

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.P. 119/MB/2022

*In the matter of
Under Section 66 read with Section 52
The Companies Act, 2013
and all other applicable provisions, if any.*

*And
In the matter of
The Reduction of Share Capital of
Universal Prime Aluminium Limited*

Universal Prime Aluminium Limited

CIN: U28129MH1971PLC015207 ...Petitioner Company

Order delivered on 23.04.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances (through)

For the Petitioner Company : Mr. Rajeev K Goel, Mr.
Kartikeya Goel, Advocate

For the Regional Director : Ms. Aparna Mudiam, Deputy
Regional Director

ORDER

1. Heard learned Counsel for the Petitioner Company and the
Authorized Representative for the Regional Director. Neither

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.P. 119/MB/2022

objector, except otherwise stated, has come before this Tribunal to oppose the Proposed Reduction of Capital and nor has any party controverted any averments made in the Petition to the said Reduction of Capital.

2. The counsel for the Petitioner Company submits that this Petition is filed on 29.03.2022 for confirmation of a Special Resolution passed by the Petitioner Company for reduction of its Equity Share Capital by reducing the paid-up Equity Share Capital ₹7,96,74,430 divided into 79,67,443 Equity Shares of ₹10 each fully paid-up, to ₹4,46,82,740 divided into 44,68,274 Equity Shares of ₹10 each fully paid-up along with reduction to the Securities Premium Account of the Company by ₹3,15,92,685 being the amount of debit balance of the Statement of Profit and Loss written off; and by paying off, 34,99,169 Equity Shares of ₹10 each aggregating ₹3,49,91,690, constituting around 43.92% of the total Issued, Subscribed and Paid-up Equity Share Capital of the Company by an amount of ₹4.82 per Equity Share.
3. It is stated that the said Special Resolution was unanimously approved by the Shareholders of the Petitioner Company in the Extra Ordinary General Meeting held on 10th March, 2022.
4. That the rationale for the proposed Reduction of Capital of capital reduction is as below:-
 - i. *Initially, Equity Shares of the Company were listed on BSE Ltd (Bombay Stock Exchange/BSE). The Promoters of the Company proposed for voluntary delisting of the Company and accordingly had provided an exit opportunity (“Delisting Offer”) to the Public Shareholders of the Company in terms of the provisions*

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.P. 119/MB/2022

of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (“the Delisting Regulations”) and other applicable provisions, if any. The Final Exit Price, in respect of the Delisting Offer of the Company was finalized at ₹3.50 per Equity Share. Accordingly, all the Public Shareholders of the Company who had tendered their Equity Shares were paid the consideration at the Exit Price. The Company had thereafter applied for delisting of its Equity Shares from the BSE, the only stock exchange where its Equity Shares were listed. Consequent to the same, the Company got delisted from BSE with effect from 21st June, 2021. Presently, the Company is an un-listed public limited company.

- ii. *Due to adverse business conditions, the Company has incurred substantial losses. The financial position of the Company, as at 30th September, 2021, is as follows:*

Particulars	Amount ₹
<i>Paid-up Share Capital</i>	<i>7,96,74,430</i>
<i>Securities Premium Account</i>	<i>3,15,92,685</i>
<i>Capital Reserves</i>	<i>3,125</i>
<i>Profit & Loss (Debit) Balance</i>	<i>(5,20,75,007)</i>
<i>Net worth</i>	<i>5,91,95,233</i>

- iii. *As on 31st December, 2021, the Shareholding Pattern of the Company is as follows:*

Category	No. of		% of total paid-up Capital
	Share holders	Shares held	
<i>Promoter Shareholders</i>	<i>1</i>	<i>44,68,274</i>	<i>56.08%</i>
<i>Non-promoters/ Public Shareholders</i>	<i>27,938</i>	<i>34,99,169</i>	<i>43.92%</i>

- iv. *Despite the Exit Opportunity given to the Public Shareholders,*

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. 119/MB/2022

the Company still has large number of Non-promoter/Public Shareholders. Most of these Public Shareholders have very small shareholding of up to ₹5,000. As on 31st December, 2021, out of total 27,938 Non-promoter/Public Shareholders, around 27,318 Shareholders (constituting around 97.78% of total number of Public Shareholders) were holding up to 500 Equity Shares of ₹10 each.

- v. *Post-delisting of the Company from BSE, there has been no trading platform available to these public shareholders due to which such shares lost their marketability. Consequently, Public Shareholders are not able to monetize their investments in the open market to realize return on their investments.*
- vi. *The Promoters of the Company are making serious efforts to revive the Company and after detailed deliberation with the Board of Directors of the Company, following prime objectives were laid keeping the interest of the Company and all the stakeholders particularly, the Public Shareholders of paramount importance:*
 - a. *To write off the accumulated losses to the extent of ₹3,15,92,685 against the Securities Premium Account in order to re-align the relation between capital & assets; and to accurately and fairly reflect the liabilities & assets of the Company in its books of accounts; and for better presentation of the financial position of the Company.*
 - b. *Provide a permanent liquidity option to Public Shareholders for illiquid Shares of the Company.*
 - c. *Exceptional opportunity to Public Shareholders to realize fair market value of investments held in the Equity Shares of the Company.*

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.P. 119/MB/2022

- d. *Making efficient and simplification of corporate governance in terms of convening the meeting of Shareholders and compliances required to be undertaken for a company.*
- e. *Effective and focused management through single handed control.*
- f. *Attracting strategic partners/investors which requires narrow shareholder base.*
- g. *The interest of the public shareholders is of paramount importance and thus it is proposed to provide a permanent liquidity option for illiquid shares, paying off the paid-up capital in excess of the Company's requirements and the operational and administrative flexibilities for the Company.*

5. That the Share Capital Structure of the Petitioner Company, as on 31.03.2022 is as under:

Particulars	Amount in ₹
Authorised Share Capital	
6. 2,47,50,000 Equity Shares of ₹10 each	24,75,00,000/-
h 25,000 Redeemable Preference Shares of ₹100 ^e each	25,00,000/-
TOTAL	25,00,00,000/-
Issued, Subscribed and Paid-up Share Capital	
e 79,67,443 Equity Shares of ₹10 each	7,96,74,430/-
g TOTAL	7,96,74,430/-
7.	

8. The Regional Director has filed his Report dated 25.05.2023 making certain observations and the Petitioner Companies have undertaken/made following submission that :

- i. Debit balance of the Statement of Profit and Loss being

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. 119/MB/2022

- the accumulated losses to the extent of ₹3,15,92,685 is written off against the Securities Premium Account;
- ii. 34,99,169 Equity Shares of ₹10 each aggregating ₹3,49,91,690 held by the Non-promoter/Public Category Shareholders is compulsorily paid off consideration amount of ₹4.82 per Equity Share, determined on the basis of the Valuation Report of the Independent IBBI Registered Valuer, and all of such Equity Shares be cancelled and extinguished without any further act or deed.
- iii. There is no proposal for reduction in the amount payable to any of the Creditors of the Company. Hence, none of the Secured Creditors or the Un-secured Creditors of the Company would be affected by the proposed Capital Reduction. Further, the proposed Capital Reduction will not have any impact on the operations of the Company or the ability of the Company to honor its commitment or to pay its debts in the ordinary course of business.
- iv. With respect to the two complaints from Shareholders, it is clarified that the aforesaid complaints were duly attended and resolved at the time of de-listing of the Company. De-listing approval were granted to the Petitioner Company by BSE and SEBI only after the resolution to the grievances was made to the satisfaction of BSE and SEBI.
- v. With respect to the inquiry of the Company by the ROC, it is submitted that all the desired information/documents have already been furnished

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.P. 119/MB/2022

by the Company to the ROC. It is pertinent to note that the Company shall remain in existence even after the sanction to the proposed Reduction of Capital by the Tribunal. The Petitioner Company and all its Directors, KMP and other concern persons undertake to comply with notice/order, prosecutions, adjudications which may be taken by the Ministry of Corporate Affairs, as per the applicable provisions of law on submissions of investigation report in the matter of Petitioner Company.

- vi. With regard to filing of e-Form GNL-1 on MCA portal, we clarify and confirm that the requisite e-Form GNL-1 has been duly filed by the Petitioner Company on the MCA portal.
- vii. The proposed reduction of share capital is selective reduction as the petitioner has proposed the reduction of shares of the public shareholders only other than promoter; therefore, the NCLT may ask the Petitioner Company to satisfy that present scheme is fair and just equitable to public shareholders who are in minority.
- viii. The promoter is taking 100% control on the company after implementation of scheme by paying off the minority shareholders holding 43.92% equity shares of subject company which was earlier a listed Company and shares held by every minority shareholders are being bought in terms of valuation report placed on record and are being paid accordingly, accordingly their interest is taken into consideration.

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. 119/MB/2022

- ix. Section 52 provides that any utilization of the Securities Premium Account other than the permitted uses will be deemed to be Reduction of Share Capital. The same will require compliance as per section 66 of the Companies Act, 2013 (Act).
- x. It is most respectfully submitted that the present Petition is filed in terms of the provisions of Section 66 of the Act read with Section 52 of the Act and approval of the present Petition by the Tribunal is required for the proposed utilization of the Securities Premium Account to write off debit balance of profit and loss account by an equivalent amount. We, accordingly, hereby confirm that due compliance of section 52 has been made in connection with the proposed utilization of Securities Premium Account.
- xi. The proposed Reduction of Share Capital which inter-alia provides payments to the Shareholders of the Company is squarely covered under Section 66 of the Act. It may be noted that Section 66 of the Act, provides that the Company may reduce its Capital in any manner which includes buy-back of shares also. This is a well settled proposition of law, supported by a number of judgments passed by various Benches of this Hon'ble Tribunal and by the Hon'ble National Company Law Appellate Tribunal (NCLAT).
- xii. The proposed Reduction of Share Capital is subject to the applicable provisions of Income Tax Act, 1961 and all other Statues, as may be applicable. The Petitioner Company will remain in existence even after sanction of

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.P. 119/MB/2022

the proposed Reduction. The Income Tax Authorities and all the other relevant authorities shall be at liberty to take any action in accordance with the applicable provisions of law. The Petitioner Company has no objection if a suitable para to this effect may be added by the Hon'ble Tribunal while approving the present Petition.

xiii. That there is only 1 (one) creditor in the petitioner company and the present Reduction of Capital does not seek any arrangement with its Creditors. However, the Petitioner Companies hereby undertakes to protect the interest of the creditors, if any, as and when they arise.

xiv. That special resolution is passed unanimously for the proposed Reduction of Capital vide Special Resolution Dated 10th March, 2022.

9. That the Petitioner Company has filed reply with the Regional Director. After consideration of the reply of the Petitioner Company, the Regional Director appeared through its representative and submitted that their observations/ objections have been satisfactorily explained by the Petitioner Company or acceptable to them..

10. The Petitioner Company will comply with the provisions of the Income Tax Act, 1961 and the Income tax Department shall be at liberty to independently examine the legal contention of the Petitioner Company cited in this order.

11. We have perused the material on record and heard the counsel for the Petitioner Company. Upon consideration of the

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.P. 119/MB/2022

relevant facts and submissions, the proposed Reduction of Capital appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public interest/policy. Petition for the reduction of share capital is allowed.

12. In view of clarifications given by the Petitioner Company, the Company Petition is allowed along with the Schedule of Form of Minutes.
13. The Petitioner Company is directed to file a copy of this order along with a form of minutes with the concerned Registrar of Companies, electronically, along with e-form INC 28 in addition to the physical copy within 30 days from the date of issuance of the order by the registry, duly certified by the Assistant Registrar of the National Company Law Tribunal, Mumbai Bench.
14. The Petitioner company shall raise the number of shareholders to seven as required under the Companies Act, 2013 immediately after implementation of proposed scheme.
15. All concerned regulatory authorities to act on production of certified copy of this order to be issued on demand by the Deputy Registrar, National Company Law Tribunal.
16. The form of the minutes set forth hereto be and is hereby approved.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.P. 119/MB/2022

FORM OF MINUTES

“The paid-up equity share capital of Universal Prime Aluminium Ltd is henceforth ₹4,46,82,740 (Rupees four crore forty-six lakh eighty-two thousand seven hundred and forty) divided into 44,68,274 (forty-four lakh sixty-eight thousand two hundred and seventy-four) Equity Shares of ₹10 (Rupees ten) each fully paid-up.”

17. In view of the aforesaid directions, the Company Petition i.e. C.P/119/MB-I/2022 is **disposed-off** as **allowed**. File to be consigned to records.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)