

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI.

CP No. 141/66/NCLT/MB/MAH/2017

In the matter of Section 100 to 104 of the Companies Act, 1956

AND

IN THE MATTER OF M/S. FUNCTION SPACE LABS PRIVATE LIMITED

CORAM : SHRI M.K. SHRAWAT
Member (Judicial)

M/s. Function Space Labs Pvt. Ltd. : Petitioner.

Represented By :

Mr. Hemant Sethi, i/b Hemant Sethi & Co., Advocate for Petitioner

Date of Order : 22.06.2017

1. That the Petition under consideration is transferred from the Hon'ble High Court, now listed for hearing before NCLT, Mumbai Bench, moved under section 100 to 104 of the Companies Act 1956 seeking permission for reduction of Share Capital. Pursuant to the special resolution passed by the members of the Petitioner Company on 20th of July 2016 in terms of section 100 of the Act, the Petitioner Company proposes to reduce its existing issued, subscribed and paid up equity share capital of Rs.68,010 (consisting of 6801 equity shares of Rs.10/- each fully paid up be reduced to Rs.40/- (consisting of 4 issued, subscribed and paid-up equity shares of Rs.10/- each fully paid up) and that such reduction be effected by cancelling and extinguishing 6,797 issued, subscribed and paid up equity shares of Rs.10/- each fully paid up which are held by the Nexus Venturs III Ltd in exchange for cash consideration of Rs.7120/- per share amounting to Rs.4,83,94,640/-. Such consideration has been arrived in accordance with the valuation done by the Chartered Accountant as prescribed under the Indian exchange control regulations.
2. At the outset Learned Representative Mr. Hemant Sethi, Advocate appearing on behalf of the Petitioner has stated that vide an order of 2nd December 2016 in the case of the Petitioner listed as Company Summons for Direction No.918 of 2016 held as under:-

"Upon the Application of above named Company by a Summons for Directions AND UPON HEARING Mr. Hemant Sethi, i/b Hemant Sethi & Co. Advocates for the Applicant Company AND UPON reading the Affidavit dated 23rd day of September, 2016 of Mr. Sandeep Shiamsunder Singhal, Director, of the Applicant Company AND Article 44 and 75 of the Articles of Association of the Applicant Company which empowers the

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Applicant Company to reduce its equity shares in any manner AND the Applicant Company having passed a Special Resolution with requisite majority at its Extra Ordinary General Meeting held on 20th July 2016 that the Company's issued, subscribed and paid up equity share capital of Rs.68,010/- (consisting of 6801 equity shares of Rs.10/- each fully paid up to be reduced to Rs.40/- (consisting of 4 issued, subscribed and paid-up equity shares of Rs.10/- each fully paid up) and that such reduction be effected by canceling and extinguishing 6,797 issued, subscribed and paid up equity shares of Rs.10/- each fully paid up which are held by Investor Shareholders (as defined in the Articles of Association), for cash consideration of Rs.4,83,94,640/- at a price of Rs.7,120/- per share AND in view of the averments made in paragraphs 17 and 18 of the Affidavit in support of Company Summons for Direction, inter alia stating that there are no secured creditors in the Applicant Company and that the proposed reduction would not in any way adversely affect the interests of any of the Applicant Company's unsecured creditors or the operations of the Applicant Company in the ordinary course of its business and that no compromise or arrangement is called for with any of the unsecured creditors of the Applicant Company as there is no reduction in the amount payable to any of the unsecured creditors of the Applicant Company. The procedure prescribed under Section 101(2) of the Companies Act, 1956 is dispensed with."

3. The Learned Representative has also furnished a letter on behalf of the unsecured creditor dated 20th of March 2017 wherein it was declared "No Objection" as under:-

"Subject: Reduction of Share Capital of Function Space Labs Private Limited under Section 66 of the Companies Act, 2013 ("Proposed Reduction")

We are the unsecured creditor of Function Space Labs Private Limited ("The Company"). We have an amount of Rs.12,807/- due as the unsecured creditor of the Company as on 20th March, 2017. We have received all the relevant information and documents related to proposed capital reduction of the Company pursuant to the provisions of Section 66 of the Companies Act, 2013 as approved by the respective Board of Directors of the Company ("Proposed Reduction").

We hereby confirm that we fully support the Proposed Reduction and every step, which may be taken by the Company, its directors, its members or authorized representatives for implementation of the Proposed Reduction. We also convey "no-objection" to the Company for the approval of the Proposed Reduction by the Hon'ble National Company Law Tribunal, Mumbai Bench.

Kindly treat this letter as our consent and agreement to the proposed reduction for the purpose of section 66 of the Companies Act, 2013 and any modification(s) that may be made therein by the Hon'ble National Company Law Tribunal, Mumbai Bench.

We hereby waive our right to receive notice of any meeting of unsecured creditors and proceeding before the Hon'ble National Company Law Tribunal, Mumbai Bench for obtaining sanction to the Proposed Reduction since we are fully supportive to the Proposed Reduction and its implementation."

4. Learned Representative has also placed on record a certificate of the Chartered Accountant Pavan Goyal & Associates dated 20-03-2017 wherein it is certified that as on 20th March 2017 the Company had outstanding balance of Rs.12,807/- only. No objection is on record discussed above. In the light of the above it is pleaded by the Learned Representative that the Petition be decided on the lines of the observation of the Hon'ble High Court.
5. Having heard the submissions and on due consideration of the facts that the Hon'ble High Court has already dispensed with the procedure prescribed under

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section 101(2) of the Companies Act 1956, the Petition stood allowed. Disposed of accordingly. To be consigned to records.

Date :22-06-2017.

Sd/-
M.K. SHRAWAT
Member (Judicial)