IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 919/2015

Reserved on 26th 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 101 to 104 of the Companies Act, 1956 and other applicable provisions of the Companies Act, 2013

And

B.J. Duplex Boards Limited
.. Petitioner Company

Through Mr. P. Nagesh and 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 101 to 104 of Companies Act, 1956 and other applicable provisions of the Companies Act, 2013 has been filed by B.J. Duplex Boards 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 incorporated under the Companies Act, 1956 on 13th March, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The authorized share capital of the petitioner company, as on 31st March, 2015, was Rs.12,00,00,000/- divided into 1,20,00,000 equity shares of Rs.10/- each. The issued share capital of the company was Rs.5,03,97,000/- divided into 51,81,200 equity shares of Rs.10/- each aggregating to Rs.5,18,12,000/- less calls in arrears of Rs.14,15,000/-.

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 manufacturers and dealers in paper of all kinds and articles made from paper or pulp etc. and due to unforeseen events, the business suffered from huge losses and subsequent accumulation of huge losses has an adverse effect on the company's financial health and business operations. Hence, the Board of Directors of the petitioner company decided that 90% of the existing equity share capital of the petitioner company be written off and the reserves created out of the cancellation of

share capital shall be adjusted against the accumulated losses of the company. It is claimed that this will help to bring the value of its equity capital nearer to its real value.

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 in any manner as permitted in law.

8. The Board of Directors of the petitioner company in their meeting held on 9th April, 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.

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 as under:

> "Resolved That …… the issued, subscribed and paid-up equity share capital of the company be and are hereby reduced against the accumulated losses to the extent of 90% in the following manner:
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> a. The existing issues, subscribed and paid up capital of the company of Rs.51,812,000/- consisting of 5,181,200 equity shares of Rs.10/- each less calls in arrears of Rs.1,415,000/- totaling to Rs.50,397,000 be reduced to Rs.5,181,200/- consisting of 5,181,200 equity shares of Rs.1/- each less calls in arrears of Rs.1,415,000/- totaling to Rs.3,766,200.
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> b. The debt balance of Rs.57,258,727.14/- of the Reserves and Surplus being the accumulated losses as at March 31, 2014 shall be adjusted against the Reserve of Rs.4,66,30,800/- arising on cancellation of the issued, subscribed and paid up share capital aforesaid and balance accumulated losses of Rs.10,627,927.14/- be carried forward by passing necessary entries in the books of accounts in this regard.

c. Every shareholder holding shares in the company shall be allotted 01 equity share of face value of Rs.1/- each in place of 01 equity share of face value of Rs.10/- each.

d. The existing share certificates shall stand cancelled and the company shall issue fresh share certificates to the shareholders as per the entitlements at their registered address.

Resolved further that the capital clause of the Memorandum of Association of the company be accordingly altered to read as follows…………
The authorized share capital of the company is Rs.12,00,00,000/- divided into 12,00,00,000 equity shares of Rs.1/- each.

Resolved Further that ….. may be necessary to give effect to the aforesaid resolution."

12. By order dated 7th 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. Narender Kumar Bhola, Regional Director, Northern Region, has filed his report dated 25th July,

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 provisions of the Companies Act mentioned in paras 7 & 9 of his report.

14. The Regional Director in para 7 of his report has stated that the petitioner company has violated the provisions of Sections 383A/215 of the Companies Act, 1956/2013. The Regional Director in para 9 of has stated that in para 12(d) of the petition, it has been stated that subject to confirmation of reduction in share capital by the High Court, the face value of the authorized share capital of the petitioner company shall be sub-divided from Rs.10/- to Rs.1/- each. The Regional Director has prayed that the petitioner company may be directed to comply with the provisions of Section 61 of the Companies Act, 2013 and file relevant e-form accordingly. In response, learned counsel for the petitioner company submits that as regards the objection regarding non-appointment of Company Secretary in terms of Section 383(A) of the Companies Act, 1956, the petitioner shall take all relevant necessary steps as per law in case it becomes necessary. In response to the second observation, learned counsel for the petitioner has submitted that once the appropriate orders for reduction of share capital, as proposed, are passed, the petitioner will take all necessary steps for bringing about the necessary amendments in the Memorandum and Articles of

Association of the company, *inter alia,* by passing the necessary resolution in that behalf. In view of the aforesaid, the observations made by the Regional Directors stand 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 petition stands allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

August 29, 2016