
(2024) 04 NCLT CK 0052
In the National Company Law Tribunal
Case No : CP/308(MB)2023
Innoven Capital India Private Limited Vs

Date of Decision : 17-04-2024

Acts Referred:

Companies Act, 2013 — Section 52, 66, 66(1)(b)(ii), 66(6), 68
Reserve Bank of India Act, 1934 — Section 45IA

Citation : (2024) 04 NCLT CK 0052

Hon'ble Judges : Kishore Vemulapalli, Member (J); Anu Jagmohan Singh, Member (T)

Bench : Division Bench

Advocate : Hemant Sethi, Hemant Sethi & Co., Altap Shaikh

Final Decision : Disposed Of

Judgement

1. Heard the Learned Counsel for the Petitioner Company. No objector has come before the Tribunal to oppose the Petition, nor any party has controverted any averments made in the Petition.
2. The Learned Counsel for the Petitioner Company submits that the Board vide its meeting held on 05th December 2023 proposed to carry out reduction of its equity share capital and utilization of securities premium account, after considering the cash flow, capital requirement and other business factors, decided to reduce its paid-up share capital and utilize securities premium account which is more than the wants of the Company for its business operations.
3. The Learned Counsel for the Petitioner Company submits that this Petition is for confirmation of a special resolution passed by the Petitioner Company for reduction of the Subscribed and Paid – Up Equity Share Capital from Rs. 20,58,98,290/- (Rupees Twenty Crores Fifty-Eight Lakhs Ninety-Eight Thousand Two Hundred and Ninety only) divided into 2,05,89,829 (Two Crores Five Lakhs Eighty-Nine Thousand Eight Hundred and Twenty-Nine) equity shares of Rs. 10/- each fully paid-up to Rs. 9,21,05,190/- (Rupees Nine Crores Twenty-One Lakhs Five Thousand One Hundred and Ninety only) divided into 92,10,519 (Ninety-Two Lakhs Ten Thousand Five Hundred and Nineteen) equity shares having face value

Rs. 10/- each fully by cancelling and extinguishing the issued, subscribed and paid-up share capital of 11,37,93,100/- (Rupees Eleven Crores Thirty-Seven Lakhs Ninety-Three Thousand One Hundred only) divided into 1,13,79,310 (One Crore Thirteen Lakhs Seventy-Nine Thousand Three Hundred and Ten) equity shares of face value Rs. 10/- each and the Securities Premium balance shall be reduced and extinguished by a total amount of Rs.52,77,67,844 (Rupees Fifty-Two Crore Seventy-Seven Lakhs Sixty-Seven Thousand Eight Hundred Forty-Four only) i.e., reduced from Rs. 52,77,67,844 (Rupees Fifty-Two Crore Seventy-Seven Lakhs Sixty-Seven Thousand Eight Hundred Forty-Four only) to Nil and remaining adjustments be debited to the P&L Account in the balance sheet of the Company. The said special resolution was approved unanimously by all the Shareholders of the Petitioner Company in the Extra-ordinary General Meeting held on 5th Day of December, 2023, which is annexed to the Company Petition.

4. The said Special Resolution was approved unanimously by all the shareholders of the Petitioner Company in the Extra-ordinary General Meeting held on 5th December 2023, in the following manner to reduce the paid-up equity share capital and *Securities Premium in the following manner:

Particulars

Paid Up Capital

No. Of Shares

Amount Per Share

(Face Value)

Existing

20,58,98,290

2,05,89,829

10

To be

Cancelled

11,37,93,100

1,13,79,310

10

Remaining

9,21,05,190

92,10,519

10

Amount to be
paid to
shareholders

Aggregate amount of Rs 1,64,99,99,950/- i.e., Rs.145/- per share as per Valuation Report dated 1st Day of December, 2023 issued by registered valuer,

M/s RV Shah and Associates, Chartered Accountant.

*The Securities Premium balance shall be reduced by a total amount of Rs 52,77,67,844 (Rupees Fifty-Two Crore Seventy-Seven Lakhs Sixty-Seven Thousand Eight Hundred Forty-Four only) i.e., as reduced from Rs. 52,77,67,844 (Rupees Fifty-Two Crore Seventy-Seven Lakhs Sixty-Seven Thousand Eight Hundred Forty-Four only) to Nil being in excess of wants/ requirements of the Company and by returning to the shareholders an amount of Rs. 145/- (Rupees one hundred and forty-five only) per share, being the face value of Rs 10/- (Ten) and a premium of Rs 135/- (One Hundred Thirty-Five) per share for each equity share and remaining adjustments be debited to the P&L Account in the balance sheet of the Company.

5. The Learned Counsel for the Petitioner Company submits that, Clause 37 at Article IV of the Articles of Association of the Petitioner Company empowers the Petitioner Company to reduce its share capital in any manner for the time being authorized by law by passing a Special Resolution. Clause 37 at Article IV of the Articles of Association of the Petitioner Company is incorporated below:

The company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by law:

- (a) its share capital;
- (b) any capital redemption reserve account; or
- (c) any share premium account.

6. The Learned Counsel for the Petitioner submits that pursuant to the reduction of Equity Shares, the shareholders of the Petitioner Company shall be paid Rs. 145/- (Rupees One Hundred and Forty Five only) per equity share cancelled. The valuation report dated 1st December, 2023 issued by registered valuer, M/s RV Shah and Associates, Chartered Accountant, which is in accordance with the applicable provisions of Foreign Exchange Management Act and Rules, issued by the Reserve Bank of India for determining value per share to be paid to the Equity Shareholder against the Equity Shares so cancelled and extinguished.

7. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its Report dated 26th Day of March 2024, (herein referred to as the "Report"), inter alia stating therein its observations at paragraph 7 of the report and the observations of the Registrar of Companies Maharashtra, Mumbai at

paragraph 6 of the said report. In response to the observations made in the report, the Petitioner Company have filed reply to affidavit cum rejoinder on 27th Day of March, 2024 and have given necessary clarifications and undertakings. The observations made in the report and the clarifications and undertakings given by the Petitioner Company are summarized in the table below:

Sr.

No. Para 6 & 7

Observations of the Registrar of Companies Maharashtra, Mumbai and Regional Director (Western Region), Ministry of

Corporate Affairs, Mumbai

Response of the Petitioner Company as filed in affidavit cum rejoinder on 27th Day of March, 2024

6

ROC, Mumbai in his Report No. ROC/Sec.66/274/2023- 24/1025 dated 13.03.2024 inter- alia mentioned that there is no prosecution filed/ pending against the company. Further the ROC, Mumbai has made his observation in para no. 23 of his report and stated that, 1. Interest of the creditors and minor shareholders/stakeholder should be protected.

Apropos observation made in the Paragraph 6 of the report of Regional Director is concerned with respect to the, observation of ROC Mumbai as stated in its Report no. ROC/Sec.66/274/2023-24/1025 dated 13.03.2024, the Petitioner Company through this affidavit submits as follows: i.Response to observation in paragraph 6(1): The Petitioner Company undertakes to protect the interest of all the Creditors and minor shareholders/ stakeholders if any.

7 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

Apropos observation made in the Paragraph 7 (A); the report of Regional Director is concerned; the Petitioner Company respectfully submits that the interest of the creditors and all stakeholders and Government Revenue will be protected, as well as all the statutory dues, which are pending against the Petitioner Company will be settled during the course of time as they become payables with the respective Governmental authorities. Further, the Petitioner Company states that the Affidavit stating the Government Revenue or any Statutory Liabilities/dues, interest of minority shareholders and all stakeholders will be protected have been filed with this Hon'ble Tribunal through additional Affidavit on 23rd day of February, 2024.

7 B

The Tax implication 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 Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Company or its shareholders after giving effect to the proposed reduction. The decision of the Income Tax Authority is binding on the petitioner Company.

Apropos observation made in the Paragraph 7 (B); the report of Regional Director is concerned; the Petitioner Company undertakes that the approval of the said proposed reduction as mentioned in the Company Petition by the Hon'ble Tribunal will not deter the Income Tax Authorities to deal with any of the issue arising after giving final sanction to the Company Petition. The decision of such Income Tax Authorities or Authority shall be binding on the Petitioner Company, unless otherwise appealable.

7C

Further, any amount paid to the shareholders above the face value of paid-up share capital i.e. INR 10 per share shall be treated as capital gain/deemed dividend of the Income Tax Act, 1961 in the hands of the recipient shareholders at INR 145/- per share are being paid on 1,13,79,310 equity shares adjusted against the Securities Premium Account and therefore, the company and recipients shareholders shall undertake to pay Income Tax/TDS as per the provisions of Income Tax Act, 1961.

Apropos observation made in the Paragraph 7 (C); the report of Regional Director is concerned; the Petitioner Company undertakes to pay Income tax/TDS if any arising as per the provisions of Income Tax Act, 1961.

7D

It is respectfully submitted that, the petitioner Company is proposing to reduce the issued, subscribed and paid-up equity capital of the Company Rs. 20,58,98,290 consisting of 2,05,89,829 equity shares of Rs. 10/- each to Rs. 9,21,05,190/- consisting of 92,10,519 equity shares Rs. 10/- each by cancelling and extinguishing the issued, subscribed and paid-up share capital of Rs. 11,37,93,100/- consisting of 1,13,79,310 equity share of face value Rs. 10/- each in a manner by returning capital by way of cash to the equity shareholder of the company an aggregate amount of Rs. 1,64,99,99,950/- Further, the equity shareholders be returned a sum of Rs.145/- per equity share (including a premium of Rs. 135/- per equity share) of the Company for the extinguishment of the equity shares held them in consideration for the proposed Capital Reduction. The proposed scheme is in the nature of buy-back, therefore the Petitioner Company be directed to place on record as to how the present Scheme is not to circumvent the provisions of the Section 68.

Apropos observation made in the Paragraph 7 (D); the report of Regional

Director is concerned; the Petitioner Company states as follows: i. The Petitioner Company submits that in the case of the Shareholders of the unlisted Companies, under the Companies Act' 2013' the Company may provide for the options to the shareholders to exercise either by (i) Reduction of share Capital under the provisions of Section 66 of the Act or by (ii) Power of Company to purchase its securities under the provisions of Section 68 of the Act subject to the approval by the appropriate authorities. In the absence of the specific provisions under the Companies Act, 2013 and the rules thereon to follow mandatorily to choose one option over the other, the Petitioner Company (i.e. the Board of Directors and Shareholders) shall adopt any of the methods set under the Act to reduce the Paid-up Capital. In the present case the option of the reduction of the share capital was considered and approved by the Board of Directors (during the Meeting held on 5th Day of December, 2023) and then by the Shareholders (during an Extra Ordinary General Meeting held on 5th Day of December, 2023), wherein it was decided for the repayment of the excess capital through the reduction of capital method which is envisaged in Section 66 of the Companies Act, 2013.

ii. The provisions of section 66(1)(b)(ii) states that Company shall reduce the share capital without extinguishing or reducing liability on any of its shares by payoff any paid-up shares capital which is in excess of the wants of the Company". In the present case the petitioner is paying off the portion of the paid-up share capital which is in excess of the wants of the Company and is to be returned to the shareholders. It may further note that Section 66(6) also states that "nothing in this section shall apply to buy back of its own securities by company under section 68" as the objective of both the provisions is to provide an option to the shareholders.

iii. The Petitioner Company submits that it is a well settled position of Law that a Company has freedom to choose the procedure laid down in the Law. As stated supra, all the stake holders have accepted the reduction in question and all the extant provisions of law are duly followed. The Petitioner Company relies on the following judgments in support of his case:

- Mahindra Homes Private Limited, (NCLT Mumbai Bench, CP NO. 148 of 2022 - order pronounced dated 30th November, 2022)
- Max India Limited (NCLT Mumbai Bench, CP NO. 344 of 2021 - order pronounced dated 08th June, 2022)

The copies of the above-mentioned judgments are annexed to the RD Rejoinder as Annexures A1 and A2.

7E

It is observed the company has one corporate body shareholders namely Gabelhorn Investments Pte Ltd having shareholding of 99.99% but the Company has not filed form Ben-2 disclosing the name of beneficial owner of company

namely Gabelhorn Investments Pte Ltd. Therefore, petitioner company may be directed to clarify the same.

Apropos observation made in the Paragraph 7 (E); the report of Regional Director is concerned; the Petitioner Company state that, as per Section 90 of the Companies Act, 2013, the Form BEN-2 has to be filed for giving declaration with respect to the significant beneficial owners of the company, disclosing their interest in the company by way of shareholding or voting rights. Significant beneficial owners are such individual shareholders holding indirectly, or together with any direct holdings, not less than ten percent, of the shares or voting rights. The Petitioner Company hereby submit that there is/are no individual(s), holding indirectly, or together with any direct holdings, not less than ten percent, of the shares/voting rights in the shares of the Petitioner Company (or in shares/voting rights in the shares of Innoven India Holdings Pte. Ltd. (Formerly known as Gabelhorn Investments Pte. Limited), and hence, filing of form BEN-2, as per the provisions of Section 90 of the Companies Act, 2013, is not applicable to the Petitioner Company. Further the Petitioner Company undertake to comply with the provisions of Section 90 of the Companies Act, 2013 read with Companies Rules, 2018 as amended from time to time and make necessary filings with the Registrar of Companies as and when the provisions of Section 90 of the Companies Act, 2013 are triggered and to the extent as applicable.

7 F

It is respectfully submitting that the petitioner company is having foreign shareholder, therefore petitioner company may be directed to comply with the FERA/FEMA regulation and provide approval from the RBI before approval of the scheme as the shareholders of Innoven India Holdings Pte Ltd (Formerly known as Gabelhorn Investments Pte Ltd) is foreign entity.

Apropos observation made in the Paragraph 7 (F); the report of Regional Director is concerned; the Petitioner Company submits that as per the extant FEMA/RBI Guidelines; namely, the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (herein after referred to as "the Non-debt Rules" the Company falls under automatic route and prior approval of Reserve Bank of India (RBI) is not required in this case. The RBI vide its circular bearing reference A.P. (CIR Series) Circular No. 10 dated August 30, 2005 has clarified that cancellation by an Indian Company of its shares which are held by a non-resident is covered under the automatic route. The Petitioner Company undertakes to comply with the provisions of the said regulations and make necessary filings with the Reserve Bank of India post remittance of funds to the extent as applicable. The Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and circular bearing reference A.P. (CIR Series) Circular No. 10 dated August 30, 2005 is annexed to the RD Rejoinder as Annexure B1 and B2 respectively.

7 G

The petitioner company has mentioned in Para 6 of petition that it is engage in the business of granting loans to early-stage companies. The Company is a loan non-banking financial Company (NBFC), as defined under section 451A of the Reserve Bank of India Act, 1934. In this regard it is submitted that whether approval of RBI is required or not, as if required then the company shall obtain before approval of scheme.

Apropos observation made in the Paragraph 7 (G); the report of Regional Director is concerned; the Petitioner Company states that it is engaged in the business of granting loans to early-stage companies. The Company is a loan non-banking financial Company ('NBFC'), as defined under section 451A of the Reserve Bank of India Act, 1934 and the certificate of registration under section 451A of the Reserve Bank of India Act, 1934 has been annexed to the Company Petition as annexure A. Further the Petitioner Company clarifies that as per Reserve Bank of India (RBI) circular no. RBI/2015- 16/122/ DNBR (PD) CC.No. 065/03.10.001/2015-16 dated 9th day of July, 2015, the prior approval of RBI is not required in this case, as per paragraph 2 (i) (b), the stated circular as reproduced herein below;

a)

b) any change in the shareholding of an NBFC, including progressive increases over time, which would result in acquisition/ transfer of shareholding of 26 per cent or more of the paid up equity capital of the NBFC. Prior approval would, however, not be required in case of any shareholding going beyond 26% due to buyback of shares/ reduction in capital where it has approval of a competent Court. The same is however required to be reported to the Reserve Bank not later than one month from its occurrence.

The Petitioner Company undertakes that, upon sanction of this Company Petition, it will report to the RBI, the approval of this Tribunal by filing the certified copy of the order within one month of its receipt. The copy of the Reserve Bank of India (RBI) circular no. RBI/2015-16/122/ DNBR (PD) CC.No. 065/03.10.001/2015-16 dated 9th day of July, 2015 is annexed as Annexure C. to the affidavit in rejoinder..

Further the Counsel for the Petitioner submits that the Reserve Bank of India by its letter dated 27th March 2024 gave their approval to the Reduction of Share Capital.

8. The Regional Director appeared through its representative Mr. Altap Shaikh and submitted that their observations/ objections have been satisfactorily explained by the Petitioner Company. Hence, the Regional Director does not have any objection to the proposed scheme of reduction.

9. Since all the requisite statutory procedure has been fulfilled, the Company Petition is made absolute in terms of the prayer clause of the Petition.

10. From the material on record, the Scheme of reduction of share capital appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public interest/ policy.

11. The Petitioner Company to publish notice about registration of order and minutes by the concerned Registrar of Companies in two newspapers namely 'Business Standard' in English language and translation thereof in 'Navshakti' in Marathi language both having circulation in the State of Maharashtra within 30 days of registration. The Petitioner Company undertakes to file certified/ authenticated copy of the order and Form of Minutes duly certified by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench with the Registrar of Companies within 30 days of receipt of this Order.

12. Petition for the reduction of share capital allowed subject to the directions given herein above. All concerned Regulatory Authorities to act on production of certified copy of this order to be issued on demand by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

13. The form of minutes set forth herewith be and is hereby approved.

FORM OF MINUTES

"The paid-up share capital of Innoven Capital India Private Limited, is henceforth Rs. 9,21,05,190 (Rupees Nine Crores Twenty-One Lakhs Five Thousand One Hundred and Ninety Only) divided into 92,10,519 equity shares of Rs. 10 each fully paid-up, as reduced from Rs. 20,58,98,290/- (Rupees Twenty Crores Fifty-Eight Lakhs Ninety-Eight Thousand Two Hundred and Ninety only) divided into 2,05,89,829 equity shares of Rs. 10 each fully paid-up and the securities premium account balance is henceforth reduced to nil from Rs. 52,77,67,844"