

**THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

CP No. 29/MB-I/2023

*Under Section 66 of the Companies Act, 2013 and
the rules framed there under.*

And

*In the matter of Reduction of
Equity Share Capital of*

Bombay Gas Company Limited
CIN: U65100MH1982PLC026295

...Petitioner Company

Order delivered on 21.05.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances (through)

For the Petitioner(s) : Mr. Ahmed M Chunawala i/b
M/s. Rajesh Shah & Co.,
For the RD : Mr. Bhagwati Prasad i/b Regional
Director, Western Region.
For Objector : Mr. Omkar Kelkar, for State bank of
India and Mr. Darryl Pereira for Life
Insurance Corporation of India.

ORDER

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1. Heard the Learned Counsel for the Petitioner Company as well as objectors i.e. State bank of India and Life Insurance Corporation of India. Counsel for the Petitioner Company submits that both the cases are pending before the appropriate forum and that the Petitioner will comply with the directions of the appropriate forum and that the same will be met and answered in accordance with law.
2. The Articles of Association of the Company read along with Clause 38 of the Articles of Association of the Petitioner Company empowers the Petitioner Company to reduce its capital in any manner permitted by law from time to time by passing a Special Resolution in any manner for the time being authorised by law.
3. The Counsel for the Petitioner Company submits that for the reasons set out in its application, the Board of Directors of the Company, at their meeting held on 20th October, 2022, have deemed it appropriate subject to the approval of the shareholders to reduce or otherwise alter from Rs. 8,00,01,500/- divided into 80,00,150 equity shares of Rs.10/- each to Rs. 6,92,05,200/- divided into 69,20,520 equity shares of Rs.10/- each whereby 10,79,630 equity shares of Rs.10/- each of existing share capital of Rs. 8,00,01,500/- amounting to Rs. 1,07,96,300/- is extinguished and cancelled and that the aggregate amount of Share Capital so reduced will be credited to the Capital Reserve account at a consideration for sum of Rs. 61.74 (Rupees Sixty One and Paisa Seventy Four Only) per share.
4. The shareholders of the Petitioner passed a Special Resolution on 30th November, 2022 have approved the said reduction of capital of the Petitioner.
5. The Petitioner Company has complied with all statutory requirements as per the directions of the Tribunal dated 15.09.2023 and they have filed the necessary Affidavits as aforesaid. Moreover, the Petitioner

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Company also undertakes to comply with statutory requirements, if any, under the Companies Act, 2013 and the Rules made thereunder, as may be applicable.

6. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 04.01.2024 making certain observations and the Petitioner Companies have submitted / undertaken that:
 - a. The payment of consideration to the shareholder shall be processed within 60 days or such other date as decided by the Board of Directors of the Company after the reduction of share Capital.
 - b. The related party transactions entered into by the Petitioner company is in its ordinary course of business and on an arm's length basis and that the disclosure as required is provided in the Annual Report of the Company and that the Company has duly complied with the provisions of Section 188 of the Companies Act, 2013.
 - c. The Petitioner Company shall comply with the FEMA/RBI rules as applicable upon reduction of shares of any Non-Resident Shareholders.
 - d. The court case by the State Bank of India before the Main Mediation Centre, High Court of Judicature at Bombay under Section 12A of the Commercial Courts Act, 2015 is going on and Company shall continue with the proceeding at High Court. Further, the Reduction of Share capital will have no impact of the proceeding of the Company and that there will not be any adverse effect on the rights or liabilities of the Company.
 - e. The interest of the creditors and all stakeholders and Government Revenue are protected as well as statutory dues are paid off with your good office.

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- f. Section 66 of the Companies Act, 2013 clearly stipulates the reduction of Share Capital can be affected in any manner, i.e. including by way of selective reduction of share capital. Clause (a) & (b) of Section 66 of the Act, is a mere illustration and not the only manner in which share capital may be reduced. The Petitioner Company hereby refers the division bench judgement in various cases:
- i. In Re: Sandvik Asia Limited (Appeal No. 308 of 2004) where the Hon'ble Division Bench referring to various judgements confirmed selective reduction of Share Capital by extinguishing shares of Shareholders.
 - ii. In Re: Syngenta India Limited, reported in [2017] Company Petition No. 771 the National Company Law Tribunal, Mumbai Bench, in its order, while approving the selective reduction of shares referred to a relevant Judgement of Hon'ble Delhi High Court in case of Reckitt Benckiser (India) Limited ((2005) 122 DLT 612). It was held by the Hon'ble Delhi High Court in para no. 21 as follows:
“21. The principles, which can be distilled from the aforesaid judicial dicta, are summarized as under:
 - (i) *The question of reduction of share capital is treated as matter of domestic concern, i.e. it is the decision of the majority which prevails.*
 - (ii) *If majority by special resolution decides to reduce share capital of the company, it has also right to decide as to how this reduction should be carried into effect.*
 - (iii) *While reducing the share capital company can decide to extinguish some of its shares without dealing in the same manner as with all other shares of the same class.*
Consequently, it is purely a domestic matter and is to be decided as to whether each member shall have his share

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proportionately reduced, or whether some members shall retain their shares unreduced, the shares of others being extinguished totally, receiving a just equivalent

- (iv) *The company limited by shares is permitted to reduce its share capital in any manner, meaning thereby a selective reduction is permissible within the framework of law (see Re. Denver Hotel Co., 1893 (1) Chancery Division 495).*
- (v) *When the matter comes to the Court, before confirming the proposed reduction the Court has to be satisfied that (i) there is no unfair or inequitable transaction and (ii) all the creditors entitled to object to the reduction have either consented or been paid or secured.”*

Other relevant Judgements as referred in above case –

- iii. In Re: R.S. Live Media Pvt. Ltd reported in [2014] 187 Comp Case 243 (Delhi), while approving the selective reduction of share capital belonging only to the foreign shareholders of a company, the Hon’ble Delhi High Court observed that:
“In view of the above discussion, the questions viz.: Whether it is permissible for a company to reduce its share capital in a disproportionate manner... must be answered in the affirmative. The mode, manner and incidence of reduction has been regarded as a matter of domestic concern and there is no restriction under the Act which curtails the discretion of a company in adopting the manner in which the company chooses to reduce its capital..”
- iv. In Re: Elpro International Ltd., reported in [2009] 149 Comp Cas 646 (Bom) the Hon’ble Bombay High Court observed that:
“In the present case, the Court must first and foremost have regard to the well-established position that a selective reduction of share capital is legally permissible.”
- v. In Wartsila India Limited v. Janak Mathuradas, reported in (2011 (1) Bom. C.R. 600, the Hon’ble Bombay High Court

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upheld reduction of share capital as undertaken by the company therein which resulted in the extinguishment of non-promoter shareholding of the company. The Hon'ble Court further held answering in the question – *“whether the special resolution which proposes to wipe out a class of shareholders after paying them just compensation can be termed as unfair and inequitable” in the affirmative, observed that*

“...In our opinion, once it is established that non-promoter shareholders are being paid fair value of their shares...the court will not be justified in withholding its sanction to the resolution.”

Given the facts of the present case, the proposed reduction of equity share capital is a shareholder approachable gesture to provide an exit opportunity to the Non-Promoter holding equity shares of the Petitioner Company at a price not less than the fair value as fixed by the valuer of shares and in consideration of the several decisions cited above, it is concluded that selective reduction is permissible under Section 66 of the Companies Act, 2013, if the non-promoter shareholders are being paid fair value of their shares. In the present case, none of the non-promoter shareholders of the Company have raised objection about the valuation of their shares. It is nobody's case that the proposed reduction is unfair or inequitable.

g. The Petitioner Company will be bound by the decision of the Tax Authority in accordance with applicable law. Petitioner Company shall comply with all applicable provisions of the Income Tax Act and all tax issues, if any, arising out of the reduction of equity share capital and will be answered in accordance with applicable law and further, the decision of Income Tax Authority will be binding on Petitioner Company, subject to right of appeal available to the Petitioner Company under applicable laws. Also, the approval of the Petition by NCLT may not deter the Income Tax Authority to scrutinize the

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tax return filed by the Petition Company after giving effect to the proposed reduction.

- h. M/s Hamilton & Company Limited holding 74.87% shareholding, wherein no individual shareholders of the Company, holds more than 50% (one-half) shares or voting rights or have right to receive or participate in more than one-half of the distributable dividend indirectly in the Petitioner Company. Therefore, the filing of BEN-2 is not applicable to Petitioner Company. We hereby state that, if directed by the concerned authority, Petitioner Company shall comply with same.
7. Mr. Bhagwati Prasad, Deputy Director for the Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection.
8. On 26.04.2023, Counsel for the State Bank of India informs that they have already filed their objections vide letter dt. 28.11.2023 and they are seeking some directions from this Tribunal to pay an amount which is disputed by the Petitioners; however, Counsel for the Petitioner informs that an amount of debt was agreed to be paid in the Mediation Proceedings. This Bench is of the view that dispute in relation to the quantum of claim in the proceedings cannot be considered by this Tribunal. Needless to say, the interest of Creditors shall be protected and their Claims shall be admitted in accordance with Law.
9. Since the requisite statutory procedure has been fulfilled, the Company Petition is made absolute in terms of the prayer clause of the Petition. All concerned regulatory authorities to act on certified copy of the order and the form of minutes forming part of the Petition, duly certified by the Deputy Registrar or Assistant Registrar, National Company Law

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Tribunal. The Petitioner Company undertakes to file the same with the Registrar within 30 days from the date of the receipt of the order.

10. Petitioner to publish notices about registration of order and minutes of reduction by the concerned Registrar of Companies, Maharashtra, in two newspapers, namely 'Free Press Journal' in English and 'Navshakti' in Marathi, both having circulation in Mumbai, within 30 days of registration.

FORM OF MINUTE

“The subscribed, issued and paid-up share capital of Bombay Gas Company Limited, the Petitioner Company shall stand reduced or otherwise altered from Rs. 8,00,01,500/- divided into 80,00,150 equity shares of Rs.10/- each to Rs. 6,92,05,200/- divided into 69,20,520 equity shares of Rs.10/- each whereby 10,79,630 equity shares of Rs.10/- each of existing share capital of Rs. 8,00,01,500/- amounting to Rs. 1,07,96,300/- is extinguished and cancelled and that the aggregate amount of Share Capital so reduced will be credited to the Capital Reserve account at a consideration for sum of Rs. 61.74 (Rupees Sixty One and Paise Seventy Four Only) per share.”

Sd/-

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Prabhat Kumar
Member (Technical)

Justice V.G. Bisht
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