

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CP/310(KB)2022

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI D. ARVIND**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 16TH APRIL 2024

IN THE MATTER OF	MSA (INDIA) LIMITED
UNDER SECTION	SUB-SECTION (1) OF SECTION 66.

Appearance (via video conferencing/physically)

Ms. Aditi Jhunjunwala, CS] For the Applicant

C O R R I G E N D U M O R D E R

1. This matter was not on Board. Upon mentioning the matter is taken on Board today.
 - a. In the order dated 19th March, 2024, in para 18 Paragraph 3(g) of the rejoinder which shows *“With reference to Paragraph 2(h) of the said affidavit, it is hereby stated that the Company has appointed a Company Secretary w.e.f [•] in compliance with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, following the rights issue of shares. Nevertheless, the Company encountered technical difficulties on the MCA portal during the form submission. Nonetheless, the Company successfully rectified the filing vide SRN no. AA4767814. The relevant MCA form is annexed as Annexure-C. Furthermore, in the case of Krishna Institute of Medical Sciences Ltd and Ors v. the Registrar of Companies, Andhra Pradesh and Telangana, the Hon’ble NCLT noted that the failure to appoint a company secretary is not an offence of such gravity, that it would adversely affect the interests of the public and shareholders of the company. Without affecting the aforementioned points, we affirm that the Company will persist and function post reduction, thereby not affecting any of its statutory obligations or liabilities. The Hon’ble Tribunal may consider the same and pass necessary orders.”* will read as **“With reference to Paragraph 2(h) of the said affidavit, it is hereby stated that the Company had appointed a Company Secretary pursuant to applicability of Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, post the rights issue of shares. However, the**

Company faced technical issues on MCA portal while filing the form but however the Company regularized the filing vide SRN no. AA4767814.

Without prejudice to the above, we submit that the Company will continue to exist and operate post reduction and therefore, any statutory obligations or liabilities will not be affected. Further, in *Krishna Institute of Medical Sciences Ltd and Ors v. the Registrar of Companies, Andhra Pradesh and Telangana*, the Hon'ble NCLT observed that the non-appointment of a company secretary is not, in fact, an offence of such a serious nature, that would have any impact on the public and shareholders of the company. The Hon'ble Tribunal may consider the same and pass necessary orders." and

In para 21. which shows *"RESOLVED THAT pursuant to section 66 and other applicable provisions of the Companies Act, 2013 (including any statutory modification(s) or re-enactment thereof for the time being in force) and the rules made thereunder (the "Act") and pursuant to Article 75 of the Articles of Association of the Company and subject to confirmations by the Hon'ble National Company Law Tribunal, Kolkata Bench ("NCLT") and such other approvals, consents, permissions and sanctions as may be necessary, to be obtained from any Government or statutory authority, consent of the members of the Company be and is hereby accorded to reduce the issued, subscribed and paid up capital of the Company from Rs. 48,12,69,870/- (Rupees Forty-Eight Crores Twelve Lacs Sixty-Nine Thousand Eight Hundred and Seventy only) consisting of 4,81,26,987/- (Four Crores Eighty One Lacs Twenty Six Thousand Nine Hundred and Eighty Seven) equity shares of Rs. 10/- (Rupees Ten) each to Rs. 8,12,69,870/- (Rupees Eight Crores Twelve Lacs SixtyNine Thousand Eight Hundred and Seventy only) divided into 81,26,987 (Eighty One Lacs Twenty Six Thousand Nine Hundred and Eighty Seven only) equity shares of Rs. 10/- (Rupees Ten Only) each fully paid up of the Company by cancellation of issued, subscribed and paid-up capital of Rs. 4,00,00,000/- (Rupees Four Crores only) divided into 40,00,000 (Forty Lacs) equity shares of Rs. 10/- (Rupees Ten Only) each being 83.11% (Approx.) of the total issued, subscribed and paid up capital of the Company.*

"RESOLVED FURTHER THAT upon the capital reduction being confirmed by the Hon'ble NCLT and becoming effective and operative, and/or the receipt of such other approvals as may be required, the equity shareholders of the Company, as on the 'Record date' to be determined by the Board for the purposes of determining the

names of the registered holders of the equity shares of the Company, for the equity shares held by them and which are extinguished.” will read as under:

“RESOLVED THAT in supersession of the Special resolution item no.2 passed on 26th July, 2022, pursuant to section 66 and other applicable provisions of the Companies Act, 2013 and National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016 and other applicable provisions, if any, of the Companies Act, 2013, and Article 75 of Articles of Association of the Company and subject to obtaining such approvals, consents, permissions and sanctions and / or including any modification(s) or re-enactment thereof, if any and other applicable provisions for time being in force, and subject to the sanction of the Hon’ble National Company Law Tribunal, Kolkata Bench (‘NCLT’), and any other statutory / regulatory authorities, as the case may be, the consent of the members be and is hereby accorded to reduce the existing issued, subscribed and paid up capital of the Company of INR 48,12,69,870 divided into 4,81,26,987 equity shares of INR 10 each fully paid up to 81,26,987 equity shares of INR 10 each fully paid up, by cancelling and extinguishing 4,00,00,000 fully paid equity shares of INR 10 each (“Capital Reduction”) having fair value of INR 1.69 per share obtained from the fair valuation report of a Chartered Accountant dated September 5th, 2022 and that such reduction shall be effected by returning to the members an amount of INR 1.5 per share aggregating to an amount of INR 6,00,00,000/-. (Indian Rupees Six Crores Only.)

“RESOLVED FURTHER THAT, upon the Capital Reduction being confirmed by the NCLT and becoming effective and operative and upon payment of consideration to the members, without any further act or deed by the equity shareholders, 4,00,00,000 equity shares of INR 10 (Rupees Ten) each of the Company full paid up, shall stand cancelled, extinguished and rendered invalid.”

b. Rest of the order dated 19th March, 2024 will remain unchanged.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

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*An application u/s 66 of the Companies Act, 2013 read with Rules
2(1) of the NCLT (Procedure for reduction of share capital of
Company) Rules.*

IN THE MATTER OF:

MSA (India) Limited bearing CIN: U51909WB1965PLC026653 a company incorporated under the Companies Act, 1956 and validly subsisting under the Companies Act, 2013 having its registered office at Room No. 5 & 6, Surabhi Building, 3rd floor 8/1/2, Dr. U.N. Brahmachari Street, Kolkata -700017 in the State of West Bengal.

... Petitioner.

Pronouncement on:19th March, 2024

Coram:

Ms. Bidisha Banerjee, Member (Judicial)

Mr. D. Arvind, Member (Technical)

Appearances:

**Ms. Aditi Jhunjunwala, Practising Company Secretary for the
Petitioner**

Mr. Alok Tandon, Joint Director for RD(ER), MCA

ORDER

Per: D.Arvind, Member (Technical)

1. The Court congregated through hybrid mode.
2. This is a Petition filed under section 66 of the Companies Act, 2013 ('the Act') read with the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016. The petitioner company, MSA (India) Limited (the Company) seeks approval of this Tribunal qua Special

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Resolution passed at the Extraordinary General Meeting held on 20th September 2022 for reduction of the issued, subscribed and paid-up equity shares capital of the company.

- 3.** The Ld. Authorised Representative for the Petitioner Company submits that no objector has come before the Tribunal to oppose the Petition and nor has any party controverted any averments made in the Petition.
- 4.** The Petitioner Company ('the Company') was incorporated on 20th October 1965 under the provisions of the Companies Act, 1956 as a Company limited by shares. The registered office of the Company is situated at Kolkata in the State of West Bengal, which falls within the jurisdiction of this Bench.
- 5.** The Ld. Authorised Representative for the petitioner submits that the reason for the reduction of share capital are as follows:

 - a. The reduction of equity share capital in the manner proposed would enable the Petitioner Company to have a rationalize capital structure which is commensurate with its business and assets.
 - b. The purpose of the Scheme is to reorganize the Capital Structure of the Company so as to represent the realistic value for the Shares of the company.
 - c. The Company has accumulated losses due to low capacity utilization and higher overheads and interest as per the last audited balance sheet as of 31st March 2022 which has substantially wiped off the value represented by the share capital and reserve of the company. The financial

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statement and balance sheet of the company are not reflecting the true health and position of the Company. In order to ensure the financial statement of the Company reflect the true and real state of affairs and position of the Company, and that the Capital which is lost due to past accumulated losses is no longer reflected in and continued to be shown on the face of the balance sheet of the Company as “debit balance” in the statement of profit and loss, it is necessary to write off the capital which is lost and not represented by any tangible assets.

- d. After detailed deliberations, the Board of Directors of the Company were of the view that reduction of share capital in accordance with Section 66 of the Companies Act, 2013 is the only practical and economically efficient legal remedy available to the Company. Therefore, the Company proposes to reduce the equity share capital of the Company, in accordance with Section 66 of the Companies Act, 2013.
 - e. The proposed reduction will be for the benefit of the Company and its shareholders, creditors and all concerned as whole.
 - f. The Scheme of Reduction, after full implementation, will result in making its balance sheet leaner and downsized.
 - g. The Scheme would not in any way affect the ordinary operations of the Company.
- 6.** The proposed restructuring of capital by reduction of capital under section 66 of the Companies Act, 2013 shall be reflected in the books of accounts of the company in the following manner as on effective date.

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Particulars	Pre-Reduction	Post Reduction
Issued, Subscribed, Paid Up share capital	4,81,26,987 Equity Shares of Rs. 10/- each	81,26,987 Equity Shares of Rs. 10/- each
a) No. of shares	Rs. 48,12,69,870/-	Rs. 8,12,69,870/-
b) Amount		

7. The Ld. Authorised Representative for the Petitioner Company submits that Article 75 of the Article of Association of the Company authorizes the Company to reduce its capital in any manner permitted by law.
8. It is submitted by the Ld. Authorized Representative for the Petitioner that there is no pending inspection, inquiry or investigation against the Petitioner Company under the Companies Act, 2013. The Petitioner Company has been paying all its dues on time and has honoured its commitments and has not defaulted in any of its obligations.
9. Accordingly, the Board of Directors of the Company, at its meeting held on 14th September, 2022 subject to approval of the equity shareholders and subject to the approval of the National Company Law Tribunal, pursuant to section 66 of the companies Act, 2013 and the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules,

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2016 and other applicable provisions of the Companies Act, 2013, approved the reduction of the issued, subscribed and paid-up equity shares capital of the company from Rs. 48,12,69,870/- (Rupees Forty-Eight Crores Twelve Lacs Sixty-Nine Thousand Eight Hundred and Seventy only) divided into 4,81,26,987 Equity Shares of Rs. 10/- (Indian Rupees Ten only) each fully paid-up to Rs. 8,12,69,870/- (Rupees Eight Crores Twelve Lacs Sixty Nine Thousand Eight Hundred and Seventy only) divided into 81,26,987 Equity Shares of Rs.10/- (Indian Rupees Ten only) each fully paid up. A certified copy of the resolution passed by the Board of Directors on 14th September, 2022 is annexed to the petition as Annexure D on Page No. 138 to 140 of the Petition.

- 10.** By a Special Resolution of the Company, duly passed in accordance with section 66 of the Companies Act, 2013 and applicable rules at the Annual General Meeting of the Equity Shareholders, held after due notice to all its members conveying that an Extraordinary General Meeting shall be held on 20th September 2022, the shareholders had approved the resolutions for such reduction. A certified copy of the Special Resolution passed by the Equity Shareholders on 20th September 2022 is annexed with the petition as Annexure F from Page 147-149 of the Petition.

- 11.** It is stated that the Petitioner Company has 6 Creditors as on 15th September 2022. A certified copy from the Statutory Auditor dated 26th September 2022, confirming the list of

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creditors of the Company which is annexed as Annexure N from Page No. 169 to 172 of the Petition.

- 12.** It is further stated that the Petitioner Company is not in arrears in repayment of any deposits or interest thereon. A certificate from the Statutory Auditor of the Company stating that the Company is not in arrears in repayment of any deposits or interest thereon is annexed to the petition as Annexure K from Page No. 161-164 of the Petition. Also, a certificate from the Statutory Auditor stating that the accounting treatment proposed by the company for the reduction of share capital is in conformity with the accounting standards specified in section 133 or any other provisions of the Act is annexed to the petition as Annexure P from Page No. 183-186 of the Petition.
- 13.** It is also stated that even after the proposed reduction of the Petitioner in Company's Equity Share Capital, the Petitioner's Company financial position will be sound and, therefore, the interests of the creditor will not be adversely affected.
- 14.** It is further stated that the proposed reduction will not cause any prejudice to the creditors of the Company. The reduction of capital does not involve either diminution of any liability in respect of unpaid capital or the payment to any shareholder of any unpaid capital. Further, the proposed adjustment would not in any way adversely affect the ordinary operations of the Company or ability of the Company to honour its commitments or to pay its debts in the ordinary course of business.

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- 15.** It is also stated that no proceedings for winding up are initiated or are pending against the company.
- 16.** Vide order dated 1st December, 2022 the Petitioner was directed as per Rule 3 of the National Company Law Tribunal (Procedure for reduction of share capital of the Company) Rules, 2016 to give notice in Form No. RSC-2 to the Central Government through the Regional Director, Eastern Region and the Registrar of the Companies, West Bengal and also to the creditors of the Company in Form No. RSC-3 seeking their representations and objections, if any. The Petitioner served the same on 6th December 2022 to the creditors vide email/speed post/hand delivery. The Petitioner was also directed to publish notice in newspapers once in *Business Standard* (English) in *Aajkal* (Bengali) as well as to upload the notice on the website of the Company, if any, seeking objections from the creditors and intimating about the date of hearing in Form No. RSC-4, within 7 days from the date of the order and file affidavit of compliance in Form No. RSC-5 confirming the dispatch and publication of notice. It was also directed that representation, if any, under section 66(2) of the Companies Act, 2013 may be filed within three months from the date of publication of notice. The matter was listed for hearing on 06.03.2023.
- 17.** In pursuance of the aforesaid order dated 1st December 2022 the petitioner has filed an affidavit in respect of compliance of the aforesaid order duly affirmed on 2nd March, 2023.

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- 18.** The Central Government through Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata has made representation by an affidavit affirmed on 25th July, 2023.

Paragraph 2 (a) of the Affidavit:

That in terms of the order of the Hon'ble National Company Law Tribunal, Kolkata Bench passed in CP No.3 10/KB/2022 on 01/12/2022, the Petitioner Company served notice together with the copy of the petition to the Central Government through Regional Director, Eastern Region, Ministry of Corporate Affairs.

Paragraph 3(a) of the rejoinder:

With reference to paragraph 2(a) of the said affidavit, it is submitted that the same is a matter of record and may be considered as such by the Hon'ble Tribunal.

Paragraph 2 (b) of the Affidavit:

That it is submitted that on examination of the records of the Petitioner/Applicant Company, it appears that no complaint and/or representation has been received against the proposed Reduction of Share Capital. The petitioner company is also updated in filing their Financial Statement and Annual Return for the year ended 31/03/2022.

Paragraph 3(b) of the rejoinder:

With reference to paragraph 2(b) of the said affidavit, it is submitted that the same is a matter of record and may be considered as such by the Hon'ble Tribunal. The Petitioner

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Company has done annual filing of Financial Statements and Annual Return for the year ended on 31st March 2022.

Paragraph 2 (c) of the Affidavit:

The proposed reduction of Share capital of the Company from Rs.48,12,69,870/- divided into 4,81,26,987/- equity share of Rs. 10/- each fully paid up to Rs.8,12,69,870/- divided into 81,26,987 Equity Shares of Rs.10/- by cancelling and extinguishing of 4,00,00,000 fully paid-up Equity Shares of Rs. 101- having fair value of Rs. 1.69 each obtained from the fair valuation report of a Chartered Accountant dated 12/09/2022 and that such reduction shall be effected by returning to the members an amount of Rs.1.50 per share aggregating to an amount¹ of Rs.6,00,00,000/-.

Paragraph 3(c) of the rejoinder:

With reference to paragraph 2(c) of the said affidavit, it is submitted that the same is a matter of fact and may be recorded as may be considered by the Hon'ble Tribunal.

Paragraph 2(d) of the Affidavit:

That it is submitted that in the Petition and other documents, the Applicant Company did not mention specifically under which category/ sub-section of section 66(1) of the Companies Act, 2013, the proposed Reduction of Share Capital has been filed. In "The reasons for reduction of equity share capital", the Applicant Company stated, inter alia, that the Company has accumulated losses and the Capital which is lost due to past accumulated losses is no longer reflected in and continued to be shown on the

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face of the balance Sheet of the Company as "debit balance". In order to ensure the financial statement of the company reflecting the true and real state of affairs and position of the Company, the proposed reduction of equity share capital would enable the Petitioner Company to have a rationalize capital structure which is commensurate with its business and assets.

Paragraph 3(d) of the rejoinder:

With reference to paragraph 2(d) of the said affidavit, it is stated that Section 66 of the Companies Act, 2013 provides for reduction of capital, subject to the confirmation by the Tribunal on an application by the Company having share capital by a special resolution.

An extract of Section 66(1) is produced as follows:

“(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,

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alter its memorandum by reducing the amount of its share capital and of its shares accordingly:”

[emphasis supplied]

It is observed from the language of the said provision that Clause (a), (b) of Section 66(1) of the Act which provides that reduction can be done “in any manner” and that the modes of reduction of capital stated are mere illustrations and not the only manner in which share capital may be reduced. We submit that the said provision is inclusive in nature.

Further, Capital Reduction was approved by the shareholders of the Company and there were no objections from any of the creditors. We submit that Capital Reduction is a matter of ‘domestic concern’, that is, the rule of the majority prevails.

The question of reduction of share capital is treated as matter of domestic concern, that is, it is the decision of the majority which prevails. Similar view had been taken by *Delhi High Court in the matter of Reckitt Benckiser (India) Ltd 122 (2005) DLT 612*.

Further, paying off to the shareholders in the process of reduction does not make it composite in nature. There has been various cases wherein payment was made to shareholders as a part of reduction including the case of *Supreme Petrochem Ltd [CP330/MB/2021]*.

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Paragraph 2(e) of the Affidavit:

However, as per resolution passed at the Board meeting held on 14/09/2022 and as per resolution passed by the Shareholders of the Applicant Company held on 20/09/2022 and as also stated in the Petition, it is, inter alia, stated that the proposed reduction of Share capital of the Company from Rs.48,12,69,870/- to Rs.8,12,69,870/- by cancelling and extinguishing of 4,00,00,000 fully paid up Equity Shares of Rs. 101- shall be effected by returning to the members an amount of Rs.1.50 per share aggregating to an amount of Rs.6,00,00,000/-. Hence, the proposed reduction of Share Capital is not only a composite in nature but also apparently indicates buy back of Equity Shares attracting the provision of section 68 of the Companies Act, 2013. Hence the proposed Reduction of Share Capital filed under section 66 of the Act is objected upon.

Paragraph 3(e) of the rejoinder:

With reference to paragraph 2(e) of the said affidavit, we reiterate that Section 66 of the Companies Act, 2013 provides for reduction of share capital in any manner as discussed in the above point. Section 66(6) explicitly provides for exclusion of the section 68 for the purposes of buyback of securities. Therefore, it is open for the Company to follow the procedure under either sections. It is also important here to ascertain the difference between the buyback of shares and reduction of share capital including their treatment and process under the various laws including the Companies Act, 2013. Further, Section

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68 of the Companies Act, 2013 provides for buyback of shares. The purpose, process, procedure and limits of buyback and reduction are completely different. Similarly, the Income Tax Act, 1961 provides for different charging sections in both the cases and therefore the treatment for both are separate. Section 66 of the Companies Act, 2013 provides for detailed procedure to reduce the share capital in any manner with the approval of the Hon'ble NCLT. Under Section 68, cancellation of share capital via buyback is not subject to the approval of Hon'ble NCLT.

Hence, both these sections, that is, Section 66 and Section 68 of the Companies Act, 2013, are mutually exclusive of each other. Paying off to the shareholders in the process of reduction does not make it composite in nature as per the said provisions of the Act. There have been various judicial pronouncements made by NCLT benches wherein reduction had been effected upon paying off to the shareholders.

Paragraph 2(f) of the Affidavit:

That it is submitted that as per Petition served and in reply to a Communication, the Petitioner Company submitted that the Company has NIL Secured Creditors as on 15/09/2022. However, as per MCA Portal and as per details available in "View Index of Charges" in respect of Registered Charges in the same MCA Portal, there are many Secured Charges loan are still showing 'Open' against the Applicant Company and respective Charge IDS are also created. Hon'ble Tribunal

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may peruse the same and issue order as deemed fit and proper.

Paragraph 3(e) of the rejoinder:

With reference to paragraph 2(f) of the said affidavit, it is stated that the Company does not have any Secured Creditors. However, as per the MCA portal, there are open charges that relates to the bank loans taken by the Company. The said loans were taken from Punjab National Bank and Grindlays Bank (Standard Chartered Bank) more than 2 decades back, for instance, loan from Grindlays Bank was taken on 06th March, 1981. At the time of taking the loans, the practice was to intimate the Registrar of Companies by submitting the forms manually. Thereafter, upon the repayment of the said loans and satisfaction of such charges, the Company had filed Form 17 on or about 2003. but the same did not get reflect in the MCA portal. Infact, the MCA portal was not there wherein e-forms were filed and the same did not get reflected.

The relevant available documents being List of Charges on MCA portal, Register of Charges, Form 13 and 17 for Grindlays loan, Company letter to Punjab National Bank for issuing NOC are annexed herewith as Annexure-A. We further state that the financials of the Company for the past atleast 10 years and even more do not reflect any secured loans which is evidence of the non-existence of the loan. Accordingly, it is clear that there are no secured loans as on date and hence, the charges are already closed.

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We further state that pursuant to the public notice given on 6th December, 2022, no objector has filed any opposition nor has any party controverted to any averments in the Company Petition. The Hon'ble Tribunal may consider the same and pass necessary orders. We crave leave to refer to the financials should the need be, at the time of hearing, if necessary.

Paragraph 2(g) of the Affidavit:

That it is submitted that in reply to a Communication and as per Petition served, the Petitioner Company stated that there are 6jsix) Unsecured Creditors of the Company for Rs.62.05 lacs as on i5/09/2022. In view of this and in terms of the provision of Section 66(2) of the Companies Act, 2013, the Applicant Company should be put to strict prove to submit proof of delivery of notice in Form RSC-3 to all those unsecured creditors in compliances with the order of the Hon'ble NCLT, Kolkata Bench made in CP No. 310/KB/2022 on 01/12/2022.

Paragraph 3(f) of the rejoinder:

With reference to Paragraph 2(g) of the said affidavit, it is submitted that the Company had served notices to all its unsecured creditors as on 15/09/2022. Further, till date no objections have been raised to the public notice made by the Company. The copies of proof of delivery of the said notices in RSC-3 is annexed herewith as Annexure-B.

Paragraph 2(h) of the Affidavit:

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It is submitted that the Subscribed and paid-up Share capital of the Applicant Company, MSA (India) Limited is Rs.48,12,69,870/- which is more than the prescribed amount of Rs.10,00,00,000/-. Therefore, the Company is statutorily required to appoint a whole-time company secretary in terms of the provision of section 203 of the Companies Act, 2023 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. However, the Company does not have any Whole Company Secretary. As per MCA BO portal, the Applicant Company has never appointed a Whole Time Company Secretary since its Paid-up Share Capital came to Rs. 10,00,00,000/- or more, as it appears. This resulted in not only violation of the provisions of section 203 of the Companies Act, 2013 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 but also raising question about the veracity of necessary compliances as required under the provision of Companies Act, 2013 and rules made thereunder in running and functioning as a Public Limited Company.

Further, since upon sanctioning of the proposed reduction, the paid up share capital shall be reduced to Rs. Rs.8,12,69,870/- which is less than Rs. 10,00,00,000/-. Therefore, the Proposed reduction of Paid-up Capital appears to be a design/mechanism to avoid facing of the non-compliances made by the Company so far since its paid-up capital reached the prescribed limit for which the Company was statutorily required to appoint a Whole Time Company Secretary. In view of the above, the Hon'ble

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Tribunal may direct the Petitioner Company to first file compounding application under section 441 of the Companies Act 2013 to get the offence compounded after making good of the default.

Paragraph 3(g) of the rejoinder

With reference to Paragraph 2(h) of the said affidavit, it is hereby stated that the Company has appointed a Company Secretary w.e.f [•] in compliance with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, following the rights issue of shares. Nevertheless, the Company encountered technical difficulties on the MCA portal during the form submission. Nonetheless, the Company successfully rectified the filing vide SRN no. AA4767814. The relevant MCA form is annexed as Annexure-C.

Furthermore, in the case of Krishna Institute of Medical Sciences Ltd and Ors v. the Registrar of Companies, Andhra Pradesh and Telangana, the Hon'ble NCLT noted that the failure to appoint a company secretary is not an offence of such gravity, that it would adversely affect the interests of the public and shareholders of the company.

Without affecting the aforementioned points, we affirm that the Company will persist and function post reduction, thereby not affecting any of its statutory obligations or liabilities. The Hon'ble Tribunal may consider the same and pass necessary orders.

Paragraph 2(i) of the Affidavit

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Further, as per MCA BO portal and as per records available, it is observed that the Applicant Company has issued 4,65,00,000 Equity Shares of Rs.101- each on Right basis aggregating to Rs. 46,50,00,000/ - on 09/03/2022 and relevant eform PAS-3 had also been filed with the concerned ROC on 24/03/2022. However, thereafter, by resolution passed on 14/09/2022 at Board meeting and on 20/09/2022 at Shareholders' meeting, the Applicant Company passed resolution for reduction of 4,00,00,000 Equity Shares of Rs.10/-, which is based on the financials as per Financial Statement as at 31/03/2022. This material fact of large issue of share capital on right issue basis has not been disclosed in the Petition served for reduction of share capital. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

Paragraph 3(h) of the rejoinder

With reference to Paragraph 2(i) of the said affidavit, it is hereby stated that the Company had done rights issues in March, 2022. The same was already disclosed in the provisional financial statements of the Company attached in the Company Petition as Annexure – C2. Further, the Company disclosed the details of the share capital (post right issue effect) in the Reduction Application. Hence, there is no concealment of any material fact. The Hon'ble Tribunal may consider the same and pass necessary orders.

- 19.** We have heard the Ld. Authorized Representative appearing on behalf of the Petitioner Company and perused the affidavit of the Central Government filed through the

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Regional Director (Eastern Region), Ministry of Corporate Affairs, Kolkata. It appears from the materials on record that the instant Petition has been accompanied with all the documents as required under Rule 2 of the NCLT (Procedure for Reduction of Share Capital of the Company) Rules, 2016.

- 20.** Having regard to the facts and circumstances of the above case and on the undertaking by the company that all the requisite statutory compliance having been fulfilled and that the proposed reduction of Share Capital shall not cause any prejudice either to the members or the creditor of the Petitioner Company and the Regional Director, Eastern Region, representing the Central Government has not raised any points and gave a clear report to the Petitioner Company, we pass the following orders:
- 21.** Approval is hereby granted for the reduction of share capital of the Petitioner Company as resolved on and effected by Special Resolution passed at an Extraordinary General Meeting of the Petitioner Company on 20th September, 2022 the extract is reproduced hereunder:

“RESOLVED THAT pursuant to section 66 and other applicable provisions of the Companies Act, 2013 (including any statutory modification(s) or re-enactment thereof for the time being in force) and the rules made thereunder (the “Act”) and pursuant to Article 75 of the Articles of Association of the Company and subject to confirmations by the Hon’ble National Company Law

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Tribunal, Kolkata Bench (“NCLT”) and such other approvals, consents, permissions and sanctions as may be necessary, to be obtained from any Government or statutory authority, consent of the members of the Company be and is hereby accorded to reduce the issued, subscribed and paid up capital of the Company from Rs. 48,12,69,870/- (Rupees Forty-Eight Crores Twelve Lacs Sixty-Nine Thousand Eight Hundred and Seventy only) consisting of 4,81,26,987/- (Four Crores Eighty One Lacs Twenty Six Thousand Nine Hundred and Eighty Seven) equity shares of Rs. 10/- (Rupees Ten) each to Rs. 8,12,69,870/- (Rupees Eight Crores Twelve Lacs Sixty-Nine Thousand Eight Hundred and Seventy only) divided into 81,26,987 (Eighty One Lacs Twenty Six Thousand Nine Hundred and Eighty Seven only) equity shares of Rs. 10/- (Rupees Ten Only) each fully paid up of the Company by cancellation of issued, subscribed and paid-up capital of Rs. 4,00,00,000/- (Rupees Four Crores only) divided into 40,00,000 (Forty Lacs) equity shares of Rs. 10/- (Rupees Ten Only) each being 83.11% (Approx.) of the total issued, subscribed and paid up capital of the Company.

“RESOLVED FURTHER THAT upon the capital reduction being confirmed by the Hon’ble NCLT and becoming effective and operative, and/or the receipt of such other approvals as may be required, the equity shareholders of the Company, as on the ‘Record date’ to be determined by the Board for the purposes of determining the names of the registered holders of the equity shares of the Company,

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for the equity shares held by them and which are extinguished.”

- 22.** The Minutes of the Extraordinary General Meeting Dated 20th September 2022 appended to the Petition and set forth herein below, is hereby approved subject to just all exceptions.

This sanction will also not affect any action pending or contemplated by any Government authority or regulatory or statutory authorities for violation of any provision of the law for the time being in force.

- 23.** A certified copy of this order including the Minutes as approved be delivered to the Registrar of Companies within thirty days of receipt of the order as per provisions of sub-section (5) of section 66 of the Companies Act, 2013, who shall register the same and issue a certificate to that effect in Form No. RSC-7 [Rule 6(3)].

- 24.** The Petitioner shall, after receiving such certificates, to publish Notice of Registration of Order and Minute once in leading English newspaper and once in Bengali Newspaper having wide circulation in the State of West Bengal within two weeks thereafter.

- 25.** The Petitioner Company shall comply with the statutory filing requirements, if any, required under the Companies Act, 2013 and the Rules notified thereunder as may be applicable including effecting appropriate accounting treatment relating to thus extinguished share capital.

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- 26.** All concerned regulatory authorities to act on the certified copy of the Order including the Minutes forming part of the petition.
- 27. C.P. No. 310/KB/2022** is hereby **disposed of** on the above terms.

The Minutes referred to above

“The issued, subscribed and paid up equity share capital of the Company is henceforth Rs. 8,12,69,870 (Rupees Eight Crores Twelve Lacs Sixty Nine Thousand Eight Hundred and Seventy only) divided into 81,26,987 (Eighty One Lacs Twenty Six Thousand Nine Hundred and Eighty Seven) Equity shares of Rs. 10/- (Rupees Ten Only) each, reduced from Rs. 48,12,69,870 (Rupees Forty-Eight Crores Twelve Lacs Sixty-Nine Thousand Eight Hundred and Seventy only) comprising of 4,81,26,987 (Four Crores Eighty One Lacs Twenty Six Thousand Nine Hundred and Eighty Seven) equity shares of Rs. 10/-(Rupees Ten) each.”

**D Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This order is signed on the 19th Day of March 2024.

Tiwari. V. [LRA]