

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

COMPANY PETITION NO. 43/ND/2022

IN THE MATTER OF:

M/S GOYAL ENGINEERING POLYMERS PRIVATE LIMITED

...PETITIONER

VERSUS

- 1. SECRETARY, MINISTRY OF CORPORATE AFFAIRS, UNION OF INDIA
REGISTERED OFFICE AT- A WING, SHASTRI BHAWAN, RAJENDRA PRASAD ROAD, NEW DELHI-110001**
- 2. REGISTRAR OF COMPANIES, NCT OF DELHI & HARYANA IFCI TOWER, 4TH FLOOR 61, NEHRU PLACE, NEW DELHI-110019**
- 3. REGIONAL DIRECTOR, NORTHERN REGION B-2 WING, PARYAVARAN BHAWAN, CGO COMPLEX, LODHI ROAD, NEW DELHI-110003**

ORDER DELIVERED ON: 23.04.2024

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENTS:

**For the Applicant : Ms. Vaishnavi Prakash, Mr. Apoorv Agarwal,
Ms. Ritika Prasad, Advs.**

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The instant Company Petition is filed by the Petitioner Company i.e., M/s. Goyal Engineering Polymers Private Limited bearing CIN: U25208DL2007PTC169499 seeking inter-alia following prayer(s) before this Tribunal: -
 - a. Fix a date for hearing of the application;

- b. Direct the applicant company to serve a notice of application to its secured and unsecured creditors as per the list;
 - c. Direct the applicant company to serve notice of application to the Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs and Registrar of Companies, Delhi;
 - d. Direct the aforesaid authorities to submit their representation with this Tribunal at the earliest;
 - e. Direction for publication of notice, in terms of Rule 3(3) of the NCLT Capital Reduction Rules, in the following newspapers, namely...in English language and in... Hindi Language and for uploading the advertisements on the website.
 - f. Confirm the reduction of issued, subscribed and paid-up equity share capital of the Applicant Company as resolved by the members in their extra-ordinary general meeting originally held on 02nd February, 2022 by passing the special resolution as set out in para 12 hereinabove;
 - g. Approve form of minutes under sub-section (5) of section 66 of the Act, as set out in para 23 herein above, proposed to be filed with the Registrar of Companies, Delhi; and/or
 - h. Pass such further order or orders as may be deemed fit and proper by this Hon'ble Tribunal.
2. The Petitioner Company was incorporated on 17.10.2007 under the provisions of the Companies Act, 1956 having its registered office at DSM 448, DLF Towers Shivaji Marg, New Delhi West Delhi-110015.
 3. The main objects of the petitioner company are briefly stated as under:
 - a. To acquire and take over a going concern under the name and style of M/s GOYAL POLYMERS, a proprietorship firm, situated at KP-13, Mourya Enclave, Pitampura, New Delhi-110034 along with all of the assets and liabilities of that firm on such terms and conditions as may be mutually agreed upon. The said firm shall cease to exist after such takeover by the company after incorporation thereof.

- b. To carry on the business of Trading of PVC, Polymers, PVC Chemicals, PVC Raw Material, Rubber Chemicals, Plastic Lajures and allied goods.
- c. To carry on the business of hips sheets, cast film sheet, expanded polystyrene sheet, pet air bubble sheet, sheets of pet perform disposable glasses and battel, all types of polys plast products and poly pet products, poly carbonate products pet poly carbonate sheet and allied goods.
- d. To carry on in India or elsewhere the business and to manufacture, process, convert, commercialize, design, develop, display, discover, mould, remould, blow, extrude, draw, dye, equip, fitting up, fabricate, manipulate, prepare, promote, remodel, service, supervise, supply, import, export, buy, sell, turn to account and to act as agent, broker, concessionaire:, consultant, collaborator, consignor, job worker, expert house or otherwise to deal in all shapes, sizes, varieties, colors, capacities, modalities, specifications, descriptions and applications of systems, of plastic granules, pet bottles, all types of plastic bottles, plastic containers of all kind and material, used in industries, trade, commerce, utilities, hospitals, transport, viation, defence, entertainment, hotels, houses, stores, agriculture, electrical and electronic and other allied fields for packing and storage whether made of plastic, plastic scrap, and plastic items, HDPE, PVC, LDPE, HIPS, PP, LLDPE, polymers, co-polymers, monmers, elastomers, resins & polyesters.
- e. To carry on in India or elsewhere the business and to manufacture, process, produce, formulate, mix, disinfect, clean, wash, dilute, dye, concentrate, compound, segregate, pack, repack, add, remove, heat, grade, design, develop, distribute, display, melt, improve, mould, blow, extrude, draw, derive, discover, fabricate, treat, work, manipulate, prepare, promote, supervise, supply, import, export, acquire, barter, store, forward, buy, sell, turn to account, market and to act as agent, broker,

representative, concessionaires, consultant, collaborator, franchisor, job worker, or otherwise to deal in all varieties, and for all purposes and in bottles characteristics, descriptions, strength, applications, colors and uses of plastic containers of all including lumps, powders, pipes, films, tubes, fibers, laminates, granules, sheets, blocks, chips, flakes, bars and other allied goods, articles and things their compounds, by-products, co-products, formulations, intermediates, ingredients, residues, mixtures and blends made of PVC, nylon, HDPE, LDPE, P.P., HPPE, polystyrene, polymers, monomers, elastomers, resins & polyesters.

4. The Authorized Share Capital of the Petitioner Company is Rs. 30,00,00,000/- (Rupees Thirty Crore) divided into 3,00,00,000 (Three Crore) Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital of the Applicant Company as on 31st March, 2021 was Rs. 30,00,00,000/- (Rupees Thirty Crore) divided into 3,00,00,000 (Three Crore) Equity Shares of Rs. 10/- (Rupees Ten) each.
5. That the Petitioner Company vide Article 38 of the Articles of Association (“AOA”) of the Petitioner Company empowers the Company may, from time to time, by special resolution, reduce, its capital in any manner permitted by law.
6. The Petitioner Company submits the reasons for reduction of share capital of the petitioner company:
 - 6.1 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.
 - 6.2 Reorganize the capital structure of the company so as to represent the realistic value for the shares of the company.
7. The Petitioner Company submits that the Company had 3 (three) equity shareholders. Out of these 3 equity shareholders, 1 shareholder (J.R.G. Holdings Pvt. Ltd.) holds 2,99,99,800 equity shares and other 2 share holder holds 100 shares each as nominee of the first shareholder. A list

of shareholders holding equity shares as on 3,00,00,000 is annexed as **Annexure-6.**

8. The Petitioner Company submits that in Extra Ordinary General Meeting held on 02.02.2022 wherein the special resolution was passed confirming the reduction of share capital with 100% vote in favour. The relevant part of the Special Resolution passed in the Extra-Ordinary General Meeting dated 02.02.2022 is reproduced as follow: -

“RESOLVED THAT pursuant to provisions of section 66 and such other applicable provisions of the Companies Act, 2013 read with National Company Law Tribunal (Procedure for Reduction of Share Capital of the Company) Rules, 2016 (including any statutory modifications or re-enactments thereof for the time being in force), Pursuant to clause 38 of Articles of Association of the Company and subject to approval by the and subject to approval by the Hon'ble National Company Law Tribunal at NCT of Delhi (hereinafter referred to as "NCLT") and subject to such other requisite approvals, consents, permissions and/or sanctions of any appropriate authority, body or institution (hereinafter collectively referred to as the "Concerned Authority") consent of shareholders of the Company be and is hereby accorded subject to such terms, conditions, guidelines or modifications, if any, as may be prescribed, imposed, stipulated in this regard by the NCLT and/or the Concerned Authority, from time to time, to reduce the issued, subscribed and paid up share capital of the Company from the present level of INR. 30,00,00,000/- (Indian Rupees Thirty Crore only) divided into 3,00,00,000 (Three Crore) equity shares of INR. 10/- (Indian Rupees Ten) each fully paid up to INR. 9,00,00,000 (Indian Rupees Nine Crore) divided into 90,00,000 (Ninety Lacs) equity shares of INR. 10/- (Indian Rupees Ten) each by paying off the paid-up share capital of the Company which was in excess of the requirement of the Company by reducing the fully paid up of equity share by 70% of the total issue, subscribed and paid-up

equity share capital of the Company comprising INR. 21,00,00,000/- (Indian Rupees Twenty-One Crore only) divided into 2,10,00,000 (Two Crore Ten Lacs) equity shares of INR. 10/- (Indian Rupees Ten) each held by the members of the Company.

RESOLVED FURTHER THAT upon the capital reduction being confirmed by the NCLT and becoming effective and operative, the payment of consideration to the Shareholders shall be made within such number of days as prescribed and subject to such approvals, if any, as may be required under the applicable law/s or as may be directed by the NCLT, on the reduction becoming effective. All such payments will be made by electronic transfer of funds, cheque, pay order/warrant or demand draft, NEFT/RTGS/IMPS etc.

RESOLVED FURTHER THAT the board of directors of the company has also proposed to adjust the consideration of reduction of share capital of one of the shareholders of the company i.e., M/s J.R.G. Holding Private Limited against the loan advance of INR 21,09,80,000 (Indian Rupees Twenty One Crores Nine Lacs & Eighty Thousand) already given to said shareholder and balance amount if any will be made by electronic transfer of funds, as mentioned above, upon the capital reduction being confirmed by the NCLT and becoming effective and operative.

RESOLVED FURTHER THAT the Board of Directors of the Company be and is hereby authorized to take all necessary steps and do all such acts, deeds, matters and things, as it may, in its absolute discretion, deem necessary, expedient, usual or proper, in the best interest of the Company and its members in connection with and relating to the Capital Reduction, including any directions for settling any question or doubt or difficulty

whatsoever that may arise, for the purpose of giving effect to the Capital Reduction for the above said purpose."

9. The Petitioner Company did not have any secured creditor as on 31.01.2022 and has 5 (five) unsecured creditors having an outstanding balance of Rs. 5,62,60,491/- as on 31.01.2022. In this respect, a list of secured and unsecured creditors of the Applicant Company as on 31.01.2022 duly certified by Mr. Pawan Goyal (DIN: 01640773) and Mrs. Usha Goyal (DIN: 00787457), directors of the Applicant Company and by the Statutory Auditors of the Petitioner Company is annexed herewith and marked as **Annexure 9 and 10**.
10. Further, in consonance with the provisions of the Companies Act, 2013 as well as the rules framed thereunder, the Petitioner Company have also filed a certificate dated 12.02.2022 from the Statutory Auditor to the effect that the accounting treatment for the reduction of equity share capital is in accordance with the Accounting Standards with respect to the same as specified by the Central Government read with Section 133 of the Companies Act, 2013. The copy of report of the statutory auditors dated 12.02.2022 confirming that the accounting treatment proposed by the company for the reduction of the share capital is in conformity with the Accounting Standards specified in Section 133 is annexed as **Annexure 11** of the present Company Petition.
11. Further, it is submitted on behalf of the Petitioner Company that there are no deposits and that the Petitioner Company has never sought recourse of availing any public deposits. The necessary certificate from the statutory auditor dated 12.02.2022 stating and confirming that there are no arrears of repayment of deposits or any interest thereon and the declaration by the Director of the Applicant Company confirming the same is also placed on record before us under page no. 12.02.2022 of the petition.
12. The Petitioner Company submitted that the reduction of capital does not affect the petitioner company's ability in future to increase its share capital and/or raise funds by way of borrowings. Further, the

petitioner company submits that the directors of the petitioner company do not have any interest in the proposed reduction of issued, subscribed and paid-up equity share capital of the Petitioner Company.

13. This Tribunal vide its order dated 22.04.2022 read with order dated 20.01.2023 had directed the Petitioner Company to issue notice to the Respondents. In compliance of order dated 22.04.2022 read with order dated 20.01.2023, an affidavit of service dated 30.01.2023 has been filed by the Petitioner Company.

14. Pursuant to the notice dated 22.04.2022 read with order dated 20.01.2023, the RD in its report 18.10.2023 had raised certain observations with regard to the proposed scheme of Capital Reduction of the Petitioner Company and in response to the same, the Petitioner Company had filed reply dated 08.12.2023 wherein the Petitioner Company gave clarification and undertaking to address the observations made by the RD. The details of the same are summarized below:

S.No.	Observations in the RD's report affidavit dated 18.10.2023	Response of the petitioner company dated 08.12.2023
1.	As it is mentioned in the petition, consideration of reduction of share capital of one of the shareholders of the company i.e., M/s J.R.G. Holding Private Limited against the loans and advances of INR 21,09,80,000 already given to said shareholder and balance amount if any will be made by electronic transfer of funds. However, no such loan is evident from the financial statement for F.Y. 2020-2021.	It is hereby reiterated that the Applicant had advance the loan of Rs. 21.10 Crores to M/s JRG Holdings Pvt. Ltd., vide passing the special resolution in the extra ordinary general meeting (hereinafter referred as "EGM") dated 20.10.2021 and therefore, financial statement for Financial Year 2021-2022 reflects the disbursement of the loan.
2.	As per shareholding pattern as on 31.03.2021 and the e-form MGT-7 filed by the Company it appears that company is the wholly owned subsidiary company of the J.R.G. Holding Private Limited. However, the company has not filed the e-form MGT-6, in respect of declaration of beneficial interest in the share held by the nominee shareholder as required u/s 89 of the Companies Act, 2013.	It is denied that the Applicant Company has not complied with provision under Section 89 of the Companies Act, 2013. It is hereby reiterated that Form MGT-6 is required to be

		<p>filed in accordance with the provisions of Section 89 of the Companies Act, 2013. In the present case, the above provision is not attracted as FORM BEN 1 under Section 90(1) of the Companies Act, 2013 dated 06.05.2019 has already been filed by the Applicant Company and in furtherance, FORM BEN 2 has duly been filed by the applicant company on 06.05.2019 under Section 90(4) of the Companies Act, 2013 detailing the declaration of holding/acquiring ownership of 85% of shares.</p>																		
3.	<p>As per the Audit report for the year ended 31.03.2021, auditor has stated in its report that the company has granted loans to parties cover under section 189 of the Companies Act, 2013. However, the company has not complied the provision of section 185 and 186 of the Companies Act, 2013. Hence the Company may be asked why not the section as mentioned complied. The details of the loans granted as below: -</p> <table border="1" data-bbox="304 1189 1155 1478"> <thead> <tr> <th>S. No</th> <th>Name of Party</th> <th>Nature of relation</th> <th>Amount of Loan given during the year</th> <th>Maximum balance during the year</th> <th>Closing balance during the year</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Usha Goyal</td> <td>Director</td> <td>36,05,969</td> <td>3,74,97,169</td> <td>3,74,97,169</td> </tr> <tr> <td>2.</td> <td>Pawn Goyal</td> <td>Director</td> <td>2,79,47,212</td> <td>12,66,04,489</td> <td>12,66,04,489</td> </tr> </tbody> </table>	S. No	Name of Party	Nature of relation	Amount of Loan given during the year	Maximum balance during the year	Closing balance during the year	1.	Usha Goyal	Director	36,05,969	3,74,97,169	3,74,97,169	2.	Pawn Goyal	Director	2,79,47,212	12,66,04,489	12,66,04,489	<p>It is denied that the Applicant Company has not complied with provisions under Section 185 and Section 186 of the Companies Act, 2013 which prohibits a company to advance loan to Directors. That it is hereby reiterated that the Applicant herein has not given any loan to its Directors as alleged by the Respondent. That the funds amounting to around 3 crores had been advanced to the Directors to act on behalf of the company. That the same was advanced in the ordinary course of business and it was promptly repaid by the Directors. That during the Financial year 2021-2022, the Directors promptly paid off the aforementioned amount given by the Applicant company which is clearly visible</p>
S. No	Name of Party	Nature of relation	Amount of Loan given during the year	Maximum balance during the year	Closing balance during the year															
1.	Usha Goyal	Director	36,05,969	3,74,97,169	3,74,97,169															
2.	Pawn Goyal	Director	2,79,47,212	12,66,04,489	12,66,04,489															

		from the auditor's report dated 15.09.2023 along with the Audited Financial Statements for the financial year ending on 31.03.2023.															
4.	<p>As per the Audit report for the year ended 31.03.2021, auditor has stated in its report that the company is not regular in depositing with the appropriate authorities undisputed statutory dues including provident fund, income tax, GST and other material statutory dues applicable to the company. The dues detail is as below: -</p> <table border="1"> <thead> <tr> <th>S.No.</th> <th>Particulars</th> <th>Amount</th> <th>Due Date</th> <th>Comments</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Vat Payable</td> <td>24,23,580</td> <td>Various due date of 2016-17</td> <td>Still unpaid INR 19,73,780/- on date of signing of audit report i.e. 23.11.2021</td> </tr> <tr> <td>2.</td> <td>Vat Payable</td> <td>19,73,732</td> <td>Various due date of 2016-17</td> <td>Still unpaid</td> </tr> </tbody> </table>	S.No.	Particulars	Amount	Due Date	Comments	1.	Vat Payable	24,23,580	Various due date of 2016-17	Still unpaid INR 19,73,780/- on date of signing of audit report i.e. 23.11.2021	2.	Vat Payable	19,73,732	Various due date of 2016-17	Still unpaid	<p>It is denied that the Applicant Company is not regular in depositing statutory dues with the Appropriate Authorities. It is reiterated that VAT amount of Rs. 19,73,780/- (Rs. Nineteen Lakh Seventy-Three Thousand Seven Hundred Eighty Only) was paid on 10.10.2022 and the VAT amount of Rs. 19,73,732/- was paid on 22.08.2022 and 23.08.2022. As per Auditors Report dated 15.09.2023 along with the Audited Financial Statements, there are no more statutory dues to be paid by the Applicant Company.</p>
S.No.	Particulars	Amount	Due Date	Comments													
1.	Vat Payable	24,23,580	Various due date of 2016-17	Still unpaid INR 19,73,780/- on date of signing of audit report i.e. 23.11.2021													
2.	Vat Payable	19,73,732	Various due date of 2016-17	Still unpaid													
5.	<p>As per the Audit report for the year ended 31.03.2021, auditor has stated in its report that the following disputed statutory dues as on date as below:</p> <table border="1"> <thead> <tr> <th>Name of the statute</th> <th>Nature of the dues</th> <th>Amount</th> <th>Period to which amount relates</th> <th>Forum where dispute is pending</th> </tr> </thead> <tbody> <tr> <td>Delhi Value Added Tax Act, 2004</td> <td>Penalty</td> <td>1,57,570</td> <td>Financial Year 2010-11</td> <td>Commissioner</td> </tr> <tr> <td>Delhi Value Added Tax Act, 2004</td> <td>Sales Tax</td> <td>79,294</td> <td>Financial Year 2010-11</td> <td>Commissioner (Appel)</td> </tr> </tbody> </table>	Name of the statute	Nature of the dues	Amount	Period to which amount relates	Forum where dispute is pending	Delhi Value Added Tax Act, 2004	Penalty	1,57,570	Financial Year 2010-11	Commissioner	Delhi Value Added Tax Act, 2004	Sales Tax	79,294	Financial Year 2010-11	Commissioner (Appel)	<p>It is denied that the Applicant Company has defaulted in payment of VAT amounting to approximately Rs. 2 Lakhs. It is hereby submitted that the amount stated by the respondent have been objected by the Applicant through Form DVAT 38 under Delhi Value Added Tax Act, 2004 vide letter dated 27.05.2015 with reference no. 109922 and 109886 along with supporting documents to the Department of Trade and Taxes, Govt. of NCT, Delhi and the same is pending adjudication. Therefore, unless the said objection is decided no question of dues arises.</p>
Name of the statute	Nature of the dues	Amount	Period to which amount relates	Forum where dispute is pending													
Delhi Value Added Tax Act, 2004	Penalty	1,57,570	Financial Year 2010-11	Commissioner													
Delhi Value Added Tax Act, 2004	Sales Tax	79,294	Financial Year 2010-11	Commissioner (Appel)													

6.	As per the Audit report for the year ended 31.03.2021, auditor has stated in its report that the company has defaulted in repayment of dues to financial institution or banks as at March 31, 2021.	The Applicant is not in default of repayment of any dues to financial institution or banks as alleged by the respondent. It is hereby reiterated that the repayment to the financial institutions is completed. The financial institution, Indian Overseas Bank, as also accepted the same and issued the Non-objection Certificate dated 31.12.2021 in favor of the Applicant Company in pursuance of the same. The same has further been verified by the Hon'ble Delhi High Court and the Hon'ble Special Judge (PC Act) CBI, Rouse Avenue Courts.
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15. The Income Tax Department vide letter dated 06.03.2023 have stated that the department has no objection regarding the reduction of share capital by 70% in respect of above assessee company.
16. The Petitioner Company filed an affidavit dated 07.02.2023 in respect on the Guarantees of the Company stating that which is reproduced hereunder: -



2. That the Applicant Company does not have any secured creditor as on 31.01.2023, in addition to that *Annexure G* attached in the present Company Petition No. 43 of 2022 at *page No. 149*, the certificate is issued by the Indian Overseas Bank stated that the Applicant Company availed many facilities over the period and that has been settled by way of one-time settlement.

For the convenience of the Hon'ble Tribunal the True Copy of the Indian Overseas Bank's consent is marked and annexed herein as **ANNEXURE A-1**.

3. That the Applicant Company have 5 (five) unsecured creditors having an outstanding balance of Rs. 5,62,60,491/- as on 31.01.2022, all of whom have provided their Non- Objection Certificates (Hereinafter

For Royal Engineering Polymers Pvt. Ltd.

referred to as "NOCs") which is attached as *Annexure 9A* with the present Petition at *page no. 101-105* as given as follows-

S. NO.	Name of Creditors	Address of Creditors	Amount (INR)
1.	D.R. PLASTOTECH PRIVATE LIMITED	8/42, IInd Floor, Industrial Area, Kirti Nagar, New Delhi-110015	4,00,000
2.	JRG ENGINEERING POLYMERS PRIVATE LIMITED	DSM 448, DLF Towers, Shivaji Marg, New Delhi-110015	1,02,28,066
3.	C.T. ENGINEERING POLYMERS PVT LTD	B1/H3, Mohan Co-operative Industrial Area, Mathura Road, Block B, New Delhi-110044	4,54,26,723
4.	DASHRATH CHANDULAL PATEL	Survey No. 229, AT & Post- Junapadder, Ta. Viramgam, Dist. Ahmedabad, Gujarat-382150	1,16,640
5.	RAVINDRA KUMAR & ASSOCIATES	F-2, 1 st Floor, B-243, Shalimar Garden Main, Sahilabad, Ghaziabad, UP-201005	89,062
		TOTAL	5,62,60,491

For the convenience of the Hon'ble Tribunal the True Copy of NOC from the unsecured Creditors are marked and annexed herein as **ANNEXURE A-2(Colly)**.



That the Applicant is not a guarantor to any loans or advances raised by any party and the same is certified by the way of the instant affidavit.

5. Due to uneven share capital, the Applicant Company has a negative net worth and seeks to reduce its share capital. Thus, the capital and assets it represents should be presented in a true and fair manner. Furthermore, to ensure that the Company will be able to achieve its

For Goyal Engineering Polymers Pvt. Ltd.

4
goals as it moves forward. For as much as in order to carry on its business, the Company is required to maintain a certain committed level of share capital at any given point of time as demonstrated by the audited balance sheet of the Applicant Company as on 31.03.2022. Therefore, in order to realign the assets and share capital of the Company and to accurately and fairly reflect the assets and liabilities of the Company in its books of accounts and to bring the existing share capital of the Company in justifiable limits, the Applicant Company with bona fide intent, seeks the confirmation from this Hon'ble Tribunal to reduce its share capital from 30,00,00,000/- (Rupees Thirty Crore) to 9,00,00,000/- (Rupees Nine Crore).

The True Copy of the audited balance sheet of as of date 31.03.2022 is marked and annexed herein as **ANNEXURE A-3**.

17. In **'Reckitt Benckiser (India) Ltd. (Supra)**, the Hon'ble Delhi High Court has upheld the view that "the question of reduction of Share Capital will be treated as a matter of domestic concern i.e., it is the decision of the majority which prevails.

18. The Hon'ble NCLAT in case of **M/s. Precious Energy Services Limited [Company Appeal (AT) No. 17 of 2021; judgement dated 28.07.2022]**, while approving the reduction of share capital observed as follows: -

7. The Madras High Court in 'Re. Panruti Industrial Company (Private) Ltd.', AIR 1960 Mad. 537, held as follows:

"...the question of reduction of capital has been treated as a matter of domestic concern, one for the decision of the majority of the shareholders of the company."

.....

8. The principles distilled from the aforesaid precedents were summarized in 'Reckitt Benckiser (India) Ltd. (CP 206 of 2004) (Delhi High Court)' that has further been upheld by several courts:

"(i) The question of reduction of share capital is treated as matter of domestic concern, i.e. it is the decision of the majority which prevails.

(ii) If majority by special reduction decides to reduce share capital of the Company, it has also the right to decide as to how this reduction should be carried into effect..."

11. It is seen from the record that the Reduction of the Share Capital was approved by the Shareholders of the Appellant Company unanimously by way of a Special Resolution with the objective of reducing the overall weighted average cost of Capital and improving the earnings per share. In 'Reckitt Benckiser (India) Ltd. (Supra), the Hon'ble Delhi High Court has upheld the view that "the question of reduction of Share Capital will be treated as a matter of domestic concern i.e., it is the decision of the majority which prevails. If majority by Special Reduction decides to reduce the Share Capital of the Company, which also has the right to decide as to how this reduction should be carried into effect..."

In the instant case, admittedly, the reduction of this Share Capital was approved unanimously by the Shareholders by way of a Special Resolution.

14. It is seen from the record that the Company has complied with all the statutory requirements as per the directions of the Tribunal and has also

filed necessary Affidavits to that effect. It is also pertinent to mention that none of the Creditors objected to the reduction of the Capital. Section 66(1)(b) of the Act enables a Company to reduce its Share Capital in any manner provided it is approved by the majority of Shareholders through a Special Resolution Relevant extracts of Section 66(1) is reproduced hereunder for ready reference: “66(1) Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in, particular, may-- (a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or (b) either with or without extinguishing or reducing liability on any of its shares,-- (i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or (ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its Company Appeal (AT) No. 17 of 2021 memorandum by reducing the amount of its share capital and of its shares accordingly;” It is observed that section 66(1) permits the Company to reduce its share capital “in any manner”.

19. From the records placed before this Tribunal and the submissions of the Learned Counsel of the Petitioner Company, it seems that the Petitioner Company has complied with statutory requirements as per the directions of the Tribunal and they have filed the necessary affidavits.
20. Since, the shareholders are being paid at much higher amount than their original capital contribution, relevant provisions of the Income Tax Act, 1961, regarding payment of withholding taxes are to be complied with by the petitioner company, before making the payment to the shareholders.
21. This Tribunal approves the amended form of minutes to be registered under Section 66(5) of the Companies Act, 2013 subject to the compliance of the observations above. Any other compliances which are to be made under various provisions of the Companies Act and

other laws, if any, have to be taken care of by the petitioner and ensure compliance thereof.

22. Ordered accordingly.

Files be consigned to the records.

FORM OF MINUTES

“The issued, subscribed and paid-up equity share capital of the Company is henceforth Rs. 9,00,00,000/- (Rupees Nine Crores Only) comprising of 99,00,000 (Ninety Lac) equity shares of Rs. 10/- (Rupees Ten) each, reduced from Rs. 30,00,00,000/- (Rupees Thirty Crores only) comprising of 3,00,00,000 (Three Crore) equity shares of Rs. 10/- (Rupees Ten) each.”

Sd/-

**DR. SANJEEV RANJAN
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**