

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

CP NO.146/Chd/Hry/2017

**Under Section 66 of the Companies
Act, 2013.**

In the matter of:

Saraswati Packaging Industries Pvt. Ltd.
Plot No.17, Road No.8, DLF City Phase-1,
Gurugram-122002.

...Applicant-Petitioner

Order delivered on: 17.01.2018

Coram: Hon'ble Mr. Justice R.P.Nagrath, Member(Judicial).

For the petitioner:

Mr. Pawan Kumar, Advocate

For Registrar of Companies,
NCT of Delhi & Haryana
and Regional Director
Northern Region,
Ministry of Corporate affairs,
New Delhi.

Dr. Raj Singh, Registrar of Companies,
Himachal Pradesh.

ORDER (Oral)

The instant application has been filed by the petitioner Saraswati Packaging Industries Pvt. Ltd. under the provisions of Section 66 of Companies Act, 2013 (for short to be referred hereinafter as the 'Act') read with National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016 (for short to be referred hereinafter as the 'Rules'). The application has been filed in Form No.RSC-1 attached with the Rules for reduction of the share capital of the company.

2. The petitioner-company was incorporated on 19.04.1989 under the provisions of Companies Act, 1956.

3. When the matter was listed on 29.05.2017 the following order was passed:-

“Learned counsel for applicant filed an affidavit along with copy of the order passed in CP No.135/Chd/Hry12017. Let the same be taken on record and indexed. Learned counsel submits that the instant petition has been filed in terms of Form RSC-1 of NCLT (Procedure for Reduction of Share Capital of Company) Rules, 2016.

Learned counsel for applicant, inter-alia, contends that the applicant-company is a Private Limited Company with an authorised share capital of ₹75 lakhs divided into 75000 equity share of ₹100/- each and the paid up capital is 55960 equity shares of the same value. The company proposes to reduce the fully paid up equity share capital of the company from ₹55,96,000/- (Rupees Fifty Five Lacs Ninety Six Thousands) divided into 55960 equity shares of ₹ 100/- each to ₹26,01,000/- (Rupees Twenty Six Lacs One Thousand Only) divided into 26010 equity shares of ₹100/- each fully paid and simultaneously issue equivalent to 6% non-cumulative redeemable preference shares of ₹100/- each to the holder of equity share capital by the amount of which their capital has been issued. It is further submitted that there is a Special Resolution dated 12.04.2017 passed by the Company for reduction of share capital and that copy of the resolution is at Annexure A-5. Learned counsel refers to certificate by auditor of the company stating that the company has neither accepted any public deposit nor is in arrears in the repayment of the deposits or the interest thereon as on the date of filing the application for

which there is also the declaration (Annexure-3) by the Managing Director of the petitioner-company. There is also a certificate by the Chartered Accountants of the company (Annexure A-4) certifying that the accounting treatment proposed by the company for the reduction of share capital is in conformity with the Accounting Standards specified in section 133 or any other applicable provisions of the Companies Act, 2013. Along with the petition, a list of the creditors of the company has also been attached as Annexure A-1 which shows there is one Secured Creditor and the rest are the amounts due to the Tenants from whom advance amounts towards security has been accepted. It is further stated in the application that by virtue of Article 16(a) of Articles of Association, the company is authorised to reduce the share capital provided it passes a Special Resolution.

The matter is fixed for hearing on 03.10.2017. Notices be issued to Central Government through the Regional Director, Northern Region, Ministry of Corporate Affairs as well as Registrar of Companies in Form RSC-2 and to all the creditors in Form RSC-3, seeking their representations/objections, if any. Notice be despatched to aforesaid statutory authorities and creditors within a week from today stating the amount of proposed reduction in share capital and the amount or estimated value of the debt or contingent debt or claim or both, for which such creditors' name is entered in the creditors list. Notice shall direct the statutory authorities and the creditors to file their representations/objections, if any, to the Tribunal within 3 months from the receipt of the notice before the date fixed and copy of objections shall be sent to the company. The proforma of the notice shall be filed in the Registry by the petitioner and as many number of copies of the petition be also annexed along with the annexures and the petitioner shall despatch the same immediately, positively within one week by Speed Post.

The petitioner is also directed to publish notice in Form RSC-4 within a week in two newspapers, one in 'Hindustan Times' (English) NCR/Delhi Edition and 'Jansatta' (Hindi) NCR/Delhi Edition and also upload the notice on its Website, if any, seeking objections from creditors and intimating the date of hearing. Notice shall also mention the proposed reduction in share capital and also the place where the aforesaid list of creditors can be inspected and the time within which the creditors can send their objections, if any.

The petitioner-company is directed to file affidavit stating aforesaid compliances along with postal receipt with track reports and the copy of the newspaper publication at least one week before the date fixed. Learned counsel for the petitioner is directed to file the Memorandum and Articles of Association of the petitioner along with the index at least one week before the date fixed.”

4. With the affidavit dated 08.06.2017 of the authorized representative of the company in terms of the order dated 29.05.2017 and also attached Memorandum and Articles of Association of the company.

5. The registered office of the company is situated at Gurugram in the State of Haryana and, therefore, the matter falls within the territorial jurisdiction of this Tribunal. In this regard the certificate issued by the Registrar of Companies, NCT of Delhi and Haryana is at page 8 of the aforesaid additional documents showing that the registered office of the company was changed from the State of Delhi to State of Haryana under the orders of Company Law Board dated 26.12.2011.

6. The petitioner is stated to be a Private Limited company. Its main objects are to manufacture, produce, procure, buy, sell, import, export and deal in all kinds of packing cases, packaging, packing requisites, cartons, boxes, crates, drums, containers, bottles, jars, tubes, bags, sacks, tarpaulin and other requisite made of paper, material like board, wood, jute, silk, coir, cotton, wool, glass, metal, steel, tin, P.V.C. polythene polypropylene, polyurethane, acrylic, plastic and other materials whether natural, synthetic, mineral or other substances etc.

7. The authorized share capital of the company is ₹75,00,000/- divided into 75000 equity share of ₹100/- each out of which the issued and paid up capital is 55960 equity shares of the same value. Reference is also made to paragraph 16 (a) of the Memorandum and Articles of Association that the company may by special resolution reduce the capital in any manner permitted by law.

8. The company now proposes to reduce issued and paid up share capital from ₹55,96,000/- divided into 55960 equity shares of ₹100/- each to ₹26,01,000/- divided into 26010 equity shares of ₹100/- each fully paid and simultaneously issue 29950 6% non-cumulative redeemable preference shares of ₹100/- each to the holder of equity share capital. In this regard reference is made to paragraph 12 of the Memorandum and Articles of Association of the company that the company may issue preference shares, which shall be redeemed within a period not exceeding twenty years from the date of their issue.

9. The company statedly passed special resolution in the Extraordinary General Meeting held on 12.04.2017 and resolved to take aforesaid decision. Copy of the special resolution is at Annexure A-5. It is stated that resolution was passed by 100% of the members of the company including two corporate shareholders.

10. The reason for the reduction of share capital is to meet the consistent demand of two major equity share holders of the company as they are holding equity share for the past ten years for securing for them the regular income and that matter was placed before the EOGM for issuance of 6% non-cumulative redeemable preference shares. This reduction is not going to involve payment to any shareholder of any paid-up share capital since the equal number and amount of 6% non-cumulative redeemable preference shares shall be issued to the same equity shareholders.

11. The compliance affidavit of service of the notice in terms of the order dated 29.05.2017 of the authorized representative of the company was filed on 28.9.2017. Notice was sent to the Central Government, Registrar of Companies, NCT of Delhi & Haryana and creditors and through newspaper publication. The advertisements with regard to the service through newspaper publication in the 'Hindustan Times' (English) and 'Jansatta' (Hindi) both dated 11.06.2017 have been filed. Alongwith this affidavit, postal receipts and tracking reports have also been filed. It is stated by the learned counsel for the petitioner that as per the tracking reports all the creditors have been delivered notices of the petition and no objection/representations have been

filed by any of the creditors. The list of the creditors of the company is at Annexure A-1 of the Main Petition as on 01.05.2017 and this list has been certified by the Managing Director of the company which is the requirement of clause (a) of sub-rule (2) of the Rules. This list of creditors is of the date not earlier than 15 days before filing of this petition. The petition was originally filed in the Tribunal on 04.05.2017. The compliance certificates in terms of clauses (b), (c) and (d) of sub-rule (2) of the Rules have also been filed. In order to comply with the provisions of sub-section (1) of Section 66 of the Act it is stated that the documents at Annexure A-3 is the certificate from the Managing Director of the company, that the company has neither accepted any deposit nor in arrears in the repayment of the deposits or the interest thereon upto the date of filing of the application.

12. The Registrar of Companies has filed his report and it is submitted by Dr. Raj Singh, Registrar of Companies, Himachal Pradesh who is representing the Registrar of Companies, NCT of Delhi and Haryana that this report has been prepared after consultation with the Regional Director, Northern Region, Ministry of Corporate Affairs.

13. The Registrar of Companies has observed in his report that in MGT-14 form alongwith copy of Special Resolution passed by the company, the authorized share capital of the company was reclassified from ₹75 lakhs divided into 75000 equity shares of ₹100/- each to 45000 equity shares of ₹100/- each and 30000 6% non-cumulative redeemable preference shares of ₹100/- each and therefore, the disclosure made in paragraph 4 of the petition

is incorrect. The petitioner-company has filed affidavit of the authorized representative of the company clarifying the observations stating therein that despite filing the aforesaid MGT-14 form existing share capital of the company remains unchanged until the approval is accorded by the National Company Law Tribunal and Form SH-7 would be filed after receiving approval from the Tribunal. Dr. Raj Singh, Registrar of Companies submits that this was the only basic observation for which clarification has been given. The Registry has also made the report that no objection/representations have been received in the Tribunal with regard to proposal for reduction of the share capital from any of the creditors or any other quarter.

14. In view of the above, the petition is allowed and the minutes of the meeting of EOGM dated 12.04.2017 of the petitioner-company are approved as under:-

“Resolved that pursuant to the provisions of Section 66(1) and other applicable provisions, if any of the Companies Act, 2013 and subject to confirmation by the National Company Law Tribunal and under the Authority of the Article of Association of the Company as amended up to the date, fully paid up equity share capital of the company be and is hereby reduced from ₹55,96,000 (Rupees fifty five lac ninety six thousand only) divided into 55960 equity shares of ₹100/- each to ₹26,01,000/- (Rupees twenty six lac one thousand only) divided into 26010 equity shares of ₹100/- each fully paid and simultaneously issue 29950 6% non-cumulative redeemable preference shares of ₹100/- each to the holder of equity share capital by the amount of which their capital has been issued.

Resolved further that Shri Arun Kumar Agrawal, the Managing Director be and is hereby authorized to make application/petition to the

Ministry of Corporate Affairs, National Company Law Tribunal and any other Government Agency to give effect to the above capital reduction of the company and to do all such acts, deeds and things as may be deemed necessary and expedient to give effect to this resolution.”

15. It is directed that the order of confirming reduction of share capital shall be published by the petitioner-company in at least two newspapers i.e. Business Standard (English) and 'Jansatta' (Hindi), NCR Edition within 15 days of the receipt of certified copy of this order.

16. The petitioner shall deliver certified copy of this order of the Tribunal within 30 days of the receipt of certified copy of this order for compliance under sub-section (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 of share; and

(d) the amount, if any, at the date of registration deemed to be paid-up on each share.

to the Registrar of Companies concerned.

Sd/-

(Justice R.P.Nagrath)
Member(Judicial)

January 17, 2018
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