

CP/06/KOB/2020

IN THE NATIONAL COMPANY LAW TRIBUNAL KOCHI BENCH

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(Under Section 66 of the Companies Act, 2013)

Order delivered on 7th January, 2021

Coram:

Hon'ble Shri Ashok Kumar Borah, Member (Judicial)

In the matter of

Josco Jewellers Private Limited
Registered office at
XIII/XIV, Rajeev Gandhi Municipal Shopping
Complex, Central Junction,
Kottayam-686001.

Parties/Counsel present (through video conference)

Counsel for the Petitioner : Shri Nebil Nizar, Advocate &
Shri PK Krishnamoorthy, JKM
Associates

ORDER

This is a Company Petition filed under Section 66 of the Companies Act, 2013 by M/s. Josco Jewellers Private Limited (CIN: U36911KL2007PTC020422) against the Registrar of Companies, Kerala for the following reliefs:

- i. That the reduction of capital resolved on by the special resolution set out in paragraph 10;
- ii. That the requirement of issuing notice to creditors and publishing newspaper advertisement may kindly be waived;
- iii. That to this end all directions necessary and proper be made and given;

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- iv. That the proposed minute set out in paragraph 19 be approved; and

The Registered Office of the Company is situated at XIII/XIV Rajeev Gandhi Municipal Shopping Complex, Central Junction, Kottayam- 686 001.

2. On presentation of the case before this Tribunal, this Bench issued notice to RoC to file its report. Now the RoC filed a report dated 01.12.2020 stating that the Regional Director, Ministry of Corporate Affairs (Southern Region), Chennai being the competent authority by virtue of the powers delegated to him by the Central Government had examined the para-wise comments submitted on the various aspects pointed out in the Scheme of Reduction of Capital and found to be in order and advised Registrar of Companies, Kerala to file affidavit/ report before this Hon'ble Tribunal stating therein that the Directorate being the competent authority, on behalf of the Central Government has examined the Scheme of Reduction of Capital with reference to the material papers made available to him and accordingly decided not to make any objection to the above Scheme or reduction of capital.

3. Heard the learned Counsel for the Petitioner Company. No objection has been received by this Tribunal opposing the Petition and nor has any party controverted any averments made in the Petition by way of affidavit.

4. The Petitioner Company submitted that Articles of Association of the Company read along with Article 5 of the Articles of Association of the Petitioner Company empowers the Petitioner Company to reduce its share capital and to divide the shares in accordance with the provisions of the Companies Act, 1956. Clause 5 reads thus:

"5. The authorised share capital of the company shall be Rs.120,00,00,000/- (Rupees One Hundred and Twenty Crores) divided into 12000000 (One Crore Twenty Lakhs) Equity shares of Rs.100/- (Rupees One Hundred only) each with power to increase or reduce or

reorganize the capital and to divide the shares in the Capital into such classes in accordance with the provisions of the Companies Act, 1956.”

5. A reading of the above clause will reveal that the Authorized Share Capital of the Company is Rs. 120,00,00,000/- divided into 1,20,00,000/- Equity Shares of Rs. 100 each, which have been issued and have been fully paid-up or credited as fully paid.

6. The Petitioner Company further submitted that the Petitioner Company is doing the business such as to manufacture, refine, process, formulate, prepare or otherwise acquire, invest in, own, hold, use, lease, mortgage, pledge, buy, sell, exchange, distribute, assign, transfer or otherwise dispose of trade, import, export, deal in and deal with all classes and kinds of gold ornaments, gold bars, sovereign, jewels made out of white gold, platinum, silver, diamond stones, pearls and allied products.

7. The Petitioner further stated that the Company executed a business transfer agreement on 1st April 2018 with the flagship company of Josco group - Josco Bullion Traders Private Limited (CIN: U51398KL2010PTC025701) with the objective to sell, transfer and convey the retail jewellery business undertaking of Josco Jewellers Private Limited to Josco Bullion Traders Private Limited. Subsequently the Board reviewed the capital structure and the leverage position of the Company and observed that the Company's Paid-up Capital is more than the required amount commensurate with the existing business of the Company and that it would be beneficial for the company to remit back its excess capital by way of reduction of share capital. Thus, reduction of capital of the Company to pay off to the shareholders the paid-up share capital which is in excess of the Company is necessary.

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8. It is further stated that the Board of Directors of the Company passed a Resolution on 02.12.2019 approving the proposed reduction of share capital. A Special Resolution has been passed in the Extra Ordinary General Meeting held on 31.12.2019 in accordance with Section 66(1) of the Companies Act, 2013, and approved the proposal for reduction of share capital.

9. The learned Counsel for the Petitioner Company stated that the proposed reduction shall be beneficial for the shareholders and all the stakeholders concerned as a whole. It is also stated that the Company has not accepted any deposits and has no secured/unsecured creditors as on 31.10.2019 and to that effect a certificate from Auditor and declaration from Directors of the Company along with the provisional financial statements as on 31.10.2019 have been produced before this Tribunal.

10. The Petitioner in the petition stated that the Company is not having any foreign investments and, therefore, was not required to comply with the provisions of FEMA and RBI guidelines in respect of Foreign Direct Investment (FDI). It is also stated that the proposed reduction of share capital has no adverse impact on the employees as there are no employees working on the rolls of the Company as on 31.10.2019 and the tax implication arising out of such reduction of share is subject to the final decision of the Income Tax authorities.

11. Since all the requisite statutory procedures have been fulfilled and no objections received from any shareholders before this Tribunal, the Company Petition is made absolute in terms of the prayer clause of the Petition, which are hereby allowed.

12. All concerned regulatory authorities are directed to act on certified copy of the order, duly certified by the Deputy Registrar or Assistant Registrar, National Company

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Law Tribunal. The Petitioner Company is directed to file the order with the Registrar of Companies within 30 days from the date of the receipt of the order.

13. Petitioner Company is directed to publish notices about registration of order and minutes of reduction by the concerned Registrar of Companies, Kerala, in two newspapers, namely 'Indian Express' in English and 'Mathruboomi' in Malayalam, both having circulation in Kerala, within 30 days of registration.

14. The form of Minutes is appended to this Petition as a Schedule as under:

SCHEDULE

FORM OF MINUTES

"The Paid-up share capital of the Company is henceforth Rs. 1 Crore (One Crore Only) consisting of 1,00,000 (One Lakh) equity shares of Rs. 100/- (Rupees One Hundred Only) each by cancelling and extinguishing a sum of Rs. 119 Crores (Rupees One Hundred and Nineteen Crores Only) from Rs. 120 Crores (Rupees One Hundred and Twenty Crores Only) consisting of 1,20,00,000 (One Crore Twenty Lakh) equity shares of RS. 100/- (Rupees One Hundred Only) each. The amount by which Equity Share Capital is so reduced being in excess of the requirements of the company and such reduction shall be effected by eliminating trade receivables of Rs. 66,02,38,366/- (Sixty-Six Crore Two Lakh Thirty-Eight Thousand Three Hundred and Sixty-Six Only) and by transfer of 12,46,498 (Twelve Lakh Forty-Six Thousand Four Hundred and Ninety-Eight) shares of Rs.52,97,61,634/- (Fifty-Two Crore Ninety-Seven Lakh Sixty-One Thousand Six Hundred and Thirty-Four Only) held by the Company in Josco Bullion Traders Private to the shareholders of the Company with rounding off payment of Rs.16 (Rupees Sixteen Only) to individual shareholders of the Company".

Dated this the 7th day of January, 2021.

**Sd/-
(Ashok Kumar Borah)
Member (Judicial)**