

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. 82 /55(3)/NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 26.07.2019**

Name of the Company: NCM-Shoava engineers Pvt. Ltd.

Section of the Companies Act: Section 55(3) of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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ORDER

None is present for the parties.

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


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 26th day of July, 2019


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CP 82/55(3)/NCLT/AHM/2018

In the matter of:

M/s. NCM-Shoava Engineers Pvt. Ltd.
Having its Registered office at:
10, Industrial Area,
Rau, Indore,
Madhya Pradesh – 453 331.

.....Petitioner

Appearance:

Mr. Mohammed Arkam G. Sheikh, Advocate for the Petitioner.

Order delivered on 26th July, 2019

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Ms. Manorama Kumari, Member (Judicial)**

ORDER

[Per: Shri Harihar Prakash Chaturvedi, Member (Judicial)]

1. The Petitioner Company, M/s. NCM-Shoava Engineers Private Limited (herein after called as "the Company") has filed the present application under Section 55(3) of the Companies Act, 2013 praying for grant of following reliefs:

"to issue directions to allow the Company to issue and allot new 4000 numbers of 10% non-cumulative redeemable preference shares of Rs.10/- each aggregating to

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Rs.4,00,000/- equal to the amount due for redemption of original non-cumulative redeemable preference shares”.

2. It is stated that the company, i.e. M/s. NCM-Shoava Engineers Private Limited was incorporated as a private company, limited by shares under the Companies Act, 1956 on 12.08.1993. The CIN of the company is U51109MP1993PTC007818. The Company at present is being managed by its two directors namely: Mr. Neeraj Mujumdar (DIN: 01286695) and Mrs. Pooja Mujumdar (DIN: 00245227). The Registered address of the company is: 10, Industrial Area, Rau, Indore, Madhya Pradesh – 453 331, India.
3. It is stated that the authorised share capital of the company is Rs.1,00,00,000/- (Rupees One Crore Only) divided into 9,50,000/- (Nine Lakh Fifty Thousand) numbers of equity shares of Rs.10/- (Rupees Ten Only) each with voting rights and 50,000 numbers of redeemable preference shares of Rs.10/- (Ten) each.
4. It is further informed that the issued, Subscribed and paid up share capital of the company is Rs.56,41,050/- (Rupees Fifty-Six Lakhs Forty-One Thousand Fifty Only) divided into 5,64,105 (Five Lakhs Sixty-Four Thousand One Hundred Five) numbers of equity shares of Rs.10/- each and

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Rs.4,00,000/- (Rupees Four Lakhs) of redeemable preference shares of Rs.10/- (Rupees Ten) each.

5. The petitioner submits that the Company had incurred losses for the last few years from 31.03.2014 to 31.03.2017 because of decrease in its total revenue and increase in production cost, interest cost and other expenses. In support of this, the petitioner has enclosed copies of the relevant documents along with the present company petition.
6. It is stated that the petitioner had issued 40,000 redeemable preference shares of Rs.10/- each fully paid on 18.05.1998 to the promoters of the Company which were due for redemption on 17.05.2018. The company had suffered losses for the last few years due to higher production cost and due to lower demand of product in market, the company has been under pressure to recover fixed cost and as such financial position of the company is deteriorating. Hence, the company is not in a position to redeem preference shares in accordance with the terms of issue which are due for redemption as the company has no source for redemption of such preference shares.
7. In view of the above stated circumstances, the petitioner company passed a special resolution on 01.05.2018 and



has obtained unanimous consent of the holders of such preference shares, and subject to the approval of this Adjudicating Authority, the petitioner company can issue new redeemable preference shares equal to the amount due, in respect of the old redeemable preference shares, and on the issue of such new redeemable preference shares, the old redeemable preference shares shall be deemed to have been redeemed. The new 40,000, 10% non-cumulative preference shares are to be issued to the existing preference shareholders of the company. The Petitioner has tabulated the details of existing preference shareholders as under:

Sr. No.	Name of Preference Shareholder with address	No. of Preference Shares	Amount	% of total Preference Share
1	Neeraj Mujumdar HT4, Jhoomer Ghat, Near Mashal Hotel, Rao, Indore- 453446, M.P.	10,000	1,00,000	25%
2	Pooja Mujumdar HT4, Jhoomer Ghat, Near Mashal Hotel, Rao, Indore- 453446, M.P.	30,000	3,00,000	75%

8. In support of the present application, the Petitioner relied on the provision of Section 55(3) of the Companies Act, 2013 which provides as under:

“Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares

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hereinafter referred to as unredeemed preference shares) , it may, with the consent of the holders of three-fourth in value of such preference shares and with the approval of the Tribunal on an Application made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed. Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.”


9. By following the above stated provisions and by examining the contents of the present application, covered under the above stated provision(s) and meets the criteria for grant of relief as per the above Section Mr. Mohammed Arkam Sheikh, the Learned Counsel for the Company has contended that the Company has sent notice on this Petition filed under section 55(3) of Companies Act, 2013 to the above four preference shareholders on 21.07.2016 and all of them have already given their "no objection" for the issue of fresh issue of 10% Cumulative Redeemable Preference Shares of Rs. 100 each in lieu of redemption of 10% Non-Cumulative Redeemable Preference shares of Rs. 100 each due for redemption on 18.08.2016.
10. By taking in to consideration of above given facts and circumstances of the petitioner company, we are of the view


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that the present Company Petition deserves to be allowed under Section 55(3) of the Companies Act. Therefore, this Tribunal hereby approved the issuance of the special resolution of the company dated 01.05.2018 for issuance and to allot new 40,000 (Forty Thousand) numbers of 10% non-cumulative Redeemable Preference shares of Rs.10 (Rs.Ten) each for a period of 20 years in lieu of 40,000 old redeemable preference shares of Rs.10/- each aggregating to Rs.40,00,000/- equal to amount due for redemption of original non-cumulative redeemable preference shares on the same terms and conditions as was applicable to the allotment of previous shares.

11. With the aforesaid directions, the present Company Petition is allowed and stands disposed of.
12. No order as to cost.


Manorama Kumari,
Adjudicating Authority
Member (Judicial)


Harihar Prakash Chaturvedi,
Adjudicating Authority
Member (Judicial)

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