

NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 12.09.2018

PRESENT: 1.Hon'ble member (J) **Shri Rajeswara Rao vittanala,**
2.Hon'ble member (T) **Dr. Ashok Kumar Mishra**

CP/CA No	Purpose	Section	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CPNo.165/BB/2018	For pronouncement of orders	Sec 66	M/s Surtec Chemicals India Pvt Ltd	M Anil Kumar PCS		

SL. NO. NAME (IN CAPITAL) & PHONE NUMBER

REPRESENTATION TO WHOM

SIGNATURE

PETITIONER/s : *none present*

RESPONDENT/s :

ORDER

None appeared for Petitioner.

CP No.165/BB/2018 is disposed of vide separate orders.

Ashok
Member (T)

Rao
Member (J)

Balaji
BV

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. No. 165/BB/18

Under Section 66 of Companies Act, 2013
Read with Rule 6 of NCLT (Procedure for Reduction of
Share Capital of the Company) Rules, 2016

**IN THE MATTER OF
SURTEC CHEMICALS INDIA PRIVATE LIMITED**

Order delivered on: 12th September, 2018

SURTEC CHEMICALS INDIA PRIVATE LIMITED
1st floor, Silver Jubilee Block,
3rd cross, Mission Road
Bangalore-560027

...Petitioner

Coram: Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Petitioner: Shri. M. Anil Kumar,
Practising Company Secretary

Per: Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

Heard on: 15.03.2018, 23.03.2018, 23.04.2018, 13.07.2018, 13.08.2018, and 04.09.2018

ORDER

- A. This Company Application has been filed on behalf of the Petitioner Company under Section 66 of the Companies Act, 2013 read with National Company Law Tribunal (Procedure for Reduction Share Capital of the Company) Rules, 2016 for the purpose of confirmation of reduction of its share capital in pursuance of the Special Resolution dated 24th November, 2017 passed by the Petitioner Company.
- B. The averments made in the Company Petition are briefly described hereunder:-
1. The Petitioner Company seeks an order for reduction of its share capital as resolved by the Special Resolution dated 24th November, 2017.

2. It is further averred in the Petition that the Petitioner Company was incorporated on 02nd May, 2006 under the name and style of “**Surtec Chemicals India Private Limited**” vide Corporate Identity No. **U24111KA2006PTC081118** with the Registrar of Companies, Karnataka. The Registered office of the Petitioner Company is situated at 1st floor, Silver Jubilee Block 3rd cross, Mission Road, Bangalore - 560027.
3. The main objects of the Petitioner Company are
- i) to carry on the business of manufacturers of and dealers in chemicals, chemicals compounds (organic and inorganic) in all forms, and chemical products of any nature and kind whatsoever, and all by-products and joint products thereof;
 - ii) to carry on business as chemical engineers, analytical chemists, importers, exporters, manufacturers of and dealers in heavy chemicals, acids, alkalies, petro-chemicals, chemical compounds and chemicals of all kinds (solid, liquid and gases), drugs, medicines, pharmaceuticals, antibiotics, tannins, tannin extracts, essences, plastic of all types, dyestuffs, intermediates, textile auxiliaries, cellphones, colours, dyes, paints, varnishes, vat and other organic dyestuffs, chemical auxiliaries, disinfectants, insecticides, fungicides, deodorants, biochemicals and pharmaceuticals, medicinal, sizing, bleaching, photographic and other preparation and articles.
 - iii) To conduct economic, financial and technical research for all products, projects and services connected with the performance organisation and exploitation of the above defined business mentioned in sub-clause (1) & (2) above.

The copies of Memorandum and Articles of Association of the Petitioner Company are shown as **Annexure-E**.

4. The latest authorized share capital of Petitioner Company is Rs.7,50,00,000/- divided into 75,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up share capital is Rs.7,49,99,430/- divided into 74,99,943 Equity Shares of Rs.10/- each fully paid up. The Audited financial statement including Auditors Report as on 31st March, 2017 is marked as **Annexure -F**.

5. It is further averred that, the financial position of the company as on 31st March 2017 is as under:

Particulars	As on 31/03/2017 (in Rupees)
Revenue from Operations	10,81,47,550/-
Less: expenditure	9,90,28,527/-
Profit/(Loss) before Depreciation and Tax	91,19,023/-
Less: Depreciation & amortisation	16,48,994/-
Profit/(Loss) before Taxation	74,70,029/-
Less: Income Tax (adjustment relating to previous year)	(12,19,189)
Less: MAT credit	12,30,805/-
Less: Deferred Tax	39,02,501/-
Profit/Loss after Tax (Balance carried to Balance Sheet)	35,55,912/-

6. The Petitioner Company submits that there is no qualification, reservation or adverse remark or disclaimer made by the auditor in his report and that there is no pending inspection, inquiry or investigation against the company under the Companies Act, 2013. It is also submitted by the Petitioner Company that Article 5 of the Articles of Association of the Company provide that the company by special resolution, may from time-to time, reduce its capital in any manner permitted by law.
7. The Petitioner Company submits that the reduction of share capital is being done to wipe out the accumulated losses to the tune of Rs. 2,50,00,000/- as approved by the Shareholders in the Extraordinary General Meeting held on 24th November 2017 to avoid erosion of net worth of the company during the immediately preceding years. It is also submitted by the Petitioner Company that the Company wishes to retain portion of the loss since the Company is in anticipation of future profits which can be utilised for setting off losses and to get the benefit of tax savings.
- a. The Petitioner Company submits that the company proposes to reduce its paid-up share capital from Rs. 7,49,99,430/- to Rs.4,99,99,430/- by cancelling 25,00,000 Equity shares of Rs.10/- each which has been lost or is unrepresented by available assets and adjusting the same against the accumulated losses.

8. It is further averred that the reduction of capital does not involve either the diminution of any liability in respect of unpaid capital as there are no partly paid up shares or the payment of any shareholder of any paid up capital.
9. The Board of Directors of the Petitioner Company have approved the proposed reduction of share capital at the Meeting on 10th November, 2017 subject to the passing of resolution by the Shareholders. The Copy of the resolution passed by the Board of Directors is shown as **Annexure-K**. The Shareholders of the Company have by special resolution approved the proposed reduction of share capital at the Annual General Meeting held on 24th November, 2017. The Copy of the special resolution passed by the Shareholders of the Company is shown as **Annexure-M**.
10. The shareholding Pattern of the Company before and after reduction is indicated below, subject to approval of the reduction:

Shareholding pattern			
1.	Surtec International GmbH	7,49,99,420	4,99,99,420
2.	Surtec Deutschland GmbH	10	10
	Total	7,49,99,430	4,99,99,430

11. The Auditors of the Petitioner Company have verified the Accounting Treatment stated in the scheme and has given a Certificate dated 13th December 2017 stating that the Accounting Treatment for reduction is in conformity with Accounting Standard under Section 133 of the Act read with Rule 7 of the Companies (Account) Rules, 2014. The copy of the certificate of Chartered Accountant is shown as **Annexure-J**. It is further averred that the Petitioner Company has forty (40) creditors as on 11th December 2017 as certified by the auditor. Copy of the list of creditors is affixed as **Annexure-G**. The Director of the Company has filed a declaration dated 29.08.2018 stating that the Company, as on date of filing of Petition, has not accepted deposits and also there are no arrears in the repayment of the deposits or the interest thereon.
- C. This Tribunal vide order dated 23th March 2018 has directed to issue notices to the creditors and also to the Regional Director and Registrar of Companies and also directed

to have an advertisement be published in “**The Hindu**” (Bangalore Edition) in English Language and Kannada Daily “**Kannada Prabha**” (Bangalore Edition) Newspapers stating that the next date of hearing of the present petition was on 23rd April 2018.

- D. The Registrar of Companies, Karnataka has filed Affidavit dated 20th April 2018 on behalf of the Regional Director, Ministry of Corporate Affairs, South-East Region, Hyderabad stating that, the Petition filed by the Petitioner Company has been examined and the Directorate has no objection.
- E. The Practicing Company Secretary for Petitioner Company has filed Memo dated 23.04.2018 along with the copies of the notices served to the Creditors, and proof of service of notice to Registrar of Companies and Regional Director, Ministry of Corporate Affairs.
- F. The Practicing Company Secretary for Petitioner Company has filed Memo on 28.08.2018 along with copies of advertisement published on 31.03.2018 in “**The Hindu**” (Bangalore Edition) in English Language and Kannada Daily “**Kannada Prabha**” (Bangalore Edition) Newspapers.
- G. The Practicing Company Secretary for Petitioner Company on 13.08.2018 has filed the Chartered Accountant Certificate on Members who have attended and voted in the Extraordinary General Meeting of the Company held on 24th November 2017.
- H. We have seen the opinion given by the Registrar of Companies, Karnataka on behalf of the Regional Director, South East Region, Hyderabad in his report dated 20th April 2018 and also after seeing Articles of Association of the Petitioner Company, as it does not contain any specific clause in this regard. It is observed that objections have not been received from Creditors, if any, and necessary measures to safeguard creditors, if any have been taken. The Practicing Company Secretary for Petitioner Company has been heard and the reports of Regional Director & the Registrar of Companies, Karnataka and the explanation given including certificate issued by Chartered Accountant have been considered.
- I. In the light of the above submissions and observations,

THIS TRIBUNAL DO FURTHER ORDER

The Special Resolution of the Petitioner Company duly passed at the Extraordinary General Meeting held on 24th November 2017, the shareholders, with some modifications, resolved to give effect to the Resolution passed by the Board of Directors as hereunder:

“RESOLVED THAT pursuant to Section 66(1) and other applicable provisions, if any, of the Companies Act, 2013 and subject to confirmation of the National Company Law Tribunal, Bengaluru Bench, and subject to such other approvals, consents, permissions or sanctions of any other authority, body or institution (hereinafter collectively referred to as (“the concerned authorities”) as may be required, and subject to such other conditions or guidelines, if any, as may be prescribed or stipulated by any of the concerned authorities, from time to time, while granting such approvals, consents, permissions or sanctions, the subscribed, issued and paid up equity share capital of the company be reduced **from** INR 74,999,430/- (Rupees Seven Crores Forty Nine Lakhs Ninety Nine Thousand Four Hundred and Thirty only) divided into 7,499,943 equity shares of INR10 each **to** INR 49,999,430/- (Rupees Four Crore Ninety Nine Lakhs Ninety Nine Thousand Four Hundred and Thirty only) divided into 4,999,943 Equity Shares of Rs.10 each”.

“RESOLVED FURTHER THAT pursuant to Section 66(1) and other applicable provisions, if any, of the Companies Act, 2013 and subject to confirmation of the National Company Law Tribunal, Bengaluru Bench, and subject to such other approvals, consents, permissions or sanctions of any other authority, body or institution (hereinafter collectively referred to as (“the concerned authorities”) as may be required, and subject to such other conditions or guidelines, the Accumulated Loss to the tune of INR 25,000,000/- (Rupees Two Crores Fifty Lakhs only) shall be setoff from the Paid-up Capital of the Company so that the Paid-up Capital of the Company be reduced to INR49,999,430/- (Rupees Four Crores

Ninety Nine Lakhs Ninety Nine Thousand Four Hundred and Thirty only)”

“**RESOLVED FURTHER THAT** the Board of Directors of the Company be and are hereby authorised severally to digitally sign and file necessary e-forms with the Registrar of Companies- Karnataka (“ROC”) to sign, execute, deliver necessary documents, deeds, letters in this regard and to do such other things, actions as may be necessary and ancillary thereto.”

“**RESOLVED FURTHER THAT** the effective date be read from April 1, 2017 for capital reduction and restructuring of capital with reference to the audited Balance Sheet as on March 31, 2017.”

“**RESOLVED FURTHER THAT** necessary endorsement in the share certificates which have already been issued, be carried out by the Director, after the capital reduction becomes operative and effective.”

“**RESOLVED FURTHER THAT** any one among the Directors be and hereby severally authorised to make application to the Ministry of Corporate Affairs/Tribunal/Regional Director or ROC, Karnataka and any other Govt. Agencies in connection with capital reduction of the company and to do all such acts, deeds and things, as may be necessary and expedient, to give effect to this Reduction.”

Be and same is hereby **CONFIRMED**.

That the minute set forth hereto be and is hereby approved.

- J. That the certified copy of this Order including the minute as approved be delivered to the Registrar of Companies within thirty days of receipt of the Order.
- K. The Notice of Reduction of paid-up Equity- Share Capital shall be published by the Registrar of Companies, Karnataka, in two newspapers namely i.e. “**The Hindu**” (Bangalore Edition) in English Language and Kannada Daily “**Kannada Prabha**” (Bangalore Edition) Newspapers both having circulation in Bangalore within 30 days of registration.

FORM OF MINUTE

“RESOLVED THAT pursuant to Section 66(1) and other applicable provisions, if any, of the Companies Act, 2013 and subject to confirmation of the National Company Law Tribunal, Bengaluru Bench, and subject to such other approvals, consents, permissions or sanctions of any other authority, body or institution (hereinafter collectively referred to as (“the concerned authorities”)) as may be required, and subject to such other conditions or guidelines, if any, as may be prescribed or stipulated by any of the concerned authorities, from time to time, while granting such approvals, consents, permissions or sanctions, the subscribed, issued and paid up equity share capital of the company be reduced **from** INR 74,999,430/- (Rupees Seven Crores Forty Nine Lakhs Ninety Nine Thousand Four Hundred and Thirty only) divided into 7,499,943 equity shares of INR10 each **to** INR 49,999,430/- (Rupees Four Crore Ninety Nine Lakhs Ninety Nine Thousand Four Hundred and Thirty only) divided into 4,999,943 Equity Shares of Rs.10 each”.

“RESOLVED FURTHER THAT pursuant to Section 66(1) and other applicable provisions, if any, of the Companies Act, 2013 and subject to confirmation of the National Company Law Tribunal, Bengaluru Bench, and subject to such other approvals, consents, permissions or sanctions of any other authority, body or institution (hereinafter collectively referred to as (“the concerned authorities”)) as may be required, and subject to such other conditions or guidelines, the Accumulated Loss to the tune of INR 25,000,000/- (Rupees Two Crores Fifty Lakhs only) shall be setoff from the Paid-up Capital of the Company so that the Paid-up Capital of the Company be reduced to INR49,999,430/- (Rupees Four Crores

Ninety Nine Lakhs Ninety Nine Thousand Four Hundred and Thirty only)”)”

“**RESOLVED FURTHER THAT** the Board of Directors of the Company be and are hereby authorised severally to digitally sign and file necessary e-forms with the Registrar of Companies- Karnataka (“ROC”) to sign, execute, deliver necessary documents, deeds, letters in this regard and to do such other things, actions as may be necessary and ancillary thereto.”

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“**RESOLVED FURTHER THAT** any one among the Directors be and hereby severally authorised to make application to the Ministry of Corporate Affairs/Tribunal/Regional Director or ROC, Karnataka and any other Govt. Agencies in connection with capital reduction of the company and to do all such acts, deeds and things, as may be necessary and expedient, to give effect to this Reduction.”

- L. If at any point of time, any creditors oppose the scheme, they are free to approach the Tribunal for settling their dues, if the company fails to settle their dues as per terms and conditions of the contract/agreement with the company.
- M. Any person shall be at liberty to apply the Tribunal in the above matter for any directions that may be necessary.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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