

IN THE NATIONAL COMPANY LAW BOARD TRIBUNAL
MUMBAI BENCH

C.P NO 1995 OF 2018

In the matter of Section 66 of the Companies act 2013
and the Rules framed there under.

AND

In the matter of Reduction of Share Capital of TAMANNA
HOTELS PRIVATE LIMITED

Tamanna Hotels Private Limited incorporated }
under the provisions of Companies Act 1956 }
having its Registered office at Plot no. 7, MIDC, }
Rajiv Gandhi, Infotek Park, Hinjewadi, Taluka }
Mulshi, Taluka – Mulshi, Pune - 411057, Maharashtra }
India }Petitioner

Order delivered on 22nd October, 2019.

CORAM: Hon'ble M.K Shrawat , Member (Judicial)

Hon'ble Chandra Bhan Singh, Member(Technical)

**For the Petitioner : Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates
for Petitioner**

Per: M.K.Shrawat, Member (Judicial)

ORDER

1. Heard the learned Counsel for the Petitioner Company.
2. The learned Counsel for the Petitioner Company submits that this petition is for confirmation of a Special resolution passed by the Petitioner Company for reduction of its equity share capital by extinguishment and cancellation of 41343 (Forty One Thousand Three hundred and forty three)equity shares of Rs 100/- each (Rupees Hundred) each held by Tamanna Hospitality Services Private Limited. The said special resolution was unanimously approved by the Petitioner Company in its Extra Ordinary General Meeting held on 18th April, 2018.

Particulars	Before Capital Reduction	After Reduction of Share Capital
Number of Equity Shares	94657	53314
Name of Shareholders		
1) Tamanna Hospitality Services Private Limited	41343	0
2) Directors and their Relatives	53314	53314
Face Value	100	100
Share Capital (in INR)	9465700	5331400

Accounting Entries:**At the time of Reduction of Share Capital**

	Dr.	Cr.
Equity Share Capital A/c	41,34,300	-
To Capital Reserve A/c		
(Tamanna Hospitality Services Private Limited)		41,34,300

(Being Capital reduced to the extent of 41343 equity shares of Rs. 100 each and Credited to Capital Reserve Account).

3. The Counsel for Petitioner submits that the rationale for the proposed reduction is as follows:
 - i) *Tamanna Hospitality Services Private Limited one of the Group Company is a shareholder in the Petitioner Company;*
 - ii) *Tamanna Hospitality holds 43.68% of the paid up share capital in the Petitioner Company i.e. 41343 Equity Shares of Rs. 100/- each.*
 - iii) *Both the Companies have common Directors ;*
 - iv) *It was decided to transfer all the Shares of Tamanna Hospitality Services Private Limited to outside party without the investment done in the Petitioner Company;*

4. The Regional Director has filed a Report dated 5th November 2018 stating therein that the reduction of Share capital cannot be selective and the proposed reduction creates clause within clause. The provision of section clearly stipulates that the reduction shall be restricted to clause of shareholders and not a shareholder and that percentage of reduction should be equal to all shareholders/ class of shareholders and cannot be a single party. The Regional Director has further observed that as per balance sheet

as on 31.03.2017 of Tamanna Hospitality Services Private Limited Note.No.10 indicates the company holds 666903 Equity shares of Rs.100/. However as per shareholding pattern enclosed to the scheme the holding is 41343 equity shares of Rs.100/-.Prima Facia this amounts to false statement. The applicant may be put to strict proof and therefore the proposed reduction of share capital deserves to be rejected.

- 5.** In response to the observations made by the Regional Director in his report, the Petitioner has affidavit in rejoinder dated 21st November 2018. The Counsel for the Petitioner submit that it is settled law that question of reduction of share capital is treated as matter of domestic concerned and the decision of majority which will prevail. In support of aforesaid contention, the Counsel for the Petitioner relied upon Judgement of the Delhi High court in case of *Reckitt Benckiser (India) Limited (2005) 122 DLT 612* passed by Justice A.K. Sikri. J then judge of the Delhi High Court . After referring to various judgements under the English laws and judgement of the Madras High Court (AIR 1960 Mad 537), in paragraph 21 of the judgement it has observed that :-

21. The principals which can be distilled from the aforesaid judicial dicta , are summarized as under:

(i) The question of reduction of share capital is treated as matter of domestic concern, i.e. the decision of the majority which prevails.

(ii) If majority by special resolution decide as to how this reduction should be carried into effect.

(iii) While reducing the share capital company can decide to extinguish some of its shares without dealing in the same manner as with all other shares of the same class. Consequently , it is purely a domestic matter and is to be decided as to whether each member shall have his share proportionately reduced, or whether some members shall retain their shares unreduced, the shares of others being extinguished totally, receiving a just equivalent.

(iv) the company limited by shares is permitted to reduce its share capital in any manner , meaning thereby a selective reduction is permissible within the framework of law. (see Denver Hotel Co. , 1893 (1) chancery Division 495).

(v) When the matter comes to court, before confirming the proposed reduction the court has to be satisfied that (i) that there is no unfair or inequitable transaction and (ii) all the creditors entitled to object to the reduction have either consented or been

paid or secured.

6. On the issue of selective reduction, the Counsel for Petitioner further submitted that Section 66 of Companies act, 2013 clearly stipulates the reduction can be effected in any manner therefore selective Reduction is permitted in law. He also invites my attention to the division bench judgement of the Bombay High Court in case of Sandvik Asia Limited (Appeal No 308 of 2004) where the Hon'ble Division Bench referring to various judgements confirmed selective reduction of share capital by extinguishing shares of non-promoter shareholders.
7. The learned Counsel for Petitioner also referred to orders passed by NCLT, Mumbai Bench in cases of (i) Kolte-Patil Real Estate Private Limited in (CP No 2770 of 2018) passed by Shri Bhaskara Pantula Mohan, Member(J) and Shri V. Nallasenapathy, Member (T); (ii) Faery Estates Private Limited (C.P. NO 401 of 2017) and by this Bench in case of (iii) V.M. Salgaonkar Corporation Private Limited in CP No 289/66/2017). Further reliance is placed on the Judgement passed in CP No 73/Chd//J&K/2018 in case Harayana Malleable and Alloy Casting Limited where the Bench permitted selective reduction without consideration.
8. The Counsel for the Petitioner further submit that although in the judgments cited above some of the shareholders had opposed selective reduction of share capital, in the present case, the proposed Reduction has been unanimously approved by 100% of the Shareholders holding issued, subscribed and paid up share capital.
9. On the second issue raised by the Regional Director that as per balance sheet as on 31.03.2017 of Tamanna Hospitality Services Private Limited Note.No.10 indicates the company holds 666903 Equity shares of Rs.100/-. However as per shareholding pattern enclosed to the scheme the holding is 41343 equity shares of Rs.100/-. The Counsel for the Petitioner clarifies Tamanna Hospitality Services Private Limited holds 41343 Equity Shares of Rs 100/- each fully paid up with average premium of 1,512,86/- in the Petitioner Company. Therefore the total investment in balance sheet of Tamanna Hospitality Services Private Limited as on 31st March 2017 is shown as Rs. 6,66,90,300/- (which includes principal plus premium). This has also been clarified by statutory auditors of the Company M/s Dayanand Shetty & Co. chartered Accountants by their certificate dated 15th January 2019.
10. The third objection raised by the Regional Director *that* as per resolution passed vide para 4(A4,5) of the in an EOGM held on 24.03.2018 as

mentioned above prima facia amounts to camouflaging the gift of entire holding of Tamanna Hospitality Services Private Limited under the façade of reduction and reissue of the same to outsiders without any consideration, aims to evade tax on sale of investments. Such transfer of outsiders without any consideration goes above the head of commercial wisdom of the common man. The act proposed in the resolution motioned above would have been achieved by simple sale and purchase of investments. Hence the said act of the company /Board of Directors is not permissible under the provisions section 66 of the Companies Act,2013.

11. In so far as observations made by the Regional Director in paragraph 9 above, the counsel for the Petitioner submits that the contention of the Regional Director that the proposed reduction prima facia amounts to camouflaging the gift of entire holding of Tamanna Hospitality Services Private Limited under the façade of reduction and reissue of the same to outsiders without any consideration, aims to evade tax on sale of investments is not correct as there will be no reissue of shares as alleged by the Regional Director. The Petitioner can reduce its share capital in any manner and therefore section 66 of the companies act, 2013 does not bar the company for cancelling its share capital without any consideration and the same does not amount to gift as the shares would be extinguished, therefore the question of gift does not arise. The Counsel for the Petitioner further clarify that the Petitioner Company through its Counsel undertakes to comply with all the applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Petition will be met and answered in accordance with law.
12. In view of the fact that the all the shareholders have approved the reduction including shareholders whose shares are being cancelled and law as laid down and as stated hereinabove, Petition for reduction of share capital is allowed.
13. All concerned regulatory authorities to act on production of certified copy of this order to be issued on demand by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench.
14. The minutes set forth hereto be and is hereby approved.
15. Ordered accordingly.

Schedule

Form of Minutes

The Capital of Tamanna Hotels Private Limited is henceforth Rs. 53314400/- divided into 53314 Equity Shares of Rs. 100 reduced from Rs. 9465700 divided into 94657 Equity Shares of Rs. 100 each. At the date of the registration of this minute 53314 shares have been issued and deemed to be fully paid.

Sd/-

**CHANDRA BHAN SINGH,
Member, (Technical)**

Sd/-

**M.K. SHRAWAT
Member, (Judicial)**

Date : 22.10.2019

A.M.