

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on: 02.02.2016

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Judgement delivered on: 29.03.2016

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CO.PET. 561/2015

IN THE MATTER OF:

DLF BUILDING & SERVICES PRIVATE LIMITED

.... PETITIONER COMPANY

Through: Mr U.K. Chaudhary, Sr. Adv. with Ms
Manisha Chaudhary, Mr Naveen Dahiya & Mr
Himanshu Vij., Advs.
Ms Aparna Mudiam, Asstt. ROC for the RD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a petition filed under Section 100 to 104 of the Companies Act, 1956 (in short the 1956 Act) read with Rules 46 and 47 of the Companies (Courts) Rules, 1959 (in short the 1959 Rules), to seek approval of the proposed reduction of share capital.

2. Notice in this petition was issued on 13.08.2015, which was accepted by Ms Aparna Mudiam, on behalf of the Regional Director (RD). Accordingly, RD was given eight weeks to file a reply. Directions were also issued to the petitioner company to carry out publication in the Delhi edition of the Business Standard (English) and Jansatta (Hindi). Since then, a reply/ report has been filed by the RD.

2.1 The petitioner company has filed an affidavit dated 07.09.2015 demonstrating publication in the two newspapers referred to above.

3. A perusal of the petition would show that the petitioner company seeks cancellation of equity share capital classified as equity A-I and equity A-II. The total share capital, which is sought to be cancelled, would amount to Rs. 12,88,50,000/-.

4. This petition has been, broadly, filed in the background of the following facts:

4.1 The petitioner company was incorporated on 11.11.1998 under the name and style: Nachiketa Real Estates Private Limited. On 27.08.1999, the petitioner company got converted into a deemed public company and, accordingly, word 'private' was deleted from its name. By virtue of a special resolution passed on 04.07.2001, the object clause of its Memorandum of Association was changed and, consequently, was duly registered with the Registrar of Companies (ROC), on 29.08.2001.

4.2 On 05.02.2001, the petitioner company passed a special resolution, whereby, it effected a change in its name from Nachiketa Real Estates Private Limited to Nachiketa Real Estates Limited. Resultantly, on 11.09.2001, a fresh certificate of incorporation was issued to the petitioner company.

4.3 This court vide order dated 09.07.2004 confirmed a scheme, which involved amalgamation of 17 companies with the petitioner company. The order to that effect was passed in CP No. 88/2002. The order passed by this court was registered with the ROC, on 16.08.2004.

4.4 The petitioner company, once again, sought a change in its name and, thus, moved an application under Section 31(1) of the 1956 Act. By this application, the petitioner company sought a change in its name from Nachiketa Real Estates Limited to Nachiketa Real Estates Private Limited. The Central Government, vide its communication dated 03.01.2005, granted

its approval to the said change in name sought by the petitioner company. Accordingly, a fresh certificate of incorporation was issued on 19.01.2005.

4.5 In 2006, the petitioner company issued equity shares classified as equity A-I and equity A-II for a housing scheme, albeit, on private placement basis.

4.6 By a special resolution passed by the shareholders of the petitioner company, on 25.04.2008, an alteration of its Memorandum of Association was brought about in compliance of provisions of Section 18(1) of the 1956 Act. This fact was duly registered by the ROC and, a consequent certificate, to that effect, was issued on 01.05.2008. The petitioner company, once again, approached the Central Government, on 03.06.2008, with an application for effecting a change in its name from Nachiketa Real Estates Private Limited to its present name i.e. DLF Building and Services Private Limited. Upon receiving approval, a certificate of incorporation of even date i.e. 03.06.2008 was issued by the ROC.

4.7 In 2010, the petitioner company abandoned the housing scheme for which equity shares, classified as equity A-I and A-II were issued. The rights attached to those shares were also amended.

5. It is in this background, that the Board of Directors (BOD) of the petitioner company, on 16.06.2015, approved the reduction in share capital. Essentially, the BOD of the petitioner company approved cancellation of share capital, which was represented by equity A-I and equity A-II. Consequent thereto, at a meeting of equity A-I shareholders, held on 06.07.2015, a special resolution was passed to grant approval to the scheme of reduction in the share capital. A similar meeting was held of equity A-II shareholders, on 06.07.2015, whereat a special resolution was passed

approving the scheme for reduction of share capital. Consents were also given by way of a special resolution dated 06.07.2015 at the meeting of the following class of shareholders, as well: 9% non-cumulative redeemable preference shareholders and 10% non-cumulative redeemable preference shareholders.

6. It is in this background, that the instant petition was moved and, as indicated above, notice in this petition was issued by this court, on 13.08.2015.

7. A perusal of the reply filed by the RD would show that it recognizes the fact that the petitioner company had issued equity A-I and equity A-II share capital on a private placement basis in 2006 to fund a housing scheme. The RD further accepts the fact that the shares so issued had neither any voting rights attached to it, nor were they entitled to dividend. The RD also accepts the fact that in 2010 the housing scheme was abandoned, and that, rights attached to the shares were amended entitling them to dividend at par with other shareholders. The RD, further, recognizes the fact that the housing project is no longer viable and, therefore, the petitioner company, necessarily, requires to extinguish the excess share capital by bringing about reduction in capital, as proposed.

7.1 The RD has also, as it appears, examined the financial position of the petitioner company as is evident from para 6 of its reply. The RD clearly states that the petitioner company has made profits to the extent of Rs. 84.92 lacs in the year ending on 31.03.2014, as compared to Rs. 153.81 lacs in the previous year. The RD further avers that there is, prima facie, no violation of provisions of Section 295/297 of the 1956 Act. It is also averred that the petitioner company has made all filings.

7.2 In sum, the RD appears to have no objection to the proposed reduction in the share capital as is sought by the petitioner company.

8. Mr U.K. Chaudhary, learned senior counsel for the petitioner, and Ms Aparna Mudiam, Asstt. ROC, made their submissions broadly in line with their respective pleadings filed in the matter.

9. Clearly, the petitioner company, seeks cancellation of equity A-I share capital and equity A-II share capital, on the ground that the said shares were issued to fund a housing scheme, qua which investment was made in 2006. Since the housing scheme was abandoned in 2010, the petitioner company appears to be of the view that the share capital, to that extent, is in excess of its needs.

9.1 The relevant extract of the resolution passed in the EOGM held on 06.07.2015, which are reflective of this fact, are set out hereafter:

“.....RESOLVED FURTHER THAT pursuant to the provisions of Section 100 to 106 of the Companies Act, 1956, and other applicable provisions, if any, of the Companies Act, 1956 and Companies Act, 2013, to the extent applicable; and rules made thereunder (including any statutory modification, amendment or re-enactment thereof for the time being in force), Articles of Association of the Company and subject to the approval of class of shareholders, the Hon'ble High Court of Delhi at New Delhi/ National Company Law Tribunal or any other appropriate Authority and further such other consents, permissions, approvals etc., as may be necessary, , the consent of the equity Shareholders be and is hereby accorded to the Reduction of the Paid-up Share Capital of the company from Rs. 170,084,630 (Rupees Seventeen Crores Eighty Four Thousand Six Hundred and Thirty Only), consisting of Rs. 123,000,000/- (Rupees Twelve Crores Thirty Lacs only) divided into 82 (Eighty Two) Equity "A-1" shares of Rs. 1,500,000/- (Rupees Fifteen Lacs Only) each-fully paid up, Rs 5,850,000/- (Rupees Fifty Eight Lacs Fifty Thousand Only) divided into 39 (Thirty Nine) Equity "A-II" shares of Rs.

3,000,000/- (Rupees Thirty Lacs) each-paid-up Rs. 150,000/- only each (Rupees One Lac Fifty Thousand only), Rs. 28,270,330/- (Rupees Two Crores Eighty Two Lacs Seventy Thousand Three Hundred and Thirty Only) divided into 2,827,033 (Twenty Eight Lacs Twenty Seven Thousand Thirty Three) Equity shares of Rs. 10/(Rupees Ten Only) each - fully paid up, Rs. 464,300/- (Rupees Four Lacs Sixty Four Thousand Three Hundred Only) divided into 4,643 (Four Thousand Six Hundred Forty Three) 10% Non-Cumulative Redeemable Preference Shares of Rs. 100/- (Rupees One Hundred Only) each- fully paid up and Rs. 12,500,000/- (Rupees One Crore Twenty Five Lacs Only) divided into 125,000 (One Lac Twenty Five Thousand) 9% Non-Cumulative Redeemable Preference Shares of Rs. 100/- (Rupees One Hundred Only) each -fully paid up, to Rs. 41,234,630 (Rupees Four Crores Twelve Lacs Thirty Four Thousand Six Hundred and Thirty Only) consisting of Rs. 28,270,330/- (Rupees Two Crores Eighty Two Lacs Seventy Thousand Three Hundred and Thirty Only) divided into 2,827,033 (Twenty Eight Lacs Twenty Seven Thousand Thirty Three) Equity Shares of Rs. 10/- (Rupees Ten Only) each-fully paid up, Rs. 464,300/- (Rupees Four Lacs Sixty Four Thousand Three Hundred Only) divided into 4,643 (Four Thousand Six Hundred Forty Three) 10% Non-Cumulative Redeemable Preference Shares of Rs. 100/- (Rupees One Hundred Only) each -fully paid up, and Rs. 12,500,000/- (Rupees One Crore Twenty Five Lacs Only) divided into 125,000 (One Lac Twenty Five Thousand) 9% Non-Cumulative Redeemable Preference Shares of Rs. 100/- (Rupees One Hundred Only) each- fully paid up, the amount by which the Share Capital so reduced being in excess of the requirements of the Company and that such reduction be effected by cancelling the Paid-up value of 82 Equity "A-I" (Non-Voting Rights) shares of Rs. 15,00,000 each (fully paid up) and Paid-up value of 39 Equity "A-II" (NonVoting Rights) shares of Rs. 30,00,000 each (Rs. 1,50,000 each paid up) and extinguishing the liability of further calls on the said 39 partly paid shares which are held by promoter/ nonpromoter shareholders.....”

9.2 As would be evident from the above, the shareholders at the EOGM have approved the cancellation of 82 equity A-I shares of Rs. 15 lacs each (fully paid-up) and 39 equity A-II shares of Rs. 30 lacs each with a paid-up value of Rs. 1.50 lacs. Resultantly, on account of A-I equity shares, share capital equivalent to Rs. 12.30 crores would stand cancelled, and on account of A-II equity shares, share capital worth Rs. 58.50 lacs would stand cancelled. In all, total share capital, worth Rs. 12,88,50,000/- would stand cancelled.

9.3 There is no dispute about the fact that the petitioner company is conferred with the necessary power to seek cancellation of its shares under Article 3 of its Articles of Association. Furthermore, the petitioner company has obtained two certificates of even date i.e. 24.06.2015 issued by M/s M.M. Jindal & Co., Chartered Accountant (CA). The first certificate certifies that the petitioner company, as on 16.06.2015, has no secured creditors. The second certificate provides affirmation qua the list of unsecured creditors appended to the petition, albeit, based on the books of the petitioner company, which includes, unsecured loans, trade creditors, sundry creditors and other current liabilities and other persons/ entities to whom moneys are owed except amounts payable towards statutory dues, provisions and other expenses.

9.4 The petitioner company has placed on record the consents of all unsecured creditors, which number 73 in all and collectively are valued at Rs. 40,407,534/-. The consents obtained have been examined and are found in order.

10. Having regard to the aforesaid, and given the fact that the RD has no objection to the proposed reduction in share capital, the prayers (A) and (B) are allowed. The proposed reduction in the share capital, as reflected in the EOGM dated 06.07.2015, is sanctioned. Consequent thereto, equity A-I shares and equity A-II shares shall stand cancelled. The petitioner company will be entitled to refund a sum of Rs. 12,88,50,000/- to the shareholders by bringing about appropriate disposal/ adjustments of its current and non-current investments, upon due reduction of its share capital. The proposed minutes, which are contained in Annexure-22 appended to the petition, accordingly, stand approved. The petitioner company will be entitled to have the said minutes registered with the ROC as required under Section 103(1)(b) of the 1956 Act. Having, thus, regard to the overall circumstances, the requirement of adding words “AND REDUCED” to the name of the petitioner company is dispensed with.

11. The petition is, accordingly, disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

MARCH 29, 2016

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