

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA.

C.P. No. 355/KB/2017

CORAM

Shri V.P. Singh
Hon'ble Member (J)

Shri Jinan K.R.
Hon'ble Member (J)

In the matter of Section 66 of the Companies Act, 2013, and relevant provisions of the Companies Act, 2013 read with the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016

And

In the matter of :

M/s. Arjun Associates Private Limited, a Company incorporated under the Companies Act, 1956 and having its registered office at 9B, Wood Street, Kolkata - 700016.
.....Petitioner.

1.Mr. Manojit Das, Pr.C.S. - for the petitioner

1. Ms.Tianla, Dy. Director, - for Central Government through
Regional Director, Eastern Region.

Judgment delivered on : 11-1-18

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ORDER

Per Shri V.P. Singh, Member (Judicial)

This is a petition filed under section 66 of the Companies Act, 2013 read with the National Company Law Tribunal (Procedure for reduction of share capital of company) Rules, 2016. The petitioner company seeks approval of this Tribunal qua the special resolution passed at the Extra Ordinary General Meeting (EOGM) of the members of the company held on 12th April, 2017 wherein it was resolved that pursuant to the request of one of the major shareholders of the company consequent to the directives of the Income Tax Settlement Commission vide order under section 245D(4) of the Income Tax Act, 1961 dated 30.03.2017 served to the said shareholder and pursuant to the applicable provisions of the Companies Act, 2013 (including any statutory modification or re-enactment thereof), Memorandum and Articles of Association of the Company, and subject to confirmation by the Hon'ble National Company Law Tribunal and such other approvals, consents, permissions and sanctions as may be necessary to be obtained from appropriate Governmental authorities, departments, offices, institutions, bodies, agencies and third parties and such conditions as may be prescribed while granting such approvals, consents, permissions and sanction, which may be agreed by the Board of Directors, the approval of the members of the company be and is hereby accorded towards cancellation of 19810 equity shares of Rs. 100/- each, by reducing the paid-up share capital of the company which shall be effected by way of:-

(a) a selective extinguishment and cancellation of 19810 equity shares which were issued/allotted at a premium of Rs.13,511/- (Rupees thirteen thousand five hundred eleven only) per share to Mr. Naresh Kumar, and having an aggregate paid-up value of Rs.19,81,000/- (Rupees nineteen lakhs eight one thousand only) and securities premium of Rs.26,76,52,910 (Rupees twenty six crores seventy six lakhs fifty two thousand nine hundred ten only) ("Proposed Capital Reduction"); and

(b) refund of 103 Nos. of Paintings and Sculptures (Fixed Assets) which were acquired from Mr. Naresh Kumar at the time of issuance/allotment of aforesaid equity shares for consideration other than cash, amounting to book value of Rs.30,93,00,000/- (Rupees

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thirty crores ninety three lakhs only) to Mr. Naresh Kumar in lieu of cancellation of 19810 equity shares of Rs.100/- each and receiving back of the balance amount of sale consideration amounting to Rs.3,96,66,090 from Mr. Naresh Kumar.

2. Section 66 of the Companies Act, 2013 came into force w.e.f. 15.12.2016 which corresponds to erstwhile section 100-104 of the Companies Act, 1956.

3. The broad facts in the background of the present petition are that the above named company, the petitioner herein ('the company') was registered on the 17th day of January, 1967 under the provisions of the Companies Act, 1956 as a company limited by shares with a share capital. The capital of the company is Rs. 1,00,00,000/- (Rupees One Crore only) divided into 50,000 (Fifty Thousand) equity shares of Rs.100/- (Rupees Hundred only) each and 50,000 (Fifty Thousand) unclassified shares of Rs.100/- (Rupees Hundred only) each of which 39623 (Thirty Nine Thousand Six Hundred Twenty Three) equity shares have been issued and have been fully paid-up.

3.1. Article(s) 37 of the Articles of Association of the Company provides that the company may, from time to time, by special resolution, reduce its capital in any manner permitted by law.

3.2. In the financial year 2006-07, the company had purchased 103 Nos. of Painting and Sculpture from Mr. Naresh Kumar, son of Late Mr. G.D. Kumar, aged around 88 years, resident of 9/1, Middleton Street, Kolkaata - 700071, one of the shareholders and director of the company, at a total consideration of Rs.30,93,00,000/- (Rupees Thirty Crore Ninety Three Lakh only). In lieu of the aforesaid purchase, the company had issued / allotted him 19,810 Nos. Of equity share of Rs.100/- each at a premium of Rs.13,511/- per share aggregating to Rs.26,76,52,910/- (Rupees Twenty Six Crore Seventy Six Lakh Fifty Two Thousand only) on 29.03.2007 to said Mr. Naresh Kumar. The rest amounting to Rs.3,96,66,090/- (Rupees Three Crore Ninety Six Lakh Sixty Six Thousand Ninety only) was adjusted with Mr. Naresh Kumar by way of settlement of his loan amount of Rs.2,38,12,000/- (Rupees Two Crow Thirty Eight Lakh Twelve Thousand only) and the payment of Rs.1,58,54,090/- (Rupees One Crore Fifty Eight Lakh Fifty Four

Thousand Ninety only) in cash. During a settlement in relation to Income Tax dispute by said Mr. Naresh Kumar with Income Tax Settlement Commission, he had requested the company to treat the transaction with regard to the earlier sale of aforesaid paintings by him to company, as null and void and therefore to reverse the said transactions in the books of the company. Upon request of Mr. Naresh Kumar, the Board at its meeting held on 27th March, 2017 after having careful consideration and evaluation, has agreed to treat the aforesaid transaction earlier entered with him in the financial year 2006-07 as null and void subject to compliance with the relevant provisions of the Companies Act, 2013 and applicable Rules made thereunder. Accordingly, the aforesaid decision of the Board has also been submitted with the Income Tax Settlement Commission. On the basis of aforesaid settlement reached by Mr. Naresh Kumar, Income Tax Settlement Commission thereupon directed vide its order under section 245(D) of the Income Tax Act, 1961, dated 30.03.2017 to treat the transaction with regard to the earlier sale of aforesaid paintings and sculpture by him to company, as null and void and therefore to reverse the said transaction in the book of the company. At the request of Mr. Naresh Kumar on the basis of above directives as received from Income Tax Settlement Commission, the Board of Directors of the company at its meeting held on 7th April, 2017, has carefully considered and evaluated the proposal of a selective reduction, extinguish and cancellation of 19810 equity shares of Rs.100/- each which were issued at a premium of Rs.13,511/- (Rupees Thirteen thousand five hundred eleven only) per share to Mr. Naresh Kumar, and having an aggregate paid-up value of Rs.19,81,000/- (Rupees Nineteen Lakhs Eighty One Thousand only) and Securities Premium of Rs.26,76,52,910/- (Rupees Twenty Six Crore Seventy Six Lakh Fifty Two Thousand Nine Hundred Ten only). Therefore, the company has to reduce the Paintings and Sculptures Account (Fixed Assets) to the extent of Rs.30,93,00,000/- (Thirty Crore Ninety Three lakhs only). According, the company shall cancel 19,810 Nos. of equity share of Rs.100/- by way of reducing the amount of Rs.19,81,300/- (Rupees Nineteen Lakh Eighty One Thousand Three Hundred only) from its paid-up share capital of Rs.26,76,52,910/ (Rupees Twenty Six Crore Seventy Six Lakh fifty Two Thousand Nine Hundered Ten only) from its Securities Premium Account. The rest amounting to Rs.

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3,96,66,090 (Rupees Three Crore Ninety Six Lakh Sixty Six Thousand Ninety only) shall be recovered in cash from Mr. Naresh Kumar. Pursuant to the provisions of Section 66 of the Companies Act, 2013, the shareholders of the company at their Extra-Ordinary General Meeting held on 12th April, 2017, have also confirmed and approved the aforesaid reduction of the paid-up capital of the company by way of Special Resolution. The Company has also in compliance with the provisions of Section 117 of the Companies Act, 2013, submitted the e-form No. MGT-14 with the Registrar of Companies on 01st May, 2017. The reduction of share capital shall not involve extinction or reduction of any liability in respect of unpaid share capital or cancellation of any paid-up share capital which is lost or is unrepresented by available assets. However, the reduction of share capital shall involve the refund of the fixed assets (103 nos. of painting and sculptures) valued at Rs. 30,93,00,000/- (Rupees Thirty Crore Ninety Three Lakhs only).

4. The members of the company by a special resolution of the company passed at an Extra Ordinary General Meeting held on 12th April, 2017 approved reduction in share capital of the company. A copy of the resolution approved by the members on 12th April, 2017 is annexed to the petition as "Annexure A-13". The number of members who voted in favour of the resolution for reduction of share capital and the number of shares or voting power held by them - 03 shareholders holding 39,623 (100%) equity shares. None of the members voted against the resolution.

5. As per the order dated 02.08.2017 passed by this Tribunal, an affidavit dated 24.08.2017, affirmed by one Director of the petition company, has been filed on 25.08.2017, stating that the notices in Form No. RSC-3 dated 24.08.2017 have been served upon the creditors drawn as on 28.04.2017, and also served notice in Form No. RSC-2 dated 24.08.2017 to the Registrar of Companies, West Bengal.

6. As per order dated 20.09.2017 passed by this Tribunal, an affidavit dated 02.11.2017, affirmed by one Director of the petitioner company, has been filed on 03.11.2017, annexing a copy of the consent / No objection letter dated 18.09.2017

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from the HDFC Ltd. In the said letter dated 18.09.2017, HDFC Ltd. has stated that it has already given its consent / No objection to the reduction of share capital under the provisions of section 66 (3) of the Companies Act, 2013, vide its earlier letter dated 29.04.2017. By another affidavit dated 02.11.2017, the petitioner company has stated that a notice dated 13.10.2017 has been served upon the Regional Director, Eastern Region as also upon the Registrar of Companies, West Bengal, along with a copy of the order dated 20.09.2017 for filing reply within 30 days. As per directions of this Tribunal, the company has filed by an affidavit dated 10.11.2017, the list of dates along with synopsis of the instant matter.

7. Pursuant to the directions passed by this Tribunal, vide its order dated 20.09.2017, the Registrar of Companies, West Bengal has filed his report dated 13.11.2017 with the following observations:

- a) The company is an active and unlisted private limited company incorporated on 17.01.1967. Its authorised share capital is Rs.10,000,000/- and paid-up capital is Rs.39,62,300/-
- b) The company has filed its Balance Sheet and the Annual Report for the financial year ended on 31.03.2017 and the last AGM was held on 15.09.2017.
- c) The company has passed special resolution at the extra ordinary General Meeting held on 12.04.2017 for selective extinguishment and cancellation of 19,810 equity shares which were issued/allotted at a premium of Rs.13,511/- (Rupees thirteen thousand five hundred eleven only) per share to Mr. Naresh Kumar and having an aggregate paid up value of Rs.19,81,000/- (Rupees nineteen lakhs eighty one thousand only) and securities premium of Rs.26,76,52,910/- (Rupees twenty six crores seventy six lakhs fifty two thousand nine hundred ten only). The said resolution has been filed by the company in MGT-14 vide SRN 42461517 dated 01.05.2017 and the same has been taken on record by the Registrar of Companies, West Bengal.
- d) Mr. Naresh Kumar is not a share holder as on 31.03.2017. However, as per the

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share holding pattern before the proposed Capital reduction of the company attached to the petition, Mr. Naresh Kumar is a share holder and holding 19810 shares. This fact is not verifiable, therefore the Hon,ble NCLT may put strict proof on the petitioner contention that he is a shareholder as on the date of petition.

8. With regard to the observations of the Registrar of Companies, West Bengal that Mr. Naresh Kumar is not a shareholder as on 31.03.2017, the petitioner company has filed an affidavit dated 27.12.2017, accompanying a copy of the resolution passed by the Board of Directors of the company, on 07.04.2017 and also the executed Securities Transfer Form (Form No. SH-4) revealing about the transfer of shares to Mr. Naresh Kumar. The resolution passed at the meeting of Board of Directors of the company, as furnished, is extracted hereinbelow :

“RESOLVED THAT pursuant to the applicable provisions of the Companies Act, 2013 and Rules made thereunder and after complying to the conditions mentioned in the Articles of Association, 1810 equity shares of Rs.100/- each of the company be and are hereby transferred under transfer No. T1/2017 from Mrs. Sunita Kumar to Mr. Naresh Kumar as mentioned below-

Name of Transferor	Name of Transferee	No. of shares	No. of Share Certificates	Dinstinctive Nos.of Shares.
Mrs. Sunita Kumar	Mr. Naresh Kumar`	19000	18	21418-40417
Mrs. Sunita Kumar	Mr. Naresh Kumar	800	19	40418-41217
Mrs. Sunita Kumar	Mr. Naresh Kumar	10	38	3433-3442

RESOLVED THAT the aforesaid shares are hereby transferred to Mr. Naresh Kumar for without any consideration being paid by him to Mrs. Sunita Kumar.

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RESOLVED FURTHER THAT necessary endorsement and entries on the share certificates and share transfer register be made and endorsed share certificate be issued to Mr. Naresh Kumar as per requirement of the provisions of the Companies Act, 2013 and Rules made there under in this regard.

RESOLVED THAT any one Director of the Company be and is hereby authorized to do the needful in this matter.”

9. Pursuant to the directions passed by this Tribunal vide its order dated 14.11.2017, the Regional Director, Eastern Region, representing the Central Government, has filed his affidavit dated 02.01.2018 with his observations which are extracted hereinbelow :

- a) That it is submitted that on examination of the report of the Registrar of Companies, West Bengal, it appears that no complaint and/or representation has been received against the proposed Reduction of Share Capital. The petitioner company is also up-dated in filing its statutory return. A copy of ROC, WB report dated 13.09.2017 is enclosed and marked as 'Annexure-A'
- b) That the company was incorporated on 17.01.1967 and the capital of the company is Rs.1,00,00,000/- (Rs. One Crore only) divided into 50,000 (Fifty thousand) equity shares of Rs.100/- each and 50,000 (Fifty thousand) unclassified shares of Rs.100/- each, of which 39623 equity shares of Rs.100/- each have been issued and fully paid-up.
- c) That the petitioner company as 1(one) secured creditor namely HDFC Limited and the applicant company has obtained NOC for proposed reduction of share capital from HDFC Limited vide its letter dated 29.04.2017 and the same is annexed herewith as "Annexure-B'.
- d) That as informed by the company 19810 equity shares were allotted to Sh. Naresh Kumar for Rs.30.93 Crore in 2006-07 against purchase of 103 paintings by renowned painters like M.F. Hussain, Jamini Roy etc., which Mr. Naresh

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Kumar wanted to sell to the company.

- e) That these 19810 equity shares were transferred by Sh. Naresh Kumar on 15.10.2008 to his wife Sunita Kumar and were transferred back to him on 07.04.2017.
- f) That the sale of 103 paintings against allotment of 19810 equity shares of the company was not accepted by the Income Tax Settlement Commission and consequently Sh. Naresh Kumar requested the company to cancel the sale transaction vide letter dated 27.03.2017 and the Income Tax Settlement Commission in its order dated 31.03.2017 has accepted the reversal of the sale transaction. Thus, the ground for reduction of share capital is genuine. Copy of IT Settlement Commission order is enclosed as "Annexure-C'.
- g) That it is further submitted that, on 07.04.2017 the company send notices for Extra ordinary General Meeting on 12.04.2017, and in the said meeting special resolution was passed by approving the proposed scheme of writing off of share capital Rs.19,81,000/- in terms of section 66 of the Companies Act, 2013.
- h) That in view of the above facts and circumstances, this office has no objection to the reduction in share capital by the company.

10. Heard the Ld. Pr.CS appearing for the petitioner company as also Dy. Director representing the Regional Director, Eastern Region. No objection has come before this Tribunal to oppose the petition nor has any party controverted any averment made in the petition.

11. Perused the petition and the affidavits in support thereof as also the affidavit from the Regional Director, Eastern Region and report from the Registrar of Companies, West Bengal. Submissions of the respective parties have also been considered. It appears from the materials on record that the special resolution was passed on

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12.04.2017, which was attended by 03 members having voting power of 39,623 and the present at the meeting voted in favour of the resolution. It further appears that one creditors as on 28.04.2017, being HDFC Ltd, has issued consent / NO Objection letters dated 29.04.2017 and 18.09.2017. As indicated above, necessary power for reduction in share capital contained in Article 37 of the Articles of Association of the petitioner company.

12. The Auditors have issued a certificate dated 09.05.2017, to the effect that the List of Creditors as on 28.04.2017 is true and correct as per record maintained by the Company and the certificate is issued under Rule 2(b) of the National Company Law Tribunal (Procedure for reduction of share capital of company) Rules 2016.

13. The petitioner company has made a declaration of repayment of deposits which reads thus :

“I, SUNITA KUMAR (DIN - 00218013), presently residing at Middleto Mansion, 9/1, Middleton Street, Kolkata - 700071 and acting as the Managing Director of the Company, pursuant to the provisions of Section 66 of the Companies Act, 2013 read with the Rule 2(c) of the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016, do hereby solemnly declare that as on the date of filing of the application/petition before the Hon'ble National Company Law Tribunal, Kolkata Bench, for the purpose of the proposed reduction of paid-up share capital of the Company, the Company is not in arrears in the repayment of the deposits or the interest thereon. Moreover, the company does not have any deposit.”

14. The Auditors have also issued a certificate dated 09.05.2017 to the effect that the company is not, as on the filing of petition, in arrears in the repayment of the deposits or interest thereon; Moreover the company does not have any deposit and that the certificate is issued under Rule 2(c) of the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.

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15. The Auditors have also issued a certificate dated 09.05.2017 to the effect that the proposed accounting treatment as specified in petition in conformity with the Accounting Standard specified in Section 133 of the Companies Act, 2013 and the certificate is issued under Rule 2(d) of the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.

16. It further appears from the Explanatory Statements appended to the Notice dated 07.04.2017 that as on 31.03.2017, the paid-up share capital of the company is Rs.39,62,300/- (Rupees Thirty nine lakhs sixty two thousand three hundred only) and the balance in the securities premium account is Rs.26,76,52,910/- (Rupees twenty six crores seventy six lakhs fifty two thousand nine hundred ten only)

16.1. The shareholding pattern of the Company and the revised shareholding pattern of the company post the proposed Capital Reduction shall be as follows :

A. Current Shareholding Pattern before the Proposed Capital Reduction

Sl. No.	Name of Shareholders	No. of Shares held	Face Value (Rs)	Amount Paid up (Rs.)
1	Mr. Naresh Kumar	19810	1981000.00	1981000.00
2	Mrs. Sunita Kumar	19801	1980100.00	1980100.00
3	Mrs. Jessima Kumar	12	1200.00	1200.00
Total		39623	3962300.00	3962300.00

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B. Revised Shareholding Pattern post the Proposed Capital Reduction

Sl. No.	Name of Shareholders	No. of Shares held	Face Value (Rs)	Amount Paid up (Rs.)
1	Mr. Naresh Kumar	Nil	Nil	Nil
2	Mrs. Sunita Kumar	19801	1980100.00	1981000.00
3	Mrs. Jessima Kumar	12	1200.00	1200.00
Total		19813	1981300.00	1981300.00

17. Neither the Regional Director, Eastern Region nor the Registrar of Companies, West Bengal has any objection to the petition.

18. Having regard to the facts and circumstances of the above case and since all the requisite statutory compliances having been fulfilled and that such reduction of share capital shall not cause any prejudice either to the members or the creditors of the petitioner company and neither the Regional Director, Eastern Region, representing the Central Government nor the Registrar of Companies, West Bengal did raise any objection to the petition,

This Tribunal do hereby order:

(1) That the reduction of share capital of the above company resolved on and effected by Special Resolution passed at the Extra Ordinary General Meeting held on 12.04.2017 which resolution was in the words and figures as following viz.

“Resolved that pursuant to the request of one of the major shareholders of the company consequent to the directives of the Income Tax Settlement Commission vide order under section 245D(4) of the Income Tax Act, 1961 dated 30.03.2017 served to the said shareholder and pursuant to the applicable provisions of the Companies Act, 2013 (including any statutory modification or re-enactment thereof) , Memorandum

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and Articles of Association of the Company, and subject to confirmation by the Hon'ble National Company Law Tribunal (hereinafter referred to the "NCLT") and such other approvals, consents, permissions and sanctions as may be necessary to be obtained from appropriate Governmental authorities, departments, offices, institutions, bodies, agencies and third parties and such conditions as may be prescribed while granting such approvals, consents, permissions and sanction, which may be agreed by the Board of Directors (hereinafter referred to the "Board"), the approval of the members of the company be and is hereby accorded towards cancellation of 19810 equity shares of Rs. 100/- each, by reducing the paid-up share capital of the company which shall be effected by way of:-

(a) a selective extinguishment and cancellation of 19810 equity shares which were issued/allotted at a premium of Rs.13,511/- (Rupees thirteen thousand five hundred eleven only) per share to Mr. Naresh Kumar, and having an aggregate paid-up value of Rs.19,81,000/- (Rupees nineteen lakhs eight one thousand only) and securities premium of Rs.26,76,52,910 (Rupees twenty six crores seventy six lakhs fifty two thousand nine hundred ten only) ("Proposed Capital Reduction"); and

(b) refund of 103 Nos. of Paintings and Sculptures (Fixed Assets) which were acquired from Mr. Naresh Kumar at the time of issuance/allotment of aforesaid equity shares for consideration other than cash, amounting to book value of Rs.30,93,00,000/- (Rupees thirty crores ninety three lakhs only) to Mr. Naresh Kumar in lieu of cancellation of 19810 equity shares of Rs.100/- each and receiving back of the balance amount of sale consideration amounting to Rs.3,96,66,090 from Mr. Naresh Kumar.

Resolved further that the Board be and is hereby authorised to consider and take action on any or all matters as outlined above relating to the reduction of paid up share capital of the Company and to do all such acts, deeds and things necessary and incidental in order to give effect to the above resolution".

be and the same is hereby confirmed.

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(2) that the Minute appended to the petition is 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 as per provisions of sub-section (5) of section 66 of the Companies Act, 2013 who shall register the same and issue a certificate to that effect in Form No.RSC-7 [Rule 6(3)].

(4) that the petitioner is given liberty, after receiving such certificate, to publish Notice of Registration of Order and Minute once each in leading English Newspaper and once in vernacular Newspaper in Bengali having wide circulation in the State in which the registered office of the company is located, within two weeks thereafter.

(5) The petitioner company shall comply with the statutory requirements, if any, required under the Companies Act, 2013 and the Rules notified thereunder, as may be applicable.

(6) All concerned regulatory authorities to act on the certified copy of the order including the Minute forming part of the petition.

(7) C.P. NO. 355/KB/2017 is hereby disposed of on the above terms. Pending C.A., if any, also stands disposed of.

SCHEDULE

Form of Minute

"The paid-up share capital of Arjun Associates Pvt. Ltd., is henceforth Rs.19,81,300/- (Rupees Nineteen Lakh Eight One Thousand Three Hundred only) divided into 19,813 equity shares of Rs.100/- each, reduced from Rs.39,62,300/- (Rupees Thirty Nine Lakh Sixty Two Thousand Three Hundred Only) divided into 39,623 equity shares of Rs.100/- each. At the date of the registration of this minute 19,813

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equity shares of Rs. 100/- each numbered 01-19813, have been issued and are deemed to be fully paid (and the remaining 30,187 equity shares of Rs.100/- each and 50,000 unclassified shares of Rs.100/- each are unissued).

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(Jinan K.R.)

Member (J)

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(V.P. Singh)

Member (J)

Signed on this 11th day of January, 2018.