

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH
HYDERABAD**

CA No.12/66/HDB/2017

U/s 66 of the Companies Act, 2013

In the matter of

Rewa Tollway Private Limited
H.No.1-89/1, Plot No.42 and 43,
Kavuri Hills, Phase-1, Madhapur,
Hyderabad – 500 081.
Telangana.

... Applicant Company

Versus

The Regional Director (SER)
Ministry of Corporate Affairs
3rd Floor, Corporate Bhawan,
GSI Post, Tattiannaram, Nagole,
Bandlaguda,
Hyderabad – 500 068.

2. The Registrar of Companies,
Ministry of Corporate Affairs
2nd Floor, Corporate Bhawan,
GSI Post, Tattiannaram, Nagole,
Bandlaguda,
Hyderabad – 500 068.

.... Respondents

Date of pronouncement of Order: 12.12.2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittalana, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)



Parties Present:

Counsel for the Applicant: Shri Ch. Pushyam Kiran, Advocate

Per: Ravikumar Duraisamy, Member (Technical)

Order Confirming Reduction of Share Capital and Approving Minutes

1. Upon the Company Application of Rewa Tollway Private Limited presented on 14.02.2017 and upon hearing Shri Ch. Pushyam Kiran, Advocate and Authorized Representative for the applicant, and upon reading the said application and upon perusing publication in Business Standard and Namaste Telangana, Vernacular Language containing the notice of the date of hearing of this petition, and considering that no objector has come before the Tribunal to oppose the Application and nor has any party controverted any averments made in the Application.
2. Heard, Shri Ch. Pushyam Kiran, Learned Counsel appeared on behalf of the Applicant Company on various dates viz. 22.03.2017, 11.04.2017, 18.04.2017, 24.04.2017, 20.06.2017, 20.07.2017, 22.08.2017, 29.08.2017, 08.09.2017, 22.09.2017 and finally on 22.09.2017 .
3. The Applicant Company filed C.A.No.76/2017 praying for dispensation of issuance of notice to creditors and publication of notice in newspapers which is required as per Rule 3(6) of National Company Law Tribunal (Procedure for Reduction of Share Capital) Rules, 2016. However, the Applicant Company has filed C.A.No.86/2017 withdrawing the above C.A.No.76/2017 and was allowed on 24.04.2017.



4. The Learned Counsel for the Applicant Company submitted that Article 11 of the Articles of Association of the Company empowers the Applicant Company to reduce the share capital. He further submitted that the proposed reduction of share capital has become necessary because the Applicant Company was incorporated as a Special Purpose Vehicle for strengthening, widening, rehabilitation, operation and maintenance of - (i) a section of project highway on Rewa-Jaisinghnagar-Shadol-Amarkantak Road Project of approximately 246.80 kms ("Project No.1"); (ii) a section of Project Highway on Satna-Maihar-Parasimod-Umaria Road Project of approximately 141.30 kms ("Project No.2"). These projects were for a concession period of 5440 days from the date of appointment i.e. 13.01.2003 which ends on 05.12.2017. Concession Agreements in relation to the above projects were entered into with the Madhya Pradesh Road Development Corporation Limited ("MPRDC"). Due to major cracks on Koteswar Bridge, traffic was diverted from the Satna stretch of the highway towards National Highway-7 from 26.10.2013, which resulted in reduction of heavy vehicles at the toll area and consequently, resulted in revenue loss to the Project No.2. In view of the financial impossibility to undertake the balance overlay works due to fall in revenue, the Applicant approached the MPRDC with a request to foreclose the concession agreement. MPRDC acceded to the Applicant's request and vesting certificate dated 20.10.2016 by virtue of which MPRDC is deemed to have acquired title and interest of the Concessionaire i.e. the Applicant Company in relation to the Project No.2 and the Project Highway is deemed to have vested to the MPRDC free from encumbrances, charges and liens whatsoever. The Applicant being a Special Purpose Vehicle and in



view of the fact that one of the two projects to carry out which the Applicant was incorporated now having been foreclosed and taken over by MPRDC, the Applicant is seeking to make a proportionate reduction of its share capital so as to make it accurately reflect its present asset position.

5. It is further submitted that the Applicant seeks to reduce its share capital by Rs.61,98,53,580/- divided into 1,60,74,338 equity shares of Rs.10/- each and 4,59,11,020 - 15.75% compulsory convertible cumulative preference shares (CCCPS) of Rs.10/- held by IJM Rewa (Mauritius) Limited. Upon reduction, the issued, paid up and subscribed capital of the Applicant Company would be Rs.18,00,00,000/- consisting of 1,80,00,000 Preference shares of Rs.10/- each.

6. The Board of Directors of the Applicant Company had approved the proposed reduction of capital at the meeting held on 01.02.2017 and thereafter an Extraordinary General Meeting of the Applicant Company was convened on 07.02.2017. Subsequently, the shareholders of the Company, by passing a Special Resolution in its Extraordinary General Meeting held on 07.02.2017 has approved the scheme of Reduction of Share Capital, the Issued, Subscribed and Paid Up Equity Share Capital of the Company, from Rs.79,98,53,580/- to Rs.18,00,00,000/-.

7. As per the directions of this Bench, the Applicant Company had issued a public notice in Form No.RSC-4 in pursuant to Rule 3(3) of NCLT (Procedure for Reduction of Share Capital of the Company) Rules, 2016. The Applicant Company also submitted an Affidavit



dated 19.06.2017, for publication of notice duly notarised along with newspaper publication issued on 27.05.2017 in Business Standard in English edition, Namaste Telangana in vernacular language.

8. The Applicant Company filed another affidavit dated 17.07.2017 stating that pursuant to the issue of individual notice to the creditors, the Counsel for the Applicant Company received a letter dated 27.05.2017 from one of the Creditors mentioned in the list of creditors viz. Tirupati Build-Con Private Limited stating that it has an objection to the reduction of share capital as the payment for the work done by the said Creditor was not being made by the Applicant Company without any reason, despite several requests. Though the amount due from the Applicant to the above creditor as per the list of creditors is Rs.26,70,099/- there were certain issues pending for resolution between the Applicant and the said Creditor. It is pertinent to mention here that the said creditor had earlier given a letter dated 09.02.2017 stating that it has no objection to the proposed reduction of share capital. It is evident from the manner in which the creditor changed its stand that it is attempting to use the present application to arm twist the Applicant into making payment of money to it without coming forward for settlement of pending issues and therefore the objection raised by the above creditor ought not to be taken into consideration by this Hon'ble Tribunal. Further, the Tirupati Constructions, a sister concern of the creditor, was awarded subcontract works for Rs.2,40,81,031/- by IJM (India) Infrastructure Limited, which is an associated Company of the Applicant. The Applicant Company withheld the payment due to the creditor, since, the said Tirupati Constructions did not pay sales tax and did not file sales tax returns because of which IJM is being denied Input Tax Credit of



Rs.20,43,960/- by the authorities for the default made by Tirupathi Constructions. The Creditor being well aware of the reasons had given its no-objection to the reduction of the share capital however, after having received the notice in the application, the creditor, as an afterthought, is attempting to take undue advantage, without indicating any intention of paying the statutory dues to the Government. It is also submitted that the Reserves and Surplus of the Applicant as per the limited review balance sheet for the period ended 31.01.2017 is Rs.7,25,55,180/- and the cash and bank balance available with the Applicant Company is Rs.69,96,79,103/- and the amount due to the above creditor is Rs.26,70,099/-. Therefore, the Applicant Company has sufficient financial ability to discharge the amount due to the above creditor even after reduction of the share capital. Thus, the amount due to creditor is adequately secured and the reduction of share capital of the Applicant Company is not going to affect the above creditor in any manner and prayed this Tribunal to pass an order rejecting the objection raised by Tirupati Build-Con Private Limited.



9. It is further stated in the above Affidavit that the Applicant Company is not required to take any prior approval from Reserve Bank of India as the shares have been allotted to IJM Rewa (Mauritius) Limited (which is a holding company of the Applicant) on repatriation basis, and the reduction of share capital of the Applicant Company is in conformity with the Foreign Exchange Management Act, 1999 (FEMA) and the Rules and Regulations framed there under from time to time.

10. The Applicant Company also filed another Affidavit dated 28.07.2017 stating that the investment made by the IJM Rewa (Mauritius) Limited in the Applicant Company has been made under the Automatic Route for which the approval of RBI is not required. This is clearly provided in the Foreign Exchange Management (Transfer or Issue of Security by a person resident outside India) Regulations, 2000 and the Master Circular No.15/2015-16 issued by the Reserve Bank of India on 10.07.2015. The procedure that is required to be followed by the Applicant Company when investment is made by a foreign entity is that the factum of the said investment is required to be intimated to the RBI by way of filing Form FC-GPR and this procedure was complied with by the Applicant Company at the time of investment. Upon reduction of share capital, the Applicant Company would have to file an onward remittance form with the RBI through the Authorised Dealer Bank and transfer the amount back to IJM Rewa (Mauritius) Limited.



11. In support of its submissions, the Applicant Company filed a Memo dated 28.09.2017 enclosing there with the following case laws which were relied upon by the Applicant Company:-

- a) Religare Capital Markets Limited – Manu/DE/1091/2015 – Hon'ble High Court of Delhi.
- b) AAPC India Hotel Management – Manu/NC/0202/2017 – NCLT, Principal Bench, New Delhi.
- c) Wrigley India Private Limited – Manu/NC/0672/2017 – NCLT, New Delhi Bench.

12. The Registrar of Companies, Hyderabad vide his Report dated 22.03.2017 by inter-alia and confirming averments of Applicant in Company Application, has further stated that the Hon'ble Tribunal can consider the case on merits.
13. The Regional Director (South East Region), Ministry of Corporate Affairs vide his Report dated 02.06.2017 submitted that the Applicant Company while paying off the paid-up capital, may not utilize the funds, which are defined under Section 68 of the Companies Act, 2013 i.e. (a) its free reserves; (b) the Securities Premium Account; or (c) the proceeds of the issue of any shares or other specified securities. It is further stated that the amount payable to IJM Rewa (Mauritius) Limited, is a foreign shareholder and therefore, payment of cash to the said foreign shareholder may be subject to compliance of FEMA and the Hon'ble Tribunal can consider the case on merits.
14. During the hearing held on 08.09.2017, the Bench opined to obtain views of the Reserve Bank of India with regard to any specific approval required by the Applicant Company when money is flowing out of the Country. Accordingly, the Registry has sent a letter dated 05.10.2017, to the Regional Director, Reserve Bank of India, Hyderabad for its opinion/comments. The Reserve Bank of India vide its letter dated 26.10.2017 submitted the following:-

- a) The proposed reduction in capital shall be treated as transfer of shares from non-resident to resident. This transaction is under general permission route.



- b) The guidelines relating to pricing for transfer of shares from non-resident to resident are mentioned in AP (DIR Series) Circular 4; dated 15.07.2014.



- c) In terms of Para 2(1)(g) of Schedule-1 to Notification No. FEMA 20/RB-2000; dated 03.05.2000 as amended from time to time (copy enclosed), the onus of compliance with the provisions of FEMA, 1999 is on the investee company.

- d) The company has to ensure that the transaction is in compliance with entry route, pricing, sectoral cap and any other attendant conditionality of FEMA, 1999.

15. We have carefully gone through all the pleadings, Report of the Regional Director (SER), Ministry of Corporate Affairs, Report of the Registrar of Companies, Opinion/comments of the RBI, various Affidavits filed by the Applicant Company, also relevant provisions of Companies Act, 2013 and Rules, we are of considered view that the Company Application deserved to be allowed as prayed for.

16. In the result, the Company Application bearing CA.No.12/66/HDB/2017 is allowed with the following directions:-

- a) The Minutes set forth in the schedule hereto be and is hereby approved.
- b) Applicant Company to publish the notices about registration of order and minutes of reduction by the Registrar of Companies, Hyderabad in the same newspapers in which previous

publications were issued to disseminate information with respect to approval granted to the scheme of reduction within 30 days of registration.

- c) Applicant Company to settle the outstanding amount of the Creditor i.e. Tirupati Build-Con Private Limited as per the terms and conditions within three weeks from the date of receipt of copy of this order and report compliance to the Registry.
- d) All concerned regulatory authorities to act on certified copy of the order and form of minutes forming part of the Application.



Form of Minutes

“The Equity Share Capital of Rewa Tollway Private Limited is henceforth Rs.18,00,00,000/- (Rupees Eighteen Crores only) divided into 1,80,00,000 equity shares of Rs.10/- (Rupees Ten only) each, reduced from Rs.79,98,53,580/- (Rupees Seventy Nine Crores Ninety Eight Lakhs Fifty Three Thousand and Five Hundred and Eighty only) comprising of 3,40,74,338 equity shares of Rs.10/- each and 4,59,11,020 – 15.75% Compulsorily Convertible Cumulative Preference Shares of Rs.10/- each”.

Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

[Signature]
for Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

प्रमाणित प्रति
CERTIFIED TRUE COPY

केस संख्या
CASE NUMBER... *CPA 12/12/66/HDB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT... *12.12.2017*
प्रति तैयार किया गया तारीख
COPY MADE READY ON... *12.12.2017*