

(2023) 05 NCLT CK 0014
In the National Company Law Tribunal
Case No : CP 182/MB/C-I/2022
Zuari Farmhub Limited Vs

Date of Decision : 04-05-2023

Acts Referred:

Companies Act, 2013 — Section 66, 90

Citation : (2023) 05 NCLT CK 0014

Hon'ble Judges : H. V. Subba Rao, Member (J); Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Gaurav Joshi, Anirudh Das, Meghna Rajadhyaksha, Kirti Kalyani, Harit Lakhani, Shardul Amarchand

Final Decision : Disposed Of

Judgement

H.V. Subba Rao, Member (Judicial)

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 this Petition is for confirmation of a special resolution passed by the Petitioner Company for reduction of its issue, subscribed and paid-up equity share capital from Rs. 785,57,00,000 (INR seven hundred eighty-five crores Fifty-seven lakhs only) divided in to 78,55,70,000 (Seventy-eight crores fifty-five lakhs seventy thousand only) equity shares of Rs. 10 each to Rs. 86,60,26,000/- (INR Eighty-Six Crores Sixty Lakhs Twenty-Six Thousand Only) divided into 8,66,02,600 (Eight Crore Sixty-Six Lakhs Two Thousand Six hundred only) Equity Shares of Rs. 10/-each fully paid. The said special resolution was unanimously approved by the shareholders of the Petitioner Company in the Extra-Ordinary General Meeting held on June 28, 2022.

3. The Learned Counsel for the Petitioner Company submits that:

a) The Capital Reduction would enable right sizing of the Petitioner Company's

balance sheet, which adequately represents the accounting value of its assets and liabilities and would better represent its financial position such that the equity share capital which is not represented by the accounting value of assets shall be cancelled. The Capital Reserve of the Petitioner Company before and after the Capital Reduction in terms of this Scheme shall be as under:

Particulars

Outstanding balance (in INR)

Pre Capital Reduction (in INR)

Adjustment pursuant

to the Capital Reduction

(INR)

Post Capital Reduction (in INR)

Capital Reserve

-698,96,74,000

698,96,74,000

NIL

b) Upon the Scheme becoming effective and with effect from the Appointed Date i.e. July 1, 2022, the issued, subscribed and paid-up capital of the Petitioner Company shall stand reduced from Rs.785,57,00,000 (INR Seven Hundred and Eighty Five Crores and Fifty Seven Lakhs) consisting of 78,55,70,000 (Seventy Eight Crores Fifty Five Lakhs and Seventy Thousand) Equity Shares to Rs.86,60,26,000 (INR Eighty Six Crores Sixty Lakhs and Twenty Six Thousand) consisting of 8,66,02,600 (Eight Crores Sixty Six Lakhs Two Thousand and Six Hundred) Equity Shares, without any further act, instrument or deed.

c) The aforesaid reduction of capital shall be effected by cancellation and extinguishment of Rs.698,96,74,000 (INR Six Ninety Eight Crores Ninety Six Lakhs and Seventy Four Thousand) consisting of 69,89,67,400 (Sixty Nine Crores Eighty Nine Lakhs Sixty Seven Thousand and Four Hundred) Equity Shares held by Zuari Agro Chemicals Limited (ZACL) in the Petitioner Company by writing off/ adjustment of negative balance in the capital reserve account of the Petitioner Company to the tune of Rs.698,96,74,000 (INR Six Ninety Eight Crores Ninety Six Lakhs and Seventy Four Thousand) in the following manner:

Particulars

Debit/Credit

Amount (in INR)

Share

Capital

Debit

6,98,96,74,000

-

Capital

Reserve

Credit

-

6,98,96,74,000

d) The share capital of the petitioner company before and after the Capital Reduction in terms of this Scheme shall be as under:

Pre Capital Reduction

Post Capital Reduction

Particulars

No of shares

Amount

Particulars

No of shares

Amount

Authorised share capital

Equity

shares of

face value

of INR 10

(Ten) each

80,00,00,000

80,00,00,000

Equity shares of face value of INR 10 (Ten) each

80,00,00,000

80,00,00,000

Issued, subscribed and paid share capital

Equity

shares of

face value

of INR 10

(Ten) each

78,55,70,000

785,57,00,000

Equity Shares of face value of INR 10

(Ten) each

8,66,02,600

86,60,26,000

e) The Capital Reduction in pursuance to this Scheme shall not affect the authorised share capital of the Petitioner Company.

f) The Capital Reduction in pursuance to this Scheme does not envisage any payment/outflow of funds to the shareholders on account of such reduction and it will not in any way involve or result in extinguishment of any liability or diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital.

g) The creditors of the Petitioner Company are in no way affected by the Capital Reduction, as there is no reduction in the amount payable to any of the creditors. Further, the Scheme does not alter, vary or affect the rights of the creditors in any manner whatsoever. The liabilities with respect to payments due to the creditors will be discharged by the Petitioner Company in accordance with the terms of their agreements with the Company in the ordinary course of business.

h) The Capital Reduction in pursuance to this Scheme will not have any adverse impact on the operations of the Petitioner Company or the ability of the Petitioner Company to honour its commitments or to pay its debts in the ordinary course of business.

i) The Capital Reduction in pursuance to this Scheme does not in any manner alter, vary or affect the payment of any dues or outstanding amounts including all or any of the statutory dues payable or outstanding.

j) Notwithstanding the Capital Reduction in pursuance to this Scheme and subject to the orders of the NCLT, the Petitioner Company shall not be required to add the words "And Reduced" as a suffix.

k) During the pendency of this Scheme, ZACL will be eligible for all the rights in the capacity of shareholders of the Petitioner Company including but not limited to receiving the dividend and bonus shares, participate in right issue and buy-back, voting in the shareholders' meeting and participate in any other corporate action taken by the Petitioner Company.

l) The Scheme does not involve any conveyance or transfer of any property of the Petitioner Company and does not involve any issue of shares. Consequently, the order of NCLT, approving the Scheme will not attract any stamp duty, under the applicable stamp law, in this regard.

4. The Regional Director, Western Region, Mumbai in his Report dated November 23, 2022 has made observations in Para 6 and Para 7 (a) to (c) of the said Report. In response to the observations made by the Regional Director, the Petitioner Company has given necessary undertakings and clarification through an affidavit in rejoinder dated January 18, 2023. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Company are summarized in the table below:

Sl. No.

Observations of the Regional Director

Response of the Petitioner Company

6

ROC, Goa in his Report No.

ROC/Goa/Reduction/ ZFL/790 dated 07.10.2022

inter-alia mentioned that there is no complaint, prosecution, investigation, inquiry, inspection filed

/pending against the company. Further the ROC, Goa has made his observation in para no.23 of his report as stated that,

1.Certificate of Auditor as NIL secured Creditors has not been attached to the Company Petition submitted in this office.

2.No details attached regarding Newspaper Publication with the copy

of the Company Petition."

Submission- Para-6 point 1 and 2:

1) Chartered Accountant Certificate certifying that the Petitioner Company has no Secured Creditors has been filed with the Company Petition at Page 179 thereof.

2) Pursuant to the Order dated 26th August 2022 of this Hon'ble

Court, the Petitioner Company has caused newspaper publication on 2nd September 2022 with respect to the Company Petition. In this regard, Affidavit of Service dated 8th September 2022 has been filed with this Hon'ble Tribunal.

7A.

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.

The Petitioner Company states that the interest of the creditors and all stakeholders of the Petitioner Company are protected and the Petitioner Company is paying its statutory dues as they arise in the ordinary course of business. It is further stated that pursuant to issuance of notice to the Unsecured Creditors of the Petitioner Company, the Petitioner Company has till date, not received any objection from the creditors or the public at large to the proposed reduction in the paid up share capital of the

Petitioner Company.

7B.

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 after giving effect to the proposal reduction. The decision of the Income Tax Authority is binding on the petitioner Company.

The Petitioner Company states that the sanction of the present Company Petition by this Hon'ble Tribunal and the approval to the proposed reduction in the paid up share capital of the Petitioner Company shall not curtail the right of the Income Tax Department to scrutinize tax return filed by the Petitioner Company after giving effect to the proposed reduction. It is further stated that subject to exercise of available appellate remedies, the Petitioner Company shall be bound by the final order passed by the Income Tax Department as regards return filed by the Petitioner Company after giving effect to the proposed reduction in capital. Further, it is stated that the tax implication if any, arising from the proposed reduction in share capital is subject to scrutiny and decision of the Income Tax Department.

7C.

Further the petitioner company has one major shareholder namely Zuari Agro Chemicals Limited holding 100% mentioned in the Financial statements as at 31.03.2021, but Company has not filed Form

BEN-2 declaring name of the Beneficial Owner of the Shareholding as its shareholders on 31.03.2021 and 16.06.2022

in compliance of section 90

of the CA, 2013, thus the Petitioner Company shall undertake to comply with the requirement of Section

90 of the CA, 2013 and Companies (Significant Beneficial owners) Rules,

2018.

The Petitioner Company is in compliance of the Companies Act, 2013 and has filed form BEN-2 in compliance of the provision of Section 90 of the Companies Act, 2013 and undertakes to continue compliance of the provision of Section 90 of the Companies Act, 2013. The form BEN-2 and payment challan thereto has been submitted.

5. Having heard the learned counsel for Petitioner Company and having gone through the content of the present Petition and perusing the documents annexed therewith, the bench found that all requisite statutory procedure and practice for reduction of share capital of Petitioner Company are followed. Therefore, the Special Resolution of the Petitioner Company confirm by EOGM dated June 28, 2022 of the Petitioner Company found to be in order. Hence the present Company Petition deserves to be allowed. Hence it is allowed in terms of its prayer clause and Schedule of Form of Minutes.

6. The Petitioner Company to publish the notices about registration of order and minutes of reduction by the concerned Registrar of Companies, Goa in two newspapers namely i.e. "Times of India" in English language and translation thereof in "Gomantak", in vernacular language both having circulation in the state of Goa within 30 days of registration. The Petitioner Company undertakes to file the certified copy of the order and form of minutes duly certified by the Deputy Registrar, National Company Law Tribunal with the Registrar of Companies within 30 days from the date of the receipt of certified copy of the present order.

7. All concerned regulatory authorities to act on production of certified copy of this order to be issued on demand by the Deputy Registrar, National Company Law Tribunal.

8. Ordered Accordingly.

SCHEDULE

Form of Minutes

"Effective from appointed date i.e. 1st July 2022 the issued, subscribed and the paid-up equity share capital of Zuari Farmhub Limited is reduced from Rs.

785,57,00,000 (INR seven hundred eighty-five crores Fifty-seven lakhs only) divided in to 78,55,70,000 (Seventy-eight crores fifty-five lakhs seventy thousand only) equity shares of Rs. 10 each to Rs. 86,60,26,000/- (INR Eighty-Six Crores Sixty Lakhs Twenty-Six

Thousand Only) divided into 8,66,02,600 (Eight Crore Sixty-Six Lakhs Two Thousand Six hundred only) Equity Shares of Rs. 10/-each fully paid.”

On the date of Registration of this minute, issued subscribed and fully paid up capital of Zuari Farmhub Limited is 8,66,02,600 (Eight Crore Sixty-Six Lakhs Two Thousand Six Hundred Only) Equity Shares of Rs. 10/-each, aggregating to Rs. 86,60,26,000/- (INR Eighty-Six Crores Sixty Lakhs Twenty-Six Thousand Only) and the remaining 71,33,97,400 equity shares are unissued.