

**NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD BENCH**

(Company Petition No. 4/ALD of 2017)

Under Sections 66 of Companies Act, 2013 and Rules thereunder)

In the matter of :-

The Companies Act 2013, Including any Statutory Modification  
Or re-enactments thereof for the time being in force and including  
Rules thereunder

AND

In the matter of

Petition for reduction of share capital

In the matter of

Galaxy Square Private Limited

(CIN No. U99999UP1980PTC075285

A private Limited Company incorporated

Under the Companies Act, 1965 having

Its registered office at A-44-45, Sector-62,

Noida, Gautam Road, Buddha Nagar, UP-201309, India.

..... Petitioner Company

**Present:**

***Shri Saubhagya Agrawal, Advocate for petitioner***

***Shri M.K. Bagri, OL for Central Govt.***

**ORDER**

***(As per Harihar P. Chaturvedi, Member J.)***

The present company petition is filed under Section 66 of the Companies Act 2013 & rules made thereunder whereby the petitioner company has sought for



relief as stated in its prayer clause. For confirmation of its special resolution passed in its EOGM 19.8.2016 for reduction of the authorised capital of the company.

The petitioner company in para 7 of its company petition has stated the reason for reduction of its capital stating inter alia that the proposed reduction intends to carry out the reduction of capital by paying off/ returning to the holders of 21,701 Class A equity shares of INR 100 each, at a price of INR 23,040 per Class A equity share which amounting to INR 499,991,040/- thereby extinguishing and proportionate cancellation of all such share as pleaded in the present company petition. The company in support of its proposal has duly sent notices along with Explanatory note/statements (under Section 102 of the Companies Act ,2013) on August 17, 2016 to its Equity Shareholders, Preference Shareholders and gave proper justification for proposed reduction of its share capital.

It is also stated that in Board of Directors meeting held on 17.8.2016 has also approved the proposal for reduction of company's share capital the provision of Section 66 of the Companies Act,2013. That apart the company duly convened its Extraordinary General Meeting on August 19, 2016 of its Equity Shareholders, Preference Shareholder by its special resolution unanimously approved the proposed reduction of share capital in the company which is incorporated in Para 8 ( at page 11 to 15) of the present petition. It is also stated that all (four) equity and (1) preference shareholder were present in the meeting held on 19.8.2016 through their authorised representative and in their presence only the above mentioned resolution has been passed.






Pursuant thereto the Company duly filed necessary Form MGT-14 with the Registrar of Companies, in respect of the Special Resolution of its Shareholders passed in its Extraordinary General Meeting.

It is contended that the proposed reduction in share capital would result in the outflow of INR 49,99,91,040/- but it does not involve diminution of any liability in respect of unpaid capital nor the proposed adjustment would in any way adversely affect the ordinary operations of the petitioner company or to the ability of petitioner company to honour its commitments or to pay its debts in the normal course of business. Consequently the proposed reduction will not affect the rights of its creditors of the petitioner company.

It is also reported that all the secured creditors constituting the number and value of the petitioner company have given their separate consents in writing in favour of proposed reduction of capital and also expressed their no objection to dispense with holding of meeting of secured creditors. Similarly, it is stated that among 46 unsecured creditors of the company 18 amounting 94% of the debts in value have also agreed for reduction of share capital and expressed their no objection to dispense with the holding of meeting of unsecured creditors. It is also submitted that share of the petitioner company are not listed any Stock Exchange. That apart the company petitioner did not receive any deposits from public in general therefore the proposed reduction of capital will not prejudicially affect the interest of its Shareholders, Creditors and its depositors. It is also submitted that proposed reduction of capital is not intended in any manner to have any beneficial effect on the material interest if any, of directors of the company except to the extent of their shareholding. Therefore, the reason stated above and facts and






circumstances of the present company petition has prayed for approval of Forms of minutes of the proposed reduction of capital which is set out in details in Paragraph 11 of the present petition. The same is proposed to be filed before the Registrar of Companies by the petitioner companies under Section 66 of the Companies Act. I have for it needs to be confirmed by this tribunal. Further it is submitted that present petition is made bonafidely to secure the end of justice before this tribunal therefore prayer is made for issue of necessary direction as stated in the prayer clause A to D of the present company petition. For the sake of convenience of the relevant para 11, and prayer clause of the company petitioner reproduced herein below:-

Form of minute proposed to be registered under Section 66 (5) of the Companies Act, 2013 is as follows:

*“ The Paid up equity share capital of Galaxy Square Private Limited is henceforth 107,59,400 (Rupees One Crore Seven Lakh Fifty Nine Thousand and Four Hundred only) divided into 107,594 (One Lakh Seven Thousand and Five Hundred and Ninety Four ) class A equity shares of INR 100 (Rupees One Hundred only) each reduced from INR 129,29,500 (Rupees One Crore Twenty Nine Lakhs Twenty Nine Thousand and Five Hundred only) divided into 129,295 (One Lakh Twenty Nine Thousand Two Hundred and Ninety Five) class A equity shares of INR 100 (Rupees One Hundred only) each. At the time of registration of this minute 1,29,295 Class A equity shares of INR 100 each are issued and fully paid.”*





**PRAYER CLAUSE:-**

**PRAYER**

That in the circumstances aforesaid, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- A confirm the reduction/cancellation of the issued and paid up equity share capital as approved by the petitioner company in terms of the special resolution passed by the equity and preference shareholders at the Extraordinary General Meeting held on August 19, 2016.
- B Pass necessary directions for:
  - (i) Dispensing with the meetings of the Equity Shareholders of Galaxy Square Private Limited on the ground that consent letters of all the shareholders are available on record.
  - (ii) Dispensing with the meetings of the secured creditors of Galaxy Square Private Limited on the ground that all the secured creditors have given their consent.
  - (iii) Dispensing with the meetings of the unsecured creditors of Galaxy Square Private Limited on the ground that written consents have been obtained from the unsecured creditors constituting approximately 94% in value of the total unsecured creditors.
- (C) Approve the Form of Minutes under Section 66 (5) of the Companies Act, 2013, as set out in paragraph 11 herein above, proposed to be filed with the Registrar of Companies, Kanpur;






- (D) Dispense with the formality of words "And Reduced" while describing the capital structure of company while confirming the proposed reduction of share capital;
- (E) Pass such order and further order/orders or directions in the matter as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

The Central Government through office of the RD/ ROC and by his representation affidavit dated 28.02.2017, has stated (in Para 7 of the said affidavit) that its office is inclined to accept the report of Registrar of Companies having no objection to the sanction of the proposed reduction of capital, however subject to certain observation made (in para 1 to 7) of the affidavit which need to be considered while confirming the resolution and sanction of the proposed reduction in the authorised capital of the companies.

The Regional Director submits (in the affidavit) that petitioner company provided details of its foreign/non-resident interest by furnishing particulars therefore the company may be directed to comply with the applicable provisions of FEMA and RBI. It is also pointed out that in Para 3 (of his affidavit) that reduction in share capital of the petitioner company is therefore being proposed in order to modify its debt-equity ratio and thereby to improve the return on equity capital of the petitioner company. Such aspect to be looked into while considering the sanction of the proposed reduction of the authorised capital of the company.

We have heard the submission of the Learned Counsel for the petitioner company Mr. Saubhagya Agrawal and Shri M.K. Bagri, the OL representing the office of the RD and have gone through the contents of the present petition..





It is submitted that except the observation made by the Regional Director in its affidavit there are no adverse material from the office of the RD & ROC that goes against the company in respect of the proposed reduction of share capital.

Having examining the contents of petition read with documents annexed therewith and by perusal of the affidavit of the Regional Director we find that the present proposal of the company for reduction/cancellation of issued and paid up capital equity share has been approved through a special resolution passed by the equity, preference shareholder in its Extraordinary General Meeting. Further it has been duly consented by its secured and unsecured creditors. Hence it seems to be reasonable and proper it does not seem to be contrary to the public policy or affecting prejudicially to the interest of shareholders creditors of the company nor detrimental to the interest of the public at large (i.e depositors). Therefore we feel that present company petition deserved to be allowed. Hence is allowed. Consequent prayer made in the prayer clause (A) to (E) is made absolute.

In the result the special resolution of the shareholders of the petitioner company in its Extraordinary General Meeting dated 19.8.2016 and duly consented by its Secured and Unsecured Creditors and the text of special resolution which has been stated in Para 8 and forms of minutes as proposed as incorporated in Para 11 of the company petition is hereby approved and confirmed.

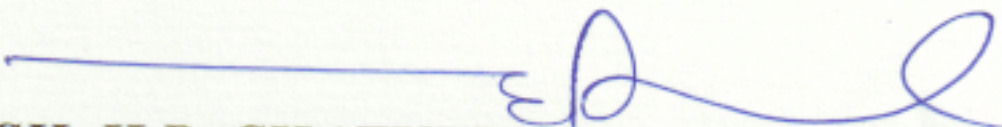
The petitioner to file certified copy of this order along with authentic minutes of the Company's Meeting under section 66 (5) of the Companies Act 2013 before the Registrar of Companies, Kanpur. The petitioner is also directed to file a copy of the draft order in the prescribed format to the Registrar of <sup>this</sup> tribunal for the purpose of scrutiny and authentication by the register of this Tribunal. The parties



may act upon as per the authenticated copy of this order read with order passed in prescribed format for the purpose of taking follow up action.

A cost of Rs. 20,000/- awarded to the Central Government towards legal expenses incurred which are payable within 30 days from the date of receipt of the authenticated copy. Consequently, the petition is allowed and stand disposed of.

Date:-28.4.2017

  
**SH. H.P. CHATURVEDI (Judicial Member)**

28/04/2017