

**NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH, COURT-II**

**20. Company Petition/277/2023**

**CORAM:**

**SHRI ANIL RAJ CHELLAN**  
**HON'BLE MEMBER (T)**

**SHRI KULDIP KUMAR KAREER**  
**HON'BLE MEMBER (J)**

**ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 24.06.2024**

**NAME OF THE PARTIES:- Kredence Business Advisory Private  
Limited.**

**Section: Sub-Section (1) of Section 66 of Companies Act, 2016**

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**ORDER**

Adv. Mr. Ativ Patel appeared for the Petitioner. Ms. Aparna Mudiam, Deputy Director, RD(WR) appeared through VC. Heard, Counsel for the parties for a considerable time. **Company Petition/277/2023 is allowed** and detail order will follow vide separate order sheet.

**ANIL RAJ CHELLAN**  
**Member (Technical)**

*SALAM*

**KULDIP KUMAR KAREER**  
**Member (Judicial)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT NO. II**

**COMPANY PETITION NO. 277 OF 2023**

*In the matter of:*

*The Companies Act, 2013*

*And*

*In the matter of:*

*Section 66 of the Companies Act 2013*

*And*

*In the matter of:*

*Reduction of Equity Share Capital of*

*Kredence Business Advisory Private*

*Limited*

*U74900MH2010PTC199950*

**KREDENCE BUSINESS )  
ADVISORY PRIVATE )  
LIMITED, a private limited )  
company incorporated under the )  
Companies Act, 1956 having its )  
registered office at 4/A-1, Court )  
Chambers, 35, New Marine Lines )  
Mumbai – 400 020 )  
CIN: U74900MH2010PTC199950 )**

**... PETITIONER COMPANY**

**Coram:**

**Anil Raj Chellan**

**Member (Technical)**

**Kuldip Kumar Kareer**

**Member (Judicial)**

**For the Applicant:** Mr. Ativ Patel

**For the Regional Director (WR):** Ms. Aparna Mudiam, Deputy Director

**Order delivered on: 24.06.2024**

**ORDER**

*Per: Coram*

1. Heard the Learned Counsel for the Petitioner Company. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The Board of Directors of the Petitioner Company vide its meeting held on 16<sup>th</sup> August 2023 proposed to carry out the reduction of equity share capital.
3. The Learned Counsel states that as on 31<sup>st</sup> March 2023, the accumulated losses of the Petitioner Company are Rs. 49,11,400 (Rupees Forty-Nine Lakhs Eleven Thousand and Four Hundred Only), that the Petitioner Company proposed to reduce the paid-up capital which is lost and / or is unrepresented by available assets to represent the true and fair view of its financial position. The losses of the Petitioner Company have substantially wiped off the value represented by the share capital thus the financial statements presently do not reflect the correct picture of the health of the Petitioner Company. This has given the need to re-adjust the relation between the capital and assets and to reflect the liabilities and assets of the Company accurately and fairly in its books of accounts.

4. The Learned Counsel for the Petitioner Company submits that the pursuant to the proposed capital reduction, the Petitioner Company shall cancel and extinguish 4,90,000 (Four Lakh Ninety Thousand) shares.
5. The Learned Counsel for the Petitioner Company submits that this Petition is for confirmation of a special resolution passed by the Petitioner Company for reduction of Equity Share Capital from Rs. 50,00,000/- (Rupees Fifty Lakhs Only) comprising of 5,00,000 Equity Shares of Rs. 10/- each to Rs. 1,00,000/- (Rupees One Lakh Only) comprising of 10,000 equity shares of Rs. 10/- each. The reduction shall lead to reflecting the true value of the real and remaining assets of the Petitioner Company after writing off the losses arising from diminution in value of investments made by the Petitioner Company, on sale of Intellectual Property, and due to operative losses since inception. The said special resolution was carried out unanimously by voting 100% in favour of the resolution by the Equity shareholders in the Extra-Ordinary General Meeting of the Company held on 24<sup>th</sup> August 2023.
6. The Learned Counsel for the Petitioner Company submits that Article 4(b) of the Articles of Association of the Petitioner Company empowers the Petitioner Company to reduce its share capital from time to time in accordance with the provisions of the Companies Act 2013.
7. The Regional Director, Western Region, Mumbai in his Report dated 21<sup>st</sup> June 2024 has made observations in paragraphs 6 and 7 of the said Report. In response to the observations made by the Regional Director, the Petitioner Company has given necessary undertaking and

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT NO. II

COMPANY PETITION NO. 277 OF 2023

clarifications through an Affidavit in Reply dated 22<sup>nd</sup> June 2024. The observations made by the Regional Director in its Report dated 21<sup>st</sup> June and the clarifications and undertakings given by the Petitioner Company are summarised in the table below:

Para No.	Observations in RD Report dated 21 <sup>st</sup> June 2024	Response of Petitioner Company in Affidavit in Reply dated 22 <sup>nd</sup> June 2024
6	<p><i>ROC, Mumbai in his Report No. ROC/STA/Sec66/206/2022-23/1128 dated 20.06.2024 inter-alia mentioned that there is no inspection, investigation, inquiry, complaints, prosecution against the company.</i></p> <p><i>The ROC, Mumbai has made his observations in para no. 23 of his report and stated that;</i></p> <p><i>Interest of the creditors and minor shareholder / shareholders should be protected.</i></p> <p><i>Hon'ble NCLT, Mumbai bench may decided on its merits.</i></p>	<p>i. That the Petitioner Company has no Creditors and that a list of Creditors showing no creditors has been prepared and certified by the Directors (being Annexure J1 to the captioned Petition) and that the Auditor has certified that the Petitioner Company has no Creditors (being Annexure J2 to the captioned Petition). The Petitioner Company further confirm that there has been no change since the filing of the captioned Petition and that there are no Creditors to the Petitioner Company, as on date. Hence, the question of interest of creditors does not arise since there are no creditors and the proposed reduction will not cause any prejudice. It may be noted that considering the same, this Hon'ble Tribunal had</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT NO. II

COMPANY PETITION NO. 277 OF 2023

		<p>also dispensed with the requirement of giving notice to creditors in the Order dated 1st December 2023 passed in the captioned Petition.</p> <p>ii. That with regards to the interest of the shareholders, the Petitioner Company states that the proposed reduction of share capital has been unanimously approved by the shareholders in the Extra Ordinary Shareholders meeting held on 24th August 2023. A special resolution dated 24th August 2023 was passed by the Shareholders of the Petitioner Company (being Annexure – G to the captioned Petition).</p> <p>iii. That in view of the above, the observations of the ROC have been adequately dealt with and this Hon'ble Tribunal may confirm the proposed reduction of share capital of the Petitioner Company.</p>
7(A)	<i>(A) Applicant to submit an Affidavit to the effect that the interest of the creditors and all the stakeholders and Government</i>	<p>i. That with regards to the observation in Paragraph 7(A), the Petitioner Company submits that the proposed reduction of share</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT NO. II

COMPANY PETITION NO. 277 OF 2023

	<p><i>Revenue are protected as well as statutory dues are paid off</i></p>	<p>capital will not prejudice the interest of creditors and the interests of all stakeholders for reasons stated in paragraphs 4 (i) and (ii) of this Affidavit – namely, that there are no creditors and that the shareholders have given their approval by way of a Special Resolution. Furthermore, the Petitioner Company submits that as per the directions of this Hon’ble Tribunal in its Order dated 1st December 2023, the Petitioner Company carried out public notice in Form No. RSC-4 in newspapers Business Standard and Navshakti on 8th December 2023 and the same has been placed on record before this Hon’ble Tribunal by way of Affidavit of Service dated 12th December 2023. The Petitioner Company submits that the Petitioner Company has not received any objections from any stakeholder. Furthermore, The Petitioner Company says the Petitioner Company will ensure that the Government Revenue is protected, and the Petitioner</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT NO. II

COMPANY PETITION NO. 277 OF 2023

		Company has no pending statutory dues.
7(B)	<i>B) The tax implication if any arising out of the proposal for reduction is subject to final decision of Income Tax's Authorities. The approval of the Company Petition by this Hon'ble Court may not deter the Income Authority to scrutinize the tax return filed by the Com effect to the proposed reduction. The decision of the Income Tax Authority is binding on the Petitioner Company</i>	That with regards to observation in Paragraph 7 (B), the Petitioner Company submits that the approval of the Company Petition by this Hon'ble Tribunal may not deter income-tax department to deal with any of the issues arising after giving effect to the reduction of capital. The decision of income-tax department shall be binding on the Petitioner Company.
7(C)	<i>The observations of the Regional Director on the proposed Scheme of Reduction of Capital are as under:- A) Applicant to submit an Affidavit to the effect that the interest of the creditors and all stakeholders and Government Revenue are protected as well as statutory dues are paid off  C) Further, the company be directed to place on record of the Tribunal the complete details of accumulated losses till date giving year wise particulars. The company be also directed to place on record the justification as to why the company should continue and its business plans ahead.</i>	That with regards to observation in Paragraph 7 (C), the Petitioner Company submits that the justification as to why the Petitioner Company should continue its business plans is that the company has significant expertise in business advisory which can be fruitfully put to use and monetize / generate revenues and profits. The Petitioner Company has submitted detailed breakup of the accumulated losses of the Petitioner Company as Annexure – 1 of this Affidavit



<p><i>Subject to the Observation made in para 6 and 7(A), (B), &amp; (C) above, Hon'ble NCLT may pass appropriate orders/order as deem fit and proper on merits.</i></p> <p><i>Under these circumstances the Regional Director, prays this Hon'ble Tribunal may kindly be pleased:</i></p> <p><i>(a) Take this report on record;</i></p> <p><i>(b) Kindly consider the observations made at Para 6 and 7 (A), (B), &amp; (C) above and pass such other Order / Orders as deemed fit and proper on merits in the facts and circumstances of the case."</i></p>	
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8. The Learned Counsel appearing on behalf of the Petitioner Company submits that the Petitioner Company has complied with all the statutory requirements and the directions of the Tribunal, and the Petitioner Company has filed necessary Affidavit of Compliance with the Tribunal. Moreover, the Petitioner Company also undertakes to comply with statutory requirements, if any, under the Companies Act, 2013 and the Rules made thereunder, as may be applicable.
9. This Bench opines that the requisite statutory procedure has been fulfilled, the Company Petition is made absolute in terms of the prayer clause of the Petition.

10. 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 designated Registrar, National Company Law Tribunal. The Petitioner Company undertakes to file the same with the Registrar within 30 days from the date of the receipt of the certified copy of the order.
11. The form of minutes set forth herewith be and is hereby approved.
12. Ordered accordingly.

**Form of Minutes**

*“The issued, subscribed and paid up equity share capital of Kredence Business Advisory Private Limited is henceforth INR 1,00,000/- (Indian Rupees One Lakh) divided into 10,000 (Ten Thousand) Equity Shares of face value of INR 10/- (Indian Rupees Ten only) each reduced from INR 50,00,000/- (Indian Rupees Fifty Lakhs only) divided into 5,00,000 (Five Lakhs) Equity Shares of face value of INR 10/- (Indian Rupees Ten only) each fully paid up. At the date of registration of these minutes, 10,000 (Ten Thousand) Equity Shares of face value of INR 10/- (Indian Rupees Ten only) each have been issued and deemed to be fully paid up”*

**Sd/-**  
**ANIL RAJ CHELLAN**  
**MEMBER TECHNICAL**

**Sd/-**  
**KULDIP KUMAR KAREER**  
**MEMBER JUDICIAL**