

**IN THE NATIONAL COMPANY LAW BOARD TRIBUNAL
MUMBAI BENCH**

CP NO. 263 OF 2017

In the matter of Section 66 of the Companies Act 2013 and
the Rules framed thereunder

AND

In the matter of Reduction of Share Capital of Highway
Concession One Private Limited

Highway Concession One Private LimitedPetitioner Company

Judgment/Order delivered on 6th December, 2017

Coram:

Hon'ble **B. S. V. Prakash Kumar**, Member (J)
Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co
Ms. P Sheela, Joint Director in the office of Regional Director
Mr. Ramesh Golap, Assistant Director in the office of Regional Director

Per: B.S.V. Prakash Kumar, Member(J)

Order confirming Reduction of Share Capital and Approving Minutes

1. Heard the learned counsel for Petitioner Company. No objector has come before the Tribunal to oppose the Petitioner and nor has any party controverted any averments made in the Petitioner.
2. The Counsel for the Petitioner Company submits that Article 10 of the Articles of Association of the Company empowers the Petitioner Company to reduce its Share Capital from time to time.
3. The Counsel for the Petitioner Company submits that the Petition was filed for the confirmation of the special resolution for the proposed reduction of share capital in the manner proposed that would enable the Company to have a rational capital structure which is commensurate with its remaining business and assets.

The Board of Directors of the Petitioner Company at their meeting held on 12th May, 2017 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 9th June, 2017 whereby the shareholders had approved the reduction in the amount of share capital from Rs. 54,50,15,030/- (Rupees Fifty Four Crores Fifty Lakhs Fifteen Thousand and Thirty Rupees only) consisting of 5,45,01,503 (Five Crores Forty Five Lakhs One Thousand Five Hundred and Three) Equity shares of Rs.10 (Rupees Ten) each fully paid up to Rs. 45,73,55,250/- (Rupees Forty Five Crores Seventy Three Lakhs Fifty Five Thousand Two Hundred and Fifty only) comprising of 4,57,35,525 (Four Crores Fifty Seven Lakhs Thirty Five Thousand Five Hundred and Twenty Five) Equity shares of Rs. 10 (Rupees Ten) each fully paid up. Further, there will be reduction in the securities premium account not exceeding Rs. 33,82,91,431/- and payment of cash to the shareholders amounting to Rs. 42,58,51,211/-.

4. The Regional Director has filed his Report dated 15th November 2017 inter alia stating that :-
- (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 upon RBI as shareholders are foreign entities.
 - (c) It is submitted that in clause 5 of the application it is mentioned that the issued, subscribed and paid up capital is Rs 60,15,97,790 whereas in another table in the same clause it is shown as Rs. 54,50,15,030/-. Further, the applicant does not mention the reason for the reduced amount as in this application approval it is sought for reduction from Rs 54,50,15,030/- to Rs. 45,73,55,250/-. In this regard applicant has to undertake to clarify.
 - (d) It is submitted that in Minutes of order of the Advocate inter alia mentioned that, the securities premium account of Highway Concessions One Private Limited is henceforth reduced from Rs. 1,899,848,266/- to Rs. 1,561,656,835/- which means there will be reduction of Rs. 338,191,431/-

whereas in Clause 15(v) of the application it is inter-alia mentioned that reduction of securities premium account of Rs. 33,82,91,431/- which is to be clarified.

(e) Applicant in Clause 14 of the Application inter-alia mentioned in para 2 that the aggregate consideration to be paid for the capital reduction has been changed from Rs. 43,58,51,259/- to Rs. 42,58,51,211/- and in para 3 that reduction of securities premium account of the Company not exceeding Rs. 33,82,91,431/- instead of Rs. 43,58,51,259/-. In this regard it is submitted that the applicant has not mentioned the actual amount of securities premium that will be reduced and it appears applicant seeking one time approval for all its future reduction.

(f) It is submitted that, the list of creditors is not certified as per rule 2(2)(a) of the National Company Law Tribunal (Procedure for reduction of share capital of company).

(g) It is submitted that newspaper copy is not submitted.

5. In so far as observations made by the Regional Director, the Counsel for the Petitioner submit that the Petitioner Company has filed affidavit in rejoinder dated 24th November 2017 and have clarified that:-
6. In so far as observations made in paragraph 4(a) of his Report, Petitioner has clarified that the Petitioner Company is not subject to any scam and interest of the creditors, stakeholders are protected as well as statutory dues would be paid off in the ordinary course of business and that notices have been served upon all the creditors and no objections have been raised by the creditors within the time limit prescribed under the law.
7. In so far as observations made in paragraph 4(b) of his Report, Petitioner has clarified that shares of the Petitioner Company would be cancelled and post sanctioning of the reduction of capital by this Tribunal and filing of necessary forms with Registrar of Companies, the shares of the Petitioner Company would be cancelled and necessary payment to all its shareholders would be made. Since one of the shareholders of the Petitioner Company is a non-resident, in

compliance of FEMA Regulations, the Petitioner undertakes to file necessary forms (FC-TRS) pertaining to payout to the foreign shareholders with RBI.

8. In so far as observations made in paragraph 4(c) of his Report, Petitioner has clarified that the issued, subscribed and paid up capital of Rs. 60,15,97,790/- is as per the audited financial statements as on March 31, 2016. Subsequently, Company has issued bonus equity shares of 1,20,31,956 of Rs. 10 each amounting to Rs. 12,03,19,560/-. Therefore, the paid up share capital of the Company has increased to Rs. 72,19,17,350/- as on March 31, 2017. Post March 31, 2017, the Company had undertaken buyback of equity shares of 1,76,90,232 shares of Rs. 10 each amounting to Rs. 17,69,02,320/-. Accordingly, the revised paid up equity share capital is Rs. 54,50,15,030/- as mentioned in para 5 of the Petition.
9. In so far as observations made in paragraphs 4(d) & (e) of his Report, Petitioner has clarified that in the Special Resolution a copy whereof is annexed at Annexure-F2 it mentions that reduction of Securities Premium not exceeding Rs 33,82,91,431/- which is upper limit. The form of minutes, a copy whereof is annexed at page 143 of the petition, reflects the actual amount of utilization of Securities Premium Account amounting to Rs 33,81,91,431/-.
10. In so far as observations made in paragraphs 4 (f) of his Report, Petitioner has clarified that the list of creditors has been certified by two Directors of the Company a copy whereof is annexed to the affidavit in rejoinder.
11. In so far as observations made in paragraphs 4 (g) of his Report, Petitioner have clarified that newspapers have been annexed to the affidavit of service which has been filed in this Tribunal and copies thereof are again annexed to the affidavit in rejoinder.
12. The learned Counsel appearing on behalf of the Petitioner Company further submits that the Petitioner Company has complied with all the statutory requirements as per the directions of the Tribunal and they have filed necessary

affidavit of service. None of the parties have come forward to oppose the proposed reduction.

13. The Special Resolution as approved by the shareholders for the Capital Reduction in their Extraordinary General Meeting held on 9th June 2017 is confirmed and the petition is made absolute in terms of Para 27 of the Petition.
14. The minutes set forth hereto be and is hereby approved.
15. 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.
16. All concerned regulatory authorities to act on certified copy of the order duly certified by the Deputy Director, National Company Law Tribunal.

Form of Minutes

"The capital of Highway Concessions One Private Limited is henceforth Rs. 45,73,55,250 divided into 4,57,35,525 Equity Shares of Rs. 10 reduced from Rs. 54,50,15,030 divided into 5,45,01,503 Equity Shares of Rs. 10 each. At the date of the registration of this minute 4,57,35,525 Equity Shares have been issued and deemed to be fully paid. The Securities Premium Account of Highway Concessions One Private Limited is henceforth reduced from Rs. 1,899,848,266 to Rs. 1,561,656,835."

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)