

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**C.P No.14/66/GB/2020**

**Coram:**

**Hon'ble SHRI H. V SUBBA RAO, MEMBER (JUDICIAL) : Through  
AND : Video  
Hon'ble SHRI PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL): Conference**

**ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY LAW  
TRIBUNAL, GUWAHATI BENCH ON 23rd August, 2021.**

**Name of the Company: Assambrook Limited**

**Section: Section 66 of Companies Act**

<b>S.No.</b>	<b>NAME (CAPITAL LETTERS)</b>	<b>DESIGNATION</b>	<b>REPRESENTATION</b>	<b>SIGNATURE</b>
1.	MR. DHRUPAD DAS	Advocate	Petitioner	Through Video
2.	MS. MAITREYEE DAS	Advocate	Petitioner	Conference

**ORDER**

The Applicant is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

Prayers made in the Petition are rejected and the Petition is disposed of.

The Order is pronounced in the open court, vide separate sheet.

**Sd/-**

**(Prasanta Kumar Mohanty)  
Member (Technical)**

**Sd/-**

**(H. V. Subba Rao)  
Member (Judicial)**

Dated this 23<sup>rd</sup> day of August, 2021

**NATIONAL COMPANY LAW TRIBUNAL  
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**Hon'ble SHRI H. V SUBBA RAO, MEMBER (JUDICIAL) : Through  
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Hon'ble SHRI PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL): Conference**

**ORDER**

**Date of Order: 23.08.2021**

**[Per se: Prasanta Kumar Mohanty, Member (T)]**

1. This application under Section 66 of the Companies Act, 2013 has been filed by the applicant Assambrook Limited (CIN: U70109AS1947PLC009386), having its registered office at Tinkharia Tea Estate, P.O Dhekiajuli-784110, Dist. Sonitpur, Assam for confirming its resolution for reduction of share capital.
2. The Petitioner Company was incorporated on 8<sup>th</sup> August, 1947 at Kolkata under the name and style **Brooke Bond Estates India Limited** under the Indian Companies Act, 1913. Thereafter, the name of the Company was initially changed to **Brooke Bond Estates Limited** and thereafter to **Assam Brooke Estates Limited** and ultimately to its present name **Assambrook Limited**.
4. That subsequently, on 23<sup>rd</sup> October, 2009 vide order passed by the Hon'ble Company Law Board, Kolkata, **the registered office of the Company was shifted from the State of West Bengal to the State of Assam**. Copies of the Certificate of Incorporation, change of name, Memorandum of Association and the amended Articles of the Association of the Company are attached herewith and marked as **Annexure-A, Annexure-B, Annexure-C** and **Annexure-D** respectively.
5. It is submitted that the object for which the Company was established was to, inter alia, acquire land, tea gardens and plantation and to carry on tea plantation business and other allied activities. Upon commencement of its business, the

Company acquired tea gardens and carried on the business of tea plantation. The Company, subsequently, **acquired two (2) tea gardens viz., Dhullie Tea Estate and Tinkharia Tea Estate both in the State of Assam**, however due to several intervening factors, **the Company has since sold the said assets and have taken steps to diversify its portfolio in other ventures as approved under its Memorandum of Articles.**

6. It is further submitted that at present the **authorized share capital of the Company is Rs.18,50,00,000/- (Rupees Eighteen Crores and Fifty Lacs)** divided into 1,85,00,000 equity shares of Rs.10/- each. **The issued, subscribed and paid up share capital of the Company is Rs.15,66,12,420/- (Rupees Fifteen Crores Sixty Six Lacs and Twelve Thousand Four Hundred Twenty)** divided into 1,56,61,242 equity shares of Rs.10/- each all fully paid up. That, as per Article 54 of the Articles of Association of the Company, the Company has been authorized to, from time to time, by a special resolution, reduce its capital in any manner permitted by law. True copies of the special resolution dated 4<sup>th</sup> September 2019 duly approved and circulated is annexed herewith and marked as **Annexure-E.**

7. It is also submitted that the final accounts for the financial year ending March, 2019 has been duly audited and approved by the Company. A copy of the audited Financial Statement of the Company as at 31 March, 2019 together with the report of the Auditors thereon is annexed herewith and marked as **Annexure- F.**

8. The Petitioner states that as against the paid up share capital of approximately Rs.1566 lacs, the audited financial statements reflect a debit balance of approx. Rs.3226 lacs in the Profit and Loss Accounts, of that relevant financial year. The Petitioner most humbly submits that the said debit balance in the Profit & Loss Accounts has been provisioned for due to cumulative losses suffered by the Company during last several years for the reasons stated hereinafter.

9. It is also submitted that the equity shares of the Company were listed in Bombay Stock Exchange. **In July 2018 the equity shares of the Company were compulsorily delisted from BSE Limited** and soon thereafter equity

shares of the Company **were also delisted from CSE**. Post delisting, the equity shares of the Company **are not currently tradable securities at the Stock Exchanges**. True copy of the master data available on the website of the Ministry of Corporate Affairs confirming that the Company is not listed is annexed herewith and marked as **Annexure-G**.

10. The rationale and purpose for reduction of share capital of the applicant company, as emerged from the application are that –

- i. From the year 2002-03 the Company started to incur losses in its tea business and till date it has accumulated a loss of approximately Rs.3226 lacs. That, over the years, in-spite of infusion of substantial funds both in the form of equity as well as debt, the Company could not revive its tea plantation business and continued to incur losses till date.
- ii. In view of mounting losses, vide separate Deed dated 31<sup>st</sup> March 2015 and 24<sup>th</sup> September 2014 respectively, the Company was constrained to sell all the assets and liabilities of the Company of the Tinkharia Tea Estate and the Dhullie tea Estate respectively. The Company has since received the full purchase consideration relating to sale of the said two tea estates. **The Company presently does not have any secured creditor as duly reported in the audited financial statement of the Company**. True copy of the Deed of Sale dated 31<sup>st</sup> March, 2015 and 24<sup>th</sup> September, 2014 are annexed herewith and marked as **Annexure-H** and **Annexure-I** respectively.
- iii. The latest audited Financial Statement of the Company has been prepared up to 31<sup>st</sup> March, 2019 and the same had been duly approved by the shareholders of the Company at the Annual General Meeting of the Company held on 4<sup>th</sup> September, 2019. True copy of the minutes of meeting is annexed herewith and marked as **Annexure-J**.
- iv. That the Petitioner Company, by way of abundant caution, submits that the Company has a paid up share capital of approx. Rs.1566 lacs and a security premium reserve of Rs.1270 lacs. That the Petitioner

has approached this Hon'ble Tribunal by way of the instant application to **reduce its share capital and not the security premium account**, i.e. in accordance with the special resolution approved by its shareholders.

- v. **The financial statement of the Company exhibiting huge accumulated losses does not reflect true and fair view of the state of affairs of the Company**, which can be prejudicial to its future operation and its ability to be able to infuse fresh capital for its business to survive. That given the current financial position, as exhibited by the last audited financial statements, **it is commercial challenge for the Company to raise further equity in view of huge accumulated losses.**
- vi. In view of the cumulative losses suffered by the company over the past several years together with the sale of assets, the Board of Directors of the Company keeping in-line with the best corporate management practices advised that it would be commercially prudent and in best interest of the Company to substantially reduce its share capital which had been permanently lost or is unrepresented by available assets.

11. It is submitted that by a special resolution of the Company duly passed in accordance with Section 66(1) of the Companies Act, 2013 at the Annual General Meeting of the Company held after due notice as provided in the Act on 4<sup>th</sup> day of September, 2019 it was resolved as follows: -

**“RESOLVED THAT** in supersession of the earlier resolution passed in the Annual General Meeting held on 29<sup>th</sup> Sept, 2018 and pursuant to Section 66 and other applicable provisions of the Companies Act, 2013, (including any statutory modification(s) or re-enactment thereof for the time being in force) and the rules made thereunder (the “Act”), read with Articles of Association of the Company; and the confirmation by the Hon'ble National Company Law Tribunal (“NCLT”); and as such other approvals as may be required, and subject to the terms and conditions and modifications, if any, as may be prescribed by the NCLT consent of the members of the Company be and is

hereby accorded, by way of a special resolution, to reduce the issued, subscribed and paid-up capital of the Company from Rs.15,66,12,420 (Rupees Fifteen Crores Sixty Six Lakhs Twelve Thousand four hundred and twenty) divided into 1,56,61,242 (One crore Fifty Six Lakh Sixty One Thousand Two Hundred Forty two) equity shares of Rs.10 (Rupees Ten) each all fully paid up to Rs.10,00,000 (Rupees Ten lacs) divided into 10000 (Ten Thousand) equity shares of Rs.100 (Rupees One hundred) each all fully paid up by cancelling and extinguishing, an amount of Rs.15,56,12,420 (Rupees Fifteen Crore Fifty six lacs twelve Thousand four hundred twenty only) which capital has been lost or is unrepresented by available assets (the "Capital Reduction")."

**"RESOLVED FURTHER THAT** immediately upon the Capital Reduction becoming effective and operative the authorized share capital of the Company shall stand consolidated and sub divided into 18,50,000 equity shares of Rs.100/- each and consequential amendment be made in the capital clause of the Memorandum of Association of the Company."

**"RESOLVED FURTHER THAT** upon the Capital Reduction being confirmed by the NCLT and becoming effective and operative the reduction will be carried out for the Shareholders of the Company, as on **the 'Record Date' to be determined by the Board** for the purposes of determining the names of the registered holders of the equity shares of the Company."

**"RESOLVED FURTHER THAT** consequent upon the Capital Reduction as aforesaid no member of the Company shall be entitled to hold fractional share of Rs.100/- each and all such fractional shares shall without any further action on behalf of the Company or the member entitled to such fractional shares, stand consolidated to the face value of Rs.100/- each and transferred to a Trust comprising of independent directors of the Company as Trustees who shall offer such fully paid up shares of Rs.100/- each to the existing shareholders of the Company. The decision of the Trustees as to the timing and method of offer to the existing shareholders of the Company shall be final and binding on all concerned. The Trustees after defraying all costs, charges and expenses of such sale shall distribute the net sale proceeds to the

shareholders of the Company in proportion to their fractional entitlement. The Company Secretary of the Company, if any, shall be the Secretary of such Trust and shall assist the Trustees in managing the affairs of the Trust.”

“**RESOLVED FURTHER THAT** the Board of Directors of the Company be and is hereby authorized to do all acts, deeds, matters and things which may be required or necessary for effecting the Capital Reduction including obtaining confirmation of NCLT to such Capital Reduction and to delegate all or any of the powers conferred upon it by this resolution to any Committee of Directors or any other director or officer of the Company as it may think fit and proper.”

12. It is submitted that the said Annual General Meeting of the Company for the year ended 31 March, 2019 was attended by thirty-four (34) shareholders of the Company and voting on 55,00,564 equity shares. At the said Annual General Meeting of the Company, the shareholders, present and voting, voted unanimously in favour of the said resolution for reduction of the share capital of the Company.

13. It is further stated that by the said resolution the issued, subscribed and paid up capital of the **Company is sought to be reduced from Rs.15,66,12,420/- (Rupees Fifteen Crores Sixty Six Lacs and Twelve Thousand Four Hundred Twenty) to Rs.10,00,000/- (Rupees Ten Lacs) by cancelling and extinguishing an amount of Rs.15,56,12,420/- which capital has been permanently lost and is unrepresented by available assets of the Company.**

14. It is again submitted that proposed reduction in the equity share capital **does not involve payment to any shareholders or members of the Company or in reduction of any unpaid calls.** In other words, the proposed reduction in share capital does not involve outgo of any cash and consequently does not affect the rights of the creditors of the Company in any manner whatsoever.

15. It is again submitted that presently the Company does not have any secured creditors. The petitioner further states that the total claim of the unsecured creditors of the Company as on 25<sup>th</sup> January, 2020 was only **Rs.24,77,205.12/-**. True copy of the list of the creditors of Company, duly verified by two Directors of the

Company and the certificate of the Auditors of the Company are annexed hereto and collectively marked as **Annexure-M**.

16. It is again submitted that reduction of the Share Capital of the Company will involve the following accounting treatment in the Books of Accounts of the company:

- a. The issued, subscribed and paid up share capital of the Company shall be reduced from Rs.15,66,12,420/- to Rs.10,00,000/- by cancelling and extinguishing an amount of Rs.15,56,12,420/- as aforesaid; and**
- b. The accumulated losses of the Company which is reflected in the form of debit balance in the Profit & Loss Account of the Company for the year ended 31<sup>st</sup> March, 2019 shall be reduced by the said sum of Rs.15,56,12,420/-, that is to say, from Rs.32,35,66,552.67 to Rs.16,59,54,132.67 by setting off such losses against reduction in the share capital.**

17. It is submitted that the form of the Minutes, which is required to be approved by the Hon'ble Tribunal under Section 66(5) of the Act is as follows: -

"The capital of Assambrook Limited is henceforth Rs.10,00,000/- divided into 10,000 equity shares of Rs.100/- each all fully paid up reduced from Rs.15,66,12,420/- by cancelling and extinguished as amount of Rs.15,56,12,420/-."

18. This Hon'ble Tribunal vide order dated 25<sup>th</sup> November, 2020 had directed the petitioner to clarify the below mentioned points in the form of an Affidavit under Rule 43 of NCLT Rules: -

- a. The Company was incorporated on 08.08.1947 and the Company started incurring loss from 2002-2003. Whether the Company has incurred loss after sale of reported two Tea Estates i.e. Dhullie Tea Estate and Tinkhara Tea Estate.
- b. As reported, the Share Capital shall be reduced from Rs.15,66,12,420.00 to Rs.10,00,000.00 by cancelling and extinguishing

an amount of Rs.15,56,12,420.00. Thereafter, the capital will be only Rs.10.00 lacs by way of 10,000 shares with the face value of Rs.100.00. Then whose shares will be cancelled and who will be holding these 10,000 shares.

- c. **There are Five entities holding shares of 79.39% including the shares of Allahabad Bank 42,50,800. Whether all the above entities participated in the Annual General Meeting in which the decision was taken to reduce the value and number of shares by 99.37%.**
- d. **Shares are held by the Allahabad Bank 42.50 lacs, Bank of India 12.00 lacs, whether these shares are conversion of loans given by these Financial Creditors. If so, the date of allotment of shares and the price at which these shares were allotted.**
- e. **As per the petition filed, the Dhullie Tea Estate Pvt. Ltd. is sold by the Company but one Dhullie Tea Plantations Pvt. Ltd is holding 26.50 lacs shares of the petitioner Company. Whether this Company is related to the Dhullie Tea Estate.**
- f. **The Company desires to cancel the shares without liquidating/ adjusting the share premium reserve amount of Rs.12.70 Crores lying in the balance sheet. The reason for cancelling 99.37% of total shares instead of adjusting the share premium held in the Books of the Company.**
- g. Whether the Company is in operation? If so, what is the sales figures and the number of employees are on roll.
- h. Details of the movable and immovable Assets of the Company and its worth as on 31.03.2019, if valued, as per valuer's report. If not valued within last three years, Desk Top valuation can be done by the Company itself and the same valuation Report is to be submitted.

19. The Petitioner pursuant to the order dated 25<sup>th</sup> November, 2020, filed its reply in the form of an affidavit dated 12.01.2021 submits point-wise clarifications to the queries as follows:

- a. That in response to the query no. (a), the deponent states that the Company has continued to incur losses even after the sale of the two tea estates, namely Tinkharia Tea Estate and Dhullie Tea Estate in the financial year 2014-15. The Petitioner craves leave to reproduce the details of year wise losses incurred by the Petitioner Company after the sale of the aforementioned tea estates in the table below for the convenience of this Hon'ble Tribunal.

Financial Year	Profit/ (Loss) after tax (Rs. In 100)
2014-15	(207950)
2015-16	(4265)
2016-17	(9113)
2017-18	(5537)
2018-19	(975)
2019-20	(954)

- b. That in response to the query no. (b), the deponent humbly reiterates that Petitioner Company filed this instant petition for reduction of shares capital seeking to reduce the equity share capital of the Petitioner Company from Rs.15,66,12,420/- to Rs.10,00,000/- by cancelling and extinguishing an amount of Rs.15,56,12,420/-.
- c. That as per the proposed scheme of reduction duly annexed with the Special Resolution dated 04.09.2019 filed along with the main Application, shareholders holding 10000 or more shares would be allotted shares in proportion to their shareholding as per the scheme and they will remain shareholders of the Petitioner Company after reduction of capital. That the shareholders holding less than 10000 shares would be entitled to fractional shares which will be transferred to a Trust to be formed for this purpose and the fractional shares will be consolidated to a face value of Rs.100 each. The trust shall offer the consolidated shares to the existing shareholders of the Petitioner

Company. It is pertinent to state that the aforementioned scheme for reduction of capital has been approved by a special resolution by the shareholders of the Petitioner Company in the Annual General Meeting held on 4<sup>th</sup> September, 2019.

- d. That in response to the query no. (c), the Deponent most humbly states that the Annual General Meeting held on 04.09.2019 was attended by thirty four (34) shareholders, present and voting, voted unanimously in favour of the special resolution approving the reduction of share capital of the Petitioner Company. The Petitioner begs to state that the notice for the aforesaid AGM was duly given, as per law, on 07.08.2019.
- e. The Deponent further begs to state that it is settled law that the question of reduction of share capital is treated as a matter of domestic concern and it is the decision of the shareholders which prevails. Furthermore, any objection to the proposed scheme of reduction can only be considered after the Hon'ble Tribunal issues notice in the instant petition and directs that such notice be published in accordance with Rule 3(3) of the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.
- f. That in response to the query no. (d), the Deponent most humbly states that the 42,50,000 shares held by the Allahabad Bank and the 12,00,000 shares held by the Bank of India were issued and allotted upon conversion of loans given by the respective banks to the Petitioner Company. The shares were issued to Bank of India at Rs.25 including a premium of Rs.15 per share on 29.05.2015 and the shares were issued to Allahabad Bank at par on 30.05.2016.**
- g. That in response to query no. (e), the deponent most humbly states that by a registered deed of sale dated 24.05.2014, Dhullie Tea Estate

was sold by the Petitioner Company to Dhullie Tea Plantations Private Limited. This deed of sale has been attached and marked as **Annexure-I** of the main petition filed by the Petitioner Company for reduction of share capital before this Hon'ble Tribunal.

- h. That in response to the query no. (f), the Deponent humbly states that it is a recognized position of law that a company is free or open to choose the mode or extent of reduction of its share capital. It is also a well-settled principle that the court must not sit in judgment over the commercial wisdom of the Directors of a Company. In the instant petition, the proposed mode of reduction of capital is by cancelling and extinguishing an amount of Rs.15,56,12,420/- in the paid up equity share capital of the company. The Petitioner begs to state that the proposed mode of reduction is in accordance with Section 66(1) (b) (i) of the Companies Act, 2013. The Petitioner further begs to reiterate that the reason for reduction of share capital is that in view of mounting losses and the sale of two tea estates of the Petitioner Company, the paid-up equity share capital as reflected in the Memorandum of Association is lost or unrepresented by the available assets of the Petitioner Company.
- i. That in response to the query no. (g), the Deponent most humbly states that the Petitioner Company is not in operation at present and is exploring new avenues of business. The Deponent most humbly submits that given the current state of accounts, it is imperative for the Company to reduce its share capital as prayed for to make the Company viable to seek fresh infusion of funding whether institutional or otherwise.
- j. That in response to the query no. (h), the Deponent most humbly states that the details of the movable and immovable assets of the Petitioner Company and its net worth are provided in the Annual

Report for the financial year ended 31.03.2020 and the same had been annexed and marked herewith as **Annexure-A**.

20. This Hon'ble Tribunal vide order dated 22<sup>nd</sup> February, 2021 had directed the petitioner to clarify the below mentioned points in the form of an Affidavit under Rule 43 of NCLT Rules: -

- a. There are Five entities holding shares of 79.39% including the shares of Allahabad Bank 42,50,800. Whether all the above entities participated in the Annual General Meeting in which the decision was taken to reduce the value and number of shares by 99.37%.
- b. Shares are held by the Allahabad Bank 42.50 lacs, Bank of India 12.00 lacs, whether these shares are conversion of loans given by these Financial Creditors. If so, the date of allotment of shares and the price at which these shares were allotted.
- c. As per the petition filed, the Dhullie Tea Estate Pvt. Ltd. is sold by the Company but one Dhullie Tea Plantations Pvt. Ltd is holding 26.50 lacs shares of the petitioner Company. Whether this Company is related to the Dhullie Tea Estate.

21. The Petitioner pursuant to the order dated 22<sup>nd</sup> February, 2021, filed its reply in the form of an affidavit dated 18.03.2021 submits point-wise clarifications to the queries as follows:

- a. That in response to the query, the Deponent humbly states that the Annual General Meeting held on 04.09.2019 was attended by thirty-four (34) shareholders and all shareholders, present and voting, voted unanimously in favour of the special resolution approving the reduction of the share capital of the Petitioner Company. The Petitioner begs to state that the notice for the aforesaid AGM was duly given, as per law, on 07.08.2019. That in support of the instant petition and to answer the Hon'ble Tribunal's query no. (b) in a comprehensive manner, a certified copy of the list of shareholders and their respective

shareholding in the Petitioner Company who were present and voting in the AGM dated 04.09.2019 has been annexed herewith and marked as **Annexure-A**.

- b. That the Deponent further, in response to the query (b) of the Orders dated 22.02.2021, states that Stressed Assets Fund ("**SASF**") has been restrained from exercising any voting rights pending adjudication of a dispute regarding its ownership over its shares in the Petitioner Company by the Ld. City Civil Court at Calcutta vide the court's interim order dated 22.12.2015. that subject to the dispute with respect to the ownership of shares of SASF (9.577% equity shares) in the Petitioner Company. The said Ld. City Civil Court, Calcutta vide its orders dated 18.02.2021 extended its interim orders till 19.03.2021 restraining the Defendants from exercising voting rights with the said equity shares.
- c. **It is submitted that it is important to note that till date, neither Bank of India nor SASF nor Allahabad bank have attended any General Meetings of the Company since becoming shareholders of the company despite notices being duly served upon them as per law. It is reiterated that all General Meetings of the company have been duly conducted as per the procedure prescribed under law. It is further reiterated that the special resolution for reduction of the paid-up equity share capital of the Petitioner Company was passed unanimously by the shareholders present and voting.**
- d. **That in response to the query no. (c), the Deponent humbly states that the query has already been answered in the affidavit filed by the Petitioner Company on 12.01.2021. For the convenience of this Hon'ble Tribunal, the Deponent reiterates that 42,50,000 shares held by the Allahabad bank and the 12,00,000 shares held by the Bank of India were issued and allotted upon conversion of loans given by the respective banks to the Petitioner Company. The shares were**

**issued to Bank of India at Rs.25 including a premium of Rs.15 per share on 29.05.2015 and the shares were issued to Allahabad bank at par on 30.05.2016.**

- e. That in response to the query no. (d), the Deponent humbly states that by a registered deed of sale dated 24.09.2014, Dhullie Tea Estate was sold by the Petitioner Company to Dhullie Tea Plantations Private Limited. This registered conveyance deed/ deed of sale has been attached and marked as **Annexure-I** of the main petition filed by the Petitioner Company for reduction of share capital before this Hon'ble Tribunal.

22. The Petitioner prays that the form of the Minutes, which is required to be approved by the Hon'ble Tribunal under Section 66(5) of the Act is as follows: -

"The capital of Assambrook Limited is henceforth Rs.10,00,000/- divided into 10,000 equity shares of Rs.100/- each all fully paid up reduced from Rs.15,66,12,420/- by cancelling and extinguishing an amount of Rs.15,56,12,420/-".

23. The Petitioner in his application has prayed before this Hon'ble Tribunal to allow the below mentioned prayers:

- a. To allow the Petitioner Company to reduce its share capital by confirming the resolution passed by way of a special resolution as submitted hereinabove;
- b. To issue all directions necessary and proper be made and given to effect the reduction of Share Capital as prayed for;
- c. To approve the proposed Minutes set out in paragraph 19 of the application;
- d. To give necessary directions for service of notice of this application upon the Central Government through the Regional Director, Ministry of Corporate Affairs, North Eastern Region, Guwahati; the Registrar of Companies, Assam; and to all the creditors of the Company;
- e. And to pass any such order(s) or further order(s) that this Hon'ble Tribunal be may deem fit and proper in the interest of justice.

## ORDER

**24. Heard the submissions of the learned Advocate appearing for the Petitioner at length and perused the documents, written submissions made available.**

**24.1 In our considered opinion, the prayer made by the Applicant for confirming its resolution passed for reduction of share capital by cancelling the shares to the extent of 99.37% i.e. from the value of Rs.15,66,12,420.00 to Rs.10,00,000.00 only, retaining the shares premium account untouched, with the continuous accumulated loss of the company for the last 18 years to the extent of approximately Rs.32.26 crores, is not to be confirmed in the interest of all Stake Holders, Public and Corporate Governances on account of the following:**

**24.2 The Company was incorporated on 08.08.1947 and started incurring loss for last 18 years from 2002-2003. The Two Estates, the Company was having, Dhullie Tea Estate and Tinkhara Estate have been sold in the year 2014 – 2015 to reduce the Loss but the position did not improve. There is no asset at all. There is no staff, company is not in operation and the loss is increasing every year mainly for payment of remuneration to the Managing Director of the company. The loss has gone up to Rs.32.26 crores in spite of sale of the two Tea Estates. When the company has been incurring loss for last 18 years, no assets, no operation, no staff, shares compulsorily delisted from the BSE Limited and the CSE Limited and the Management failed to keep the company in operation and earn profit, then the resolution passed to cancel and adjust 99.37% of share value with the loss is certainly in no way in the interest of the shareholders to sacrifice 99.37% of their share amount subscribed.**

**24.3 As per the balance sheet and submissions of the Counsel for the Petitioner, the three Financial Creditors ie Allahabad Bank, Bank of India and Stress Assets Stabilization Fund became shareholders of the Company on conversion of their Loans .They are holding 44.38% of the total shares of the**

Company but they were not present when this resolution was passed. As per the resolution, these shareholders (FC) have to lose 99.37% of the worth of their shares.

**24.4 As per the records available and submissions made, the Petitioner Company availed loans from Allahabad Bank and Bank of India and it could not repay the same. Subsequently these loans were converted into shares and even the company collected share premium of Rs.15.00 per share from the Bank of India. These shareholders are really Financial Creditors for practical purpose.**

**24.5 The company has been incurring loss for last 18 years. There is no operation and no staff. The management has failed to operate and earn profit. At this stage, the Company passes Resolution to cancel the shares including the shares of the Financial Creditors almost 100% with an intention to mobilize fresh funds / investment from new Financial Creditors / Investors showing a Rosy Balance Sheet to the Public.**

**It clearly shows the intention of the Company behind passing the resolution, when it is not able to do anything for last 18 years.**

**25. The Balance Sheet shows that the Company is having Reserve/ Security Premium Reserve of Rs 16.78 crores but the Company intends not to touch the Reserve / Security Premium Reserve but to wipe out almost the entire value of shares, when the company knows very well that the entire value of shares and the reserve lying are not sufficient to come out the mounting / increasing loss of Rs.32.20 crores.**

**It clearly shows that the company intends to do window dressing the balance sheet showing the balance sheet of share value of 10.00 lacs (only 10,000 shares of Rs.100/-each) with Reserve amount of Rs.16.78 lacs so that new lenders and investors are attracted to lend and invest when the existing Lenders and Shareholders are losing almost entire 100% amount invested.**

**This decision cannot be considered as Commercial Decision to Cancel the Shares/Wipe out the value of the Shares First to reduce the accumulated loss retaining the Share Premium amount lying intact.**

**But it may be considered as malafide one. It is a complete misuse of system and an attempt to get further loan/investment without paying the existing FC/OC/Shareholders.**

26. As per the balance sheet and submissions, the company sold its Dhullie Tea Estate to Dhullie Tea Plantation Pvt. Ltd. Now Dhullie Tea Plantation holds 16.92% of shares of the Petitioner Company and the said company has filed a case in the City Civil Court, Kolkata against SASF with respect to the ownership of the shares of SASF.

27. The Hon'ble Supreme Court in ***Asian Resurfacing of Road Agency Pvt. Ltd. Vs. CBI*** dated 15.10.2020 held that –

*"35. ... .... In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced."*

28. Section 430 of the Companies Act, 2013 reads as under:

*"430. Civil court not to have jurisdiction.— No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal."*

29. Rule 11 of the NCLT Rules reads as under:

*"11. Inherent Powers. - Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as*

may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”

**30. This Company is considered to be a fit case for winding up so that further Lenders or Investors are not duped and attracted to the proposed Window Dressing Balance Sheet to sanction loan or invest. This is a company is of 73 years old and it may earn some amount by way of sale/transfer of Brand Value of Brook Bond Estates India Ltd./Assambrook Ltd on winding up or Resolution and distribute the proceeds among the Creditors and Shareholder.**

**31. Considering the points mentioned above and in the interest of Stakeholders, Lenders, Investors, Public, the Compliance of the guidelines of Companies Act & Corporate Management Practices, We hereby reject the prayer made by the Applicant to confirm the resolution passed.**

**32. However, the liberty is available with the Petitioner to pass a fresh resolution, if at all felt necessary, in compliances of the guidelines of the Companies Act giving clear 21 days’ notice to the shareholders by way of E-mail, Speed post, WhatsApp. The company must ensure that notice of the meeting of the shareholders reaches the shareholders especially the five entities holding 79.39 % shares, well in time and proof of delivery of the notice of the Meeting is to be enclosed along with the Petition, if at all filed before the NCLT.**

**33. The Petitioner is hereby directed to send the copy of this Order to all shareholders having shares of 5% and above as on 31.03.2020 including the SASF besides uploading the Order at the Company’s Website and file the proof of delivery of the Order to such shareholders with the Registry within 15 days from today.**

**Sd/-**

**(Prasanta Kumar Mohanty)  
Member (Technical)**

*(ravinad/DeKal 23.08.2021//*

**Sd/-**

**(H. V. Subba Rao)  
Member (Juicial)**