(2021) 02 NCLT CK 0118

In the National Company Law Tribunal

Case No : Company Petition No. 3268/MB-I Of 2018

Druva Software Private Limited Vs

Date of Decision : 02-02-2021

Acts Referred:
Companies Act, 2013 — Section 52, 66

Citation : (2021) 02 NCLT CK 0118

Hon'ble Judges : Janab Mohammed Ajmal, J;V. Nallasenapathy, Member (Technical)

Bench : Division Bench

Advocate : Hemant Sethi, Rupa Sutar

Final Decision : Allowed

Judgement

1. The petitioner Company Druva Software Private Limited has filed this Petition dated 29th August 2018 under section 66 read with section 52 of the Companies Act, 2013 (the Act) for reduction of Share Capital.

2. We have heard the Learned Counsel for the Petitioner Companies and the representative of the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.

3. The Learned Counsel for the Petitioner Company submits that Article 4 of the Articles of Association of the Petitioner Company empowers the Petitioner Company to reduce its share capital in any manner permitted by law by passing a Special Resolution.

4. The Learned Counsel for the Petitioner Company submits that the Petitioner Company having passed a special resolution on 19th July 2018 whereby the shareholders had approved the reduction of its :

a. paid-up equity share capital from Rs. 248,650/- consisting of 24,865 equity shares of Rs. 10/- each to Rs. 62,290/- consisting of 6,229 equity shares of Rs. 10/- each, by extinguishing and cancelling equity shares held by the shareholders, other than 6,229 (Six Thousand Two Hundred and Twenty Nine

Only) equity shares held by Druva Technologies Pte. Ltd and 1 (One Only) equity share held by Mr Milind Borate, without any payment. The special resolution for the same was unanimously approved by the equity shareholders of the company on 19th July 2018 at 10.00 AM at Muttha Chambers II, Level VI, Senapati Bapat Marg, Pune - 411016; and

b. entire issued, subscribed and paid up Compulsorily Convertible Cumulative Participant Preference shares (Series C and Series D) of Rs. 379,970/- divided into 37,997 Compulsorily Convertible Cumulative Participant Preference shares of Rs. 10 each, by extinguishing and cancelling preference shares held by the shareholders in the Company, without any payment.

The special resolution for the same was unanimously approved by the preference shareholders of the Petitioner Company in its Extra Ordinary General Meeting held on 19th July 2018 at 10.30 AM at Muttha Chamber II, Level VI, Senapati Bapat Marg, Pune - 411016.

5. The Regional Director has filed a Report dated 21st January, 2020 and made certain observations in para 7(a) to 7(c) of the said Report. The Petitioner Company has filed an Affidavit-in-Rejoinder with this Bench on 11th February 2020 in response to the report filed by the Regional Director and copy of the Rejoinder is also submitted with Regional director, Western Region, Mumbai. The observations made by Regional Director and clarification and undertakings given by the Petitioner Company are as under:

Sr.

No. Para 7

Observations made in Regional Directors Report on 21st January 2020

Response of the Petitioner Company

(a)

Applicant to submit an Affidavit to the effect that the interest of the creditors and all stakeholders and Government Revenue are protected as well as statutory dues is paid off.

Apropos observation made in paragraph 7(a) of the report of Regional Director is concerned, the Petitioner Company undertakes that interest of the creditors and all stakeholders and Government Revenue are protected as well as

statutory dues are paid off.

(b)

Applicant has to undertake to serve notice to RBI as shareholders are foreign entities.

Apropos observation in para 7 (b) of the report of Regional Director is concerned, the transaction complies with pricing guidelines as applicable for Indian Company to undertake Reduction of Capital as per the provisions of Foreign Exchange Management Act, 1999 along with rules and regulations issued thereunder from time to time (FEMA) and there is no requirement to serve notice to Reserve Bank of India to give effect to the petition. The Company undertakes to comply with all the post-facto reporting's/filings to be done with RBI under FEMA.

(c)

The tax implication if any arising out of the proposal for reduction is subject to final decision of Income Tax Authorities. The approval of the Company Petition by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Company after giving effect to the proposed reduction. The decision of the Income Tax Authority is binding on

the petitioner Company.

Apropos observation made in para 7

(c) of the report of Regional Director is concerned, the Petitioner Company through its Learned Counsel undertakes to comply with all the applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Petition of Capital Reduction will be met and answered in accordance with the law.

6. In response to the Affidavit in Rejoinder filed by the Petitioner Company, the Regional Director, Western Region, Mumbai has filed supplementary Report on 25th February 2020 with this Bench and has stated that the reply filed by the Petitioner is satisfactory.

7. The Counsel appearing on behalf of the Petitioner Company further submits that the Petitioner Company has complied with all statutory requirements as per the directions of the Tribunal and they have filed the necessary Affidavits with the Tribunal. Moreover, the Petitioner Company also undertakes to comply with statutory requirements, if any under the Companies Act, 2013 and the Rules made thereunder, as may be applicable.

8. Since the requisite statutory procedure has been fulfilled, the Company Petition is made absolute. The Special Resolution as approved by the shareholders in their Extra ordinary General Meeting held on 7th December 2019 be and is hereby confirmed. Petition for reduction of share capital is allowed.

9. The minutes set forth hereto be and is hereby approved.

10. All concerned regulatory authorities to act on certified copy of the order duly certified by the Deputy Director or Assistant Registrar, National Company Law Tribunal. The Petitioner Company undertakes to file the same with the Registrar of Companies within 30 days from the date of the receipt of the order.

11. The Petitioner to publish notices about registration of order and minutes of reduction by the concerned Registrar of Companies, Maharashtra, in two newspapers, namely 'Indian Express' in English and `Loksatta' in Marathi, both having circulation in the state of Maharashtra, within 30 days of registration.

FORM OF MINUTES

"The share capital of Druva Software Private Limited, the Petitioner Company is henceforth reduced from Rs. 2,48,650/- (Rupees Two Lakhs Forty Eight Thousand Six Hundred and Fifty only) divided into 24,865 (Twenty Four Thousand Eight Hundred and Sixty Five Only) Equity Shares of Rs. 10/- (Rupees Ten Only) each and 37,997 (Thirty Seven Thousand Nine Hundred and Ninety Seven Only) Compulsory Convertible Cumulative Participant Preference Shares of Rs.10 (Rupees Ten Only) each to Rs. 62,290 (Rupees Sixty Two Thousand Two Hundred and Ninety only) divided into 6,229 (Six Thousand Two Hundred and Twenty Nine only) Equity Shares of Rs. 10/- each"