petitioner Company showing compliance regarding service of the petition on the Registrar of Companies and the Regional Director, Northern Region, and also regarding publication of citations in the aforesaid newspapers on 11th July, 2016 and the same is on record.

14. The Regional Director, Northern, Ministry of Corporate Affairs has filed an Affidavit dated 21st September, 2016 stating that they do not have any objection to the proposed reduction of share capital.

15. The petitioner company has also stated vide affidavit dated 17.09.2016 filed by Mr. Srijoy Das, Director and Authorized Signatory of the Petitioner Company confirming that no objection has been received by the Petitioner company or their Counsel pursuant to the notice of hearing being published in the aforesaid newspapers.

16. In view of the foregoing, the Resolution dated 06^{th} May, 2016 and the Form of Minutes, proposed to be registered under Section 103(1)(b) of the act for reduction of share capital of the petitioner Company, at Annexure 'N' to the present petition, are hereby confirmed.

17. A copy of the order be filed with Registrar of Companies within six weeks. Notice of registration of this order and the Minutes approved by the Registrar of Companies be published by the petitioner Company in the newspapers, namely, 'Business Standard' (English) and 'Jansatta' (Hindi) by the Petitioner Company.

18. The formality of adding the words 'AND REDUCED' to the name of the Company is dispensed with.

19. The petition is allowed in the above terms and is accordingly disposed of.

20. A copy of this order be given *dasti.*

SIDDHARTH MRIDUL, J

SEPTEMBER 26, 2016
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