
(2021) 02 NCLT CK 0019

In the National Company Law Appellate Tribunal

Case No : Company Petition No. 40/ND Of 2020

?Serendipity Buildtech Pvt. Ltd. Vs

Date of Decision : 18-02-2021

Acts Referred:

Companies Act, 2013 — Section 66, 66(1), 66(1)(a), 66(3), 66(5), 102, 103, 114, 133

Citation : (2021) 02 NCLT CK 0019

Hon'ble Judges : Dr. Deepti Mukesh, J; Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Sougat Sinha, Apporva, Deepak Anand, Vipul Agarwal

Final Decision : Allowed

Judgement

1. The present Application is been filed under Section 66 of the Companies Act 2013, by Serendipity Buildtech Private Limited (hereinafter referred to

as "applicant"), through its authorized representative Mr. Suneet Chaudhary, being the Director, who has been authorized vide Board Resolution

dated 29.11.2019, seeking approval for reduction of share capital.

2. The Applicant is a company limited by shares, incorporated on 04.07.2005 registered under the provisions of Companies Act, 1956 bearing CIN

No.U45201DL2005PTC138239 and having registered office at 2/48, Shopping Centre, Malcha Marg, Chanakyapuri, New Delhi-110021. The company

has a paid-up share capital of Rs. 36,01,00,000/- (Rupees Thirty Six Crores One Lakh Only) divided into 3,60,10,000 (Three Crores Sixty Lakhs Ten

Thousand Only) Equity Shares of Rs.10/- each. The authorized share capital of the company is 37,00,00,000/- (Rupees Thirty Seven Crores) divided

into 3,70,00,000 Equity Shares of Rs.10/- each. The applicant is engaged in construction business, majorly construction of residential house, serviced

apartments, hotels, multiplexes plazas, hotels, entertainment centers etc.

3. The applicant states that during the financial year 2018-19, accumulated losses carried forward from the year 2017-18 was Rs.19.11 crore and net deficit as per balance sheet dated 31st March, 2019 reflects to Rs. 15.24 crore. The applicant further submits that the account statement had been

audited by M/s Uberoi, Sood and Kapoor, chartered Accountants and as per the audit report no qualification, reservation and adverse remark or

disclaimer had been made by the statutory auditor. The copy of audited financial statements of the company for financial year 2018- 2019 is annexed.

4. The applicant submits that the company suffered huge losses and in order to re-align the relation between capital and assets of the company and for

better financial position of the company the Board of Directors in its meeting dated 29.11.2019 recommended to write off the accumulated losses

against reduction of share capital in accordance with Section 66 of the Companies Act. The copy of Board Resolution dated 29.11.2019 has been

annexed.

5. The Article 23 of the Articles of Association of the applicant company empowers for reduction of share capital and provides as below:

Article 23:

“The company may, reduce in any manner and with and subject to any incident authorized and consent required by law, -

a) Its Share capital;

b) any capital redemption reserve account;

c) any share premium account.”

6. The Board of Directors and the shareholders at an Extra Ordinary General meeting held on 13th day of December 2019, after receiving due notice,

passed special resolution to reduce the share capital in accordance with the provisions of Section 66(1) of the Companies Act, 2013. It is stated that

complying the requirement of Section 103 r/w Section 114, two members were present in person and three members were present through proxies

and unanimously voted in favour of the reduction of share capital of the applicant. The relevant part of the resolution is extracted as below:

“The paid up share capital of the company be and hereby reduced against the accumulated losses to the extent of 42.30% from

Rs.36,01,00,000/- (Rupees Thirty Six crore One Lakhs Only) consisting of 3,60,10,000 (Three crores Sixty Lakhs Ten Thousand) equity

shares of face value of Rs. 10/-(Rupees Ten) each to Rs. 20,77,77,700/- (Rupees Twenty Crore Seventy Seven Lakh Seventy Seven Thousand

and Seven Hundred) consisting of 3,60,10,000 (Three Crores Sixty Lakhs Ten Thousand) equity shares of face value of Rs.5.77/- (Rupees

Five and Seventy Paise) each.

FURTHER RESOLVED THAT amendment in the capital clause of the Memorandum of Association of the company can be and is hereby

approved as follows subject to confirmation of reduction in share capital by the National Company Law Tribunal at New Delhi and the

Appropriate Authorities mentioned to hereinabove:

The Authorized Share Capital of the company is Rs. 37,00,00,000/- (Rupees Thirty Seven Crores Only) divided into 6,41,24,783 (Six Crore

Forty One Lakhs Twenty Four Thousand Seven Hundred Eighty Three only) equity shares of face value of Rs.5.77/-(Rupees Five and

Seventy Seven Paise) each??

The copy of minutes of the Extra Ordinary General Meeting of the company dated 13th December 2019 along with copy of Explanatory statement

pursuant to Section 102 of the companies Act, 2013 and Form MGT-14 with its challan, filed with the Registrar of Companies are also annexed.

7. The applicant submits that it has also been resolved in the meeting that the reserves created out of the reduction of share capital shall be adjusted

against the accumulated losses of the company. The face value of the equity share of Rs. 10 each shall be reduced to Rs. 5.77/- and any fractional

share shall be rounded off to the nearest whole number. The existing shares certificates shall stand cancelled and the company will issue fresh share

certificates to the shareholders as per the entitlements.

8. The applicant submits that proposed reduction of share capital involves cancellation of paid up share capital which is lost or is unrepresented by

available assets. Further submits that there is one secured creditor in the company and 25 unsecured creditors as on 28.01.2020. The Certificate from

statutory auditor certifying list secured and unsecured creditors of the company have been filed along with the Certificate of declaration of solvency

by two directors of the company.

9. The applicant by way of compliance affidavit filed the following in compliance of order dated 18.02.2020

a) Copies of Notices to creditors in form RSC-3 along with postal receipts of the said notices and tracking reports.

b) Affidavit with regards the publication of the application,

c) Notice to authorities in Form RSC-2 along with proof of service of the application at the Regional Director (Northern region) MCA, ROC (NCT of

Delhi and Haryana) and Income Tax is also filed.

10. The applicant states that the sole secured creditor, Hero Fincorp Limited, has given its in-principle consent vide letter dated 21.01.2020, which is

annexed. The applicant by way of affidavit dated 16.06.2020 states that objections had been invited from the unsecured creditors and objection was to

be filed by the creditors within 3 months of the said notice. However, no objections are received till date. The applicant further submits that the

statutory auditor's certificate certifying that the company has never accepted any deposits since its incorporation has been annexed. The

Certificate of statutory auditor certificate certifying that the accounting treatment proposed for reduction of capital is in conformity with the accounting

standards specified in Section 133 and/or other provisions of the Act is annexed. Hence Section 66(3) of the act is complied.

11. The investments by shareholder in the equity share capital of the company are non- repatriable basis, hence the provisions of FEMA and the

regulations made there under are not applicable to the company. The proposed reduction would not involve either diminution of any liability in respect

to unpaid share capital or the payment to any shareholder, accordingly the provisions of Section 66(1)(a) of the Act will not be applicable. Further the

net worth of the company shall remain positive and therefore not in any way have any adverse effect on the company's ability to honor its

commitments and obligations.

12. The Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, after receiving the report dated 17.12.2020 from the Registrar

of Companies has filed his report on 11.01.2021 and stated the following :

a) That as per the reports of the Registrar of Companies:

i. The Applicant Company has filed Annual Return and Balance sheet upto 30.03.2019. No prosecution has been filed and no inspection or

investigation has been conducted in respect of the Applicant Company

ii. The company will have to file relevant forms as prescribed under companies act for reclassification of the authorized share capital.

iii. The company has not served notice in accordance with the NCLT rules, hence directions to be given to file Form RSC-2 accompanies with relevant disclosures in e-form GNL-1 forthwith.

iv. The NOC of unsecured creditors has not been furnished.

v. The auditor's qualification is not mentioned in the audit report field for the FY 2018-19.

b) The company has a secured creditor namely Hero Fincorp Ltd. with loan amounting to Rs. 27,41,68,281/- as per the Balance Sheet provided as on 31.03.2019. The NOC provided by the company is not supported by a Board Resolution.

13. Notice has been served to income tax department. However, no objection has been raised by the Income tax department.

14. In response to the observation made by RD in the report, the applicant has stated that the queries raised by the RD has already been dealt with

vide compliance affidavit dated 25.02.2020. Further on 19.01.2021, during the hearing Ld. Counsel for RD made statement that they have perused the

compliance affidavit and as per instructions the queries/objections of the department stands satisfied. Hence, they have no objection to the application being allowed.

15. Taking into consideration the documents on record and no objection of the departments, we pass following orders :

i. That the reduction of the share capital of the above company as resolved by the Board Of Directors at the Extra Ordinary General meeting held on the 13.12.2019 is allowed.

ii. That the minutes for reduction of share capital as specified under section 66(5) of the Companies Act, 2013 is be and hereby approved. 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.

iii. Paper publication confirming reduction of capital by this Tribunal, shall also be done in the newspaper English Edition "The Business Standard"

and Hindi Edition "Jansatta" in the prescribed format within a period of thirty days from the date of this order.

iv. The copy of order be served to the parties.

Application is allowed and disposed off in terms of above orders.