

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

CP.NO.34/BB/17

Under Section 66 and 52 of Companies Act, 2013

IN THE MATTER OF
ACE CREATIVE LEARNING PRIVATE LIMITED

Order delivered on: 6th February, 2018

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

ACE CREATIVE LEARNING PRIVATE LIMITED
No.163/B, 6th Main, 3rd Cross,
J.P.Nagar, 3rd Phase,
Bangalore-560078.

APPLICANT

For the Petitioner (s)

1. Shri.Guru Prasad Sirsi, Practising Company Secretary
2. Shri. Arjun. K.Perikal, Advocate
M/s J.Sagar Associates, Level 3, Prestige Obelisk,
3, Kasturba Road, Bengaluru-560001- Advocates
for the Applicant Company.

Per: **Hon'ble Shri Ratakonda Murali, Member (Judicial)- Author**

Heard on: 08/06/2017, 20/06/2017, 11/07/2017, 04/08/2017, 16/08/2017, 24/08/2017,
01/12/2017, 19/12/2017, 19/01/2018, 24/01/2018, 31/01/2018 & 05/02/2018

ORDER

This Company Application has been filed on behalf of the Applicant Company under Section 66 of the Companies Act, 2013 read with National Company Law Tribunal (Procedure for Reduction of Share Capital of the Company) Rules, 2016 for the purpose of confirmation of reduction of its share capital in pursuance of the Special Resolution dated 26th April, 2017 passed by the Petitioner Company.

The averments made in the Company Petition are briefly described hereunder:-

The Petitioner Company seeks an order for confirmation of reduction of its share capital.

It is further averred in the Petition that, the Petitioner Company was incorporated on 4th April, 2008 under the name and style of Ace Creative Learning Private Limited with the Registrar of Companies, Karnataka. The Registered office of the Petitioner Company is situated at No.163/B, 6th Main, 3rd Cross, J.P.Nagar, 3rd phase, Bangalore-560078.



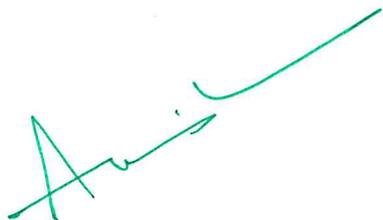
The main objects of the Applicant Company is to develop, provide, maintain, research, organise, undertake, manage, operate educational content and methodologies in the fields of commerce, arts, science, engineering, medical pharmacy, insurance, risk management, computer literacy, music, dance, acting, sports, journalism, management, social welfare and industrial studies and other fields as may be developed from time to time. The copy of Memorandum and Articles of Association of the Applicant Company is shown as **Annexure-A**.

The latest authorized share capital of Applicant Company is Rs.2,37,10,000/- divided into 8,95,000 Equity Shares of Rs.10/- each and 60,600 Series A Compulsorily Convertible Preference Share Capital of Rs.100 each and 87,000 Series B Compulsorily Convertible Preference Share Capital of Rs.100 each. The issued, subscribed and paid-up share capital is Rs.1,57,26,030/- divided into 102,663 Equity Shares of Rs.10/-each and 60,600 Series A Compulsorily Convertible Preference Share Capital of Rs.100 each and 86,400 Series B Compulsorily Convertible Preference Share Capital of Rs.100 each fully paid up. The Audited balance sheet as on 31st March, 2016 is marked as **Annexure –B series**.

It is further averred that, the Company proposes to reduce its paid-up share capital from Rs.1,57,26,630/- to 1,04,31,730/- by cancelling 52,949 Series B compulsorily convertible preference shares and returning a sum of Rs.7,554/- per share on cancellation of 52,949 Series B compulsorily convertible preference shares of Rs.100/- each. The company further proposed that a sum of Rs.7,554/- per share being the amount paid in excess of the par value of shares of Rs.100/- will be debited to securities premium account, as the Company has no capital redemption reserve account, on the date of this petition.

The Board of Directors of the Applicant Company have approved the proposed reduction of share capital subject to the passing of special resolution by the shareholders at the General Meeting on 26th April, 2017. The Copy of the resolution passed by the Board of Directors is shown as **Annexure-C**.

The Petitioner Company doesn't have any creditors as on 20th April, 2017. It is stated that the reduction of capital does not involve diminution of any liability in respect of unpaid share capital. The Creditors of the Petitioner Company will in no way be affected by the proposed reduction of share capital as there is no reduction in the amount payable to any of the creditors, no compromise or arrangement is contemplated with the creditors and also as there is no reduction in the security, which creditors may have in the Petitioner Company.



It would not affect any creditors as no amounts would go out of the Company. There would be no discharge of consideration.

The Shareholders of the Petitioner Company have approved the proposed reduction of share capital at the Extra-Ordinary General Meeting of the Company on 26th April, 2017.

The Petitioner Company has filed Form No.MGT-14 on 30th November, 2017 with the Registrar of Companies, Karnataka-Bangalore. The Copy of Form MGT-14 filed with the Registrar of Companies is filed along with memo dated 1st December, 2017.

The Petitioner Company has produced a certificate issued by the Chartered Accountant dated 27th April, 2017 stating that, the Petitioner Company has no Creditors. The Certificate of Chartered Accountant is shown as **Annexure-F series** and also a declaration dated 28th April 2017 given by the Managing Director of the Petitioner Company that, there are no arrears in repayment of any deposits or interest payable thereon and certificate issued by the Chartered Accountant affirming the same has been issued, certifying that the Company has no creditors as on 20th April, 2017. The certificates of the Managing Director are shown as **Annexure E & G**.

The Statutory Auditors of the Petitioner Company have verified the Accounting Treatment stated in the scheme and has given a Certificate stating that the Accounting Treatment for reduction is in conformity with Accounting Standard under Section 133 of the Act read with Rule 7 of the Companies (Account) Rules, 2014. The copy of the certificate of Chartered Accountant is shown as **Annexure-F series**.

The Petitioner Company has produced a certificate issued by the Chartered Accountant dated 27th April, 2017 stating that, the Petitioner Company has Nil deposits as defined under Section 2(31) of the companies Act, 2013 read with Rule 2(1)(c) of the Companies (Acceptance of Deposits), Rules, 2014. The Certificate of Chartered Accountant is shown as **Annexure-F series**.

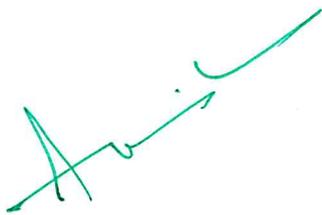
This Tribunal vide order dated 16th August, 2017 issued notice to Regional Director and Registrar of Companies and also directed to have an advertisement be published in leading English Newspaper and in a leading Vernacular Newspaper stating that the next date of hearing of the present petition was on 1st December, 2017. A Memo dated 7th September, 2017 has been filed at **Pages No.1-2 in CP.No.34/BB/17** furnishing the newspaper publication.

The Regional Director, Ministry of Corporate Affairs, South-East Region, Hyderabad has filed Affidavit dated 28th November, 2017 with following observations:-

- a. It is submitted that, the price of Rs.7554/- per share for the existing Compulsorily Convertible Preference Shareholders was stated by the Petitioner to have been fixed upon due valuation but a copy of the Valuation Report was not produced by the Petitioner. Hence no comments can be offered on the reasonability or otherwise of the value of each Compulsorily Convertible Preference Share.
- b. Upon enquiries with the Petitioner Company, it is learnt that the object of the present petition is to replace the high cost of capital with a relatively economical debt, whereas the Petitioner appears to have moved the present petition on the ground of Section 66(1)(b)(i) i.e., pay-off any paid-up Share Capital in excess of wants of the company.
- c. As per the last audited Balance Sheet as at 31.3.2017, the Company has a debit balance in the Profit and Loss Account to the extent of Rs.29.66 Crores. Therefore, the Hon'ble Tribunal may consider directing the Petitioner to add the words "and reduced" after its name for a period of 2 years.

Further the Counsel for Petitioner Company has filed Affidavit dated 18th December, 2017 of the Authorised Signatory in response to the observations made by the Regional Director, Ministry of Corporate Affairs, South-East Region, Hyderabad and submitted that:

- a. With reference to the observation made in Para 4 in the affidavit, the valuation report has been produced before the Hon'ble Tribunal.
- b. With regards to the observation made in Para 5, it is submitted that the Board of Directors were of the opinion that the company had excess capital that was not required for its business activities. Since the company had to pay dividends at a high rate for capital which was not required, it was felt that it was advisable to cancel 52,949 Series B Compulsorily Convertible Preference Shares and raise capital more economically in the future as and when required by the company's business.

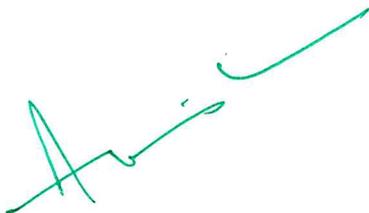


- c. With regard to observation made in Para 6, the provisions of section 66 of the companies Act, 2013 do not mandate that the words “and reduced” should be used by the company whose capital is reduced. Under the earlier Companies Act, 1956, section 100 to 104 provided that the court could direct the words “and reduced” to be used by the company in certain circumstances. However, such a requirement has been omitted in section 66 of the Companies Act, 2013. Hence, it can be construed that such omission by the legislature was intentional and therefore, there is no provision under the Companies Act, 2013 mandating that a company should use the words “and reduced” in its name after effecting reduction of capital. In light of this, the observation of the Regional director in his affidavit stating that the Hon’ble Tribunal may consider directing the petitioner to use the words “and reduced” is not valid. We agree with this contention of the Counsel.

The Registrar of Companies, Karnataka has filed Affidavit dated 29th November, 2017 making some observations which are as follows:

- a. This office has verified the records of the company and on verification it is noticed that the Petitioner Company has filed statutory returns up to the financial year ended 31.3.2016 with this office and all the said forms are approved. The relevant form MGT-14 for the present capital reduction has not been filed by the Petitioner Company with this office.
- b. Article No.5 of Articles of Association of the Petitioner Company permits reduction of share capital of the company.
- c. No Prosecutions, technical Scrutiny and Complaints are pending with this office. As per the petition, the company decided to reduce the paid up capital from Rs.1,57,26,630 to Rs.1,04,31,730
- d. That the Petitioner Company has submitted Chartered Accountant Certificate of BSR & Associates LLP Chartered Accountants dated 27.4.2017 stating that the company has not raised any deposit as on 20-4-2017 and there is no default in payment of deposits and interest thereon and has further stated that the company’s proposal of reduction of share capital is in accordance with the standard specified in Section 133 of the Companies Act, 2013. However the Petitioner Company has not submitted the method of Accounting in the proposal of reduction of share capital.

Further the Counsel for Petitioner Company has filed Affidavit dated 18th December, 2017 by the Authorised Signatory in furnishing the response to the observations of the Registrar of Companies and stated as follows:



- a. It is submitted that with reference to paragraph 2 in the report, Form MGT-14 for the present capital reduction has been filed. A copy of the proof of filing form-MGT-14 has been annexed as **Annexure-A**.
- b. It is submitted that with reference to paragraph 5, there is no specific accounting treatment prescribed for reduction of capital under the accounting standards as per the Companies (Accounting Standards) Amendment rules, 2016. However the proposed accounting treatment prescribed in the company petition is in line with section 52(1) and section 55(2)(c) of the Companies Act, 2013 subject to the approval of the Hon'ble Tribunal.

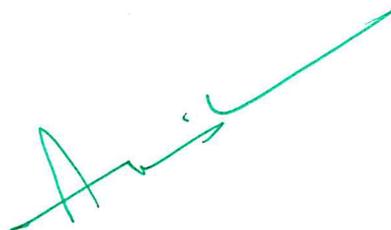
The matter was listed again for clarification. On 24th January 2018, the Practising Company Secretary of the Petitioner Company was present. He was directed to furnish the Valuation Certificate to the Regional Director, South East Region, Hyderabad and to seek his opinion. On 2nd February 2018, when the matter was listed, this Tribunal received further report from Regional Director, South East Region, Hyderabad. In his report he has specifically stated that, he received valuation Report dated 25th January 2018 issued by M/s DSB & Associates, Chartered Accountants, Bangalore, wherein the fair value of both Equity Share and CCPS is Rs 8,026.82 each while the proposed rate at which the CCPS holders would be paid is Rs 7,554/- per CCPS which rate has the consent of CCPS holders. Thus Regional Director has observed in his report that, he has no objection in this regard.

The Counsel has also filed Memo alongwith certificate confirming the valuation of shares issued by M/s DSB & Associates, Chartered Accountants, Bangalore for perusal.

Thus in the light of the latest opinion given by the Regional Director, South East Region, Hyderabad in his report dated 2nd February 2018, and after seeing Article 5 of the Articles of Association of the Petitioner Company which empowers the Company to reduce its Share Capital and further objections are not received from Creditors or any other person interested and after hearing the Counsel for Petitioner Company and after considering the reports of R.D & ROC and the explanation given including certificate issued by Chartered Accountant

THIS TRIBUNAL DO FURTHER ORDER

The Special Resolution of the Petitioner Company duly passed at the Extraordinary General Meeting held on 26th April, 2017, the shareholders, with some modifications, resolved to give effect to the Resolution passed by the Board of Directors as hereunder:



RESOLVED THAT pursuant to Section 66 and 52 of the Companies Act, 2013 and other applicable provisions and subject to the confirmation by the National Company Law Tribunal, the paid-up share capital of the Company be and it is hereby reduced from Rs.1,57,26,630/- (Rupees One Crore Fifty seven Lakhs Twentysix Thousand Six Hundred and Thirty Only) to Rs.1,04,31,730/- (Rupees One Crore Four Lakhs Thirtyone Thousand Seven Hundred and Thirty only), by cancelling the following number of series B Compulsorily Convertible Preference Shares of Rs.100/- each held by shareholders:

Name of the Shareholder	Number of shares
Kaizen Private Equity	11,424
Kaizen Domestic Scheme I	11,513
Hober Mallow Trust	15,006
Accel India Venture II (Mauritius) Ltd.,	15,006

Resulting in the cancellation of Rs.52,949 Series B Compulsorily Convertible Preference Shares held by shareholders in the Company.

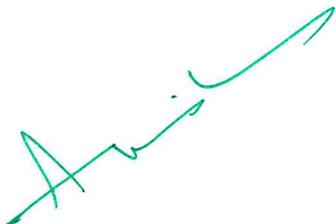
RESOLVED FURTHER THAT pursuant to the reduction of share capital of the Company from 1,57,26,630/- (Rupees One Crore Fifty Seven Lakhs Twenty Six Thousand Six Hundred and Thirty only) to Rs.1,04,31,730/- (Rupees One Crore Four Lakhs Thirty One Thousand Seven Hundred and Thirty only), Rs.39,99,76,746/- (Rupees Thirty Nine Crores Ninetynine Lakhs Seventy Six Thousand Seven Hundred and Fortysix only) being Rs.7,554/- (Rupees Seven Thousand Five Hundred and Fifty four only) per Series B Compulsorily Convertible Preference Shares cancelled, be returned to the preference shareholders.

RESOLVED FURTHER THAT pursuant to Section 52 read with Section 66 of the Companies Act, 2013, and subject to the confirmation by the National Company Law Tribunal the securities premium account of the Company be reduced from Rs.39,63,00,615/- (Rupees Thirty Nine Crores Sixty Three Lakhs and Six Hundred Fifteen only) to Rs.16,18,769/- (Rupees Sixteen Lakhs Eighteen Thousand Seven Hundred and Sixty Nine only) pursuant to utilizations of a sum of Rs.39,46,81,846/- (Rupees Thirty Nine Crores Forty Six Lakhs Eightyone Thousand Eight Hundred and Forty Six only) for payment to the shareholders upon cancellation of 52,949 Series B Compulsorily Convertible Preference Shares.

RESOLVED FURTHER THAT any member of the Board of Directors or such other person as may be identified by them for this purpose, acting severally, be and is hereby authorised to take such other steps as may be necessary to give effect to above resolutions.”

Be and same is hereby **CONFIRMED**.

That the minute set forth hereto be and is hereby approved.



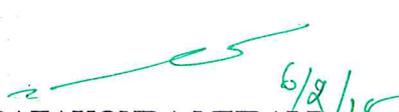

That the certified copy of this Order including the minute as approved be delivered to the Registrar of Companies within thirty days of receipt of the Order.

The Notice of Reduction of paid-up Equity- Share Capital shall be published by the Registrar of Companies, Karnataka, in two newspapers namely i.e. "The Hindu-Bangalore Edition" in English Language and Kannada Daily "Udayavani-Bangalore Edition" both having circulation in Bangalore within 30 days of registration.

FORM OF MINUTE

The paid-up equity share capital of **ACE CREATIVE LEARNING PRIVATE LIMITED**, henceforth is Rs.1,04,31,730/- (Rupees One Crore Four Lakhs Thirty One Thousand Seven Hundred and Thirty only) divided into 102,663 (one lakh two thousand six hundred and sixty three) Equity Shares of Rs 10/- (Rupees ten only) and 60,600 (Sixty thousand six hundred) Series-A Compulsorily convertible preference share capital of Rs 100/- (Rupees One Hundred only) each and 33,451 (Thirty three thousand four hundred and fifty one) Series B Compulsorily convertible preference share capital of Rs 100/- (Rupees One Hundred only) each reduced from Rs 1,57,26,630/- (Rupees one crore fifty seven lakhs twenty six thousand six hundred and thirty only) divided into 102,663 equity shares of Rs 10/- (Rupees ten only) and 60,600 Series A Compulsorily Convertible Preference Shares capital of Rs 100/- (Rupees one Hundred only) each and 86,400 Series B Compulsorily Convertible Preference Share capital of Rs 100/- (Rupees One hundred only) each fully paid up. The Securities Premium Account of the company will be reduced from Rs 39,63,00,615/- (Rupees Thirty Nine Crores Sixty Three Lakhs and Six Hundred and Fifteen only) to Rs 16,18,769/- (Rupees Sixteen lakhs eighteen thousand seven hundred and sixty nine only).


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL