

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA.

Company Petition No. 23/2016

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

In the matter of :

Sections 55 (3) of the Companies Act, 2013 read with Rule 9 of the Companies
(Share Capital and Debentures) Rules, 2014.

And

In the matter of :

Peerless Hospitex Hospital And Research Centre Limited, having its Registered
Office at 360, Panchasayar, Kolkata – 700094.

.....Petitioner

1. Mr. Rantu Kumar Das, Pr.C.S.] for the Petitioner
2. Mr. Debanjan Banerjee, Advocate.]

Judgment delivered on 6/2/18

ORDER

This Company Petition filed by the petitioner company under sub-section (3)

of section 55 of the Companies Act, 2013 read with Rule 9 of the Companies (Share Capital and Debentures) Rules, 2014 is coming up finally before us on 10.01.2018, seeking approval of this Tribunal to the further issue of 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each – Series B in redemption of the existing 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series A which were due for redemption on 05.09.2016.

2. Rule 69 of the NCLT Rules, 2016 stipulates filing of a petition under sub-section (3) of section 55 of the Companies Act, 2013 (the Act) in the prescribed format and the manner accompanied by such documents / information and requisite filing fee as mentioned in the said Rules. The instant Company Petition has been filed in terms of the said Rule.

3. Briefly, the facts as averred in the petition, are that Peerless Hospitex Hospital And Research Center Limited, the petitioner herein ("the company") was incorporated on 25.05.1989 under the Companies Act, 1956. The company is engaged in the business of running hospitals and to provide medical and other related facilities and services. Its Authorized Share capital is Rs.60,00,00,000/- divided into 400,00,000 Equity Shares of Rs.10/- each and 20,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each. The Issued, Subscribed and Paid-up Share Capital of the company is Rs. 415,703,130/- divided into 235,70,313 Equity Shares of Rs.10/- each fully paid-up of

Rs.235,703,130/- and 18,00,000 7% Redeemable Non-Cumulative Preference Shares of Rs.100/- each fully paid-up of Rs.180,000,000/-. The company issued 18,00,000 7% Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series-A on 22nd December, 2011 in lieu of full redemption of 5% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each held by The Peerless General Finance & Investment Company Limited, the sole Preference Shareholder which was initially issued on 28th August, 2006 under a Scheme of Arrangement approved by the Hon'ble High Court at Calcutta vide its order passed on 2nd August, 2006 in C.A. No.162/2006. The said 7% Redeemable Non-Cumulative Preference Shares were issued for a tenure of 5 years. The company issued and allotted on 22.12.2011 7% 18,00,000 Redeemable Preference Shares of Rs.100/- each Series-A in full redemption of the then existing 5% 1800000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each redeemable within 5 years from the date of issue on 06.09.2011. Due to inadequate resources, the company was not in a position to redeem the 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each fully paid up amounting to Rs. 180,000,000/- on the due date of redemption being 05.09.2016. As resolved at the meeting of the Share Transfer and Allotment Committee of the Board of Directors of the company held on 22.12.2011, fresh 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series-A were issued at par in full redemption of the existing 5% 18,00,000 Redeemable Non-cumulative Preference Shares of Rs.100/- each redeemable within 5 years ending on 5th

September, 2011 on the terms and conditions of right to 7% dividend with effect from 6th September, 2011 redeemable after a period of not exceeding 5 years from 6th September, 2011. The unredeemed preference shares as on the date of the petition (i.e. on 21.09.2016) is 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series-A aggregating Rs.18,00,00,000/- which was due for redemption on 05.09.2016 The company convened and conducted a meeting on 29.08.2016 of the sole Preference Share holder, The Peerless General Finance & Investments Co. Ltd., the holding company of the petitioner which gave consent for further issue of Preference Shares under section 55(3) of the Companies Act, 2013, and accordingly, the company proposed to issue further 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series-B in full redemption of the existing 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series-A as per the provisions of section 55(3) of the Companies Act, 2013 read with Rule 9(1) and (2) of the Companies (Share Capital and Debentures) Rules, 2014 on the following terms and conditions:

- i). The shares shall carry a right to a preferential dividend, as and when declared, on non-cumulative basis at 7% rate on the face value of shares.
- ii). The Preference Shareholder shall be entitled to participate in surplus fund of the company, if any.
- iii). The Preference Shareholder shall be entitled to participate in surplus

assets and profits on winding up of the company.

- iv). The Preference Shares will be redeemed fully or in part, within a period not exceeding 5 years of the issue.
- v). The holder of Preference Shares shall have a right to vote in respect of their share capital on every resolution placed before the company which directly affects the rights attached to the preference shares and any resolution for the winding up of the company or for the repayment of reduction of its Preference Share Capital.
- vi. The 7% Redeemable Non-Cumulative Preference Shares shall be issued bearing distinctive Nos. 1 to 1800,000 (both inclusive) in a single Share Certificate containing 1800,000 shares in the certificate.

The Board of Directors of company in its meeting held on 29.07.2016 passed a resolution for filing the instant petition to obtain approval of the Tribunal for the issue of further 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series-B aggregating to Rs.180000000/- in full redemption of unredeemed Preference Shares of Rs.100/- each as abovementioned.

4. It would be necessary to notice the relevant provisions of Sub-Section (3) of Section 55 of the Companies Act, 2013 in relation to issue and redemption of preference shares which reads as follows:

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“(3) Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made, by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed:

Provided that the Tribunal shall, while giving approval under this subsection, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.”

4.1 It would also be relevant to refer to Sub-Rule (1) and (2) of Rules 9 of the Companies (Share Capital and Debentures) Rules, 2014 which read as under:

9. Issue and redemption of preference shares. -(1) A company having a share capital may, if so authorized by its articles, issue preference shares subject to the following conditions namely: -

(a) the issue of such shares has been authorized by passing a special resolution in the general meeting of the company;

(b) the company, at the time of such issue of preference shares, has no subsisting default in the redemption of preference shares issued either before or after the commencement of this Act or in payment of dividend due on any preference shares.

(2) A company issuing preference shares shall set out in the resolution, particulars in respect of the following matters relating to such shares, namely: -

(a) The priority with respect to payment of dividend or repayment of capital vis-a-vis equity shares;

(b) the participation in surplus fund;

(c) the participation in surplus assets and profits, on winding-up which may remain after the entire capital has been repaid;

(d) the payment of dividend on cumulative or non-cumulative basis;

(e) the conversion of preference shares into equity shares;

(f) the voting rights;

(g) the redemption of preference shares.

5. Notice of the petition has been served upon the Registrar of Companies, West Bengal (RoC,WB).

6. As per directions of this Tribunal given vide its order dated 23.01.2017, the company convened and held an Extra Ordinary General Meeting (EOGM) of equity shareholders on 02.03.2017 for their consent to the issue of further 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series-B in full redemption of the existing 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series-A with the following terms and conditions:

- i). The Shares shall carry a right to a preference dividend, as and when declared, on non-cumulative basis, at 7% rate on the face value of shares.
- ii). The Preference Shareholders shall be entitled to participate in surplus fund of the company, if any.
- iii). The Preference Shareholder shall be entitled to participate in surplus assets and profits on winding up of the company.
- iv) The Preference Share will be redeemed fully or in part, within a period not exceeding 5 years of the issue.
- v) The holder of Preference Share shall have right to vote in respect of their share capital on every resolution placed before the company which directly affects the right attached to the preference shares and any resolution for the winding up of the company or for the repayment of reduction of its Preference Share Capital.

- vi) The Preference Shares shall be issued bearing distinctive Nos. 1 to 18,00,000 (both inclusive) in a single share certificate containing 18,00,000 shares in this certificate.

The material facts concerned with and relevant to the issue of the aforesaid Preference shares are mentioned in the explanatory statement annexed to the notice dated 18.02.2017 for holding the Extra-Ordinary General Meeting on 02.03.2017 which are as under:

- (a) The proposed issue shall be of 7% 18,00,000 Redeemable Non-cumulative Preference Shares of Rs. 100/- each Series – B.
- (b) The object of the issue is to fully redeem the existing Redeemable Non-Cumulative Preference Shares of Rs. 100/- each Series – A which is due for redemption on 5th September 2016.
- (c) The new Preference Shares shall be issued following the provisions of Section 55(3) of the Companies Act, 2013 read with Rule 9(1) and (2) of the Companies (Share Capital and Debenture) Rules, 2014.
- (d) As the entire amount of existing preference Shares are due for redemption the proposed issue is being made at Rs. 100/- each.
- (e) The shares shall carry a right to a preferential dividend, as and when declared, on non-cumulative basis, at 7% rate on the face value of shares.

- (f) The Preferences Shareholder shall be entitled to participate in surplus fund of the Company, if any.
- (g) The Preference Shareholder shall be entitled to participate in surplus assets and profits on winding up of the Company.
- (h) The Preferential Shares will be redeemed fully or in part, within a period not exceeding 5 years of the issue.
- (i) The holder of Preference Share shall have right to vote in respect of their share capital on every resolution placed before the Company which directly affects the right attached to the preference shares and any resolution for the winding up of the Company for the repayment of reduction of its Preference Share Capital.
- (j) The Preference Shares shall be issued bearing distinctive nos. 1 to 18,00,000 (both inclusive) in a single share certificate containing 18,00,000 shares in this certificate.
- (k) The share holding pattern of the Company is as under:

Category	No. of Shares	Amount (Rs.)	% of Shareholding
Promoters:			
Individual	140	1,400	0.00059
Group Companies	22,071,333	22,07,13,330	93.64039
Total Promoter Holdings (A)	22,071,473	220,714,730	93.64098
Public Holdings:			
Bank, Flls & Insurance Cos.	-	-	-
Mutual Funds & Flls	-	--	--
Other Corporate Bodies	1,488,640	14,886,400	6.31574
Public	10,200	102,000	0.0433
Any other	-	-	-
Total Public Holding (B)	1,498,840	14,988,400	6.3590
Grand Total (A+B)	23,570,313	235,703,130	100.0000

7. The company has filed e-form MGT-14 vide SRN-G37067972 dated 02.03.2017 which has been approved by the office of the RoC,WB.

8. As per directions of this Tribunal given vide its order dated 31.05.2017, the

RoC,WB has filed his detailed report dated 06.10.2017. In his said report, the RoC,WB has made his following observations:

- i). The company is an active unlisted public company. Its authorized share capital comprises Equity Share capital of Rs.400,00,000 and Redeemable Non-Cumulative Preference Share capital of Rs. 200,000,000/-. The Paid-up Share Capital of the company comprises Equity Share capital of Rs. 235,703,130/- and 7% Redeemable Non-Cumulative Preference Share capital of Rs. 180,000,000/-. Financial Statement and Annual Return for the financial year ended on 31.03.2016 have been filed.
- ii). The existing 7% 18,00,000 Redeemable Non-cumulative preference Shares of Rs.100/- each Series-A were issued on 22nd December 2011 in lieu of full redemption of 5% Redeemable Non-Cumulative Preference Shares of Rs.100/- each held by Peerless Finance & Investment Company Limited (PGFI), the holding company which were initially issued on 28th August 2006 under a Scheme of Arrangement approved by the Hon'ble High Court at Calcutta on 2nd August 2006. The subject Preference Shares were issued for tenure of 5 years with effect from 6th September,2011 and were due for redemption on 5th September 2016.
- iii) The Company has submitted that the present financial position does not permit the company to redeem the existing 7% 18,00,000 redeemable non-cumulative preference shares of Rs.100/- each, therefore, the company

proposed to issue further 7% 18,00,000 Redeemable Non-cumulative Preference Shares of Rs.100/- each Series-B equal to existing 7% 18,00,000 Redeemable Non-cumulative Preference Shares of Rs.100/- each Series-A as per the provisions of section 55(3) of the Companies Act, 2013 read with rule 9(1) and (2) of the Companies (Share Capital and Debentures) Rules, 2014. Accordingly, the company has passed a special resolution in the general meeting and filed with this office vide e-form MGT-14 SRN-G37067972 dated 02.03.2017 and complied with as per rule 9(1)(a). As per rule 9(1)(b), where issue of such further redeemable preference share be made on application before NCLT under section 55(3) of the Companies Act, 2013.

- iv) The entire existing preference shares are held by the Holding Company, there is no non-consented preference share holder to the further issue of preference shares.
- v). The company has reported net profit of Rs.32 lakhs and Rs.691 lakhs for the financial year 2014-2015 and 2015-16 respectively.

9. Heard Ld. Pr.C.S. and perused the record. The main reason which the petitioner claims for the issue of further 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series-B in redemption of the existing 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series-A, is insufficient resources. The existing Redeemable

Non-Cumulative Preference Shares of Rs.100/- each were due for redemption on 05.09.2016. The performance of petitioner company can be seen from the summary of financial results for the year 2015-16 as reflected in the Annual Report together with the audited Annual Accounts of the company which are extracted hereinbelow:

	<u>2015-2016</u>	<u>2014-2015</u>
Gross Income	15094	13275
Total Expenditure before Interest & Depreciation	13524	12286
Profit/(Loss) before Interest, Depreciation & Tax	1570	990
Interest	224	354
Depreciation	603	572
Profit/Loss before Taxation	743	64
Tax for earlier year/current year	-	(3)
Deferred Tax for the year	52	(29)
Profit/(Loss) after tax	691	32
Surplus/(Deficit) B/F from prevision years	(2607)	(2581)
Adjustment on account of Depreciation as per Schedule -II of the Companies Act, 2013	Nil	(58)
Surplus/(Deficit) Carried to Balance Sheet	(1917)	(2607)

From the above highlight of company's performance, it reveals that the company during the year ended 31.03.2016 registered a net profit of

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Rs.6,91,26,973/- against the previous year's net profit of Rs.32,00,043/- The Reserves & Surplus as shown in the financial statements of the company for the year ended on 31.03.2016 was Rs.11,40,34,119/-. The accumulated losses for the year ended 31.03.2016 posted at Rs.19,15,34,634/- against previous year's losses of Rs.26,06,61,606/-. During the said year, the Board of Directors did not recommend declaring any dividend on Equity Shares as well as Preference Shares due to accumulated losses and inadequate profits, as reported in the Directors' Report dated 26.05.2016 attached with the Annual Report for the year ended 31.03.2016. Although the company has virtually earned profit in the financial year ended 31.03.2016, the fund position did not permit the company to redeem the existing 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/-each Series-A on due date, as claimed by the petitioner.

10. Article 5 of Articles of Association of the company authorizes it to issue preference shares which are or at the option of the company are liable to be redeemed on such terms and conditions and in such manner, as the Board may determine, subject to the provisions of section 80 of the Act.

11. Neither the equity shareholders nor the sole preference shareholder has any objection to the proposed issue of further 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series-B in redemption of the existing unredeemed 7% 18,00,000 Redeemable Non-Cumulative Preference

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Shares of Rs.100/- each Series-A (which were due for redemption on 05.09.2016). The further preference shares will be redeemed fully or in part, within a period not exceeding 5 years of the issue. The relevant resolution has been approved by the Board of Directors at their meeting held on 29.07.2016, as also by the sole Preference Shareholder at the meeting held on 29.08.2016. Equity shareholders have also approved the resolution at the EOGM held on 02.03.2017. The company also filed MGT-14 with the office of the RoC,WB which has been approved by the concerned authority.

12. In view of the foregoing and upon considering the approval accorded by the equity shareholders at the EOGM held on 02.03.2017 as well as sole preference shareholder of existing 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series-B (which remained unredeemed as on 05.09.2016), at the meeting held on 29.08.2016, there is no impediment in approving the issue of further 7% 18,00,000 Redeemable Non-Cumulative Preference Share of Rs.100/- each Series-B in full redemption of existing 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series-A, subject to terms and conditions as stipulated under the further issue. The Registrar of Companies, West Bengal has not raised any objection to the further issue of Preference Shares. Consequently, we do hereby approve in terms of the provisions of sub-section (3) of section 55 of the Companies Act, 2013 read with Rule 9 (1) and (2) of the Companies (Share Capital and Debentures) Rules, 2016, the further issue of Redeemable Non-Cumulative

Preference Shares equal to the amount due in lieu of the unredeemed Redeemable Non-Cumulative Preference Shares as resolved on and effected by the resolution passed at the Extra Ordinary General Meeting of the Equity shareholders held on 02.03.2017 which resolution was in the words and following viz.

“RESOLVED that pursuant to the provision of section 55(3) of the Companies Act, 2013 read with Rule 9 of the Companies (Share Capital and Debentures) Rules, 2014 and pursuant to the order dated 23rd January, 2017 issued by National Company Law Tribunal, consent be and is hereby accorded to issue 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each, Series-B in full redemption of existing 7% 18,00,000 Redeemable Non-Cumulative Preference Shares of Rs.100/- each Series-A, with the following terms and conditions:

1. The shares shall carry a right to a preferential dividend, as and when declared, on non-cumulative basis at 7% rate on the face value of shares.
2. The Preference Shareholder shall be entitled to participate in surplus fund of the company, if any.
3. The Preference Shareholder shall be entitled to participate in surplus assets and profit on winding up of the company.
4. The Preference Shares will be redeemed fully or in part, within a period not exceeding 5 years of the issue.
5. The holder of Preference Shares shall have a right to vote in respect of

their hare capital on every resolution placed before the company which directly affects the rights attached to the preference shares and any resolution for the winding up of the company or for the repayment of reduction of its Preference Share Capital.

6. The 7% Preference Shares shall be issued bearing distinctive Nos. 1 to 1800,000 (both inclusive) in a single Share Certificate containing 1800,000 shares in the certificate.”

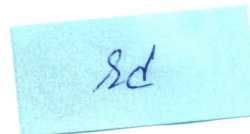
13. On the issue of such further preference shares, the unredeemed preference shares of the petitioner company shall be deemed to have been redeemed.

14. The petitioner company shall also remain bound to comply with the statutory requirements, if any, required under the Companies Act, 2013 and the rules notified thereunder, as may be applicable.

15. **Company Petition No. 23/2016** is accordingly decided on the above terms.

16. No order as to costs.

17. Urgent certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.



(Jinan K.R.)
Member (J)

Signed on this *6th* day of February 2018.