

**THE NATIONAL COMPANY LAW TRIBUNAL,
PRINCIPAL BENCH
AT NEW DELHI**

COMPANY PETITION NO. 538 OF 2016

Under Sections 100 to 104 of the Companies Act, 1956
(Section 66 of the Companies Act, 2013)

IN THE MATTER OF:

NIPPON SIGNAL INDIA PRIVATE LIMITED

.....PETITIONER COMPANY

Judgement Dated: 07.09.2018

Coram:

**CHIEF JUSTICE (RTD.) M.M.KUMAR
Hon'ble President**

**S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)**

Present:

For The Petitioner: Mr. Rohit Mahajan, Advocate

For Regional Director, (NR): Ms. Sonam Sharama,
Company Prosecutor

For Income Tax Department: Mr. Rajat Nayar, Standing Counsel



ORDER

S K Mohapatra, Member

1. The present petition has been filed by the petitioner M/s Nippon Signal India Private Limited before High Court of Delhi under Sections 100 to 104 of the Companies Act, 1956 for confirmation of the proposed reduction of the share capital of the petitioner company pursuant to the special resolution passed by the members of the company in the Extra Ordinary General Meeting held on April 28, 2016. Pursuant to notification no. GSR 1119 (E) & S.O 3676 (E) dated 7th December, 2016 issued by Ministry of Corporate affairs, Government of India and vide order dated 11.01.2017 passed by the Hon'ble Delhi High Court, the petition was transferred from High Court to this Bench.
2. Brief averments of the petitioner are that the Petitioner Company was incorporated as a private limited company under the provisions of the Companies Act, 2013 on October 21, 2015 under the name of Nippon Signal India Private Limited with the Registrar of Companies, Delhi having incorporation number as U63030DL2015FTC286651.
3. It is pertinent to state that the Petitioner Company is a subsidiary of a Japanese company namely - Nippon Signal Co., Ltd., Japan which is holding 99% of the subscribed capital of the Petitioner Company. The remaining 1% of the subscribed share



capital of the petitioner Company is held by another Japanese Company namely Nisshin Electronics services co. Ltd.

4. The Petitioner Company was incorporated *inter alia* to carry on business of providing automated railway signaling system, automated fare collection systems, automated traffic information systems, parking systems and related mobility solutions for achieving safe, reliable and comfortable transportation for rail solutions, road solutions security and sensing solutions.
5. The authorized share capital of the Petitioner company is Rs. 75,00,00,000 /- comprising of 7,50,00,000 number of equity shares of Rs. 10/- each. The subscribed share capital of the company is Rs. 75,00,00,000 /- comprising of 7,50,00,000 number of equity shares of Rs. 10/- each. However, the paid-up share capital of the company is Rs. 37,50,00,000/- comprising of 7,50,00,000 number of equity shares of Rs. 5/- paid-up for each share. The present proposal for reduction of capital in terms of provisions of Section 100(1)(a) of the Companies Act, 1956 is intended to reduce and extinguish the unpaid liability of Rs. 5/- (Rupees Five Only) per share of the Subscribers.
6. It is submitted that the need for reduction of capital as stated in the application is that the unpaid amount of Rs. 5 on each of the equity share of the subscribed capital of the Petitioner Company is much beyond the business requirement of the Petitioner company and such amount

is not required as it may not be profitably/ gainfully utilized by the Petitioner Company.

7. It is stated that the Petitioner Company does not have immediate plan for expansion and these funds if called up will remain idle locking of the scarce resources and funds from Shareholders. It is also emphasized that after the proposed reduction of share capital, the Petitioner Company will continue to have sufficient cash flow and availability of funds to meet not only its present requirements but also its immediate future requirements.
8. The Petitioner Company further submits that there will not be any cash repayment to the members/Subscribers of the petitioner's company on account and pursuant to the proposed reduction of capital.
9. It is appropriate to mention that Section 66 of the Companies Act, 2013 is a combination of Sections 100 to 105 of the 1956 Act with certain modifications which read with National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016 (herein after referred as 'the Rules') deals with reduction of share capital by companies.
10. Section 66 of the Companies Act, 2013 reads as under:

“66. Reduction of share capital

(1) Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special



resolution, reduce the share capital in any manner and in particular, may—

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

(b) either with or without extinguishing or reducing liability on any of its shares,—

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

(ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

(2) The Tribunal shall give notice of every application made to it under sub-section (1) to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a



period of three months from the date of receipt of the notice:

Provided that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

(3) The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit:

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

(4) The order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be published by the company in such manner as the Tribunal may direct.



(5) *The company shall deliver a certified copy of the order of the Tribunal under subsection (3) and of a minute approved by the Tribunal showing—*

(a) the amount of share capital;

(b) the number of shares into which it is to be divided;

(c) the amount of each share; and

(d) the amount, if any, at the date of registration deemed to be paid-up on each share, to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

(6) *Nothing in this section shall apply to buy-back of its own securities by a company under section 68.*

(7) *A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.*

(8) *Where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the*

proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company is unable, within the meaning of sub-section (2) of section 271, to pay the amount of his debt or claim,—

(a) every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date; and

(b) if the company is wound up, the Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(9) Nothing in sub-section (8) shall affect the rights of the contributories among themselves.



(10) If any officer of the company—

(a) knowingly conceals the name of any creditor entitled to object to the reduction;

(b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or

(c) abets or is privy to any such concealment or misrepresentation as aforesaid, the shall be liable under section 447.

(11) If a company fails to comply with the provisions of sub-section (4), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.”

11. It is seen that prior to seeking confirmation of the Tribunal, a special resolution must be passed by the shareholders of the company in its general meeting resolving to reduce the share capital. In this regard petitioner company has referred to Article 41 of its Articles of Association, which empowers the petitioner company to reduce its share capital in any manner from time to time by passing special resolution.

12. The proposal of capital reduction has been consented by the shareholders of the Petitioner Company by a special resolution duly passed in pursuance of



Section 100 of the Companies Act, 1956 and in accordance with section 114 of the Companies Act, 2013, at the Extraordinary General Meeting of the Petitioner Company held on April 28, 2016, whereat it was resolved as follows:

“RESOLVED THAT pursuant to the provisions of Section 100 to 104 and other applicable provisions, if any of the Companies Act, 1956, Article 41 of the Articles of Association of the Company and subject to the confirmation by the Hon'ble High Court of Judicature at Delhi, or other appropriate authorities, if required, consent of the members of Company be and is hereby accorded for reducing the subscribed share capital of the Company from Rs.75,00,00,000/- (Rupees Seventy Five Crores Only) divided into 7,50,00,000 (Seven Crores Lakhs) equity shares of the Company of Rs.10/- (Rupees Ten) each to Rs.37,50,00,000/- (Rupees Thirty Seven Crores and Frio, Lakhs Only) divided in to 7,50,00,000 (Seven Crores Fifty Lakhs) equity shares of Rs.5/- (Rupees Five Only) each in the manner such that the liability towards the unpaid amount of Rs.5/- (Rupees Five

Only) on each of the 7,50,00,000 (Seven Crores Fifty Lakhs) equity shares is extinguished and the partly paid up equity shares of the Company be fully paid up.

RESOLVED FURTHER THAT upon confirmation by the Hon'ble High Court of Judicature at Delhi on reduction of the share capital of the Company as above and pursuant to the provisions of Section 61 (1)(d) of the Companies Act, 2013 and other applicable provisions, if any and Article 41 of the Articles of Association of the Company, each of the equity shares of the Company of face value Rs.10/- (Rupees Ten Only) each in the capital of the Company be and is hereby subdivided into 2 (Two) equity shares of face value Rs. 5/- (Rupees Five Only) per share and the revised Capital Clause 5 of the Memorandum of Association of the Company shall be read as under:

CLAUSE V of MOA

The Authorized Capital of the Company is INR 750,000,000/- (Rupees Seven Hundred and Fifty Million only) divided into 150,000,000 (One Hundred



and Fifty Million) equity shares of INR 5/- (Rupees Five Only)”.

13. In compliance of the requirements of proviso to sub-section 1 of Section 66 of the Companies Act, 2013 the petitioner has filed an affidavit dated 20.04.2018 affirming that *the Petitioner Company has no arrears of deposits because the company had not accepted any deposit from any person under the provisions of the companies Act, 2013 or the erstwhile Companies Act, 1956.*
14. Besides the certificate of statutory auditor dated 23.08.2017 has been placed on record which certifies that the accounting treatment used for proposed reduction is as per the generally accepted accounting principles in India since it is not directly addressed by any of the Accounting Standards specified under section 133 of the Companies Act, 2013.
15. The petitioner company has submitted that the company does not have any secured creditors and has only 1 unsecured creditor. The sole unsecured creditor of the petitioner company has given its no objection to the



proposed reduction. The consent letter has been placed on record.

16. The petitioner company has 2 shareholders and their consent letters in favour of the proposed reduction have been placed on record. Needless to say that shareholders of the company unanimously have approved the proposed reduction in the EOGM held on 28.04.2016. In that view of the matter as the consent of the members and the sole creditor of the company are on record, the requirement of convening any meeting of members or creditors of the petitioner company does not arise.

17. The petitioner company has further filed an affidavit dated 21.07.2017 affirming that the petitioner has published the notice in compliance of order dated 21.07.2016 passed by Hon'ble High Court of Delhi in "Danik Bhaskar" and "Times of India" on 24.12.2016. It has also been affirmed that the petitioner company has not received any objection from any person till date.

18. In the same affidavit dated 21.07.2017 the petitioner company has also submitted that the copies of petition along with the copies of the notices have been duly served



on the Registrar of Companies and Regional Director, Northern Region in compliance with the order dated 02.06.2017 and in proof of the same acknowledgement made by the respective offices have also been enclosed.

19. The Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, after receiving the report from the Registrar of Companies has filed his report on 23.02.2018 with the following observations:

“5. It is humbly submitted that as per the report of ROC, Delhi & Haryana the petitioner company has filed its statutory Annual Returns upto 31.03.2016. No prosecution has been filed against the petitioner company and no complaints are pending and no inspection or investigation has been conducted in respect of the Petitioner Company. The ROC, Delhi & Haryana vide para 26 of its report has inter-alia stated that the company has not attached certificate whether it is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or



the interest payable thereon in terms of section 66(1)(b)(ii) of the Companies Act, 2013. It is also stated that the company has not attached Auditor certificate regarding compliance of Accounting Treatment as specified in Section 133 or any other provisions of this Act in terms of section 66(3) of the Companies Act, 2013.

6. *It is humbly submitted that the Petitioner Company vide letter dated 22.02.2018 has inter-alia stated that the company has no arrears of deposits because it has not accepted any deposit from any person under the provisions of Companies Act, 2013 or erstwhile Companies Act, 1956. It is further confirmed by the Company that the certificate from the Statuary Auditors of the company on the accounting treatment for the proposed reduction of capital to be in accordance with the provisions of section 133 of the Companies Act, 2013 has already been filed with the NCLT. Copy of Petition company letter*



dated 22.02.2018 is enclosed and marked as Annexure - C.”

20. A perusal of the aforesaid report reveals that the company has furnished necessary certificate confirming that there is no arrears of deposits from any person and that certificate of statutory auditor on the accounting treatment in respect of reduction is in conformity of accounting standards specified in Section 133 of the Companies Act, 2013 has already been placed on record. No specific objection has been raised in the report against the proposed reduction.

21. It is seen from the order dated 15.05.2018 that Ld. Company Prosecutor has specifically stated at the time of oral hearing that the requirements of Section 66 of the Companies Act, 2013 stand fulfilled.

22. The department of Income Tax has filed its representation on 27.02.2018 with the following submissions:

“ a. As per the ITR filed by the assessee for AY 2016-17, the company was formed on 21.10.2015.



- b. It filed its first ITR for AY 2016-17.*
- c. The case of the assessee has been selected for scrutiny for the AY 2016-17.*
- d. No demand is outstanding as on date as per the ITR system against the assessee.*
- e. As per the financials of the company submitted with department, prima facie no adverse impact on the interest of revenue can be perceived at this stage. However, the proceedings of security assessment for the AY 2016-17, time barring on 31.12.2018, are still pending.”*

23. A perusal of the aforesaid report reveals that no specific objection has been raised against the proposed reduction of the share capital of the petitioner company. However it is clarified that there shall be no limitation on the power of the Income tax Department for recovery of any Tax dues, including imposition of penalties etc. in accordance with law.



24. Petitioner has further submitted that there are no investigation proceedings pending under the companies Act, 2013 or Companies Act, 1956 against the Petitioner Company. It has also been affirmed that no one will be prejudiced if the proposed reduction in share capital of the Petitioner Company is confirmed.

25. Having considered the above stated legal and factual aspects of the present case we find that there is no adverse material available on record which goes against the relief sought for by the petitioner company seeking proposed reduction of share capital nor it will prejudicially affect the interest of any shareholder or creditor nor it will have any adverse effect on public at large. Further, the accounting treatment, as proposed by the Company for such reduction of the share capital is in conformity with the accounting standards specified in Section 133 and other provisions of the Companies Act, 2013. Hence, it may be seen that the Petitioner Company has duly complied with all statutory requirements pursuant to the direction of the Tribunal and filed necessary Affidavit of undertaking before this Tribunal. The Petitioner Company further undertakes to



comply with the statutory requirement, under the Companies Act, 2013 and Rules made there under, as applicable to the proposed Reduction of its share capital.

26. In the matter of Hindustan Commercial Bank Ltd. v. Hindustan General Electric Corporation Ltd. AIR 1960 Cal 637 the Calcutta High Court held that the question of reducing capital is a domestic affair to be decided by the majority. The Court further held that the Companies Act, 1956 leaves it to the company to decide for itself the extent and mode of reduction and application of the moneys thereby. This is, however, subject to the confirmation of the Court, which is required for safeguarding the interests of creditors and minority shareholders and seeing that it is fair, just and reasonable.

27. As a sequel to the above discussion it is seen that the prescribed statutory procedure have been duly followed with the approval of the members and creditor of the company and that no any objection has been received against the proposed reduction and therefore proposed reduction can be confirmed by passing order in terms of Rule 6 of the Rules.



THIS TRIBUNAL DO ORDER

28. The minutes as proposed to be registered under Section 66 of the Companies Act, 2013 is hereby approved.

FORM OF MINUTE

"The Authorized Share Capital of Nippon Signal India Private Limited is Rs. 75,00,00,000 (Rupees Seventy Five Crores Only) comprising of 15,00,00,000 (Fifteen Crores) equity shares of Rs. 5/- (Rupees Five Only) each. The issued subscribed and paid up capital of the Company is Rs. 37,50,00,000 (Rupees Thirty Seven Crores and Fifty Lakhs Only) comprising of 7,50,00,000 (Seven Crores Fifty Lakhs) equity shares of Rs. 5/- (Rupees Five Only) each, reduced from Rs. 75,00,00,000 (Rupees Seventy Five Crores Only) comprising of 7,50,00,000 (Seven Crores Fifty Lakhs) equity shares of Rs. 10/- (Rupees Ten Only) each.

At the date of registration of this minute, 7,50,00,000 (Seven Crores Fifty Lakhs) equity shares of Rs. 5/- (Rupees Five Only) each amounting to Rs. 37,50,00,000 (Rupees Thirty Seven Crores and Fifty



Lakhs Only) are issued and deemed to have been fully paid up."

29. As per Section 66 (5) of Companies Act, 2013 the petitioner company shall deliver a certified copy of this order under section 66(3) and the minute as approved to the Registrar of Companies within 30 days of receipt of the order.
30. The petitioner Company is further directed to publish, the order of confirmation of the reduction of capital by the Tribunal as per Section 66 (4) of Companies act, 2013, in two newspapers, one in English language and translation thereof in Hindi language, both having wide circulation where the registered office of the Company is situated.
31. The Registrar of Companies shall issue a certificate of Registration of Order and Minute in Form RSC-7 of The National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016.
32. All concerned regulatory authorities to act on certified copy of order.

33. Any person shall be at the liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

Let copy of the order be served to the parties.

Sdl—

(M.M. KUMAR)

PRESIDENT

Sdl—

Sdl—

(S.K. MOHAPATRA)

MEMBER (T)