

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCHAT HYDERABAD**

CA(CAA)No.25/230/HDB/2017

Date of Order: 09.05.2017

M/s SPI Cinemas Private Limited
Having registered office at
II Floor, 3rd Cross, Central Avenue,
Magunta Layout,
Nellore – 524 003.

.... Applicant Company

Parties Present:

Counsel for the Applicant:

Mr. V.S. Raju & Mr. V.B. Raju

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)



**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

ORDER

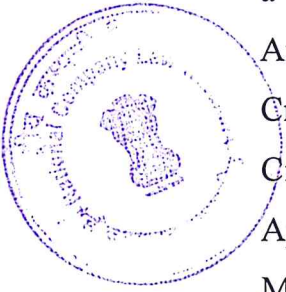
(As per Rajeswara Rao Vittanala, Member (J))

- I. The Company Application bearing CA(CAA)No.25/230/HDB/2017 (referred to as Company application hereinafter) is filed by M/s SPI Cinemas Private Limited, under Sections 230 and other applicable provisions of the Companies Act, 2013 by seeking the following reliefs:
 - a) To dispense with the meeting of the Equity Shareholders and Secured Creditors.
 - b) To convene the meeting of the Unsecured Creditors of the Applicant Company at the registered office of the Company or any other place as may be directed for consideration of the proposed scheme.
 - c) To appoint a Chairperson for convening the conducting the meeting of the Unsecured Creditors:
 - i. That the quorum be fixed as 15 (fifteen) Creditors personally present in the meeting.
 - ii. The Creditors be permitted to exercise their vote at the said meeting either in person or through proxies.

- iii. As to the manner of giving the notices of the said meeting, it is sufficient to serve the notices on the Unsecured/Trade Creditors of the Applicant Company by Ordinary Post.
- iv. That the advertisement be directed to be published once in English Edition of "The Indian Express", Nellore Edition and once in Telugu Edition of "Andhra Jyothi", Nellore Edition.
- v. As for the time for the Chairperson of the meeting to file their report to the Hon'ble Tribunal of the result of the meeting, the time be fixed as 10 days from the date of the said meeting.

2. Brief contentions as raised in the Company application is as under:

a) M/s SPI Cinemas Private Limited (Applicant Company) was incorporated as a Private Limited Company under the Companies Act, 1956 in the State of Andhra Pradesh on 30.09.1991 under the name of M/s Chayalakshmi Creations Private Limited. Subsequently, the name was changed to M/s SPI Cinemas Private Limited on 18.03.2009. The Registered Office of the Applicant Company is situated at II Floor, 3rd Cross, Central Avenue, Magunta Layout, Nellore – 524003, Andhra Pradesh.



- b) The main objects and nature of business of the Transferee Company, in brief, as set out in the Memorandum of Association, are as follows:-
- (i) To produce, distribute and exhibit motion pictures of all kinds. In any languages Indian and foreign including feature films, commercials, advertisements, commercial ads jingly and sports documentaries. Educational pictures and audio visual pictures, and slides in all branches and fields through all professes that may be discovered or offered from time to time resulting in Cinematographic films, television films, cartoon films, silent or talking, sound producing, synchronized, stereophonic, colored and bioscope film and computer animation and related productions.
 - (ii) To carry on the business of cine developer and printer, reduction and blow-up services of all varieties of films and undertake all cine laboratory services including motion picture editing, titling, recording

and dubbing, sound processing, printing and duplicating in all sizes, including digital techniques.

- (iii) To educate, train employ, bring up, enter into agreement with films directors, technicians, engineers, sound experts, cameraman, musicians, art directors, actors, actresses and other persons for the purpose of production, exhibition, display of films, dramatic or performances of all kinds or otherwise.
- (iv) To carry on as owners and/or lessees of film theatres/multiplexes/studios with recreation centers, amusements parks, shopping arcades, video game centres, bowling alleys, recording theatres, preview theatres including providing facilities in all its branches of entertainment and to create and develop infrastructure facilities, erecting and running of theatres/multiplexes/studios for exhibiting films and for musical performance and to give such studios or theatres either on lease or on rent, either alone or in partnership with individuals and/or bodies.
- (v) To engage in the field of education in all of its forms and types and also undertake social welfare measures, environment protection initiatives, develop concept of healthy living in society in general and promote and implement the same for betterment of living of all sections of the society and for this purpose set up institutions, centres and the like etc.

c) At present the applicant Company is engaged in the business of production, distribution and exhibition of film and movies etc.

d) The authorized, issued, subscribed and paid-up share capital of the Applicant Company as on 31.03.2016 is as under:

Particulars	Rupees
Authorised Share Capital	
13,00,000 Equity Shares of Rs.100/- each	13,00,00,000
Total	13,00,00,000
Issued, Subscribed and Paid-up Share Capital	
6,92,770 equity shares of Rs.100/- each	6,92,77,000
Total	6,92,77,000



Subsequent to the 31.03.2016 there has been no change in the capital structure of the Applicant Company.

3. It is stated that as part of internal reorganization and restructuring of the share capital structure of the Applicant Company and with a view to return funds which are in excess of wants of the Company, the Scheme of Arrangement will benefit the Applicant Company and their shareholders. The rationale and reasons for the proposed Scheme of Arrangement, inter alia, are summarized below:-

- i. Reduce and cancel 3,82,100 equity shares of Rs.100/- each (cancelled shares) at a face value of Rs.100/- per share (Face Value Amount).
- ii. Revise the face value of balance 3,10,670 equity shares from Rs.100/- each to Rs.10/- each and credit the balance Rs.90/- per equity shares to the Securities Premium account.
- iii. Of the total Reduced Shares, 3,44,000 equity shares of Rs.100/- each comprise the entire investment of M/s Samayanallur Power Investments Private Limited ("SPIPL") and the balance 38,100 equity shares of Rs.100/- each comprise a portion of investment of Mr. S.V. Swaroop Reddy which cumulatively represent 55.16% of the paid-up share capital of the Company. This could facilitate and provide SPIPL and Mr. Swaroop Reddy liquidity for their investments and also return funds which are in excess of wants of the Company.
- iv. Further, the Capital Reduction is not only expected to provide SPIRL and exit option and liquidity of Mr. S.V. Awaroop Reddy, but also expected to benefit the continuing shareholders by:
 - a) Reducing the outstanding number of shares and consequently increase Earnings Per Share over a period of time and enhance long term value creation;
 - b) Making the Balance Sheet leaner and more impressive by improvement of key ratios like Return on Net Worth, Return on Assets etc.
 - c) The revision of face value of the Balance Shares as defined in the Scheme would also benefit the Company and its continuing shareholders by improving the Return on Equity and also benefit the Company in




terms of any future plans to attract fresh investment or undertake an Initial Public Offer through the stock exchanges.

In view of the above benefits, the proposed arrangement would result in an enhanced shareholder value.

4. It is stated that in view of the aforesaid advantages, the Board of Directors of the Applicant Company vide its meeting dated 20.03.2017 approved the Scheme of Arrangement between the Applicant Company and their Shareholders & Creditors.
5. Some of the salient / material features of the proposed Scheme are as under:

- a) With effect from the Appointed Date, 3,82,100 equity shares of Rs.100/- each representing the Cancelled Shares shall be reduced thereby cancelling 3,44,000 equity shares of Rs.100/- each held by SPIPL and 38,100 equity shares of Rs.100/- each held by Mr. S.V. Swaroop Reddy as detailed below:-



Name of the Shareholder	Share Certificate Number	Distinctive Numbers		Number of shares
		From	To	
Samayanallur Power Investments Private Limited	13	237021	372020	135000
Samayanallur Power Investments Private Limited	32	372021	581020	209000
S.V. Swaroop Reddy	16	11	13	3
S.V. Swaroop Reddy	18	17	18	2
S.V. Swaroop Reddy	19	19	20	2
S.V. Swaroop Reddy	37	581021	619113	38093
		Total number of shares		382100

The cancelled shares shall stand cancelled on payment of consideration of Rs.100/- per equity share.

With effect from the Appointed Date as per the Scheme, the face value of Balance Shares amounting to 3,10,670 equity shares, being 2,79,480 equity shares held by M/s SS Theatres LLP; 31,177 equity shares held by Mr. S.V.

Swaroop Reddy, and balance by individual shareholders shall stand revised from Rs.100/- per equity share to Rs.10/- per equity share.

The revision in the face value of the Balance Shares i.e. the difference between Rs.100/- and Rs.10/-, being Rs.90/- per equity share, amounting to Rs.2,79,60,300 shall be credited to the Securities Premium Account of the Company and disclosed as Shareholder's funds in the liabilities side of the Balance Sheet of the Company.

With effect from the Appointed Date as per the Scheme, the equity share capital structure of the Company upon reduction, cancellation and revision I face value as aforementioned shall stand at Rs.31,06,700/- being 3,10,670 equity shares of Rs.10/- each.

b) Effect on the Shareholders:

On sanction of the Scheme by the NCLT, the liability to pay the shareholders will accrue on the Appointed Date, though the shareholders shall be actually paid the consideration due to them respectively, without any further application, act or deed by the shareholder. All such payments will be made through Authorized banking channels and sent to the registered address of the equity shareholders.

The company shall pay the said Consideration as enumerated in Clause 3.7 of the Scheme, by way of transfer to an authorized bank account of the respective equity shareholders on the day of filing of the order of the NCLT with the Registrar.

The Balance Shares held by the continuing shareholders shall have a face value of Rs 10/- per share. It is clarified that the revision of face value does not result in any distribution of assets from the Company to the shareholders holding the Balance Shares.



c) Cancellation and Re-issue of share certificates:

On payment of consideration, the shareholders holding the Cancelled Shares shall furnish to the Company, the share certificates representing the Cancelled Shares and the same shall be cancelled by the Company.

Where only a part of the shares represented in a share certificate are to be reduced, the Company shall provide to the shareholders, a new certificate representing the balance shares held by them and representing the revised face value of Rs 10/- per share.

The share certificates representing the Balance Shares shall be tendered to the Company by the continuing shares and the Company shall re-issue the share certificates to such continuing shareholders reflecting the revised face value of Balance Shares of Rs 10/- each.



The cancellation and re-issue of share certificates and issue of fresh certificates as per para 7.2 and 7.3 of the Scheme shall be deemed to be in compliance with the provisions of sections 46 of the Companies Act, 2013 read with Companies (Share Capital and Debentures) Rules 2014.

d) Accounting Treatment:

On the Scheme of Arrangement for Reduction of Share Capital becoming effective from the Appointed Date, the issued subscribed and paid up equity share capital of the Company shall be accounted by cancelling the share capital i.e. be reduced from Rs.6,92,77,000/- to Rs.3,10,67,000/-.

On the Scheme of Arrangement for Reconstruction of Share Capital becoming effective from the Appointed Date, the issued subscribed and paid up equity share capital of the Company shall be accounted by revising the share capital i.e. be revised from Rs.3,10,67,000/- to Rs.31,06,700/-.

While an amount of Rs.3,82,10,000/- shall be reduced from the bank account of the Company as represented in the asset side of its balance sheet representing the consideration paid for the Cancelled Shares, an amount of Rs 2,79,60,300/- shall be credited to the Securities Premium Account of the Company

representing the capital reduced on the Balance Shares and disclosed under Shareholder's Funds in the liabilities side of the Company's Balance Sheet.

e) **Compliance with Section 66 of the Act:**

The sanction of the Scheme of Arrangement resulting in the reduction of the issued, subscribed and paid-up share capital of the Company as above shall be deemed to be in accordance with and compliance with the provisions of Section 66 of the Act without any further application, act or deed required by the Company or its shareholders.

f) **Conduct of Business:**

Save and except as expressly provided in this Scheme, nothing contained in this Scheme of Arrangement shall affect the conduct of business of the Company and/or any contract, deed, bond, agreement and other instrument of whatsoever nature to which the Company is a party and which is subsisting or having effect on the Effective Date and shall remain in full force in effect against or in favour of the Company and may be enforced fully and effectively.

Further, all legal or other proceeding pending on the Effective Date by or against the Company shall not be affected by reason of the Scheme of Arrangement and the same may be continued, prosecuted and enforced by or against the Company in the same manner and to the same extent as it would or might have been continued, prosecuted or enforced against the Company as if the Scheme had not been made.

g) **General Terms and Conditions**

i. **Application to the National Company Law Tribunal**

The Company shall, with reasonable dispatch, apply to the NCLT for necessary orders or directions for holding or dispensing with the meetings of the members (and creditors, if necessary) of the Company and for sanctioning this Scheme under Sec. 230 and other applicable



provisions of the Act for carrying this Scheme into effect from the Appointed Date.

ii. Notice to Statutory Authorities:

The notice to the statutory authorities such as Registrar of Companies, Income-tax authorities etc shall be sent forthwith, after the notice is sent to the members or creditors of the company, inviting representation if any on the Scheme of Arrangement of Reduction of Share Capital.

The Company shall comply with the requirements of provisions of subsection (5) of section 230 of the Act and Rules made there under.

iii. Modifications/Amendments to the Scheme

The Company through their Boards of Directors including Committees of Directors or other persons, duly authorised by the Board in this regard, may make, or assent to, any alteration or modification to this Scheme or to any conditions or limitations, which the NCLT may deem fit to direct, approve or impose.

If any Part or provision of this Scheme hereof is invalid, ruled illegal by the NCLT of competent jurisdiction, or unenforceable under present or future laws, then it is the intention of the Parties that such Part or provision, as the case may be, shall be severable from the remainder of the Scheme, and the Scheme shall not be affected thereby, unless the deletion of such Part or provision, as the case may be, shall cause this Scheme to become materially adverse to any Party, in which case the Parties shall attempt to bring about a modification in the Scheme, as will best preserve for the Parties the benefits and obligations of the Scheme, including but not limited to such Part or provision.

iv. Date of taking effect:

The Scheme set out herein in its present form approved, imposed or directed by the NCLT shall be effective from the Appointed Date.



v. Scheme Conditional on Approvals/Sanctions:

This Scheme is conditional on and subject to –

- a) The sanction or approval under any law of the Central Government, State Government, or any other agency, department or authorities concerned being obtained and granted in respect of any of the matters in respect of which such sanction or approval is required.
- b) The compliance of the provisions of section 230 of the Act and the Rules as may be applicable.
- c) The Scheme being agreed to by the respective requisite majorities of the members and creditors of the Company as per the provisions of Section 230 of the Act.

vi. Effect of non-receipt of confirmation/sanctions:

In the event of the Scheme not being sanctioned by the NCLT and/or the Order or Orders not being passed as aforesaid, the Scheme shall become fully null and void and in that event no rights and liabilities shall accrue to or be inter-se by the parties in terms of the Scheme, save and except in respect of any act or deed done prior thereto as is contemplated hereunder or as to any rights and/ or liabilities which might have arisen or accrued pursuant thereto and which shall be governed and be preserved or worked out as is specifically provided in the Scheme or as may otherwise arise in law. In such event, each party shall bear and pay its respective costs, charges and expenses for and / or in connection with the Scheme.

vii. Expenses connected with the Scheme:

All costs, charges, levies, fees, duties and expenses in relation to or in connection with negotiations leading up to the Scheme and of carrying out and completing the terms and provisions of this Scheme and in relation to or in connection with the Scheme shall be borne and paid by the Company.



6. It is stated that no investigation or proceedings have been instituted or are pending against the Applicant Company. It is further stated that the Applicant Company is an unlisted Company.
7. It is stated that there are 7 (seven) Shareholders in the Applicant Company and out of which 5 shareholders constituting more than 99% have given their consent by way of an affidavit to the proposed scheme of Arrangement. There is only 1 (one) secured creditor viz. HDFC Bank, Chennai and it has given no objection for the scheme. There are 187 Unsecured/Trade creditors in the Applicant Company.
8. I have heard Mr. V.S. Raju & Mr. V.B. Raju, learned Counsels for Applicant Company and have carefully considered the proposed scheme of Arrangement along with relevant pleadings made in the present application and relevant Sections/Rules as provided in the Companies Act, 2013 and NCLT Rules, 2016, which confers powers on this Tribunal.
9. As stated briefly stated supra, the proposed scheme of Arrangement is initiated by the Board of Directors for good and sufficient reasons for the benefit of all stake holders of Companies involved in the Scheme in question and also for the benefit of Companies involved. The proposed scheme contains all precautions so as to protect interests of all parties concerned and all the public interest in general. In any case, stake holders of Companies involved are ultimate masters for approving or not any scheme, however, subject to fulfilment of relevant provisions of Companies, 2013 and NCLT Rules, 2016. The scheme prima facie shows it is for the benefit of all stake holders and provide all safeguards for them. Hence, the scheme can be put to approval of un-secured creditors as Equity shareholders have already given their consent for the scheme.
10. In view of the above facts and circumstances of the case, and in the interest of justice, I am of the considered view that it is necessary to appoint a Chairperson and a Scrutiniser to convene the meetings of Un-secured Creditors of the Company. I



hereby dispose of the Company Application bearing CA(CAA)No.25/230/HDB/2017 with the following directions:

- i. Ordered to convene a meeting of the Unsecured Creditors of the Applicant Company at the Hotel Aditdhi Grand, Srisailam Towers, above Reliance Super Market, near K.V.R. Petrol Bunk, Dargamitta, Nellore – 524003, Andhra Pradesh for consideration of the proposed Scheme and appointed Ms. C. Shilpa, Advocate (Plot No.613, SKD Nagar, Vanasthalipuram, Hyderabad – 500070 - Mobile No.9985183500) as Chairperson for convening and conducting Unsecured Creditors meeting. Further, appointed Ms. V. Suma Smitha, Advocate (Flat No.106, Nirmal Tower, 200 Dwarakapuri Colony, Panjagutta, Hyderabad – 500082 – Mobile No.9866337351) as Scrutiniser for assisting the Chairperson in conducting the Unsecured Creditors Meeting.
- ii. That the quorum is fixed as 140 (One Hundred and Forty) creditors personally present in the unsecured creditors meeting. The Unsecured Creditors be permitted to exercise their vote at the meetings either in person or through proxies.
- iii. It is ordered that notices be sent to all Unsecured Creditors involved in the scheme individually at the address registered with the Company, through standard mode of communication exist in the Company, and such notice shall be accompanied by a statement disclosing the details of scheme of Arrangement in question along with material documents, if any. And also inform about the meeting to all concerned Statutory Authorities. It can also put on Company's website.
- iv. That the advertisement to be published once in English Edition of "The Indian Express", Nellore Edition, and one in Telugu Edition of "Andhra Jyothi", Nellore Edition.
- v. Meeting of the Unsecured Creditors to be held on **08.07.2017 at 11.30 AM** at the Hotel Aditdhi Grand, Srisailam Towers, above Reliance Super Market, near K.V.R. Petrol Bunk, Dargamitta, Nellore – 524 003, Andhra Pradesh.



- vi. The Company is directed to ensure at least 3/4th of the value of Creditors should express their consent for the Scheme in question in order to have fair representation about acceptance of it.
- vii. Ten days time is granted for the Chairperson of the meeting to file their report in the Registry of this Bench.
- viii. Fee for Chairperson is fixed at Rs.50,000/- (Rupees Fifty Thousand only) and for Scrutiniser is fixed at Rs.30,000/- (Rupees Thirty Thousand only) for meeting, which is to be paid by the Company.



Sd/-

Rajeswara Rao Vittanala
Member (Judicial)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68