

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 892/2015

Reserved on 25th May, 2016
Date of pronouncement: 27th July, 2016

In the matter of

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

And

**Petition under Sections 100 to 104 of the
Companies Act, 1956 and other
applicable provisions of the Companies
Act, 2013**

And

Justride Enterprises Limited

.. Petitioner Company

**Through Mr. P. Nagesh with
Mr. Ashutosh, 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 104 of Companies Act, 1956 and other applicable provisions of the Companies Act, 2013 has been filed by Justride Enterprises 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 14th February, 1967 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Tobu Enterprises Private Limited. The company changed its name to Tobu Enterprises Limited and obtained the fresh certificate of incorporation on 17th December, 1987. The company again changed its name to Justride Enterprises Limited and obtained the fresh certificate of incorporation on 29th November, 2013.

4. The authorized share capital of the petitioner company, as on 31st March, 2015, was Rs.5,40,00,000/- divided into 54,00,000 equity shares of Rs.10/- each. The issued share capital of the company was Rs.4,73,16,000/- divided into 47,31,600 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 that the petitioner company was carrying the business of trading of bicycles, tri cycles, and plastic item however, due to growth of the unorganized sector, the demand for the products being traded by the petitioner company decreased considerably, resulted in

incurring losses which got accumulated over a period of time. It has been further submitted that since there is no lucrative opportunities left in the present business, the petitioner company decided to close the present business and enter into new line of business that offers better return on investment and for this purpose the management of the petitioner company is making efforts for getting fresh infusion of funds but due to presence of continuous losses no one shows interest in investing money in the petitioner company and hence the financial health of the company is not improving. Hence, the Board of Directors of the petitioner company decided that 90% of the existing issued, subscribed and paid-up equity share capital of the petitioner company be written off and the reserves created out of the cancellation shall be adjusted against the accumulated losses of the company.

7. It is pleaded that the petitioner company is authorized by virtue of provisions of Article 50 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 3rd December, 2014 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 Extra Ordinary General Meeting is placed on record.

10. The petitioner company has placed on record the fairness opinion report provided by Corporate Professionals Capital Private Limited stating that the proposed reduction in capital neither involves any financial outlay/outgo on the part of the petitioner company nor does it directly or indirectly involves any outflow of the petitioner company's asset to its shareholders. It is further provided that the reduction of capital also does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholders of any paid-up capital. Consequently, such reduction will not cause any prejudice to the shareholders of the applicant company.

11. 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:

“The issued, subscribed and paid-up equity share capital of Rs.4,73,16,000/- consisting of Rs.47,31,600 equity shares of Rs.10/- each be reduced to Rs.47,31,600/- consisting of 4,73,160 equity shares of Rs.10/- each by reduction of equity share capital by 90%.

Every shareholder holding shares in the company shall be allotted 01 share of face value of Rs.10/- each in place of 10 each.

Any fractional shares shall be rounded off to the nearest whole number.

The existing share certificates shall stand cancelled and the company will issue fresh share certificates to the shareholders as per the entitlement at their registered addresses.

The equity shares (after reduction) shall continue to be listed and traded on the respective stock exchanges.”

12. By order dated 1st December, 2015, notice of this petition was directed to be issued to the Regional Director, Northern Region and citations were directed to be published in the newspapers 'Business Standard' (English) and (Hindi) in terms of the Companies (Court) Rules, 1959. The petitioner has filed an affidavit showing compliance regarding service on the Regional Director, Northern Region as also publication of citations in the aforesaid newspapers on 12th April, 2016. Copies of the newspaper clippings containing the publications have been filed along with the affidavit.

13. In response to the notice issued, Mr. A. K. Chaturvedi, Regional Director, Northern Region, has filed his report dated 9th May, 2016 stating

that the ROC in his report has not made any adverse comments and that the Regional Director has no objection to the proposed reduction of share capital of the petitioner company.

14. Although no objection has been raised by the Regional Director to the proposed reduction but in para 7 of his report he has stated that the petitioner company has violated the provisions of Sections 383A/215 of the Companies Act, 1956. In response to the aforesaid observation, learned counsel for the petitioner company submits that as regards the objection regarding non-appointment of Company Secretary in terms of Section 393(A) of the Companies Act, 1956, the petitioner shall take all relevant necessary steps as per law in case it becomes necessary. In view of the aforesaid, the observation made by the Regional Directors stands satisfied.

15. Despite publication of notice, no objection has been received from any creditor or any member of the public. The petitioner company, in the affidavit dated 13th May, 2016 of Sh. Ashutosh Gupta, counsel for the petitioner company has submitted that they have not received any objection pursuant to citations published on 12th April, 2016. Thus, there appears to be no legal impediment in allowing the present petition.

16. 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 '5', is also approved.

17. 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.

18. 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.

19. The representative of the Regional Director submitted that keeping in view of the fact that the matter involved examination of extensive records and prioritized hearings, at least costs of Rs.1.0 lakh should be paid by the petitioner. Learned counsel for the petitioner submitted that his client has no objection to pay the costs. As already directed vide

order dated 25.05.2016, let costs of Rs.1.0 lakhs be deposited by the petitioner with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

20. The petition stands allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

July 27, 2016