

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**CP/312(KB)2023**

***An application under Section 66 of the Companies Act, 2013;***

**IN THE MATTER OF:**  
**PHILIP INDIA LIMITED**

***... PETITIONER COMPANY***

**Date of pronouncement of the Order: September 19, 2024.**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)  
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**Appearance (via video conferencing/physically):**

Mr. S.N. Mookherjee, Sr. Adv.	] For the Petitioner
Mr. Ratnanko Banerji, Sr. Adv.	]
Mr. Joy Saha, Sr. Adv.	]
Mr. Shaunak Mitra, Adv.	]
Mr. Rishav Banerjee, Adv.	]
Mr. Naman Chaudhury, Adv.	]
Mr. Mehul Shah, Adv.	]
Mr. Rudra Mitra, Adv.	]

Mr. Jishnu Saha, Sr. Adv.	] For the Minority Shareholders
Mr. Reetobroto Mitra, Adv.	]
Mr. Labanyasree Sinha, Adv.	]
Mr. Swastika Sengupta, Adv.	]
Mr. M. Bajpai, Adv.	]

**ORDER**

***Per: D. Arvind, Member (Technical)***

1. This Court is congregated through hybrid mode.
2. Learned Sr. Counsels/Counsels appearing on behalf of the parties were heard *in extenso*.
3. This petition being **CP/312(KB)2023** has been preferred by Philips India Limited (Petitioner Company/Petitioner) under Section 66 of the Companies Act, 2013 seeking following relief(s), *inter alia*: -

**3.1** *The reduction of the issued, subscribed and paid-up equity share capital of the Petitioner Company from the existing INR 57,51,72,420 divided into 5,75,17,242 equity shares having a face value of INR 10 to INR 55,29,02,420 divided into 5,52,90,242 equity shares having a face value of INR 10 each fully paid up, by cancelling and extinguishing, in aggregate, 3.87% of the total issued, subscribed and paid-up equity share capital of the Petitioner Company held by all the equity shareholders of the Petitioner Company other than Koninklijke Philips N.V. and Philips Radio B.V (“Specified Shareholders”), comprising 22,27,000 equity shares having a face value of INR 10 fully paid up as on the Effective Date (as defined in the Postal Ballot Notice) (“Capital Reduction”) be sanctioned and confirmed by the Tribunal;*

**4. Brief facts of the case:**

**4.1** In the Petitioner Company, 96.13% of the shareholding is held by a group Company, namely, Koninklijke Philips N. V. (in short “KPNV”), which holds 5,52,90,182 shares of Rs. 10 each and Philip Radio B. V. (in short “PRBV”) which is also group Company of Petitioner, holds 60 number of shares of Rs. 10 each. The

public shareholders (Retail Shareholders) hold 18,16,948 equity shares of Rs. 10 each, representing 3.16% of shareholding. Investor Education Protection Fund hold balance 0.71% shareholding represented by 4,10,052 shares of Rs. 10 each.

- 4.2** The equity shares of the Petitioner Company were delisted from the stock exchanges in the year 2004. Post delisting, equity shares of the Company are not traded in any of the stock exchanges in India.
- 4.3** The public shareholders holding 18,16,948 shares representing 3.16 per cent of the total shareholding do not have avenue to monetize their shareholding, consequent to the de-listing of the shares of the Company in stock exchanges.
- 4.4** It is the claim of the petitioner that public shareholders are put to lot of hardship and inconvenience as there is no liquidity for their shareholding.
- 4.5** Ld. Sr. Counsel for the Petitioner Company claims that they have been receiving multiple and regular requests through calls, emails and other recognized modes of communication from these public shareholders to buy out their shareholding in the Petitioner Company.
- 4.6** Ld. Sr. Counsel further submits that, considering the requests from these shareholders and to help them liquidate their shares, the Petitioner Company took a decision to reduce the share capital of the Company and pay to such public shareholders based on “fair value” of the shares as consideration and provide exit to such specified shareholders in a fair and transparent manner.

- 4.7** Accordingly, the Petitioner Company appointed M/s. KPMG Valuation Services LLP bearing registration no. IBBI/RV-E/06/2020/115 as a registered valuer. The said valuer firm determined the fair value of the Petitioner Company's equity shares at Rs. 740/- per equity share.
- 4.8** The Valuation Report was issued on 31<sup>st</sup> October, 2023, by the said firm. The Report was also sent to ICICI Securities Ltd., a leading Merchant Banker for providing its fairness opinion. The Merchant Banker provided its fairness opinion on 31<sup>st</sup> October, 2023, confirming the valuation done by the KPMG Valuation Services LLP to be the fair value.
- 4.9** It is the claim of the petitioner that in spite of valuation at Rs. 740 per share, the Board of Directors of the Petitioner Company decided to pay a premium of INR 175 per equity share which is approximately 24% over the fair value, as consideration to the public shareholders, over and above the "fair value" determined.
- 4.10** The Board of Directors at their meeting held on 31<sup>st</sup> October, 2023 considered and approved the proposed Capital Reduction of the Petitioner Company as per the terms set out in the resolution.
- 4.11** And, hence, this petition has been filed seeking the relief(s) mentioned above, in Para No. 3 of this Order.

**5. Ld. Counsel for the Petitioner: -**

- 5.1** Ld. Sr. Counsel Mr. S. N. Mookerjee argued on behalf of the Petitioner Company and submits that the minority shareholder representing 3.87 per cent were not having any avenue to

monetise their shareholding after the Petitioner Company was delisted in the year 2004.

- 5.2** He submits that the Petitioner Company was receiving several emails from such public shareholders asking the Petitioner Company to buy out, or provide a mechanism for exit.
- 5.3** Considering the request from these shareholders and to help them to liquidate their shares, this exercise is being undertaken so that petitioner company is able to provide exit to such Public Shareholders in a “fair and transparent” manner. The Petitioner Company appointed one of the renowned registered valuer KPMG Valuation Services LLP and their valuation report was sent to a renowned Merchant Banker ICICI Securities Ltd. for fairness opinion.
- 5.4** He took us through the Report of KPMG Valuation Services LLP to demonstrate that valuation has been done by adopting discounted cash flow method which is the method, commonly used in valuing business or equity, if the entity which is being valued is a going concern and have not much of physical assets.
- 5.5** He also brought to our attention the fairness opinion, issued by Merchant Banker ICICI Securities Ltd., dated 31/10/2023 which has approved the “fair value” determined by the KPMG Valuation Services LLP, to be fair and proper.
- 5.6** He submits that 99.58% of the equity shareholders of the Petitioner Company have approved the proposed Capital Reduction by way of a special resolution through Postal Ballot including by remote e-voting. Total number of shareholders who voted in favour of the resolution is 458, as against 161 who voted

against the resolution. However, he submits that 458 shareholders who voted in favour represents 99.58% of shareholding.

**5.7** Therefore, he submits that all the parameters required for capital reduction under Section 66 of the Companies Act, 2013 have been met and, consequently, this petition should be allowed and relief claimed be granted.

**6. Ld. Counsel for the Respondent: -**

**6.1** Ld. Sr. Counsel Mr. Jishnu Saha for the respondents submits that the Company has attached in their rejoinder, emails purported to have been received from only 7 such public shareholders out of more than 25,000 such shareholders.

**6.2** He further submits that the purported emails attached in the rejoinder does not disclose the names or their email address of such purported shareholders, and therefore, no credence can be given to say that even such miniscule shareholders wanted to liquidate their share for “fair value”, that too determined solely based on the price to be / determined by the Petitioner Company appointed Registered Valuer.

**6.3** He also relied on Registered valuer report independently obtained by Respondent minority public shareholders from one Mr. Haresh B. Shah. The Report dated 11<sup>th</sup> April, 2024 reveals that he has also used discounted cash flow method and valued the shares in the range of INR 4,605 to 6,119 per equity share.

- 6.4** In light of this report, he submitted that the valuation of the equity share determined by KPMG (the valuer appointed by the petitioner) cannot be as low as INR 740 per equity share.
- 6.5** He took leave of this Tribunal to file a supplementary affidavit with another independent valuer report dated 30<sup>th</sup> July, 2024. The respondent has been obtained the valuation report from one Mr. Gaurav Jain, who is a registered valuer. His report dated July 30, 2024, also estimated the value of equity share of the Petitioner Company at Rs. 4,463/- per share, way more than Rs. 740/- per equity share determined by the petitioner appointed Registered Valuer.
- 6.6** However, Mr. Gaurav Jain, the Registered Valuer appointed by the Respondent has used market approach based on Comparable Companies Method (in short “CCM”) to arrive at the fair value.
- 6.7** Ld. Senior Counsel vehemently argued that the Petitioner Company made similar attempt previously in 2018 but had to withdraw due to protest/objections made by the minority/public shareholders. This he claims, this fact was not brought to the notice of this Tribunal while moving this petition.
- 6.8** He further submits that Valuation Report of KPMG Fairness Opinion Report of ICICI Securities and Board Resolution was issued/ executed on a single day, i.e., on 31<sup>st</sup> October, 2023. He contends that this is clearly a suspicious act with an intention to squeeze the minority shareholders at a throw away value/price.
- 6.9** He also submits that the Petitioner Company declared a massive dividend of Rs. 240 per equity share in the recent past and when that being the case the valuation of Rs. 740 per share is very very

low, and the same cannot be “fair value”. The Company has been growing steadily, and therefore, the valuation of equity share should be in the range of Rs. 4500 to Rs. 4700.

**6.10** He also submits, relying on several disclaimers and exceptions made in the Valuation Report of KPMG as well as in the fairness opinion report issued by the ICICI, that the reports are not conclusive with so many disclaimers and exceptions while determining/expressing an opinion on “fair value” of the equity share of the petitioner company.

**6.11** He also submits that the Valuation Report prepared by KPMG Valuation Services LLP has been done without any independent verification of parameters that were considered for the purpose of valuation.

**6.12** He further submits that the Valuation Report proceeded solely on the basis of discounted cash flow method ignoring market approach (comparing Co’s business to comparable trading/similarly operating business).

**6.13** He submits that the petitioners have stated mainly two reasons for capital reduction, in their proceedings, which are as under:

**(i)** First reason is that, since the Company’s shares are not traded in stock exchanges, the public shareholders do not have avenue to monetise their shareholding, and they have received multiple and regular requests from public shareholders to buy-out their shareholding. That the reduction of share-capital would unlock the value of illiquid securities, for such shareholders.



**(ii)** The second reason is that the capital reduction will enable the company to save administrative and other costs associated with a very small percentage of the shareholding held by large number of public shareholders.

**6.14** He contends that explanatory statement for the proposed resolution for capital reduction, ought to have, at least provided for the following:

- a)** The explanatory statement ought to have accurately indicated the number and nature of requests received by the Company from Public Shareholders for transfer, exit or sale of shares in the last five years, and their names and details.
- b)** The explanatory statement ought to have indicated the reason why the earlier Petition made in the year 2018 under Section 66 was withdrawn.
- c)** The explanatory statement ought to have set out the changed facts and circumstances which has compelled the Company to propose the reduction of share capital once again.
- d)** The explanatory statement ought to have set out any communications from major shareholders such as Phillips NV, Netherlands or any of, the other major shareholders, to the Board of Directors directly or individually in relation to the squeezing out minority shareholders' exercise.
- e)** The explanatory statement ought to have set out what is the cost of the administration of 25,000 shareholders,

and what is that the petitioners company would be saving if such minority public shareholders exit by way of the proposed capital reduction.

**f)** On the aspect of valuation, the explanatory statement ought to have set out:

**i)** the parameters adopted for valuation;

**ii)** the material projections, cash flows, capital budget, revenue budget all of these as approved by the Board of Directors as provided to the Valuer for valuation. It should have set out any other material information provided by the Company to the Valuer for carrying out the valuation exercise. This was necessary since the Valuer firm has clearly stated that it has assumed information provided by the management to be fair estimate and has relied while preparing the Valuation Report.

**iii)** the engagement letter issued to the Valuer; terms of engagement including all email communications, with the Registered Valuer, if the intention of the petitioner Company is to be fair and transparent, as claimed.

**6.15** He further contends that if the scheme of capital reduction is unjust or unreasonable or if it unfairly discriminates a class of shareholders, such a scheme should be rejected, by this Tribunal.

**6.16** The Tribunal is vested with responsibility of protecting the rights of minority shareholders from oppression of majority promoter shareholders in the matters of reduction of share capital.

**6.17** By approving the said proposal, the promoter shareholder seek to gain complete control over the Company and ouster the non-promoter shareholders, at a throw away price.

**6.18** He also submits that valuation of the equity shares is in breach of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

**6.19** The Promoter Shareholders of the Company are foreign companies. In effect, the reduction of the share capital is nothing but an indirect mode of transferring the shares of the Specified Shareholders to the Promoter Shareholders.

**6.20** Therefore, the entire exercise according to the Sr. Counsel is in the violation of the Foreign Exchange Management Act, 2000 and the rules and regulations made thereunder.

**7. Per Contra by the Ld. Sr. Counsel for the Applicant: -**

**7.1** The Ld. Sr. Counsel submitted a verification note issued by KPMG Valuation Services LLP dated 1<sup>st</sup> September, 2024 certifying the approach, basis and methodology adopted by them while valuing the Petitioner Company shares to demonstrate that the fair value determined by them is as per International Valuation Standard (in short “IVS”) and ICAI Valuations Standards 2018.

**7.2** According to this note the Petitioner Company has four divisions as per the table below: -

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<b>Segment Name</b>	<b>Description</b>	<b>% Contribution</b>
Philips Innovation Campus ("PIC")	Software development for innovative solutions catering to the Philips group globally.	37.8%
Health Segment ("HS")	Distribution of medical diagnostic imaging.	33.1%
Health Innovation Campus ("HIC")	Operates as a contract manufacturer for Philips globally.	15.2%
Personal Health ("PH")	Distribution of products in oral healthcare, mother & child & personal care.	13.0%

**7.3** Relying on this note, he claims that the Petitioner Company's operations are highly dependent on the parent Company & its associates (Philip group), as significant portion of the revenues of the Company are generated from sales to parent and other group companies and the technology for such products/services does not lie with petitioner company.

**7.4** The Petitioner Company bill mostly their customers (group companies) on cost plus basis and such mark ups are governed by transfer pricing regulations of respective countries and transfer pricing regulatory authorities had/have no objection to the transfer pricing adopted by the Petitioner Company. In fact, the petitioner Company does not have its own brand as it is

owned by Philips NV, to get such massive valuation of the equity shares, claimed by the Respondents.

**7.5** He submits that a cost plus of 10% has been applied for estimating revenues and growth rate of 5% has been used for the purpose of arriving at value of the equity shares.

**7.6** He also relies on two judgments, i.e., one is in the case of **G.L. Sultania and Others V. Securities Exchange Board of India and Others (2007) 5 Supreme Court Cases 133** passed by the Hon'ble Supreme Court held as under: -

*“32. .... that valuation of shares is not only a question of fact, but also raises technical and complex issues which may be appropriately left to the wisdom of the experts, having regard to the many imponderables which enter into the process of valuation of shares .....*”

He further submitted that in para 84 of this Order held as under:

*“84. .... Unless it is shown that some well-accepted principle of valuation has been departed from without any reason, or that the approach adopted is patently erroneous or that relevant factors have not been considered by the valuer or that the valuation was made on a fundamentally erroneous basis ....., this Court would not interfere with the valuation of an expert .....*”

**7.7** He also relies on the case law of **Bombay High Court** in **2015 SCC Online 6358: (2015) 6 AIR Bom R 291: (2016) 132 CLA 223** rendered by the Hon'ble High Court of Bombay in the matter of **Securities Exchange Board of India and Others V. Kakinada Fertilizers Limited** wherein the Hon'ble High Court took a

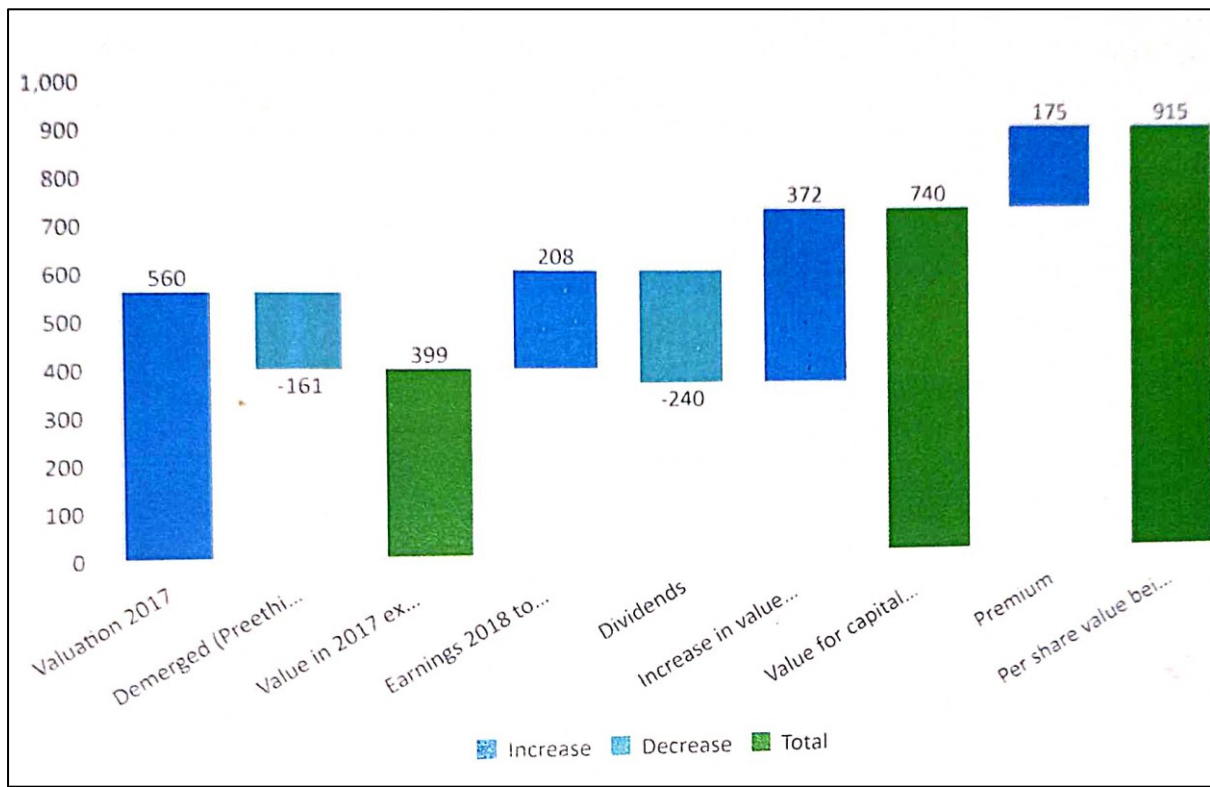
similar view to the one taken by the **Hon'ble Supreme Court**, in the case law cited supra.

**8. Further submissions by Ld. Sr. Counsel for the Petitioner: -**

- 8.1** Ld. Sr. Counsel also submits that earlier petition was filed by the Petitioner Company in the year 2018 pursuant to a different resolution and there is no connection with this petition.
- 8.2** There was no adjudication or any objection raised by any shareholder in the said Company Petition filed in the year 2018 and the same was withdrawn voluntarily. Therefore, the question of application of principle of res judicata does not arise.
- 8.3** Relying on the judgment of **Hon'ble Supreme Court** in the case of **G.L. Sultana and Others** he submits that no case has been made out by the respondents in terms of approach, method, relevant factors etc. adopted for valuation to be demonstrably wrong. No case has been made out by the respondent that there is fundamental error in the valuation.
- 8.4** He strongly submits that, in fact in the first valuation report issued by one Mr. Haresh B. Shah, the respondent appointed valuer confirms that the value determined by the KPMG is "fair".
- 8.5** To the objection raised by the respondent that there should be a separate approval of the specified shareholders/public shareholders which forms a separate class of shareholders being affected by the proposed reduction of share capital, Ld. Sr. Counsel submits that this objection is wholly mis-conceived as Section 66 of Companies Act 2013 does not envisage or require any meeting or any approval of any particular class of shareholders under such facts and circumstances. In the present

case, the special resolution has been passed with 99.58% voting in favour of the proposed reduction of share capital.

**8.6** He also placed a graphic table as justification of the share price determined by KPMG, which has been extracted herein for ease of reference. This graph captures the sale of Preethi (Home appliances division) and consequent reduction in revenue, as well as healthy dividend pay-out, but after several years.



**8.7** He also submits that the scheme is in compliance with all the applicable laws including FEMA Act. He further submits that the Adjudicating Authorities' directions if any on this aspect will duly be complied with.

**9. Analysis & Findings: -**

**9.1** We have heard both the Ld. Sr. Counsels at length for the parties. This petition has been filed under Section 66 of the Companies Act, 2013, predominantly for buying out the minority shareholders who are large in number compared to the promoter shareholder. However, such large number of public shareholders hold only 3.87% of the total shareholding of the petitioner Company whereas the promoter shareholder holds more than 96% of the shareholding.

**9.2** Before we proceed further, it would be appropriate to examine the relevant parts of the report submitted by Regional Director MCA on the proposed capital reduction. For the sake of convenience reproduced as under.

**9.3 Relevant portion of the RDs' Report is as under: -**

*(d) The proposed reduction of Share Capital of the Company from the existing Rs. 57,51,72,420/- divided into 5,75,17,242 Equity Shares having a face value of Rs. 10/- each to Rs. 55,29,02,420/- divided into 5,52,90,242 equity shares having a face value of Rs. 10/- each fully paid up, by cancelling and extinguishing of 22,27,000 Equity Shares having a face value of Rs. 10/ each, which are holding by Specified Shareholders of the Company, in aggregate, 3.87% of the total issued, subscribed and paid-up equity share capital held by all the Equity Shareholders of the Petitioner Company other than Koninklijke Philips N.V. and Philips Radio B.V., the Promoters of the Company.*



*(g) That it is submitted that since the proposed Reduction of Share Capital is to pay off money to the Specified Shareholders, who are being non-resident, the Applicant Company shall ensure and undertake through appropriate affirmation that no payment of money by way of Reduction of Share Capital, as proposed, for which necessary compliance of the applicable provision of the Foreign Exchange Management Act, 1999 (FEMA) and other sanctions/ approvals from the Reserve Bank of India (RBI) are required, shall be made to any of the Specified Shareholders, being non-resident. Further, Hon'ble Tribunal may also direct the Petitioner Company to comply with applicable provisions of FEMA Act and/or obtain NOC from RBI in the matter.*

**9.4** Before we come to the allegations, submissions and counter submissions made on behalf of the petitioners and respondent, particularly on valuation of equity shares, we are inclined to examine whether for buying out the shareholding of the minority shareholders, Section 66 of the Companies Act 2013 which deals with capital reduction can be invoked. For the sake of convenience relevant provision of Section 66 of the Companies Act, 2013 is reproduced as under: -

*(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 memorandum by reducing the amount of its share capital and of its shares accordingly:

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

**(2)** The Tribunal shall give notice of every application made to it under sub-section (1) to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice:

Provided that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

- (3)** *The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit:*

*Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.*

- (4)** *The order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be published by the company in such manner as the Tribunal may direct.*

- (5)** *The company shall deliver a certified copy of the order of the Tribunal under sub-section (3) and of a minute approved by the Tribunal showing—*

- (a)** *the amount of share capital;*
- (b)** *the number of shares into which it is to be divided;*
- (c)** *the amount of each share; and*
- (d)** *the amount, if any, at the date of registration deemed to be paid-up on each share,*

*to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.*

*(6) Nothing in this section shall apply to buy-back of its own securities by a company under section 68.*

- 9.5** The Petitioner Company has passed Special Resolution to reduce the share-capital, with more than 99% voting rights. As per Section 66(1)(a), the Company can reduce the share capital for (a) extinguishing or reducing the liability of 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, cancel any paid-up capital which is lost or is unrepresented by available assets or pay off any paid-up share capital which is in excess of the wants of the Company.
- 9.6** From the pleadings made out, we are of the view that sub-Section (1)(a) of Section 66 has no application in this case, as the capital reduction is not sought for extinguishing or reducing the share capital that has not been paid-up.
- 9.7** Nothing has been pleaded in the petition or during the course of hearing that the reduction in share capital is for cancellation of paid-up capital, which is lost or unrepresented by available assets, and therefore the first part of Section 66(1)(b) has no application to the case in hand.
- 9.8** It has also not the case of the Petitioner Company in their pleadings that they wanted pay off capital which is in excess of wants of the Company. In fact, we see borrowings/ liabilities in the balance sheet of the petitioner Company, and therefore, the second part of Section 66(1)(b) also has no application to the case in hand. In any event this has not even be pleaded.

- 9.9** On the other hand, the Petitioner Company has claimed only two grounds (a) wanted to provide liquidity/exit for the minority shareholders (b) Company wanted to save on administrative cost of servicing large public shareholders with negligible percentage of shareholding.
- 9.10** When that being the case, we don't find anything in the pleadings, not even in the written note, involving circumstances mentioned in Section 66(a) or 66(b) of the Companies Act, for the purpose of invoking Section 66 of the Companies Act, for capital reduction, in the case in hand.
- 9.11** In the erstwhile Section 100 of the Companies Act, 1956, which was dealing with capital reduction, provisions were wide enough and there was no specific bar for "buy back of shares" from minority shareholders for the purpose of Capital Reduction.
- 9.12** In fact, Section 100 of the Companies Act was often used for the said purpose and consequently for capital reduction by Companies. However, Section 66(6) of the Companies Act, 2013, in our view provides specific bar and states that nothing in this Section shall apply to buy-back of its own securities by a Company under Section 68 of the Companies Act, 2013.
- 9.13** In our view under the current facts and circumstances the Petitioner Company is resorting to buy-back of its own equity shares from the minority shareholders/public shareholders and incidentally reducing the share capital. In other words, share capital reduction is only incidental to the main objective of buy back of shares, even as per their own pleadings.

- 9.14** Coming to the dispute relating to valuation of the equity shares, petitioner has placed one report prepared by KPMG and the respondents have placed two reports, i.e., one prepared by Mr. Haresh B. Shah a registered valuer and another report prepared by Mr. Gaurav Jain, who is also a registered valuer.
- 9.15** While KPMG and Mr. Haresh B. Shah have adopted discounted cash flow method for the purpose of arriving at value of the equity share of the Petitioner Company Mr. Gaurav Jain has used market approach basis on “comparable companies’ method. However, Mr. Gaurav Jain has not identified which Company/ Companies he has compared to arrive at the value.
- 9.16** We examined the pleadings and documents provided by the Petitioner Company and we are inclined to agree with them about their unique model of business operations, as they supply most of the goods and services to their own parent company /associates company on cost plus mark-up model. They have several divisions which are unique to each other and therefore comparable companies’ method may not be correct approach/method for the purpose of valuing petitioner company shares in the present case.
- 9.17** The discounted cash flow method is normally used in companies which has fewer physical assets and when the company is run as a going concern. In this case, there is no dispute that the company is a going concern and does not have much of physical assets. Even the brand is not owned by the petitioner Company Philips India Limited. Therefore, discounted cash flow method adopted by the petitioner valuer as well as the respondent valuer Mr. Haresh B. Shah seems to be in Order.

- 9.18** However, we see huge difference between the values determined by petitioner's valuer and the respondent's valuer, even though both of them have adopted same method, i.e., discounted cash flow method. While petitioner appointed valuer has valued it at Rs. 740/- per share, the respondent appointed valuer has valued in excess of Rs. 4500/-, by suggesting a range between Rs. 4605/- to Rs. 6119/-.
- 9.19** The variance could be due to various factors such as difference in estimates of future cash flow, rate of growth applied, rate of cost of capital employed etc.
- 9.20** Further variables that would impact cost of capital are risk free rate of return prevailed at the time of valuation, market return of particular industry as a whole, proxy beta, weighed average cost of capital during the projected period, dividend pay-out ratio vs. retention ratio and so on and so forth. Unless parameters and estimates adopted by Petitioner's Valuer is made transparent such difference will exist.
- 9.21** Situation may require a direction to the Registered Valuer to disclose the parameters factored while determining the price under discounted cash flow method to reconcile **two vastly** different prices determined by two different Registered Valuers, while adopting same method of valuation. However, we desist from doing so as we are anyway dismissing this petition on the ground that Section 66 of the Companies Act cannot be invoked under the facts and circumstances of the case.

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**9.22** In view of the above discussion, we are not dealing with contentions and counter contentions made with regard to Foreign Exchange Management Act and in any case petitioner company is willing to comply with any directions as per law, of this Adjudicating Authority with regard to FEMA compliance.

- 10.** Accordingly, this application being **CP/312(KB)2023** is **dismissed**.
- 11.** The Registry is directed to send e-mail copies of the Order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 12.** Certified copies of this Order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
- 13.** File be consigned to records.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**Order signed on: 19<sup>th</sup> September, 2024.**

*Ar. [steno]*