

FORM NO. RSC - 6

[See Rule 6(2)]

Before the National Company Law Tribunal at Chennai Bench
Company Petition No.21/66(1)/CB/2017.

M/s. Reed Relays & Electronics India Limited –Petitioner

Before the Hon'ble Member (s):

CH. MOHD SHARIEF TARIQ, MEMBER (J)

S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Order confirming Reduction of Share Capital and Approving Minute

Upon the application of M/s. Reed Relays & Electronics India Limited. presented on the 13th Day of February, 2017 and upon hearing Shri Mr. R. Murari, Ms. Hema Srinivasan and Ms. Sushmita Udayasankar Authorised Representatives for the Applicant and upon hearing Shri Balu Sridhar, PCS Authorised Representative for the Objectors, and upon reading the said application and upon perusing (the postal ballot notice/form and the last date for receipt of postal ballot form/ e-form has been intimated to shareholders by way of publication of advertisement in The New Indian Express(English) and in Dinamani (Tamil) on 11th November, 2016 containing the notice of the date of hearing of this petition. The objections raised are devoid of the merits and were rejected. No objection has been filed by the unsecured creditors. There is one secured creditor namely State Bank of India who have also given no objection.

THIS TRIBUNAL DO ORDER:

(1) That the reduction of the share capital of the above company effected by the special resolution passed at a General Meeting of the said Company held on the 12th day of December, 2016 which was in the words and figures following, viz..

The Share Capital Rs. 1,07,68,090/-(Rupee One Crore Seven Lakhs Sixty Eight Thousand and Ninety Only) consisting of 10,76,809 (Ten Lakhs Seventy Six Thousand Eight Hundred and Nine Only) Equity Shares of Rs.10/- each fully paid up to Rs. 43,48,470/- (Rupees Forty Three Lakhs Forty Eight Thousand Four Hundred and Seventy Only) consisting of 4,34,847 (Four Lakhs Thirty Four Thousand Eight Hundred and Forty Seven Only) Equity Shares Rs.10/- each, fully paid-up by cancelling 6,41,962 (Six Lakhs Forty One Thousand Nine Hundred and Sixty Two Only) issued, subscribed and paid up equity shares of Rs.10/ each, being shares held by non- promoter shareholders of the company and paying against the shares cancelled a sum of Rs.107/- per equity shares of 10/-be and the same is hereby confirmed.

(2) On the terms and conditions as per the minute set forth in the schedule hereto be and is hereby approved.

(3) 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.

***Dated this 04th day of October, 2017**

SCHEDULE

(Minutes of Resolution Passed by way of Postal Ballot by the members of Reed Relays & Electronics India Limited on Monday 12th December, 2016 which was declared on Thursday 15th December, 2016)

Form of Minute

The capital of M/s. Reed Relays & Electronics India Limited is hence forth Rs. 43,48,470/- (Rupees Forty Three Lakhs Forty Eight Thousand Four Hundred and Seventy Only) consisting of 4,34,847 (Four Lakhs Thirty Four Thousand Eight Hundred and Forty Seven Only) Equity Shares Rs.10/- (Ten) each, reduced from Rs. 1,07,68,090/-(Rupee One Crore Seven Lakhs Sixty Eight Thousand and Ninety Only) consisting of 10,76,809 (Ten Lakhs Seventy Six Thousand Eight Hundred and Nine Only) Equity Shares of Rs.10/-(Ten) each. At the date of the registration of this minute Rs. 1,07,68,090/-(Rupee One Crore Seven Lakhs Sixty Eight Thousand and Ninety Only) Equity Shares Rs.10(Ten) etc., have been issued and are deemed to be fully paid and 6,41,962 (Six Lakhs Forty One Thousand Nine Hundred and Sixty Two Only) Equity Shares are Cancelled.

(By the Tribunal)

Registrar/Dy. Registrar

*Date of the order to be the date of the approval of the minute.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

CP/21/66(1)/CB/2017

Under Section 66(1) of the Companies Act, 2013

In the matter of

M/s. Reed Relays & Electronics India Limited

Order delivered on 4th of October, 2017

CORAM

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

*For Applicant(s) : Mr. R. Murari, Ms. Hema Srinivasan
and Ms. Sushmita Udayasankar,
Sr. Counsel/Counsels*

For Objector (s) : Mr. Balu Sridhar, PCS

ORDER

Per : CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. We have heard both the Counsels appearing for the Petitioner and the Objectors, and perused the record placed on the case file.

2. Under consideration is an Application filed under Section 66 (1) of the Companies Act, 2013 for confirming the reduction of share capital which was filed before this Bench on 13.02.2017.

3. The Applicant Company has made prayers as follows:-

- a) *That the reduction of capital resolved on by the special resolution set out in the paragraph 9d above be confirmed;*
- b) *That to this end all directions necessary and proper be made and given;*
- c) *That the proposed minute be approved; and*
- d) *That such other or further order as shall be just and equitable, having regard to the facts and circumstances of this case and thus render justice.*

4. It has been stated in the Application that the Applicant Company was incorporated and registered on 04.08.1971 with the office of the Registrar of


Companies, Tamilnadu, Chennai as a public limited company by shares. However, subsequently, the office of the Company was shifted after following the procedure prescribed to the jurisdiction of the Registrar of Companies, Tamilnadu, Comibatore. The Company's Corporate Identity Number (CIN) is U32100TZ1971PLC018202.

5. The main object of the company is to do all kinds of business relating to the manufacture, assembly, fitting up, repairing, converting, overhauling, maintaining rendering services of all and pertaining to telecommunication, electronic, space and satellite communication, apparatus and equipment and railway signalling and safety equipment's, including manufacture of all types of Reeds and Reed Relays.

6. The Authorised Capial of the company is Rs.1,00,00,000(Rupees Five Crore Only) divided into 50,00,000/-(Rupees Fifty Lakhs Only) equity shares of Rs.10 each. The issue, subscribed and paid up capital u

of the company is Rs.1,07,68,090/- (rupees One Crore Seven Lakhs Sixty Eight thousand and Ninety Only) consisting of Rs.10,76,809 (Rupees Ten Lakhs Seventy Six Thousand Eight Hundred and Nine Only) equity shares of Rs.10 (Rupees Ten Only) and the company has only one class of shares.


7. It has been stated in the Application that the outstanding amount of Rs.18,39,502/- is towards the secured Term Loan as on 31.01.2017. Besides this, the Company has also short-term borrowings from the company's bankers State Bank of India towards the Working Capital facility on which a sum of Rs.4,65,021 (Rupees Four Lakhs Sixty Five Thousand and Twenty One Only) was pending as on 31.03.2016 and the amount outstanding to the State Bank of India towards the Working Capital facility, as on 31.01.2017.

8. It has also been mentioned in the Application that the company has not accepted any deposits from any person and hence, there is no question of default 

in repayment of deposits or interest thereon. The list of creditors duly certified by the managing Director of the company is enclosed, which is placed at page 92 of the typed set filed with the Application. The certificate obtained from M/s. R. Subramanian & Company, Chartered Accountants, the auditors of the company, stated that the accounting treatment proposed for the reduction of the share capital is in conformity with the applicable accounting standards; the certificate is placed at page 95 of the typed set filed with the Application.

9. It has been stated that during year 1988, the Applicant Company made an initial public offering (IPO) of its shares and it listed its shares in the then Madras Stock Exchange (MSE). At the time of listing, the company has opted to list only in MSE, as then the concept of compulsory listing on Regional Stock Exchange (RSE) was necessary and at the time of listing, the Registered Office of the Company was situated in Chennai. The shares of the company were

listed for the first time on MSE on the 02.01.1989. However, the shares of the company being listed on MSE were last traded on 08.03.2001 @ of Rs.30 per share. Thus, there has been no trading in the shares of the company since 08.03.2001.

10. The SEBI framed guidelines for RSEs to surrender their recognition as a stock exchange. The guidelines were published on 29.12.2008 ("1st Exit Circular") As per the para 8 of the 1st Exit Circular, the companies that are exclusively listed on the de-recognised RSEs, were required to seek listing on other exchanges or provide exit opportunity to its non-promoter shareholders and subsequently, the SEBI has issued another circular on 30.05.2012 (2nd Exit Circular"). In the said Circular, the process of the de-recognition of stock exchanges was listed out which provided that the exclusively listed companies which fail to obtain listing on any other stock exchange **will cease to be a listed company** and will be moved to dissemination board of 

one of the stock exchanges having nationwide trading terminal, by the existing stock exchange.

11. Thereafter, the SEBI also issued another circular dated 22.05.2014 (“3rd Exit Circular”) giving directions to the Regional Stock Exchanges for providing an option to companies exclusively listed on RSE’s either to get themselves listed on a stock exchange with nationwide trading terminal, or voluntary delisted of their securities under the SEBI (Delisting Equity Shares) Regulations, 2009. Not only this, another circular was issued by the SEBI on 17.04.2015 (“4th Exit Circular”) under which time was extended for such companies by another 18 months from the date of the regulation to get themselves listed on a stock exchanges having nationwide trading terminal.

12. In the light of the above option given by the SEBI, the Board of Directors of the Company at their meeting held on 13.10.2016 decided to pay off capital of the non-promoter shareholders of the company by

providing an exit to them. The copy of the Resolution is placed at page 124 of the typed set filed with the Petition. Pursuant to which, the Board of Directors appointed M/s. P. Pattabiramen and Company as Chartered Accountants to carry out valuation of the shares of the Applicant Company. The said Chartered Accountants, after carrying out the valuation, submitted their report and the value that they presented as per Discounted Free Cash Flow (DCF) method of valuation is Rs.107/- (Rupees One Hundred and Seven Only) per share. Based on this, a decision was taken that the same shall be the value to be paid to every share held by non-promoter shareholder of the company, **as a part of the reduction in the share capital of the company.** The company dispatched notices on 27.10.2016 together with an explanatory statement to the shareholders with the Resolution for Reduction of Capital by cancelling 6,41,962/- (Six Lakhs Forty One Thousand Nine Hundred and Sixty Two Only) ("cancelled shares") out of 10,76,809/- (Ten Lakh Seventy Six Thousand Eight Hundred and Nine

Only) and paying of sum of Rs.107(Rupees One Hundred and Seven Only) for each cancelled share of face value Rs.10/- each. Since the amount to be paid off to the shareholders, is more than the face value of the shares of the company, the remaining amount is to be paid from the securities premium account and also from the general reserves of the company. Thus, the total amount to be paid for the reduction of capital is a sum of Rs.6,86,89,934/- (Rupees Six Crores Eighty Six Lakhs Eighty Nine Thousand Nine Hundred and Thirty Four Only) which is proposed to be adjusted from the securities premium account and general reserves of the company. Therefore, a special resolution of the company was passed on 12.12.2016, wherein it has been mentioned in the Petition that the valid votes cast "for" are 435273 having 89.56%, against e-voting and valid votes cast "for" are 1330 having 89.89% under postal ballot. Therefore, consolidated votes cast by ballot papers and e-voting held between 13.11.2016 to 12.12.2016 came to be 89.56% in favour of the Resolution in reduction of share capital. It has also

been mentioned that the reduction of share capital does not involve extinction or reduction of liability in respect of the unpaid share capital or cancellation of paid up share capital which is lost or and unrepresented by available assets. Thus, the reduction also involves the reduction of the securities premium account of the company, which is also considered to be reduction of share capital within the meaning of the provisions of the Companies Act, 2013.

13. In this case, Mr. Dilip Kumar Surana, being a shareholder, along with four other shareholders, have filed the objections stating therein that the SEBI circular dated 10.10.2016 prescribed the procedures for giving exit opportunity to the public shareholders of the exclusively listed companies of De-recognised/Non-operational/Existed Stock Exchanges placed in the Dissemination Board and the Applicant Company did not give such an exit opportunity as per the said circular. It has further been stated that the Net Asset Value and Discounted Cash Flow methods were

employed to arrive at the value of shares and the consideration was fixed as per the Discounted Cash Flow method at Rs.107/- for each share to be cancelled. But, the explanatory statement did not even disclose the actual value of shares and also the valuation report for determining the consideration for cancellation of shares. The Objectors contended that the public shareholdings in the company is 59.62% and that of the promoters' is 40.38% and the proposed reduction of share capital involves only public shareholdings and the consideration fixed for the proposed reduction is unfair and unjust. Besides this, an objection has been raised that the votes of public shareholders and promoters have not been counted separately which would have shown the defeat of the resolution passed on the proposed reduction of share capital. It has also been added that the scrutinizer's report is completely biased and opaque. It has further been stated that the valuation of shares has not been done in consultation with the designated stock exchange and by an independent valuer from the panel

of expert valuers of the designated stock exchange as prescribed in the SEBI circular dated 10.10.2016 and it was prayed that the notice should also be sent to SEBI. The Applicant company has rebutted the objections raised by the Objectors, which we will deal in subsequent paragraphs. This Bench also issued notice to SEBI through the Registry.

14. Thereafter, a rejoinder was filed by the Objectors reiterating the earlier objections, wherein a relief has been sought to direct the Applicant Company to list the Company's shares in a nationwide stock exchange or offer exit opportunity to the public shareholders as mandated by SEBI circular dated 10.10.2016. The Objectors have also filed the written arguments specifically stating that the appointment of M/s. P. Pattabiramen and Company, Chartered Accountant as valuers for conducting the value of shares for the purpose of reduction is against the SEBI circular dated 10.10.2016 and the valuers were not eligible to act as valuers for valuation of shares, and while determining

the value the present available cash and bank balances, non-current investments and liabilities are not considered in enterprise value calculation. The rest are the same objections which have been raised in the beginning.

15. It may be worthwhile to mention that the main objection raised by the Objector is that the valuation of the shares given by the Valuers is not correct. The value per share would have been more than that which has been shown as Rs.107/- per share.


16. In this connection, we may make a reference to the ruling of the Hon'ble Apex Court given in **G.L. Sultania Vs. Securities and Exchange Board of India**, [2007] 78 CLA 425 (SC)/[2007] 5 SCC 133, wherein the Court has observed as follows:-

“It appears to us that the appellant expects this court to act as an expert itself. This, we are forbidden from doing. Unless it is shown that some well-accepted principle of valuation has been departed from without any reason, or that the approach adopted is patently erroneous or that relevant factors have not been considered by the

valuer or that the valuation was made on fundamentally erroneous basis or that the valuer adopted a demonstrably wrong approach or a fundamental error going to the root of the matter this Court would not interfere with the valuation of an expert. As noticed in Miheer H Mafatala v. Mafatlal Industries Ltd. [1997] 1 SCC 579, valuation of shares is a technical and complex problem which can be appropriately left to the consideration of experts in the field of accountancy. So many imponderables enter into the exercise of valuation of shares.

It may be that views may differ and it is no gainsaying that even experts may differ in their conclusions or even reasoning. The court must take notice of this fact and must not interfere unless there are compelling reasons to upset the finding of the expert valuer on grounds such as those enumerated in the earlier part of the judgement or other similar grounds.”

17. It will not be out of place to make a reference to **Campbell Vs. Edwards** [1976] All ER 785 (CA), wherein it was laid down that *“even strict principles of natural justice do not apply to a valuer as an expert, unless it is agreed otherwise, makes his own inquiries, applies his own expertise and decides on the basis of his own expert opinion.”*

18. In an earlier ruling given by the Hon'ble Supreme Court in **“Hindustan Lever Employees Union Vs. Hindustan Lever Ltd.”**, Manu/SC/0101/1995: AIR 


1995 SC 470, court rejected the argument that *“if some other method was adopted, probably the determination of valuation would have been more in favour of the shareholders. Merely because some other method of valuation could be resorted to which would possibly be more favourable, that alone cannot militate against granting approval to the Scheme propounded by the company. The court’s obligation is to be satisfied that valuation was in accordance with law and it was carried out by an independent body.”*

19. The Objectors have not challenged the legality of the report of the Valuer on the basis of fraud, collusion or partiality. It is stated while determining the value, the present available cash and bank balance, non-current investment and liabilities are not considered in enterprise value calculation and impact of this on the share shall be an incremental amount of Rs.207 per equity share. In the light of the above stated case law, the objection raised with regard to the valuation of the

shares is devoid of merits and therefore, stands rejected.

20. In relation to other objections raised by the Objectors, the Applicant Company has submitted Written Arguments rebutting the same. It has been stated in the Written Arguments that the overwhelming majority of the shareholders have voted in favour of the 'Special Resolution' for the purposes of reduction of share capital of the 1st Respondent Company and the secured creditors viz., State Bank of India has also given no objection to the reduction of share capital and there is no objection from any of the unsecured creditors. The explanatory statement under Section 102 of the Companies Act, 2013 is also on record. Section 66 of the Companies Act, 2013 does not make any distinction between the number of public and promoter shareholders who have cast their votes for and against the Resolution. It has also been submitted that Discounted Free Cash Flow method is one of the recognised fair value method which is in consonance

with the International Financial Reporting Standards (IFRS), which the Ministry of Corporate Affairs also acknowledged through a Press Release dated 13.03.2015 that *“the Indian Accounting Standards significantly follow the International Financial Reporting Standards (IFRS)”*. However, any method of fair valuation can be used as long as there is no inherent defect in the mode of valuation. It has also been submitted that the question of reduction of share capital is treated as a matter of domestic concern, and it is the decision of the majority which prevails as has been held by Hon’ble High Court of Delhi in **Reckitt Benckiser (India) Limited** reported in MANU/DE/1174/2005.

21. It has specifically been mentioned by the Applicant Company that the process of reduction of capital has been initiated in Board Meeting dated 05.10.2016 wherein, M/s. P. Pattabiramen & Co., Chartered Accountants were appointed to value the shares of the 1st Respondent Company. Therefore, the 

SEBI circular dated 10.10.2016 cannot be made applicable retrospectively. It has also been mentioned that on different dates three letters have been sent to NSE i.e., 13.10.2016, 11.11.2016 and 08.12.2016. But, the company has not received any objections from NSE to the proposed exit offer given. Then, as per the Order of this Bench, private notice was also sent to NSE and SEBI. The soft copy of the above notice was sent by the Applicant Company through e-mail to NSE and reply has been sent by NSE on 18.08.2017 stating that they have **no comments to offer**. In other words, the reply of the NSE refers that they do not have any objection to the methodology of exit opportunity given by the 1st Respondent Company.

22. In the light of the above, it is quite clear that the proposal for the reduction of the share capital is not contrary to any regulations or the provisions of the Companies Act, 2013. It is not for the court to suspect the correctness or *bonafides* of the valuation report as long as there is no inherent defect or other vitiating

factor in the valuation and it is well settled principle that court must not sit in judgement over the commercial wisdom of Directors. In view of this, the objections raised by the Objectors are devoid of merits, and the same are rejected. Therefore, we allow the Application for reduction of the share capital of the Company and order as follows:-

ORDER

23. We confirm the reduction of share capital of Applicant Company by approving the minutes of Special Resolution dated 12.12.2016 passed by the shareholders for reduction of share capital from Rs.1,07,68,090/- (Rupees One Crore Seven Lakhs Sixty Eight Thousand and Ninety Only) consisting of 10,76,809 (Ten Lakhs Seventy Six Thousand Eight Hundred and Nine Only) equity shares of Rs.10/- each fully paid-up to Rs.43,48,470/- (Rupees Forty Three Lakhs Forty Eight Thousand Four Hundred and Seventy Only) consisting of 4,34,847 (Four Lakhs

Thirty Four Thousand Eight Hundred and Forty Seven Only), issued, subscribed and paid-up equity shares of Rs.10/- each, fully paid-up, by cancelling 6,41,962 (Six Lakhs Forty One Thousand Nine Hundred and Sixty Two Only) issued, subscribed and paid-up equity shares of Rs.10/- each, being the shares held by non-promoter shareholder (as defined in the explanatory statement) of the 1st Respondent Company, and paying against the shares cancelled a sum of Rs.107 per equity share of Rs.10/-.

24. In terms of the above, the necessary alteration shall be made in the Memorandum of Association by reducing the amount of share capital and of its shares accordingly by the Applicant Company. The copy of the altered Memorandum of Association and minute approved along with the Order shall be delivered to the ROC by filing E-form INC-28, within thirty days of the receipt of copy of the Order. Accordingly, the Registry shall prepare an Order in FORM No.RSC-6 as per the National Company Law Tribunal (Procedure for

Reduction of Share Capital of Company) Rules, 2016
and issue to the Applicant.

S. Vijayaraghavan
(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)
PAM

Ch. Mohd. Sharief Tariq
(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)