

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH - II, CHENNAI
CA/76(CHE)/2020**

Under Section 66(1) of the Companies Act, 2013

In the matter of M/s. Sri Rathinagiri Hometex Private Limited

M/s. SRI RATHINAGIRI HOMETEX PRIVATE LIMITED,

CIN: U45203TN2005PTC057930

Represented by its Authorised signatory Mr. P. Sivasankar,

Having its registered office at,

D.No. 9/959, Ponvel Nagar, Chinnandan Koil Road,

Karur, Tamil Nadu, India – 639 001

... Application

Order Pronounced on 10th May 2024

CORAM

SHRI. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Petitioner(s): Mr. Dhanraj B, Advocate

COMMON ORDER

1. The instant application has been filed by M/s. Sri Rathinagiri Hometex Private Limited represented by its Director and authorised signatory, Mr. P. Sivasankar under Section 66(1) of the Companies Act, 2013, seeking reliefs as follows;
 - i. *That the Reduction of Capital resolved on by the Special Resolution set out in Paragraph 7 above be confirmed;*
 - ii. *That to this end all directions necessary and proper be made and given;*
 - iii. *That the proposed Minute be approved;*
 - iv. *That such further or other order/s be made in the premises as to this Hon'ble Tribunal shall deem fit.*
2. Applicant Company is a Private limited Company limited by Shares. The main objects are, "To establish, construct, purchase or otherwise acquire textile mills and

factories and to carry on the business of manufacturing, bleaching, dyeing, printing, selling yarn, cotton and/or stable fibre: cloth and other fabrics made from raw cotton, jute, wool, rayon and other suitable materials; and generally to carry on the business of textile manufacturers in all its branches". The Complete details of the Objects are detailed in Memorandum of Association placed at typeset of the appeal.

3. It is stated, that the Applicant Company is involved in business of textiles. The Company after thorough analysis of the financial position, valuation of assets found that the value of assets is not sufficient to cover entire paid up capital. Further it stated that company is continuously making loss. Therefore, after looking into different options, the Board of Directors had decided to reduce the paid up capital of the company by cancelling and extinguishing to the tune of Rs.1,51,78,000/- (Rupees one crore fifty one lakh seventy eight thousand only) which is unrepresented by assets of the company and adjust the loss. In addition it is submitted that the proposed reduction of the share capital does not affect the Company's ability to honour its commitments and obligations in the course of business.

4. The Authorized Share Capital of the company as on 20.12.2022 is as below,

Particulars	No. of Shares	Amount
Authorised Share Capital Equity shares of Rs.1000/- each	62,500 (Sixty two thousand and five hundred)	Rs.6,25,00,000/- (Rupees Six crore twenty five lakh only)
Issued, Subscribed and fully paid Equity shares of Rs.1000/- each	60,710 (Sixty thousand seven hundred and ten)	Rs.6,07,10,000/- (Rupees six crore seven lakh and ten thousand only)

5. The list of Dates and events in relation to the present application as follows,

S.No	Date	Events
1	03.10.2019	Special Resolution for reduction of Share capital as per sec 66 of Companies Act, 2013 has been passed by the EGM

2	28.11.2019	Application filed before AA for approval of proposed share Reduction which has been numbered as CA/76/2020
3	09.01.2020	Filed an application for amending the main CA which has been numbered as IA/19/2021
4	10.11.2021	Amendment application IA/19/2021 has been allowed
5	04.08.2022	Report of the Regional Director has been filed
6	20.09.2022	<p>Special Bench II has raised few queries and directed the applicant to file a clarification affidavit complying all the following requirements.</p> <p><i>“The queries below has been extracted,</i></p> <ul style="list-style-type: none"> • <i>MoA and AoA of the company was not filed</i> • <i>Class wise list of creditors certified by the Director (mandated Rule 2(a) of NCLT procedure for reduction of share capital rules 2016) was not filed</i> • <i>Declaration from director regarding arrears in repayment of deposits (mandated Rule 2(c) of NCLT procedure for reduction of share capital rules 2016) was not filed</i> • <i>The auditor certificate dated 03.02.2021 which shows total credit value as Rs.2,47,405?- but in the balance sheet at page 37 & 40 much higher credit liability is recorded</i> • <i>Instead of consent Affidavit only “No Objection Letters” of the creditors were placed on record (one of the creditor is Limited company)</i> • <i>The shares proportions before and after reduction of share capital was not properly described in the application.”</i>
7	29.03.2023	Applicant has filed the compliance affidavit as per the order dated 20.09.2022
8	29.03.2023	Applicant has sought for RSC – 3 notice
9	31.05.2023	1 st motion order has been reserved by the Division Bench II
10	01.08.2023	1 st motion order has been passed along with 2 nd motion notice in respect of Reduction of Shares by the Division Bench II
11	10.08.2023	Publication of Public notice / Newspaper publication has been effected
12	30.08.2023	Affidavit of Compliance in respect of effecting paper publication by the applicant has been filed
13	08.11.2023	2 nd Motion order has been reserved by the Division Bench II
14	23.02.2024	<p>Case re-opened for clarification stating the following reasons,</p> <ul style="list-style-type: none"> - <i>List of creditors as on 20.12.2022 provisional balance undergone significant changes as to that of audited balance sheet ending 31.10.2019</i> - <i>Shortfall of Primary service to the creditors as on 20.12.2022</i>

15	25.04.2024	Orders reserved by the Special Bench II
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6. The applicant pursuant to queries raised by tribunal on 20.09.2022 has filed the Audited Balance sheets for the period ending 31.03.2022 and Provisional Balance sheet as on 20.12.2022 of the company.
7. The provisional audited balance sheet closing on 20.12.2022 details the Share Holding Pattern of the Equity Shareholders as follows,

S. No	Name of the Shareholder	No. of Equity Shares of the Rs.1000/- each	Percentage of share value
1	P. Sivasankar	12,915	21.27
2	S. Malathi	19,096	31.46
3	K. Madhumathi	5,250	8.65
4	S. Rathinagiridhar	7,567	12.46
5	M/s. Lakshmi Saraswathi cotton mills private limited	7,937	13.07
6	K.Shankar, Managing Partner of Shree Renga Polymers	7,947	13.09
	Total	60,710	100

8. The Petitioner Company as on 20.12.2022 has 2 Secured Creditors and 7 Unsecured Loan Creditors The respective outstanding balance and dues are extracted hereunder,

LIST OF SECURED CREDITORS AS ON 20.12.2022

Sl No.	Name & Address of the Creditors	Amount in Rs.
1.	South Indian Bank-Term Loan D.No:9, 80, Feet Road. Karur-639002	2,77,895.27
2.	Karnataka Bank Limited No: 207/5, VV Towers, Kovai Road, Karur-639002	6,66,272

LIST OF UNSECURED CREDITORS AS ON 20.12.2022

Sl. No.	Name & Address of the Creditors	Amount in Rs.
1	Maha Mudra Investments No.: 9, Thirunagar 1 st Cross, Kamarajapuram, Karur-639002.	13,30,242.17
2	Madu Funds, 9/959-2, Ponvel Nagar, Chinnandan Kovil Street, Karur-639001	48,64,491
3	K. Madhumathi TARAKA 34/1, Anna Nagar, 5 th Cross Street, Karur-639002	70,000
4	A.Ashwini Chinnandan Kovil Street, Karur-639002	5,00,000
5	A.Athithya Chinnandan Kovil Street, Karur-639002	10,00,000
6	A.Bhuvaneswari Chinnandan Kovil Street, Karur-639002	25,00,000
7.	S. Rathinagiridhar, TARAKA 34/1, Anna Nagar, 5 th Cross Street, Karur-639002	40,00,000

S. No	Type of Creditor	No of Creditors	Outstanding Balance in INR
1	Secured Creditor	2	9,44,167.27
2	Unsecured Creditor	7	1,42,64,733.17
	Total	9	1,52,08,900.44 (INR one crore fifty two lakh eight thousand nine hundred and forty four only)

9. This Tribunal vide its order dated 19.10.2020, directed the Applicant counsel to issue notice of hearing of the instant application to Registrar of Companies, Concerned and to the Regional Director – Southern Region. In compliance of the same AoS dated 27.11.2020 has been filed by the applicant.
10. The Regional Director – Southern Region submitted its report on 04.08.2022, wherein the RD has expressed its view as under;

“

4. *It is submitted that the company has furnished the certificate from the auditors of the company certifying that the company has Nil Secured creditors and 03 unsecured creditors.....*

6. *The Application for reduction of share capital has been examined and it is has been decided not to make any objection to the proposed reduction of share capital and it is therefore*

prayed that this Hon'ble Tribunal may dispose of the matter on merits and pass such order / orders as deemed fit and proper.

.....”

11. We have heard Ld. Counsels for the applicant as well as RoC and perused the records on file.
12. The shareholders of the Applicant Company has passed a resolution for Reduction of Shares capital through an EGM dated 30.12.2019 which is extracted as below, along with the explanatory statement of meeting notice dated 02.10.2019,

EXPLANATORY STATEMENT

(PURSUANT TO SECTION 102 OF THE COMPANIES ACT, 2013)


Item No.1:

The following Explanatory Statement pursuant to Section 102 of the Companies Act, 2013, sets out all material facts relating to the business mentioned in the accompanying notice.

1. The Board of Directors at their meeting held on 02nd October 2019 took stock of the assets of the Company as on 31/03/2019. After through analysis of the financial position and also valuation of assets, the Board has concluded that the value of assets is not sufficient to cover entire paid up capital of the Company, and the company is making losses continuously.
2. After evaluating various options, the Board of Directors had decided to cancel the paid up capital to the extent of Rs 1,51,78,000 /- representing to 25% the paid up share capital of the Company. In this regard the Board has decided to reduce the paid up share capital of the Company by cancelling and extinguishing the paid-up capital to the tune of Rs 1,51,78,000 /- which is unrepresented by assets of the Company. The Company has incurred losses and reduction of capital to the extent of Rs 1,51,78,000 /- would not in any way have any adverse effect on the Company's ability to honour its commitments or meet its obligations in the ordinary course of business.
3. Therefore, the Board of Directors of the Company approved the draft Scheme of Reduction of Capital at its meeting held on 02.10.2019 (Second day of October, Two Thousand and Nineteen).

Place: Karur
Date: 02.10.2019

By order of the Board of Directors
for Sri Rathinagari Hometex Private Limited


P. Sivasankar
Managing Director
DIN 01072386



SRI RATHINAGIRI HOMETEX PRIVATE LIMITED

Regd. Office: No. 9/959, Ponvel Nagar, Chinnandan Koil Road, Karur-639001, Tamil Nadu
CIN-U17111TN1993PTC025367

MINUTES OF THE EXTRA ORDINARY GENERAL MEETING OF THE SHAREHOLDERS OF SRI RATHINAGIRI HOMETEX PRIVATE LIMITED HELD ON WEDNESDAY, THE 30TH OCTOBER 2019 AT 10 AM AT THE REGISTERED OFFICE OF THE COMPANY .

Number of Members present- 6

DIRECTORS PRESENT:

1. Mr. P. SIVASANKAR-MANAGING DIRECTOR
2. Mrs. S. MALATHI- WHOLE TIME DIRECTOR

CHAIRMAN

Mr. P. SIVASANKAR was voted to the Chair to preside over the meeting. The Chairman welcomed the members present. He declared that the requisite quorum was present and called the meeting to order.

NOTICE

The notice convening the meeting along with the explanatory statement for the item of special business, having been previously circulated was taken as read, with the consent of the members present.

SPECIAL BUSINESS

1. REDUCTION OF SHARE CAPITAL OF THE COMPANY

The Chairman informed the members of the need for reduction of capital to the extent of 25% of the total paid up capital of the Company. The matter was discussed at length and the following resolution was passed:

SPECIAL RESOLUTION:

“RESOLVED THAT pursuant to Sections 66 of the Companies Act, 2013 read with National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016, and all such laws as may be applicable from time to time, if any, (including any statutory modification or re-enactment thereof for time being in force) and in accordance with the Memorandum of Association and Article of Association and as per Table F of the Companies Act, 2013 as adopted by the Company as its Articles of Association of the Company and subject to the approval of the Hon'ble National Company Law Tribunal at Chennai and any other statutory authorities, as the case may be required, approval of the members be and is hereby accorded to reduce the paid-up equity share capital of the Company from Rs. 6,07,10,000/- (Rupees Six Crores Seven Lakh Ten Thousand Only) divided into 60,710 Equity shares of Rs. 1000/- each to Rs. 4,55,32,000/- (Rupees Four Crore Fifty Five Lakh Thirty Two Thousand Only) divided into 45,532 (Forty Five Thousand Five Hundred Thirty Two) Equity shares of 1000/- (Rupees One Thousand only) each.”

“RESOLVED FURTHER THAT the aforesaid reduction of paid-up share capital shall be effected by cancelling the paid up capital to the extent of 25% of the total paid up capital amounting to Rs. 1,51,78,000/- which is not represented by available assets of the Company.”

“RESOLVED FURTHER THAT the Scheme of Reduction of Capital which is circulated to the members along with this notice detailing the reduction of share capital as explained above be and is hereby approved.”



13. From the explanatory statement it is apparent that Reduction of Share capital was mainly intended as the value of assets is not sufficient to cover the entire paid up capital of the company, and the company is also continuously making losses.

But on perusal of balance sheets, this tribunal infers that there is no substantial loss in the business of the company during FY 2021 - 2022. Further there is no Proper valuation report on or after to substantiate their pleas. In addition, substantial amount of time has been passed since the filing of the present application. The composition of the creditors and their credit values underwent significant changes between FY 2018 – 2019 and FY 2021 – 2022 and as on 20.12.2022 which has been apparently inferred from the balance sheets.

14. It is observed that application filed without necessary documents, adjudication of interlocutory application for amending the main application, subsequent raising of queries and considerable amount of time taken to comply with the directions of this tribunal on the part of applicant and change in constitution of the bench for many times on part of the Adjudicating authority has led to the delay in final adjudicating of the present matter.

15. The report filed by the Regulator (RD) submits a different information in respect of the number of creditors, which shows that report is not based on the latest financial statements of the applicant company.

16. This tribunal has taken a view that, any application seeking for approval of Reduction of Share Capital should be pursued based on the immediate, latest evidential records and documents of the company only and the present case it is not so. The tribunal presumes that there may be possibility of substantial changes in the affairs of the Company, its book values, creditors and liabilities etc.,

17. In view of above, this tribunal dismisses **CA/76/2020** which seeks approval for the Reduction of Share Capital in respect of *M/s. Rathinagiri Hometex Private Limited* with liberty to conduct the process of Share Capital Reduction afresh and file an application on that basis along with submission of all necessary documents and requirements for obtaining approval from this Adjudicating Authority under Section 66 of Companies Act, 2013 and connected rules therein.

18. Accordingly **CA/76/2020** is **dismissed** and disposed of.

-Sd/-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd/-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)