

THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

C.P. 49 OF 2024

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

And

In the matter of
The Reduction of Share Capital of

Kimberly Engineers Private Limited

CIN: U28920MH1994PTC079302

..... Petitioner Company

Order delivered on 07.06.2024

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)

Hon'ble Member (Judicial)

Appearances (through)

For the Petitioner(s) : Mr. Chandrakant Mahadeshwar,

ORDER

1. Petition admitted and fixed for final hearing on **20.09.2024**.
2. This Company Petition has been filed by Kimberly Engineers Private Limited u/s 66 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 seeking reduction of Equity Share Capital from Rs. 11,20,000/- (Rupees Eleven Lacs Twenty Thousand Only) divided into 11,200

(Eleven Thousand Two Hundred only) number of Equity Shares of the face value of Rs. 100/- (Rupees Hundred Only) each fully paid to Rs.7,27,000/- (Seven Lakhs Twenty-Seven Thousand Only) divided into 7,270 (Seven Thousand Two Hundred Seventy only) Equity Shares of face value of Rs. 100/- (Rupees Hundred Only) each fully paid up by cancelling 3,930 (Three Thousand Nine Hundred and Thirty) number issued, subscribed and paid-up equity shares of face value of Rs.100/- (Rupees Hundred Only) each and utilization of the amounts lying in the Reserves and Surplus.

3. The Petitioner Company submits that the equity shareholders holding 11,200 number of equity shares of Rs. 100/- each representing 100% of equity share capital have passed a special resolution in its Extra Ordinary General Meeting held on 15.03.2024 for reduction of Equity Share Capital from Rs. 11,20,000/-(Rupees Eleven Lacs Twenty Thousand Only) divided into 11,200 (Eleven Thousand Two Hundred only) number of Equity Shares of the face value of Rs. 100/- (Rupees Hundred Only) each fully paid to Rs.7,27,000/- (Seven Lakhs Twenty-Seven Thousand Only) divided into 7,270 (Seven Thousand Two Hundred Seventy only) Equity Shares of face value of Rs. 100/- (Rupees Hundred Only) each fully paid up by cancelling 3,930 (Three Thousand Nine Hundred and Thirty) number issued, subscribed and paid-up equity shares of face value of Rs.100/- (Rupees Hundred Only) each and utilization of the amounts lying in the Reserves and Surplus.

4. The Petitioner Company has one Secured Creditors as on 11.04.2024, which is secured by the Mortgage of Toyota Car owned by the Petitioner Company. The Petitioner Company submits that proposed reduction of share capital is not likely to cause any prejudice to the creditors as there is no reduction in amount payable to any of the creditors and no compromise or arrangement is contemplated with the Creditors.
5. Having considered the submission of the Petitioner company and material on record, this Bench directs the Petitioner company to issue notice the secured creditor u/s 66(2) of the Companies Act, through speed post/RPAD and by way of email stating that they may file its representation/objection, if any, within 30 days. If no representation is received by this Tribunal within 30 days, it will be presumed that, the secured creditor does not have any objection with the approval of proposed reduction.
6. The Petitioner Company is directed to issue Form No. RSC-2 of the hearing of the Petition along with copy of Petition upon:-
 - (i) The Ministry of Corporate Affairs;
 - (ii) The concerned Registrar of Companies;
 - (iii) The Reserve Bank of India;
 - (iv) Central Government through the concerned Regional Director;

- (v) Jurisdictional Income Tax Authority, with whom the Petitioner Company is assessed to tax under Income Tax Law as well as upon the Nodal authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address: - 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in; and
- (vi) Jurisdictional Goods and Service Tax Authority (Proper Officer) with whom the Petitioner Company is assessed to tax under GST Law.

7. The notice shall be served by Registered Post-AD/ Speed Post/ Hand Delivery and email and such notice shall contain a statement that ***“they may submit their representations to the Tribunal, if any, within a period of three (3) 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 reduction of equity share capital”***.

8. 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 wide 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.

9. The Petitioner Company shall submit to the Tribunal, within seven days of expiry of period up to which representations or objections were sought, the representations or objections so received along with responses of the Petitioner Company thereto. If no representations or objections has been received by the Petitioner Company, then in such case it shall be presumed that there are no objections to the proposed capital reduction
10. The Petitioner Company shall, as soon as may be, but not later than seven days from the date of issue of such notices, file an affidavit in Form No. RSC-5 confirming the dispatch and publication of the notice.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)