

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

Company Petition No.CP. No.13(ND)/2017

**Present:CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE PRESIDENT
& SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

In the matter of:

**SK E & C INDIA PRIVATE LIMITED
Unit No.940/941, 09th Floor, JMD Megapolis ,..... Applicant/Petitioner
Sector-48, Sohna Road, Gurgaon - 122101**

ORDER

- 1) The instant application has been filed by the applicant SK E & C India Private Limited under the provisions of Section 66 of Companies Act, 2013 seeking the following reliefs.
- a) Pass an order for, and/or confirming the reduction of share capital of the Company in terms of the present application and as resolved on 02.02.2017 by the special resolution by members of the Company set out in the paragraph 10 above.
 - b) Give any direction necessary and proper be made and given
 - c) Approve the proposed minutes, and
 - d) Pass any and such further orders as the Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.
- 2) In respect of the prayers above, the applicant has made an averment in paragraph 10 to the effect that on 02.02.2017 a Special Resolution was passed by the shareholders of the applicant company at the Extraordinary General Meeting held on the said date at the registered office of the Company under Section 66 of the Companies Act, 2013 whereby the share capital of the applicant company has been consented to be

reduced from Rs.1,78,05,865/- (Rupees One Crore Seventy Eight Lakhs Five Thousand Eight Hundred Sixty Five) divided into 1,78,05,865 (One Crore Seventy Eight Lakhs Five Thousand Eight Hundred Sixty Five) equity shares of Rs.10/- each to Rs.1,30,58,650/- (Rupees One Crore Thirty Lakhs Fifty Eight Thousand Six Hundred fifty) divided into 13,05,865 (Thirteen Lakhs Five Thousand Eight Hundred Sixty Five) equity shares of Rs.10/- each and Reserves of Rs.11,81,28,097/- (Rupees Eleven Crore Eighty One Lakhs Twenty Eight Thousand Ninety Seven) to Rs.98,06,172/-. (Rupees Ninety Eight Lakhs Six Thousand One Hundred Seventy Two).

3) It is further averred in the application that in view of the fact that the oil and gas business in which the applicant Company is engaged has seen a slump in its growth and as the applicant does not have any projects which are current to undertake and execute, but, on the other hand, it is having share capital in excess of what is required to run the affairs of the Company, the applicant Company through the above Special Resolution passed on 02.02.2017 has decided to reduce the share capital of the Company under Section 66 of the Companies Act, 2013. It is also 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 any paid up capital which is lost or is unrepresented by available assets.

4) At the time of hearing it is further represented by the Learned Counsel for the petitioner that as on 3.2.2017, the applicant Company does not have any secured and unsecured creditors and in proof of which the Learned Counsel for the applicant

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Company has adduced certificates from the Managing Director of the Company as well as its Statutory Auditor as Annexures P-12 and P-13 both dated 03.02.2017. It is also further represented that the applicant has no deposits and that the applicant Company is not in arrears in the repayment of deposits or interest thereon as on 03.02.2017, as is evident from Annexures P-10 and P-11 dated 03.02.2017.

5) On a query from us with respect to the financial statements of 31.12.2016 which discloses outstanding dues to creditors amounting to Rs.68,72,862/-, the Learned Counsel for the applicant Company represents that subsequent to the said date all the liabilities have been liquidated which is evident from the above certificates issued by the Statutory Auditors of the Company as well as Managing Director of the applicant Company annexed as Annexure P-12 and P-13 and in the absence of any secured and unsecured creditors, it is represented by the Learned Counsel for the applicant Company that the paper publication which is required to be effected may be dispensed with.

6) We have perused the application as filed by the applicant alongwith annexures wherein the reduction of capital from Rs.17,80,58,650/- divided into 1,78,05,865 equity shares of Rs.10 each is sought to be reduced to Rs.1,30,58,650/- divided into 13,05,865 equity shares of Rs.10 each as well as the reduction of surplus amount standing in the reserves presently at Rs.11,81,28,097/- to Rs.98,06,172/-. A perusal of the Articles of Association, more particularly clause 39, discloses that the applicant Company has the



power by way of Special Resolution to reduce its capital, any Capital Redemption Reserve Account and Securities Premium Account in the manner thought fit and authorized by it. It is also seen on a perusal of Notifications issued by Ministry of Corporate Affairs that this Tribunal is presently vested with the power to confirm reduction of share capital of a company and that the provision of Section 66 and the Corresponding Rules has been notified on 15.12.2016 which provides inter alia the forms which are required to be adopted by the applicant as well as the procedure to be followed by this Tribunal. In consonance with the provisions of the Act as well as the rules framed there under, the company amongst other documents, have also filed a certificate from the Auditor of the Company issued to the effect that accounting treatment for the reduction of share capital of the company is in conformity with the accounting standards specified under Section 133 or other provisions, as applicable, of the Companies Act, 2013. The certificate dated 3.2.2017 is added (P-14)..

7) Taking into consideration, the application as well as the documents filed along with it, and also the representation made by the Learned Counsel for the applicant Company, we order as follows:

- i. The applicant is directed to give notice of the instant application within a period of 7 days from the date of receipt of this order to the Central Government, the Registrar of Companies having jurisdiction over the files of



the applicant Company as well as the creditors, if any of the applicant Company.

- ii. The applicant Company is further directed to cause the publication of notice in the prescribed form in English Daily 'Indian Express' and in the Hindi daily in 'Jansatta' in the edition in which the registered office of the applicant Company is situated.
- iii. The applicant Company is also directed to upload on the website of the Applicant Company, if any, intimating about the date of hearing which is fixed as 31.05.2017.

The applicant company shall file an affidavit confirming the dispatch and publication of notice not later than seven days from the date of issue of such notices. The notices directed to be issued herein by the applicant shall be given by the applicant company whereby the authorities to whom such notices are issued shall have at least three months from the date on which the notice is served on them to file their report/objections, if any.

The application/petition shall come up for hearing on 31.05.2017 by which date the authorities to whom notice of the petition is directed to be given shall file their objections, if any, failing which it will be construed that there is no objection to the confirmation of reduction of share capital of the Applicant Company as contemplated in the Application.



To come up for hearing and further orders on 31.05.2017.

22.02.2017

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(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT

SDI-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)