

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT-V**

**Company Petition No. 156/ND/2019**

[Application under Section 66 of the Companies Act, 2013 read with the National Company Law Tribunal (Procedure for Reduction of Share Capital) Rules, 2016]

**IN THE MATTER OF:**

**M/S. AKTIVORTHO PRIVATE LIMITED  
CIN U85100DL2011PTC227251**

Registered Office at E-83, Paschimi Marg,  
Vasant Vihar, New Delhi-110057

**...Petitioner Company**

**Order Delivered on: 17.05.2024**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**  
**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For the Petitioner** : Mr. Aditya Kumar Pandey, Mr. Rajeev Ranjan Thakur,  
Advs.

**For the RD** : Ms. Shankari Mishra, Ms. Jyoti Khurana, Advs.

**ORDER**

**PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)**

1. The present Company Petition is filed on behalf of M/s. Aktivortho Private Limited bearing CIN: U85100DL2011PTC227251 seeking inter-alia following prayer(s): -

- i) *Direct that notices be given to creditors in terms of sub-rule (1) of Rule 3 of the Rules and notice be published in terms of Rule 3 (3) of the Rules, in the English and Hindi editions of the Business Standard or such other newspaper as this Hon'ble Tribunal may deem fit.*

- ii) Confirm the reduction in the paid-up equity share capital of the Applicant Company as approved by the shareholders of the Applicant Company by Special resolution dated 26th September, 2019 as set out at ANNEXURE.*
- iii) Approve the form of the Minute to be filed with the Registrar of Companies, National Capital Territory of Delhi & Haryana as set out in paragraph 24 herein above;*
- iv) Direct that the certified copy of the order of this Hon'ble Tribunal confirming the reduction in the paid-up equity share capital of the Applicant Company and the Minute be filed with the Registrar of Companies, National Capital Territory of Delhi and Haryana within 30 (thirty) days of receipt of the certified copy of the order;*
- v) Pass such further of other orders as deemed fit and proper in the facts and circumstances of the case.*

2. The Petitioner Company submits that the Petitioner Company intends to reduce its issued, subscribed and paid-up share capital in terms of Section 66 of the Companies Act, 2013 and the present petition is filed before this Tribunal to obtain sanction regarding the abovesaid object.

3. That the Petitioner Company was incorporated on 11.11.2011 under the provisions of companies act, 1956 as company limited by shares under the name as Orthopedic Rehabilitation and Prevention (India) Private Limited. Subsequently name of the company is changed to Aktivortho Private Limited vide fresh certificate of incorporation dated 23.08.2017. The registered office of the Petitioner Company is situated at E-83, Paschimi Marg, Vasant Vihar, New Delhi-110057 and is engaged in the business of medicine and health care management such as rehabilitation, sports medicine, medical prevention, multi- disciplinary pain management, cardiology, oncology, neurology, and occupational medicine in India and development, establishment and provide all types of centers, independently or otherwise, for providing an integrated model of health care management service, orthopedic, rehabilitation, treatment and prevention/fitness to individuals and companies. Also creation of academy for engaging physiotherapist, rehabilitation specialist and pain management specialists and acquire, within or outside India, requisite technical know-how.

4. The Learned Counsel for the Petitioner Company submits that Articles 41 of the Articles of Association of the Petitioner Company empowers the Petitioner Company to reduce its share capital in any manner permitted by law from time to time by passing a Special Resolution. The Board of Directors in their meeting held on 26.09.2019 passed a resolution unanimously approving the reduction of issue, subscribed and paid-up share capital of the Company from INR 23,23,77,990/- (Indian Rupees Twenty-Three Crore Twenty-Three Lakh Seventy- Seven Thousand Nine Hundred Ninety only) comprising of 2,32,37,799/- (Two Crore Thirty-Two Lakh Thirty-Seven Thousand Seven Hundred Ninety Nine only) equity shares of INR 10/- (Indian Rupees Ten only) each fully paid up to INR 3,48,56,698.5/- (Indian Rupees Three Crore Forty Eight Lakh Fifty Six Thousand Six Hundred Ninety Eight and Five Paise only) divided into 2,32,37,799/- (Two Crore Thirty-Two Lakh Thirty-Seven Thousand Seven Hundred Ninety Nine only) equity shares of INR 1.50 (Indian Rupees one and Fifty Paise only) each, by writing off the accumulate losses of the company.

**Copy of Special Resolution of the Company passed in General Meeting dated 26.10.2019 is reproduced below:**

*"RESOLVED THAT pursuant to section 66 and other applicable provisions of the Companies Act, 2013 and rules made thereunder (including any statutory modification(s) or re-enactment thereof for the time being in force), the Articles of Association of the company and subject to the confirmation of the National Company Law Tribunal, the approval of the members of the company be and is hereby accorded to reduce the issued, subscribed and paid up share capital of INR 23,23,77,990/- (Indian Rupees Twenty-Three Crore Twenty-Three Lakh Seventy- Seven Thousand Nine Hundred Ninety only) comprising of 2,32,37,799/- (Two Crore Thirty-Two Lakh Thirty-Seven Thousand Seven Hundred Ninety Nine only) equity shares of INR 10/- (Indian Rupees Ten only) each fully paid up to INR 3,48,56,698.5/- (Indian Rupees Three Crore Forty Eight Lakh Fifty Six Thousand Six Hundred Ninety Eight and Five Paise only) divided into 2,32,37,799/- (Two*

*Crore Thirty-Two Lakh Thirty-Seven Thousand Seven Hundred Ninety Nine only) equity shares of INR 1.50 (Indian Rupees one and Fifty Paise only) each, by writing off the accumulate losses of the company."*

***RESOLVED FURTHER THAT*** *the Board of Directors of the company be and are hereby authorised to move a petition to the National Company Law Tribunal, for an order confirming the aforementioned reduction and also authorised to do all such acts, deeds, matters and things as are considered requisite or necessary to effectively implement above resolution and to accept such modification and/or conditions, if any, which may be required and/or imposed by the National Company Law Tribunal while giving approval for such reduction."*

5. The Learned Counsel for the Petitioner Company submits that the rationale for the proposed capital reduction is that the company has accumulated loss of Rs. 24,31,73,119/- as on 31.03.2018 and these continuing losses had substantially eroded the value of share capital thus it's not reflecting the correct picture of financials of the company; for ensuring that the financial statement should reflect the real picture and the capital which is lost is not continued to be shown in balance sheet; to write off the losses of company against the share capital; to enable the company to have a rational structure which is commensurate with its remaining business and assets. It was further submitted by the Petitioner Company that the proposed reduction of share Capital is in the best interest of the company and its shareholders, creditors and all concerned.
6. This Tribunal vide its order dated 06.07.2021 had directed the Petitioner Company to issue notices to all the creditors & statutory authorities and also to submit the list of creditors in each category, certificate of auditors, audited financials for the year ended on 31.03.2021 and details of repayment to creditors after the date of latest audited balance sheet. The Petitioner Company had filed all the relevant documents along with affidavit on 17.12.2021 before this Tribunal in relation to the compliance of the directions contained in the order

dated 06.07.2021 with respect to the service of Notice to Regional Director, Registrar of Companies, Ministry of Corporate Affairs and Income Tax Department and Publication in newspapers and Details of Creditors. Further, it is observed that the notices were published in Business Standard (English, Delhi Edition) and Business Standard (Hindi, Delhi Edition) on 11.12.2021.

7. This Tribunal observed that the Directors of the Petitioner Company namely, Mr. Taranjeet Kaur have filed a Declaration dated 12.10.2019 declaring and confirming the fact that the Petitioner Company has not received any Deposits and no payment of Deposits and interest is pending against the company and the same is placed on record as Annexure-E along with the application. Further, the Petitioner Company has placed on record the list of creditors as on 30.09.2019 certified by the statutory auditor is also enclosed as Annexure-J.
8. Further, in consonance with the provisions of the Companies Act, 2013 as well as the rules framed thereunder, the Petitioner Company have also filed a certificate dated 11.10.2019 from the Statutory Auditor to the effect that the accounting treatment for the reduction of equity share capital ('share capital') is in accordance with the Accounting Standards with respect to the same as specified by the Central Government read with Section 133 of the Companies Act, 2013. The Copy of certificate of the Statutory Auditors dated 11.10.2019 confirming that the accounting treatment proposed by the Company for the reduction of the share capital is in conformity with the Accounting Standards specified in Section 133 is placed on record before this Tribunal on page no. 114 of the petition.
9. On receiving notice, the Registrar of Companies (ROC) has submitted their report to Regional Director (Northern Region) and Regional Director has submitted its representation/affidavit dated 07.03.2022. It is seen from the Regional Director (RD's) affidavit that the RD had raised certain observations with regard to the proposed scheme of capital reduction of the Petitioner Company in Para 7 of its affidavit based upon the report of RoC, vide the Letter dated 18.11.2019 communicated by the ROC, Delhi to the Petitioner Company and in response to the same, the Petitioner Company had filed reply dated 19.01.2023 wherein the Petitioner Company gave clarification and undertaking to address the

observations made by the Regional Director. On The details of the same are summarized below:

<b>S. No.</b>	<b>Observations in the RD's report vide affidavit dated 07.03.2022</b>	<b>Response of the Petitioner Company vide Letter dated 01.12.2023</b>
	<p>i. <b>Para-22</b> of the Petition speaks as under:</p> <p><i>"The Applicant Company submits that the accounting treatment proposed for the Capital Reduction is in conformity with the Accounting Standards prescribed under section 133 of the Companies Act, 2013. A certificate as on 30.09.2019 issued by the statutory auditor of the applicant company for the capital reduction is in conformity with the applicable accounting standards as prescribed under section 133 of the Act"</i></p> <p>The above contention of the petition speaks about Accounting Treatment in the books of the Petitioner Company on post-sanction of reduction of share capital without giving any specific statement thereto, rather has stated to follow Accounting Standard prescribed under section 133 of the Act. To substantiate above statement in the Petition the company has enclosed a certificate from a Sapna Gupta &amp; Associates, Chartered Accountants who has certified that the reduction of share capital is in conformity with the Accounting Standard as specified in section 133 of the Act. In this regard it is to submit that there is no specific Accounting Standard pronounced by the ICAI for Reduction of Share Capital which falls under section 66 of the Act. However, the Petition speaks that the above reduction of share capital is ear-marked against writing off accumulated losses shown in the Balance Sheet of the Company. In view of the above it is prayed before the Hon'ble Tribunal to kindly direct the Petitioner Company to suitably amend the above para</p>	<p>In so far as the observations made in para 8(i) of the affidavit filed by the Regional Director, with reference to <b>Para -22</b> of the petition the Applicant submits that the observations made in this regard are factually incorrect. As per report, Para 22 speaks that the above reduction of Share Capital is ear-marked against writing off of accumulated losses shown in the Balance Sheet of the Company. This is factually incorrect statement. Hon'ble Tribunal may refer page no. 22 of petition for Para - 22. Nothing in this line is mentioned there.</p> <p>Further, they pray for deletion of word Accounting Standard-14 from Para - 22, Company humbly submits that Accounting Standard 14 is mentioned neither in petition nor in certificate annexed with petition.</p> <p>We would like to submit that observations mentioned in Para 8(i) of the above- mentioned report is not maintainable as it is factually incorrect statement. Still for the sake of clarity of Para 22 of the petition, we have submitted a certificate from the Statutory Auditors of the company for clarification of accounting treatment of reduction of share capital. Copy of Auditor's certificate is attached as Annexure-2.</p>

of the Petition by stating therein details of Reduction of Accumulated Loss of the Company against the Reduction of Share Capital by deleting such adoption of Accounting Standard-14 as stated in the scheme.

ii. **Para-24** of the Petition speaks as under:

*“The Capital of the Aktivortho Private Limited is herewith INR 3,48,56,698.5/- divided into 2,32,37,799/- equity shares of INR 1.50/- each reduced from Rs. 23,23,77,990/- comprising of 23237,799/- equity shares of Rs. 10/- each. At the date of Registration of this minute 2,32,37,799 shares numbered 1 to 2,32,37,799 have been issued and are deemed to be fully paid.”*

From the above contention of the Petition, it is stated that there is no reduction in the number of paid-up capital of the company rather it has stated about Reduction in Face Value of the equity share which shall be Rs. 1.50/- per share against Rs. 10/- per share and the said will deemed to be fully paid-up. The above para speaks to reduce the face value per equity share from Rs. 10/- to Rs. 1.50/- per equity share and the same requires amendment of the Memorandum of Association (MOA) under section 13 of the Act which is not complied by the Petitioner Company. In view of the above it is prayed before the Hon'ble Tribunal to direct the Petitioner Companies to amend the capital clause of the MOA to reduce teh face value of the equity share from Rs. 10/- to Rs. 1.50/- per equity share (effecting increasing number of equity shares in the Authorized Share Capital) of the company by complying with the provision of Section 13 of the Act

In so far as the observations made in para 8(ii) of the affidavit filed by the Regional Director, with reference to **Para 24** of the petition the Applicant submits that alteration of Memorandum of Association to reduce the face value from INR 10 each to INR 1.50 each is a procedural aspect. After due order from Hon'ble Tribunal, we undertake to comply with the provisions of Section 13 of Companies Act, 2013 and rules made thereunder.

before sanction of the present petition by the Hon'ble Tribunal.

**Para 7** of the Affidavit filed by the Regional Director, referred to above, makes reference to the report of ROC, Delhi wherein certain observations have been made. With reference to the observations in Para 7 (I) of the affidavit, I state that this is a clerical error and para 17 of the application shall be read as

"It is submitted that the share capital structure of the Applicant Company post reduction of its Share Capital, subject to the confirmation of this Hon'ble Tribunal, shall be as follows:

Share Capital	Amount in INR
<u>Authorised Capital</u>	
16,66,66,666 Equity Shares of INR 1.50 Each	24,99,99,999

Total	24,99,99,999
Revised Issued, Subscribed and Fully paid up Capital	
2,32,37,799 Equity Shares of INR 1.50 Each	3,48,56,698.50

Further, company hereby submits that it is ready to file all the requisite e-forms including but not limited to E Form SH7 for compliance of the provisions of the Companies Act 2013 and rules made thereunder. The matter of fact, company can file the form, if required mentioned in office of regional director report is only required to file after the due order of Hon'ble Tribunal.

10. This Tribunal vide its order dated 23.08.2023 directed the Petitioner Company to file an affidavit of consent from all secured and unsecured creditors in respect of proposed reduction of share capital. The Petitioner Company has filed an affidavit dated 19.09.2023 clarifying that the total unsecured creditors in the books of accounts of Petitioner Company as on 30.09.2019 amounts INR 16,89,886, the Petitioner Company has duly paid all the creditors at the time of submitting this affidavit before this tribunal. In view of this we are of considered



opinion that once the creditors are satisfied with their dues consent is not necessary of the proposed scheme.

11. Pursuant to notice served on Income Tax Department, the IT Dept. has filed its affidavit/reply on 06.11.2021 wherein it is stated that “prayed this Hon’ble Tribunal may kindly safeguard the interests of the Revenue against pending demands, and/or demands likely to arise in the future.” In Order dated 23.08.2023 it has been recorded that the IT Dept. has no objection to the reduction of share capital subject to protection of interest of Income Tax Department. The Petitioner Company has also submitted their no objection before the tribunal vide order dated 21.02.2024.
12. The Company has also got valuation of its shares conducted by the Registered Valuer namely Mr. Manish Chandra (IBBI Registered valuer having registration number as IBBI/RV/05/2019/10903. The valuation has been done in accordance with Net Asset Value method (NAV) and the value per share as come to INR 1/-. A copy of the Valuation report is placed on record before us.
13. We observe from the record that the Reduction of the Share Capital was approved by the Shareholders of the Petitioner Company unanimously by way of a Special Resolution of Extraordinary General Meeting on 26.09.2019. In **‘Reckitt Benckiser (India) Ltd.** (Supra), the Hon’ble Delhi High Court has upheld the view that “the question of reduction of Share Capital will be treated as a matter of domestic concern i.e., it is the decision of the majority which prevails.
14. The Hon’ble NCLAT in case of **M/s. Precious Energy Services Limited [Company Appeal (AT) No. 17 of 2021; judgement dated 28.07.2022]**, while approving the reduction of share capital observed as follows: -

*7. The Madras High Court in 'Re.Panruti Industrial Company (Private) Ltd.', AIR 1960 Mad. 537, held as follows:*

*"...the question of reduction of capital has been treated as a matter of domestic concern, one for the decision of the majority of the shareholders of the company."*

.....

*8. The principles distilled from the aforesaid precedents were summarized in 'Reckitt Benckiser (India) Ltd. (CP 206 of 2004) (Delhi High Court)' that has further been upheld by several courts:*

*"(i) The question of reduction of share capital is treated as matter of domestic concern, i.e. it is the decision of the majority which*

*prevails. (ii) If majority by special reduction decides to reduce share capital of the Company, it has also the right to decide as to how this reduction should be carried into effect...."*

*11. It is seen from the record that the Reduction of the Share Capital was approved by the Shareholders of the Appellant Company unanimously by way of a Special Resolution with the objective of reducing the overall weighted average cost of Capital and improving the earnings per share. In 'Reckitt Benckiser (India) Ltd. (Supra), the Hon'ble Delhi High Court has upheld the view that "the question of reduction of Share Capital will be treated as a matter of domestic concern i.e., it is the decision of the majority which prevails. If majority by Special Reduction decides to reduce the Share Capital of the Company, which also has the right to decide as to how this reduction should be carried into effect...".*

*In the instant case, admittedly, the reduction of this Share Capital was approved unanimously by the Shareholders by way of a Special Resolution. ....*

*14. It is seen from the record that the Company has complied with all the statutory requirements as per the directions of the Tribunal and has also filed necessary Affidavits to that effect. It is also pertinent to mention that none of the Creditors objected to the reduction of the Capital. Section 66(1)(b) of the Act enables a Company to reduce its Share Capital 'in any manner' provided it is approved by the majority of Shareholders through a Special Resolution Relevant extracts of Section 66(1) is reproduced hereunder for ready reference: "66(1) Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in, particular, may-- (a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or (b) either with or without extinguishing or reducing liability on any of its shares,-- (i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or (ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its Company Appeal (AT) No. 17 of 2021 memorandum by reducing the amount of its share capital and of its shares accordingly;" It is observed that section 66(1) permits the Company to reduce its share capital "in any manner".*

15. From the records placed before this Tribunal and the submissions of the Learned Counsel of the Petitioner Company, it seems that the Petitioner Company has

complied with all statutory requirements as per the directions of the Tribunal and they have filed the necessary affidavits.

16. The Memorandum of Association provides for face value of Rs. 10 per share however, the applicant in the present application has prayed for reduction in share capital by way of reducing the face value of shares from Rs. 10 per share to Rs. 1.5 per share. It is therefore, necessary that the Memorandum of Association be amended after following the due process of law and necessary requirements to be compliance with.

17. Taking into consideration the documents on record and subject to above condition, we pass the following orders:

- i. The reduction of the share capital of the above company qua Special Resolution passed at the Extra Ordinary General Meeting held on 26.09.2019 is allowed.
- ii. In view of the same, this Tribunal is of the view that it is just and proper to confirm the Reduction of the Share capital of the Petitioner Company as resolved by the members of the Company by passing a special resolution and by way of the consent in the form of an affidavit. The minute under section 66(5) of the Companies Act, 2013 as set out in the application is hereby approved.
- iii. A certified copy of this order including the minute as approved be delivered to the Registrar of Companies within thirty days of receipt of the order and paper publication confirming the reduction of share capital by this Tribunal, shall also be issued in the English Edition of the newspaper "Business Standard" and in the Hindi Edition of the newspaper "Business Standard" in the prescribed format within a period of thirty days from the date of this order.
- iv. The Petitioner Company is further directed to comply with requirements indicated by the Regional Director for Alteration in Memorandum of Association and filing of E-Form SH7 as mandated by the Regional Director within 10 days of this order.
- v. The copy of the order be served to the parties.
- vi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

18. This Tribunal approves the amended form of minutes to be registered under Section 66(5) of the Companies Act, 2013 subject to the compliance of the observations above. Any other compliances which are to be made under various provisions of the Companies Act and other laws, if any, have to be taken care of by the petitioners and ensure compliance thereof.

19. Ordered accordingly.

Files be consigned to the records.

**Sd/-**  
**(DR. SANJEEV RANJAN)**  
**MEMBER (T)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (J)**