

BEFORE THE PRINCIPAL BENCH NATIONAL COMPANY LAW TRIBUNAL

AT NEW DELHI

Present: CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE PRESIDENT

& SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

COMPANY PETITION NO. 387 OF 2016

(TRANSFERRED FROM THE FILE OF HON'BLE HIGH COURT OF DELHI)

IN THE MATTER OF SECTIONS 100 TO 104 OF THE COMPANIES ACT, 1956

(PRESENTLY SECTIONS 66 OF THE COMPANIES ACT, 2013)

AND

IN THE MATTER OF:

UNIMODE OVERSEAS LIMITED

Having its Registered Office at :

304A/10178, IIIrd Floor, Ravinder Plaza,

Abdul Aziz Road, Karol Bagh

New Delhi-110005

.....Petitioner Company

ADVOCATE FOR THE PETITIONERS:

Mr. P.Nagesh, Advocate,  
Mr.Ashutosh Gupta , Advocate,

FOR REGIONAL DIRECTOR,(NR), MCA:

Mr. C.Balooni, Company Prosecutor

## ORDER

This is a Petition which is filed by the Petitioner above-named for the purpose of confirmation of reduction of its equity share capital. The Petition was originally filed in the Hon'ble High Court of Delhi under the erstwhile provisions of Companies Act, 1956 and the matter was listed before it on 10.05.2016. The Hon'ble High Court on the said date was pleased to direct that notice of the Petition be issued to the Registrar of Companies as well as Regional Director and also direct the Petitioner to carry out publication in the newspapers "Business Standard" English and Hindi Delhi Edition returnable on 7<sup>th</sup> October, 2016. The proceedings as above pending before the Hon'ble High Court of Delhi in view of Section 66 of the Companies Act, 2013 having been notified by the Central Government vide Notification No.3677E dated 07.12.2016 effective from 15.12.2016 as well as the Rules titled as "National Company Law Tribunal (Procedure for Reduction of Share Capital of Companies) Rules, 2016" having also been notified, the Hon'ble High Court vide its Order dated 31.01.2017 has transferred the instant Petition as well as transmitted the records connected therewith to this Tribunal which in view of all the above is now vested with the powers to consider matters concerning Reduction of Share Capital.

2. Subsequent to the transfer, the matter came up before us on 23.02.2017 for hearing and the Counsel for the Petitioner represented that the report of the Regional Director/Registrar of Companies has been filed as directed by the Hon'ble High Court. The Learned Counsel for the Petitioner took us through the Petition and represented that the company contemplated reducing its existing paid up share capital of Rs.5,01,05,070/- consisting

of 50,10,507 Equity Shares of face value of Rs.10/- each to Rs.50,10,507/- consisting of 50,10,507 Equity Shares of Rs.1/- each and that hence there is a reduction of 90% of face value of the equity shares and the purpose is stated in Paragraph 8 of the Petition as extracted below:-

- 8.1 That the Company, in the past has incurred huge losses;
- 8.2 That the Company, has been recently acquired by the new set of promoters in accordance with SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 who with the intent to revive the business operations, have proposed to wipe off the existing accumulated losses to the extent possible;
- 8.3 In order to get fresh infusion of funds for the revival of business operations, which otherwise due to presence of continuous losses is not possible, the new promoters of the petitioner company have proposed a restructuring in a manner that accumulated losses gets cleaned up to the extent possible;
- 8.4 That cleaned up Balance Sheet structure will strengthen the financials of the petitioner company, thereby, optimizing the valuation of the petitioner company and enhancing the opportunities for seeking fresh investments; and
- 8.5 In such circumstances it is desired that the capital structure of the Company should be reorganized as proposed in the present Petition. Hence, the Board of Directors of the Company decided that accumulated losses should be written-off to maximum possible extent, i.e. 90% of the existing paid up equity share capital of the Petitioner Company.

3. Perusal of the Petition shows that the company is reorganizing its share capital in order to recover accumulated losses to the extent possible. 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 22.09.2015 and further it is also seen that the same has been approved by the Equity Shareholders in the Extra Ordinary General Meeting held on 25.02.2016 vide Special Resolution passed there at. Subsequently, the Company Petition before the Hon'ble High Court seems to have been preferred.

4. From the records, it is evident that the company being a listed company has obtained 'No Adverse Observation Certificate' dated 22.01.2016 issued by the Bombay Stock Exchange in relation to the reduction of share capital proposed by the Petitioner Company. The Petitioner Company has also produced a Certificate issued by the Statutory Auditor of the Company dated 30.04.2016, a perusal of which discloses that the company does not have any Secured and Unsecured Creditors. A perusal of the report/observation filed by the Regional Director does not disclose any adverse observations in relation to proposed reduction of equity share capital of the Petitioner Company. In relation to paper publication, the same seems to have been effected on 10<sup>th</sup> September, 2016 in compliance with the order of the Hon'ble High Court and it is stated that neither the Counsel nor the Petitioner has received any objection subsequent to effecting the paper publication by the Petitioner.

5. 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:-

(1) 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 25th day of February, 2016, which resolution was in the words and figures following, viz,

**"RESOLVED THAT** pursuant to the provisions of Sections 100 to 104 and other applicable provisions, if any, of the Companies Act, 1956, Article 50 of the Articles of Association of the Company and subject to the confirmation of the Hon'ble High Court having jurisdiction over the registered office of the Company, or of the National Company Law Tribunal (NCLT) and/or any other regulatory authority as may be required, the paid up share capital of the company be and are hereby reduced against the accumulated losses to the extent of 90% (Ninety Percent) from its existing capital Rs.50,105,070 (Rupees Five Crores One Lac. Five Thousand and Seventy) consisting of 5,010, 507 (Fifty Lacs Ten Thousands and Five Hundred Seven) equity shares of face value of Rs.10/- (Rupees Ten) each to Rs.5,010,507 (Rupees Fifty Lacs Ten Thousands and Five Hundred Seven) consisting of 5,010,507 (Fifty Lacs Ten Thousands and Five Hundred Seven) equity shares of face value of Rs.1 (Rupee One) each in the following -

a) The issued, subscribed and paid-up equity share capital of Rs.50,105,070 (Rupees Five Crores, One Lac, Five Thousands, and Seventy) consisting of 50,10,507 (Fifty Lacs, Ten Thousands and Five Hundred Seven) Equity Shares of Rs.10 (Rupees



Ten Each) be reduced to Rs.5,010, 507 (Rupees Fifty Lacs Ten Thousands and Five Hundred Seven) consisting of 5,010,507 (Rupees Fifty Lacs Ten Thousands and Five Hundred Seven) equity shares of Rs.1/-(Rupees One ) each by reduction of Equity Shares capital by 90%.

- b) That the reserved created out of the reduction of share capital shall be adjusted against the accumulated losses of the Company.
- c) Every Shareholder holding shares in the Company shall be allotted 1(One) share of face value of Rs.1 (Rupees One) each in place of 1(One) share of face value of Rs.10/-(Rupees Ten) each.
- d) Any fractional shares shall be rounded off to the nearest whole number.
- e) The existing share certificates shall stand cancelled and the Company will issue fresh share certificates to the shareholders as per the entitlements at their registered address.
- f) The Equity Shares (after reduction) shall continue to be listed and traded on the respective stock exchanges.

**RESOLVED FURTHER THAT** the capital clause of the Memorandum of Association of the company be accordingly altered to read as follows subject to the confirmation of reduction in share capital by the Hon'ble High Court of Delhi at New Delhi and other Appropriate Authorities mentioned to hereinabove:

The Authorized Share Capital of the company is Rs.52,500,000/- (Rupees Five Crores, Twenty Five Lacs) divided into 52,500,000 (Five Crores Twenty Five Lacs) equity shares of Rs.1/- (Rupees One only) each.”

Be and the same is hereby confirmed.

- (2) That the Petitioner Company in view of confirmation the reduction of its capital shall for a period of two years from the date of this order add to its name as the last words thereof the words “and reduced”.
- (3) That the minute set forth in the schedule hereto be and is hereby approved.
- (4) 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.

#### SCHEDULE

The capital of Unimode Overseas Ltd. is henceforth Rs.5,010,507 divided into 5,010,507 equity shares of Rs. 1/- each, reduced from Rs.50,105,070 divided into 5,101,507 equity shares of Rs.10/-each.

Dated this 23rd day of March 2017.

23.03.2017

(O.P.Sharma)

SD/-

(CHIEF JUSTICE M.M.KUMAR)  
PRESIDENT

SD/-

(R.VARADHARAJAN)  
MEMBER (JUDICIAL)