(2021) 04 NCLT CK 0045

In the National Company Law Tribunal

Case No : Company Petition No. 822/MB/C-II Of 2019

Electronica Industries Limited Vs

Date of Decision : 26-04-2021

Acts Referred:
Companies Act, 2013 — Section 66, 66(2), 66(3), 66(4), 133

Citation : (2021) 04 NCLT CK 0045

Hon'ble Judges : Janab Mohammed Ajmal, J;Ravikumar Duraisamy, Member (Technical)

Bench : Division Bench

Advocate : Hemant Sethi

Final Decision : Allowed

Judgement

1. This is a Petition under section 66 of the Companies Act, 2013 (the Act) seeking reduction of share capital of the Petitioner Company. We have

heard the learned Counsel for the Company.

2. It is submitted that Article 12A of the Articles of Association of the Petitioner Company as stated below empowers it to reduce its share capital in

any manner for the time being authorized by law:

â??12A. The Company may, subject to the provisions of the Act, from time to time by Special Resolution, reduce its share capital and

securities premium account in any manner for the time being authorized by law, and in particular may pay off any paid-up share capital

upon the footing that it may be called up again or otherwise and may, if and so far is necessary, alter its Memorandum by reducing the

amount of its shares capital and of its shares accordingly. This Article is not to derogate from any power of the Company would if it were

omitted.â??

3. That this Petition seeks confirmation of a Special Resolution passed by the Company to reduce its issued, subscribed and paid-up equity share

capital from Rs. 1,07,06,100/- (Rupees One Crore Seven Lakh Six Thousand One Hundred only) consisting of 10,70,610 (Ten Lakh Seventy Thousand

Six Hundred and Ten) equity shares of Rs. 10/- (Rupees Ten only) each to Rs. 1,03,01,040/- (Rupees One Crore Three Lakh One Thousand and

Forty only) consisting of 10,30,104 (Ten Lakh Thirty Thousand One Hundred and Four) equity shares ofR s. 10/- (Rupees Ten only) each, by

cancelling and extinguishing, in aggregate, 40,506 (Forty Thousand Five Hundred and Six) equity shares ofR s. 10/- (Rupees Ten only) each held by

the Public Shareholders of the Company and Electronica Finance Limited, on payment of a sum of Rs. 437/- (Rupees Four Hundred and Thirty-

Seven only) per share. The said Special Resolution was approved by the required majority of the shareholders present in its Extra Ordinary General

Meeting held on 31st December 2018.

4. In response to the notice under section 66 (2) of the Act the Regional Director has filed a Report dated 23rd December 2019 inter alia stating in

paragraph 7 (a) to (b) thereof :

a. Applicant to submit an Affidavit to the effect that the interest of the creditors and all stakeholders and Government Revenue are protected

as well as statutory dues are paid off.

b. The Tax implications if any arising out of the proposal for reduction is subject to final decision of Income Tax Authorities. The approval

of the Company Petition by this Honâ??ble Court may not deter the Income Tax Authorities to scrutinize the tax return filed by the

Company after giving effect to the proposed reduction. The decision of the Income Tax Authorities is binding on the Petition Company.

5. No other Authority has made any response to the said notice. In reply to the observation the Regional Director the Company has filed an Affidavit

on 27th January 2020 clarifying as under:

a) Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 7(a) of the report is concerned, it is submitted that

that the interest of the Creditors, all Stakeholders and Government Revenue will be protected as well as Statutory dues paid off.

b) Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 7(b) of the report of Regional Director is

concerned, the Petitioner Company through its Learned Professional undertakes to comply with all the applicable provisions of the Income Tax Act,

1961 and all tax issues arising out of the Petition of Capital Reduction will be met and answered in accordance with the law.

6. The Regional Director has filed his Supplementary Report stating that the reply is satisfactory.

7. It is submitted that the Company has no deposits with it and hence has no liability to discharge. The Company has no secured creditors as on 13th

February 2019. There are unsecured creditors with an aggregate outstanding debt of Rs. 19,01,935/-. It has been determined and would be repaid in

regular course of business and there would be no prejudice caused to the creditors upon the proposed reduction in share capital. The Directors have

on 14th February 2019 given a Certificate indicating the above. The Statutory Auditor of the Company has also given a Certificate to that effect. The

Statutory Auditor has given a Certificate that the accounting treatment for the reduction of the share capital of the Company has been in conformity

with accounting standards specified in section 133 or any other provision of the Act, as required under section 66 (3) of the Act.

8. The Professional appearing on behalf of the Petitioner Company submits that the Petitioner Company has complied with all statutory requirements

as per the directions of the Tribunal. An Affidavit dated 04.06.2019 showing compliance with the directions under the Order dated 27.05.2019 has

been filed before this Tribunal. Moreover, the Petitioner Company also undertakes to comply with the statutory requirements, if any, under the Act

and the Rules thereunder, as may be applicable.

9. We have heard the learned Professional appearing for the Company and perused the records. We are satisfied that the Petition can be allowed.

Hence ordered.

10. The Company Petition for reduction of share capital be and the same is allowed subject to the following.

a. The Company shall, within thirty days hence, publish the confirmation of the reduction of share capital in English daily â??Indian Expressâ?? (Pune

Edition) and Marathi daily â??Lok Sattaâ?? (Pune Edition) as required under section 66 (4) of the Act. It may also be published in the website, if any, of the Company.

b. The Company shall, within thirty days of receipt of this order, deliver a certified copy thereof and the minutes approved herein to the Registrar of

Companies concerned, who shall register the same and issue a certificate to that effect.

c. All regulatory authorities concerned shall act on production of the certified copy of this order.

Minutes Approved by the Tribunal

â??The Paid-up Equity Share Capital of Electronica Industries Limited shall be reduced from Rs. 1,07,06,100/- (Rupees One Crore Seven

Lakh Six Thousand One Hundred only) divided into 10,70,610 (Ten Lakh Seventy Thousand Six Hundred and Ten) fully paid-up Equity

Shares of Rs. 10 (Rupee Ten only) each to Rs. 1,03,01,040/- (Rupees One Crore Three Lakh One Thousand and Forty only) divided into

10,30,104 (Ten Lakh Thirty Thousand One Hundred and Four) fully paid-up Equity Shares of Rs. 10/- (Rupee Ten only) eachâ??