

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH C-IV**

C.P. 256/MB/2023

*In the matter of
Under Section 66 of the
Companies Act, 2013 and the
Rules framed thereunder;*

And

*In the matter of
Reduction of Equity Share Capital
of*

**RB Bristish Marine India Private
Limited**

(“The Petitioner Company”)

RB Bristish Marine India Private Limited

[CIN: U63090MH2005PTC156643]

.... Petitioner Company

Order Pronounced on: **17.01.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Shri Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Petitioner Company:

Mr. Arun Saxena a/w Ms. Nalini, Ld
Counsel for Petitioner Present.

ORDER

1. Heard Learned Counsel for the Petitioner.

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2. Petition Admitted.
 3. Petition is fixed for final hearing and disposal on 2nd May 2024.
 4. Learned Counsel for the Petitioner Company submits that in light of the fact that the Petitioner Company possesses funds which are in excess of its operational and financial requirements. Thus, the Petitioner Company aims to return the capital which is in excess of the wants of the Company and restructure its Balance Sheet.
 5. Learned Counsel for the Petitioner Company further submits following rationale and benefits for filing the present Company Petition: -
 - a) As on December 31, 2022, the Company has cash and cash equivalents and liquid resources aggregating to Rs. 2,258.75 Lakhs, which are in form of Cash at Hand and Cash at Bank. Further, the Company has enough resources to meet its ongoing business activities as well as future growth requirements;
 - b) On a review of the financial position of the Company as per its Audited Financial Statement as on 31 March, 2022 including its reserves, future revenues, expansion plans and CAPEX thereto etc., the Board of Directors of the Company in the meeting held on 05.12.2022, were of the opinion that the paid-up share capital of the Company is in excess of its requirement of funds.
 - c) The Board of the Company, in the aforesaid meeting, after carefully examining and evaluating the different options available to the Company and in accordance with the provisions of Section 66 of the Companies Act, 2013 read with the applicable rules issued thereunder, and subject to the consent of the Shareholders and the approval from the Hon'ble Tribunal and other statutory authorities as and where applicable, decided to pay back the excess share capital by reduction of Equity Share Capital of the Company from Rs. 32,80,03,150 (Rupees Thirty-Two Crores Eighty Lakhs Three Thousand One Hundred and Fifty Only) divided into 3,28,00,315 (Three Crores Twenty-Eight Lakhs Three Hundred and Fifteen) Equity Shares of Rs. 10/- each upto Rs. 13,30,03,150 (Rupees Thirteen Crore Thirty Lakh Three Thousand One Hundred Fifty Only) divided

into 1,33,00,315 (One Crore Thirty-Three Lakh Three Hundred and Fifteen) Equity Shares of Rs. 10/- each by reduction of 1,95,00,000 (One Crore Ninety-Five Lakhs) Equity Shares of Rs. 10/- each at a price of Rs. 11.51 per share as stated in the valuation report issued by C.A. Vaibhav Jain, Registered Valuer at Annexure-A8.

- d) Article 6 of the Articles of Association of the company provides that the company shall have the power to reduce the share capital whenever the Company thinks expedient.
- e) Post the reduction of share capital—
- (i) the Company will have more efficient capital structure and the shareholders will also benefit in terms of enhanced return on equity capital, return on capital employed and dividend yield on face value of shares.
 - (ii) The Company will have enough resources to fund the ongoing activities and its expansion programme etc.
- f) The reduction of the paid-up equity share capital will not result in any change in the proportion of shareholding of the members of the Company and would not in any way have any adverse effect on the Company's ability to honor its commitments or meet its obligations in the ordinary course of business.
- g) The benefits of the Scheme will be as follows:
- (i) The excess capital, lying idle and unused by the Company, will be returned to all the shareholders of the Company in a proportion of their shareholding as on the record date, as may be fixed by the Board.
 - (ii) An accurate financial position of the Company will be reflected and excess and unwanted share capital will be returned to the shareholders.
6. The Learned Counsel 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 30.12.2022, being

Annexure-A10 to the Company Petition, approving the reduction of share capital of the Petitioner Company.

7. 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 2,94,45,000 (Indian Rupees Two Crore Ninety-Four Forty-Five Thousand) between the face value of Equity Shares cancelled of INR 19,50,00,000 (Indian Rupees Nineteen Crore and Fifty Lakh Only) and consideration of INR 22,44,45,000 (Indian Rupees Twenty-Two Crore Forty-Four Lakh Forty-Five Thousand Only) shall be adjusted against the Reserves & Surplus Account.
8. The Learned Counsel for the Petitioner Company submits that Annexure-A14 of Company Petition includes a certificate from M/s MKSA & Associates, Chartered Accountants, the Statutory Auditor of the Company and Declaration by Director of the Company confirming that the Company as on 31.12.2022 does not have deposits and there are no arrears in the repayment of the deposits or the interest thereon. Further, Company Petition at Annexure-A11 also includes a certificate from Statuary Auditor of the Company certifying that the accounting treatment proposed by the Company for the Reduction of Share Capital is in conformity with the Accounting Standards specified in Section 133 or any other provisions of Act.
9. The Learned Counsel for the Petitioner Company submits that as on 31.12.2022, the Petitioner company does not have any Secured Creditors and has 3 Unsecured Creditors amounting to Rs. 1,95,14,419. Duly certified list of creditors by Directors of the Company and certificate from the Statuary Auditor of the company in this regard forms part of Company Petition at Annexure-A12 & A13 respectively. Learned Counsel for the Petitioner Company further submits that the interest of unsecured creditors of the Petitioner Company will in no way affected by the proposed reduction of the share capital as there shall not be any reduction in the amount payable to any of the unsecured creditors arising out of this reduction.

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10. 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, "Financial Express", in English language and translation thereof in "Navakal", in Marathi Language, both having circulation in Mumbai. 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.
11. 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 three (3) Unsecured Creditors as on 31st December 2022, by R.P.A.D./ Speed Post and email, 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.
12. Within 7 days from the date of this Order, the Petitioner Company is directed to serve notices through RPAD/Speed Post and email upon the Central Government through Regional Director, Western Region, pursuant to Section 66 of the Companies Act, 2013 read with 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.
13. Within 7 days from the date of this Order, the Petitioner Company is directed to serve notices through RPAD/Speed Post and email upon

the concerned Registrar of Companies, Maharashtra at Mumbai, pursuant to Section 66 of the Companies Act, 2013 read with 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.

14. The Petitioner Company shall submit to this Tribunal, within seven (7) days of expiry of period up to 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.
15. 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.
16. 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.
17. Ordered accordingly.

Sd/-

Ms. Anu Jagmohan Singh
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)