

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH, (Court-VI)**

**COMPANY PETITION (COMPANIES ACT) No. 187/ND/2023**

**IN THE MATTER OF:**

**TIMEX GROUP INDIA LIMITED**

*Having its Registered Office at:*

E-10, LOWER GROUND FLOOR, LAJPAT NAGAR – III, NEW DELHI – 110024

[CIN : L33301DL1988PLC033434]

...Petitioner/Applicant

**Date of Pronouncement : 07.06.2024**

**CORAM :**

**SHRI. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES :**

**For the Petitioner / Applicant : Adv. Amit Dhingra, Adv. Shivam K**

**Raheja, along with Adv. Kesang T Doma.**

**ORDER**

**PER : MAHENDRA KHANDELWAL, MEMBER(JUDICIAL)**

1. This is an application filed by Timex Group India Limited, under the provisions of Section 55(3) of the Companies Act, 2013 read with Rule 9 of the Companies (Share Capital and Debentures) Rules 2014, and Rule 69 of the National Company Law Tribunal Rules, 2016 with the following prayers: -

- (i) Pass appropriate orders under Section 55(3) of the Companies Act, 2013 thereby approving the further issue by the Petitioner Company of 2,73,15,264 10.75 % Cumulative Redeemable Non-Convertible preference shares (NCPS) of face value of Rs. 10/- for cash at par aggregating Rs. 27,31,52,640 each on a private placement basis to Timex Group Luxury Watches B.V. for redeeming existing 1,57,00,000 (13.88%) Cumulative Redeemable Non-Convertible Preference Shares of Rs. 10/- each of the Petitioner Company and which amount is equivalent to the value of the redemption amount (being Rs. 15,70,00,000) plus the unpaid cumulative dividend till the due date of redemption (being Rs.13,03,91,380) on the NCPS, less the tax to be deducted at source (being Rs.1,42,38, 740); *and/or*
- (ii) Any further directions which this Tribunal may pass in the interest of justice.

**Following Averments have been made by the Petitioners: -**

2. The Petitioner Company (Timex Group India Limited) is a public company limited by shares incorporated on 04.10.1988 under the provisions of the Companies Act, 1956. It was originally incorporated under the name of Timex Jayna Limited and subsequently its name was changed to Timex Watches Limited and a fresh certificate of incorporation dated 01.01.1991 consequent upon change of name was issued by the Registrar of Companies, Delhi and Haryana. Thereafter, the name of the Petitioner Company was further changed to its current name which is Timex Group India Limited and a fresh certificate of incorporation dated 13.10.2007 was issued by the Registrar of Companies, National Capital Territory of Delhi and Haryana.
3. That the present petition is being filed by the Petitioner Company through its authorized signatory Mr. Vipul Sharma, Deputy General Manager-Legal, duly

authorized vide board resolution dated 14.07.2023 passed by the Petitioner Company. The shares of the petitioner company are listed on the Bombay Stock Exchange. It is submitted that the present petition is within the prescribed period of limitation. The Petitioner Company further states and declares that it has not previously filed any application, petition, or any suit regarding the matter in respect of which that Petition has been made, before any court of law or any other authority or any other Bench of this Hon'ble Tribunal and nor any such application, writ petition or suit is pending before any of them.

4. That the main objects of the Petitioner Company **at the time of the issuance of the First Round of Preference shares i.e. on 27.03.2004**(which are the subject matter of the present petition) as mentioned in its Memorandum of Association were as under: -

*"To enter into collaboration with a foreign company, M/s TIMEX GROUP LIMITED, a Bermuda Company with an office at Hamilton, Bermuda for the purpose of carrying on business of superb designers, manufacturers, dealers. importers & exporters of quartz clocks, wall and table clocks, digital clocks and wrist watches and other allied items with time keeping frequency standard based on quartz crystal; and also for manufacturing parts and components of such quartz clocks. wall and table clocks, digital clocks, wrist watches and other allied items. To organise the Company for the purposes of manufacturing, importing, exporting, assembling, selling and servicing the products of the Company, referred to in Para (1) above."*

5. That the main objects of the Petitioner Company, as mentioned in its **current** Memorandum of Association are as under:

(i) *"To carry on the business of developers, designers, engineers, assemblers, manufacturers, packers, dealers, sellers, traders,*

*distributors, repairers, importers and exporters of all kinds, descriptions, models and types of*

- (a) quartz clocks, wall and table clocks, digital clocks, chronometers, horological instruments, wrist watches, industrial clocks, smart watches, devices for measuring time and other allied items with time keeping frequency standard based on quartz crystal or otherwise, their cells/ batteries, cases, accessories, spares, parts and components;*
  - (b) jewellery, ornaments, gems, diamonds, precious and semi-precious stones, crystals;*
  - (c) frames, eye wear including sunglasses, prescription eyewear, contact lenses, toys, gifts, writing instruments like pens, wallets, belts and other leather products, personal care and lifestyle category products like perfumes, cosmetics, clothes and other personal accessories.*
  - (d)\*\* Safety and tracking devices, their cells/ batteries, cases, accessories, spares parts and components.*
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- (ii) To carry on the business of all kinds of forging, molding, fabrication, production, job work, precision engineering, designing, constructing, altering, renovating, repairing and controlling all kinds of components, tools, precision engineering tools, molds, jigs, plants, equipment, machinery required for purposes related to, allied to and ancillary to the activities as mentioned in Clause 1, hereinabove, both for captive consumption and for third parties.*
  - (iii) To carry on the business of providing, installation and commissioning services, sales support services, marketing services, customer support services, after sales services, business management systems, back office operations, engineering support services, system integration services, market research and market support services, information*

*technology support services, research and development, testing and validation services, management services, consultancy services, and other services in relation to the activities as mentioned in Clauses 1 and 2, hereinabove. "*

6. The Capital Structure of the company is as follows: -

**Authorised**

<b>No. of Shares</b>	<b>Value per share (Rupees)</b>	<b>Amount (Rupees)</b>
Equity Shares: 40,00,00,000 (Forty Crores)	1/- (One)	40,00,00,000 (Forty Crores)
Preference Shares: 13,00,00,000 (Thirteen Crores)	10/- (Ten)	130,00,00,000 (One Hundred and Thirty Crores)
<b>Total Authorised Share Capital</b>		<b>170,00,00,000 (One Hundred Seventy Crores)</b>

**Issued, Subscribed and Paid Up**

<b>No. of Shares</b>	<b>Paid Up Value per share (Rupees)</b>	<b>Amount (Rupees)</b>
Equity Shares: 10,09,50,000 (Ten Crore Nine Lakh Fifty Thousand)	1/- (One)	10,09,50,000 (Ten Crore Nine Lakh Fifty Thousand)
Preference Shares: 7,61,00,000 (Seven Crore Sixty-One Lakh)	10/- (Ten)	76,10,00,000 (Seventy-Six Crore Ten Lakh)

7. The Articles of Association of the Petitioner Company specifically authorises the company to issue preference shares. In this regard, Article 14 of the Articles of Association provides that subject to provisions of the Companies Act and notwithstanding the provisions contained in Article 4 of these

Articles, the Petitioner Company may Issue redeemable and/or cumulative/non-cumulative and/or convertible/nonconvertible and/or participating/non-participating preference shares at such rate of dividend and on such terms as regards maturity etc., which the board of directors of the Petitioner Company shall determine from time to time in its absolute discretion.

8. The shareholding pattern of the Petitioner Company as on 30.06.2023 is forming part of the Petitioner Company's Annual Report 2023. A copy of Annual Report 2023 of the Petitioner Company, which includes the audited balance sheet for FY 2022-2023, the auditor's report and the director's report of the Petitioner Company.
9. In respect of preference share capital, the Petitioner Company has issued Cumulative Redeemable Non-Convertible Preference Shares ("NCPS") to Timex Watches B.V. Netherlands, the holding company. Thereafter, the name of Timex Watches B.V. was changed to Timex Group Luxury Watches B.V. and recorded on 03.03.2008 and necessary endorsement was made on the share certificates.
10. It is submitted that there have been 4 rounds of allotment of preference shares (each having their own varying terms of issue) by the company as follows: -
  - i. 13.88 % 157,00,000 NCPS of Rs. 10 each issued on 27.03.2004 falling due for redemption on 26.03.2024 ("NCPS 1")
  - ii. 13.88 % 229,00,000 NCPS of Rs. 10 each issued on 21.03.2006 falling due for redemption on 20.03.2026 ("NCPS 2")
  - iii. 5 % 350,00,000 NCPS of Rs. 10 each issued on 16.02.2017 falling due for redemption on 15.02.2027 ("NCPS 3")
  - iv. 0.09 % 25,00,000 NCPS of Rs. 10 each issued on November 22, 2022 falling due for redemption on November 2022, 2027 (NCPS 4)

**Present petition is related only to NCPS 1 which has already become due for redemption.**

11. The Petitioner Company, thereafter, changed the coupon rate of the said shares from 2.9 % to 7.1% effective 01.04.2009 and passed a board resolution in this regard dated 29.01.2009. The Reserve Bank of India ("RBI") gave no objection to the change in coupon rate through NOC dated 01.03.2011.
12. Original maturity of NCPS 1 was ten (10) years from the date of allotment i.e., 27.03.2004, with an option to the Petitioner Company of an earlier redemption after 27.03 2006. The NCPS1 were due for redemption on 26.03.2014 the term/ period of which pursuant to the provisions of Section 106 of the Companies Act, 1956 was extended by the Petitioner Company through an application dated 26.11.2013, with the consent of preference shareholders by five (5) years i.e., till 26.03.2019. RBI granted no objection for the said extension vide letter dated 09.04.2014.
13. Further, the Petitioner Company, thereafter, changed the coupon rate of the said shares from 7.1% to 13.88 % effective 01.04.2016 and passed a board resolution in this regard dated 26.05.2016. The RBI approved extension of NCPS 1 by five (5) years i.e., till 26.03.2019 dated 06.02.2017.
14. Further, the Petitioner Company again vide its request letter dated 06.12.2017, applied for extension of maturity period of NCPS1 by five years, that is, 26.03.2024, which was approved by RBI through its letter dated 22.02.2018.
15. As stated above, the NCPS 1 will become due for redemption on 26.03.2024. However, due to insufficiency of profits in the previous/earlier years, the Petitioner Company was not in a position to declare or pay dividend on the NCPS1 and based on the projected workings, the Petitioner Company will still not be in a position to redeem the aforesaid NCPS 1 out of profits of the Petitioner Company or declare/ pay any dividend. Moreover, the Petitioner Company is not in a position to issue fresh shares in terms of Section 55(2)

of the Companies Act, 2013 for the purpose of redemption of the NCPS 1.

16. In terms of Section 55(3) of the Companies Act, 2013, where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue, it may: -

- i) with the consent of the holders of three-fourths in value of such preference shares; and
- ii) with the approval of the jurisdictional National Company Law Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

17. For this purpose, as the NCPS 1 will fall due for redemption and considering that no more extension of the term of the NCPS 1 is now feasible as the maximum tenure for a preference share cannot exceed twenty years under the Companies Act, 2013, the Petitioner Company board of directors issued a proposal dated 10.07.2023 to the 100% preference shareholder of NCPS 1, namely, Timex Group Luxury Watches B.V., Netherlands. The 100% preference shareholder gave its consent by letter dated 11.07.2023.

18. The total cumulative dividend obligation of the Petitioner Company on NCPS 1 to the NCPS 1 holder, until 26.03.2024, amounts to Rs. 13,03,91,380 (undeclared/ unpaid for 5 (five) years from FY 2018-19 to FY 2022-23 amounts to Rs. 10,89,58,000 and for 2023-24 for 359 days amounts to Rs. 2,14,33,380). The redemption amount of the NCPS considering above accumulated undeclared/ unpaid dividend amounts to Rs. 28,73,91,380, being Rs. 15,70,00,000 the amount representing the face value of the NCPS and Rs. 13,03,91,380 being the accumulated undeclared/ unpaid dividend.

19. Since the above redemption amount involves income/capital gain occurring to the preference shareholder, necessary withholding **tax** of Rs. 1,42,38,740



would need to be deducted by the Petitioner Company on the gain income element of Rs. 13,03,91,380 on redemption of the NCPS 1 considering the redemption amount of Rs. 28,73,91,380 resulting in the net redeemable amount of Rs. 27,31,52,640. Accordingly, the issuance of new unlisted 2,73,15,264 10.75% Cumulative Redeemable Non-Convertible Preference Shares of Rs.10 each at par on a private placement basis to the preference shareholder namely, Timex Group Luxury Watches B.V., aggregating to Rs. 27,31,52,640 net amount has been computed/arrived at.

20. Notice of the Annual General Meeting dated 14.07.2023 was sent to the members of the Petitioner Company containing, inter alia, a draft Special Resolution for the consent of the members of the Petitioner Company, subject to such other approvals I sanctions/ consents/ permissions, as may be required from any appropriate statutory and regulatory authorities including approval of the Hon'ble Tribunal, to be accorded to the board of directors to create, offer, issue and allot up to a maximum of 2,73,15,264 10.75% Cumulative Redeemable Non-Convertible Preference Shares of Rs.10/- each for cash at par aggregating to Rs. 27,31,52,640/- on a private placement basis to Timex Group Luxury Watches B.V., the holding company of the Petitioner Company ("New NCPS"), for redeeming NCPS 1 and which amount is equivalent to the value of the redemption amount (being Rs.15,70,00,000/-) plus the unpaid cumulative dividend till the due date of redemption (being Rs.13,03,91,380/-) on the NCPS1, less the tax to be deducted at source (being Rs.1,42,38,740/-) in accordance with applicable law, with such rights and privileges and on such terms and conditions as may be decided by the board of directors.

21. The said special resolution was passed in the Annual General Meeting of the Petitioner Company held on 23.08.2023 and subsequently the said resolution has been filed by the Petitioner Company with the Registrar of Companies, National Capital Territory of Delhi and Haryana on 05.09.2023 in e-Form MGT-14 vide challan no. AA4451355.

22. The **Terms of Further Issuance** of Preference Shares are as follows: -

(a) ISSUE PRICE	2,73,15,264 (Two Crore Seventy-Three Lakh Fifteen Thousand Two Hundred and Sixty Four) 10.75% Cumulative Redeemable Non-Convertible Preference Shares of face value of Rs. 10/- each of the Petitioner Company issued at a price of Rs. 10/- each, i.e., nominal value of Rs. 10/- per share.
(b)RATE OF DIVIDEND	Dividend rate will be 10.75% per annum (on the face value) which will remain fixed over the tenure of the New NCPS.
(c) NON-CUMULATIVE/ CUMMULATIVE	The New NCPS will carry cumulative dividend.
(d) TENURE & CONVERSION/REDEMPTION Terms	The amount on each New NCPS shall be redeemable on the expiry of 20 years, with an option of either party for an early redemption anytime. The New NCPS will be non-convertible and will be redeemed at par value.
(e) OBJECTIVES OF THE ISSUE	The issue will be made to accommodate the redemption of existing NCPS 1.
(f) THE MANNER OF ISSUE OF The Share	The New NCPS are SHARES proposed to be issued on a private placement basis to M/s Timex Group Luxury Watches B.V., the holding company of the Petitioner Company.
(g) PRIORITY WITH RESPECT TO PAYME	The New NCPS shall be issued on a private

<p>OF DIVIDEND or REPAYMENT OF CAPITAL</p>	<p>placement basis and these shall carry dividend at the rate of 10.75%.</p> <p>The New NCPS shall carry a preferential right vis-a-vis equity shares of the Petitioner Company with respect to the payment of dividend and repayment in case of winding up on the repayment of capital.</p>
<p>(H) THE MANNER AND MODES OF REDEMPTION</p>	<p>The New NCPS shall be redeemed in accordance with the provisions of the Companies Act, 2013 read with the relevant rules as amended from time to time i.e. The New NCPS shall be redeemed only out of the profits of the Petitioner Company which would otherwise be available for dividends or out of proceeds of fresh issue of preference shares made for the purpose of redemption.</p>
<p>(I) VOTING RIGHTS</p>	<p>New NCPS shareholder will have a right to vote only on resolutions placed before shareholders which directly affect their rights attached to preference shares like winding up of the company repayment of preference shares etc.</p>

23. The Petitioner Company submits that despite making honest efforts to redeem the NCPS 1, the Petitioner Company is not in a position to redeem the same. The same can be ascertained from the financials of the Petitioner Company for the financial years 2020-2021, 2021-2022 and 2022-2023.

24. The Petitioner Company has already sought necessary approval consent from the 100% preference shareholder, Timex Group Luxury Watches B.V.,

Netherlands, in terms of Section 55(3) of the Companies Act, 2013, and as stated above Timex Group Luxury Watches B.V., Netherlands vide its letter dated 11.07.2023 has also issued its consent in this regard.

25. It is submitted that no prejudice shall be caused to anyone if prayer as sought here under are granted to the Petitioner Company. However, irreparable loss shall be caused to the Petitioner if the prayers as sought hereunder are not granted to the Petitioner. 6.21 That the present Petition is being made bonafide and in the best interest of the Petitioner Company and all its stakeholders.

### **ANALYSIS & FINDINGS**

26. Relevant Provisions of Law are reproduced hereunder for brevity: -

#### **A. Rule 9 Of The Companies (Share Capital and Debentures) Rules, 2014**

*“Issue and Redemption of Preference Shares – (1) A company having a share capital may, if so authorised by its articles, issue preference shares subject to the following conditions, namely:*

- a) The issue of such shares has been authorised by passing a special resolution in the general meeting of the company;*
- b) The company, at the time of issue of such preference shares, has no subsisting default in the redemption of preference shares issued either before or on after the commencement of this Act or in payment of dividend due on any preference shares”*

#### **B. Rule 69 of the National Company Law Tribunal Rules, 2016**

*(1) The petition under sub-section (3) of section 55 of the Act shall be in Form No. NCLT. 1 and shall be accompanied by documents mentioned in Annexure B and setting out:*

- (a) particulars of registration*

- (b) capital structure, the different classes of shares into which the share capital of the company is divided;*
  - (c) the provisions of the memorandum or articles authorizing the issue of preference shares;*
  - (d) total number of preference shares issued*
  - (e) details of such preference pay dividend;*
  - (f) terms and conditions of issue of such existing preference shares;*
  - (g) total number of such preference shares (unredeemed) and number of holders consented for with value of such preference shares and percentage of holders who have consented for; and*
  - (h) date or dates on which the consent was given or the resolution was passed.*
- (2) On petition under sub-section (1), the Tribunal, after hearing the petitioner and any other person as appears to it to be interested in the petition, may, if it is satisfied, having regard to all the circumstances of the case, approve for issue of further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of unredeemable preference shares:*

*Provided that the Tribunal shall, while giving approval, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares:*

*Provided further that the Tribunal may, at its discretion, make such orders as to costs as it thinks fit.*

**C. Section 55(3) of The Companies Act, 2013**

*“Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the*

*unredeemed preference shares shall be deemed to have been redeemed.*

*Provided that the Tribunal shall, while giving approval under this subsection, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.*

*Explanation - For the removal of doubts, it is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.”*

27. It is observed that the petitioners have placed the following documents on record: -

- a. Consent letter dated 11.07.2023 of the 100% preference shareholder of NCPS 1, namely, Timex Group Luxury Watches B.V., Netherlands (Holding Company) for the issuance of preference shares and redemption of existing preference shares under section 55(3) of the Companies Act, 2013.
- b. Resolution passed by the board of directors of the Petitioner Company for the issuance of new Cumulative Redeemable Non-Convertible Preference Shares of Rs. 10/- each to the preference shareholder, i.e., Timex Group Luxury Watches B.V., Netherlands.
- c. Audited Financial Statements for the year 2020-21 and 2021-22.

28. In light of submissions made by the petitioner and after perusing documents placed on record, following material observations are relevant for the purpose of adjudication of the present petition -

- (i) Since the consent to the issuance of further preference shares for redeeming existing preference shares (initial maturity date being 26.03.2014 and thereafter extended to 26.03.2024 pursuant to 2 extensions granted by Reserve Bank of India in 2014 and 2019

espectively) has been granted by 100% Preference Shareholders of Timex Group Luxury Watches B.V., Netherlands (the Holding Company) which satisfies the requisite threshold of consent of 3/4<sup>th</sup> value stipulated under Section 55(3) of the Companies Act, 2013 ; there seems to be no impediment in allowing the present petition.

- (ii) The Petitioner Company is empowered by Its Articles of Association to issue Preference Shares.
- (iii) That the initial maturity date for NCPS 1 was 26.03.2014 which was extended twice by RBI on 09.04.2014 and 22.02.2018 respectively, thus the final maturity date of NCPS 1 became 26.03.2024.
- (iv) The petitioner's ground herein is primarily that it does not have sufficient earnings to redeem the NCPS 1 that were issued on 27.03.2004 and accordingly prays that this Tribunal may allow further issue of preference shares on private placement basis in lieu of the redemption of NCPS 1.
- (v) Section 55(2) of The Companies Act, 2013 prescribes that preference shares cannot be issued for a period exceeding 20 years except for infrastructural projects (which does not apply to the present case).
- (vi) The present petition appears to be compliant with the provisions of Section 55(3) of the Companies Act, 2013 and therefore we are inclined to grant the prayers as sought by the petitioner company.

## **ORDER**

In light of the aforesaid discussion, this Tribunal do hereby order as follows: -

29. This Tribunal **approves** prayer of the petitioner **seeking further issuance** of

2,73,15,264 Cumulative Redeemable Non-Convertible Preference Shares ("NCPS") of face value of Rs. 10/- each **in lieu of** 1,57,00,000 13.88 % Cumulative Redeemable Non-Convertible Preference Shares of face value of Rs. 10/- each which is due for redemption on 26.03.2024 **with the condition** that if preference shareholders seek redemption of all or part of the CCPS at any time after the expiry of lock-in period of 1 year from the issue of CCPS, subject to compliance of provisions of Section 55 of the Act, the petitioner will redeem such preference shares and make payment to the shareholders. However, if preference shareholders do not seek redemption within the period of twenty years from the date of issue, the preference shares shall be compulsorily converted into equity shares on the expiry of 20 years.

30. On such further issuance of redeemable preference shares, the unredeemed preference shares (NCPS 1) shall be deemed to have been redeemed. It is further clarified that the issue of further redeemable preference shares in lieu of unredeemed NCPS 1 shall not be deemed to be an increase or decrease in the share capital of the company (Petitioner Company).

31. The **COMPANY PETITION (COMPANIES ACT) No. 187/ND/2023** is accordingly **allowed** and stands disposed off.

32. Let the copy of order be served to the parties.

No order as to costs.

-sd/-

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

-sd/-

**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**