

**BEFORE THE PRINCIPAL BENCH NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

**Present: CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE PRESIDENT
& SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)
COMPANY PETITION NO. 1169 OF 2016**

**(TRANSFERRED FROM THE FILE OF HON'BLE HIGH COURT OF DELHI)
IN THE MATTER OF SECTIONS 100 TO 104 OF THE COMPANIES ACT, 1956
(PRESENTLY SECTIONS 66 OF THE COMPANIES ACT, 2013)**

AND

IN THE MATTER OF:

JAIPUR-MAHUA TOLLWAY PRIVATE LIMITED

Incorporated under Companies Act, 1956

Having its registered office situated at:

A-57, DDA Sheds, Okhla Industrial Area,

Phase-11, New Delhi-110020

CIN: U45200AP2005PTC45663

.... PETITIONER COMPANY

**ADVOCATE FOR THE PETITIONERS: Mr. Yashwant Mathur, Advocate
Mr. Abhyudai Singh, Advocate
Mr. Shridha Malhotra, Advocate
Mr. Karan Mehra, advocate**

FOR REGIONAL DIRECTOR,(NR), MCA: Mr. C.Balooni, Company Prosecutor

ORDER

1. This is a Petition is filed by the Petitioner above-named for the purpose of confirmation of reduction of its equity share capital. The Petition was originally filed in the Hon'ble High Court of Delhi under the provisions of erstwhile Companies Act, 1956 and the matter was listed before it on 25.11.2016. The Hon'ble High Court on the said date was pleased to direct that notice of the Petition be issued to the Registrar of Companies as well as Regional Director; and also directed the Petitioner to carry out publication in the English daily "Statesman" and Hindi daily "Jansatta" both Delhi Edition returnable on 28th March, 2017. The proceedings were pending before the Hon'ble High Court of Delhi. However in view of Section 66 of the Companies Act, 2013 having been notified by the Central Government vide Notification No.3677E dated 07.12.2016 effective from 15.12.2016 as well as the Rules titled as "National Company Law Tribunal (Procedure for Reduction of Share Capital of Companies) Rules, 2016" having also been notified; and taking into the consideration the notifications, the Hon'ble High Court vide its Order dated 25.01.2017 has transferred the instant Petition alongwith the connected records therewith to this Tribunal. This Tribunal is now vested with the powers to consider matters concerning Reduction of Share Capital as contemplated in this petition.
2. Subsequent to the transfer, the matter came up before us on 28.03.2017 for hearing and the Counsel for the Petitioner represented that the reports of the Regional Director/Registrar of Companies have been filed as directed by the Hon'ble High Court. Learned counsel represents that the existing Paid-up Share Capital of the Petitioner Company of Rs.1,95,14,19,360/- (Rupees One Hundred and Ninety five crores fourteen lakhs nineteen thousand three hundred and sixty only) consisting of 19,51,41,936 (Nineteen crores fifty one lakhs forty one thousand nine hundred and thirty six only) equity shares of Rs. 10/- (Rupees ten only) each fully paid up shall be reduced to Rs. 1,40,14,19,360/- (Rupees One Hundred and forty crores fourteen lakhs nineteen thousand three hundred and

sixty only) consisting of 14,01,41,936 (Fourteen crores one lakh forty one thousand nine hundred and thirty six only) Equity Shares of Rs. 10/- (Rupees Ten only) each fully paid up, the amount of Rs. 55,00,00,000/- (Rupees Fifty Five Crores only) consisting of 5.50,00,000 (Five crores fifty lakhs only) Equity shares of Rs.10/- each, fully paid up, which are held by the existing shareholders and excess capital being in excess of the requirements/wants of the Petitioner Company be paid back to the existing shareholders and in the ratio of their current shareholding in the Petitioner Company and that the rationale is stated in Paragraph 13 of the Petition which is extracted below:-

(a) The Board has considered the present business model, the future revenues and the other business factors and it is of the opinion that the present shareholders' funds available with the Petitioner Company are in excess of its wants/requirements and which cannot be effectively deployed in the business. The Board of Directors are of the view that the Petitioner Company does not require such excess capital for its business operations and such excess capital impacts the return on equity and earnings per share. Hence, the board has decided to return for the business purposes of the Petitioner Company back to its shareholders in terms of section 100(1)(c) of the Companies Act, 1956, after the sanction /approval of the Hon'ble High Court.

(b) After the analysis of various options available to the Petitioner Company, the Board is of the view that the reduction of the equity share capital is the most practical option available to the Company, which is also statutorily permissible. That after reduction of the share capital of the Petitioner Company in the manner enumerated in the present petition, Shareholders would get back their investment in capital which is in excess of the wants of the Petitioner Company and not represented by existing assets required for the business operations of the Petitioner Company and the Petitioner Company's financial position will be better reflected after the reduction.





(c) That thus an amount of Rs. 55,00,00,000/- (Rupees Fifty Five crores only) being the difference of the existing Paid-up capital and the reduced paid-up capital, and which will be refunded to the respective shareholders of the petitioner Company in compliance to the provisions of section 100 to 105 of the Companies Act, 1956 and accordingly the current / non-current assets of the Petitioner Company will be adjusted in accordance with law and accounting practices of the Petitioner Company. Thus, the Petitioner Company is filing the present Petition under Section 101 of the Companies Act, 1956 to obtain a sanction from this Hon'ble court to reduce the Paid-up Share Capital in accordance to the procedure established in accordance with the law.

3. A Perusal of the Petition shows that the company is reorganizing its share capital in order to distribute its surplus capital which it is stated to be in excess of its business requirements. The Board of Directors of the company is said to have approved the reduction of the paid up equity share capital of the Petitioner Company on 16.11.2016 and further it is also seen that the same has been approved by the Equity Shareholders in the Extra Ordinary General Meeting held on 18.11.2016 vide Special Resolution. Subsequently, the Company Petition before the Hon'ble High Court seems to have been preferred.
4. From the records, it is evident that the company is a private limited company and that the petitioner is empowered by virtue of its Articles of Association to undertake the exercise of reduction of share capital and in this connection the averment made in the paragraph 14 of the petition is extracted here under:-

"That Article 10 of the Articles of Association of the Petitioner Company permits and authorizes that the Petitioner Company may reduce its capital by way of Special Resolution in any manner from time to time under the provisions of Companies Act, 1956." However, perusal of the Articles of Association reveals that relevant power is contained in paragraph 11 and not in paragraph 10 as stated. Be that as it may.

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It is evident that the Petitioner Company is competent to undertake the reduction of share capital as approved by the Board and shareholders of the Petitioner Company.

5. The Petitioner Company has also produced a Certificate issued by the Statutory Auditor of the Company dated 09.11.2016, a perusal of which discloses that the company have Two Secured Creditors as on 31.10.2016 and that consents from both of them have been received.
6. In relation to the unsecured creditors of the Petitioner Company it is evident from the certificate issued by the Statutory Auditor dated 09.11.2016 that there were seventeen unsecured creditors as on 31.10.2016 and that consent letters from all of them are produced. A perusal of the report/observation filed by the Regional Director does not disclose any adverse comments in relation to the proposed reduction of equity share capital of the Petitioner Company, other than bringing to the notice of this Tribunal that 99.99% of the shareholding of the petitioner company is being held by Cube Highways and Infrastructure Pte Ltd (earlier known as ISQ Asia Infrastructure I-A Pte Limited) , a foreign entity and in the circumstances the reduction if confirmed as proposed by the petitioner should be in compliance with FEMA/RBI regulations.
7. Further the Regional Director in para 7 of his affidavit has stated that the Registrar of Companies, Delhi and Haryana vide para 24 of his report has stated that it has been observed that the Petitioner Company is a wholly owned subsidiary of Cube Highways and Infrastructure Pte. Ltd, and hence the Petitioner Company may be asked to give an undertaking regarding requisite compliances from Reserve Bank of India as required under Foreign Exchange Management Act, 1999, for payment of such consideration to the said foreign company/entities.
8. In response to the above observations, the Petitioner company through its authorized signatory has filed an affidavit wherein an undertaking to the following effect has been given at para 5 and same is reproduced hereunder:

“5. That I, on behalf of the Petitioner Company, do hereby undertake that all the necessary/ requisite Foreign Exchange Management Act, 1999, compliances as required by the Reserve Bank of India for payment of the amount as becoming due and payable on sanctioning of the Scheme of Reduction of Share Capital to the foreign shareholder(s) of the Petitioner Company will be duly complied with/ completed by the Petitioner Company”

The above undertaking is taken on record and Regional Director does not have any further objection. It is made clear that the confirmation granted herein shall be subject to all compliance with not only FEMA/RBI regulations but also other laws whether it be fiscal or otherwise which may have a bearing on the proposed reduction to equity share capital as enunciated in the petition.

9. In relation to paper publication, the same seems to have been effected on 14.12.2016, in compliance with the order of the Hon'ble High Court and it is stated by the Petitioner that same has been published on the website of Cube Highways of which the Petitioner Company is a group Company. Further it is stated on Affidavit that neither the counsel nor the Petitioner has received any objection subsequent to effecting the paper publication by the Petitioner in relation to the reduction of share capital.
10. Taking into consideration the above, there being no objections from any quarter in relation to the reduction of capital as contemplated by the petitioner Company, this Tribunal do order as follows:-



(1) That the reduction of the share capital of the above company resolved on and effected by the special resolution passed at a general meeting of the said company held on the 18th day of November, 2016, which resolution was in the words and figures following, viz,

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To consider the reduction of share capital of the Company, with or without modification, as a Special Resolution:-

“RESOLVED THAT pursuant to the provisions of Section 100 to 105 of the Companies Act, 1956, and other applicable provisions, if any, of the Companies Act, 1956 and Companies Act, 2013, to the extent applicable; and Rules made thereunder (including any statutory modification, amendment or re-enactment thereof for the time being in force), Articles of Association of the Company and subject to the approval of the Hon’ble High Court of Delhi at New Delhi / National Company Law Tribunal or any other appropriate Authority and further such other consents, permissions, approvals etc., as may be necessary, the Reduction of Share Capital of the Company as set out in the draft scheme of reduction of share capital, a copy of which is circulated to all the shareholders along with the notice convening extra-ordinary general meeting, to be filed with Hon’ble High Court of Delhi at New Delhi/National Company Law Tribunal or any other appropriate Authority, (hereinafter referred to as “draft scheme”), be and is hereby approved;

RESOLVED FURTHER THAT pursuant to the provisions of Section 100 to 105 of the Companies Act, 1956, and other applicable provisions, if any, of the Companies Act, 1956 and Companies Act, 2013, to the extent applicable; and rules made thereunder (including any statutory modification, amendment or re-enactment thereof for the time being in force), Articles of Association of the Company and subject to the approval of class of shareholders, the Hon’ble High Court of Delhi at New Delhi / National Company Law Tribunal or any other appropriate Authority and further such other consents, permissions, approvals etc., as may be necessary, the consent of the equity shareholders be and is hereby accorded to the Reduction of the Paid-up Share Capital of the company from Rs. 1,95,14,19,360/- (Rupees One Hundred and Ninety five crores fourteen lakhs nineteen thousand three hundred and sixty only) consisting of 19,51,41,936

(Nineteen crores fifty one lakhs forty one thousand nine hundred and thirty six only) equity shares of Rs. 10/- (Rupees ten only) each fully paid up, to Rs. 1,40,14,19,360/- (Rupees One hundred and forty crores fourteen lakhs nineteen thousand three hundred and sixty only) consisting of 14,01,41,936 (Fourteen crores one lakh forty one thousand nine hundred and thirty six only) Equity Shares of Rs. 10/- (Rupees Ten only) each fully paid up, the amount of Rs. 55,00,00,000/- (Rupees Fifty Five crores only) by which the Share Capital, so reduced being in excess of the requirements of the Company and that such reduction be effected by cancelling the Paid-up value of 5,50,00,000 (Five crores Fifty Lakhs only) Equity shares of Rs. 10/- each, fully paid up which are held by the existing shareholders and the excess capital, being in excess of wants/requirements of the Petitioner Company be paid back to the existing shareholders in the ratio of their current shareholding in the Petitioner Company;

RESOLVED FURTHER THAT upon reduction being confirmed by the Hon'ble High Court of Delhi at New Delhi/ National Company Law Tribunal or any other appropriate Authority the abovementioned shareholders holding the Paid-up Share Capital proposed to be reduced be returned/paid back to the respective shareholders as per, the amount paid by them on the respective shares held by them in compliance with the provisions of Foreign Exchange Management Act, 1999 and other applicable laws;

RESOLVED FURTHER THAT upon extinguishment of Share Capital, the Paid-up Share Capital of the Company be stand reduced to the extent of the face value of the shares so extinguished on the record date;

RESOLVED FURTHER THAT consequent amendments be made in the Capital clause of the Memorandum of Association and Articles of Association (if any) of the Company after the said reduction becomes operative and effective;

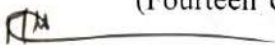


Be and is hereby approved.

- (2) In the facts of the present case, the use of the words "AND REDUCED" in the petitioner company's name is dispensed with.
- (3) That the minute set forth in the schedule hereto be and is hereby approved.
- (4) That a certified copy of this order including the minute as approved be delivered to the Registrar of Companies within thirty days of receipt of the order and paper publication confirming the reduction by this Tribunal of the Equity share capital shall also be issued in the same newspapers as published earlier in the prescribed format within a period of thirty days from the date of this order.

SCHEDULE

"The capital of Jaipur-Mahua Tollway Private Limited, is henceforth Rs. 1,40,14,19,360/- (Rupees One hundred and forty crores fourteen lakhs nineteen thousand three hundred and sixty only) divided into 14,01,41,936 (Fourteen crores one lakh forty one thousand nine hundred and thirty six only) equity shares of Rs. 10/- (Rupees Ten only) each, reduced from Rs. 1,95,14,19,360/- (Rupees One Hundred and Ninety five crores fourteen lakhs nineteen thousand three hundred and sixty only) divided into 19,51,41,936 (Nineteen crores fifty one lakhs forty one thousand nine hundred and thirty six only) equity shares of Rs. 10/- (Rupees Ten only) each. At the date of the registration of this minute 14,01,41,936 (Fourteen crores one lakh forty one thousand nine hundred and thirty six only)






equity shares have been issued and are deemed to be fully paid (and the remaining 5,50,00,000 (Five crores Fifty Lakhs only) Equity shares are unissued).

Dated this... 24th... day of April... 2017...

Re-issued 3rd day of May, 2017


(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT


(R.VARADHARAJAN)
MEMBER (JUDICIAL)

DATE:

U.D Mehta