

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COMPANY PETITION NO.1506 OF 2018

Under Section 66 of the Companies Act,
2013

In the matter of the Reduction of Share
Capital of NOBLE RESOURCES AND
TRADING INDIA PRIVATE LIMITED

NOBLE RESOURCES AND TRADING INDIA
PRIVATE LIMITED

....Petitioner Company

Order delivered on 10th September, 2018

Coram: Hon'ble Bhaskara Pantula Mohan Hon'ble Member (J)
Hon'ble V. Nallasenapathy Hon'ble Member (T)

For the Petitioner (s): Mr. Kunal Juneja, i/b MP Law Offices, Advocate for the
Petitioner Company.

Mr. S. Ramakantha from the office of Regional Director, Western Region Mumbai.
Mr. Neelambuj Sahai from the office of Registrar of Companies.

Per: V. Nallasenapathy Hon'ble Member (T)

Order confirming Reduction of Share Capital and Approving Minutes

1. Heard the learned counsel for Petitioner Company.
2. No objection has come before the Tribunal to oppose the Petition and nor has any party controverted any averments made in the Petition.
3. The Counsel for the Petitioner Company submits that Article 4 of the Articles of Association of the Petitioner Company empowers the Petitioner Company to reduce its Share Capital.

4. The Counsel for the Petitioner Company submits that the Petition was filed for reduction of the Share Capital of the Petitioner Company. The Board of Directors of the Petitioner Company at their meeting held on 26th January, 2018, have deemed it appropriate to reduce its equity share capital. The Counsel for the Petitioner Company further submits that the Petitioner having passed a Special Resolution on 30th January, 2018 whereby the shareholders had approved the reduction of Share Capital of the Petitioner Company from 2,00,11,872 (Two crores eleven thousand eight hundred and seventy two only) equity shares of face value of Rs. 100/- (Rupees Hundred only) each fully paid up aggregating to Rs. 200,11,87,200/- (Rupees Two hundred crores eleven lakhs eighty seven thousand two hundred only) to Rs. 15,00,00,000/- (Rupees Fifteen Crores only) consisting of 15,00,000 (Fifteen Lac only) equity shares of face value of Rs. 100/- (Rupees Hundred) each fully paid up, by cancelling and extinguishing 1,85,11,872 (One Crore Eighty Five Lacs Eleven Thousand Eight Hundred Seventy Two only) paid up equity shares of face value of Rs. 100/- (Rupees Hundred only) each fully paid up aggregating to Rs. 185,11,87,200/- (Rupees One Hundred Eighty Five Crores Eleven Lacs Eighty Seven Thousand Two Hundred only), which are held by the Shareholders, in proportion to their existing shareholding in the Company.

5. That as per the valuation report dated January 16, 2018 issued by Mohinder Puri & Co., Chartered Accountants, the Net Asset Value of equity shares of the Company is Rs. 69.84/- per share.

Accordingly, the price per share that can be remitted to the non-resident Shareholders on reduction of capital cannot exceed the price determined as per the internationally accepted pricing methodology on arm's length basis.

Therefore, the aforesaid reduction is to be effected by remitting back an amount of Rs. 69.84/- (Rupees Sixty Nine and paisa eighty four only) per

equity share to the equity Shareholders for the shares cancelled, in proportion to the extent of shareholding held by them in the Company.

6. Against the Face value of equity shares of the Company of Rs. 100/- per share, an amount of Rs. 69.84/- per share will be remitted back to the non-resident Shareholders and the remaining amount of Rs. 30.16 /- per share shall be transferred to the Capital Reduction Account. The funds available in this Capital Reduction Account shall be utilized to adjust the accumulated losses to the extent possible.

Hence, the total amount which shall be remitted back to the Shareholders in proportion to the extent of shareholding held by them in the Company is Rs. 129,28,69,140/- (Rupees One Hundred Twenty Nine Crore Twenty Eight Lacs Sixty Nine Thousand One Hundred Forty only)

7. The Regional Director report was filed on 27th July 2018 with the NCLT Mumbai, Bench. The observations by the Regional Director are laid down in para 7 of its report, which are mentioned below:

- a) *Applicant to submit an Affidavit to the effect that the Applicant company is not subject to any scam and interest of the creditors, stakeholders are protected as well as statutory dues are paid off.*
- b) *Applicant has to undertake to serve notice to RBI as shareholders are foreign entities.*
- c) *It is submitted that, copy of newspaper advertisement is not submitted.*
- d) *The tax implication if any arising out of the proposal for reduction is subject to final decision of Income Tax Authorities. The approval of the Company Petition by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Company after giving effect to the proposed transaction. The decision of the Income Tax Authority is binding on the petitioner company.*

8. In so far as observations of the Regional Director, as stated in Para 7(a)-7(c) of his Report is concerned, the Petitioner Company vide its affidavit filed on August 14, 2018, submitted that the Applicant company is not subject to any

scam, and interest of the creditors, stakeholders are protected as well as all undisputed statutory dues are paid off. Vide the same affidavit, the Petitioner Company also submitted that it has already served notice to Reserve Bank of India on May 14, 2018, and the Notice of Company Petition had been published in The Free Press Journal, English and in Navshakti, Marathi on May 14, 2018.

In so far as observation of the Regional Director, as stated in Para 7(d) of his Report is concerned, the Petitioner Company vide the same affidavit, submitted and agreed that it shall comply with all applicable provisions of the Income Tax Act and all tax issues (if any) arising out of the Company Petition will be met and answered in accordance with law and the decision of the Income tax Authority will be binding on Petitioner Company.

9. The Special Resolution as approved by the shareholders for the Capital Reduction in their Extraordinary General Meeting held on 30th January, 2018 is confirmed and the Petition is made absolute in terms of Para 14 of the Company Petition.
10. The Form of Minutes attached as Annexure -14 to the Company Petition is hereby approved.
11. 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.
12. All concerned regulatory authorities to act on certified copy of the order along with Form of Minutes, duly certified by the Deputy Director or Assistant Registrar, National Company Law Tribunal.

13. The Company is directed to file Certified Copy of the Order of the Petition with Registrar of Companies within 30 days from the date of receipt of the order.

Minutes proposed to be registered under Section 66 (5) of the Companies Act, 2013 with the Registrar of Companies: -

"The Paid-up Share Capital of Noble Resources and Trading India Private Limited shall henceforth be Rs. 15,00,00,000 /- (Rupees Fifteen Crores only) consisting of 15,00,000 (Fifteen Lac only) Equity Shares of Rs. 100/- (Rupees One Hundred only) each fully paid up having cancelled the Paid-up shares capital of Rs. 185,11,87,200/- (Rupees One Hundred Eighty Five Crores Eleven Lacs Eighty Seven Thousand Two Hundred only) consisting of 1,85,11,872 (One Crore Eighty Five Lacs Eleven Thousand Eight Hundred Seventy Two only) Equity shares of Rs. 100/- each, fully paid up".

SD/-

SD/-

V. Nallasenapathy, Member (T) Bhaskara Pantula Mohan, Member (J)