

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COURT-IV

5. CP/39(MB)2024

CORAM:

MS. ANU JAGMOHAN SINGH
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **18.04.2024**

Name of the Party: Chep India Private Limited

Section 66(1) of Companies Act, 2013

ORDER

1. Mr. Hemant Sethi, Ld. Counsel for the Applicant present through physical mode.
2. Petition admitted. The Company Petition is fixed for hearing on **08.08.2024**.
3. Ld. Counsel for the Petitioner Company submits that this petition is for confirmation of a Special Resolution passed on 12.02.2024 by the Equity Shareholders for utilization of an amount of Rs. 160,00,00,000 (Indian rupees one hundred and sixty crores only) out of the balance standing to the credit of Securities Premium Account of the Company as on February 9, 2024, for writing off the equivalent amount of deficit in the statement of Profit and Loss Account of the Company and reduction of the issued, subscribed and paid-up equity share capital of the Company from Rs. 167,14,00,000/- (Rupees one hundred sixty-seven crores fourteen lakhs Only) divided into 167,14,000 equity shares of Rs. 100/- each to Rs. 90,27,72,500 (Rupees ninety crores twenty-seven lakhs seventy-two thousand five hundred only) divided into 90,27,725 equity shares of Rs. 100/- each, by cancelling and extinguishing paid-up equity share capital as mentioned below:

Particulars	Equity Shares
<i>Existing No. of shares held (A)</i>	1,67,14,000
<i>No. of Shares to be reduced through cancellation and extinguishment (B)</i>	76,86,275
<i>Face value per share (fully paid) (INR)(i)</i>	100
<i>Price per share to be paid as per valuation report issued by Registered Valuer, Neelesh Balkishan Bajaj (INR) (ii)</i>	255
<i>Per Share – Excess i.e. premium per share amount to be paid which will be adjusted against the Securities Premium account (INR) (iii) = (ii)-(i)</i>	155
<i>No. of shares post reduction of Capital (C) = (A) – (B)</i>	90,27,725

4. The said special resolution was unanimously approved by the shareholders of the Petitioner Company in its respective Extra Ordinary General Meeting held on February 12, 2024.

5. Pursuant to the cancellation and extinguishment of 76,86,275 (Seventy-six lakhs eighty-six thousand two hundred and seventy-five) equity shares of the Company, a total consideration of Rs. 196,00,00,125 (Indian rupees one hundred and ninety-six crores one hundred and twenty-five only) will be paid to the equity shareholders on a proportionate basis out of the total cash and cash equivalents of approx. Rs 200 crores.

6. The Counsel for the Petitioner further submit that Rationale for Capital Reduction is that :
- a. *The Company has Accumulated Losses and Securities Premium in its books of accounts. In light of the accumulated losses as aforesaid, the capital of the Company has been depleted to that extent.*
 - b. *In order to accurately and truly reflect the liabilities and assets position of the Company in its books of accounts and for better presentation of the financial position there is a need for rationalizing the Balance Sheet.*
 - c. *Accordingly, the Accumulated Losses to be written off by reducing the amount of Rs. 160,00,00,000 against the balance in Securities Premium Account as on February 9, 2024, to give a true and fair view of the books of accounts of the Company under a capital reduction exercise as per Section 66 read with Section 52 of the Companies Act, 2013 (the "Act") read with the National Company Law Tribunal Rules, 2016, National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016 (the "Rules").*
 - d. *Further, pursuant to merger of CHEP Manufacturing and Equipment Private Limited, a wholly owned subsidiary of the Petitioner Company, resulted in synergies and transfer of all assets and liabilities including the surplus funds of CHEP Manufacturing and Equipment Private Limited to the Petitioner Company. This has led to surplus funds in the hands of the Petitioner Company and the same is proposed to be repatriated to the shareholders of the Petitioner Company.*
 - e. *In view of the above background and rationale, the Board of Directors in their meeting held on February 9, 2024 considered and approved the proposed capital reduction in accordance with Section 66 read with Section 52 of the Companies Act, 2013 (the "Act") read with the National Company Law Tribunal Rules, 2016, National Company Law Tribunal (Procedure for Reduction of*

Share Capital of Company) Rules, 2016 (the “Rules”) and carry out the reduction of an amount of Rs. 160,00,00,000 (Indian rupees one hundred and sixty crores only) out of the balance standing to the credit of Securities Premium Account of the Company as on February 9, 2024, for writing off the equivalent amount of deficit in the statement of Profit and Loss Account of the Company and also reduction of 76,86,275 (Seventy-six lakhs eighty-six thousand two hundred and seventy-five) equity shares of face value of Rs. 100 each on LIFO basis in the proportion of holding of each shareholder effected by payment of Rs. 255 (Indian rupees two hundred and fifty-five) per equity share of face value Rs. 100/- each aggregating to Rs. 196,00,00,125 (Indian rupees one hundred and ninety six crores one hundred and twenty-five only) as on the date of approval by the National Company Law Tribunal, Mumbai bench for optimizing and rationalizing the Balance Sheet and payment of surplus cash to the shareholders of the Petitioner Company.

- f. The capital reduction is compliant with applicable provisions of Income-tax Act, 1961 and any other law for the time being in force.*
- g. The proposed capital reduction approved by the Board of Directors is also approved by the shareholders of the Company by way of special resolution passed on February 12, 2024 and further subject to the confirmation by the Hon’ble National Company Law Tribunal, Mumbai bench and subject to such other statutory approvals as may be required and in compliance with the provisions of the Act and the Rules.*
- h. Further, pre and post capital reduction, the net worth of the Company shall remain positive and therefore the reduction of capital would not in any way have any adverse effect on the Company’s ability to honour its commitments or meet its obligations in the ordinary course of business and would improve its return on equity ratio. Therefore, the proposed capital*

reduction shall not prejudice any creditors of the Company. The capital reduction is also in the interest of the Company as well as the shareholders.

7. For the purposes of achieving the aforesaid objectives, the Petitioner Company is desirous of adjusting the accumulated losses against the Securities Premium Account and reducing its equity share capital pursuant to the provisions of Section 66 and section 52 of the Companies Act, 2013 read with the National Company Law Tribunal rules (Procedure for Reduction of Share Capital of Company) Rules, 2016 and the other applicable provisions, if any.
8. Within seven (7) days from the date of this order, the Petitioner Company is directed to serve notices in Form No. RSC-2 of the hearing of the Petition along with copy of Petition upon:- (i) the concerned Registrar of Companies (ii) Central Government through the concerned Regional Director (iii) the Reserve Bank of India with a direction that they may submit their representations to the Tribunal, if any, within a period of three months from the date of receipt of such notice and copy of such representations shall simultaneously be served upon the Petitioner Company, failing which, it shall be presumed that the authorities have no objection to the proposed capital reduction.
9. Within 7 days from the date of this Order, the Petitioner Company to publish notice in Form No. RSC-4 of the date of hearing of Petition in '**Business Standard**' in English language and translation thereof in '**Navshakti**' in Marathi language both having circulation in the State of Maharashtra. The notice shall state the proposed reduction in equity shares and that the objections, if any, shall be filed within three months from the date of publication of the notice with a copy served on the Petitioner Company.

10. Within seven (7) days from the date of this order, the Petitioner Company is directed to serve a notice in Form No. RSC-3 of the hearing of the Petition upon Secured/ Unsecured Creditors of the Petitioner Company by R.P.A.D./Speed Post and through Email pursuant to Section 66(2) of the Companies Act, 2013 with a statement that they may submit their representations and objections, if any, to this Tribunal, within a period of three months from the date of the receipt of the said notice and a copy of such representations / objections shall simultaneously be served upon the Petitioner Company, failing which it shall be presumed that such Creditors of the Petitioner Company have no objection to the proposed capital reduction.
11. The Petitioner Company shall submit to the Tribunal, within seven days of expiry of period upto which representations or objections were sought, the representations or objections so received along with responses of the Petitioner Company thereto.
12. The Petitioner Company shall, as soon as may be, but not later than seven days from the date of issue of such notices, file Compliance Report confirming the dispatch and publication of the notice.

Sd/-

ANU JAGMOHAN SINGH
Member (Technical)

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)