

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

C.P. 95/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

Anand Engineers Private Limited

("The Petitioner Company")

Anand Engineers Private Limited
[CIN: U45200MH2007FTC172204]

..... Petitioner Company

Order Pronounced on : **23.07.2024**

Coram:

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

Shri Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Petitioner Company : Mr. Ahmed Chunawala, Advocate
through physical mode.

For the Regional Director : Mr. Mr. Tushar Wagh, Ld.
Authorised Representative for the RD
office, present though VC.

ORDER

1. Heard the Learned Counsel for the Petitioner Company. Neither objector, except otherwise stated, has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.
2. The Ld. Counsel for the Petitioner Company submits that the present petition is for confirmation of a Special Resolution passed by the Shareholders of the Petitioner Company on **14th November, 2022** for reduction of its Equity Share Capital by reducing the Paid-Up Equity Share Capital from *Rs. 17,16,000 divided into 17,160 equity shares of Rs. 100/- each, fully paid up to Rs. 12,62,000/- divided into 12,620 equity shares of Rs. 100/- each* by cancelling and extinguishing, in aggregate, 26.46% of the total capital issued, subscribed and paid up capital of the company, comprising 4,540/- (Four Thousand Five Hundred Forty) Equity shares of Rs. 100/- (Rupees Hundred) each at premium of Rs. 27,900/- (Twenty-Seven Thousand Nine Hundred) each held by the members of the company.
3. However, the Company has recently completed buy back by-passing **Special Resolution dated 06.02.2023** in which the paid – up equity shares capital of the Company has been reduced from *Rs. 17,16,000 divided into 17,160 equity shares of Rs. 100/- each fully paid up to Rs. 14,72,000/- divided into 14,720 equity shares of Rs. 100/- each fully paid*

up and after buy back process, the Company now proposes to reduce the paid equity share capital **from Rs. 14,72,000 divided into 14,720 equity shares of Rs. 100/- each, fully paid up to Rs. 10,18,000 divided into 10,180 equity shares of Rs. 100/- each fully paid up**”.

4. That the **Rationale** for the Scheme for Reduction of Share Capital:

- a. *The Scheme of Reduction of Capital is made by the Anand Engineers Private Limited, pursuant to the provisions of the Section 66(1)(b)(i) of the Companies Act, 2013, read with the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016 and other applicable provisions, if any. The scheme provides for reduction of equity share capital of the Company.*
- b. *Reason for reduction of Share Capital is to capture the mutual understanding for granting an Exit to the Outgoing Shareholders of the Company.*
- c. *In view of the above, the Board has decided to reduce the paid-up Equity Share Capital of Anand Engineers Private Limited by cancelling and extinguishing the Equity shares held by the shareholders as on the Effective date of the Scheme.*
- d. *Further by article(s) 103.8 of Articles of Association of the company authorizes the company to reduce its share capital in any manner and in accordance with the provisions of the Act permitted by law.*

- e. *The company has passed a special resolution confirming the said reduction of share capital of the company on 14th November, 2022.*
5. Ld. Counsel for the Petitioner Company submits that there are **21 (two) Equity Shareholders** in the Petitioner Company. The Equity Shareholders of the Petitioner Company have approved the said reduction by passing special resolutions at Extraordinary General Meeting held on **14.11.2022**.
6. There is *1 (one) Secured Creditor and 133 Unsecured Creditors* in the Petitioner Company which is total outstanding value of *Rs. 11,00,15,717/-* as on 30.11.2022. It is submitted that the Petitioner Company has served notices upon all its Secured/ Unsecured Creditors in compliance with the directions of this Tribunal *vide Order dated 19.05.2023*. The Petitioner Company submitted a letter dated 13.12.2023 stating that it has not received any objection from any of its Creditors for the proposed reduction in share capital. Further, it is also submitted that the reduction is in the best interest of the Company and its stakeholders and that the Petitioner Company has taken all necessary steps to mitigate any adverse impact on its creditors.
7. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, and RoC has filed a Report dated 10th November, 2023 and 1st November, 2023. In the Said

report, few observations were made on the proposed Scheme of Reduction. The Petitioner Company filed Rejoinder Affidavit on 28.11.2023 which are reproduced hereunder:

Sr. No.	Observation by the Regional Director/Registrar of Companies	Reply to the Company	Comments of the Regional Director
1.	Interest of the Creditors should be protected.	As stated in Para 6 of the Report, the Petitioner Company will protect the interest of creditors, and their outstanding dues, if any, will be paid off in the ordinary course of business as and when they are due. Further, the Petitioner Company states that the rights of the creditors are not affected as there is no compromise or arrangement with creditors.	The reply of the company appears to be satisfactory.

2.	Applicant to be submit an affidavit to the effect that the interest of the Creditors and all stakeholders and government revenue are protected as well as statutory due are paid off.	As per Para 7A the petitioner company vide this affidavit hereby solemnly affirms that pursuant to the reduction of share capital of the Petitioner Company, interest of the creditors, stakeholders and the Government Revenue will not be affected i.e., the Petitioner Company will ensure protecting interest of its creditors, stakeholders and Government and all their outstanding dues, if any, will be paid off in the ordinary course of business as and when they	The reply of the company appears to be acceptable.
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		are due.	
3.	The tax implication if any arising out of the proposal for reduction is subject to final decision of Income Tax Authorities. The approval of the company petition by this Hon'ble Court may not deter the Income tax Authority to scrutinize the tax return filed by the company after giving effect to the proposed reduction. The decision of the Income Tax Authority is binding on the petitioner company. Further the payment made to Income tax or	As per Para 7 B the Petitioner company submits that tax implication if any arising out of the proposed reduction will be answered with in accordance with law and further, the decision of Income Tax Authority will be binding on Petitioner Company, subject to right of appeal available to the Petitioner Company under applicable Laws. Further, the petitioner undertakes that the payment made to shareholders	The reply of the company appears to be acceptable.

	capital gain tax, as the case may be in hands of receipts shareholders.	shall be as per applicable income tax rules.	
3.	It is respectfully submitted that, the petitioner company is proposing to reduce share capital from Rs. 17,16,000 divided into 17,160 equity shares of Rs. 100/- each, fully paid up to Rs. 12,62,000/- divided into 12,620 equity shares of Rs. 100/- each at Rs. 27,900/- per equity shares for each equity share of par value of Rs. 100/-	As stated in Para 7(C) & (d) of the Report, is concerned, the Petitioner Company submits that the reduction of capital is regarded as one of the process of decreasing company's share capital by paying off the paid-up share capital which is in excess of the wants of the company. However, Buyback of shares which is altogether a separate provision governed by section 68 of the	Section 68 of the Companies Act, 2013 deals with buy back of shares, whereas Section 66 of the Companies Act, 2013 deals with reduction of capital after obtaining the permission of NCLT. Both deal with different situations. In case of Capgemini India Private Limited the Bombay High Court has held that buy back of shares cannot be equated to reduction of capital. The Petitioner Company further submits

	<p>In this regard, it is submitted that in the scheme the applicant proposes to pay off to the shareholders on huge valuation of Rs. 27,900/- per shares which is in the nature of buy back and not falling strictly under section 66 of the Companies Act, 2013 as the petitioner company should proceed as per provisions of the Section 68 of the Companies Act, 2016 for buyback of the shares and provisions of the AOA (Article 103) of the petitioner</p>	<p>Companies Act, 2013, which also restricts buy back up to 25% of paid-up share capital and free reserve during a financial year. The Companies has kept both these sections mutually exclusive and same is evident from sub-section (6) of section 66 which read as “nothing in this section shall apply to buy-back of its own securities by a company under section 68”. Thus, the petitioner submits that reduction of share capital dose not circumvent the</p>	<p>that the First Capital Reduction is selective, and they are paying fair value to the Existing Shareholders to provide them an exit and are not buying back the shares held by them so the provisions of section 68 of the Companies Act, 2013 will not apply. The petitioner Company has adopted one of the routes available under the companies Act, 2013 to provide exit opportunity to public shareholders at fair value and the procedure laid down under the</p>
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	company.	provision of the Section 68.	<p>provisions of section 66 of the Companies Act, 2013 has been duly followed including, obtaining approval of shareholders by way of special resolution and approval of the Hon'ble NCLT.</p> <p>Thus, reply of the company is affirmative in view of section 66(6) of the Companies Act, 2013.</p>
4	Further, any amount paid to shareholders above the face value of paid up share capital i.e. Rs. 100/- per share is treated as deemed divided u/s 2(22) of the Income Tax	As stated in Para 7(e) of the Report, is concerned, the Petitioner Company hereby undertakes to duly pay the tax liabilities, if any, arising as a result of the reduction of	<p>The reply of the company is affirmative.</p> <p>However, the matters falls under the domain of the Income Tax Department.</p>

<p>Act, 1961 in the hands of the receipt shareholders at Rs. 27,900/- per shares are being paid on 4,540 equity shares from accumulated profits i.e. General Reserve of the Company and therefore, the company receipts shareholders shall undertake to Income Tax/TDS as per the provisions of Income Tax Act, 1961.</p>	<p>share capital of the Company under the provisions of Section 2(22) of the Income Tax Act, 1961. The Petitioner Company undertakes to comply with all the applicable provisions of the Income - Tax Act, 1961 and all other tax issues arising out of the petition of reduction of share capital will be met and answered in accordance with the law. The Petitioner Company undertakes to discharge tax liability or</p>	
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		withholding tax liability, if applicable, on the amounts to be paid to the shareholders pursuant to the reduction of share capital, wherever and in case applicable, to the Petitioner Company.	
5	The Petitioner Company has not furnish valuation report of Shares; therefore, petitioner shall be provide before Hon'ble NCLT to satisfy that proper valuation report for the valuation for the purpose of reduction of share capital	The Petitioner company submits that company limited by shares is permitted to reduce the share capital in any manner within the framework of Law. An observation was that valuation report of shares is furnish, since petitioner company its	The reply of the company is not satisfactory on following grounds:- I. In all most cases the company's valuation of shares before filling the petition for reduction of capital so that Hon'ble NCLT may satisfy that

		<p>private limited company and valuation of shares is being technical matter, which requires considerable skill and experience. If shareholders are satisfied with the value which are mentioned in the Shares Purchase Agreement executed by the company with the consent of Board and majority shareholders, that is sufficient proof of the transaction for reduction of share capital.</p> <p>Hereto annexed and marked "Exhibit - B" as Share Purchase Agreement</p>	<p>outgoing shareholders are getting money back by way of reduction of capital, as per there intriguing value/fair value so that is should not be (pre-judicial to interest of creditors.</p> <p>II. The company is paying Rs. 12,66,66,000/- as reduction of capital to shareholders holding 4540 shares comprising 26.46% paid up share capital at the rate of Rs. 27,900/- per share, of the</p>
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		<p>executed by the company between existing and outgoing shareholders.</p> <p>It is submitted that the concerned shareholders whose capital is proposed to be reduced and all the shareholders of the Company were present at the Shareholders meeting held on 14th November, 2022 and have unanimously agreed for the reduction of their share capital. The minutes of the aforesaid meeting is annexed and marked "Exhibit - C".</p> <p>It is submitted</p>	<p>company. All though a company has reserved the notice to the creditors but possibilities of affecting the creditors interest cannot be ruled out if proper valuation of shares is not made for reducing the company's fund (shareholders net worth) which is always giving the cushion to the creditors in form of debt equity ratio in the company. Thus, the debt service ability</p>
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		<p>that the certificate from the Statutory Auditor stating 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 the Act. Hereto annexed and marked "Exhibit - D" is the copy of the Certificate from the Statutory Auditor and the Company herewith submit the past 2 years Audited Balance sheet which is annexed</p>	<p>of the company will come down after reduction of capital, as company has approx.19.06 crore creditors as on 31.03.2022</p> <p>III. In view of above the Hon'ble NCLT may consider the above submissions and decide the matter on merit of the case.</p>
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		and marked "Exhibit – E".	
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8. The Regional Director appeared through its representative and submitted that their observations/ objections have been satisfactorily explained by the Petitioner Company or acceptable to them. Hence, the Regional Director does not have any objection to the proposed scheme of reduction.
9. The Petitioner Company further submits that the book net-worth of the Company is as herein below:

Pre-Reduction	Post-Reduction
Rs. 23,42,12,290/-	Rs. 23,35,14,290/-

10. The certificate issued by the Statutory Auditors confirming that the accounting treatment for reduction of equity share capital is in accordance with the accounting standards specified under section 133 and other provisions of the Companies Act, 2013 is annexed to the Petition.
11. The Statutory Auditors have also issued a certificate certifying that the company has not accepted any deposits.
12. The Petitioner Company will comply with the provisions of the Income Tax Act, 1961 and the Income Tax Department shall be at liberty to independently examine the legal contention of the Petitioner Company cited in this order.

13. We have perused the material on record and heard the Counsel for the Petitioner Company. Upon consideration of the relevant facts and submissions, the Scheme of reduction of share capital appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public interest/ policy. Petition for the reduction of share capital allowed.
14. In view of clarifications given by the petitioner company, the Company Petition is allowed and Schedule of Form of Minutes.
15. The Petitioner Company to publish notices about registration of order and minutes by the concerned Registrar of Companies in two newspapers namely "**Free Press Journal**" in English language and translation thereof in "**Navshakti**" in Marathi language both having circulation in the State of Maharashtra within 30 days of registration.
16. The Petitioner Company to file the certified copy of the order and form of minutes duly certified by the Deputy Registrar/Assistant Registrar of this Tribunal within 30 days from the date of receipt of the certified Order from the Registry of this Tribunal.
17. All concerned regulatory authorities to act on production of certified copy of the order to be issued on demand by the Deputy Registrar/Assistant Registrar of this Tribunal.

18. The minutes set forth hereto be and is hereby approved.

FORM OF MINUTES

“The existing issued, subscribed and paid up equity share capital of Anand Engineers Private Limited, the petitioner Company, comprising of Rs. 14,72,000/- (Rupees Fourteen Lakh Seventy-Two Thousand) divided into 14,720 (Fourteen Thousand Seven Hundred and Twenty) equity shares of Rs.100/- (Rupees One Hundred Only) shall be reduced to Rs.10,18,000/- (Ten Lakh Eighteen Thousand Rupees) divided into 10,180 (Ten Thousand One Hundred and Eighty) equity shares of Rs.100/- (Rupees One Hundred Only).”

Sd/-

Anu Jagmohan Singh
Member (Technical)

/Dubey/

Sd/-

Kishore Vemulapalli
Member (Judicial)