

BEFORE THE NATIONAL COMPANY LAW BOARD TRIBUNAL
MUMBAI BENCH

CP 240/66/NCLT/MB/MAH/2017

Under Section 66 of the Companies
Act, 2013

In the matter of

M/s ACG Arts and Properties Pvt. Ltd.
.... Petitioner

Order delivered on: 03.11.2017

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Adv. Hemant Sethi, Advocate for Petitioner.

Per: *Bhaskara Pantula Mohan, Member (J)*

ORDER

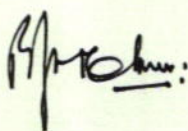
1. The Petitioner M/s. ACG Arts and Properties Private Limited had filed the petition on 28th June, 2017 under Section 66 of the Companies Act, 2013 for Reduction of Share Capital.
2. Heard the learned counsel for the Petitioner Company. No one has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
3. The Counsel for the Petitioner submit that no representation has been received from the Central Government through Regional Director or the Registrar of Companies or the Creditors within the said period, it is therefore presumed that they have no objection to the reduction of share capital.
4. By article(s) 4(d) of the Articles of Association of the Company, it is provided that the company may, by special resolution, reduce its capital authorised by law, mentioned below:

"The company may, (subject to the provisions of Section 78,80 and 100 to 105 inclusive of the Act) from time to

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time, by Special Resolution, reduce its Capital and any Capital Redemption Reserve Account or premium account in any manner for the time being authorised by law, and in particular capital may be paid off on wise. This Article is not to derogate from any power the Company would have if it were omitted."

5. The applicant company was registered on 15th day of November, 1983, having its registered office at Scitech Centre, 2nd Floor, Prabhat Nagar, Jogeshwari (West), Mumbai 400102, under the provisions of the Companies Act, 1956 as a company limited by shares. Presently the company has only 5 shareholders.
6. Thus considering the business plan of the Company, the Board of Directors of the Petitioner Company at their meeting held on 28th April, 2017 have deemed it appropriate to reduce from Rs. 10,80,000/- (Rupees Ten Lakhs Eighty Thousand only) consisting of fully paid up 10,800 Equity shares of Rs. 100/- (Rupees Hundred) each **to** Rs. 42,000/- (Rupees Forty-Two Thousand only) consisting of fully paid up 420 Equity shares of Rs. 100/- (Rupees Hundred) each, without making any payment to the equity shareholders for the equity shares so cancelled and extinguished. The shareholders whose shares are cancelled shall be those whose names appear in the register of members of the Company, as on 31st March, 2016 and shall specifically exclude those shares that are issued and allotted post 31st March, 2016. The amount equivalent to the amount of share capital so reduced shall be credited to the Capital Reserve Account. It is observed that the cancelled shares belong to the individuals of the same family and it's their decision to reduce the Share Capital.
 - 6.1 As on 31st March, 2017 the Financial Position of Balance Sheet annexed, is that under the head "*Current Assets*" the cash and bank balance available was ₹38,85,70,015/- (Thirty-Eight Crores Eighty-Five Lakhs Seventy Thousand Fifteen only). It is pointed out that as on 31st March, 2017 cash equivalent is ₹26,33,60,724/- (Twenty-Six Crores Thirty-Three Lakhs Sixty Thousand Seven Hundred and Twenty-Four only). On the other side of the Balance Sheet the "*Current Liability*" is of ₹19,17,000/- (Nineteen Lakhs Seventeen Thousands only) mainly consisting of Audit Fees and a provision made for RoC compliance fees.
7. Since its incorporation, the Petitioner Company carrying a business of manufacturing, trading, dealing and investing in paintings, artifacts, antiques and the likes and dealers and/or investors in land and immovable properties.
8. Consequently, the Applicant Company wants to rationalize its holding structure by migrating it's shareholding to Trust.



9. The Board of Directors of the Applicant Company had sent a Notice and Explanatory Statement dated 28th April, 2017 for convening an Extra Ordinary General Meeting of the equity shareholders of the Applicant Company on 31st May, 2017.
10. The Petitioner Company further submits that the Petitioner having passed a Special Resolution with requisite majority at its Extra Ordinary General Meeting held on 31st May, 2017, for reduction of share capital and authorising to file a requisite Petition before NCLT, moved this Petition, for ready reference, relevant portion reproduced below :-

"RESOLVE THAT, pursuant to the provisions of section 66 and other applicable provisions of the Companies Act, 2013, and Article 4(d) of the Articles of Association of the Company and subject to obtaining such approvals, consents, permissions and sanctions as may be required and also subject to the confirmation by the National Company Law Tribunal at Mumbai Bench, the approval of the shareholders of the Company be and is hereby accorded for reducing the issued, subscribed and paid up share capital of the Company, which shall be effected by way of.

- a) *A selective extinguishment and cancellation of 10,380 (Ten Thousands Three Hundred and eighty) fully paid up equity shares of ₹100/- (Rupees Hundred) each held by Ajit Singh, Jasjit Singh and Jasjit Singh HUF and having an aggregate paid up value of ₹10,38,000/- (Rupees Ten Lakhs Thirty-Eight Thousand) ("Proposed Capital Reduction");"*

"RESOLVE FURTHER THAT the amount of share capital so reduced shall be credited to the capital reserve in the books of the company at the time of giving effect to the capital reduction"

11. It is placed on record that MGT 14 with the RoC, Mumbai in respect to the Special Resolution passed by the Members/shareholders in their Extra Ordinary General Meeting held on 14th June, 2017 for the approval to the Reduction in Share Capital of the Company.
12. Counsel appearing on behalf of the Petitioner Company further submits that the Petitioner has complied with all the statutory requirements as per the directions of the Tribunal and they have filed necessary Affidavit of compliance in the Tribunal. Moreover, the Petitioner Company also undertakes to comply with statutory requirements, if any under the Companies Act, 2013 and the Rules made thereunder, as may be applicable. Since the requisite statutory procedure has been fulfilled the petition is made absolute accordingly. The Special Resolution as approved by the shareholders

Ajit Singh:

in their Extraordinary General Meeting held on 31st May, 2017 is confirmed.

13. The Capital of the Petitioner Company shall henceforth be Rs. 42,000/- divided into 420 paid up Equity Shares of Rs. 100/- each.
14. Sec. 66 (4) prescribe for Publication in the Newspaper. Public Notice by advertising in News Paper viz. "Free Press Journal" in English language and "Navshakti" in Marathi language hence already published and the relevant evidence is placed on record.
15. Petition for reduction of share capital allowed subject to the direction given herein above. All concerned regulatory authorities to act on production of certified copy of this order to be issued on demand by the Deputy Director, National Company Law Tribunal.
16. Ordered Accordingly.

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)

Sd/-

M. K. Shrawat
Member (Judicial)

Dated : 03rd November 2017