(2013) 12 KAR CK 0006

In the Karnataka High Court

Case No : Company Petition No. 115 of 2012

In Re: Fundermax India Private Limited

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0006

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Madhukar M. Deshpande, for the Appellant;

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Notice of the petition having been served on the Registrar of Companies and paper publication also having been taken out in this regard, none appears for the respondent. There is no objection from any quarter. The petition is filed u/s 100(c) of the Companies Act, 1956 (Hereinafter referred to as the ''Act'', for brevity). The petitioner-company was originally incorporated in the year 2007 under the provisions of the Act as M/s. Max Compact India Private Limited as a company limited by shares in the State of Maharashtra.

By a special resolution in terms of Section 21 of the Act and with the prior approval of the Central Government, the company changed its name to M/s. Fundermax India Private Limited as a company limited by shares in the State of Maharashtra duly registered with the Registrar of Companies and in the month of August 2011, the company shifted its registered office from Thane (West) in the State of Maharashtra to the State of Karnataka vide order dated 2.8.2011 by the Company Law Board, Mumbai Bench. The registered office of the company at present is at Brigade Road, Bangalore.

2. The authorised capital of the company is Rs. 300,000,000/- divided into 30,000,000 equity shares of Rs. 10/- each. At the time of incorporation of the company, the paid-up capital of the company was Rs. 5,00,00,000/- divided into 50,00,000 equity shares of Rs. 10/- each. Subsequently, the paid-up-capital was increased to Rs. 15,00,50,000/- from time to time.

The petitioner had also earlier approached the High Court of Bombay, in Company Scheme Petition No. 559/2010 for reduction of its Paid-up-Capital by Rs. 6,50,00,000/- from Rs. 15,00,50,000/- making the paid-up capital to Rs. 8,50,50,000/-under Sections 100 to 103 of the Act, which was allowed by order dated 15.10.2010.

It is claimed that the issued, subscribed and paid-up share capital of the company is now Rs. 8,50,50,000/- divided into 85,05,000 equity shares of Rs. 10/- each The liability of the members is limited.

The object of the company was to undertake activities of manufacturing, trading, marketing apart from other activities.

3. Article 4 of the Articles of Association empowers the petitioner-company to reduce its paid-up share capital and the petitioner claiming as the subsidiary company of M/s. Fundermax GmbH, Austria, having intention to set up manufacturing facilities of its products used in Real Estate sector and construction industry in India and since the Austrian company owns 99.99% of its Indian Subsidiary Company, the petitioner wants to reduce its paid-up equity share capital from 8,50,50,000/- divided into 85,05,000 equity shares of Rs. 10/- each to Rs. 1,00,50,000/- divided into 10,05,000 equity shares of Rs. 10/- each thereby reducing its paid-up share capital by Rs. 7,50,00,000/- divided into 75,00,000 equity shares of Rs. 10/- each pursuant to Section 100(c) of the Companies Act, 1956 and a special resolution is passed by the petitioner in its Extra-ordinary General Meeting held on 27.2.2012, the minutes, of which, as at Annexure-K, read as under: RESOLVED THAT, pursuant to the provisions of Section 100 and other applicable provisions if any, of the Companies Act, 1956 and subject to the consent of the Hon''ble High Court at Bengaluru (Karnataka State), the Paid up Share Capital of the Company be reduced from Rs. 8,50,50,000 (Rupees Eight Crore Fifty Lacs Fifty Thousand Only) divided into 85,05,000 (Eighty Five Lacs Five Thousand) Equity Shares of Rs. 10 (Rupees Ten only) each to Rs. 1,00,50,000 (Rupees One Crore Fifty Thousand Only) divided into 10,05,000 (Ten Lacs Five Thousand) and that such reduction be effected by canceling the Equity Share capital of Rs. 7,50,00,000/- (Rupees Seven Crore Fifty Lacs) divided into 75,00,000 (Seventy Five Lacs) Equity Share of Rs. 10/- (Ten) each.

The petitioner has filed its Form No. 23 along with requisite attachment for passing of such special resolution with the Registrar of Companies, Karnataka, Bangalore. Due to recessionary trends, especially in the Real Estate Sector and Construction Industry, as on the date of the petition, which had a direct bearing on the business of the petitioner-company, it was decided by its Board to postpone the concept till the economic scene improved and as no such huge capital was needed, the excess paid-up capital to be taken back to Austria for its better use there and to consider bringing it back to India, if required. The present petition is filed seeking permission to reduce its paid-up capital. It is stated that 25 creditors, including the unsecured creditors, had given trade deposits to the petitioner -company and the list of creditors is produced. The petitioner-company has issued special notices dated 14.3.2012 along with a copy of the resolution, as already stated and the same has been served on the creditors. The company has also produced Auditor''s Certificate confirming the list of creditors as on 29.2.2012 and it has obtained a ''No Objection Letter'' from the creditors of the company regarding the reduction of its paid-up capital from Rs. 8,50,50,000/- to Rs. 7,50,00,000/-. It has also produced its Provisional Balance Sheet as on 29.2.2012. Hence, the petitioner seeks that the petition be allowed.

The Registrar of Companies having been issued notice and the same having been served as shown from the memos filed by the petitioner and since there are no objections filed and as there is no legal impediment for the petition to be allowed, the same is allowed. The Special Resolution dated 27th February, 2012 as proposed at ''Annexure K'' to be registered u/s 103(1)(b) of the Act for reduction of the paid up equity share capital of the petitioner-company, are approved. A copy of this order and the approved minutes shall be filed with the Registrar of Companies within six weeks. Notice of registration of this order and the minutes approved by the Registrar of Companies be published by the petitioner- company in "The Hindu", a English Daily and "Udayavani", a Kannada Daily within four weeks from the date of registration of the same before the Registrar of Companies.

