

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA.**

C.P. No. 475/KB/2017

**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 :

Regency Trust Limited, a Company incorporated under the Companies Act, 1956 and having its registered office at 538, Ground Floor, Paresh Mazumder Road, P.O. Haltu, Kolkata-700078

.....Petitioner.

1. Mr. Arif Ali, Advocate] for the petitioner
2. Mr. Ayush Bhalotia, Advocate]

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

1. Mr. S.K. Dutta, Advocate] for SEBI
2. Mr. Syamantak Benerjee, Advocate]

Judgment delivered on : 4-1-2018

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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 through Postal Ballot results declared on 09.08.2016 wherein it was resolved that the issued subscribed and paid up equity share capital of Rs.10,00,00,000/-(Rupees Ten Crores only) consisting of Rs.1,00,00,000 equity shares of Rs.10/- (Rupees Ten) each fully paid-up to Rs.1,00,00,000/-(One Crore only) divided into 1,00,00,000 (One Crore) fully paid-up equity shares of Re.1/- each, by writing off the accumulated losses of the company. Section 66 of the Companies Act, 2013 came into force w.e.f. 01.06.2016 which corresponds to erstwhile section 100-104 of the Companies Act, 1956.

2. The broad facts in the background of such the present petition came to be filed are that the above named company, the applicant herein (hereinafter call 'the company') was registered on the 2nd day of September, 1988 under the provisions of the Companies Act, 1956 as a company limited by shares with a share capital. The authorised and paid-up capital of the company is Rs. 10,00,00,000/- (Ten Crore only) divided into 1,00,00,000 (One Crore) equity shares of Rs.10/- each of which 1,00,00,000 (One Crore) equity shares have been issued and have been fully paid-up. The equity shares of the company are listed at BSE Ltd.

2.1. Article(s) 2 and 48 of the Articles of Association of the Company

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provide that the company may, from time to time, by special resolution, reduce its capital in any manner permitted by law.

2.2. The company had accumulated loss of Rs.9,11,66,432/- (Nine crores eleven lakhs sixty-six thousand four hundred and thirty two only) as against the total paid up share capital of Rs.10,00,00,000/- (Ten crores only). Therefore, it was felt by the company that the paid-up share capital of the company did not really represent the available assets of the company and that the balance sheet of the company should reflect the true picture. The Board of Directors of the company therefore passed a resolution in the meeting held on April 21, 2016 resolving to reduce the paid-up capital from Rs.10,00,00,000/- (Rupees Ten Crores only) divided into 1,00,00,000 (One crore) equity shares of Rs.10/- (Rupees Ten) each fully paid-up to Rs. 1,00,00,000/- (Rupees One Crore only) divided into 1,00,00,000 (One crore) equity shares of Re.1/- each fully paid-up which has lost or is unrepresented by available tangible assets. The resultant paid-up capital of the company will be Rs.1,00,00,000/- (Rupees One Crore only) divided into 1,00,00,000 (One crore) equity shares of Re.1/- each fully paid-up. The company has unsecured creditors of Rs.15,51,834 (rupees Fifteen lakhs fifty-one thousand eight hundred and thirty-four only) as on March 31, 2016 and the company does not have any secured creditors. The creditors have issued their No Objection Certificate for reduction in share capital of the company. No Objection Certificate from BSE taken by the company for reduction in share capital of the company, a copy of Fairness Opinion Certificate on valuation of shares of Regency Trust Ltd. and a copy of complaint status report are annexed to the petition as Exhibit 7, 8, 9 respectively.

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2.3 The reasons for such reduction of share capital are :

- i. The company has accumulated loss of Rs.9,11,66,432/- (Rupees Nine crore eleven lakh sixty sixty thousand four hundred and thirty two only as on March 31,2016. The continued losses have substantially eroded the value of share capital thus the financial statements do not reflect the correct picture of the financial health of the company.
- ii. For ensuring that the financial statement of the company reflects the real picture and the capital which is lost is not continued to be shown on the face of balance sheet, it is necessary to carry out reduction of capital of the company.
- iii. Since writing off of losses has become inevitable for growth of the company and its members, the company is now proposing to undertake a scheme of capital reduction exercises whereby the company would write off the losses against the share capital
- iv. The reduction of capital in the manner proposed would enable the company to have a rational structure which is commensurate with its remaining business and assets.
- v. The proposed reduction will be for the benefit of the company and its shareholders, creditors and all concerned as a whole.

2.4. The members of the company through Postal Ballot results declared on August 09, 2016, approved reduction in share capital of the company. A copy of the resolution approved by the members through Postal Ballot on August 09, 2016 is annexed to the petition as "Exhibit-12". The number of members who voted in favour of the resolution for reduction of share capital and the number of shares or

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voting power held by them - 49 shareholders holding 39,92,837 (39.93%) equity shares. The number of members who voted against the resolution and the number of shares or voting power held by them - 8 shareholders holding 12,49,485 (12.49%) equity shares.

2.5 The proposed scheme of reduction in share capital does not involve either the diminution of any liability in respect of any unpaid capital or the payment to any shareholder of any paid-up capital nor is any call being waived. There is no actual cash out flow. Further, the proposed adjustment would not in any way adversely affect the ordinary operations of the company or the ability of the company to honor its commitments or to pay its debts in the ordinary course of business.

3. The matter was heard on different dates. The petitioner was directed by an order dated 06.03.2017 to serve a notice along with a copy of the petition on all regulatory authorities including SEBI, Central Government. The company filed an affidavit dated 21.04.2017 confirming the service of notice on the Regional Director, Eastern Region, the Registrar of Companies, West Bengal as also the Securities Exchange Board of India (SEBI) on 07.04.2017. The Central Government through the Regional Director, Eastern Region as well as SEBI were represented. Although no affidavit came to be filed from SEBI, Ld. Advocate representing SEBI submitted that since BSE had given no objection, there was nothing further to communicate from SEBI side and the communication dated 23.06.2016 from BSE is placed on record. The Regional Director, Eastern Region, filed his affidavit dated 16.08.2017. The observations of the Central Government on the petition, as stated in the said affidavit, are extracted below :

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That it is submitted that Para 7 to 10 of the petition speaks about that the scheme inter - alia provides for writing off part of the debit balance in profit & loss account to the extent of Rs.9,00,00,000/- (Rupees Nine Crores only) against reduction of paid-up capital from Rs.10,00,00,000/- (Rupees Ten Crores only) divided into 1,00,00,000/- (one crore) equity shares of Rs.10/- each fully paid-up to Rs.1,00,00,000/- (Rupees one crore) equity shares of Re.1/- each fully paid-up.

Thus, the financial statements of the company reflects the real picture and the capital lost is not continued to be shown on the face of balance sheet, the scheme may be considered.

4. As per order dated 16.08.2017, the petitioner company filed a supplementary affidavit dated 15.09.2017, in support of the main petition, furnishing the following documents:

- a) The list of creditors drawn upto 18.08.2017 showing NIL, certified by the Whole Time Director and Director (Finance) & CFO of the company, as per Rule 2(2)(a) of the NCLT (Procedure for reduction of share capital of the company) Rules, 2016.
- b) Another certificate dated 18.08.2017 issued by the Whole Time Director and Director (Finance) and CFO, stating that the company has 02 creditors as on 31.03.2016, amounting to Rs.7,25,326/- and Rs.8,26,508/-; the company has NIL creditors as on 18.08.2017; there is no share application money pending allotment secured or unsecured loans / secured creditors; there are no deposits and arrears in payment of interest thereon; and that the accounting treatment proposed by the company is in conformity with the

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accounting standards specified in section 133 or any other provisions of the Act.

c) Statutory Auditor (M/s.Prakash Modi & Associates) has issued a certificate dated 18.08.2017 to that effect as per (b) above.

5. The Registrar of Companies, West Bengal filed his report on 08.12.2017 stating inter alia that :

a) the company has filed its Balance Sheet and Annual Reports upto 31.03.2019;

b) the authorised share capital is Rs.10,00,00,000/- and the paid-up capital is Rs.10,00,00,000/-.

c) the prosecutions have been launched against the company being case No. C/11558/2013 under section 220(3) and case No. C/1361/2014 under section 220(3) of the Companies Act, 1956 which are pending before the Ld. Chief Judicial Magistrate Alipore.

d) the company has passed the special resolution at the Extra-ordinary General Meeting held on 09.08.2016 approving to reduce the issued, subscribed and paid-up share capital of Rs.10,00,00,000/- consisting of 1,00,00,000/- equity shares of Rs.10/- each fully paid upto 1,00,00,000/- divided into 1,00,00,000 fully paid up equity shares of Re.1/- each by writing off the accumulated losses of the company.

e) the scheme provides for inter alia write off debit balance in the profit and loss accounts to the extent of Rs.9,00,00,000/- against reduction of paid-up capital from Rs.10,00,00,000/- divided into 1,00,00,000 equity shares of Rs.10/- each fully paid up upto

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Rs.1,00,00,000/- equity shares of Re.1/- each fully paid up. Thus, the financial statements of the company reflects the real picture of the capital lost is not continued to be shown in the Balance Sheet. Accordingly, the proposed deduction of capital may be considered.

6. The capital structure and shareholding pattern of the petitioner company pre-reduction of capital as on 31st March, 2016 and post reduction of capital, as available from records, are indicated below :

Particulars	Pre-reduction (Rs.)	Particulars	Post Reduction (Rs.)
Authorised Share Capital 1,00,00,000 Equity Shares of Rs.10/- each	10,00,00,000	Authorised Share Capital 10,00,00,000 Equity Shares of Rs.1/- each	10,00,00,000
Total	10,00,00,000	Total	10,00,00,000
Issued Subscribed and Paid-up Capital 1,00,00,000 Equity Shares of Rs.10/- each	10,00,00,000	Issued, Subscribed and Paid-up Share Capital : 1,00,00,000 Equity Shares of Rs.1/- each	1,00,00,000
Total	10,00,00,000	Total	1,00,00,000

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Shareholding Pattern

Particulars	Prior to the Scheme		After the implementation	
	No. of Shares (Rs.10/- each)	%	No. of Shares (Rs.10/- each)	%
Promoters & Group	0	0.00	0	0.00
Foreign Portfolio Investors	431863	4.32	431863	4.32
Shareholders holding upto Rs.2 lakhs	1043766	10.44	1043766	10.44
Shareholders holding more than Rs.2 lakhs	5267147	52.67	5267147	52.67
NRI	31725	0.32	31725	0.32
HUFs	233591	2.34	233591	2.34
Clearing Mem bers	29873	0.29	29873	0.29
Body Corporates	2962035	29.62	2962035	29.62
Total	1,00,00,000	100.00	1,00,00,000	100.00

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7. Heard the Ld. Counsel appearing for the petitioner company as also the Ld. Counsel representing the SEBI and 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.

8. 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 09.08.2016 by majority of the members voting in favour of the resolution through Postal Ballots. It further appears that two creditors as on 31st March, 2016 had issued their individual No Objection Certificate. The Auditor of company has issued a certificate dated 18.08.2017 confirming that the company has nil creditors as on 18.08.2017; there is no share application money pending allotment secured or unsecured loans / secured creditors; there are no deposits and arrears in payment of interest thereon and that the accounting treatment proposed by the company is in conformity with the accounting standards specified in section 133 or any other provisions of Act. No representation has come from the SEBI in respect of the present instant petition. However, Ld. Counsel representing SEBI submitted before this Bench that since BSE has given No Objection, there is nothing further to communicate from SEBI and the communication from BSE dated 23.06.2016 is already placed on record. Neither the Regional Director, Eastern Region, nor the Registrar of Companies, West Bengal has any objection to the petition.

9. 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/^{S.E.T.S.} 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 through Postal Ballot by majority voting in favour of the resolution, on 09.08.2016 which resolution was in the words and figures as following viz.

- a) "RESOLVED THAT pursuant to the provisions of section 100 to 104 of the Companies Act, 1956 and other applicable provisions, if any, of the Companies Act, 2013 read with the Articles of Association of the company and pursuant to relevant rules of the Companies (Court) Rules, 1959 and subject to the confirmation of the Hon'ble High Court of Kolkata / National Company Law Court and other appropriate authorities, if any, in this regard and subject to such other conditions or guidelines, if any, as may be prescribed or stipulated by any of the concerned authorities, from time to time, while granting such approvals, consents, permissions or sanctions and which may be agreed by the Board of Directors of the company, the approval of the members of the company be and is hereby accorded to reduce the issued, subscribed and paid-up equity share capital of Rs.10,00,00,000/ (Rupees Ten Crores only) consisting of 1,00,00,000 (One crore) equity shares of Rs.10/- (Rupees Ten only) each fully paid-up to Rs.1,00,00,000/- (Rupees One Crore only) divided into 1,00,00,000/- (One Crore)

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fully paid-up equity shares of Re.1/- (Rupee One only) each, by writing off the accumulate losses of the company.”

- b) “RESOLVED FURTHER THAT the Board of Directors of the company, be and is hereby authorized to do all such acts, deeds, matters and things as are considered requisite or necessary to effectively implement the arrangement embodies in the Scheme and to accept such modification and/or conditions, if any, which may be required and/ or imposed by the Hon’ble High Court of Kolkata / National Company Law Court while sanctioning the arrangement embodies in the Scheme or by any authorities under law, or as may be required for the purpose of resolving any doubts or difficulties that may arise in carrying out the Scheme.”

be and the same is hereby confirmed.

(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.

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(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. 475/KB/2017 is hereby disposed of on the above terms. Pending C.A., if any, also stands disposed of.

SCHEDULE

Form of Minute

"The capital of Regency Trust Limited, is henceforth Rs.1,00,00,000/- (Rupees One Crore only) divided into 1,00,00,000 (One Crore) Fully Paid Up Equity Shares of Re.1/- (Rupee One only), reduced from Rs.10,00,00,000/- (Rupees Ten Crores only) divided into 1,00,00,000 (One crore) Equity Shares of Rs.10/- (Rupees Ten) each. At the date of the registration of this minute 1,00,00,000 (One crore) Equity Shares numbered 1 to 1,00,00,000, have been issued and are deemed to be fully paid (and nil shares are unissued)."

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(Jinan K.R.)
Member (J)

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(V.P. Singh)
Member (J)

Signed on this 4th day of January, 2018.