

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP NO. 252 OF 2018

In the matter of Section 66 read with Section 52  
of the Companies Act, 2013 and the Rules  
framed thereunder

AND

In the matter of Reduction of Preference Share  
Capital of Ecolab Food Safety and Hygiene  
Solutions Private Limited

Ecolab Food Safety and Hygiene Solutions Private Limited . Petitioner

**Order delivered on 3<sup>rd</sup> September, 2018**

Coram:

Hon'ble **Bhaskara Pantula Mohan, Member (Judicial)**  
Hon'ble **V. Nallasenapathy, Member (Technical)**

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co

Mr. S Ramakantha , Joint Director in the office of Regional Director

Per: V. Nallasenapathy, Member (Technical)

**Order confirming Reduction of Preference Share Capital and  
Approving Minutes**

1. Heard the learned counsel for the Petitioner Company. No objector has come before the Tribunal to oppose the Petitioner Company and nor has any party controverted any averments made in the Petitioner Company.
2. The Counsel for the Petitioner Company submits that Article 5 of the Articles of Association of the Petitioner Company empowers to reduce its Share Capital from time to time.

3. The Counsel for the Petitioner Company submits that the Petition was filed for the confirmation of the special resolution for the proposed reduction of equity share capital in the manner proposed that would enable the Petitioner Company to have a rational capital structure which is commensurate with its remaining business and assets and improve financial ratios like return on capital, which is in excess of want of Company and right size the balance sheet. The Board of Directors of the Petitioner Company at their meeting held on 21st December, 2017, have deemed it appropriate to reduce 16,18,92,902 (Sixteen Crores Eighteen Lakh Ninety Two thousand Nine Hundred & Two) equity shares of the Petitioner Company, being in excess of the requirements of the Petitioner Company, and pay to the holders of the equity an aggregate amount of INR 130,00,00,000 (Rupees One Hundred & Thirty Crores only) for equity shares of INR 10 (Rupees Ten only) each so cancelled and extinguished.
4. The Counsel for the Petitioner Company further submits that the Petitioner having passed a Special Resolution on 25<sup>th</sup> January, 2018 in the meeting of Equity Shareholders whereby the Equity Shareholders have approved the reduction of equity share capital of INR 1,618,929,020/- (Indian Rupees One Sixty One crores Eighty Nine Lakhs Twenty Nine Thousand and Twenty only) consisting of 1,618,929,02 shares of INR 10/- (Indian Rupees Ten) each fully paid for an aggregate consideration of 1,300,000,000 (Rupees One Hundred & Thirty crore only) for equity shares of INR 10 (Rupees Ten only) each so cancelled and extinguished. Such consideration

will be discharged by payment of cash to the equity shareholders amounting to INR 1,300,000,000 (Rupees One Hundred & Thirty crore only).

5. The Regional Director has filed his Report dated 11<sup>th</sup> July, 2018 inter alia stating that :-

- (a) *Applicant has to undertake to serve notice to RBI as shareholders are foreign entities*
- (b) *The applicant company has proposed to reduce 1,618,929,020 from its existing paid up capital of INR 1,802,584,970 by paying off INR 130,000,000 [Rs 130 crore] which is purportedly in excess of want of the Company[ Section 66(1)(b)(ii) of the Act]. However kind attention is drawn to the last audited balance sheet wherein the Company is having only Rs 42.49 [INR 85.67 as per unaudited financial statement as at 31.12.2017] under the head Cash and Cash equivalents. Rest of the funds are tied up in Short term loans given INR 78.49 crore as at 31.03.2017 [INR 57.27 crore as per unaudited Financial statement as at 31.12.2017] and further Inventories and trade receivables. It is also important to note that trade receivables and inventories have increased as at 31.12.2017 as compared to 31.03.2017. The Company has current liabilities too to pay off which have also increased from 25.10 crore as at 31.03.2017 to Rs 37.84 crores as at 31.12.2017. Thus, apparently, the applicant, company funds has business requirements and may for its business and may be asked to explain as to how 130 crores could be said to be "in excess of wants " of the company to fit in section 66(1)(b)(ii) of the Act to the tune of INR 130 crore.*

*Subject to the observation made in para 8(a) and (b) above. Hon'ble NCLT may pass appropriate orders/order as deem fit and proper on merits.*

6. In so far as observations made in paragraph 8(a) of his Report, the Petitioner Company operates in the business of manufacture and trading of chemicals. The aforementioned activities are allowed

under the automatic sector under clause 5.2.5 of the FDI Policy reproduced below.

*"Manufacturing 5.2.5 Manufacturing: 5.2.5.1 Subject to the provisions of the FDI policy, foreign investment in 'manufacturing' sector is under automatic route. Further, a manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce, without Government approval."*

In the past when the investment was done through multiple tranches the company has filed the FC-GPR confirming the fact that the investment was done through the automatic route. These submissions were approved and taken on record by RBI. Hence, in light of above, since the activities are under the automatic route, there is no separate approval required from Reserve Bank of India. Accordingly, service of notice to RBI is unwarranted.

7. In so far as observations made in paragraphs 8 (b) of his Report, the Petitioner Company has clarified that the Petitioner Company has sufficient liquidity in order to discharge the cash component of the consideration for reduction of the equity share capital.
8. The Petitioner Company has been making decent profits in recent years. Accordingly, the capital of INR 180 crores, considering the business size and the profits, are in excess of wants of Company, hence it wishes to reduce the same, by INR 161 crores. The excess funds are currently deployed in deposits and loans to fellow companies on which interest is earned. Considering the future business need and current business obligations currently there is excess funds with the Company, and in order to improve the financial ratios and also right size the balance sheet, the Company

has passed a special resolution to reduce 16,18,92,902 (Sixteen Crores Eighteen Lakh Ninety-Two thousand Nine Hundred & Two) equity shares of the Petitioner Company, being in excess of the requirements of the Petitioner Company, and pay to the holders of the equity an aggregate amount of INR 130,00,00,000 (Rupees One Hundred & Thirty Crores only) for equity shares of INR 10 (Rupees Ten only) each so cancelled and extinguished.

9. The Petitioner Company have filed further affidavit dated 3<sup>rd</sup> September 2018 and further brought to our notice that it has assets which can be utilized to discharge the consideration. The Company would have sufficient funds even after the capital reduction. An analysis of funds as per unaudited balance sheet of March 31, 2018 is provided below for reference after paying the consideration of INR 130,00,00,000 on account of reduction of capital.
10. The Company has Current Assets of INR 16,862 lakhs as on March 31, 2018 which consists of Cash and Bank balances of INR 8,108 lakhs; Short- term loans and advances of Rs 4,930 lakhs; Inventory of 1,241 lakhs and Trade receivables of 2,577 lakhs, Other current assets of INR 6 lakhs. The liabilities are in the tune of INR 3,168 lakhs consisting of trade payables of INR 2,259 lakhs and other current liabilities and short term provisions of INR 910 lakhs. Thus, the net funds available is to the tune of INR 13,693 lakhs. The Capital reduction requirement is of INR 13000 lakhs thus, the Company would have sufficient funds even after the payment of capital reduction amount in the range of INR 693 lakhs for its day to day operations.

11. Further, the Company has provided a loan of INR 4500 lakhs to its fellow entity which earns an interest of 9.70%, the interest income on the same ie from April 2018 till August 2018 would amount to INR 182 lakhs.
12. Based on above, the Company is of the view that the funds are in excess of its wants and has undertaken the proposed Capital reduction. The explanation provided by the Petitioner Company it appears that the Petitioner Company has adequate sources of fund to pay the consideration proposed to be discharged in cash.
13. The learned Counsel appearing on behalf of the Petitioner Company further submits that the Petitioner Company has complied with all the statutory requirements as per the directions of the Tribunal and they have filed necessary affidavit of service. None of the parties have come forward to oppose the proposed reduction.
14. The Special Resolution as approved by the equity shareholders for the Reduction of Equity Share Capital in their Extraordinary General Meeting held on 25<sup>th</sup> January, 2018 is confirmed and the petition is made absolute in terms of the prayer clause No. 26 of the Petition.
15. The minutes set forth hereto be and is hereby approved.
16. Petitioner to publish notices about registration of order and minutes of reduction by the concerned Registrar of Companies, Maharashtra, in two newspapers, namely 'Free Press Journal' in English and 'Navshakti' in Marathi, both having circulation in Mumbai, within 30 days of registration.
17. All concerned regulatory authorities to act on certified copy of the order and the form of Minutes forming part of the petition, duly certified by the Deputy Director, National Company Law Tribunal.

**Form of Minutes**

*"The Equity Share Capital of Ecolab Food Safety and Hygiene Solutions Private Limited, is henceforth of **18,36,55,950** (Rupees Eighteen Crores Thirty Six Lakhs Fifty Five thousand Nine Hundred & Fifty only) divided into **1,83,65,595** (One Crores Eighty Three Lakhs, Sixty Five thousand Five Hundred and Ninety Five only) Equity Shares of INR 10/- each, reduced from INR 1,80,25,84,970/- (Rupees One Hundred and Eighty Crore Twenty Five Lakh Eighty Four Thousand Nine Hundred and Seventy only) divided into 18,02,58,497 (Eighteen Crore Two Lakh Fifty Eight Thousand Four Hundred and Ninety Seven) Equity Shares of INR 10/- each.*

SD/-

**V. Nallasenapathy, Member(T)****3.9.2018**

SD/-

**Bhaskara Pantula Mohan, Member (J)**