

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
CP/6(AHM)2024

Order under Section 66 of Companies Act, 2013

IN THE MATTER OF:

A.Menarini India Private Limited

.....Applicant

Order delivered on: 26/07/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT-2**

CP/6(AHM)2024

[Company Petition under Sections 66 of the Companies Act, 2013]

Memo of Parties

A. Menarini India Private Limited
[CIN: U74130GJ2001PTC039600]

A company incorporated under the provisions of the Companies Act, 1956, having its registered office at No.101 in Tower A, Shapath-4, Opp. Karnavati Club, S.G. Road, Ahmedabad-380 015, Gujarat

..... Petitioner Company

Order Pronounced on 26.07.2024

Coram:

Mrs.Chitra Hankare, Member (Judicial)

Dr. Velamur G Venkata Chalapathy, Member (Technical)

Appearance :

For the Petitioner Company : Ms. Vaibhavi Parikh, Advocate

For the Regional Director : Mr. Shiv Pal Singh

JUDGMENT

1. The petitioner company was incorporated on 25.05.2001 under the provisions of the Companies Act 1956 (hereinafter referred to as the Act).

2. The petitioner company is carrying business of distribution of products in India in the dermatology and primary care sector. The authorized share capital of the petitioner company as on 31.03.2023 and as per unaudited provisional financial statement on 31.12.2023 is Rs.100,05,00,000/- and the issued, subscribed and paid-up capital is Rs.25,54,67,470/-.
3. By virtue of Article 37 of the Articles of Association of the company, the company may by special resolution reduce its share capital. There are two shareholders viz., A. Menarini Asia Pacific Pte. Limited (AMAPPL) and A. Menarini Asia Pacific Holdings Pte. Limited. A. Menarini Asia Pacific Pte. Limited is a Singapore based holding company of petitioner company and a subsidiary of A. Menarini Asia Pacific Holdings Pte. Limited. AMAPPL has invested in the petitioner company from time to time at premium. Petitioner company received capital infusion from time to time from its shareholders at premium over the period aggregating to INR 213,74,54,274. Thus, the total share capital with premium of the petitioner company is INR 2,39,29,21,744/-. As on 31.12.2023, petitioner company has a cash balance of INR 55,42,12,115/-. As the petitioner company has surplus cash balance and has excess equity in the books in

the form of securities premium as well as it has sufficient source for meeting its business requirements even after meeting its regular obligations, petitioner company proposes to rationalise the capital structure by reducing its share capital and remitting the excess capital to the shareholders. Hence, the board of directors of the petitioner company at their meeting held on 02.02.2024 proposed to reduce 34,23,914 equity shares from total 2,55,46,747 equity shares held by AMAPPL at a fair value of INR 92/- per share. Pursuant to such reduction, AMAPPL will continue to hold 2,21,22,833 equity shares in the petitioner company.

4. The Valuation Report dated 02.02.2024 of Mr. Amol Chandrakant Bongale, Registered Valuer [Reg. No. IBBI/RV/03/2020.12847], recommends the fair value of equity shares as INR 92.73 per share which consists of INR 10/- being the face value of the share and INR 82.73 as premium per share. The resolution passed by the board of directors and approved by the shareholders in the EOGM held on 02.02.2024 has agreed valuation at INR 92/- per share. The aforesaid valuation report has duly considered by the Statutory Auditor of the petitioner company.

5. The board of directors of the petitioner company had sent notice and explanatory statement under Section 102(1) of the Act, to the equity shareholders of the petitioner company proposing to convene an Extra Ordinary General Meeting (EOGM) on 02.02.2024. The resolution for approving the proposed reduction of equity share capital was approved unanimously i.e. 100% in number and 100% in value, by the equity shareholders in the EOGM held on 02.02.2024.

6. Upon capital reduction becoming effective and operative, the petitioner company shall pass the following adjustment in its books of accounts in accordance with Section 133 of the Act:-
 - (i) Share capital will be reduced to the tune of INR 3,42,39,140/- (viz. 34,23,914/- equity shares of INR 10/- each)
 - (ii) Existing Securities Premium will be reduced by the remaining amount to the tune of INR 28,07,60,948/-.
 - (iii) Further, paying off the shareholder, the cash and bank balance will be reduced to the tune of INR 31,50,00,088/-

The net-worth of the petitioner company shall remain positive post-reduction. The reduction of equity share capital and

utilization of securities premium for repayment of the part of the equity share capital will not cause any prejudice to any creditors of petitioner company (who have given their consent) as there is no reduction in the amount payable to any of the creditors and will not adversely affect the ordinary operations of company or the ability of the company to honour its commitments or to pay its debts in the ordinary course of business as verified from the assessable net worth of the company which is positive. The applicant has also given an affidavit stating that it will comply with extant FEMA guidelines on account of reduction of share capital to the shareholders which are its own holding company and its parent company as observed from documents submitted and hence the reduction of equity is within the permissible provisions, no objections raised by the regulators and the entity survives even after the stated reduction of share capital.

7. There is no pending inspection, inquiry or proceeding/investigation pending against the petitioner company under the provisions of the Act. No qualification, reservation or adverse remark or disclaimer has been made by the statutory auditor in his report for the audited financials of the petitioner company as on 31.03.2023. There are no public

deposits at the petitioner company, so there is no question of arrears in deposit repayment. The statutory auditor has certified the amount payable to the secured and unsecured/trade creditors as on 24.01.2024, the accounting treatment proposed for reduction of equity share capital and securities premium is in conformity with the accounting standards specified in Section 133 or any other provisions of the Companies Act, 2013 and no arrears in repayment of deposits or interest thereon.

8. The reduction of equity share capital as envisaged by the petitioner company is not required to be registered under the provisions of Competition Act, 2002. Petitioner company has foreign/non-resident shareholders, it undertakes to comply with the provisions of FEMA/RBI guidelines. There are no proceedings/investigation pending against the petitioner company under Sections 210-217, 219,220, 223, 224, 225, 226 and 227 of the Act. It is further stated that there are winding up petitions pending against it. Petitioner company is not a listed public limited company. The petitioner company, therefore, prayed for confirmation of reduction of 34,23,914 equity shares from total 2,55,46,747 equity shares.
9. As per direction of this Tribunal dated 15.02.2024 and 28.02.2024, petitioner company filed affidavit on 06.03.2024

and 09.04.2024 regarding service of notices to the Regional Director, Registrar of Companies, Income Tax Authorities and to the Unsecured Creditors as well as proof of paper publication respectively.

10. The Regional Director (RD) filed its report dated 23.04.2024 along with report of the Registrar of Companies (RoC) dated 13.03.2024. The RD in its report submitted this Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the company after giving effect to the proposed reduction and the payment made to the shareholders shall be subject to payment of Capital Gain Tax in the hand of recipients shareholders and also the company shall be liable for payment of dividend distribution tax, if applicable. Further submitted that petitioner company to file an affidavit to the effect that the interest of the creditors and all stakeholders and Government Revenue are protected as well as statutory dues are paid off. RD submitted that as per Section 2(22) (d) and other applicable provisions of the Income Tax Act, 1961, the shareholder is liable to pay Income Tax as deemed dividend in respect of paying of money over Rs.10/- per share, if applicable and petitioner company to submit an affidavit with undertaking that total amount of Rs.92/- per share shall be credited to bank account

of concerned shareholders towards payment to the shareholders. RD further submitted that the petitioner company has to ensure all statutory compliance of all applicable laws as well as to undertake to comply with the Income Tax/GST law and other statutory demand/taxes payable on implementation of the said reduction of capital as per law.

11. The RoC in its report stated that as per available records from the MCA, the company has filed its statutory returns i.e. annual return and balance sheet up to 31.03.2023, there is no pending inspection, inquiry or investigation against the petitioner company under the Act, no complaint is pending against the company, no court case is pending in the court against the petitioner company.
12. In response to the observation of RD, petitioner company has filed an affidavit in reply/response dated 03.05.2024 wherein it is submitted that there are no secured creditors and three unsecured creditors and two unsecured creditors having more than 90% value of debt have given no objection to the proposed reduction of share capital. It undertakes to comply with all the provisions of the Income Tax Act, 1961. It is submitted that the interest of all the creditors and all the stakeholders and

government revenue are protected as well as the statutory dues are being paid off in normal course of business. It undertakes to comply with the provisions of FEMA and RBI guidelines. It also undertakes to ensure all the compliances of all the applicable laws including the Income Tax Laws / GST Laws as applicable.

13. No representation has been received from the Income Tax Department. It seems that they have no objection to the reduction of share capital. There is also a confirmation of compliance affidavit filed by the application.

14. No representation has been received from the unsecured creditors of the petitioner company opposing the proposal to reduce the share capital. Consent letters have been obtained from the 2 unsecured creditors. From the list of documents submitted there seems to be having only unsecured creditors i.e. three unsecured creditors. Two unsecured creditors having more than 90% value of debt have given their no objection. The company is observed to be solvent as per the financial statements submitted with updated figures.

15. Heard Ld. Counsel for the petitioner company and representative of the office of the Regional Director. Also perused the documents available on record.
16. The counsel appearing for the petitioner company submitted that the petitioner company has complied with all statutory requirements as per the directions of the Tribunal and filed the necessary affidavits including additional affidavit in compliance of the order dated 25.04.2024. 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
17. On perusal of the representation of the Regional Director, it is observed that there are no adverse observations. During the hearing on 27.06.2024, Mr. Shiv Pal Singh, Deputy Director appeared for the Regional Director and submitted that they have no objection. The Statutory Auditor viz. Deloitte Haskins & Sells LLP, has certified that the proposed accounting treatment for reduction of share capital is in compliance with the accounting standards notified under Section 133 of the Companies Act, 2013 read with rules made thereunder and other generally accepted accounting principles in India. We do not see any adverse remarks made in the report of the statutory

auditor. Thus, we are satisfied that all necessary compliances for making the proposed reduction of share capital are done by the petitioner company and there is no objection from any creditors, shareholders or any stakeholders is received. Hence, the application deserves to be allowed. Hence, we pass the following order:-

ORDER

- i) Company Petition i.e. CP/6(AHM)2024, is allowed.
- ii) The below proposed minutes to be registered under Section 66(5) of the Act, are approved:-

The issued, subscribed and paid-up equity share capital of A. Menarini India Private Limited is by virtue of Special Resolution of Equity Shareholders of the company dated 2nd February 2024, be reduced from INR 25,54,67,470/- divided into 2,55,46,747 equity shares of INR 10/- each fully paid-up to INR 22,12,28,330/- divided into 22,122,833 equity shares of INR 10/- each, by cancelling and extinguishing, in aggregate, 13.40% of the total issued, subscribed and paid-up equity share capital of the company, comprising of 34,23,914 equity shares of INR 10/- each.

- iii) The petitioner company is directed to file a certified copy of this order along with authentic minutes of the Company's Meeting under Section 66(5) of the Act, 2013, before the Registrar of Companies, Gujarat, within thirty

days of the receipt of the order.

- iv) All the concerned regulatory authorities to act on certified copy of the order duly certified by the Deputy Registrar, National Company Law Tribunal, Ahmedabad Bench.
- v) The petitioner company is directed to publish notices about registration of order and minutes of reduction by the Registrar of Companies, Gujarat, in two newspapers namely, "Times of India" in English and in Gujarati translation thereof in "Gujarat Samachar" both in Ahmedabad editions, within 30 days of registration.
- vi) The FEMA compliance to be made within the period stipulated by way of APDIR circular issued under FEMA by the regulator, RBI by the petitioner and the relevant parties who need to comply with the regulations.
- vii) The petitioner company is directed to comply with the observations of the Regional Director/the Registrar of Companies. The shareholders will ensure that they comply with ROC observations on capital gains to be paid as per the provisions of Income Tax and the company ensure such compliance.
- viii) Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioner company.

- ix) While approving the Reduction of Equity Share Capital as above, it is clarified that this Order should not be construed as an order in granting any exemption from payment of stamp duty, taxes including income tax, GST etc. or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

The Income Tax Department will be free to examine the aspect of any tax payable as a result of the sanction of the Reduction of Share Capital and the compliance will be made both the companies and its shareholders to pay the taxes, if any, on petitioner company.

- x) The legal fees and expenses of the office of the Regional Director are quantified at Rs.1,00,000/- The said fees to the Regional Director shall be paid by the petitioner company.

- xi) Company Petition i.e. CP/6(AHM)2024 is disposed off.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

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