(2023) 10 NCLT CK 0017

In the National Company Law Tribunal

Case No : C.P. / 233 / MB / 2023

Indospace FWS Industrial Park Privatelimited Vs

Date of Decision : 06-10-2023

Acts Referred:

Companies Act, 2013 — Section 52, 66, 66(2), 133
National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016 — Rule 3

Citation : (2023) 10 NCLT CK 0017

Hon'ble Judges : Kishore Vemulapalli, Member (J);Anu Jagmohan Singh, Member (T)

Bench : Division Bench

Advocate : Harsh Ruparelia

Final Decision : Disposed Of

Judgement

Anu Jagmohan Singh, Member (Technical)

1. Petition Admitted.

2. Petition is fixed for final hearing and disposal on 15th day of January, 2024.

3. The Authorized Representative for the Petitioner Company submits that the present Company Petition is filed for confirmation of the Special Resolution passed with requisite majority at the Extra-Ordinary General Meeting of the Members held on 21st day of August 2023, being Exhibit F-1 to the Company Petition, approving the reduction of the issued, subscribed and paid up equity share capital of the Petitioner Company, by way of cancelling and extinguishing 26,15,392 (Twenty Six Lacs Fifteen Thousand Three Hundred Ninety Two) equity shares of INR 10 (Indian Rupees Ten Only) each held by M/s. ILP Core Ventures I Pte. Ltd., the parent company, by payment of consideration of INR 301 (Indian Rupees Three Hundred One Only) per equity share, leading to a reduction in the issued, subscribed and paid-up equity share capital of the Petitioner Company from INR 8,19,79,250 (Indian Rupees Eight Crore Nineteen Lakh Seventy-Nine Thousand and Two Hundred Fifty) divided into 81,97,925 (Eighty-One Lakh Ninety-Seven Thousand Nine Hundred and Twenty Five) equity shares of INR 10

(Indian Rupees Ten Only) each to INR 5,58,25,330 (Indian Rupees Five Crores Fifty Eight Lacs Twenty Five Thousand Three Hundred Thirty) divided into 55,82,533 (Fifty Five Lacs Eighty Two Thousand Five Hundred Thirty Three) equity shares of INR 10 (Indian Rupees Ten Only) each. The Petitioner Company shall pass appropriate entries as per the applicable accounting policies and accounting standards (specified in section 133 or any other provision of the Companies Act, 2013). Further, the difference of INR 76,10,79,072 (Indian Rupees Seventy Six Crores Ten Lacs Seventy Nine Thousand Seventy Two only) between the face value of equity shares cancelled of INR 2,61,53,920 (Indian Rupees Two Crores Sixty One Lacs Fifty Three Thousand Nine Hundred Twenty only) and consideration of INR 78,72,32,992 (Indian Rupees Seventy Eight Crores Seventy Two Lacs Thirty Two Thousand Nine Hundred Ninety Two only) shall be adjusted against the Securities Premium Account. The said special resolution was unanimously approved by the Equity Shareholders in their meeting held on 21st August 2023.

4. The Authorized Representative for the Petitioner Company submits that it is authorized by Article 9 of the Articles of Association to undertake reduction of share capital of the Petitioner Company. The extract of Article 9 of the Articles of Association, is as follows:

"9. Subject to applicable laws the Company may, reduce in any manner and with, and subject to, any incident authorized and consent required by law,—

(a) its share capital;

(b) any capital redemption reserve account; or

(c) any share premium account."

5. Within seven (7) days from the date of this order, the Petitioner Company is directed to publish notice of date of hearing of the Company Petition in Form RSC-4 in the newspapers namely, "Business Standard", in English language and translation thereof in "Navshakti", in Marathi Language, both having circulation in Maharashtra and to also upload the same on the website, if any, of the Petitioner Company. The notice shall mention the amount of proposed reduction of equity share capital, the places where the list of creditors may be inspected, the date of hearing and a statement that creditors may submit their representations to the Tribunal, if any, within a period of three (3) months from the date of publication of such notice and copy of such representations shall simultaneously be served upon the Petitioner Company.

6. Within seven (7) days from the date of this order, the Petitioner Company is directed to serve notice in Form No. RSC-3 of the hearing of the Company Petition upon its sole Secured Creditor and all of its Unsecured Creditors as on 15th August 2023, by R.P.A.D./ Speed Post, pursuant to Section 66(2) of the Companies Act, 2013 with a statement that they may submit their representations and objections, if any, to this Tribunal, within a period of three

(3) months from the date of the receipt of the said notice and a copy of such representations / objections shall simultaneously be served upon the Petitioner Company, failing which it shall be presumed that such Creditors of the Petitioner Company have no objection to the proposed reduction of equity share capital.

7. The Petitioner Company to serve the notice upon the Central Government through the Regional Director, Western Region, pursuant to Section 66 of the Companies Act, 2013 and as per Rule 3 in Form No. RSC-2 of the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016. If no response is received by the Tribunal from the Central Government within Three (3) months of the date of receipt of the notice, it will be presumed that Central Government has no objection to the proposed reduction of equity share capital as per Rule 3 of the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.

8. The Petitioner Company to serve the notice upon the concerned Registrar of Companies, Maharashtra at Mumbai, pursuant to Section 66 of the Companies Act, 2013 and as per Rule 3 in Form No. RSC-2 of the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016. If no response is received by the Tribunal from the Registrar of Companies within three (3) months of the date of receipt of the notice, it will be presumed that Registrar of Companies has no objection to the proposed reduction of equity share capital, as per Rule 3 of the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.

9. The Petitioner Company to serve the notice upon the concerned Income Tax Authority within whose jurisdiction the Petitioner Company is assessed to tax. If no response is received by the Tribunal from the concerned Income Tax Authority within three (3) months of the date of receipt of the notice, it will be presumed that Income Tax Authority has no objection to the proposed reduction of equity share capital.

10. The Petitioner Company shall submit to this Tribunal, within seven (7) days of expiry of period upto which representations or objections were sought, the representations or objections so received along with responses of the Petitioner Company thereto. If no representations or objections have been received by the Petitioner Company, then in such case, it shall be presumed that there are no objections / representations to the present Company Petition.

11. The Petitioner Company to file an Affidavit of Service, as soon as may be, but not later than seven (7) days from the date of issue of such notices and advertisement, as per Rule 3(5) in Form No. RSC-5 of the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016, confirming the dispatch of the notice and publication.

12. The Petitioner Company undertakes to file an affidavit before the final hearing regarding the compliance required under applicable Foreign Exchange Management Rules/ Regulations in relation to payment of consideration to the

non-resident shareholder pursuant to the aforesaid Capital Reduction.

13. Ordered accordingly.

