

**In the National Company Law Tribunal**

**Allahabad Bench**

**Company Application No.94/ALD/ 2016**

*(Under Section 66 of the Companies Act, 2013)*

In the matter of Companies Act, 2013

IN THE MATTER OF

**JUBILANT CLINSYS LIMITED**

a company incorporated under the  
provisions of the Companies Act, 1956  
having its Registered office at 1A, Sector 16 A,  
Institutional Area, Noida, Uttar Pradesh, 201301

**Judgement / Order delivered on 07.07.2017**

**Coram:** Hon'ble Shri H.P Chaturvedi, Member (J)

**For the Petitioner:** Shri Navin Sinha, Senior Advocate, along with  
Shri Rahul Agarwal, Advocate

**For the Respondent:** Shri Krishna Dev Vyas CGSC , along with  
Shri M.K Bagri, Official Liquidator for Central Government

Per: Hon'ble Shri H.P Chaturvedi, Member (J)

**ORDER**

1. The instant application is filed by the applicant Jubilant Clinsys Limited, before this Tribunal under the provision of Section 66 of the Companies Act, 2013 by seeking following reliefs:

- I. **The reduction of capital resolved on 16<sup>th</sup> day of December, 2016 by the special resolution as set out in paragraph 17 of the application be confirmed;**



- II. The use of words 'AND REDUCED' in the name of the Company be dispensed with;**
- III. The form of Minute under Section 66(5) of the Companies Act, 2013 as set out in Paragraph 24 hereinabove be approved;**

2. The Petitioner Company was incorporated as a public company under the name of Jubilant Clinsys Limited on August 30, 2004. The Company is a scientifically focused contract research organization and is currently engaged in (a) providing pharmaceutical and biotechnology companies with services in support of Phase – I – IV drugs and providing services relating to data management / EDC, medical affairs, regulatory services etc.

3. It is stated that the Petitioner Company proposes to reduce its share capital by extinguishing and cancelling its Preference Shares, which have aggregate paid up value of Rs. 27,05,00,000; the Company proposes to pay Rs. 27,05,00,000 to the holders of 2,70,50,000 Preference Shares as on March 31, 2016.

4. The Petitioner Company in the para 11 of its Application has shown principal reasons for reduction of share capital stating as under: -

- I. The Company is no longer engaged in the clinical trial business and its staffing solutions business and therefore has excess capital;
- II. The Company has adequate cash and liquid assets to continue running its business activities.
- III. The Company has share capital which is in excess of its requirement to continue the business activities as are being currently undertaken by the Company.

5. It is further pleaded that Article 44 of the Article of Association of the Company empowers such that Applicant Company, by a special resolution may reduce its share capital in any manner permitted by law.



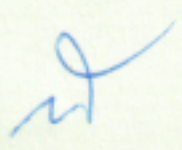
6. In support of the Petition's prayer clause, the applicant company has made such averment to this effect in Para 15 of the Application that the Board of Directors of the Company at its meeting held on November 24, 2016, approved the proposed reduction in the share capital of the Company by a special resolution duly passed in accordance with Section 66 (1) of the Companies Act, 2013. It was resolved to reduce the preference share capital of the Company by Rs. 27,05,00,000 by cancellation and extinguishment of the preference shares of the Company comprising of:

- I. 2,08,50,000, 6% optionally convertible non-cumulative redeemable preference shares of Rs. 10 each held by Jubilant Life Sciences Limited and
- II. 62,00,000, 8% optionally convertible non - cumulative redeemable preference shares of Rs.10 each held by Jubilant Life Sciences Limited (collectively "Preference Shares") and
- III. payment of an aggregate paid up value of Preference Share of Rs. 27,05,00,000 to the holders of the Preference Shareholding 2,70,50,000 Preference Shares as on March 31, 2016 being made.

7. It is further stated in the Para 20 of application that six out of seven equity shareholders of the Petitioner Company and its sole preference shareholder attended extra ordinary general meeting and have unanimously approved the above stated resolution. No shareholder voted against the proposed reduction of the share capital of the company.

8. It is also stated by the Petitioner Company that the company has not accepted any deposits and has no secured or unsecured creditors. Thus in absence of any creditors, the aforesaid extinguishment and cancellation of preference shares will not be prejudicial to the creditors of Company.

9. In response of the present application the Central Government through the Regional Director has filed its





representation affidavit dated 06.04.2017. As per Para 6 of the same the Applicant Company is a wholly owned subsidiary of M/s. Jubilant Drug Development Pte. Ltd., a Foreign Company therefore applicant company directed to comply with the applicable provisions of FEMA / RBI, if any. In response to the Company Secretary of the Applicant Company Mr. Vipul Sharma through his supplementary Affidavit dated 15.05.2017 has given undertaking to comply with all legal provisions and policy directions under FEMA/ RBI as applicable to the present case for reduction of capital.

10. A careful perusal of affidavit of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi gives such impression that his office (of Regional Director) accepts the report of Registrar of Companies as per Para 7 of affidavit, and has no specific objection, subject to his comments and observation made in his affidavit, for grant of relief as prayed for.

11. We considered the facts of the present case and heard the submission of Learned Senior Advocate Shri Navin Sinha, along with by Advocate Shri Rahul Agarwal for of the Applicant Company and Shri Krishna Dev Vyas the CGSC along with Shri M.K. Bagri the Official Liquidator for Central Government. We also perused the content of the affidavit of Regional Director and Report of Registrar of Companies and further supplementary Affidavit filed by Shri Vipul Sharma the Company Secretary of Petitioner Company who has furnished undertaking in reply of RD's Affidavit and assured to make necessary compliance of statutory provisions.

12. The law relating to reduction of share capital of a company is contained in Section 66 of Companies Act, 2013 (the corresponding Section 100 to 105 of the old Companies Act, 1956).



We have also gone through the relevant provision of Section 66, Companies Act, 2013 which reads as under:

#### **66. Reduction of Share Capital**

1. Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—

a. extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or  
b. either with or without extinguishing or reducing liability on any of its shares, —

i. cancel any paid-up share capital which is lost or is unrepresented by available assets; or

ii. pay off any paid-up share capital which is in excess of the wants of the company,

alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

**Provided** that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

2. The Tribunal shall give notice of every application made to it under sub-section (1) to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice:

**Provided** that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

3. The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit:

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

4. The order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be



published by the company in such manner as the Tribunal may direct.

5. The company shall deliver a certified copy of the order of the Tribunal under subsection (3) and of a minute approved by the Tribunal showing—

- a. the amount of share capital;
  - b. the number of shares into which it is to be divided;
  - c. the amount of each share; and
  - d. the amount, if any, at the date of registration deemed to be paid-up on each share,
- to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

XXX XXX XXX

13. Having considered the above stated legal and factual aspects of the present case we find that there is no adverse material is available on record which goes against the relief sought for by the applicant company seeking proposed reduction of share capital nor it will prejudicially affect the interest of any shareholder nor it will have any adverse effect on public at large. Further, the accounting treatment, as proposed by the Company for such reduction of the share capital is in conformity with the accounting standards specified in Section 133 and other provisions of the Companies Act, 2013. A certificate by the auditor of the Company to this effect has been annexed to the present Application. Hence, it may be seen that the Petitioner Company has duly complied with all statutory requirements pursuant to the direction of the Tribunal and filed necessary Affidavit of undertaking before this Tribunal. The Petitioner Company further undertake to comply with statutory requirement, under the Companies Act, 2013 and Rules made there under, as applicable to the proposed Reduction of its share capital.

14. Thus, the requisite statutory procedure seems to be fulfilled, and no any kind of objections is received against to the proposed reduction.

That apart, by making a judicial outlook in the present case we see the Hon'ble Bombay High Court came to examine the legal preposition for approving Reduction of Capital in the matter of In



*Re: Elpro International Ltd.* <sup>1</sup> (as per Hon'ble Justice D.Y Chandrachud observed as such:

“Reduction of share capital will be at such rate which is provided in the resolution.”

In *Hindustan Commercial Bank Ltd. v. Hindustan General Electric Corporation Ltd.* <sup>2</sup>the Calcutta High Court referred to the judgment of the House of Lords in the British American Trustee case with approval and held that the question of reducing capital is a domestic affair to be decided by the majority. The Court held that the Companies Act, 1956 leaves it to the company to decide for itself the extent and mode of reduction and application of the moneys thereby. This is, however, subject to the confirmation of the Court, which is required for safeguarding the interests of creditors and minority shareholders and seeing that it is fair, just and reasonable. A similar view was taken by the Madras High Court in *Panruti Industrial Co. (P.) Ltd. In re* <sup>3</sup>and in *Kaashyap Radiant Systems Limited*, an unreported decision of 17-6-2006 in Company Petition No. 48 of 2006. After considering several decisions, including the decision of the House of Lords in British and American Trustees, the Madras High Court held that the question of reduction of capital is a matter of domestic concern, one for the decision of the majority of the shareholders of the Company. Since the decision for reduction is based on commercial considerations undertaken by businessmen who are in the best position to know of the necessities and interests of the company concerned, in the absence of serious allegations as regards the bona fides of the proposed scheme, the Courts are hesitant. In interfering with the view of the majority. The Court has to consider whether the interests of those members of the public who may be

<sup>1</sup> [2009]149CompCas646(Bom)

<sup>2</sup> MANU/WB/0172/1960: AIR1960Cal637

<sup>3</sup> AIR 1960 Mad. 537



induced to take shares in the company are secured and whether the reduction is fair and equitable as between different classes of shareholders.

In the case of *William Jones & Sons, In re*<sup>4</sup> it has been held :

“where no one objects, the Court, in exercise of its discretion, should confirm the reduction of share capital”

In *Panruti Industrial Co. (P.) Ltd.'s case* (supra), the Madras High Court made the following observations:

“When exercising its discretion, the court is concerned to see that the reduction is fair and equitable but it is not concerned to consider the motive for reduction.... (p. 539) The company however is not bound to satisfy the Court that the proposals are not unfair, it is for the objectors to disclose such matters, as will stand in the way of the Court's approval.... (p. 540)”.

In a decision in *Reckitt Benckiser (India) Ltd.*<sup>5</sup> the Delhi High Court underlined the following principles which emerge from the law relating to a reduction of share capital:

- (i) The question of reduction of share capital is treated as a matter of domestic concern, i.e., it is the decision of the majority which prevails;
- (ii) If a majority by special resolution decides to reduce share capital of the company, it has also the right to decide as to how this reduction should be carried into effect;
- (iii) While reducing the share capital the 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.
- (v) When the matter comes to the Court, before confirming the proposed reduction the Court has to be satisfied that (i) 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.

<sup>4</sup> (1969) 2 Comp.L.J 99

<sup>5</sup> MANU/DE/1174/2005: 122 (2005) DLT612



15. In the light of the above stated rulings applicable to the present Company Application for reduction of share capital is deserved to be allowed. Hence it is allowed and made absolute in the terms of its prayer clause.

16. In the result the petitioner company is dispensed with the use of word "*and reduced*" in the name of the petitioner company or even in the memorandum of association, as no special reason is shown by the Central Government to be existing which may call for giving such direction by this Tribunal to the Company.


17. The minutes as proposed to be registered under Section 66 of the Companies Act, 2013 is hereby approved.

***Form of Minutes***

*"The paid up capital of Jubilant Clinsys Limited is henceforth Rs. 1,99,97,660 /- divided into 1,999,766 Equity Shares of Rs. 10 /- each reduced from Rs. 29,04,97,660/- divided into 1,999,766 Equity Shares of Rs.10 /- each and 2,70,50,000 Preference Shares of Rs. 10 /- each."*

18. The petitioner Company is further directed to publish, the order of confirmation of the reduction of capital by the Tribunal as per Section 66(4) of Companies act, 2013, in two newspapers, one in English language and translation thereof in Hindi language, both having wide circulation where registered office of the Company is situated.

19. As per Section 66(5) of Companies Act, 2013 the applicant company shall deliver a certified copy of the order of the NCLT under section 66 (3) and of minute approved by the Tribunal to the Registrar of Companies within 30 days of the receipt of copy of the order.





20. The Registrar of Companies shall issue a certificate of Registration of Order and Minute in Form RSC- 7 of The National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016.

21. No order as to cost.

22. All concerned regulatory authorities to act on certified copy of order.

— Sd —  
H.P. CHATURVEDI, 7/07/2017  
MEMBER-JUDICIAL

Dated: 07.07.2017