

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **19.07.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : CP(CA)/47(CHE)/2023
NAME OF THE PETITIONER(S) : Prabha Auto Products Pvt Ltd
NAME OF THE RESPONDENTS :
UNDER SECTION : Sec 61(1)(b) of CA, 2016 R/w Rule 71 of
NCLT Rules 2016

ORDER

Present: Ld. Counsel Shri. S Aravindan for the Petitioner.

Vide common order pronounced in the Open Court, CP/47/(CHE)/2023 and CP/52/2023 are allowed.

Original copy of the order be kept in CP/47/(CHE)/2023 and copy of the order be kept in CP/52/2023.

File be consigned to records.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)

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APPLICATION NUMBER :
PETITION NUMBER : CP(CA)/52(CHE)/2023
NAME OF THE PETITIONER(S) : Prabha Auto Products Pvt Ltd
NAME OF THE RESPONDENTS :
UNDER SECTION : Sec 66 of CA, 2013

ORDER

Present: Ld. Counsel Shri. S Aravindan for the Petitioner.

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(SANJIV JAIN)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

CP/47(CHE)/2023

*Under Section 61(1)(b) read with Rule 71 of the NCLT Rules, 2016 and applicable
Provisions of the Companies Act, 2013 and Rules*

Along with

CP/52(CHE)/2023

*Under Section 66 read with NCLT (Procedure for Reduction of Share Capital of the
Company) Rules, 2016 and applicable Provisions of the NCLT Rules, 2016*

In the matter of ***Prabha Auto Products Private Limited***

Prabha Auto Products Private Limited

CIN: U35999TN1994PTC027349

Having its Registered Office at

No.1825, 18th Main Road, Anna Nagar West,

Chennai – 600 040

... Petitioner

Order Pronounced on 19th July 2024

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Petitioner: S.Aravindan, Advocate

COMMON ORDER

(Hearing Conducted through VC)

CP/47(CHE)/2023 has been filed by the Prabha Auto Products

Private Limited under the provisions of Section 61(1)(b) read with Rule 71 of

the NCLT Rules, 2016 and applicable Provisions of the Companies Act, 2013 and Rules, seeking reliefs as follows;

- a) That the consolidation of share capital resolved pursuant to the special resolution set out in paragraph iv (14) above be approved;*
- b) That change in the memorandum of association of the Petitioner Company with regard to the authorised share capital by substituting the existing Clause V, as approved by the (i)Board of Directors of the Petitioner Company vide resolution dated April 26,2023; and (ii) shareholders of the Petitioner Company vide resolution dated 03.05.203, be approved;*
- c) That to this end, all enquiries and directions necessary and proper be made and given; and*
- d) That such further or other orders be made as the Hon'ble Tribunal shall deem fit in the interest of justice and equity.*

2. CP/52(CHE)/2023 has been filed by the ***Prabha Auto Products Private Limited*** under the provisions of Section 66 read with NCLT (*Procedure for Reduction of Share Capital of the Company*) Rules, 2016 and applicable Provisions of the NCLT Rules, 2016 , seeking reliefs as follows;

- e) That the reduction of paid-up share capital resolved pursuant to the special resolution set out in paragraph iv (13) above be approved;*
- f) That the minutes to be proposed and filed be approved;*
- g) That to this end, all enquiries and directions necessary and proper be made and given; and*
- h) That such further or other orders be made as the Hon'ble Tribunal shall deem fit in the interest of justice and equity.*

3. The main objects of the Company as set out in the Clause of the Memorandum of Association of the Company, are briefly reproduced as under;

- a) *To carry on business as manufacturing, buying, selling re- selling, sub-contracting, exchanging, hiring, altering, importing, exporting. improving, assembling, distributing, servicing, repairing and dealing in as original equipment manufacturers, as also on a jobbing industry basis, and in a any other capacity all and every kind of machineries, component parts, replacement parts, spare parts, accessories, tools, implements and fittings of all kinds inclusive of all types of axles, and all relevant axle assembly, components, parts and accessories, propeller shafts and universal joints, ornamentation and decorative parts for motors, cycle cars, cycles, scooters, buses, omni buses, of every description and other vehicles and products of all descriptions whether propelled or used by means of petrol, spirit, steam, oil vapour, gas, coal, electricity, petroleum, atoms or any other motive or mechanical power, in India or elsewhere; and to carry on any other business manufacturing or otherwise which is connected to the above etc.*

4. The Authorized capital of the company as on 31.03.2023 is Rs.7,00,00,000 (Rupees Seven Crores) divided into 70,00,000 equity shares of Rs.10 each. The issued, subscribed and paid-up capital of the Company as on 31.03.2023 is Rs. 6,30,15,400 (Six Crores Thirty Lakhs Fifteen Thousand Four Hundred only) divided into 63,01,540 Equity Shares of Rs.10 each.

5. It is stated that the Statutory Auditors of the Petitioner Company by their certificate dated 08.05.2023 annexed as *Annexure "R"* to the Application have confirmed that the Accounting Treatment proposed by the Company is in conformity with the Accounting Standards specified by the Central Government under Section 133 of the Act, 2013.

6. The Statutory Auditors of the Petitioner Company have filed a Certificate which is appended as "*Annexure O*" to the effect that the Petitioner Company as on 25.04.2023 has 1 Secured Creditor with an outstanding balance of Rs.18,63,35,497.38/- only and has 62 Unsecured Trade Creditors at an outstanding balance of Rs.48,85,69,596/- only.

7. It is averred that the company has not accepted any deposits and therefore there are no arrears in repayment of any deposit or interest thereon as on the date of Application. A declaration to that effect has been filed by the Directors of the company which is placed at *Annexure-Q* of the typed set of the application. The Statutory Auditors have verified and certified that the company has no arrears

in repayment of deposit or interest and the same is placed at *Annexure-P* of the typed set of the application.

8. In consonance with the provisions of this Act as well as the rules framed thereunder, the company amongst other documents, have also filed a certificate dated 08.05.2023 from the Auditor of the company issued to the effect that the accounting treatment for the Reduction of Share Capital is in conformity with the Accounting Standards specified by the Central Government under Section 133 of the Act, 2013.

9. It is stated that *Article 38 of the Articles of Association of Company* empowers the Petitioner Company for Capital Reduction, which is as follows;

38. The company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by law, -

a) its share capital;

b) any capital redemption reserve account; or

c) any share premium account.

10. A perusal of the Articles of Association, more particularly, *Article 35*, provides for consolidation of share capital and the same is extracted hereunder:

35. Subject to the provisions of section 61, the company may, by ordinary resolution,-

(a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares.

11. It is stated that the latest audited annual financial statements of the Petitioner Company as on 31.03.2022 reflects the sound position of the assets and liabilities of the Petitioner Company together with auditor's report as at 31.03.2022 annexed as **Annexure B**. It is stated that the auditor's report forming part of the audited annual financial statements provides that the financial position of the Petitioner Company is true and fair. No specific remarks or qualifications have been mentioned in the auditor's report. The Petitioner Company has annexed the audited financial statements for the financial years 2020-2021 and 2019-20 as **Annexure - C and Annexure - D** respectively. The Petitioner Company has also annexed its unaudited financial statements for the period up to 31.03.2023 as Annexure – E of the company petition typeset.

12. It is stated that the Board of Directors of the Petitioner Company at its meeting held on 26.04.2023, has resolved to consolidate the share capital of the Petitioner Company and consequential reduction of paid-up share capital in respect of fractions, if any, on consolidation of share capital for various crucial reasons to protect the legitimate business and interest of the Petitioner Company and has consequently proposed to amend clause V of the Memorandum of Association of the Petitioner Company, subject to the approval of the shareholders and this Tribunal. (The certified true copy of the extract of board resolution passed by the board of directors at its meeting held on 26.04.2023 is annexed as Annexure F of the Petition typeset.)

13. It is stated that the Company has engaged the services of Mr. S. Poosaidurai, Chartered Accountant and Registered Valuer having Registration no. IBBI/RV/06/2018/10489, to arrive at the value of the shares for this purpose. The registered valuer has arrived at the fair value of each share of face value Rs. 10 (Rupees Ten) at Rs. 39.62 (Rupees Thirty Nine and Sixty Two Paise) per share. The Petitioner Company has also engaged the services of Mr. Vishesh Unni

Raghunathan, a SEBI-registered Category I merchant banker, another registered valuer, to affirm the aforesaid fair value. He has confirmed the fairness of the valuation arrived at by the registered valuer by arriving at the fair value of each share of face value Rs 10 (Rupees Ten) at Rs 40.35 (Rupees Forty and Thirty Five Paise) per share. The Board of Directors of the Petitioner Company has decided to fix the highest value per share determined as above as the fair value of each share of face value Rs. 10 (Rupees Ten) at Rs. 40.35 (Rupees Forty and Thirty Five Paise) and the same has then been accepted and taken on record by the Board of Directors.

14. It is stated that neither Section 61 or 66 of the Act nor the relevant Rules mandate valuation by registered valuer as per Section 247 of the Act. However, the Petitioner Company in all fairness and also in the interest of the shareholders has obtained the valuation reports from Mr. S. Poosaidurai, Chartered Accountant and Registered Valuer having Registration no. IBBI/RV/06/2018/10489 and Mr. Vishesh Unni Raghunathan, a SEBI-registered Category I merchant banker for this purpose and the same are annexed as **Annexure - G** in this petition.

15. It is stated that the Board of Directors of the Petitioner Company in the same meeting held on 26.04.2023, subject to the approval of the shareholders and this Tribunal, approved that any fractional shares arising from such consolidation of share capital will be reduced under the provisions of Section 66 of the Act and rules framed thereunder, from the paid-up capital of the Petitioner Company. The consideration to be paid for the shares reduced has been determined at the rate of Rs. 40.35 (Rupees Forty and Thirty Five Paise) per share of the pre-consolidated share of Rs. 10 (Rupees Ten) each, which will be distributed to all the eligible holders of fractional shares within 30 days of the record date to be determined for this purpose by the Board after the approval of this Tribunal for the consolidation of share capital and confirmation of reduction of paid-up share capital arising out of such consolidation.

16. It is stated that the reduction amount on account of the fractional shares is also considered in excess of the wants of the Petitioner Company and the same shall be paid to the all the eligible holders of fractional shares out of cash and / or free reserves available in the books of the Petitioner Company. It has been further approved

by the Board of the Petitioner Company in the said meeting that on approval of the shareholders of the special resolutions proposed, the Petitioner Company will make the necessary petitions with this Tribunal for approval.

17. Payment of Consideration:

17.1. It is stated that Petitioner Company shall upon the receipt of the order of this Tribunal, and after the Board meeting shall take further action to record the order, deposit the whole of the consideration payable to the holders of fractional shares in a special bank account to be opened for the reduction of paid-up share capital of the Petitioner Company. The consideration for the reduction of paid-up share capital shall be discharged by issue of cheque / draft/pay order / electronic transfer of funds /NEFT / RTGS / IMPS (in accordance with the bank mandate available) to the registered holder of the relevant fractional shares, whose name appears as a member as on the record date to be determined for this purpose by the Board after the approval of this Tribunal within 30 (thirty) days to the last known address of such shareholder, as available with the Petitioner Company.

17.2. It is stated that where the consideration has not been received and / or accepted by the relevant holders of fractional shares, on account of cheques returned and / or undelivered / cheques not deposited, or for any other reason, the Petitioner Company shall retain such consideration in the special bank account along with interest, if any, accrued from time to time, for a period of 7 (seven) years. The amount outstanding in the special bank account after the said period shall be utilized in a manner as may be permitted under any law then in force or transfer to the Investor Education and Protection Fund as per Section 125 of the Act.

18. Taxation:

18.1. It is stated that the consideration paid to the shareholders for reducing the resulting fractional shares from the paid-up share capital in accordance with Section 66 of the Act together with Rules framed thereunder, would be considered as dividend within the provisions of Section 2(22)(d) of the Income-tax Act, 1961, as amended from time to time and the Company is liable to pay Dividend Distribution Tax ('DDT') in accordance with the provisions of Section 115-0 of the Income-Tax Act, 1961 as amended from time to time. The eligible

holders of fractional shares should consider their own tax position and action as applicable appropriately.

19. It is stated that on **03rd May 2023**, a Special Resolution was passed by the Shareholders of the petitioner company in the Extra Ordinary General Meeting (EoGM) held at the Registered Office of the Petitioner Company under Section 66 of the Companies Act, 2013.

The Special Resolution is extracted hereunder:

***RESOLVED THAT** pursuant to Section 61(1)(b) and other applicable provisions if any, of the Companies Act, 2013 (including any statutory modification or re-enactment thereof for the time being in force), read with the Articles of Association of the Company, and any other approval, consent, permission, sanction etc. as may be required from Hon'ble National Company Law Tribunal (NCLT), any government or other authority. consent of the shareholders, be and is hereby accorded for consolidation of the entire authorised, issued, subscribed and paid-up equity shares in the share capital of the Company by increasing the nominal value of the equity shares from Rs. 10 (Rupees Ten) each to Rs. 5,00,000 (Rupees Five Lakh) each so that every 50,000 (fifty thousand) equity shares with nominal value of Rs. 10 (Rupees Ten) each held by a shareholder are consolidated and redesignated into 1 (one) equity share with nominal value of Rs. 5,00,000 (Rupees Five Lakh) each.*

RESOLVED FURTHER THAT

a) The existing share certificates issued to the holders of the equity shares of the Company be treated as cancelled from the Record Date to be determined

for this purpose by the Board after the approval of the Hon'ble NCLT for the consolidation, and fresh share certificates be issued in respect of the eligible consolidated equity shares of the Company to such shareholders in accordance with the provisions of the Companies Act, 2013 read with Companies (Share Capital and Debentures) Rules, 2014.

b) No member will be issued any certificate for the resulting fraction of a share as a result of implementation of this resolution for consolidation of shares, but such fractional shares entitlement shall be reduced from the share capital in accordance with Section 66 of the Companies Act, 2013 together with rules framed thereunder by paying the shareholders a price per fractional share as determined by the Board in accordance with law.

RESOLVED FURTHER THAT *the consent of shareholders is hereby accorded under the provisions of Section 66 and other applicable provisions if any, of the Companies Act, 2013 read with NCLT (Procedure for reduction of share capital of Company) Rules 2016 (including any statutory modification or re-enactment thereof for the time being in force) and subject to the confirmation by the Hon'ble NCLT, any government or other authority for reduction of capital of the Company, consequent to such consolidation of shares in respect of any fractions arising from such consolidation and the consideration to be paid to the shareholders entitled for such fractional equity shares so reduced has been determined at the rate of Rs. 40.35 (Rupees Forty and Thirty Five Paise) per share for each fractional share of Rs 10 (Rupees Ten) each as existed prior to consolidation and will be distributed to all the eligible fraction holders within 30 days of the record date to be determined for this purpose by the Board after the approval of the Hon'ble NCLT. Pursuant to the confirmation and payment by the Company, the shares of the Company*

held by such shareholders entitled to fractional shares, arising out of consolidation, shall be deemed to have been automatically surrendered and thereafter cancelled by the Company and be of no effect.

RESOLVED FURTHER THAT *Mr. Subramania Pillai Kubher, Managing Director, and Mr. Vinod Kubher, Whole Time Director, be and are hereby authorized jointly and severally to do all such acts, deeds and things as may be considered necessary or expedient to give effect to this resolution.*

RESOLVED FURTHER THAT *the Board of Directors of the Company be and is hereby authorized to do after such acts, deeds and matters as they may in their absolute discretion deem necessary, expedient or desirable for completing the consolidation of shares of the Company and giving effect to the foregoing resolutions, including without limitation (a) payment for all fractional entitlements of shareholders of the Company on consolidation by reduction of capital and taking all other actions to facilitate the process of consolidation, (b) settlement of any questions difficulties or doubts with respect to the foregoing resolution and/ or delegation of any of their powers to such person, committee etc., as may be authorized by the Board."*

20. It is stated that the face value of each share as on date i.e., pre-consolidation is Rs.10 (Rupees Ten) each. The face value of the equity share post- consolidation shall be Rs.5,00,000 (Rupees Five Lakh) each. The list of shareholders of the Petitioner Company as on 31.03.2023 is annexed as Annexure – L of this petition. It is stated that even post consolidation of share capital and consequent reduction of

paid-up share capital, there will not be any change in the authorized share capital and it remains as Rs. 7,00,00,000 (Rupees Seven Crore).

21. It is stated that the Rationale and benefits for consolidation of share capital and consequential reduction of paid-up share capital in respect of fractions, if any, on consolidation of share capital are enumerated below

- a. The shareholding pattern of the Petitioner Company as on 31.03.2023, is provided as under:

S. No.	Name	No of shares	% of shareholding
1.	S. Kubher	57,74,440	91.64%
2.	K. Vinod	3,50,000	5.55%
3.	K. Manonmani	92,900	1.47%
4.	K. Vidya	22,500	0.36%
5.	Chitra Sivakumar	20,000	0.32%
6.	S. Gunaseelan	12,000	0.19%
7.	Balambigai Sundaram	10,000	0.16%
8.	G. Subramaniam	10,500	0.17%
9.	C. Sivakumar	8,500	0.13%
10.	R. Rajendran	500	0.01%
11.	C. E. Karunakaran	100	0.00%
12.	Aparna	100	0.00%
	Total	63,01,540	100.00

- b. It is evidenced from the above-referred shareholding pattern that majority shareholders hold 61,24,440 (sixty one lakh twenty four thousand four hundred forty) equity shares, equivalent to 97.19% of the paid-up share capital of Petitioner Company ("Majority Shareholders") and balance 1,77,100 (one lakh seventy seven thousand hundred) equity shares equivalent to 2.81% of the paid-up equity share capital of the Petitioner Company are held by the remaining shareholders ("Minority Shareholders").
- c. The proposed consolidation of share capital will rationalize the share capital of the Petitioner Company by reducing the number of shares outstanding. As a result of the proposed consolidation of share capital, there would be an immediate reduction in the number of

paid-up equity shares. In respect of any fractions arising from the proposed consolidation of share capital, the consideration to be paid to the shareholders entitled for such fractional shares so reduced has been determined at the rate of Rs. 40.35 (Rupees Forty and Thirty Five Paise) per share for each fractional share of Rs. 10 (Rupees Ten) each as existed prior to consolidation and will be distributed to all the eligible holders of fractional shares within 30 (thirty) days of the record date to be determined for this purpose by the Board after the approval of the NCLT and pursuant to the confirmation and payment by the Petitioner Company, the shares of the Petitioner Company held by such shareholders entitled to fractional shares, arising out of consolidation, shall be deemed to have been automatically surrendered and thereafter cancelled by the Petitioner Company and be of no effect. Hence, the Petitioner Company shall benefit from easier management of a smaller number of shares and the business will be closely held within the immediate family members of the Majority Shareholders as remaining shareholders.

- d. Moreover, for providing an exit opportunity to the shareholders, it is felt advisable in the interest of both, the shareholders and the Petitioner Company, to consider a reorganization of the share capital of the Petitioner Company by way of a consolidation of share into larger denomination, which will not only help the Petitioner Company to reduce the costs on a long-term basis but will also provide better opportunity to minority shareholders to liquidate their shareholding. The Petitioner Company has no intention to affect the economic interest of Minority Shareholders. On one hand, holders of fractional shares would get an exit opportunity for shares which do not have a ready market. On the other hand, the Petitioner Company will benefit from closely holding the business of the Petitioner Company within like-minded shareholders and also the trade secrets / confidential information related to its business will be better protected. The proposed consolidation of share capital and consequent reduction of paid- up share capital will also provide general efficiency in corporate decision making.
- e. Owing to the intricate business connections in the specialized wing of industry of the Petitioner Company, being manufacturing spare parts of automobiles, the Petitioner Company has built well-established relationships with multiple contenders in the market, in and around Chennai, and is generating goodwill derived from the quality of its products. Over a period of time, from the year 2016, the

Majority Shareholders, who are in control of the Petitioner Company have been repeatedly receiving information that Mr. C. Sivakumar, the former chief executive officer of the Petitioner Company, has been engaging in competing business against the Petitioner Company. Further, it is pertinent to note that Ms. Balambigai Sundaram and Ms. Chitra Sivakumar are family members of Mr. C. Sivakumar and Mr. R. Rajendran is a close acquaintance of Mr. Sivakumar. Out of the Minority Shareholders, these particular shareholders as named herein ("Competing Shareholders"), while holding the shares of the Petitioner Company, have acted selfishly and against the legitimate interests of the Petitioner Company. Further, the Competing Shareholders have also poached at least eight (8) core employees of the Petitioner Company, drastically affecting the operations of the Petitioner Company. By unreasonably continuing to use such valuable data / information/resources for their products / services in the competing business, the Competing Shareholders have acted and are continuing to act against the legitimate interests of the Petitioner Company and of the various stakeholders. The Petitioner Company does not have any issue with its shareholders if they are engaged in any other business other than the business of the Petitioner Company. The Competing Shareholders were continuing to cause damage to the business of the Petitioner Company by neither discontinuing their business that was directly competing with that of the Petitioner Company and pursuing the Petitioner Company to purchase their shares.

- f. Hence, the management of the Petitioner Company decided to approach this Tribunal to approve the consolidation of the share capital of the Company to ensure that the control remains with the Majority Shareholders and to prevent the leakage of proprietary information by the Competing Shareholders by buying out the shares held by the Competing Shareholders. The Minority Shareholders barring the Competing Shareholders have, upon being informed of the current circumstances as described above, have provided their willingness and consent to the proposed consolidation of share capital and consequent reduction of paid-up share capital of the Petitioner Company solely to safeguard the legitimate interests of the Petitioner Company and its various stakeholders. In addition, the Minority Shareholders barring the Competing Shareholders have voted in favour of the special resolution passed in respect of the proposed consolidation of share capital and consequent reduction of paid-up share capital of the

Petitioner Company which is evidenced in the scrutinizer's report. Out of the Minority Shareholders holding 1,77,100 (one lakh seventy seven thousand hundred) equity shares equivalent to 2.81% of the paid-up equity share capital of the Petitioner Company, the said consent vide the letters of support provided by certain Minority Shareholders, up to the date of filing this Petition, collectively holding 1,38,000 (one lakh thirty eight thousand) equity shares, equivalent to 2.19% of the paid-up share capital of Petitioner Company, are herein annexed as Annexure - M.

- g. Keeping in mind the economic interest of the shareholders, the fair value that the shareholders are supposed to receive as consideration for their shares, have been finalized based on the highest value determined as the value per share, by the valuation reports submitted by a registered valuer and a SEBI-registered Category I merchant banker. The proposed consolidation of share capital and consequent reduction of paid-up share capital would provide an option for the Minority Shareholders to exit at such a fair consideration. The Petitioner Company has no intention to adversely affect the economic interest of minority shareholders. Moreover, since the competitors will no longer be associated with the Petitioner Company, the business prospects will be better and the lenders, investors and customers of the Petitioner Company will not be affected in any manner since all interests will be aligned towards attaining the objects of the Petitioner Company. This will, in turn, increase market interest in the shares and generally make the business of the Petitioner Company more attractive to potential investors. Therefore, all interests of the stakeholders are aligned, both at the board's level and at the shareholder's level.
- h. Despite the business being more attractive to multiple potential investors, currently the investors are frequently put off by the fact that the Competing Shareholders are running competing business. This, in turn, leads the potential investor to believe that the Petitioner Company is not doing well and there is conflict of interest amongst its own handful of shareholders. While the value of the shares of the Petitioner Company will remain the same, if the shares are consolidated and an exit opportunity is provided to the Minority Shareholders and the Competing Shareholders, upon consolidation of share capital and consequent reduction of paid-up share capital, the resulting management of the Petitioner Company will be more appealing to potential investors.

- i. Further, since the Competing Shareholders will no longer be associated with the Petitioner Company, the Petitioner Company will be able to approach lenders for financing without any complications and will not face any issues of conflict of interest while processing any loans or borrowings required by the Petitioner Company.
- j. The customers / potential customers of the Petitioner Company will no longer be reluctant in placing their orders with the Petitioner Company for manufacturing, assembling and selling etc., of various products since the Competing Shareholders are provided an exit and the trade secrets / confidential information of the Petitioner Company and that of its customers will be secured under an effective management with a fully aligned group of shareholders.

22. We have heard the Learned Counsel for the Petitioner Company and Perused the documents placed on record.

23. This Tribunal vide its order dated 22.11.2023, *inter alia* had directed the Petitioner Company to give notice of the instant application to the Ministry of Corporate Affairs through the office of the Regional Director, Registrar of Companies and creditors of the company and any other relevant sectors and to cause the publication of notice in the prescribed form.

24. In pursuance of the same, the Petitioner Company, has filed an Affidavit of Service before this Tribunal in relation to the directions issued by the Tribunal. A perusal of the same manifests the fact that

the Petitioner Company had issued a newspaper advertisement on 28.11.2023 in “Business Standard” (English) and “Dina Malar” (Tamil). In relation to the said publication of notice, there is no objection from any creditor / shareholders of the Petitioner Company.

25. Consequent thereto, upon receipt of the notice, the Regional Director has submitted its observation dated **06.03.2024**, that the Directors as well as the Auditors of the Company have furnished the certificate to the effect that the Company has no arrears in repayment of deposits or interest thereon. Further, it is stated in the report that the Company is regular in filing the statutory returns up to Financial Year 2022-23 and that there is no complaint / prosecution / investigation / inspection pending against the Company. RD in para 5 of its Report has stated as follows;

5. The reduction of share capital filed with the application has been examined and it has been decided not to make any objection to the reduction of share capital. It is therefore prayed that this Hon'ble National Company Law Tribunal Bench at Chennai may dispose of the matters on merits and pass such order/orders as deemed fit and proper.

26. In the facts and circumstances of the matter, this Tribunal is of the view that it is just and proper to confirm the Reduction of Share capital of the Petitioner Company as resolved by the members of the

Company by passing a special resolution and by way of the consent in the form of affidavit. It is ordered accordingly. This Tribunal hereby approves the proposed form of Minutes to be registered under section 66 (5) of the Companies Act, 2013 as given in the application as follows:

The issued, subscribed and paid-up equity share capital of Prabha Auto Products Private Limited, is henceforth Rs. 6,15,00,000 (Rupees Six Crore Fifteen Lakh) divided into 123 (one hundred twenty-three) equity shares of Rs. 5,00,000 (Rupees Five Lakh) each, reduced from Rs. 6,30,15,400 (Rupees Six Crore Thirty Lakh Fifteen Thousand Four Hundred) divided into 63,01,540 equity shares of Rs. 10 (Rupees Ten) each, fully paid up, by cancelling and extinguishing 1,51,540 (one lakh fifty-one thousand five hundred forty) fractional equity shares of Rs. 10 (Rupees Ten) each, arising out of consolidation of share capital, held by the following shareholders:

S.NO	NAME OF THE SHAREHOLDER	NO OF FRACTIONAL SHARES HELD	FACE VALUE (IN RS.)
1	S. Kuber	24,400	10
2	K.Manonmani	42,900	10
3	K.Vidya	22,500	10
4	Chitra Sivakumar	20,000	10
5	S.Gunaseelan	12,000	10
6	Balambigai Sundaram	10,000	10
7	G.Subramaniam	10,500	10
8	C.Sivakumar	8,500	10
9	R.Rajendran	500	10
10	C.E.Karunakaran	100	10
11	Aparna	100	10
	Total	1,51,540	10

27. 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 way of action being taken, albeit, in accordance with law, against the persons concerned, directors and officials of the Petitioner.

28. While approving the Reduction of share capital as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment is due or required in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law. Further all compliances as are required to be done by the Petitioner Company upon this order confirming reduction of share capital and security premium reserve shall be duly complied with in relation SEBI, FEMA and Income Tax laws as may be applicable.

29. With respect to Consolidation of Share capital in **CP(CA)47/CHE/2023**, the pre and post consolidation structure of the Petitioner Company is as follows;

	Pre-consolidation Structure	Post-consolidation Structure
Total Authorized Share Capital (INR)	INR 7,00,00,000 (Indian Rupees Seven Crore Only)	INR 7,00,00,000 (Indian Rupees Seven Crore Only)
Nominal value of shares (INR)	INR 10 (Indian Rupees Ten)	INR 5,00,000 (Indian Rupees Five Lakh)
No. of shares (Authorized Share Capital)	70,00,000 (seventy lakh)	140 (one hundred forty)
Total paid-up capital (INR)	6,30,15,400 (Indian Rupees Six Crore Thirty Lakh Fifteen Thousand Four Hundred)	6,15,00,000 (Indian Rupees Six Crore Fifteen Lakh)
Nominal value of shares (INR)	INR 10 (Indian Rupees Ten)	INR 5,00,000 (Indian Rupees Five Lakh)
No. of shares (Paid up capital)	63,01,540 (sixty three lakh one thousand five hundred forty)	123 (one hundred twenty three)

30. It is stated that the Shareholding Pattern of the Petitioner Company as on date is tabulated below:

S. No.	Name	No of shares	% of shareholding
1.	S. Kubher	57,74,440	91.64%
2.	K. Vinod	3,50,000	5.55%
3.	K. Manonmani	92,900	1.47%
4.	K. Vidya	22,500	0.36%
5.	Chitra Sivakumar	20,000	0.32%
6.	S. Gunaseelan	12,000	0.19%
7.	Balambigai Sundaram	10,000	0.16%
8.	G. Subramaniam	10,500	0.17%
9.	C. Sivakumar	8,500	0.13%
10.	R. Rajendran	500	0.01%
11.	C. E. Karunakaran	100	0.00%
12.	Aparna	100	0.00%
	Total	63,01,540	100.00

31. It is stated that from the above-referred shareholding pattern that majority shareholders hold 61,24,440 (sixty one lakh twenty four

thousand four hundred forty) equity shares, equivalent to 97.19% of the paid-up share capital of Petitioner Company ("Majority Shareholders") and balance 1,77,100 (one lakh seventy seven thousand hundred) equity shares equivalent to 2.81% of the paid-up equity share capital of the Petitioner Company are held by the remaining shareholders ("Minority Shareholders").

32. It is stated that the proposed consolidation of share capital will rationalize the share capital of the Petitioner Company by reducing the number of shares outstanding. The Petitioner Company shall benefit from easier management of a smaller number of shares and the business will be closely held within the immediate family members of the Majority Shareholders as remaining shareholders.

33. It is stated that the Petitioner Company has no intention to affect the economic interest of Minority Shareholders since the consideration for fractional shares arising from the proposed consolidation of share capital will be paid to the shareholders entitled for such fractional shares at the rate of Rs.40.35 (Rupees Forty and Thirty Five Paise) per share for each fractional share of Rs.10 (Rupees

Ten) each as existed prior to consolidation. On one hand, holders of fractional shares would get an exit opportunity for shares which do not have a ready market. On the other hand, the Petitioner Company will benefit from closely holding the business of the Petitioner Company within like-minded shareholders and also the trade secrets/confidential information related to its business will be better protected from the other shareholders who are acting contrary to the legitimate interest of the Petitioner Company.

34. Thus by taking into consideration the facts and circumstances of the present case, the consolidation of the shares of the Petitioner Company is hereby allowed. Accordingly, the face value of the Equity Share of the Petitioner Company shall be consolidated to Rs.5,00,000/- per Equity Share from Rs. 10/- per Equity Share. However, there is no change in the authorized share capital of the Petitioner Company and it remains at Rs.7,00,00,000/-.

35. The Petitioner Company shall alter / amend the Memorandum of Association with respect to the Authorized Share Capital of the

Company, which is Rs.7,00,00,000/- (Rupees Seven Crore Only) divided into 140 Equity Shares of Rs.5,00,000/- (each).

36. Accordingly, CP/(CA)/47/CHE/2023 and CP/(CA)/52/CHE/2023 stand **allowed and disposed of.**

Sd-

**VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)**

-Sd

**SANJIV JAIN
MEMBER (JUDICIAL)**

SriramAnanth.V