

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

101. CP/129(MB)2024

IN THE MATTER OF

Namco Industries Private Limited

Section 66 of the companies Act, 2013

Order Delivered on 09.10.2024

CORAM:

MS. REETA KOHLI
MEMBER (J)

MS. MADHU SINHA
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner:- C.A. Harsh C. Ruparelia (PH)

For the Respondent:

ORDER

1. Petition Admitted.
2. Petition is fixed for final hearing and disposal on 22nd day of January 2025.
3. The Professional 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 5th day of September 2024, being **Annexure F** (*Page Nos. 105 to 107*) to the Company Petition, approving the proposed reduction of equity share capital from 5,00,00,000 equity shares of Rs. 10 each, fully paid-up to 5,00,00,000 equity shares of Re. 0.2 each, fully paid up, on a proportionate basis and that such reduction shall be adjusted against the opening debit balance of Profit &

Loss Account as on April 1, 2024. Simultaneously, the debit balance of Profit & Loss Account post such adjustment shall be adjusted against the amount of securities premium account as on April 1, 2024 and subsequent to the reduction of share capital, every 5 equity shares of Re. 0.2 each, fully paid up will be consolidated into 1 equity share of Re. 1 each, fully paid up. 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). The Petitioner Company submits that pursuant to the reduction of share capital, the difference between the face value of the shares reduced/cancelled shall be adjusted against the opening debit balance of Profit & Loss Account as on April 1, 2024. Simultaneously, the debit balance of Profit & Loss Account post such adjustment shall be adjusted against the amount of securities premium account as on April 1, 2024. The Petitioner Company further submits that pursuant to consolidation of share capital, there shall be no impact on the books of accounts of the Petitioner Company. The said special resolution was unanimously approved by the Equity Shareholders present and voting in the extraordinary general meeting held on 5th September 2024.

4. The Professional for the Petitioner Company submits that it is authorized by Article 38 of the Articles of Association to undertake reduction of share capital of the Petitioner Company. The extract of Article 38 of the Articles of Association, is as follows:

“The company may by special resolution reduce in any manner and with and subject to any incident authorised and consent required by law its share capital any capital redemption reserve account or any share premium account.”

5. The Professional for the Petitioner Company submits that it is authorized by Article 36 of the Articles of Association to undertake reduction of share capital of the Petitioner Company. The extract of Article 36 of the Articles of Association, is as follows:

“Subject to the provisions of Section 61, the company may by ordinary resolution consolidate and divide all or any of its share capital into shares of larger amount than its existing shares convert all or any of its fully paid-up shares into stock and reconvert that stock into fully paid-up shares of any denomination sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the memorandum cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person.”

6. 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, “Business Standard”, in English language and translation thereof in “Navshakti”, in Marathi Language, both having circulation in Maharashtra and to also upload the same on the website, if any, of the Petitioner Company. 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.

7. The Petitioner Company has 1 Secured Creditor amounting to Rs. 60,13,00,000 and 33 Unsecured Creditors aggregating to Rs.72,25,15,934 as on 10th September 2024. The certificate issued by the Statutory Auditor certifying the list of creditors is annexed as **Annexure L** (*Page Nos. 126-131*) to the Company Petition. 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 Secured Creditor and all of its Unsecured Creditors as on 10th September 2024, by R.P.A.D./ Speed Post, 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.
8. The Petitioner Company to serve the notice upon:- (i) the Central Government through the Regional Director, Western Region, (ii) the concerned Registrar of Companies, Maharashtra at Mumbai, and (iii) the concerned Income-tax Authority, pursuant to Section 66 of the Companies Act, 2013 and as per

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 within Three (3) months of the date of receipt of the notice, it will be presumed that there are no objections 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.

9. The Petitioner Company shall submit to this Tribunal, within seven (7) days of expiry of period upto 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.
10. 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 and publication of the notice.
11. Ordered accordingly.

Sd/-
MADHU SINHA
Member (Technical)
//Anmol//

Sd/-
REETA KOHLI
Member (Judicial)