

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

Arguments heard on 24.04.2017

Orders passed on 28.04.2017

C.P.No.20 of 2017

(Under Section 66(1) r/w Section 52 of the Companies Act, 2013)

In the matter of Scheme of Arrangement of Amalgamation
Of

M/s.Cloudcherry Analytics Private Limited
And

Their Members/Shareholders

Represented by : Counsel Mr. K.Ramasamy

CORAM

ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ,
MEMBERS (JUDICIAL)

ORDER

CH MOHD SHARIEF TARIQ, MEMBER(JUDICIAL) :- (ORAL)

1. Under adjudication is C.P.No.20 of 2017 that has been filed under Section 66(1) r/w Section 52 of the Companies Act, 2013 by the petitioner company viz. M/s.Cloudcherry Analytics Private Limited. The company was incorporated on 07.02.2014 under the Companies Act, 1956, having its CIN: U72900TN2014PTC094906. The registered office of the petitioner Company is located at No.4/462, First floor, Swaminathan Nagar, Third Main Road, Kottivakkam, Chennai-600041.

2. The details of share capital of the petitioner company are as follows:

Particulars	Amount
Authorised share capital	Rs.1,00,00,000
1,00,000 Equity shares of Rs. 10/- each	Rs. 10,00,000
90,000 Preference shares of Rs.100/- each	Rs. 90,00,000
Issued, subscribed and fully paid up share capital	Rs. 88,19,760
10,106 Equity Shares of Rs.10/- each	Rs. 1,01,060
83,000 Redeemable Preference Shares of Rs.100/- each	Rs. 83,00,000
4,187 Compulsorily Convertible Preference Shares of Rs.100/- each	Rs. 4,18,7000

3. The objects of the Company, among other things, include carrying on business of management consultation and providing solutions in business analytics using Information and Technology products and tools and other techniques; offer computer/software based solutions and execute consultancy in project management, corporate planning, organisation and method study, computer appliances, operation research, personnel management and recruitment; conduct research and development in business analytics, business development, market research, consumer satisfaction and feedback or any and to use them for various types of business organisations, etc.

4. The petitioner company has thought it fit to reduce its share capital as the current capital seems to be in excess of the requirements of the entity. So, the company has contemplated to return the capital available in excess of the requirement of the company to the holders of

Compulsorily Convertible Preference Shares (for short CCPS) to the extent of shares they held, by resorting to capital reduction.

5. The applicant company declared that this exercise is purely a domestic matter and within the powers of the company and its members to consider and pass a resolution to reduce its share capital and securities premium account. Further, it is not violative of any provisions of the Companies Act, 2013. It has been declared that no winding up proceedings and no investigation under sections 235 to 251 of the Companies Act, 1956 or any other applicable provisions of the Companies Act, 2013 are pending against the company.

6. The detailed reasons for the reduction of the share capital under Section 66 have been given in the petition. The meeting of the Board of Directors has been convened on 24.11.2016 wherein it has been resolved to approve the reduction of 4,187 Compulsorily Convertible Preference Shares of Rs.100/- each held by the CCP shareholders at a premium of INR 10,539.77 and paying a consideration of INR 4,45,48,717 at a price of INR 10,639.77 per share (including a premium of INR 10,539.77 per share), by the company to the holders for the said reduction of CCPS capital, subject to payment of taxes as may be applicable. It has been mentioned that the return of paid up capital does not in any manner adversely affect or prejudice the interest of the shareholders or public at large.

7. The certificate [placed at Page 130 Annexure-L] issued by Mr.K.M.Sukumaran, Chartered Accountant shows that the reduction of capital is in conformity with the accounting standards specified in Section 133 of the Act r/w the Rule 7 of Companies (Accounts) Rule, 2014 and other general accepted Accounting Principles. Another certificate issued by the Chartered Accountant confirms that there are no creditors which is placed at Page 127 of the petition.

8. On perusal of the pleadings and considering the submissions made, we order to dispense with the requirement to follow the procedure laid down under Section 66(2) read with Section 66(3) of the Companies Act, 2013 read with the National Company Law Tribunal (Procedure for Reduction of Share Capital) Rules, 2016 for the reason that there are neither secured nor unsecured creditors.

9. In the light of the above stated facts and the provisions of the Companies Act, 2013, we direct the Registry to issue notice to the Regional Director, Ministry of Corporate Affairs and ROC concerned. If the authorities are desirous of making any objection/representation, if any, may do so within three months from the date of receipt of the notice. In case no objection/representation is not received, it shall be presumed that they do not have any objection/representation to the arrangement. There is no requirement to issue notice to SEBI, as the petitioner company is not a listed company.

10. The company is directed to effect newspaper publication of the notice as prescribed, within seven days from the date, the order of this Bench is uploaded in the website of NCLT, one in English "Business Standard" (All India edition) and the other in the regional vernacular "Malai Malar" (Chennai edition) having wider circulation in the State of Tamilnadu and upload the notice on the website of the company, besides placing on the notice board at its Registered Office. The next date of hearing is **04th August, 2017 at 10.30 A.M.**


ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)


CH. MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)