

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
CP/42(AHM)2023

Order under Section 66 of Companies Act, 2013

IN THE MATTER OF:

Ahlstrom Fibercomposites India Private Limited

.....Applicant

Order delivered on: 23/07/2024

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/42(AHM)2023

[Application under Sections 66 of the Companies Act, 2013]

Memo of Parties

Ahlstrom Fibercomposites India
Private Limited
[CIN: U74120GJ2008FTC082596]

A Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Mundra, SEZ Integrated Textile & Apparel Park (MITAP), Plot No.7, Survey No.141, Mundra, Gujarat Applicant Company

Order Pronounced on 23.07.2024

Coram:

Mrs.Chitra Hankare, Member (Judicial)

Dr. Velamur G Venkata Chalapathy, Member (Technical)

Appearance :

For the Applicant Company : Mr. Ravi Pahwa, Advocate i/b.
Thakkar & Pahwa, Advocates.

For the Regional Director : Mr. Shiv Pal Singh

JUDGMENT

1. The applicant company was incorporated on 27.03.2008 under the provisions of the Companies Act (hereinafter referred to as the Act) in the State of Delhi and its registered office was changed from Delhi to Mundra, Gujarat. The name of the company was also changed. The company is carrying business of manufacturing, producing, processing, etc. varieties of fabrics, papers for medical hygiene and for industrial uses. The company has surplus funds which are not being utilized for the business. The paid-up share capital of the company is in excess of the needs of the company. The scheme of reduction of capital will enable the company to return the excess capital lying idle and unused by the company to the shareholders in the proportion of their shareholding. It will not affect adversely on the company's commitments and obligations in the ordinary course of business. The interest of the creditors of the company is not prejudicially affected in any way and they will be paid off in the ordinary course of business.

2. By virtue of Article 38 of the Articles of Association of the company, the company may in general meeting reduce its share capital. There is no proceedings/investigation pending against

the company under the provisions of the Act. No qualification, reservation and adverse remark or disclaimer has been made by the auditor in his report for the audited financial statements of company as at 31.03.2023. The company has not made any arrears in repayment of deposits or interest thereof. The authorized share capital of the company as on 31.03.2023 is Rs.405,00,00,000/- and the issued, subscribed and paid-up capital of the company is Rs.107,50,00,000/-.

3. The applicant company wishes to restructure its balance sheet by reducing paid-up equity share capital by way of reducing number of equity shares from 10,75,00,000 equity shares of Rs.10/- each to 7,00,00,000/- equity shares of Rs.10/- each by cancellation of 3,75,00,000 equity shares of Rs.10/- each at fair value of Rs.15.88 per share. It shall be effected by returning excess share capital to the tune of Rs.10/- per share towards cancellation of 3,75,00,000 shares and Rs.5.88 per share by way of adjustment against reserves and surplus balance of Rs.59,55,00,000/- .
4. The company held meeting of Board of Directors on 20.10.2023 and passed resolution for approval of capital reduction. The scheme of capital reduction was approved by resolution. The Board of Directors sent notice and explanatory statement

convening Extra Ordinary General Meeting of equity shareholders on 26.10.2023. In the meeting, special resolution was duly passed unanimously.

5. The statutory auditor of the company certified list of creditors as on 15.11.2023, no arrears in repayment of deposits or interest thereon and the accounting treatment proposed by the company for reduction of share capital is in conformity with the accounting standards specified in Section 133 of the Act. It is further stated that no winding up petition is pending against the company and shares of the company are not listed on any Stock Exchange. The applicant, therefore, prayed for confirmation of reduction of equity share capital of Rs.37,50,00,000/- and for approval of proposed minutes to be registered.
6. The notice was issued to Central Government through the Regional Director, the Registrar of Companies and to the Creditors of the company. The applicant has also made publication in two newspapers, i.e. Time of India, in English and in 'Kutchh Mitra' in vernacular, both in Gujarat editions on 11.12.2023.

7. The Regional Director (RD) filed its report dated 27.02.2024 on 01.03.2024 along with report of the Registrar of Companies (RoC) dated 17.01.2024. The RD in its report submitted that the applicant 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. The RoC in its report stated that there are no complaints, inquiry, inspection, investigation or prosecution is pending against the applicant company. It is further submitted that the payment made to the shareholders shall be subject to payment of Capital Gain Tax in the hands of recipients shareholders and also the company shall be liable for payment of dividend distribution, tax, if applicable. It is stated that the 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 are paid off. It is further stated that the applicant to submit an affidavit with undertaking that total amount of Rs.15.88 per share shall be credited to bank account of concerned shareholders towards payment to the shareholders. It is further submitted that the company / shareholder is liable to pay Income Tax as deemed dividend in respect of paying of money over Rs.10/- per share is

par value. It is further stated that the petitioner company is required to be complied with the provisions of FEMA and RBI guidelines as the applicant company has foreign shareholder.

8. In response to the observation of RD/RoC, applicant company has filed an affidavit in reply/response dated 05.03.2024 wherein it submitted that the applicant company shall pay necessary Income Tax, if payable, on reduction of share capital as per the provisions of Section 2(22) of the Income Tax Act 1961 read with other applicable provisions also discharge the requisite tax liability, if any, as per the applicable provisions on due time. It declared that the interest of the creditors and all stakeholders and Government Revenue are protected and the statutory dues are paid off, to the extent applicable. Applicant company further undertakes that total amount of Rs.15.88 per share shall be credited to bank account of concerned shareholders towards payment to the shareholders, subject to withholding taxes, as may be applicable. It undertakes to comply with the provisions of FEMA and RBI guidelines. Applicant company also undertakes to ensure compliances of all applicable laws and shall not be absolved from any of the statutory liabilities and to comply with Income Tax/GST Law

and any other statutory demand / taxes payable on implementation of the reduction of share capital as per law.

9. No representation has been received from the creditors of the applicant company opposing the proposal to reduce the share capital. From the list of documents submitted there seems to be only unsecured creditors and it seems that they have no objection to the reduction of share capital of the applicant company. The applicant has enclosed a certificate from the Statutory Auditor which only confirms the Annexure submitted on page 184 of the application (list of unsecured creditors), but does not list any secured creditors.

10. Heard Ld. Counsel for the applicant and representative of the office of the Regional Director. Also perused the documents available on record. On perusal of report of the Regional Director, it appears that there are no adverse observations in respect of the applicant company as well as to the proposed reduction of share capital. Applicant company has filed affidavit dated 15.05.2024 in respect of compliance of order dated 25.04.2024 wherein it is stated that all the provisions contemplated under the Income Tax Act, 1961 has been complied with.

11. The Statutory Auditor's report dated 21.11.2023 is filed by the applicant company. The Auditor has certified that the proposed accounting treatment as contained in Clause-14 of the Draft Scheme is in conformity with Indian Generally Accepted Accounting Principles and other provisions of the Act and rules made thereunder. Thus, we are satisfied that all necessary compliances for making the proposed reduction of share capital are done by the applicant 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 Application i.e. CP/42(AHM)2023, is allowed.
- ii) The below proposed minutes to be registered under Section 66(5) of the Act, are approved:-

“The paid-up equity share capital of Ahlstrom Fibercomposites India Private Limited be reduced from Rs.1,07,50,00,000 (Rupees One Hundred and Seven Crores Fifty Lakhs only) comprising of 10,75,00,000 (Ten Crores Seventy Five Lakhs) Equity shares of Rs.10 (Rupees Ten) each to Rs.70,00,00,000 (Rupees Seventy Crores only) divided into 7,00,00,000 (Seven Crores) equity shares of Rs.10 (Rupees Ten only) each”

- iii) The applicant 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) The applicant 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 Kutchh Mitra' in vernacular, both in Gujarat editions, within 30 days of registration. The company would wait for a period of 30 days after publishing the notices before unwinding/reducing the share capital to ensure no secured creditors raise any claim or objection of the reduction in share capital proposed.
- v) The FEMA compliance to be made within the period stipulated by way of APDIR circular issued under FEMA by the regulator, RBI.
- vi) The applicant 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.
- vii) 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,

in accordance with law, against the concerned persons, directors and officials of the applicant company.

- viii) 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.
- ix) The legal fees and expenses of the office of the Regional Director are quantified at Rs.50,000/-. The said fees to the Regional Director shall be paid by the applicant company.
- x) Company Petition i.e. CP/42(AHM)2023 is disposed off.

Sd/-

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

Sd/-

**CHITRA HANKARE
MEMBER (JUDICIAL)**

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