

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH
NEW DELHI

Judgement Dated: 14/6/2018

CORAM:

R. VARADHARAJAN, MEMBER (JUDICIAL)

MS. DEEPA KRISHAN, MEMBER (TECHNICAL)

COMPANY PETITION NO. 93 OF 2017

IN THE MATTER OF SECTIONS 66 OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF:

RENAISSANCE ADVANCED CONSULTANCY LIMITED,


Having its Registered office at

B- 47, Second Floor, Connaught Place

New Delhi- 110001.

..... PETITIONER COMPANY

ADVOCATE FOR THE PETITIONER: Rajeev Kumar, Advocate

 **FOR REGIONAL DIRECTOR, (NR), MCA: Mr. C. Balooni, Company
Prosecutor**

ORDER

DEEPA KRISHAN, MEMBER(T)

1. The Petitioner companies have approached this Tribunal for the purpose of confirmation of reduction of its equity share capital and share premium account. This Tribunal vide its order dated 23.05.2017 was pleased to dispense with the requirement of convening the meetings as there were nil secured creditors and 4 unsecured creditors whose consent affidavits had been placed on record. The tribunal has further directed the applicant to cause the publication of notice in Business Standard' English Daily' and Jansata 'Hindi Edition 'in the city in which the registered office of the applicant Company is situated and also direct the petitioner companies that notice of the Petition be issued to the Registrar of Companies as well as Regional Director and Income Tax Department.
2. An affidavit dated 01.06.2017 has been filed by the Petitioner Companies confirming that copies of petition along with the copy of the notice have been duly served to the Registrar of Companies, Regional Director, Northern Region and Income Tax Department in compliance with the order dated 23.05.2017 and in proof of the same acknowledgement made by the respective offices have also been enclosed.
3. The Learned Counsel for the Petitioner took us through the Petition and represented that the company will reduce its paid-up capital from

Rs.2,65,00,000 /- divided into 26,50,000/- equity shares of Rs. 10/- each to
Rs. 2,16,95,190/- divided into 21,69,519/- equity shares of Rs. 10/- each.

4. The Issued, Subscribed and Paid-up capital of the Petitioner Company pre and post the reduction of capital shall be:

Issued, Subscribed and Paid-up capital (Pre-capital reduction) <u>Equity</u> 26,50,000 Equity shares of Rupees 10/- each.	2,65,00,000/-
Issued, Subscribed and Paid-up capital (Post capital reduction) <u>Equity</u> 21,69,519 Equity shares of Rupees 10/- each.	2,16,95,190

5. It is submitted by the applicant company that the proposed reduction in share capital does not involve any extinction or reduction of any liability in respect of unpaid share capital or cancellation of paid up capital which is lost or is un- represented by available assets or the payment to any shareholder of any paid-up share capital.

6. The Company was incorporated on 01.09.2014 with the name and style of Renaissance Advanced Consultancy limited. The company is presently engaged in the business of consultancy.

7. The Board of Directors has passed the board resolution on 13.04.2017 in which they have accorded approved for reducing the issued, subscribed and paid up share capital of the Company, which shall be affected by way of:

a. *Extinguishment and cancellation of 2,75,988 /- fully paid up equity shares of Rs. 10/- each held by Raghu Trading & investment Co. Pvt. Ltd. and 2,04,493 fully paid up equity shares of Rs. 10/- each held by Global Agencies Pvt. Ltd (“Proposed Capital Reduction”) there by reducing the issued, subscribed and paid up share capital of the Company from Rs. 2,65,00,000 to Rs, 2,16,95,190.*

b. *Nil consideration being payable by the Company to Raghu Trading and Global Agencies in lieu of the reduction, extinguishment and cancelation of the fully paid up equity shares as mentioned hereinabove.*

8. They have further resolved that the amount of share capital so reduced shall be credited to the Capital Reserve Account in the books of the Company at the time of giving effect to the capital reduction.

9. Perusal of the Petition shows that in pursuant to family arrangement amongst the members of Dalmia family, 2,75,988 equity shares of Raghu Trading & Investment Co. Pvt. Ltd and 2,04,493/- equity shares of Global Agencies Pvt. Ltd are being cancelled. No consideration is being paid for the cancelled

shares. The Board of Directors of the company is said to have approved the reduction of the paid-up equity share capital of the Petitioner Company on 13.04.2017 and further it is also seen that the same has been approved by the Equity Shareholders in the Extra Ordinary General Meeting held on 12.05.2017 vide Special Resolution passed thereat. Subsequently, the Company Petition before this Tribunal has been preferred.

10. From the records, it is evident that the company is a private limited company and hence in relation to the reduction of share capital proposed by the Petitioner Company, it is competent to undertake the reduction of share capital as approved by the Board and shareholders of the Petitioner Company.

11. The Petitioner Company has produced a Certificate issued by the Statutory Auditor of the Company, a perusal of which discloses that the company does not have any Secured Creditors. It is further submitted by the petitioner company that it has 4 unsecured creditors to the value of Rs. 361,391/ as on 10.05.2017. It is also further represented that the Petitioner Company has no deposits and that the petitioner company is not in arrears in the repayment of deposits or interest thereon as on 10.05.2017, as is evident from Annexure-O dated 12.05.2017.

12. Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, after receiving the report from the Registrar of Companies has filed his report on 25.8.2017. On a perusal of the above representation of the

Regional Director as also stressed at the time of oral hearing by the representative of the Regional Director, It is seen that the Registrar of Companies, Delhi & Haryana vide para 21 of his report has stated as under:

a. It has been mentioned in para 21 of the petition inter-alia that as on 10.05.2017, the company has nil secured creditors. In this regard, it is submitted that the balance sheet as at 31.03.2016 filed by the company on MCA-21 Portal reflects that the company has outstanding secured loan of Rs. 31.75 crores sanctioned by Barclays Investment & loan (India) Ltd. It has also created charge and filed e-form. CHG-1 on MCA-21 Portal in terms of the provisions of section 77(1) of the Companies Act, 2013. However, this office has no intimation about satisfaction of such outstanding secured loans as the company has not yet given any intimation in the prescribed form to this office with regard to the payment or satisfaction of any charge registered as is required in terms of the provisions of section 82 of the Companies Act, 2013.

b. It has been observed from list the enclosed to the Annual Return, MGT-7 filed for the financial year ended on 31.03.2015 that the company has following shareholders:

** A.H. Dalmia Holding 1 share*

Usha Dalmia holding 1 share

Abhishek Dalmia holding 24998 shares



Deepak Dalmia holding 1 share on behalf of Priyemvada Dalmia Trust.

Puja Dalmia holding 1 share

Priyemvada Dalmia holding 1 share

Whereas contrary to the above, the corresponding Balance Sheet as at 31.03.2015 filed by the company on MCA-21 Portal reflects that as on 31.03.2015, Shri Abhishek Dalmia and Shri Deepak Dalmia are holding 50% each of the paid-up share capital of the company. The above facts may be explained by the company.


13. The petitioner filed an affidavit dated 04.09.2017 in response to the aforesaid observation and has stated that the petitioner company has paid off the secured loan on 20.10.2016. Accordingly, as on the date of filling the petition and as on today, there is neither any outstanding amount to be paid off nor any charge against the Petitioner Company in respect of the said loan. Copy of the no dues certificate from Barclays Investment & Loan Ltd. has been filed. The Petitioner Company has filed the necessary form for the release of the said charge. They have further submitted that the balance sheet as at 31st March,2015 filed by the Petitioner company on 28.12.2015, there has been an inadvertent typographical error in writing the percentage stake held by Mr. Abhishek Dalmia and Mrs. Deepali Dalmia as 50% each. The actual percentage stake held by Mr. Abhishek Dalmia and Mrs. Deepali Dalmia is 49.996% and 49.994% respectively. The balance stake of 0.01% is held by other shareholders.

14. It is pertinent to mention here that in compliance order dated 04.05.2018 of this Tribunal on the captioned subject and to state that name of Deepali Dalmia holding 24997 as on 31.03.2017 was inadvertently spelt as 'Deepak Dalmia'. However, it is also stated that list of shareholders enclosed to the said Annual Return and the relevant note to the said balance sheet are not properly legible which may be the reasons the said error was incurred.

15. Taking into consideration the above, there being no objections from any quarter in relation to the reduction of capital as contemplated by the petitioner Company, this Tribunal do order as follows: -

i) That the reduction of the share capital of the above company resolved on and effected by the special resolution passed at a general meeting of the said company held on the 12.05.2017.

ii) Which resolution was in the words and figures following, viz



“Resolved that pursuant to Sections 66 of the Companies Act, 2013 and other applicable provisions, if any, of Companies Act, 2013 (including any statutory modification or re-enactment thereof for the time being in force) read with article 39 of the Articles of Association of the Company, subject to the confirmation of the National Company Law Tribunal (“NCLT”), the approval of the shareholders of the Company be and is

hereby accorded for reducing the issued, subscribed and paid up share capital of the Company, which shall be effected by way of the reduction of share capital and shall take place in the following manner:

- a) Extinguishment and cancellation of 2,75,988 /- fully paid up equity shares of Rs. 10/- each held by Raghu Trading & investment Co. Pvt. Ltd. and 2,04,493 fully paid up equity shares of Rs. 10/- each held by Global Agencies Pvt. Ltd (“Proposed Capital Reduction”) there by reducing the issued, subscribed and paid up share capital of the Company from Rs. 2,65,00,000 to Rs, 2,16,95,190.
- b) Nil consideration being payable by the Company to Raghu Trading and Global Agencies in lieu of the reduction, extinguishment and cancelation of the fully paid up equity shares as mentioned hereinabove.
- c) They have further resolved that the amount of share capital so reduced shall be credited to the Capital Reserve Account in the books of the Company at the time of giving effect to the capital reduction.



Be and the same is hereby confirmed.

(2) In the facts of the present case, the use of the words “AND REDUCED” in the petitioner company’s name is dispensed with.

(3) That the form of minute under section 66(5) of the Companies Act, 2013 as set out in ANNEXURE-K hereto be and is hereby approved.

(4) The requirement of sending notices to secured and unsecured creditors is also dispensed with as the petitioner company does not have any secured creditor.

(5) That a 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 and paper publication confirming the reduction by this Tribunal of the Equity share capital shall also be issued in the same newspapers as published earlier in the prescribed format within a period of thirty days from the date of this order.

Sdl —

(Deepa Krishan)

Member (Technical)

Sdl —

14/6/18

(R. Varadharajan)

Member (Judicial)