(2023) 10 NCLT CK 0054

In the National Company Law Tribunal

Case No : CP NO. 609 Of 2020

Melauto Engineers Private Limited Vs

Date of Decision : 20-10-2023

Acts Referred:

Companies Act, 2013 — Section 66, 68, 68(6)

Citation : (2023) 10 NCLT CK 0054

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Anuradha Sanjay Bhatia, Member (T)

Bench : Division Bench

Advocate : Sanam Umbargikar

Final Decision : Disposed Of

Judgement

1. Heard Learned Practicing Company Secretary appearing for the Petitioner Company and the representative from the Regional Director (WR).

2. The learned Practicing Company Secretary for the Petitioner Company submits that this is an Application for the confirmation of a special resolution dated 29th January, 2020 for the reduction of the Company's issued, subscribed and paid up equity share capital from Rs.37,10,000/- (Rupees Thirty Seven Lacs Ten Thousand Only) divided into 37,100 (Thirty Seven Thousand One Hundred Only) equity shares of Rs.100/-(Rupees One Hundred Only) to Rs.3,71,000/- (Rupees Three Lacs Seventy One Thousand Only) divided into 3,710 (Three Thousand Seven Hundred and Ten Only) equity shares of Rs.100/- (Rupees One Hundred Only), by cancelling/ extinguishing the paid up equity share capital of the Petitioner Company to the extent of 33,390 (Thirty Three Thousand Three Hundred and Ninety Only) equity shares of Rs.100/-(Rupees One Hundred Only) each and paying to the holders of such 33,390 (Thirty Three Thousand Three Hundred and Ninety Only) an agreed amount of Rs.100/-(Rupees One Hundred Only) per equity shares, aggregating to Rs.33,39,000/- (Rupees Thirty Three Lacs Thirty Nine Thousand Only).

3. The learned Practicing Company Secretary for the Petitioner Company submits that Based on a review carried out after finalization of the accounts for the

financial year ended on 31st March 2019 and subsequently provisional financial statements as of 20th January 2020 the Board of Directors of the Petitioner Company (hereinafter referred to as the 'Board') is of the opinion that considering the surplus cash and other factors, the financial status of the Petitioner Company is sound and that the paid-up capital of the Petitioner Company is in excess of its requirements.

4. The learned Practicing Company Secretary for the Petitioner Company submits that as on date there are no Secured Creditors or Unsecured Creditors in the Applicant Company.

5. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed a Report dated 9th May, 2022 inter alia making the following observations in Paragraph 6 and Paragraph 7 to which are reproduced hereunder:

Para

Observation by the Regional Director

Undertaking of the Petitioner Company/ Rejoinder

6

ROC, Mumbai, in his Report No.ROC/JTA/022376/66(2)/250 dated 16.12.2021 inter alia mentioned that there is no prosecution filed/ pending against the Company. Further the ROC, Mumbai, has made his observations in para no.23 of his report and stated that, "Interest of the creditors should be protected".

"May be decided on its merits".

I say that as far as observation of the ROC, Mumbai, in his Report No. ROC/ JTA/022376/66(2)/250 dated 16.12.2021, the Petitioner Company undertakes that the proposed capital reduction does not result into any arrangement with the creditors of the Petitioner Company and therefore, there interests are protected. Further, the Petitioner Company undertakes that at present there are no outstanding Secured or Unsecured Creditors in the Petitioner Company.

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.

I say that as far as the observation of the Regional Director stated in Paragraph 7

(A) of his report are concerned, the Petitioner Company undertake that the interest of the creditors and all stakeholders and Government Revenue will be protected and also all the Statutory dues which are due and payable will be paid off before the payment to shareholders on account of the proposed capital reduction.

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. Further the payment made to the shareholders shall be subject to payment of Capital Gain Tax in the hands of recipients shareholders.

I say that as far as the observation of the Regional Director stated in Paragraph 7

(B) of his report are concerned, the Petitioner Company undertake that the tax implication if any arising out of the proposal for reduction would be subject to provisions of the Income-tax Act, 1961 and Petitioner Company would comply with the relevant provisions of the Income-tax Act, 1961. The approval of the Company Petition by this Hon'ble Court would 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. Further, the Petitioner Company undertakes to comply with the relevant provisions of the Income-tax Act, 1961 in connection with payment of consideration in relation to the proposed capital reduction.

7(3)

It is respectfully submitted that, the petitioner Company is proposing to reduce the issued, subscribed and paid- up equity capital of the Company from Rs. 37,10,000 consisting of 37,100 equity shares of Rs. 100/- each to Rs. 3,71,000/- consisting of 3,710 equity shares of Rs. 100/ each and that the reduction shall be by way of proportionate cancellation and extinguishment of 33,390 (Thirty Thousand Three Hundred Ninety) equity shares of Rs 100 (Rupees One Hundred only) each of the Company. 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.

I say that as far as the observation of the Regional Director stated in Paragraph 7

(C) of his report are concerned, the Petitioner Company would like to make a submission that the proposed capital reduction is as per the provisions of the section 66 of the Companies Act, 2013

which is subject to the approval by the Hon’ble NCLT. Petitioner Company would like to make a submission that as per sub-section (6) of the Section 68 of the Companies Act, 2013 provides that "Nothing in this section shall apply to buy- back of its own securities by a company under section 68". In view of this, Petitioner Company would like to submit that as the proposed reduction of share capital is subject to the approval of Hon'ble NCLT, in view of the provisions of section 68(6) of the Companies Act, 2013, provisions of section 66 of the Companies Act, 2013 are not applicable to the proposed reduction of share capital.

6. In view of the clarifications given by the Petitioner Company, the Company Petition is allowed.

7. The Petitioner Company to publish notices about registration of order and minutes by the concerned Registrar of Companies in two newspapers namely "Free Press Journal" in English language and translation thereof in "Navshakti" in Marathi language both having circulation in the State of Maharashtra within 30 days of registration.

8. The Petitioner Company undertakes to file the certified copy of the order and form of minutes duly certified by the Deputy Registrar/Assistant Registrar of this Tribunal within 30 days from the date of receipt of the certified Order from the Registry of this Tribunal.

9. All concerned regulatory authorities to act on production of certified copy of the order to be issued on demand by the Deputy Registrar/Assistant Registrar of this Tribunal.

10. The minutes set forth hereto be and is hereby approved.

FORM OF MINUTES

The existing issued, subscribed and paid up equity share capital of Melauto Engineers Private Limited, the petitioner Company, comprising of Rs.37,10,000/- (Rupees Thirty Seven Lacs Ten Thousand Only) divided into 37,100 (Thirty Seven Thousand One Hundred Only) equity shares of Rs.100/- (Rupees One Hundred Only) shall be reduced to Rs.to Rs.3,71,000/-(Rupees Three Lacs Seventy One Thousand Only) divided into 3,710 (Three Thousand Seven Hundred and Ten Only) equity shares of Rs.100/- (Rupees One Hundred Only)