

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-II, CHENNAI**

CP/1409/2019 filed under Section 61(1) (b) of the Companies Act, 2013 r/w Rule 71 and Applicable provisions of the NCLT Rules, 2016.

CP/1408/2019 filed under Section 66 of the Companies Act, 2013 r/w NCLT (procedure for reduction of share capital of the Company) Rules, 2016.

MA/1366/2019 in CP/1408/2019 filed under section 66 of the Companies Act, 2013 r/w Rule 3(6) of (procedure for reduction of share capital of the Company) NCLT Rules, 2016.

MA/1367/2019 in CP/1408/2019 filed under section 66 (3) and (4) of the Companies Act, 2013 r/w Rule 6 of (procedure for reduction of share capital of the Company) NCLT Rules, 2016.

In the matter of consolidation of share capital and Reduction of Share Capital of **M/s. SIMPSON AND COMPANY LIMITED**

M/s. SIMPSON AND COMPANY LIMITED

[CIN: U65991TN1925PLC002345]

861/862 Anna Salai,
Chennai-600002.

---Applicant/Petitioner Company

CORAM

R. SUCHARITHA, MEMBER (JUDICIAL)
B. ANIL KUMAR, MEMEBR (TECHNICAL)

For Applicant(s) : *Shri. P.H Arvinth Pandian, Sr. Advocate*
Shri. A.R Ramanathan, Advocate
Counsel for the Objectors : *Shri. Karhik Seshadri, Advocate*
Shri. R. Venkatavardhan, Advocate
Shri. Chandramouli Prabhakar, Advocate
Shri. Kaushik Chatterjee, Advocate
Shri. D. Peruman Saranyan, Advocate

CP/1409/2019 and CP/1408/2019 MA/1366/2019 in CP/1408/2019 and MA/1367/2019 in CP/1408/2019
In the matter of M/s. Simpson and Company Limited

COMMON ORDER

Per: B. ANIL KUMAR, MEMEBR (TECHNICAL)

Order Pronounced on: 13.07.2021

CP/1409/2019 filed under provisions of Section 61 (1) (b) of the Companies Act, 2013 read with Rule 71 of the NCLT Rules, 2016 by M/s. Simpson & Company Limited (hereinafter referred to as "**Applicant/Petitioner Company**") to consolidate its shares of Rs. 10/- each comprised in Share Capital into shares of a larger amount than their existing amount, which was filed before this Tribunal on 27.11.2019 seeking to allow the following prayers:-

- a) Approving the consolidation of the entire authorised, issued, subscribed and paid up equity share of Rs.10/- each in the share capital of the Applicant Company by increasing the nominal value of such consolidating 250 equity shares of Rs. 10/- to Rs. 2500/- each;
- b) Such other and/or further Orders as are deemed necessary by this Hon'ble Tribunal in the facts and circumstances of the case

2. **CP/1408/2019** filed under section 66 of the Companies Act, 2013 read with NCLT (Procedure for reduction of share capital of Company) Rules, 2016 2016 by M/s. Simpson & Company Limited (hereinafter referred to as "**Applicant/Petitioner Company**") for confirming the reduction of share capital of the Applicant Company seeking the following prayers:



- a) That the special resolution for reduction of capital resolved in the Extra Ordinary General Meeting (EOEM) held on 07.11.2019 set out in para 21 of the Application be confirmed.
- b) That to this end, all the directions necessary and proper be made and given;
- c) That the minutes to be proposed and filed be approved
- d) That such further or Order/Orders be made in the premises as to the Tribunal shall deem fit and proper and thereby render justice.

3. The Company Application MA No. 1367 of 2019 has been filed in CP No 1408 of 2019 to permit the Applicant, under Section 66(3) and (4) of the Act, to file Form of Minute in the Main Application under Section 66 of Act, subsequent to the Record date to be fixed by the Board of Directors of the Applicant or within such time period to be fixed by this Tribunal.

4. The Company Application MA No. 1366 of 2019 has been filed in CP No 1408 of 2019 to dispense with the Notice to creditors of the Applicant, under Rule 3 (6) the National Company Law Tribunal (Procedure for reduction of share Capital) Rules, 2016. The said Company Application has been ordered at the First Hearing held on 17.12.2019 by this Tribunal vide an Order dated 27.12.2019 and hence notice to unsecured creditors have been dispensed with. The Petitioner Company has no secured creditors. In this regard the Petitioner Company has furnished the certificate from the Auditor of the Company that the liability in respect of secured creditors is Nil.



5. Brief averments of this Company Petitions; the Applicant Company namely, M/s. Simpson & Company Limited is an unlisted Public Limited Company, which was originally incorporated on 03.02.1925 under the Companies Act, 1913 and constitutes to be a company under the Companies Act, 1913 (hereinafter referred to as "Act") vide CIN: U65991TN1925PLC002345, having its registered office at 861/862 Anna Salai, Chennai-600002. The main objects of the Applicant Company are set out in Memorandum of Association which *inter-alia* the Applicant Company is to carry on the business as follows:

- i) To take over as a going concern the business Coach Builders and Motor Engineers carried on by Messrs, MacDougall and Green under the style or name of Simpson and Company as from the first day of December, 1924
- ii) To carry on in India or elsewhere the business of manufactures of the exporters and importers of dealers in, repairers, cleaners, stores and warehouses of automobiles, motor cars, motor cycles, aeroplanes, carriages and vehicles of all kinds of whether propelled by mechanical power or not, and all machinery, implements, utensils, appliances, apparatus, lubricants, cements, solutions, enamels and all things capable of being used therewith or in the manufacture, maintenance and working thereof respectively or in the construction of any track or surface adapted for the use thereof etc and various similar objects as set out therein.

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6. The details of the capital structure viz., the Authorised, issued, subscribed and paid up share capital of the Applicant Company as on 31.03.2019 are as follows:-



AUTHORISED SHARE CAPITAL	AMOUNT IN RS.
1,10,00,000 Equity Shares of Rs. 10/- each	11,00,00,000
1,00,000 redeemable Preference shares of Rs. 100/- each	1,00,00,000
TOTAL	12,00,00,000
ISSUED, SUBSCRIBED AND PAID UP CAPITAL	AMOUNT IN RS.
73,77,500 Equity Shares of Rs. 10/- each	7,37,50,000
TOTAL	7,37,50,000

7. The learned counsel for the Applicant has submitted that the shares of the Petitioner Company have been dematerialised as per the relevant rules and Demat Account has been opened through a Depository namely Central Depository Services Limited.

8. The learned counsel for the Applicant has submitted that clause 12(a) (b) of the Articles of Association of the Applicant Company provides for consolidation of shares and the same is extracted and reproduced hereunder:

Consolidation and division of shares

"12(A) the company shall have power to alter the conditions of its memorandum as follows, that it to say, it may

a.

b. Consolidation and divide all or any of its shares capital into shares of larger amount than its existing shares"

The above provision of the Articles is same as that of the provisions of section 61(1) (b) of the Companies Act, 2013.

Needless to state that Article 13 of the Articles of Association of the Applicant Company also provides for reduction of share capital

9. The learned counsel for the Applicant has submitted that the consolidation of share and consequential reduction of capital in respect of the fractions if any on consideration of shares as follows:-

a) The Board of Directors of the Applicant Company has at its meeting held on 25.09.2019, subject to the approval of the shareholders and this Tribunal, approved the proposal to consolidate its share capital into shares of a larger amount than its existing shares by increasing the nominal value of the equity shares from 10/- per share to Rs. 2500/- per share so that every 250 equity shares with nominal value of Rs. 10/- held by a member are consolidated into 1 (One) equity share with nominal valued of Rs. 2500/- each on the terms and conditions with effect from the record date after approval of the this Tribunal as follows:-

- i) In case of shares held by in physical form, the existing share certificate issued to the holders of the equity shares of company will be treated as cancelled from the Record Date to be determined for this purpose by the Board after approval of this Tribunal and fresh share certificates be issued in respect of the consolidated equity shares of the Company to such members in accordance with the provisions of the of the Companies Act, 2013 read with Companies (Share Capital and Debentures) Rules, 2014;
- ii) In case of shares held by in dematerialised from the respective beneficiary accounts of the members holding the shares in dematerialized from be credited with consolidated equity shares in lieu of their existing shares;
- iii) No member will be issued any certificate for resulting fractional entitlement of a share as a result of implementation of this resolution for consolidation of shares (both physical and demat mode) but such fractional shares entitlement shall

be reduced from the share capital by paying the shareholders a price pre fractional share to be determined by the Board in accordance with law.

10. The learned counsel for the Applicant has submitted that the Applicant Company engaged the Registered Valuer Mr. T.V Balasubramaniam, Partner of M/s. PKF Sridhar & Santhanam LLP., Chartered Accountants (Registered under the IBBI) and RBSA Capital Advisors LLP., a SEBI Registered Category 1 Merchant Banker for valuations of shares. The Registered valuers have arrived at the fair value of each share of face value of Rs.10 at 14,860/- per share. The said fair value and they have confirmed the fairness of the valuation arrived by the registered valuers and same was accepted by the Board of Directors in their meeting held on 25.09.2019.

11. The learned counsel for the applicant submitted that the Board of Directors of the Applicant Company at the same meeting held on 25.09.2019, subject to the approval of the shareholders and this Tribunal, resolved that any fractions arising from such consolidation (Both physical and demat mode) will be reduced under the provisions of Section 66 of the Companies Act, 2013 and Rules framed thereunder, from the capital of the Applicant Company and the consideration to be paid for the equity shares reduced has been determined at the rate of Rs.14,860/- per share (Rupees Fourteen thousand eight hundred and sixty only) of the pre-consolidated equity share of Rs 10 each which will be distributed to all the eligible

fraction holders of shares, who may end up holding less than 1 share in the Applicant Company further to the increase of nominal value from Rs.10/- to Rs.2500/-, within 30 days of the record date to be determined for this purpose by the Board after the approval of this Tribunal for the consolidation and confirmation of reduction arising out of such consolidation. The reduction amount on account of the fractional shares is also considered in excess of the wants of the company.

12. The learned counsel for the applicant submitted that neither Section 61 nor 66 of the Act or the relevant Rules mandates valuation by Registered Valuer as per Section 247 of the Companies Act. However, the Applicant Company in all fairness and also in the interest of the shareholders has obtained the valuation from such valuer to ascertain the value.

13. The rationale and benefits for consolidation and consequential reduction of capital in respect of fractions if any on consolidation of shares are stated hereunder.

- a) The share capital of the company as on 24.09.2019 is as under

SL	DESCRIPTION	DETAILS		
		NO. OF PERSONS	NO. OF SHARES	%
1	Amalgamations Pvt Ltd (Promotor)	1	7236034	98.08
2	Shareholders of	16	93196	1.26

	promoter and their relatives			
3	Insurance company	1	20000	0.27
4	Others	167	28270	0.39
	TOTAL	185	7377500	100.00

- b) In view of the large number of small shareholders for the closed held company, it has become very cumbersome and costly for the Company to service such large number of shareholders. Due to the large number of shareholders, the compliance and administrative activities of the Company have also increased manifold and every corporate action takes its own time to implement due to the procedural requirements which are otherwise mandated for companies with a much larger shareholder base.
- c) Consolidation of shares of the Company is expected to be beneficial for all parties involved. On the one hand, the small public shareholders of the Company would get an exit opportunity for shares which otherwise do not have a ready market; while the Company will benefit from significant savings in costs, reduction in administrative and procedural work and legal compliances, and general efficiency in corporate decision making.
- d) The proposed consolidation would provide an option for the small shareholders to exit at a fair consideration as otherwise

in view of non-availability of ready tradability, it will impair the value of such shares.

14. The learned counsel for the petitioners submitted that after Approval of the shareholders for the consolidation of shares and consequent reduction was obtained through a special resolution passed at the Extra ordinary General Meeting (in short "**EOGM**") of the Applicant Company held on 7th November 2019. At the meeting, the poll was ordered to be taken by the Chairman of the meeting pursuant to section 109(1) of the Company Act, 2013, wherein 63 shareholders holding 73,38,864 shares of face value of Rs 10/- each were present in person or proxy and out of which 12 shareholders holding 73,28,255 shares constituting 99.86% in value have approved and passed the said special resolutions for consolidation and Reduction. However, 47 shareholders holding 10,492 shares constituting 0.14% have voted against the said resolutions. Votes polled by 4 shareholders holding 117 shares were declared invalid. Hence it is submitted that Shareholders constituting 99.86 % being the overwhelming majority has approved the said resolutions.

15. It is further submitted that the consolidation results in changes in voting percentage of shareholders, Applicant Company have approached this Tribunal for approval. The Applicant, having stated the rationale for consolidation, *supra* to submit that due to consolidation there may be a very meagre change in voting

percentage of shareholders and such meagre change is 0.15%, which is not even a whole integer number of 1. The Applicant Company has taken out a list of shareholders holding equity shares of face value of Rs 10/- each as of 24.09.2019, and has applied the consolidated face value of Rs 2500/- on the shares of Rs 10/- each held by them and has made out a comparison chart containing (i) present shareholding of shareholders, (ii) consolidated shareholding and (iii) percentage change in their shareholding. The said comparison chart with shareholding position as of 24.9.2019 is filed as Annexure 11 to CP No 1409 of 2019 and the same fortifies that changes in voting percentage is meagre and would not even distant remotely tilt any decision of shareholders, apart from bringing down the number of shareholders.

16. The learned counsel for the Applicant further submitted that such changes in voting percentage amounting to 0.15% which is less than 1% is normally discarded or considered as negligible in mathematical parlance. However, the Applicant Company bonafide, approaching this Tribunal by filing this Application under Section 61 (1) b of the Act for approval in the interest of Company and all concerned. Simultaneously, it is also submitted that some shareholders holding less than 250 shares would not be entitled to the consolidated shares of face value of Rs 2500/- each and the same is by virtue of their shareholding.

17. The learned counsel for the Applicant submits that the provisions of Section 66 (1) of Act (and also earlier provisions of Section 100 of erstwhile 1956 Act) states that subject to confirmation of this Tribunal, a company "may reduce the share capital in any manner". The emphasize is "in any manner". However, said provision, after any manner also states that such reduction "and in particular may" include the methods provided under Section 66 (1) (a) or (b). In the case on hand, the reduction of capital is only consequent to consolidation of shares, in respect of any fractions arising thereof and it does not involve any extinction or reduction of any liability in respect of any unpaid share capital or cancellation of a paid-up share capital which is lost or is unrepresented by available assets. It is further submitted that upon consolidation, the provisions of Section 61 of Act do not contemplate the manner in which the fractional shares are to be treated or paid off the capital. Hence it may not strictly fall under any of the methods specified under Section 66(1) (a) or (b) (i) of Act. In view of payment to shareholders holding fractional share capital which is in fraction and which is also in excess of the wants of the Applicant (on account of consolidation), such reduction is also considered in excess of the wants of the Company and consequentially would be falling under Section 66(1) (b) (ii) of Company Act, 2013.



18. Hence, this Application is filed under Section 66 for confirmation and the reduction of capital if any consequent to consolidation of shares in respect of any fractions arising thereof, would result in the payment at a consideration of Rs.14,860/- per share (Rupees Fourteen thousand eight hundred and sixty only) of the pre-consolidated equity share of Rs 10/- each to all the eligible fraction holders.

19. In compliance with the procedural requirements the Regional Director has filed a common Report dated 16.09.2020 in both the Company Petitions. In the said Report it is submitted that the RD has received certain complaints from certain shareholders of the Applicant Company and the same were sent to Applicant Company for their comments. Applicant Company has sent detailed replies to those alleged complaints. The RD in his Report has recorded the said three complaints and the reply of the Applicant Company and has further offered his comments to the said complaints.

20. The RD further submitted that the as per records of ROC, Chennai, the Petitioner Company is regular in filling the statutory returns and there is no prosecution/investigation/inspection are pending against the Petitioner Company. The RD further submitted that the scheme of consolidation of shares and consequently reduction of share capital has been examined and it has been decided

not make any objections except for the observations made by them under para 6 to their affidavit.

21. It is further submitted that very few shareholders have filed their written objections through their Counsel at the hearings before this Tribunal and their objections were only with reference to valuation of share at Rs 14,860/- per share. Mr M.A.A Annamalai and Mr Balu Sridhar, shareholders have filed written objections and they also claim to represent few other shareholders. The crux of the said objections seem to be the value offered is low and they demand higher valuation per share for fractional shares arising out of consolidation. The learned counsel for the Petitioner Company has filed detailed replies to the objections of Mr. M.A.A Annamalai and Mr. Balu Sridhar on 05.11.2020 and 21.12.2020 respectively before this Tribunal. In the said replies Petitioner has also extracted the replies furnished by Registered Valuer, who valued the shares for certain issues raised in the objections of Mr. M.A.A Annamalai. In this regard, it is submitted that replies were furnished by Registered Valuer to the said Objections of Mr. M.A.A Annamalai as stated in Reply dated 05.11.2020 to the said objections.

22. The other objections raised by Mr. Balu Sridhar is that valuation report has not been provided by the Petitioner Company and in this regard it is submitted that the valuation report and fairness certificate are not documents placed for consideration at the

shareholders meeting and as such there is no requirement for attaching the same to the notice. Section 102(3) of the Companies Act 2013 only requires that where any item of business refers to any document, which is to be considered at the meeting, the Time & Place where such document can be inspected must be specified in the explanatory statement. In the instant case as the valuation report is not a document placed for consideration at the meeting the same was not attached to the notice of the EGM. Further the Regional Director in his Report dated 16.9.2020 filed before this Tribunal has annexed the valuation report and the same is available to the said objecting shareholder as a copy of it can be obtained from the Registry as per procedure. Further this Tribunal permitted inspection of the Report at the office of the Petitioner vide Order dated 18.9.2020 to inspect the valuation report & fairness certificate and 2 shareholders viz., Mr. M.A.A Annamalai and another inspected the same on 30.9.2020 and had taken extensive notes and reproduced the entire Valuation Report of the Registered Valuer as Annexure R-4 of the Objection Petition of Mr. M.A.A Annamalai.

23. With respect to the observations of the Objector Mr. M.A.A Annamalai on the valuation and also with respect to the observations of the Practicing Company Secretary (appointed by the Objector) in their report dated 15.10.2020, the Registered Valuer appointed by Petitioner Company has para wise clarification forming part of the

written submissions filed by the Applicant Company on 05.04.2021 vide SR No. 1815.

24. The learned counsel for the petitioner Company has submitted that the Company has bonafidely acted upon and accepted the expert's opinion with reverence to said valuation and hence the said valuation is proper and no one can have any grievance. Further shareholders holding 73,28,255 shares constituting 99.86% in value have approved and passed the said special resolutions for consolidation and Reduction. Higher Valuation is not a matter of right for the said few objecting shareholders. In any event the Board and 99.86% majority of shareholders have approved the consolidation and consequential reduction. The Valuation exercise itself has arisen to provide a window to encash the fractional entitlements arising out of consolidation and the said window has been provided properly and that too with a high valuation of Rs 14,860/- per one Rs. 10/- share when compared to earlier buy-back offer of Rs 10,500/- made in 2018. The book value of the company as on 31.3.2019 was Rs 2212/- per share of face value Rs.10/- each. Reflecting the book value and rounding off the same to the nearest multiple of Rs 500/- the face value on consolidation was fixed at Rs 2500/- per share, which is equivalent to 250 shares of Rs 10/- each.

25. It is further submitted that the interests of the creditors are not affected by virtue of the consolidation and consequential

reduction of share capital. The creditors of the Company would in no way be prejudiced by the reduction of capital, in respect of fractions if any arising out of consolidation of shares. The company has no secured creditors. In so far as the unsecured creditors are concerned the same aggregates to Rs151.14 crore (forming part of 10.59% of the Total Equity of the company of Rs 1631.91 crore) and occurs in day to day business of the Applicant Company. Furthermore, the Applicant Company as stated *supra* is a profit-making company with sound financial position and assets. The Petitioner Company has positive net worth of Rs 1631 .91 cores. The Income for the FY 2018-2019 is 1652.03 crores and the Corresponding Profit after tax is 176.29 crores. Hence the said liabilities of unsecured creditors will be paid as and when the same is due and payable and, in any event, the said temporary debts are protected/secured, considering the financial position of the Company. In any event, though wide advertisements of notice of petitions were issued in leading newspapers "**Indian Express**" and "**Dinamani**", none of the creditors of Applicant have filed any objections for either the consolidation or the consequential reduction before this Tribunal

26. It was further submitted that, no one will be prejudiced if the proposed reduction of capital if any in respect of fractions if any arising out of consolidation of shares is approved and the approval of the said reduction of capital if any in respect of fractions if any

arising out of consolidation of shares will benefit the company and is in the interests of the shareholders of the Company and the general public. It would, therefore, be just and equitable that consolidation of shares and reduction of capital if any in respect of fractions if any arising out of consolidation of shares be approved as the same is bound to benefit both the company and its shareholders.

27. The Applicant submits that there is no direct reduction of equity share capital by the Applicant. However, reduction is arising only on account of consolidation as stated *supra* in detail. As stated *supra* the transactions in the shares of the Company are in dematerialised form. Hence there is a possibility of trading in shares till the Approval for consolidation is granted by this Hon'ble Tribunal and also till the record date is fixed by the Board of Directors, as per the said Resolution passed by the shareholders and approval to be accorded by this Tribunal. Only on such record date, the Applicant can arrive at exact number of shares that are in fraction and that are to be reduced by making appropriate payment, as per the orders of this Tribunal.

28. In view of the above, the Applicant Company in MA/1367/2019 in CP/1409/2019 prayed for permission of this Tribunal file the Form of minutes, as envisaged under Rule 6 of NCLT (Procedure for reduction of share capital of Company) Rules 2016, subsequent to the fixation of the Record Date. It is relevant to submit that Record

Date can be fixed pursuant to the approval of the Consolidation Application filed separately under Section 61 (1)(b) of the Act by the Applicant.

29. In respect to the Scheme of Consolidation and reduction of share capital, the learned counsel for the petitioner relied on the Hon'ble Supreme Court in the matter of **Miheer H. Mafatlal Vs. Mafatlal industries Ltd. [1996 (87) CC 792]** has held as follows;

"It has also to be kept in view that which exchange ratio is better is in the realm of commercial decision of well-informed equity shareholders. It is not the Court to sit in appeal over this value judgment of equity shareholders who are supposed to be men of the world and reasonable persons who know their own benefit and interest underlying any proposed scheme. With open eyes they have okayed this ratio and the entire Scheme. 40% of the majority shareholders were financial institutions who were supposed to be well versed on the aspect of valuation of shares. They had no objection to the exchange of two shares of transferor-company for five shares of the transferor company." (page no. 836 last Para)

"In this connection we may also refer to a decision of Moughm, J. in Re Hoare & Co. (No.2) case (1933) ALL ER 105 wherein it was laid down that where statutory majority had accepted the offer the onus must rest on the applicants to satisfy the court that the price offered is unfair." (Page no.837 last para)

These observations in our view represent the correct legal position on this aspect. We may also keep in view that in the present case not only expert like M/s C.C., Chokshi & Co. had suggested the ratio but another independent body ICICI Security & Finance Company Limited reached the same conclusion which was conveyed by its letter dated 10th November 1993 to the company approving of the entire Scheme along with the suggested ratio. A mere look at the report of the Chartered Accountants M/s C.C. Chokshi & Co. shows that various factors underlying the Scheme of Compromise and Arrangement were taken into consideration while suggesting the exchange ratio by the said reputed firm of chartered accountants." (Page no. 838 para 5)

30. Further, reliance was also placed upon in the matter of **Sandvik Asia Ltd. Vs. Bharat Kumar Padamsi and others [2009 (151) CC 251(Bom)]**, by Hon'ble Division Bench of Bombay High Court, wherein it was held:-

"In our opinion, the above quoted observation of the House of Lords from its judgment in the case of Poole(supra), referred to above, squarely apply to the present case. In our opinion, once it is established that non-promoter shareholders are being paid fair value of their shares, at no point of time it is even suggested by them that the amount that is being paid is any way less and that even overwhelming majority of the non-promoters shareholders having voted in favour of the resolution shows that the court will not be justified in withholding its sanction to the resolution. As the Supreme Court has recognised that the judgment of the House of Lords in the case of British & American Trustee and Finance Corporation Ltd. is a leading judgment on the subject, we are justified in considering ourselves bound by the law laid down in that judgment. As we find that there is similarity in the facts in which the observations were made in the judgment in the case of British & American Trustee and Finance Corporation, we will be well advised to follow the law laid down in that case."(Page no. 262 (Para no.16)

31. Further, In **AtlasCopco (India) Ltd. And Others [2020 (221) CC 72]** the Hon'ble Mumbai Bench of this Hon'ble Tribunal held;

"In the present case, we have found no patent unfairness in the valuation report obtained by the petitioner-company. The Proposed capital reduction has in fact also been approved by a majority of the non – promoter public shareholders. Therefore, this contention is also not accepted."(Page 81 Para 17)

32. Also in **Chembra Peak Estates Ltd. Vs. Registrar Of Companies, Karnataka [2020 (218) CC 10 (NCLAT)]**, the Hon'ble Appellate Tribunal held that;

"We are satisfied with the submission made by the learned Counsel for the Appellant, the records submitted and the documents filed in its support. We are of the view that the apprehension as expressed by minority shareholders with regard to consolidation of shares is



concerned, the Company has well taken care of their concern. The Company having complied with the statutory requirement, as contemplated in the Act, we are of the view that the appeal deserves to be allowed.” **(Page No. 17 Para No. 15)**

“The reason taken for dismissal of Company Petition by the NCLT does not have any substance. As on the date of EGM, it is evident that the votes cast in favour of the resolution for consolidation of shares is more than 95%. It is noteworthy to mention that during pendency of the Appeal, most of the shareholders, who objected for consolidation of shares, have sold their shares to the Director of the Appellant-Company. Considering Company Appeal (AT) No. 36 of 2019 Page 14 of 14 and taking into consideration the transfer of shares, more than 95% of shareholding, appears to be in favour of consolidation of shares. From the records, only two shareholders holding 172 and 335 shares respectively remained as shareholders of the Company and unequivocally their percentage is very minimal and their rights are well protected.” **(Page No. 17 Para No. 16)**

33. This Tribunal examined the main Company Petitions viz., CP/1408/2019 and CP/1409/2019 and also MA/1366/2019 in CP/1408/2019 and MA/1367/2019 in CP/1408/2019 and objections filed by the objectors viz., Common objections filed under sections 61 and 66 of the Companies Act, 2013, adoption memo filed on behalf the objectors of 23 and written submissions, Additional written submissions and compilation of Judgments in respect of CP/1408/2019 and CP/1409/2019 and in respect to MA/1366/2019 in CP/1408/2019 and MA/1367/2019 in CP/1408/2019 filed written submissions respective of 9 objectors of the petitioner Company on 07.04.2021 vide SR NO. 1822 and the report submitted by the Regional Director dated 16.09.2020. This Tribunal has patiently heard this petitioner Companies and the objectors during the successive stages of hearing posted on several dates.

34. On a careful analysis of the submissions of the Petitioner Companies and points of objections put forward by the objectors, clarification given by Applicant, we find that the Applicant Company has sought for the prayers para 1 and para 2 on page 2 and 3 *supra*.

35. Heard the submissions made by the Learned Counsel / Authorized Representative for both the parties and perused the documents submitted by the Applicant and the written submissions of the Objectors and after the oral submissions made by both parties, the following are our findings:

- i) Pursuant to section 61(1)(b) of the Companies Act, 2013 read with Rule 71 of the NCLT, Rules 2016 and Article 124 (a) of its Articles of Association, the Applicant Company is empowered to consolidate its shares of smaller denomination into shares of larger denomination. In exercise of such powers, the Applicant Company after having complied with the due process of law approached this Tribunal for confirmation of the Resolution passed and consequential orders in relation thereto.
- ii) It appears from Para 20 of the written submission filed by the Applicant Company that 47 shareholders holding 10,492 shares consisting 0.14% had voted against the Special Resolution for consolidation and reduction. The majority of 99.86% shareholders of the Applicant Company approved the resolution.
- iii) Since the consolidation of shares of the Applicant Company in the manner hereinabove described results in fraction of

holding of certain number of shareholders, majority of whom hold less than 250 shares of Rs.10/- each approached this Tribunal as objectors to the above course of action.

- iv) The learned counsel Mr. H. Karthik Seshadri appeared for 20 objectors. The list of the Objectors and shares held by the Objectors are given below:

S. N O.	NAME OF THE OBJECTORS	FOLIO No/DEMAT ACCOUNT No.	NO. OF SHARES HELD
1	M.A.A. Annamalai & Ulagamman	1301740000003840	394
2	A Meyyappan and A. Ulagammai	1301740000001100	84
3	A. Ulagammai and M.A.A. Annamalai	1301740000003830	1
4	M. Nachammai & A. Meyyappan	130174000000117320	1
5	M.A.A Annamalai (HUF)	130174000000122590	1
6	M. Krishna (Minor)	130174000000165400	1
7	A. Meyyappan HUF	130174000000179540	1
8	ArunLakashman (Minor)	130174000000180620	1
9	R. Rajan		3665
10	Karthik Seshadri H	130174000000189310	140
11	NishankSakariya	F.No. 543	400
12	Vijayalashmi Muthu & Muthu Viswanathan		166
13	Dilip Kumar Jain		8
14	JayantilalLaxmichand Jain	DRN 09425815	83
15	HullasLaxmichand Jain	DRN 09167402	50
16	R M Chittal		83
17	Rarayanan R M		41
18	Nachiappan R.M		41
19	A Ananthapadmanaban		50
20	V Shankar Srmirasan	Folio No.526	140
	TOTAL NO. OF SHARES HELD BY OBJECTORS		5250

- v) In respect to above the Common objections were filed by 20 shareholders holding 5250 shares in total as seen from the list of objectors available from Page 22 vide SR.No. 2947 dated 15.10.2020. Total shareholding of above objectors is **0.07116%**.
- vi) The Learned Counsel Mr. R. Venkatavardan appeared for another group of 9 minority shareholders namely:-

S. No.	NAME OF THE MINORITY SHAREHOLDER	NO. OF SHARES HELD BY SHAREHOLDERS
1	Balu Sridhar	100
2	JanakMathurada	100
3	MadhusudhanMadhavdas	33
4	Chirayush Pravin Vakil	100
5	Dilip Kumar Surarana	133
6	Sunanda M Wadhwani	100
7	NiharBhupendra Shah	100
8	SarjuBhupendra Shah	824
9	JigishaSarju shah	83
	TOTAL NO. OF SHARES HELD BY OBJECTORS	1573

- vii) In respect to above the Common objections were filed by 9 minority shareholders holding 1573 shares in total as seen from the list of objectors. Total minority shareholding of above objectors is **0.02133%**.
- viii) One of the Counsel Mr. Koushik Chatterjee appearing for another objector namely, Mr. Mahendra Girdharilal Wadhwani submitted that the Valuation is not in accordance with Provisions of Section 247 of the Companies Act, 2013 and the relevant Registered Valuer Rules as the Valuer in his report has stated the valuation analysis has been carried out without a detailed "Due diligence" based on full, fair and complete disclosure by Simpson on all matters that affect the Valuation exercise. In this regard the learned counsel for the

Petitioner submits that for mostly provisions of Section 247 would be made applicable, only if the Valuation is required under the provisions of the Companies Act, 2013. It is an admitted fact that Valuation has arisen only in respect of fractional entitlements that may be held by shareholders on consolidation, which are about 11000 shares as of September 2019. The Valuation has neither been stipulated under Section 61 nor under 66 of the Act. Hence the provisions of Section 247 would not apply to the facts of the case. The Petitioner, in order to address the fractional shares that may arise, has carried out the valuation in the bonafide interests.

- ix) It has been submitted by the Applicant that the Valuer should exercise due diligence while carrying out valuation, which is very vivid on plain reading of the whole valuation report. The statement of valuation analysis has been carried out without a detailed "Due diligence" made by valuer in Report cannot be equated with the exercise of due diligence (proper care) as stated under Section 247 of the Company Act, 2013, the valuer has exercised proper and all the care while arriving at the Value and the same has been tested by SEBI approved valuer in their fairness report. Hence such objections are irrelevant in the present circumstances of the case and deserves to be discarded by this Tribunal.

COMMON OBJECTORS:

- (a) The contentions of the common objectors center around the Corporate action taken by the Company in order to consolidate each bundle of the 250 Equity Shares of Rs.10 into one Equity Share of Rs.2500 each alleging that the management of the Company wielding brute majority has forcefully expropriated the

shares of the minority at a value fixed by them, which is unfair, oppressive and unreasonable.

(b) From the Typed Set of common objectors, the salient points of objectors are culled out and reproduced below:-

- i) They alleged that "majority of the Public Shareholders is **0.09249%** present and voted in the meeting have actually voted against the resolution and Promoter shareholders and their relatives have voted "for" the resolution. In fact, since the entire exercise was being done for the benefit of the Promoters and the Promoter's relatives as is evident from the Explanatory statement to the notice, they ought not to have participated in the voting at all since they were interested. However, they did. Since the number of shares held by the Public Shareholders is negligible, the resolution could not be defeated. It clearly depicts the intention of the Minority Shareholders that they were against this proposed consolidation.
- ii) They have submitted that the decision to consolidate the 250 shares of Rs. 10/- into one Rs.2500 per share is with the sole object of simply expropriating the shares of the smaller shareholders. Such a decision has no rational or basis. It is completely arbitrary and oppressive to the minority shareholders. The decision appears to be with the sole object of getting rid of the smaller shareholders from the register of members by force. This decision per se appears to be motivated. No explanation is provided as to why and for reason the board decided to all of a sudden to consolidate shares into 250 shares as 1 share of face value of Rs.2500/-. No explanation is provided how this will be beneficial to the company or the shareholders.

The object of this exercise is evidently to only create fractional shareholding for a large number of minority shareholders.

- iii) Secondly, as a direct consequence of such consolidation, the fractional shareholders are required to be paid off. The value arrived at by the Company is arbitrary and abysmally low. The value fixed for one share at Rs.14,860/- is arbitrary and without basis. The Objectors had shown that simply looking at handful of subsidiaries of the Company the value ought to be in the range of Rs.39,391/-. The fair value cannot be less than Rs.50,000/- per share. Yet the small minority shareholders were being offered a miniscule amount of Rs.14,860/- per share which is less than 1/3rd the fair price.
- iv) They have submitted that the valuation given by the Company at INR 14860/- is grossly undervalued. One of the Subsidiary Companies of Simpson & Co where the company holds 76% stake is TAFE with an EPS of 505/- for year ended 31st March 2019. A comparable peer for TAFE in the listed market segment is Escorts which is currently trading at a PE multiple of 36 times. A peer valuation analysis translates to a value of INR 13,816/- per share of Simpson & Co for just one company i.e., TAFE. Considering this valuation alone, it is very clear that the valuation arrived at by the company is grossly undervalued as Simpson & Co has several subsidiaries, associates and joint ventures apart from its core operating business. Furthermore, it is noticed that TAFE holds 88,86,831 shares in AGCO Corporation which is a NASDAQ listed entity which is currently trading at US\$ 80 per share. The approximate value of such investment in INR is Rs.5,300 crore for TAFE. There are several such hidden values in the

various subsidiary companies that have not been factored into.

- v) Analyzing the Valuation Certificate, it is evident that the valuation exercise undertaken by the Registered Valuer suggests that several illiquidity discounts have been applied. Any aggressive assumptions would result in a substantial reduction in the final value arrived at for the purpose of consolidation. The Objectors had visited the office of the Petitioner and taken notes of the valuation certificate and shown it to a registered valuer along with publicly available financial statements.
- vi) The Objectors have mentioned that Discounted Cash Flow method which is one of the more robust valuation approaches has been discarded completely.
- vii) Assets of the Company which are used for business have been taken at book value and not fair value. An example is the fact that the Company has its manufacturing facility in Mount Road, Chennai spread across at least 10 Acres on a conservative estimate. This asset alone will give a fair value of Rs.700Crore for the company. The subsidiary companies also have enormous assets which have not been properly valued. Apart from this, the company has a huge manufacturing facility at Sembiam and many such business assets across subsidiaries which have been valued at book value or historical purchase costs which are irrelevant now.
- viii) Apart from the above, highlights of the written submissions filed on behalf of the common objectors are elucidated hereunder:-
 - What is foremost to be kept in mind in this case is: The shares of the Petitioner Company is not listed in any stock exchange. The market value of the

shares is therefore not immediately ascertainable.

- Assets of the company which are used for business have been taken at book value and not fair value.
- Valuation report has completely given a go by to The Companies (Registered Valuer & Valuation) Rules, 2017.
- Lack of Bonafides on the part of the Petitioner.
- Failure to exercise Power for Proper purpose.
- Action amounts to expropriation of property belonging to shareholders.

(c) This Tribunal examined all the succinct points, raised by all the objectors in common and specific. The poignant point is pertaining to the value arrived at Rs.14,860/- per Rs.10 Equity Share in the Applicant Company by the Registered Valuers appointed for the purpose and the fairness of which had been confirmed by the SEBI Registered Category-I Merchant Banker. According to the objectors, the value arrived at and proffered by the Applicant Company is only Rs.14,860/- which is abysmally low. One of the objectors has categorically stated that the value per share could be in the range of Rs.50,000/- to Rs.5,00,000/-.

(d) This Tribunal observes that the value of any investment particularly Equity Share is based on its ability to produce a return. Admittedly, investors of equity shares listed in the Stock Market have two kinds of reasonable expectations viz., (i) to get regular

dividend and (ii) appreciation in the market price which will maximize their wealth; capital appreciation. Price Earnings Ratio signifies the relationship between Price and Earnings (Market Price divided by Earnings Per Share); evidently in the case of listed shares. It is not so in the case of equity shares of unlisted Public Limited Companies for which there is no regular or assured market in which case the determinants of value per share cannot be attributed to P/E Ratio.

- (e) There can be many determinants or a few determinants depending upon the perception of an individual investor. It can be perceived value; the value which an investor in public at large is willing to pay for the shares or esteem value; which is embedded on the intrinsic attractiveness of an intending investor in shares of certain Companies in which case the value may be ranging from Rs.50,000/- to Rs.5,00,000/- or even beyond per equity share of the Applicant Company as claimed by one of the objectors. If the value is sought to be ascertained in this manner, various underlying assets, derivative assets, hidden assets or even assets which are in the abstract form should be valued. In the instant case, the equity shares of this Applicant Company are unlisted and accordingly it does not carry a demand from the public investors to invest in the Rs.10/- equity shares of this company by offering a higher value or esteem value which could be the one projected by the objectors, falling in the range of Rs.50,000/- to Rs.5,00,000/- per equity share of Rs.10/- each in the Applicant Company.

- (f) The next question before us is, whether the Applicant Company has arrived at the value per equity share in a fair and transparent manner. We find that valuation of the shares has been done by Registered Valuers and the appropriateness of the value has been confirmed by a SEBI approved Category-I Merchant Banker.
- (g) The objectors have alleged that Discounted Cash Flow (DCF) Method of valuation which is one of the robust methods of valuation has been discarded completely. It is a well accepted principle that DCF is a direct valuation technique which values a Company by projecting its future cash flows and then using the Net Present Value Method to value those cash flows. The task of projecting future cash flows of any Corporate Entity is based on a series of assumptions about how the business will perform in future and then forecasting how this business performance translates into the cash flow generated by the business. Even this is also challengeable and according to the view of this Tribunal, by anyone who wants to challenge this. Further, by applying Discounted Cash Flow Method, the discounting factor is based upon the weighted average cost of the capital which in the case of the Applicant Company may be a theoretical weighted average cost owing to minimal borrowed fund having regard to the size of owned fund; there can be only a notional weighted average cost of capital the ascertainment of which is also disputable by the objector. Therefore this Tribunal is unable to discern

the contention of the objectors pertaining to disregarding of the Discounted Cash Flow Method.

- (h) This Tribunal is unable to observe any inappropriateness in the value arrived at Rs.14,860/- per equity share of Rs.10/- each which is 1486 times of the nominal value of Rs.10/- per equity share gained over a period of time. The equity shares of the Applicant Company being unlisted, do not carry liquidity as there can be no takers to acquire these shares for a price of Rs.14,860/- or even below since higher the price demanded the greater will be the illiquidity discounting factor.
- (i) Therefore, the objectors who are the dissenting shareholders are certainly free to enjoy their constitutional rights of holding these shares after consolidating by institutionalizing a Trust or sell these shares for a better price than what is proffered by the Applicant Company, if there are buyers.
- (j) This Tribunal is also persuaded by the Judgment of rendered by the Hon'ble High Court of Karnataka in the matter of **Vijay Kumar D. Shah vs Hewlett Packard Global Soft Ltd**, wherein it has been stated that;

"In this matter, the company decided to consolidate and reorganize the company's share capital by way of a share consolidation by increasing the nominal value of the shares of the company from Rs. 10 to Rs. 2,50,000 so that 25,000 equity shares with a nominal value of

Rs. 10 each were consolidated into one equity share with a nominal value of Rs. 2,50,000. The fractional shareholders arising out of the consolidation were to be paid Rs. 1,630 per share. The petitioner was accordingly offered Rs. 3,97,720 for the 244 shares (fractional shares) held by him. In spite of the same the petitioner had alleged oppression and mismanagement under sections 397 and 398 of the Companies Act 1956.

The arrangement made was that in the event of the consolidation of the share capital, any fractional entitlements, which arise from such consolidation should be aggregated and transferred to a trustee and the resultant shares sold to the person determined by the board of the company. Resultantly, the amount owed to the petitioner was held by the trustees appointed by the company after selling the fractional entitlements belonging to the petitioner."

This arrangement of appointment of trustee and disposing of the fractional entitlements was made pursuant to article 62A of the AOA of the company which is reproduced hereunder for ready reference:

"Whenever as a result of any bonus issue of shares or as a result of consolidation of shares, any members would become entitled to fractions of a share, such fractions shall be consolidated

(to the extent possible) and the shares resulting therefrom shall be held by the directors of the company (or by any person nominated by the board in this behalf), in trust for the members so entitled to the said fractions in proportion to their respective entitlements. The directors (or such person or persons, as the case may be) may, on behalf of those members, sell the shares resulting from the consolidation of the fractions at such price and on such terms as the Board may deem fit to any person as the Board may deem fit and distribute the net proceeds of the sale in due proportion among those members, and the directors may authorise such or some person to execute the instrument of transfer of the shares to, or in accordance with the directions of, the purchaser. The transferee shall not be bound to see the application of the purchase money nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale."

The verdict by the high court upheld this arrangement and dismissed the challenge of the petitioner who is a minority shareholder.

36. We order that in order to safeguard the interest of those who are in the dissenting minority category, who would otherwise not be willing to accept the price of Rs. 14,680/- per share offered by the petitioner company in consideration of cancellation of their shares and reduction, the petitioner company shall facilitate constituting a



trust in which the fractional shares shall be vested for benefit of the dissenting shareholders.

37. We further that in order the safeguard of interest of the dissenting shareholders, who do not offer the shares to the company for cancellation of the shares held by them by accepting price of Rs. 14,680/- per share, the petitioner company shall facilitate constituting Trust, in which fractional shares of the dissenting shareholders shall be vested for their benefit arising thus shares through an appropriate deed, delineating and rights and entitlement of the beneficiaries and other matters incidental or ancillary thereto. In this regard provisions has contained in section 89 of the Companies Act, 2013 and rules made there under, in so far as it pertains to declaration in respect to beneficial interest.

38. Thus, in view of the dispositive reasoning as discussed in the preceding paragraphs, this Tribunal comes to an irresistible conclusion that the consolidation of shares as prayed for by the Petition in CP/1409/2019 is free from any legal infirmities and falls within the contours of Section 61(1)(b) of Companies, 2013 and in such circumstances, the relief as prayed for in CP/1409/2019 stands **allowed.**

39. In relation to CP/1408/2019, wherein reduction of share capital is being prayed by the Applicant Company, after considering the objections as raised by the shareholders, this Tribunal is also of the

considered view that the reduction in the paid up share capital can be allowed to the extent of the equity shares held by the objecting minority shareholders as are offered to the Applicant Company for cancellation and consequential reduction by accepting the price offered by the Applicant Company.

40. The special resolution of the company duly passed in accordance with section 66(1) of the Companies Act, 2013 at EGM held on 07th November, 2019 which is same in para 21 of the application is modified by the Tribunal as follows:-

RESOLVED FURTHER THAT the consent of shareholders is hereby accorded under the provisions of the section 66 and other applicable provisions if any, of the Company Act, 2013 read with NCLT (procedure for reduction of share capital of company) Rules, 2016 (including any statutory modification or re-enactment thereof for the time being in force) and subject to the confirmation and conditions prescribed by the Hon'ble Tribunal, any government or other authority for reduction of capital of the company, consequent to such consolidation of shares in respect of any fractions arising from such consolidation (both physical and demat mode) and the consideration to be paid to the shareholders entitled for such fractional equity shares so reduced has been determined at the rate of Rs. 14,680 per share each fractional share of Rs. 10/- each as existed prior to consolidation and will be distributed to all the eligible fraction holders who volunteers to offer their shares to the



company for cancellation within 30 days of the record date to be determined for this purpose by the Board after approval of the Tribunal. Pursuant to the confirmation and payment by the company, the shares of the company held in physical and demat mode by such shareholders entitled to fractional shares, arising out of consolidation, shall be deemed to have been automatically surrendered and thereafter cancelled by the company and be of no effect.

41. In view of the same, this Tribunal is of the view that it is just and proper to confirm the consolidation of share capital of the Applicant Company. Thereafter, reduction of share capital of the Applicant as resolved by the members of the Company by passing a special resolution and by way of the consents in the form of affidavit. This Tribunal also approves the special resolution set out in Paragraph 21 of the Application and as extracted in paragraph 40 *supra*. Respect to modification made by this Tribunal.

42. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the applicant.



43. While approving the Reduction of share capital as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law. Further all compliances as are required to be done by the Applicant Company upon this order confirming reduction of share capital and security premium reserve shall be duly complied with in relation SEBI, FEMA and Income Tax laws as may be applicable.

44. In relation MA/1367/2019 in CP/1408/2019, the Applicant Company has sought to permit the Applicant, under Section 66(3) and (4) of the Act, to file Form of Minutes in the Main Application under Section 66 of Act, subsequent to the Record date to be fixed by the Board of Directors of the Applicant or within such time period to be fixed by this Tribunal. In view of the reasons stated in the preceding paragraphs that the transactions in the shares of the Company are in dematerialised form there is a possibility of trading in shares till the Approval for consolidation is granted by this Tribunal and also till the record date is fixed by the Board of Directors, as per the said Resolution passed by the shareholders and approval to be accorded by this Tribunal, only on such record date, the Applicant can arrive at exact number of shares that are in fraction and that are to

be reduced by making appropriate payment, as per the orders of this Tribunal. Thus, in view of the same MA/1367/2019 stands **allowed**. In respect to MA/1366/2019, this Tribunal vide an Order dated 27.12.2019, notice to the creditors have been *dispensed with*. Hence, this application viz. MA/1366/2019 stands **closed**.

45. As mentioned in para 39 *supra*, this CP/1409/2019 stands **allowed**

46. Accordingly, this CP/1408/2019 stands **Approved**

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

TJS