

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 15

CP/32(MB)2024

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **05.04.2024**

NAME OF THE PARTIES: **TPAC PACKAGING INDIA PRIVATE**
LIMITED

Section 66(1) of the Companies Act, 2013

ORDER

1. Mr. Ashish O. Lalpuria, CS a/w Mr. Kamal Lahoty, CS appeared for the Petitioner.
2. The learned Authorised representatives for the Petitioner Company submits that this petition is filed for confirmation of a special resolution passed by the Petitioner Company to reduce the Securities Premium Account of the Company from INR 2,02,86,48,000/- (Rupees Two Hundred and Two crores Eighty Six Lakhs Forty Eight Thousand) to 1,21,14,47,000/- (Rupees One Hundred and Twenty One Crores Fourteen Lakhs and Forty Seven Thousand), and that such reduction be effected by writing off the Accumulated Losses amounting to 81,72,01,000/- (Rupees Eighty One Crores Seventy Two Lakhs and One Thousand), as per the audited financials of the Company as on 31st March 2023.

3. The Petitioner was incorporated as a private limited company under the name and style “TPAC Packaging India Private Limited” on 26th October, 2017 with the Registrar of Companies, Mumbai. The Petitioner Company manufactures and sell PET preforms and bottles.
4. The Share Capital of the Petitioner Company as on 28th February, 2024 stands as follows:

Sr no.	Share Capital Description	Amount (Rs.)
1	Authorised Share Capital	
	27,50,00,000 Equity Shares of Rs. 10/-each	2,75,00,00,000/-
2	Issued, Subscribed and Paid up Share Capital	
	25,47,69,575 Equity Shares of Rs. 10/-each	2,54,76,95,750/-

5. The Learned Authorised Representative submits that by virtue of Article 37 of the Articles of Association of the Petitioner Company, it is provided that the Petitioner Company may reduce its share capital in accordance with the Act. The relevant extract of the said articles is produced as under:

“37. The company may, by special resolution, reduce in any manner and with, and subject to, any incident authorized and consent required by law,-

(a) its share capital;

(b) any capital redemption reserve account; or

(c) any share premium account.”

6. The Learned Authorised Representative submits that the reduction of the paid-up share capital of the Company by way of writing off the Accumulated Losses against the amount lying in the Securities Premium Account of the Company does not involve reduction in the issued, subscribed, paid-up share capital of the Company, any payment of the paid up share capital to the shareholders of the Company nor does it result in

extinguishment of any liability or diminution of any liability, therefore, there is no outflow of / payout of funds from the Company and hence the interests of the creditors is not adversely affected.

7. The Learned Authorised Representative submits that the Reduction of Share Capital will not affect the ability or liquidity of the Company to meet its obligations / commitments in the normal course of business. Further, this Reduction of Share Capital would also not in any way adversely affect the ordinary operations of the Company.
8. The Learned Authorised Representative submits that the Reduction of Share Capital, if approved, the Company will represent true financial position which would benefit the shareholders of the Company.
9. The Board of Directors of the Petitioner Company have approved the reduction in securities premium account at their meeting held on February 05, 2024 which was subsequently approved by the Equity Shareholders of the Petitioner Company by passing a special resolution at their Extra Ordinary General Meeting held on 28th February 2024.
10. Based on the submissions made in the Petition as well as by the Authorised Representative appearing for the Petitioner, this Bench hereby orders that
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 - a. 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 its secured and unsecured creditors 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 secured and unsecured creditors of the Petitioner Company have no objection to the proposed capital reduction.

- b. 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 Registrar of Companies, Mumbai (ii) Central Government (through the Regional Director, Western Region, Mumbai), 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.
- c. 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 'Financial Express' in English language and translation thereof in 'Navshakti' in Marathi language both having circulation in the State of Maharashtra. The notice shall state the amount of the proposed reduction of share capital 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.
- d. 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.

- e. The Petitioner Company to file an affidavit in Form No. RSC-5 confirming the dispatch and publication of the notice.
- f. With the above directions, CP/32/(MB)/2024 is hereby admitted.
- g. Petition is fixed for hearing on **26.07.2024**.
- h. The Registry is directed to accept physical copy of the Petition.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

Sapna