

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT – V**

**CP / 302 (MB) 2023**

In the matter of petition under Section 66 of the Companies Act 2013 read with the National Company Law Tribunal Rules, 2016, National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016.

AND

In the matter of Reduction of Equity Share Capital of **Vanaz Engineers Limited** (the “**Petitioner Company**”)

**Vanaz Engineers Limited,** )  
**(CIN U29299PN1949PLC006866)** )  
a Company incorporated under the provisions of )  
Companies Act 1913 having its registered )  
office at 85/1 Paud Road, Pune- 411038, )  
Maharashtra, India )

**..... Petitioner Company**

**Order dated.22.04.2024**

**CORAM:**

**Ms. Reeta Kohli, Hon’ble Member (J)**

**Ms. Madhu Sinha, Hon’ble Member (T)**

**For the Petitioner:** Mr. Hemant Sethi a/w Ms. Devanshi Sethi, Tanaya

Sethi, i/b. Hemant Sethi & Co., Advocates

**For Regional Director:** Mr. Altap Shaikh, ICLS (VC)

**ORDER**

1. The Court is convened through hybrid mode (Physically and Video-conference).
2. Heard Learned Counsel for the Petitioner Company and the representative from the Regional Director (WR). No objector has come before the Tribunal to oppose the Petition and nor has any party controverted any averments made in the Petition.
3. The learned Counsel for the Petitioner Company submits that this petition is for confirmation of a **Special Resolution** passed by the equity shareholders of the Petitioner Company to reduce the issued, subscribed and paid-up equity share capital of the Petitioner Company from Rs. 2,15,38,210 comprising of 21,53,821 equity shares of Rs. 10 each fully paid up, to Rs. 2,03,75,460 comprising of 20,37,546 Equity shares of Rs. 10 each fully paid up, by cancelling and extinguishing 1,16,275 fully paid-up equity shares of Rs. 10 each of the Petitioner Company held by the “Minority Shareholders”, including their transferees (in case their shares are transferred by the existing shareholders), legal heirs, assignees, successors, executors, as the case may be of such shareholders, as on the Record Date and that the Petitioner Company shall debit the Equity share capital account to the extent of the face value of shares cancelled and the difference between face value per share and the amount of consideration per share shall be debited to the ‘Retained Earnings’ under the head ‘Reserves and surplus’. The said special resolution was approved by the equity shareholders of the Petitioner Company in its Extraordinary General Meeting held on 24<sup>th</sup> November 2023.

4. The Learned Counsel for the Petitioner Company states that the rationale for reduction is as follows;

- a. *The equity share capital of Petitioner Company stands at Rs. 2,15,38,210 divided into 21,53,821 equity shares of Rs. 10 each and total number of shareholders of the Petitioner Company is 369. Out of these, around 289 shareholders, being workers & staff shareholders and their legal heirs (referred to as 'Minority Shareholders'), hold collectively 1,16,275 shares viz ~5.399% of the total share capital of the Petitioner Company.*
- b. *Many of these worker shareholders need funds and management has been in receipt of requests from such shareholders for buying out the shares against payment of a mutually agreed consideration. As the equity shares of the Petitioner Company are not listed on any stock exchanges, there is no recognized market available to these shareholders of the Petitioner Company to buy and sell the shares held by them in the Petitioner Company. The Petitioner Company intends to undertake one time exercise to provide an exit opportunity to all the worker shareholders by way of reduction of share capital as per section 66 of Companies Act, 2013. The corporate action of reduction of share capital will provide the necessary liquidity to the worker shareholders.*
- c. *Further, reduction in the number of shareholders of the Petitioner Company will also streamline the shareholding structure of Petitioner Company which will eliminate unnecessary complexity resulting in prompt decision-making, enable the management to align their interests and work more effectively towards common goals, effective utilisation of resources, respond swiftly to market situations and overall management effectiveness and also improve key performance ratios of the Petitioner Company such as Earnings*

*Per Share (EPS), Return on Equity (ROE), Price Earnings Ratio (P/E Ratio) etc.*

- d. *Further, reduction of share capital will also enable the Petitioner Company to save on administrative costs associated with servicing large number of shareholders holding small percentage of shareholding such as sharing annual documents and information, organizing meetings, related compliances, and reporting requirements etc. and thereby allow the Petitioner Company to allocate the resources in a more meaningful manner towards core business operations and growth initiatives.*
  
5. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed a Report dated 12<sup>th</sup> March 2024 inter-alia making the following observations which are produced hereunder to which the Petitioner has filed responses by way of an Affidavit -In-Rejoinder dated 15<sup>th</sup> March 2024:

Para	Observation by the Regional Director	Responses by the Petitioner
6	<p>ROC, Pune in his Report No. ROCP/Sec.66/Vanaz/2024/2650 dated 31.01.2024 inter-alia mentioned that there is no any complaints pending against the Company. Further, no inquiry / investigation follow-up is pending against the Company. The ROC, Pune has made his observation at para no. 23 of his report and stated that:</p> <p>1. As stated in the declaration of directors regarding Creditors, the balance of Secured Creditors of the Company as of 15th November is NIL. However, as per master Data available on MCA Portal it is observed that Charge ID 90088321 of 26.09.2020 for amount of Rs. 1,50,00,000/- is pending.</p> <p>2. IEPF Authority being a minority shareholder, the consent / NOC may be acquired.</p> <p>In view of the above, the petition may be decided on the merits considering the interest of minority shareholders and creditors.”</p>	<p>With reference to sub para (1) of Para 6 of the RD Report containing observations of ROC Pune, the Petitioner Company submits that the said Charge bearing Charge ID 90088321 pertains to bank guarantees given to the customers of the Petitioner Company. The same is contingent liability of the Petitioner Company and there is no amount payable in respect of such guarantee as on 15<sup>th</sup> November 2023. Therefore, the same is not an actual Secured Creditor of the Petitioner Company. The balances of Secured Creditor of the Petitioner Company as on 15<sup>th</sup> November 2023 is NIL and same is also certified by the Statutory Auditor of the Petitioner Company.</p> <p>With reference to sub para (2) of Para 6 of the RD Report containing observations of ROC Pune, the Petitioner Company submits as under:</p> <p>i. The Petitioner Company has served notice calling for extra ordinary general meeting of the Petitioner Company on 24<sup>th</sup> November 2023 for considering and approving the scheme of reduction of share capital of the Petitioner Company upon all the shareholders of</p>

Para	Observation by the Regional Director	Responses by the Petitioner
		<p><i>the Petitioner Company including the Investors Education and Protection Fund (IEPF) (in respect of the shares which were transferred by the Petitioner Company to IEPF over the years). The copy of email sent to IEPF about the notice of EOGM is enclosed as Annexure – 1 to the affidavit in rejoinder.</i></p> <p><i>ii. The Petitioner Company submits that the IEPF had the opportunity to attend the Extra Ordinary General Meeting and raise objections to the Scheme, if any. However, no one was present on behalf of IEPF in the meeting nor any objections have been received by the Petitioner Company from IEPF.</i></p> <p><i>iii. After receipt of RD Report, the Petitioner Company has again intimated IEPF Authority about the reduction of share capital of the Petitioner Company, vide its letter dated 13<sup>th</sup> March 2024. The copy of letter and proof of dispatch of the same is enclosed as Annexure – 2 to the affidavit in rejoinder.</i></p> <p><i>iv. The Petitioner Company further submits that the section 66 of the Companies</i></p>

Para	Observation by the Regional Director	Responses by the Petitioner
		<p><i>Act, 2013 provides that subject to confirmation of the Tribunal, company may reduce shares in any manner by passing a special resolution. In the present case, application for the confirmation from the Tribunal u/s 66 was filed after special resolution for the scheme for reduction of share capital was passed at the EOGM held on 24<sup>th</sup> November 2023. Therefore, the Petitioner Company has followed and complied with the procedure specified in the section 66 of the Act.</i></p> <p><i>v. Without prejudice to the above, the Petitioner Company further submits that the special resolution for the scheme of reduction of share capital is approved by shareholders of the Petitioner Company, with 99.18% of the shareholders present voting in favour of the Resolution. The shares held by IEPF represent only 0.338% of the paid-up share capital of the Petitioner Company and the amount payable to IEPF on account of reduction of share capital shall be only Rs. 2,80,35,280. Thus, the Petitioner Company submits that IEPF holding merely</i></p>

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		<p><i>0.338% cannot prejudice the rights of the other shareholders, including minority shareholders (whose shares are being cancelled), who have voted in favour of scheme of reduction of share capital.</i></p> <p>vi. <i>The Petitioner Company further undertakes to deposit the consideration payable to IEPF on account of reduction of share capital to the bank account of the IEPF Authority and file the relevant forms, including Form IEPF – 7 in accordance with the provisions of the Companies Act, 2013.</i></p>
7 (A) and 7 (E)	<p><i>7(A) The petitioner Company is proposing to reduce the issued, subscribed and paid-up equity capital of the Company, from existing Rs. 2,15,38,210/- comprising of 21,53,821 equity shares of Rs. 10/- each to Rs. 2,03,75,460/- comprising of 20,37,546 equity shares of Rs.10/- each, by paying off, cancelling and extinguishing the total issued, subscribed and paid-up equity share capital of the Company, comprising of 1,16,275 equity shares of Rs.10/- each at value of</i></p>	<p>With reference to Para 7(A) and 7(E) of the RD Report, the Petitioner Company submits that the present scheme of capital reduction is in accordance with section 66 of the Companies Act, 2013. Section 66 of the Companies Act, 2013 clearly stipulates that the reduction can be effected “in any manner” and therefore, selective capital reduction is permitted. Various benches of Hon’ble NCLT has approved the reduction of share</p>



<b>Para</b>	<b>Observation by the Regional Director</b>	<b>Responses by the Petitioner</b>
	<p><i>Rs. 3,851/- per share held by the holders of the equity shares of the Company, other than the promoter-shareholder of the Company.</i></p> <p><i>In this regard it is respectfully submitted that:</i></p> <p><i>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 Hon'ble NCLT may ask the Petitioner Company to satisfy that present scheme is fair and just equitable to public shareholders who are in minority.</i></p> <p><i>7(E) It is further submitted that petitioner Company's promoter is taking 100% control on the company after implementation of scheme by paying off the minority shareholders holding 1,16,275 equity shares of subject company, therefore interest of minority shareholders in terms of valuation should also be taken care of at the time of consideration of scheme by Hon'ble NCLT.</i></p>	<p>capital on selective basis in the past (refer judgements referred below). Further, the Petitioner Company submits that the Promoters of the Petitioner Company are not going to assume the 100% control of the Petitioner Company post the reduction of share capital as there are various other shareholders of the Petitioner Company whose shares are not being reduced under the present Scheme and who shall continue to remain shareholders of the Petitioner Company. Furthermore, the Petitioner Company submits that the valuation of its equity shares has been determined by independent valuers namely - (i) Deloitte Touche Tohmatsu India LLP vide its valuation report (value determined in range of Rs. 3,488 to 3,851 per equity share); (ii) Mr. Pruthvi Mota, an IBBI registered valuer, vide its valuation report and (iii) Coortus Advisors Private Limited vide its valuation review report (value determined at Rs. 3,659 per equity share). The Petitioner Company has adopted a fair value of Rs. 3,851 per equity share, being the highest of the value of equity shares determined by the independent valuers. Therefore, the proposed capital</p>

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		reduction is fair and equitable to the minority shareholders.

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7 (B)	<p><i>It is observed that in the proposed scheme the applicant proposes to paying off, cancelling and extinguishing the total issued, subscribed and paid-up equity share capital of the Company, comprising of 1,16,275 equity shares of Rs.10/- each at a fair value of Rs. 3,851/- per share held by the holders of the equity shares of the Company, other than the promoter-shareholder of the Company, which is a nature of buy back. Therefore, Petitioner may be directed to comply with the provision of Section 68 along with Section 66 of the Companies Act, 2013.</i></p>	<p>With reference to Para 7(B) of the RD Report, the Petitioner Company submits as under:</p> <ol style="list-style-type: none"> <li><i>i. As per the section 66 of the Companies Act, 2013 (“the Act”), a company having a share capital can reduce its share capital in any manner as it so desires, by passing a Board Resolution, Special Resolution and subject to confirmation by the Tribunal.</i></li> <li><i>ii. As per the Act, section 68 empowers the Company to purchase its own securities upto certain limits with the approval of Board and Shareholders of the Company. The process u/s 68 does not require any intimation or approval of NCLT.</i></li> <li><i>iii. The process, approvals and mechanism prescribed u/s 66 and 68 are mutually exclusive, independent and cannot be applied in a same transaction. The provision under Section 66(6) of the Act explicitly provides for non-applicability of provisions of section 66 in case of a buy-back of it’s own securities by any Company under section 68.</i></li> <li><i>iv. The instant petition is filed by the Company for the approval u/s 66 of the</i></li> </ol>

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		<p><i>Companies Act, 2013. Section 66 of the Act provides for a detailed procedure to reduce the share capital of the Company with or without consideration, with the approval of Board, Shareholders and NCLT, which has been duly followed in the instant case.</i></p> <p><i>v. The Company is permitted to undertake corporate action either under section 66 of the Act or under section 68 of the Act and accordingly is required to comply provisions of the applicable section under which such corporate action is undertaken, which in the instant case is section 66 of the Act.</i></p> <p><i>vi. In this regard, reliance is placed on the following rulings where similar observations were raised by the Regional Director and the Hon'ble NCLT were pleased to allow reduction of share capital as a procedure under Section 66 of the Act holding that reduction of capital u/s 66 does not circumvent the provisions of section 68 of the Act:</i></p>

Para	Observation by the Regional Director	Responses by the Petitioner
		<p>a. Decision of NCLT Mumbai in CP No. 344 of 2021 Max India Limited;</p> <p>b. Decision of NCLT Mumbai Bench in CP No. 330 of 2021 Supreme Petrochemical Limited;</p> <p>c. Decision of NCLT Mumbai Bench in CP No. 207 of 2021 Fairfield Atlas Limited;</p> <p>d. Decision of NCLT Mumbai Bench in CP No. 195 of 2022 Sai Service Private Limited.</p> <p>The copy of these judgements are attached as Annexure 3 to Annexure 6 to the affidavit in rejoinder.</p> <p>vii. In view of the above the Petitioner Company submits that present scheme does not circumvent the provisions of section 68 of the Act and the said provisions of section 68 are not applicable in the instant case.</p>
7 (C) and 7 (D)	<p>7 (C) Further, any amount paid to the shareholders above the face value of paid-up share capital i.e. INR 10 per share is treated as capital gain or deemed dividend u/s 2(22) of the Income Tax Act, 1961 in the hands of the recipient shareholders at INR 3,851/- per share are being paid on 1,16,275 equity shares adjusted against the</p>	<p>With reference to Para 7(C) and 7(D) of the RD Report, the Petitioner Company the Petitioner Company undertake to comply with applicable provisions of Income-tax Act, 1961 including the directions of the Income Tax Department, if any. The Petitioner Company undertakes to withhold /</p>

Para	Observation by the Regional Director	Responses by the Petitioner
	<p><i>Securities Premium Account / General Reserves and therefore, the company and recipients shareholders shall undertake to pay Income Tax/TDS as per the provisions of Income Tax Act, 1961. 7 (D) The Tax implication if any arising out of the proposal for reduction is subject to final decision of Income Tax Authorities. The approval of the Company Petition by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Company or its shareholders after giving effect to the proposed reduction. The decision of the Income Tax Authority is binding on the petitioner Company and the recipient shareholders. However, the company and recipient shareholders shall give undertaking to pay</i></p>	<p>deduct taxes, if applicable, at the prescribed rates, in accordance with the applicable provisions of the Income-tax Act, 1961, on the consideration payable to the shareholders on account of reduction of share capital.</p>

6. During the course of arguments, the Representative of the RD has submitted that the explanations and clarifications given by the petitioner companies are found satisfactory and that they have no further objections.
7. In view of the clarifications given by the Petitioner Company and the judgements cited on the issue, the Company Petition is allowed.
8. The Petitioner Company to publish notices about registration of order and minutes by the concerned Registrar of Companies, Pune, Maharashtra in two newspapers namely “*The Free Press Journal*” in English language and translation thereof in “*Sandhyanand Pune*

*Edition*” in Marathi language both having circulation in the State of Maharashtra within 30 days of registration.

9. The Petitioner Company undertakes to file the certified copy of the order and form of minutes duly certified by the Designated Registrar of this Tribunal with the Registrar of Companies within 30 days from the date of receipt of the certified copy of the Order from the Registry of this Tribunal.
10. All concerned regulatory authorities to act on production of certified copy of the order to be issued on demand by the Designated Registrar of this Tribunal.
11. The minutes set forth hereto be and is hereby approved.

***“The paid up capital of Vanaz Engineers Limited, is henceforth Rs. 2,03,75,460 (Rupees Two Crores Three Lakhs Seventy-Five Thousand Four Hundred and Sixty Only) divided into 20,37,546 (Twenty Lakh Thirty-Seven Thousand Five Hundred and Forty-Six Only) Equity Shares of Rs. 10 each, reduced from Rs. 2,15,38,210 (Rupees Two Crores Fifteen Lakhs Thirty-Eight Thousand Two Hundred and Ten Only) divided into 21,53,821 (Twenty-One Lakhs Fifty-Three Thousand Eight Hundred and Twenty-One Only) Equity Shares of Rs. 10 each. At the date of the registration of this minute equity shares numbered 20,37,546 (Twenty Lakh Thirty-Seven Thousand Five Hundred and Forty-Six Only) Equity Shares of Rs. 10 each, have been issued and are deemed to be fully paid (and the remaining 19,62,454 (Nineteen Lakh Sixty-Two Thousand Four Hundred Fifty-Four) Equity shares of Rs. 10 each are unissued)”.***

**SD/-**

**Madhu Sinha  
Member (Technical)**

**SD/-**

**Reeta Kohli  
Member (Judicial)**