You have uploaded below Document Successfully

IA Filing / Filing No : 2709138043672021
Filing Date : 25-02-2022

S. No.	Filing Number	Miscelleneous No	Party Name	File Name
1	2709138043672021	2709138043672021/2	Supreme Petrochem Limited	REJOINDER NCLT.pdf

Receipt Print

भारतीय गैर न्यायिक

एक सौ रुपये

Rs.

रु. 100

HUNDRED RUPEES

INDIA

NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL

महाराष्ट्र MAHARASHTRA ◐ 2021 ◐ ZM 782742

NOTARIAL REG. NO. 5
Sr. No. 2485 Page No. 79
Date 25-02-2022

प्रधान मुद्रांक कार्यालय, मुंबई.
प.मु.वि.क्र. 800009
21 DEC 2021
सक्षम अधिकारी

NOTARY UDAI PRAKASH Mumbai (Maharashtra) Regd. No. 9972 GOVT. OF INDIA

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COMPANY PETITION NO. 330 of 2021

श्री सी. टी. आंबेकर

In the matter of Section 66 and other applicable provisions of the Companies Act, 2013 and the rules framed thereunder

AND

In the matter of reduction of Equity Share Capital of Supreme Petrochem Limited ("Petitioner Company")

Supreme Petrochem Limited
a Company incorporated under the provisions of Companies Act, 1956 having its registered address at Solitaire Corporate Park, Bldg. No. 11, 5 Floor, 167,Guru Hargovindji Marg, Chakala, Andheri - East, Mumbai - 400093.
CIN No: L23200MH1989PLC054633 *.....The Petitioner Company*

AFFIDAVIT ON BEHALF OF THE PETITIONER COMPANY DEALING WITH THE OBSERVATIONS OF THE REGIONAL DIRECTOR, MADE IN HIS REPORT DATED 18 FEBRUARY 2022

I, D N Mishra, Authorised Representative of the respective Petitioner Company above named, Indian Inhabitant, having office at Solitaire Corporate Park, Building No. 11, 5th Floor, 167, Guru Hargovindji Marg, Chakala, Andheri East, Mumbai – 400 093 and at present at Mumbai do hereby solemnly affirm and say as follows:

1. I am the Authorised Signatory of the Petitioner Company. I am acquainted with the facts of the case in regards to the matter of reduction Equity Share Capital of Supreme Petrochem Limited and able to depose to the same, in the above matter.

2. I have perused the Report dated 18 February, 2022 filed by the Regional Director ('Report") in this Hon'ble Tribunal, making certain observations to the Scheme in Paragraph 6 and 7 therein. I am filing the present Affidavit on behalf of Petitioner Company dealing with the said observations.

3. For the sake of ready reference, the observations made by the Regional Director in paragraph 6&7 of the said Report are reproduced hereunder:

   6. "ROC, Mumbai in his Report No. ROC/JTA/054633/66(2)/309 dated 21.01.2021 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 should be protected.

   2. Complaint vide SRN 100016969, J000030198 & J00066293 are pending against the Company. Copy of the above said complaint is annexed hereto and marked as "Annexure-A" *Which are in the nature of non-*

NOTARY

refund deposits and as per proviso section 66, no such reduction shall be made if the Company is in arrears in the repayment of any deposits accepted by it, interest payable thereon.

3. *May be decided on it's merits.*

7. *The observations of the Regional Director on the proposed Scheme of Reduction of Capital are as under:-*

   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 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 scrutinise the tax return filed by the Company after giving effect to the proposed reduction. The decision of the Income tax Authority is binding on the Petitioner Company. Further the recipient shareholders of reduction amount shall be subject to the applicable capital gain Tax/dividend tax as the case may be.

   C) It is observed that in the proposed scheme the applicant proposes to reduce the issued, subscribed and paid-up equity share capital of the Company from the existing Rs 94,02,06,710/- divided into 9,40,20,671 equity shares with face value of Rs 10/- per equity share to Rs 37,60,82,684/- divided into 9,40,20671 equity shares with face value of Rs 4/- by returning to all the Equity Shareholders as on the record date an amount of Rs 6/- per Equity share out of face value of Rs 10/- per Equity Share held by them and reducing the face value of Equity Shares of the Company from the existing Rs 10/- per equity share to Rs 4/- per Equity Share on terms and conditions as contained in the draft scheme of reduction of share capital, which be and is hereby approved. It is observed that in the proposed Scheme the applicant proposed to return *to all the equity shareholders as on the record date an amount of Rs 6/- per Equity shareholders as on the record date an amount of Rs 6/- per Equity share out of face value of Rs 10/- per, which is a nature of buy back. Therefore, Petitioner Company be directed to place on record as to how to present Scheme is not circumvent the provisions of the Section 68.*

D)The Petitioner Company has mentioned in Para 3 of Petition that it is engaged in business of brokerage and underwriting of shares, stocks, debentures, bonds, etc. In this regard it is submitted that whether approval of RBI, SEBI, Stock Exchange as applicable and any other regulatory authority is required or not, and if required then the company shall obtain before approval of Scheme.

4. The response of the Petitioner Company to each of the aforesaid observations made in the Report are as under:

4.1. In so far as the observation made in Paragraph 6 (1) of the said Report is concerned the Petitioner Company undertakes that interest of all creditors is protected.

4.2. In so far as the observation made in Paragraph 6 (2) of the said Report is concerned about 3 complaints, the Petitioner company undertakes and confirm that the approval of the Reduction will not dilute any complaint and all complaints pending with ROC/MCA will be decided on its own merit and in accordance with law.

Out of the said three complaints, though very old and not in relation to share capital reduction scheme of the Company, the two complaints are in relation to issue of duplicate share certificate (viz. shares) and payment of dividend, which have been already transferred to Investor Education and Protection Fund (IEPF) as per IEPFA Rules, 2016 on which Company has no controls. These shares and dividend have been transferred to IEPF because the concerned shareholders did not claim their dividend consecutively for 7 years period. However, Company will co-operate with such members in all respect.

whenever they proceed, subject to compliance of IEPFA Regulations/ requirements on their part. Company has already replied to Registrar of Companies, Mumbai in this regard. The third complaint is w.r.t. payment of principal and interest of Ms. Celine Lobo related to a fixed deposit amount who was having fixed deposit with Company in Joint with Mr. Raymond Lobo. In this connection we submit that Company has already paid the entire amount to the deposit holder on 02.12.2014 (Rs.3450/- Interest) and on 08.12.2014 (Rs.10,000/- Principal) and to corroborate the same, bank statement of HDFC Bank, Mumbai is attached. Company has already replied to Registrar of Companies, Mumbai with respect to aforesaid three complaints and the copy whereof is collectively attached herewith vide ***"Annexure-1"*** for ready reference. The present scheme for reduction will not have any impact on pending complaints which will be decided on its own merits.

4.3. In so far as the observation made in Paragraph 7 (A) of the said Report the Petitioner Company is concerned, the Petitioner Company undertakes that interest of all the creditors, stakeholders as well as the Government Revenue are protected and all the statutory dues are paid off by the Petitioner Company.

4.4. In so far as the observation made in Paragraph 7 (B) of the said Report is concerned, the Petitioner Company submits that the tax implications, if any, arising out of the proposal for reduction is subject to final decision of the Income Tax Authorities. The approval of the Company Petition by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinise the tax return filed by the Petitioner Company after giving effect to the proposed reduction and all issues arising out of scheme for reduction will be decided in accordance with law. Further, the Petitioner Company confirms that the Company shall make payment to the shareholders of the Company in respect to its share capital reduction, only after withholding or deducting such tax at source as may be applicable as per Income Tax Act, 1961 to the extent applicable .

4.5. In so far as the observation made in Paragraph 7 (C) of the said Report is concerned the Petitioner Company submits that a company having a share capital by passing a special resolution and subject to confirmation by the Tribunal is entitled to reduce it's share capital in any manner as it so desires. The provisions of the Companies Act, 2013 **("the Act")** have prescribed separate procedures and regulations for Buy-Back, which being independent provisions are not inter-dependent to each other. The provision under Section 66(6) of the Act explicitly provides for exclusion of section 66 for the purposes of buy-back of it's own securities by any Company. It is open for the Petitioner company to follow the procedure under Section 66 of the Act for share capital reduction or procedure under Section 68 of the Act for Buy-Back of its own securities, as the case may be, and both the provisions/procedures stand independent.

Further section 66 provides for a detailed procedure to reduce the share capital of the Company in any manner *inter alia* paying off any paid up capital which is in excess wants of the Company. Further, in accordance with Section 69 of the Act, in case of a buy-back, a sum equal to the nominal value of the shares so purchased has to be transferred to Capital Redemption Reserve whereas in the present case there is only a reduction of 60 % of the paid up value of the equity shares by returning Rs 6/- per Equity shares to the shareholders without effecting any change in the number of shares. Since there is no extinguishment in the overall number of equity shares of the Company while doing reduction of share capital, as against the provisions of Buy-Back wherein the number of shares bought back are mandated to be extinguished, the number of shares will remain intact pre and post the proposed share capital reduction of the company. Further, Section 68 of the Act provides for a maximum cap of buyback only to the extent of 25 % of the total paid up capital and free reserves whereas the proposed reduction envisages reduction of 60% of the paid up value of shares i.e reduction in the face value of shares from Rs 10/- per equity share to Rs 4/- per equity share. Therefore, the contentions of the Regional Director are contrary to the prevailing legal position. In this regard reliance is placed on the following rulings where similar observations were raised by the Regional Director and the Hon'ble High Court/NCLT were pleased to allow reduction of share capital as a procedure under Section 66;

1. Decision of NCLT Mumbai Bench in CP No. 1188 of 2020 in the matter of Earnest Towers Private Limited dated 24.08.2021. (Enclosed vide ***Annexure – 2)***
2. Decision of High Court of Bombay in Company Petition No. 801 of 2005 in Company Application No. 620 of 2005 in the matter of Kalyani Thermal Systems Limited dated 23.12.2005. (Enclosed vide ***Annexure – 3)***
3. Decisions of NCLT Mumbai Bench in CP No. 4514 of 2019 in the matter of Lily Realty Private limited dated 10.03.2021. (Enclosed vide ***Annexure – 4)***
4. Decision of High Court of Bombay in Company Scheme Petition No. 434 of 2014 connected with Company Summons for direction no. 396 of 2014 dated 28.04.2015 in the matter of Capgemini India Pvt. Ltd. (Enclosed vide ***Annexure – 5)***

In view of the above the Petitioner Company confirms that the present Scheme does not circumvent the provisions of the Section 68 in any manner.

4.6 In so far as the observation made in Paragraph 7 (D) of the said Report is concerned the Petitioner Company submits that Company is not engaged in the business of brokerage and underwriting of shares, stocks, debentures, bonds etc. as stated in RD report dated 18.02.2022 and para 3 as referred therein related to our petition is reproduced as hereunder:

"To carry on business as Merchants, Dealers, Distributors, Traders, commission agents, brokers, adatias or in any other capacity in India or elsewhere and to import, export, buy, sell, barter, exchange, pledge, mortgage, advance upon or otherwise deal in goods, produce, articles and merchandise of any kind including all type of chemicals, petrochemicals intermediate products, plastic goods raw materials, machinery and packaging related thereto", hence such observation in RD report is irrelevant to the Company. Further the National Stock Exchange of India and BSE have given their NOC to the share capital reduction scheme of the Company vide their Letter dated 18 June 2021 which is attached herewith vide ***Annexure – 6*** and ***Annexure – 7***. Further, since the Petitioner Company is not an NBFC, no prior approval from RBI for reduction of its share capital is mandated.

5. I therefore, say that based on the clarifications provided by the Petitioner Company to the observations made by the Regional Director in his Report herein, the Company Petition be allowed and the reduction be sanctioned and made absolute by this Hon'ble Tribunal.

Solemnly affirmed at Mumbai dated)
on this __ February , 2022)

Aadhar No. 457263124970

Before me,

BEFORE ME

UDAI PRAKASH(M.A.LL.B.,)
ADVOCATE & NOTORY GOVT. OF INDIA
MUMBAI (MAHARASHTRA)
REG. NO. 9972
Room No. 10, S. No. 94, Inshwadi, Kharodi Village,
Marve Road, Malad (W), Mumbai - 400 095.

NOTARY GOVT. OF INDIA
UDAI PRAKASH
Mumbai (Maharashtra)
Regd. No. 9972
Exp. Date. 27/01/2023

O/C

Annexure-1

SUPREME PETROCHEM LTD

Regd. Office :
Solitaire Corporate Park, Building No. 11, 5th Floor, 167, Guru Hargovindji Marg, Andheri-Ghatkopar Link Road, Chakala, Andheri (East), Mumbai-400 093. INDIA
✆ : 91-22-6709 1900 Fax - 022 - 4005 5681 • CIN : L23200MH1989PLC054633
Website : www.supremepetrochem.com • Email : corporate@spl.co.in

Ref: CFA/CS/86/AGM_32/2021-2022

February 4, 2022

To,
The Registrar of Companies
100, Everest Building
5th Floor,
Marine Drive
Mumbai- 400020

कंपनी रजिस्ट्रार कार्यालय
Registrar of Companies
Maharashtra, Mumbai
08 FEB 2022
आवक ....
Inward ....

Sub: **Submission of our action taken report in relation to the investor grievance Submitted vide SRN NO. J00030198 w.r.t. non receipt of dividend warrant**

Dear Sir,

In reference to above grievance, we would like to state that this belongs to unpaid dividends of the shareholder which has been already transferred to Investor Education and Protection Fund (IEPF) on which Company has no control as the same is under consideration of IEPF Authorities. The IEPF 5 Form received from the shareholder related to divided was duly responded by Company as it uploaded its response to IEPF 5 of the shareholder vide SRN T43317254 dated 15.09.2021.

The acknowledgement issued by IEPF Authorities in relation to above is attached herewith vide Annexure A for your ready reference.

In view of above, there is nothing pending on the part of Company Kindly take note of it and delete the grievance from MCA Portal and oblige.

Thanking you

Yours faithfully,
For SUPREME PETROCHEM LTD

D N MISHRA
COMPANY SECRETARY

NOTARY GOVT. OF INDIA
UDAI PRAKASH
Mumbai (Maharashtra)
Regd. No. 8972
Exp. Date 27/07/2023

ISO 9001:2015
ISO 14001:2015
ISO 45001:2018
BUREAU VERITAS Certification

UKAS
008

AEO
भारतीय सीमा शुल्क
INDIAN CUSTOMS
Certificate No. INAAACS7249C2F188

Annexure-A

MINISTRY OF CORPORATE AFFAIRS

ACKNOWLEDGEMENT

SRN : T43317254

Received From : Service Request Date : 15/09/2021

Name : FINIAN LOPEZ

Address : SUPREME PETROCHEM LTD

SOLITAIRE CORPORATE PARK 167, HARGOVINDJI MARG, CHAKALA, ANDHER

MUMBAI, Maharashtra

IN - 400093

Entity on whose behalf money is paid

CIN: L23200MH1989PLC054633

Name : SUPREME PETROCHEM LIMITED

Address : SOLITAIRE CORPORATE PARK, BLDG. NO.11, 5TH FLR.

167, GURU HARGOVINJI MARG, CHAKALA, ANDH ERI (EAST)

MUMBAI, Maharashtra

India - 400093

Full Particulars of Remittance

Service Type: eFiling

Service Description

Fee For Form-IEPF-5 E verification Report - BHASKARAN VENKATACHALAPATHY

Note: The defects or incompleteness in any respect in this eForm as noticed shall be placed on the Ministry's website (www.mca.gov.in). In case the eForm is marked as RSUB or PUCL, please resubmit the eForm or file Form GNL-4(Addendum), respectively. Please track the status of your transaction at all times till it is finally disposed off. (Please refer Rule 10 of the Companies (Registration offices and Fees) Rules, 2014) It is compulsory to file Form GNL-4 (Addendum) electronically within the due date whenever the document is put under PUCL, failing which the system will treat the document as invalid and will not be taken on record in accordance with Rule 10(4) of the Companies (Registration offices and Fees) Rules, 2014

NOTARY ★ GOVT. OF INDIA ★ UDAI PRAKASH Mumbai (Maharashtra) Regd. No. 9972 Exp. Date 27/07/2023

O/C

SUPREME PETROCHEM LTD

Regd. Office :
Solitaire Corporate Park, Building No. 11, 5th Floor, 167, Guru Hargovindji Marg, Andheri-Ghatkopar Link Road, Chakala, Andheri (East), Mumbai-400 093. INDIA
© : 91-22-6709 1900 Fax - 022 - 4005 5681 • CIN : L23200MH1989PLC054633
Website : www.supremepetrochem.com • Email : corporate@spl.co.in

कंपनी रजिस्ट्रार महाराष्ट्र मुंबई
Registrar of Companies
Maharashtra, Mumbai
08 FEB 2022
आवक
Inward

Ref: CFA/CS/86/AGM_32/2021-2022 February 4, 2022

To,

The Registrar of Companies
100, Everest Building
5th Floor,
Marine Drive
Mumbai- 400020

Sub: Submission of our action taken report in relation to the investor grievance submitted vide SRN NO. I00016969 w.r.t. non receipt of matured amount

Dear Sir,

In reference to above grievance, we would like to state that the said fixed deposit for Rs.10000/- and interest thereon Rs.3450/- was paid to the depositor on due dates thereof and as per our records the same has been encashed by her. We would like to give below details for the same.

Principal amount of Rs.10000/- paid to the depositor, **Celine Lobo** vide cheque no. 502988 dated 01.12.2014 which was encashed also by her on 08.12.2014

Interest amount of Rs.3450/- was also paid to the depositor, **Celine Lobo** vide cheque no. 502801 dated 30.11.2014 which was encashed also by her on 02.12.2014.

In view of above, there is nothing pending on part of Company in relation to above grievance. Hence, we request you to please delete the grievance from ROC portal and oblige.

Thanking you

Yours faithfully,
For **SUPREME PETROCHEM LTD**

D N MISHRA
COMPANY SECRETARY

P. S. Bank Statement of HDFC Bank as a proof of payment of principal and interest

BUREAU VERITAS Certification
AEO भारतीय सीमा शुल्क INDIAN CUSTOMS
Certificate No. INAAACS7249C2F168

NOTARY GOVT. OF INDIA
UDAI PRAKASH
Mumbai (Maharashtra)
Regd/No. 9972
Exp. Date 26/07/2023

HDFC BANK

HDFC Bank Ltd.,
Lodha – I Think Techno Campus,
Building Alpha, 3rd floor
Opp. Crompton Greaves Ltd.,
Near Railway Station, Kanjur Marg (E)
Mumbai- 400 042
Ph.No.022-30752015/2079.

Account Number : 12120310000054
Statement Period : 30-Nov-2014 TO 31-Dec-2014

25-26 MAKERCHAMBERS III
NARIMAN POINT,
MUMBAI

SUPREME PETROCHEM LTD
SOLITAIRE CORPORATE PARK
BLDG NO 115TH FLOOR CHAKALA
ANDHERI (E)
MUMBAI
MAHARASHTRA 400093

DATE	DESCRIPTION	REFERENCE No	VALUE DATE	DEBITS	CREDITS	BALANCE
30-Nov-14	B/F ...		30-Nov-14	0.00	1,58,566.24	1,58,566.24
	MAKER CHAMB,MUMBAI					
01-Dec-14	CHQ PD-MICR CTS-AMEYA UDAYSHANKAR KHUT	000000502526	01-Dec-14	272.00		1,58,294.24
	MUMBAI CLE,MUMBAI					
01-Dec-14	RTGS CR-ICIC0000393-SUPREME PETROCHEM LI	ICICR52014120100	01-Dec-14		5,00,000.00	6,58,294.24
	STOCK EXCH,MUMBAI	091825				
01-Dec-14	FT --02401000118828-PUSHKALA KAVERI SUBR	000000502548	01-Dec-14	652.00		6,57,642.24
	MAKER CHAMB,MUMBAI					
02-Dec-14	CHQ PD-MICR CTS-PRAVEEN M GHANSHANI	000000502536	02-Dec-14	152.00		6,57,490.24
	MUMBAI CLE,MUMBAI					
02-Dec-14	CHQ PD-MICR CTS-SHANTAE NEELESH PRABHUDE	000000502569	02-Dec-14	1,676.00		6,55,814.24
	MUMBAI CLE,MUMBAI					
02-Dec-14	CHQ PD-MICR CTS-CELINE LOBO	000000502801	02-Dec-14	3,450.00		6,52,364.24
	MUMBAI CLE,MUMBAI					
02-Dec-14	CHQ PD-MICR CTS-RASHMI KUMAR SHAH BANK O	000000502852	02-Dec-14	25,000.00		6,27,364.24
	MUMBAI CLE,MUMBAI					
02-Dec-14	CHQ PD-MICR CTS-PRAVEEN M GRANSHANI	000000502871	02-Dec-14	10,000.00		6,17,364.24
	MUMBAI CLE,MUMBAI					
02-Dec-14	CHQ PD-MICR CTS-BHANUMATI JITENDRA PARIK	000000502872	02-Dec-14	10,000.00		6,07,364.24
	MUMBAI CLE,MUMBAI					
03-Dec-14	CHQ PD-MICR CTS-MAYUR ARVIND KHATRI	000000502566	03-Dec-14	6,704.00		6,00,660.24
	MUMBAI CLE,MUMBAI					
04-Dec-14	CHQ PD-MICR CTS-VISHNU GANPAT RAWOOL	000000502550	04-Dec-14	978.00		5,99,682.24
	MUMBAI CLE,MUMBAI					
04-Dec-14	FT-02911140073969-SARANESH S KUNDER	000000502998	04-Dec-14	18,000.00		5,81,682.24
	CMS - FORT,MUMBAI					
04-Dec-14	FT-00801050095376-ASHA SUVARNA	000000502956	04-Dec-14	18,000.00		5,63,682.24
	CMS - FORT,MUMBAI					
05-Dec-14	CHQ PD-MICR CTS-SHARMIN AYUB KHALID L	000000502861	05-Dec-14	18,000.00		5,45,682.24
	MUMBAI CLE,MUMBAI					
05-Dec-14	CHQ PD-MICR CTS	000000502862	05-Dec-14	30,000.00		5,15,682.24
	MUMBAI CLE,MUMBAI					
05-Dec-14	FT --02401000118828-PUSHKALA KAVERI SUBR	000000502982	05-Dec-14	40,000.00		4,75,682.24
	MAKER CHAMB,MUMBAI					
06-Dec-14	CHQ PD-MICR CTS-PRASUN BHUPATBHAI SHAH	000000502562	06-Dec-14	11,732.00		4,63,950.24
	MUMBAI CLE,MUMBAI					
06-Dec-14	CHQ PD-MICR CTS-AMIT Y BHATT	000000502914	06-Dec-14	8,380.00		4,55,570.24
	MUMBAI CLE,MUMBAI					
06-Dec-14	CHQ PD-MICR CTS-KISHORCHANDRA PRATAPSINH	000000502937	06-Dec-14	121.00		4,55,449.24
	MUMBAI CLE,MUMBAI					
06-Dec-14	CHQ PD-MICR CTS-JYOTI KISHORCHANDRA SAMP	000000502938	06-Dec-14	121.00		4,55,328.24
	MUMBAI CLE,MUMBAI					
06-Dec-14	CHQ PD-MICR CTS-KISHORCHANDRA PRATAPSINH	000000502991	06-Dec-14	7,000.00		4,48,328.24
	MUMBAI CLE,MUMBAI					
08-Dec-14	CHQ PD-MICR CTS	000000502881	08-Dec-14	264.00		4,48,064.24
	MUMBAI CLE,MUMBAI					

NOTARY
GOVT. OF INDIA
UDAI PRAKASH
Mumbai (Maharashtra)

HDFC BANK

HDFC Bank Ltd.,
Lodha – I Think Techno Campus,
Building Alpha, 3rd floor
Opp. Crompton Greaves Ltd.,
Near Railway Station, Kanjur Marg (E)
Mumbai- 400 042
Ph.No.022-30752015/2079.

08-Dec-14	CHQ PD-MICR CTS	000000502919	08-Dec-14	6,704.00		4,41,360.24
	MUMBAI CLE,MUMBAI					
08-Dec-14	CHQ PD-MICR CTS	000000502925	08-Dec-14	534.00		4,40,826.24
	MUMBAI CLE,MUMBAI					
08-Dec-14	CHQ PD-MICR CTS	000000502926	08-Dec-14	534.00		4,40,292.24
	MUMBAI CLE,MUMBAI					
08-Dec-14	CHQ PD-MICR CTS	000000502962	08-Dec-14	50,000.00		3,90,292.24
	MUMBAI CLE,MUMBAI					
08-Dec-14	CHQ PD-MICR CTS	000000502981	08-Dec-14	7,000.00		3,83,292.24
	MUMBAI CLE,MUMBAI					
08-Dec-14	CHQ PD-MICR CTS	000000502988	08-Dec-14	10,000.00		3,73,292.24
	MUMBAI CLE,MUMBAI					
08-Dec-14	CHQ PD-MICR CTS	000000502996	08-Dec-14	30,000.00		3,43,292.24
	MUMBAI CLE,MUMBAI					
08-Dec-14	CHQ PD-MICR CTS	000000502997	08-Dec-14	30,000.00		3,13,292.24
	MUMBAI CLE,MUMBAI					
08-Dec-14	CHEQUE RETURNED :INSTRUMENT POST DATED	000000502919	08-Dec-14		6,704.00	3,19,996.24
	MUMBAI CLE,MUMBAI					
09-Dec-14	CHQ PD-MICR CTS-RONALD SANETIS	000000502501	09-Dec-14	10,000.00		3,09,996.24
	MUMBAI CLE,MUMBAI					
09-Dec-14	CHQ PD-MICR CTS-SUMEDHA SANJAY SAVARKAR	000000502546	09-Dec-14	163.00		3,09,833.24
	MUMBAI CLE,MUMBAI					
09-Dec-14	CHQ PD-MICR CTS	000000502855	09-Dec-14	40,000.00		2,69,833.24
	MUMBAI CLE,MUMBAI					
09-Dec-14	CHQ PD-MICR CTS	000000502882	09-Dec-14	353.00		2,69,480.24
	MUMBAI CLE,MUMBAI					
09-Dec-14	CHQ PD-MICR CTS	000000502890	09-Dec-14	353.00		2,69,127.24
	MUMBAI CLE,MUMBAI					
09-Dec-14	CHQ PD-MICR CTS	000000502891	09-Dec-14	353.00		2,68,774.24
	MUMBAI CLE,MUMBAI					
09-Dec-14	CHQ PD-MICR CTS	000000502924	09-Dec-14	271.00		2,68,503.24
	MUMBAI CLE,MUMBAI					
09-Dec-14	CHQ PD-MICR CTS	000000502927	09-Dec-14	40,000.00		2,28,503.24
	MUMBAI CLE,MUMBAI					
09-Dec-14	CHQ PD-MICR CTS	000000502928	09-Dec-14	40,000.00		1,88,503.24
	MUMBAI CLE,MUMBAI					
09-Dec-14	CHQ PD-MICR CTS	000000502929	09-Dec-14	362.00		1,88,141.24
	MUMBAI CLE,MUMBAI					
09-Dec-14	CHQ PD-MICR CTS	000000502949	09-Dec-14	340.00		1,87,801.24
	MUMBAI CLE,MUMBAI					
09-Dec-14	CHQ PD-MICR CTS	000000502960	09-Dec-14	25,000.00		1,62,801.24
	MUMBAI CLE,MUMBAI					
09-Dec-14	CHQ PD-MICR CTS	000000502963	09-Dec-14	20,000.00		1,42,801.24
	MUMBAI CLE,MUMBAI					
09-Dec-14	RTGS CR-ICIC0000393-SUPREME PETROCHEM LI	ICICR52014120500	09-Dec-14		10,00,000.00	11,42,801.24
	STOCK EXCH,MUMBAI	001039				
10-Dec-14	CHQ PD-MICR CTS	000000502921	10-Dec-14	13,408.00		11,29,393.24
	MUMBAI CLE,MUMBAI					
10-Dec-14	CHQ PD-MICR CTS	000000502955	10-Dec-14	8,625.00		11,20,768.24
	MUMBAI CLE,MUMBAI					
11-Dec-14	CHQ PD-MICR CTS	000000502906	11-Dec-14	260.00		11,20,508.24
	MUMBAI CLE,MUMBAI					
11-Dec-14	CHQ PD-MICR CTS	000000502920	11-Dec-14	13,408.00		11,07,100.24
	MUMBAI CLE,MUMBAI					
11-Dec-14	CHQ PD-MICR CTS	000000502967	11-Dec-14	20,000.00		10,87,100.24
	MUMBAI CLE,MUMBAI					
12-Dec-14	CHQ PD-MICR CTS	000000502894	12-Dec-14	596.00		10,86,504.24
	MUMBAI CLE,MUMBAI					
12-Dec-14	CHQ PD-MICR CTS	000000502954	12-Dec-14	12,449.00		10,74,055.24
	MUMBAI CLE,MUMBAI					
13-Dec-14	CHQ PD-MICR CTS-RASHMI AJIT SHAH	000000502583	13-Dec-14	411.00		10,73,644.24

NOTARY
GOVT. OF INDIA
UDAI PRAKASH
Mumbai (Maharashtra)
Regd. No. 9972
Exp. Date 27/07/2023

HDFC BANK

HDFC Bank Ltd.,
Lodha – I Think Techno Campus,
Building Alpha, 3rd floor
Opp. Crompton Greaves Ltd.,
Near Railway Station, Kanjur Marg (E)
Mumbai- 400 042
Ph.No.022-30752015/2079.

	MUMBAI CLE,MUMBAI					
13-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502903	13-Dec-14	4,471.00		10,69,173.24
13-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502911	13-Dec-14	5,028.00		10,64,145.24
13-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502918	13-Dec-14	10,056.00		10,54,089.24
13-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502964	13-Dec-14	10,000.00		10,44,089.24
13-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502968	13-Dec-14	30,000.00		10,14,089.24
13-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502984	13-Dec-14	31,000.00		9,83,089.24
15-Dec-14	CHQ PD-MICR CTS-SAROJ NAROTTAMDAS SHAH MUMBAI CLE,MUMBAI	000000502592	15-Dec-14	418.00		9,82,671.24
15-Dec-14	CHQ PD-MICR CTS-PARIMAZ KEKI PADDAR MUMBAI CLE,MUMBAI	000000502565	15-Dec-14	3,352.00		9,79,319.24
15-Dec-14	CHQ PD-MICR CTS-SAROJ NAROTTAMDAS SHAH A MUMBAI CLE,MUMBAI	000000502994	15-Dec-14	25,000.00		9,54,319.24
15-Dec-14	FT --00801050095376-ASHA SUVARNA MAKER CHAMB,MUMBAI	000000503009	15-Dec-14	15,000.00		9,39,319.24
16-Dec-14	CHQ PD-MICR CTS-JIGAR DINESH NEGANDHI MUMBAI CLE,MUMBAI	000000502917	16-Dec-14	3,352.00		9,35,967.24
16-Dec-14	CHQ PD-MICR CTS-GITA JAYANTILAL SHETH MUMBAI CLE,MUMBAI	000000502941	16-Dec-14	205.00		9,35,762.24
16-Dec-14	CHQ PD-MICR CTS-SANGITA JAYANTILAL SHETH MUMBAI CLE,MUMBAI	000000502942	16-Dec-14	205.00		9,35,557.24
16-Dec-14	CHQ PD-MICR CTS-SMITA JAYANTILAL SHETH MUMBAI CLE,MUMBAI	000000502943	16-Dec-14	205.00		9,35,352.24
16-Dec-14	CHQ PD-MICR CTS-GITA JAYANTILAL SHETH AC MUMBAI CLE,MUMBAI	000000502972	16-Dec-14	10,000.00		9,25,352.24
16-Dec-14	CHQ PD-MICR CTS-SANGITA JAYANTILAL SHETH MUMBAI CLE,MUMBAI	000000502977	16-Dec-14	10,000.00		9,15,352.24
16-Dec-14	CHQ PD-MICR CTS-SMITA JAYANTILAL SHETH A MUMBAI CLE,MUMBAI	000000502978	16-Dec-14	10,000.00		9,05,352.24
16-Dec-14	FT - INDRALOK-05431140006256-PALGHAT KRI MAKER CHAMB,MUMBAI	000000502945	16-Dec-14	844.00		9,04,508.24
16-Dec-14	FT - INDRALOK-05431140006256-PALGHAT KRI MAKER CHAMB,MUMBAI	000000502987	16-Dec-14	40,000.00		8,64,508.24
17-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502883	17-Dec-14	823.00		8,63,685.24
17-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502895	17-Dec-14	801.00		8,62,884.24
17-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502922	17-Dec-14	10,056.00		8,52,828.24
18-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502886	18-Dec-14	833.00		8,51,995.24
18-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502896	18-Dec-14	801.00		8,51,194.24
18-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502931	18-Dec-14	85.00		8,51,109.24
18-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502932	18-Dec-14	85.00		8,51,024.24
18-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502934	18-Dec-14	211.00		8,50,813.24
18-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502936	18-Dec-14	422.00		8,50,391.24
18-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502959	18-Dec-14	15,000.00		8,35,391.24
18-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502966	18-Dec-14	20,000.00		8,15,391.24

NOTARY
GOVT. OF INDIA
UDAI PRAKASH
Mumbai (Maharashtra)
Regn. No. 9972
Exp. Date 27/07/2023

HDFC BANK

HDFC Bank Ltd.,
Lodha – I Think Techno Campus,
Building Alpha, 3rd floor
Opp. Crompton Greaves Ltd.,
Near Railway Station, Kanjur Marg (E)
Mumbai- 400 042
Ph.No.022-30752015/2079.

18-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502990	18-Dec-14	10,000.00		8,05,391.24
19-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502897	19-Dec-14	301.00		8,05,090.24
19-Dec-14	RTGS CR-ICIC0000393-SUPREME PETROCHEM LI STOCK EXCH,MUMBAI	ICICR52014121900 094599	19-Dec-14		9,00,000.00	17,05,090.24
20-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502893	20-Dec-14	100.00		17,04,990.24
20-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502900	20-Dec-14	422.00		17,04,568.24
20-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502910	20-Dec-14	8,380.00		16,96,188.24
20-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502946	20-Dec-14	219.00		16,95,969.24
22-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502908	22-Dec-14	187.00		16,95,782.24
22-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502912	22-Dec-14	3,352.00		16,92,430.24
22-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502947	22-Dec-14	438.00		16,91,992.24
22-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502958	22-Dec-14	10,000.00		16,81,992.24
22-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502965	22-Dec-14	10,000.00		16,71,992.24
22-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502971	22-Dec-14	20,000.00		16,51,992.24
22-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502999	22-Dec-14	40,000.00		16,11,992.24
22-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000503000	22-Dec-14	40,000.00		15,71,992.24
22-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000503005	22-Dec-14	10,000.00		15,61,992.24
22-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000503006	22-Dec-14	40,000.00		15,21,992.24
22-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000503007	22-Dec-14	40,000.00		14,81,992.24
22-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000503010	22-Dec-14	96,827.00		13,85,165.24
22-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000503016	22-Dec-14	40,000.00		13,45,165.24
23-Dec-14	CHQ PD-MICR CTS-BHUPENDRA VRAJLAL GANDHI MUMBAI CLE,MUMBAI	000000502923	23-Dec-14	438.00		13,44,727.24
23-Dec-14	CHQ PD-MICR CTS-BHUPENDRA VRAJLAL GANDHI MUMBAI CLE,MUMBAI	000000503003	23-Dec-14	20,000.00		13,24,727.24
23-Dec-14	CHQ PD-MICR CTS-VIRAL DINESH SHAH CBI AC MUMBAI CLE,MUMBAI	000000503011	23-Dec-14	20,000.00		13,04,727.24
23-Dec-14	CHQ PD-MICR CTS-JIGAR DINESH NEGANDHI MG MUMBAI CLE,MUMBAI	000000503023	23-Dec-14	10,000.00		12,94,727.24
23-Dec-14	CHQ PD-MICR CTS-RAJESH JASVANTRAI NEGAND MUMBAI CLE,MUMBAI	000000503026	23-Dec-14	14,000.00		12,80,727.24
24-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000503004	24-Dec-14	15,000.00		12,65,727.24
24-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000503012	24-Dec-14	15,000.00		12,50,727.24
24-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000503013	24-Dec-14	15,000.00		12,35,727.24
24-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000503024	24-Dec-14	13,000.00		12,22,727.24
24-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000503028	24-Dec-14	25,000.00		11,97,727.24
24-Dec-14	CHQ PD-MICR CTS	000000503029	24-Dec-14	25,000.00		11,72,727.24

NOTARY
GOVT. OF INDIA
UDAI PRAKASH
Mumbai (Maharashtra)

HDFC BANK

HDFC Bank Ltd.,
Lodha – I Think Techno Campus,
Building Alpha, 3rd floor
Opp. Crompton Greaves Ltd.,
Near Railway Station, Kanjur Marg (E)
Mumbai- 400 042
Ph.No.022-30752015/2079.

	MUMBAI CLE,MUMBAI					
26-Dec-14	CHQ PD-MICR CTS-ARPITA RAJESH DESAI MUMBAI CLE,MUMBAI	000000502340	26-Dec-14	756.00		11,71,971.24
26-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502899	26-Dec-14	406.00		11,71,565.24
26-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502902	26-Dec-14	898.00		11,70,667.24
26-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502957	26-Dec-14	40,000.00		11,30,667.24
26-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000503001	26-Dec-14	5,000.00		11,25,667.24
27-Dec-14	CHQ PD-MICR CTS-UDDHAV PRABHAKAR GORE MUMBAI CLE,MUMBAI	000000502480	27-Dec-14	189.00		11,25,478.24
27-Dec-14	CHQ PD-MICR CTS-ARCHANA NARAIN BHATIA MUMBAI CLE,MUMBAI	000000503025	27-Dec-14	10,000.00		11,15,478.24
27-Dec-14	CHQ PD-MICR CTS-DEB KUMAR GUHA NOIDA,NOIDA	000000502939	27-Dec-14	712.00		11,14,766.24
27-Dec-14	CHQ PD-MICR CTS-DEB KUMAR GUHA NOIDA,NOIDA	000000503027	27-Dec-14	40,000.00		10,74,766.24
27-Dec-14	CHQ PD-MICR INW-ABHINAV AGARWAL SITAPUR,SITAPUR	000000502915	27-Dec-14	3,352.00		10,71,414.24
27-Dec-14	CHQ PD-MICR INW-ABHINAV AGARWAL SITAPUR,SITAPUR	000000502995	27-Dec-14	10,000.00		10,61,414.24
29-Dec-14	CHQ PD-MICR CTS-ASDIN YAZDI DHALLA MUMBAI CLE,MUMBAI	000000502534	29-Dec-14	150.00		10,61,264.24
29-Dec-14	CHQ PD-MICR CTS-BEHAFRID YAZDI DHALLA MUMBAI CLE,MUMBAI	000000502533	29-Dec-14	150.00		10,61,114.24
29-Dec-14	CHQ PD-MICR CTS-NAVAZ PERVEZ LENTIN UBI MUMBAI CLE,MUMBAI	000000502515	29-Dec-14	40,000.00		10,21,114.24
29-Dec-14	CHQ PD-MICR CTS-ASDIN YAZDI DHALLA BOI MUMBAI CLE,MUMBAI	000000502879	29-Dec-14	10,000.00		10,11,114.24
29-Dec-14	CHQ PD-MICR CTS-BEHAFRID YAZDI DHALLA BO MUMBAI CLE,MUMBAI	000000502880	29-Dec-14	10,000.00		10,01,114.24
29-Dec-14	CHQ PD-MICR CTS-AVNI DEVEN MOOLJEE MUMBAI CLE,MUMBAI	000000502916	29-Dec-14	3,352.00		9,97,762.24
29-Dec-14	CHQ PD-MICR CTS-AVNI DEVEN MOOLJEE DENA MUMBAI CLE,MUMBAI	000000503015	29-Dec-14	10,000.00		9,87,762.24
30-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502919	30-Dec-14	6,704.00		9,81,058.24
30-Dec-14	CHQ PD-MICR CTS MUMBAI CLE,MUMBAI	000000502989	30-Dec-14	20,000.00		9,61,058.24
30-Dec-14	RTGS CR-ICIC0000393-SUPREME PETROCHEM LI STOCK EXCH,MUMBAI	ICICR52014123000 086345	30-Dec-14		7,50,000.00	17,11,058.24
30-Dec-14	FT --00861000100883-SUBRAMANIAM RAMANATH MAKER CHAMB,MUMBAI	000000502885	30-Dec-14	601.00		17,10,457.24
31-Dec-14	ECS FUNDS FOR STDT 31.12.2014 KANJURMARG,MUMBAI	21	31-Dec-14	3,04,681.00		14,05,776.24

Opening Balance :				1,58,566.24
Total Debit :	Dr. Count : 132	19,09,494.00		
Total Credit :	Cr. Count : 5		31,56,704.00	
Closing Balance :				14,05,776.24

--------- ------- END OF STATEMENT - ---------------

GOVT. OF INDIA NOTARY
UDAI PRAKASH
Mumbai (Maharashtra)
Regd. No. 9872
Exp. Date 27/07/2023

0k

SUPREME PETROCHEM LTD

Regd. Office :
Solitaire Corporate Park, Building No. 11, 5th Floor, 167, Guru Hargovindji Marg, Andheri-Ghatkopar Link Road, Chakala, Andheri (East), Mumbai-400 093, INDIA
✆ : 91-22-6709 1900 Fax - 022 - 4005 5661 • CIN : L23200MH1989PLC054633
Website : www.supremepetrochem.com • Email : corporate@spl.co.in

Ref: CFA/CS/86/AGM_32/2021-2022

February 4, 2022

To,
The Registrar of Companies
100, Everest Building
5th Floor,
Marine Drive
Mumbai- 400020

कंपनी रजिस्ट्रार
Registrar of Companies
Maharashtra, Mumbai
08 FEB 2022
आवक
Inward

Sub: Submission of our action taken report in relation to the investor grievance submitted vide SRN NO. J00066293 w.r.t. non receipt of duplicate shares

In reference to above, we would like to state that the grievance is related to duplicate issue of share certificates, the shares whereof has already been transferred to IEPF Authorities on which company has no control. In this regard, IEPF-5 form filed by the shareholder vide SRN R33390857 dated 18.02.2021was rejected for want of documents which the shareholder had not provided within due course, as per IEPF regulations, consequently IEPF Form is not permitting re-submission (proof enclosed vide Annexure-A and B).

In view of above, the matter is pending on part of shareholder not on the part of company Company has contacted the shareholder again anc he has agreed to file IEPF-5 afresh with all requisite documents, thereafter company will deal with it suitably.

In view of above, there is nothing pending on part of company. Kindly take note of it and delete the grievance from MCA Portal and oblige.

Thanking you

Yours faithfully,
For SUPREME PETROCHEM LTD

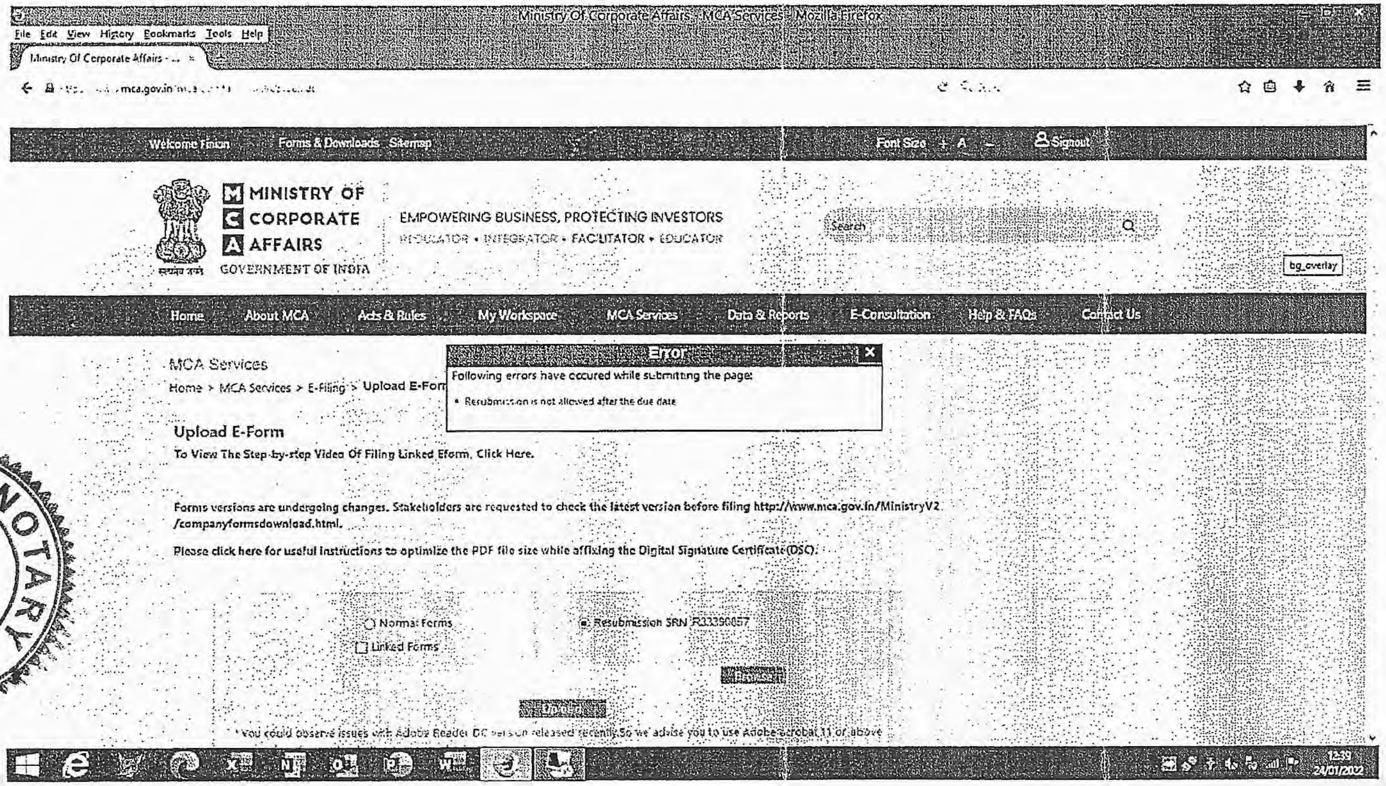
D N MISHRA
COMPANY SECRETARY

GOVT. OF INDIA NOTARY
UDAI PRAKASH
Mumbai (Maharashtra)
Exp. Date 23/07/2023

ISO 9001:2015
ISO 14001:2015
ISO 45001:2018
BUREAU VERITAS
Certification
UKAS
008

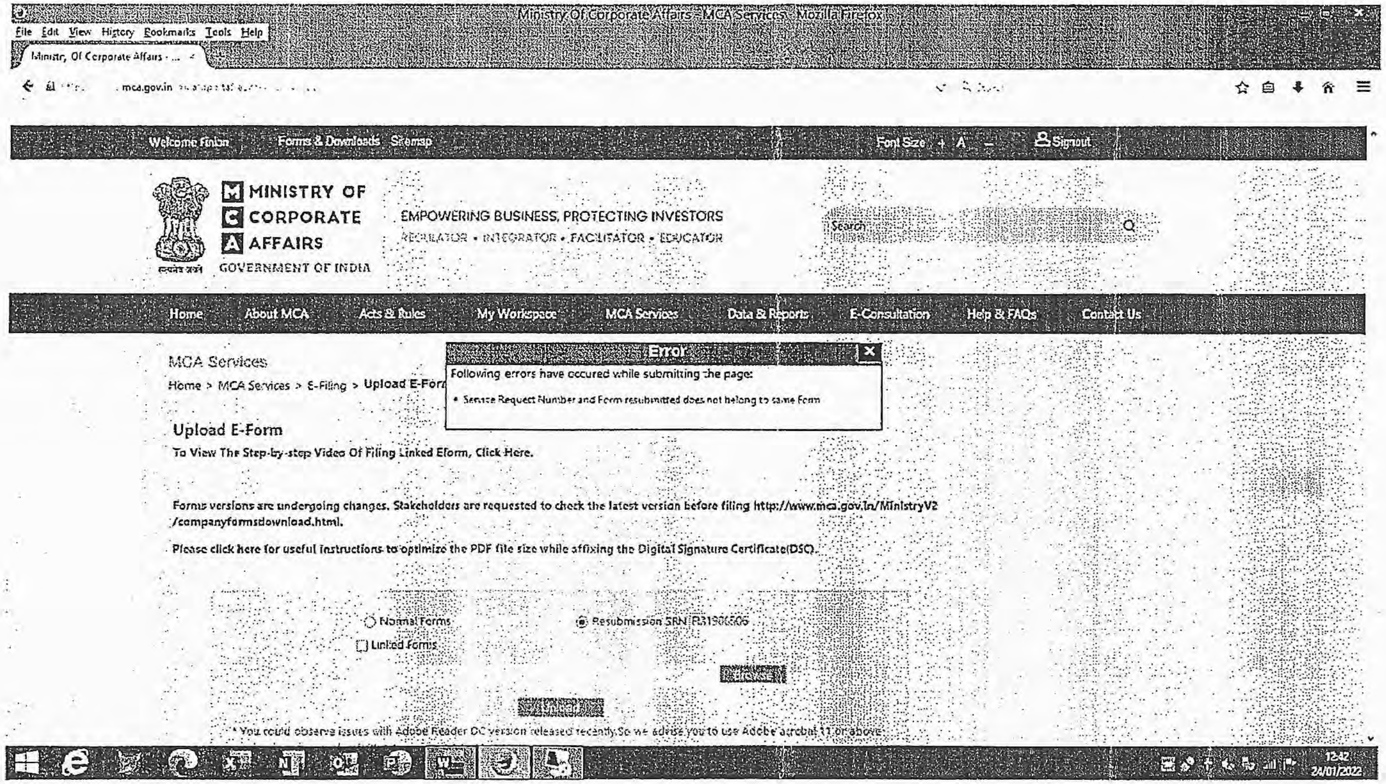
AEO
भारतीय सीमा शुल्क
INDIAN CUSTOMS
Certificate No. INAAACS7249C2F188

Annexure- A



NOTARY
GOVT. OF INDIA
UDAI PRAKASH
Mumbai (Maharashtra)
Regd. No. 9972
Exp. Date 21/07/2023

Annexure-B



NOTARY
GOVT. OF INDIA
UDAI PRAKASH
Mumbai (Maharashtra)
Regd. No. 9972
Exp. Date. 27/07/2023

Annexure-2

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL,

COURT No. - I, MUMBAI BENCH

C.P. 1188/MB-I/2020

In the matter of

A Petition under Sections 66 read with 52 of the Companies Act, 2013 and Rules framed thereunder.

And

In the matter of

A Scheme of Reduction of Share Capital of Earnest Towers Private Limited

Earnest Towers Private Limited
having its Registered Office at Plot no. C-54 &
C-55, "G" Block, Bandra Kurla Complex,
Bandra East. Mumbai – 400051
CIN: U70101MH2007PTC302758

... Petitioner Company

Date of Order: 24.08.2021

Coram:
Shri. Bhaskara Pantula Mohan, Hon'ble Acting President
Shri. Narender Kumar Bhola, Hon'ble Member (Technical)

Appearance:

For the Petitioners :	Mr. Hemant Sethi, Vidisha Poonja i/b Hemant Sethi & Co
For the Regional Director (WR) :	Ms. Rupa Sutar, Deputy Director Office of Regional Director (WR), Ministry of Corporate Affairs

NOTARY GOVT. OF INDIA UDAI PRAKASH Mumbai (Maharashtra) Exp. Date. 27/07/2023

Per: Bhaskara Pantula Mohan, Hon'ble Acting President

ORDER

1. The petitioner Company Earnest Towers Private Limited has filed this Petition dated 28.08.2020 under section 66 read with section 52 of the Companies Act, 2013 (the Act) for reduction of Share Capital.

2. We have heard the Learned Counsel for the Petitioner Company and the representative of the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.

3. The Learned Counsel for the Petitioner Company submits that Article 53 of the Articles of Association of the Petitioner Company empowers the Petitioner Company to reduce its share capital in any manner permitted by law by passing a Special Resolution.

4. The Learned Counsel for the Petitioner Company submits that the Petitioner Company having passed a special resolution on 22.08.2020 passed by the Petitioner Company for setting-off the accumulated losses to the extent of Rs. 11,60,68,906/- (Rupees Eleven Crores Sixty Lakhs Sixty-Eight Thousand Nine Hundred and Six Only) against the balance in its Securities Premium Account. Further, the Petitioner Company proposes to reduce 3,09,70,800 (Three Crores Nine Lakhs Seventy Thousand and Eight Hundred Only) subscribed, issued and fully paid up equity shares such that the total issued, subscribed and paid up equity share capital of the Petitioner Company is reduced from Rs.185,60,45,890/- (Rupees One Hundred Eighty Five Crores Sixty Lakhs Forty Five Thousand Eight Hundred and Ninety Only) divided into 18,56,04,589 (Eighteen Crores Fifty Six Lakhs Four Thousand Five Hundred and Eighty Nine Only) equity shares of Rs. 10/- (Rupees Ten only) each to Rs. 154,63,37,890/- (Rupees One Hundred Fifty-Four Crores Sixty-Three Lakhs Thirty-Seven Thousand Eight Hundred and Ninety Only) divided into

15,46,33,789 (Fifteen Crores Forty Six Lakhs Thirty Three Thousand Seven Hundred and Eighty Nine only) equity shares of Rs. 10/- (Rupees Ten only) each thereby cancelling and extinguishing, in aggregate Rs. 30,97,08,000/- (Rupees Thirty Crores Ninety-Seven Lakhs Eight Thousand Only) of total subscribed, issued, paid-up share capital of the Company comprising of 3,09,70,800 (Three Crores Nine Lakhs Seventy Thousand and Eight Hundred) equity shares of Rs. 10/- (Rupees Ten only) each. The proposed reduction of capital is for a consideration of Rs. 50/- (Rupees Fifty only) per equity share reduced and the aggregate amount of consideration payable by the Petitioner Company of Rs. 154,85,40,000/- (Rupees One Hundred Fifty-Four Crores Eighty-Five Lakhs and Forty Thousand only) would be converted into loan carrying simple interest of 12.5% per annum and repayable within 5 (Five) years.

5. The special resolution for the same was unanimously approved by the Petitioner Company in its Extra Ordinary General Meeting held on 22.08.2020 at 11.30 AM at Board Room, II floor, Royal Oaks, Embassy Golf Links Business Park, off Intermediate Ring Road, Bengaluru-560071

6. The Regional Director has filed a Report dated 03.02.2021 and made certain observations in para 6 and 7(a) to 7(e) of the said Report. The Petitioner Company has filed an Affidavit-in-Rejoinder dated 07.02.2021 with this Bench in response to the report filed by the Regional Director and copy of the Rejoinder is also submitted with Regional director, Western Region, Mumbai. The observations made by Regional Director and clarification and undertakings given by the Petitioner Company are as under:

Sr. No. Para 7	Observations made in Regional Directors Report on 03.02.2021	Response of the Petitioner Company
(a)	*Provisions of section 52 of the Companies Act, 2013 is reproduced*	*Apropos observations made in paragraph 7(a) & (b) of the Report*

GOVT. OF INDIA NOTARY

	as below – *"Application of premiums received on issue of shares –* *(1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.* *(2) Notwithstanding anything contained in sub-section (1), the securities premium account may be applied by the company—* *(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;* *(b) in writing off the preliminary expenses of the company;* *(c) in writing off the expenses of, or the commission paid or*	*of Regional Director is concerned, the Petitioner Company submits that the observations made by the Regional Director in paragraph under reference is contrary to the view taken by various orders/judgments of NCLT and High Courts.* *The Counsel for the Petitioner Company submits that it is a settled position in law that the proposed utilisation of Securities Premium Account amounts to Reduction of Capital of the Petitioner Company by virtue of the provisions of Sections 52 & 66 of the Companies Act, 2013. As Section 52 of the Companies Act, 2013 expressly provides that provisions of the said Act relating to the reduction of share capital of a Company shall, except as provided in Section 52(2) of the Companies Act 2013 apply even for adjustment of Securities Premium Account as if it were the paid up share Capital of the Company.* *As per Section 52(1) of the Companies Act, 2013, where a company issues shares at a premium*

	discount allowed on, any issue of shares or debentures of the company; *(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or* *(e) for the purchase of its own shares or other securities under section 68.* *(3) The securities premium account may, notwithstanding anything contained in sub-sections (1) and (2), be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133.—* *(a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or* *(b) in writing off the expenses of or the commission paid, or discount allowed on any issue of*	*whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a securities premium account and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the Company. Accordingly, if the Securities Premium Account is applied/ utilized for any of the purpose(s) other than those mentioned in sub-section 2 of Section 52 of the Companies Act, 2013, then such utilization would be treated as reduction of share capital in accordance with the provisions of the Companies Act, 2013. The Petitioner, in such a case, is required to follow the provisions of Section 66 of the Companies Act, 2013.* *In support of the above contention, the Counsel for Petitioner relies upon following judicial decisions of the NCLT/High Court which are*

	equity shares of the company; or *(c) for the purchase of its own shares or other securities under section 68.*	*relevant.* *(i) Decision of NCLT, Mumbai Bench in CP No. 1150 of 2020 in the matter of Indian Oiltanking Limited (Shri H.V Subba Rao and Shri Shyam Babu Gautam).* *(ii) Decision of NCLT, Mumbai Bench in CP No 552 & 543 of 2017 in the matter of HB Advisory services Private Limited and Baker Tilly Advisors DHC services Private Limited (B.S.V Prakash Kumar and V Nallasenapathy).* *(iii) Decision of NCLT, Mumbai Bench in case of Trigyn Technologies Limited in CP No 145 of 2017.* *(iv) Decision of NCLT, Mumbai Bench in Dish TV India Limited in CP No 13 of 2017.* *(v) Division Bench Judgement of the Calcutta High Court in APOT No 108 of 2010 (Globsyn Infotech Limited).* *(vi) Division Bench Judgement of the Andhra Pradesh High Court in OSA No 35 of 2004 (Hyderabad Industries*
(b)	*From the examination of provisions of this section, it is clear that the said section does not permit use of security premium account this way for writing off the debit balance of Profit & Loss Account. Hence the Scheme is not strictly falling under provisions of Section 52.*	

		Limited). *(vii) Decision of National Company Law Tribunal, Special Bench, New Delhi in CP No 516 of 2016 in the matter of Wrigley India Private Limited.* *(viii) Bengaluru Bench in Company Petition No. 273/2016 in the matter of Hipe Transportation Infrastructure Ventures Private Limited where the Securities Premium Account has been utilized for the purpose other than those specified under Section 52 (2) of the Companies Act, 2013.* *(ix) Decision of Madras High Court in the matter of Parrys Confectionery limited in CP No 262 of 2013.* *(x) Decision of Rajasthan High Court in the matter of Vaibhav Global Limited CP No 4 of 2016.*
(c)	*It is observed that in the proposed scheme the applicant proposes to pay off Rs. 50/- per share to the shareholders, which is a nature of buy back. Therefore, Petitioner*	*Apropos observations made in paragraph 7(c) of the Report of Regional Director is concerned, the Petitioner Company submits that the present petition filed before this*

	may be directed to comply with the provision of Section 68 along with Section 66 of the Companies Act, 2013.	*Bench is made under Section 66 read with Section 52 of the Companies Act, 2013 for utilization of securities premium account and reduction of equity share capital of the Petitioner Company for a consideration which would be converted into loan carrying simple interest of 12.5% per annum and repayable within 5 (Five) years. Further, the Petitioner Company submits that 100% of the issued and paid-up equity share capital of the Petitioner Company is held by Embassy Office Parks Real Estate Investment Trust and the sole shareholder has approved the proposed reduction of capital in its Extra-Ordinary General Meeting held on August 22, 2020. Also, the Petitioner Company has submitted along with the petition a copy of the certificate obtained from the Statutory Auditors of the Petitioner Company stating that the proposed accounting treatment for reduction of capital is in conformity with the accounting standards specified under Section 133 and / or any other applicable provisions of the*

		Companies Act. 2013 and rules made thereunder. *Section 66(1)(b)(ii) of the Companies Act, 2013 provides for a detailed procedure to reduce the share capital in any manner, inter alia, paying off any paid up capital which is in excess of the wants of the company. The Companies Act, 2013 has prescribed separate procedures for buyback (Section 68) and reduction of capital (Section 66). The Petitioner Company seeks approval of this Hon'ble Tribunal for reduction of capital of the Petitioner Company as prescribed under Section 66 of the Companies Act, 2013.*
(d).	*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 observations made by the Regional Director in paragraph 7(d) of the Report of Regional Director is concerned, Petitioner Company submits that the petition filed before Bench is for utilization of balance in the Securities Premium Account to set-off the accumulated losses in the Petitioner Company and for reduction of equity share capital of the Petitioner*

		Company. The Petitioner Company submits that the interest of all the creditors, stakeholders as well as the Government Revenue are protected, and all the statutory dues are paid off by the Petitioner Company.
	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 proposed reduction. The decision of the Income Tax Authority is binding on the Petitioner Company.	*Apropos observations made by the Regional Director in paragraph 7(e) of the Report of the Regional Director is concerned, Petitioner Company submits that the tax implications, if any, arising out of the proposal for reduction is subject to final decision of the Income Tax Authorities. The approval of the Company Petition by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Company after giving effect to the proposed reduction.*

7. In response to the Affidavit in Rejoinder filed by the Petitioner Company, the Regional Director, Western Region, Mumbai has filed supplementary Report dated 24.02.2021 with this Bench and has stated that the reply filed by the Petitioner is satisfactory.

8. The Counsel appearing on behalf of the Petitioner Company further submits that the Petitioner Company has complied with all statutory requirements as per the

GOVT. OF INDIA
UDAI PRAKASH
Mumbai (Maharashtra)
Regd. No. 6972
Exp. Date. 27/07/2023
NOTARY

directions of the Tribunal and they have filed the necessary Affidavits with the Tribunal. Moreover, the Petitioner Company also undertakes to comply with statutory requirements, if any under the Companies Act, 2013 and the Rules made thereunder, as may be applicable.

9. Since the requisite statutory procedure has been fulfilled, the Company Petition is made absolute. The Special Resolution as approved by the shareholders in their Extra ordinary General Meeting held on 22.08 2020 be and is hereby confirmed. Petition for reduction of share capital is allowed.

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

11. All concerned regulatory authorities to act on certified copy of the order duly certified by the Deputy Director or Assistant Registrar, National Company Law Tribunal. The Petitioner Company undertakes to file the same with the Registrar of Companies within 30 days from the date of the receipt of the order.

12. The Petitioner to publish notices about registration of order and minutes of reduction by the concerned Registrar of Companies, Maharashtra, in two newspapers, namely 'Business Standard' in English and 'Navshakti' in Marathi, both having circulation in the state of Maharashtra, within 30 days of registration.

FORM OF MINUTES

"Approval is hereby accorded pursuant to Section 66 read with Section 52 and other applicable provisions, if any, of the Companies Act, 2013, to the Special Resolution of Shareholders/Members of Earnest Towers Private Limited ("the Company") passed on August 22, 2020 at the Extra-Ordinary General Meeting approving the utilization of balance in Securities Premium Account to set-off the accumulated losses of Rs. 11,60,68,906/- (Rupees Eleven Crores Sixty Lakhs Sixty-Eight Thousand Nine Hundred and Six only) and the reduction of 3,09,70,800 (Three Crores Nine Lakhs Seventy Thousand and Eight Hundred only) subscribed, issued and fully paid Equity Shares of Rs. 10/- (Rupees Ten Only) each for an

GOVT. OF INDIA
UDAI PRAKASH
Mumbai (Maharashtra)
Regd. No. 973
Exp. Date. 27/11/2023
NOTARY

aggregate consideration of Rs. 154,85,40,000/- (Rupees One Hundred Fifty-Four Crores Eighty-Five Lacs and Forty Thousand Only) towards the capital reduction.

The Equity Share Capital of the Company shall henceforth be reduced from Rs. 185,60,45,890/- (Rupees One Hundred and Eighty-Five Crores Sixty Lakhs Forty-Five Thousand Eight Hundred and Ninety only) divided into 18,56,04,589 (Eighteen Crores Fifty-Six Lakhs Four Thousand Five Hundred and Eighty-Nine only) equity shares of Rs. 10/- (Rupees Ten Only) each to Rs. 154,63,37,890/- (Rupees One Hundred Fifty-Four Crores Sixty-Three Lakhs Thirty-Seven Thousand Eight Hundred and Ninety Only) divided into 15,46,33,789 (Fifteen Crores Forty-Six Lakhs Thirty-Three Thousand Seven Hundred and Eighty-Nine only) Equity Shares of Rs. 10/- (Rupees Ten only) each and the balance in the Securities Premium Account of the Company shall be henceforth reduced from Rs. 630,23,60,000/- (Rupees Six Hundred Thirty Crores Twenty-Three Lakhs and Sixty Thousand only) to Rs. 494,74,59,094/- (Rupees Four Hundred Ninety-Four Crores Seventy-Four Lakhs Fifty-Nine Thousand and Ninety-Four only) as on the date of the registration of this minute.

As on the date of registration of this minute, 15,46,33,789 (Fifteen Crores Forty-Six Lakhs Thirty-Three Thousand Seven Hundred and Eighty-Nine only) equity shares of Rs. 10/- (Rupees Ten Only) each of the Company shall be deemed to have been issued, subscribed and fully paid-up."

Sd-

Narender Kumar Bhola
Member (Technical)

Sd-

Bhaskara Pantula Mohan
Acting President

Annexure-3

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.801 OF 2005
IN
COMPANY APPLICATION NO.620 OF 2005

In the matter of Sections 391 and 392 read with Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of the Scheme of Arrangement between Kalyani Thermal Systems Limited and Equity Shareholders of Kalyani Thermal Systems Limited.

Kalyani Thermal Systems Limited).. Petitioner

Mr.Hemant Sethi for the Petitioner.

Mr.C.J.Joy with Mr.Mahesh Dutt and Mr.P.Sharma i/b.Dr.T.C.Kaushik for the Regional Director.

CORAM : SMT. NISHITA MHATRE, J.

DATED: 23RD DECEMBER 2005

P.C.:

. This is a Petition to obtain sanction to the proposed Scheme of Arrangement under Sections 391 and 392 read with Sections 100 to 1003 of the Companies Act, 1956 and its equity share holders. The Regional Director, Western Region, Ministry of Company Affairs, has filed an affidavit to oppose the Scheme on the ground that the procedure under Sections 391 read with 392 is being adopted even though there is separate Section 77A(1) of the Companies Act, 1956 which provides for buy back of shares. The Regional Director has raised this objection despite the judgment of the Division Bench of this Court in the case of *Securities and Exchange Board of India* vs. *Sterlite Industries (India) Ltd.*, (2003 53 CLA 41 (Bombay). An Appeal has been filed against this decision in the Supreme Court by the Regional Director. However, there is no stay of the operation of the judgment of the Division Bench. Therefore, the Division Bench judgment still holds the field. This objection raised by the Regional Director, in my view, need not be entertained. There is no other objection raised.

2. Petition allowed in terms of prayers (a) to (c), subject to payment of costs to the Regional Director quantified at Rs.2,500/- (Rupees Two Thousand Five Hundred only).

3. All concerned parties including concerned Registrar of Companies to act on the ordinary copy of the Order and Scheme annexed to the Petition, authenticated by the Company Registrar, High Court, Bombay.

4. Filing of drawn up order is dispensed with.

Annexure-4

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT No. – I

C.P. No. 4514/MB-I/2019

In the matter of

A Petition under section 66 read with section 52 of the Companies Act, 2013 and Rules framed thereunder.

And

In the matter of

The Scheme of reduction of Equity Share Capital of Lily Realty Private Limited

Lily Realty Private Limited
having its Registered Office at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai – 400 025
CIN: U45400MH2007PTC169296 ... Petitioner Company

Date of Order: 10.03.2021

Coram:

Hon'ble Janab Mohammed Ajmal, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

Appearance:

For the Petitioner	:	Mr. Hemant Sethi, i/b Hemant Sethi & Co
For the Regional Director	:	Ms. Rupa Sutar, Deputy Director, Office of the Regional Director (WR), Mumbai Ministry of Corporate Affairs, UoI.

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

1. The Petitioner Company has filed this Petition dated 12th December 2019 under section 66 read with section 52 of the Companies Act, 2013 for reduction of Share Capital.

NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH

GOVT. OF INDIA NOTARY

2. We have heard the learned counsel for the Petitioner Company and the representative of the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averment made in the Petition.

3. It is submitted that Article 38 of the Articles of Association (AoA) of the Petitioner Company empowers the Company to reduce its share capital in any manner permitted by law by passing a Special Resolution.

4. That the Petitioner Company has passed a Special Resolution on 7th December 2019 whereby the shareholders have approved the reduction in the equity share capital by proportionately returning capital to the shareholders to the tune of an amount of INR 0.10/- (Indian Ten Paisa Only) per share aggregating to INR 3,20,00,000 (Indian Rupees Three Crores Twenty Lakhs Only). Further, the difference between the face value of the equity shares so cancelled and the amount to be paid to the shareholders, shall be first adjusted against the debit balance of Profit and Loss Account and balance if any, shall be credited to the Capital Reserve in the books of the Petitioner Company and shall be deemed to form part of the reduction of capital.

5. The Regional Director has filed a Report dated 16th October 2020 stating therein, the following in para 7 and 9 of the said Report:

> *"7. ROC, Mumbai in the Report No. ROC/STA/255807/U/s. 66/1921 dated 31.08.2020 inter-alia mentioned at para No. 18 that there is no complaints received against the company/ Scheme of reduction. However, the status of the complaint verified from Portal of MCA website, it is observed that one SRN for complaint is pending but status of the same are not shown therein, hence the Petitioner Company may be directed to submit clarification about the pending complaints, by way of an Affidavit...."*

"9.the observations of the Regional Director on the proposed scheme of the Reduction of share Capital are as under:

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 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 proposed reduction. The decision of the Income Tax Authority is binding on the petitioner Company.

As per the provision of Section 66 of the Companies Act, 2013, the Share Capital can be reduced, which is lost or unrepresented by the available assets and for paying of the paid up share capital, which is in excess of the wants of the Company. The provisions of Section 66 of the Companies Act, 2013 does not envisaged the payment of share capital to the Shareholders by way of reduction. The present scheme for payment to shareholders is in the guise of buy-back of shares and hence should not be allowed. Hence, the present scheme is not in the spirit of section 66 of the Companies Act, 2013 and hence liable for rejection. Further, the Company proposes to write off the very large losses for which ROC inquiry is in progress and that the company proposes to reduce such loss by borrowing the funds, as the company has Rs. 1.63 Crores only by way of cash.

In the present scheme the ROC has reported that the inquiry under section 206 of the Companies Act, 2013 is under way against the Company for booking of huge losses of Rs. 320 Crores (Rupees Three Hundred Twenty Crores) to the Shareholders and hence also the present scheme should not be allowed till the inquiry is completed by ROC."

6. The Petitioner Company has filed an affidavit in Rejoinder with this Bench on 14th January 2021 in response to the report filed by the Regional Director. Copy of the Rejoinder is also served on the Regional Director, Western Region, Mumbai. It is clarified as under:

A. Apropos observation made in para 7 of the Report of the Regional Director is concerned, there are no complaints received against the Petitioner Company/scheme of reduction but there is one SRN reflected on the MCA portal in relation to some complaint for which the status is unknown. The complaint against the Petitioner Company relates to a matter unconnected with the reduction of capital.

B. Apropos observation made in para 9(a) of the Report of the Regional Director is concerned, the Petitioner Company states that the interest of the creditors, all stakeholders and Government Revenue will be protected and undertakes that statutory dues will be paid off in due course.

C. Apropos observation made in para 9(b) of the Report of the Regional Director is concerned, the Petitioner Company states that tax issues, if any, arising out of the proposed reduction of capital shall be subject to final decision of Income Tax Authorities. The approval of this petition by the Tribunal will not deter the Income Tax Authorities to scrutinize the tax return filed by the Petitioner Company after giving effect to the proposed reduction and the decision of the Income Tax Authority would be binding on the Petitioner Company.

D. Apropos observation made in para 9(c) of the Report of the Regional Director is concerned, the Petitioner Company states as under –

   a. Relevant extract of reduction of Share Capital as set forth in Section 66 of the Act is as follows –

   "(1) Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in, particular, may—

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

(b) either with or without extinguishing or reducing liability on any of its shares,—

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

(ii) pay off any paid-up share capital which is in excess of the wants of the company,

alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon……."

b. The Petitioner Company is engaged in the business of real estate development. In the ordinary course of its business, the Petitioner Company raises debt from various financial institutions in order to purchase the development rights and upon subsequent sale of real estate inventory the debt is repaid by the Petitioner Company. For the year ended 31st March 2019, the Petitioner Company has borrowings aggregating to INR 513,40,68,328. In the course of development of real estate projects, the Petitioner Company incurs huge finance cost on such borrowings, as a result of which the Petitioner Company has incurred accumulated losses. Further, due to the market conditions, the Petitioner Company was not able to dispose-off the inventory. Also, to make good the loss and complete the project, the shareholders had infused substantial amount of funds. In view thereof, the Petitioner Company submits that the accumulated losses aggregating to INR 427,07,95,365 have been incurred in the ordinary course of its business.

c. The observation of the Regional Director that the payment of share capital to the shareholders by way of reduction of share capital is not envisaged by section 66 of the Act and that the same is in the guise of buy-back is contradictory to the judicial precedents available on the subject matter.

d. In this regard reliance is placed on the following rulings, wherein despite the company having accumulated losses, the Hon'ble Bombay High Court/ NCLT, Mumbai has allowed payout to shareholders pursuant to reduction of share capital, since the company demonstrated sufficient liquidity to discharge the consideration to be paid as a result of capital reduction.

- ***Times Global Broadcasting Company Limited (Company Scheme Petition No. 445 of 2016) (@Page 2-4, Para 4 and 6 of the Judgement)***

  "4. The Counsel for the Petitioner Company states that the shareholders of the Petitioner Company have at its Extra Ordinary General Meeting held on 3rd June, 2016 consented for the reduction of the issued, subscribed and paid up share capital of the Petitioner Company from Rs. 2,85,00,00,000 (Rupees Two Hundred and Eighty Five Crores only) comprising of 8,57,89,606 (Eight Crores Fifty Seven Lakhs Eighty Nine Thousand Six Hundred and Six) Equity shares of Rs.10 (Rupees Ten) each fully paid up and 19,92,10,394 (Nineteen Crore Ninety Two Lakhs Ten Thousand Three Hundred and Ninety Four) 8.5% Non-Convertible Cumulative Redeemable Preference Shares of Rs.10 (Rupees Ten) each fully paid up shall be reduced to Rs. 41,83,39,250 (Rupees Forty-One Crore Eighty-Three Lakhs Thirty-Nine Thousand Two Hundred and Fifty only) comprising of 4,18,33,925 (Four Crores Eighteen Lakhs Thirty-Three Thousand Nine Hundred and Twenty-Five) Equity shares of Rs. 10 (Rupees Ten) each fully paid up, by cancelling 4,39,55,681 (Four Crore Thirty-Nine Lakhs Fifty-Five Thousand Six Hundred and Eighty-One) Equity shares of Rs.10/- each aggregating to Rs. 43,95,56,810/- (Rupees Forty-Three Crores Ninety-Five Lakhs Fifty-Six Thousand Eight Hundred and Ten Only) bearing distinctive numbers 4,18,33,926 to 8,57,89,606 and by cancelling the entire 19,92,10,394 (Nineteen Crore Ninety

*Two Lakh Ten Thousand Three Hundred and Ninety-Four) 8.5% Non-Convertible cumulative redeemable preference shares of Rs. 10/- each aggregating to Rs. 199,21,03,940/- (Rupees One Hundred Ninety-Nine Crores Twenty One Lakhs Three thousand Nine Hundred and Forty Only) bearing distinctive number 1 to 19,92,10,394, **by adjusting against the debit balance of Profit & Loss Account aggregating to Rs. 2,37,08,69,231.25 and by paying an aggregate cash consideration of Rs.6,07,91,518.75 to equity and preference shareholders** and pursuant to extinguishing the paid up Equity and Preference Share Capital and payment of the cash consideration as aforementioned, the Securities Premium Account of the Petitioner Company shall stand reduced to the extent of debit balance remaining post the abovementioned reduction in Preference and Equity Share Capital in the Profit & Loss Account as on the date of obtaining the certificate from Registrar of Companies for the Proposed Reduction pursuant to section 103(4) of the Companies Act, 1956. Copy of the Special Resolution is annexed at Exhibit- E to the Petition.*

*6. No objector has come forward to oppose the proposed reduction. **Since the requisite statutory procedure has been fulfilled, the Company Scheme Petition is made absolute in terms of prayer clauses (a) and (b).**"*

- ***Atlas Copco (India) Limited (CP No. 4475 of 2018)** (@Page 3 Para 3 and 4 and Page 14 Para 20)*

"3. ...The Learned Senior Counsel for the Petitioner Company further submits that the Company Petition was filed for providing the non-promoter public shareholders an opportunity to liquidate their shareholding at a fair and equitable price.

4. ...The Learned Senior Counsel for the Petitioner Company further submits that the Petitioner Company have passed a special resolution on 25th October 2018 whereby the shareholders had approved the reduction in the issued, subscribed and paid-up equity Share Capital of the Petitioner Company by cancelling and extinguishing the equity shares held by the non-promoter in the Company. Consequent to the reduction, the issued, subscribed and paid-up equity share capital of the Petitioner Company would get reduced from INR 22,56,15,640 (Indian Rupees Twenty

Crores Fifty Six Lakhs Fifteen Thousand Six Hundred and Forty Only) comprising 22,561,564 fully paid up equity shares of INR 10 (Indian Rupees Ten Only) each to INR 21,73,19,510 (Indian Rupees Twenty One Crores Seventy Three Lakhs Nineteen Thousand Five Hundred and Ten Only), comprising of 2,17,31,951 fully paid up equity shares of INR 10 (Indian Rupees Ten Only) each...

20. Application 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 by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench."

- ***Raymond UCO Denim Private Limited (CP No. 4645 of 2018)*** (@Page 2-3 and 5, Para 4 and 9 of the Judgement)

"4. The Counsel for the Petitioner Company further submits that the Petitioner having passed a special resolution on 20th November 2018, whereby the shareholders had approved the reduction in the amount of Preference share capital of Rs. 20,00,00,000/- (Rupees Twenty Crores Only) consisting of 2,00,00,000 (Two Crores) Preference shares of Rs.10 (Rupees Ten) each fully paid up, at its present value as on 31st October, 2018 amounting to Rs.160,63,56,000/- (Indian Rupees One Hundred and Sixty Crores Sixty Three Lakhs Fifty Six Thousand Only), ***discharged for an aggregate consideration of Rs. 20,00,000/- (Indian Rupees Twenty Lakhs only). Further, there will be set off of a debit balance of Profit and Loss Account as on 31st March 2018 of Rs.466,51,60,000/- (Indian Rupees Four Hundred and Sixty-Six Crores Fifty-One Lakhs Sixty Thousand Only)*** *against the following:*

i. Capital Reserves of Rs. 160,43,56,000/- (Indian Rupees One Hundred and Sixty Crores Forty-Three Lakhs Fifty-Six Thousand Only) generated on account of reduction of preference capital;"

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

NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH

GOVT. OF INDIA NOTARY UDAI PRAKASH Mumbai (Maharashtra) Regd. No. 6972 Exp. Date: 27/01/2023 *of the Petition and the minute appended to the Petition is set forth in this order be and is hereby approved."*

- ***KSH Infra Private Limited (CP No. 1343 of 2019)*** (@Page 1-2 and 4, Para 3 and 7 of the Judgement)

"3. The Counsel for the Petitioner Company submits that the Petition was filed for rationalisation of the capital structure by reducing its outstanding equity shares by way of capital reduction for a cash consideration thereby maximising overall shareholder value by returning the excess capital to the shareholders on a proportionate basis and proper utilisation of resources. The Board of Directors of the Petitioner Company at their meeting held on 14th March, 2019 have deemed it appropriate to reduce its equity share capital. The Counsel for the Petitioner Company further submits that the Petitioner Company having passed a special resolution on 18th March, 2019 whereby the shareholders had approved the reduction in the equity share capital on a proportionate basis from the shareholders from INR 49,85,720/- (Indian Rupees Forty Nine Lakhs Eighty Five Thousand Seven Hundred and Twenty only) divided into 4,98,572 (Four Lakhs Ninety Eight Thousand Five Hundred and Seventy Two only) equity shares of INR 10/- (Indian Rupees Ten only) each to INR 29,95,720/- (Indian Rupees Twenty Nine Lakhs Ninety Five Thousand Seven Hundred and Twenty only) divided into 2,99,572 (Two Lakhs Ninety Nine Thousand Five Hundred and Seventy Two only) equity shares of INR 10/- (Indian Rupees Ten only) each, and ***that such reduction is effected by returning capital to the shareholders on a proportionate basis of an aggregate amount of INR 77,11,34,950/- (Indian Rupees Seventy Seven Crores Eleven Lakhs Thirty Four Thousand Nine Hundred and Fifty only).*** *Further, the difference between the face value of the equity shares so cancelled and the amount to be paid to the shareholders, shall be adjusted in the Capital Reserves of the Petitioner Company and such shall be deemed to form part of the reduction of capital in the manner proposed above."*

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

- ***GMR Highways Limited (CP No. 4137 of 2019)*** (@Page 2-3, 5 and 7, Para 5, 6, 10 and 18 of the Judgement)

"5. The Counsel for the Petitioner Company submits that the Board of Directors of the Petitioner Company, at their meeting held on October 26th, 2019 have deemed it appropriate, subject to approval of the shareholders to reduce the paid-up equity share capital of the Petitioner Company from Rs. 20,52,92,97,490 divided into 2,05,29,29,749 fully paid up equity shares of Rs.10 each to Rs.7,75,44,05,100 divided into 77,54,40,510 fully paid up equity shares of Rs.10 each and that such reduction be affected by cancelling and extinguishing 62.23% of the total issued, subscribed and paid up equity shares capital of the Company."

"6. The Counsel for the Petitioner Company further submits that the Board of Directors of the Petitioner Company, at their meeting held on October 26th, 2019 have resolved that the upon capital reduction being confirmed by the Hon'ble Tribunal and the registration of order and minute of reduction of share capital by the Registrar of the Companies, ***the Company shall pay to the shareholders of the Company as on the record date, whose shares have been reduced, a sum of 0.10 Paisa per equity share, as consideration of capital reduction. The Counsel for the Petitioner submits that payment of Rs.12,77,48,923.90 will be paid to the shareholders from internal accruals."***

"10. Our attention is drawn to rationale for capital reduction provided in paragraph 10 of the Petition, wherein it has been stated as under:

The Company has accumulated losses of INR 12,77,48,92,399/- as per audited financial statements dated March 31, 2019 *which has substantially wiped off the value represented by the share capital of the Company...."*

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

e. In the past, Courts have unanimously taken a view that 'Reduction of Capital' is a 'Domestic Affair' of a particular Company in which, ordinarily, a Tribunal will not interfere because of the reason that it is a 'majority decision' which prevails. One of the oldest judgements on the subject is the judgement of the House of Lords of England in the case of **British and American Trustee and Finance Corporate v. Couper, (1894) AC 399**. In this case, the Court held that the prescribed majority of the shareholders of a company is entitled to decide whether there should be a reduction of capital, and if so, in what manner and to what extent it should be carried into effect. The Court observed that:

> *"..It will be observed that neither of these statutes prescribes the manner in which the reduction of capital is to be effected. Nor is there any limitation of the power of the Court to confirm the reduction..."*
>
> *"I do not see any danger in conclusion that the Court has power to confirm such a scheme as that now in question, or any reason to doubt that this was the intention of the Legislature. The interest of the creditors are not involved, and I think it was the policy of the Legislature to entrust the prescribed majority of the shareholders with the decision whether there should be reduction of capital, and if so, how it should be carried into effect...."*
>
> *"...If the parties to the transaction come to the conclusion that the bargain is a fair one, why should the Court say that there is a preference on the one side or on the other. If there is nothing unfair or inequitable in the transaction, I can-not see that there is any objection to allowing a company limited by shares to extinguish some of its shares without dealing in the same manner with all other shares of the same class. There may be no real inequality in the treatment of a class of shareholders although they are not all paid in the same coin or in coin of the same denomination..."*

f. Further, the Madras High Court in **Re. Panruti Industrial Company (Private) Ltd., AIR 1960 Mad. 537**, held that *question of reduction of capital has been treated as a matter of* *domestic concern, one for the decision of the majority of the shareholders of the company".*

g. The principles distilled from the aforesaid precedents were summarized in the case of **Reckitt Benckiser (India) Ltd. (CP 206 of 2004) (Delhi High Court)** that have further been upheld by several courts:

> *"(i) The question of reduction of share capital is treated as matter of domestic concern, i.e. it is the decision of the majority which prevails.*
>
> *(ii) If majority by special reduction decides to reduce share capital of the Company, it has also the right to decide as to how this reduction should be carried into effect...."*

h. In a recent order of the Hon'ble NCLAT in the matter of **Economy Hotels India Services Private Limited vs. Registrar of Companies** it was observed that,

> *"Be it noted, that 'Reduction of Capital' is a 'Domestic Affair' of a particular Company in which, ordinarily, a Tribunal will not interfere because of the reason that it is a 'majority decision' which prevails..."*

i. In the matter of **IL&FS Engineering and Construction Company Limited v. Wardha Power Company Limited**, the Andhra Pradesh High Court while allowing a Scheme of Reduction involving adjustment of accumulated losses against the balance of securities premium account held that (@Para 22 of the Judgement) –

> *"... The Section provides that share capital can be reduced "in any way". Those words are extremely wide and general. There are then given three particular instances of ways, but they are expressly given without prejudice to the generality of the*

foregoing "in any way" (Re. Ratters Group Plc). The Statute has not prescribed the manner in which the reduction is to be carried out nor has it prohibited any method effecting the object..."

j. In view of the above, the Petitioner Company respectfully submits that Section 66 of the Act allows the company to pay-off the share capital to the shareholders pursuant to reduction of share capital and thus, it would be inappropriate to re-characterize the same as buy-back.

E. Apropos observation made in para 9(d) of the Report of the Regional Director is concerned, the Petitioner Company states that the inquiry under section 206 of the Act is an ongoing proceeding and that the application for reduction of share capital under section 66 of the Act does not come in way of the inquiry. Since both are independent matters, the scheme should be allowed irrespective of the pendency of inquiry.

7. It is further submitted that one of the creditors namely, Shapoorji Pallonji (Complainant) has raised a claim against the Petitioner Company for which it has not filed any affidavit and it is the subject matter of a pending arbitration in Bangalore. Further, the capital reduction does not envisage any compromise or arrangement with the creditors of the Petitioner Company and hence, the interest of the creditors would not be adversely affected pursuant to reduction of equity share capital of the Petitioner Company. That the Petitioner Company shall continue to remain in existence post sanctioning of the capital reduction and the complainant shall continue to have his rights of redressal and claims, if any, against the Petitioner Company in the appropriate forum.

8. In response to the Affidavit in Rejoinder filed by the Petitioner Company, the Regional Director, Western Region, Mumbai has filed supplementary Report

on 21st January 2021 with this Bench stating that the reply filed by the Petitioner Company has been is satisfactory.

9. The learned Counsel appearing for the Petitioner Company further submitted that the Company has complied with all statutory requirements as per the directions of the Tribunal vide its order dated 22.01.2020 and has filed necessary affidavits to that effect with the Tribunal. Moreover, the Company also undertakes to comply with statutory requirements, if any, under the Act and the Rules made thereunder, as would be applicable. The undertaking given by the Petitioner Company is accepted.

10. Since the requisite statutory procedure has been fulfilled, the Company Petition is made absolute in terms of prayer made in the Petition. Hence ordered.

ORDER

The Petition for reduction of share capital is allowed subject to the following:

i. The Special Resolution as approved by the shareholders in their Extra Ordinary General Meeting held on 7th December 2019 be and is hereby confirmed.

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

iii. All regulatory authorities concerned to act on a certified copy of this order duly certified by the Registrar of this Tribunal. The Petitioner Company is directed to file the same with the Registrar of Companies, concerned within 30 days from the date of the receipt of the order.

iv. The Petitioner Company to publish notices about registration of order and minutes of reduction by the concerned Registrar of Companies, in the same newspapers (i.e. Business Standard and Navshakti) in which previous publications were issued, having circulation in the state of Maharashtra, within 30 days of registration.

FORM OF MINUTES

"The Issued, Subscribed & Paid-up Equity Share Capital of Lily Realty Private Limited, the Petitioner Company is henceforth INR 1,00,000 (Indian Rupees One Lakh Only) divided into 10,000 (Ten Thousand) equity shares of INR 10/- (Indian Rupees Ten Only) each, fully paid up, reduced from INR 320,01,00,000 (Indian Rupees Three Twenty Crores One Lakh Only) divided into 32,00,10,000 (Thirty Two Crores Ten Thousand) equity Shares of INR 10/- (Indian Rupees Ten Only) each, fully paid up."

Sd/-
V. NALLASENAPATHY
MEMBER (TECHNICAL)

Sd/-
JANAB MOHAMMED AJMAL
MEMBER (JUDICIAL)

Certified True Copy
Date of Application 11/03/2021
Number of Pages 14
Fee Paid Rs 70
Applicant called for collection copy on 16/03/2021
Copy prepared on 16/03/2021
Copy Issued on 16/03/2021

Joint Registrar
National Company Law Tribunal Mumbai Bench

NATIONAL COMPANY LAW TRIBUNAL
Page 15 of 15
MUMBAI BENCH

NOTARY GOVT. OF INDIA
UDAI PRAKASH
Mumbai
Regd. No.
Exp. Date 27/07/2023

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 434 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 396 OF 2014.

Capgemini India Private Limited ...Petitioner

Mr. Virag Tulzapurkar, Senior Advocate, along with Mr. Munaf Virjee and Mr. Manhar S. Saini, instructed by M/s. DSK Legal for the Petitioners.

Mr. Jimmy Avasia along with Mr. C.J. Joy and Mr. K.R. Chaudhari for the Regional Director.

CORAM: S.J. KATHAWALLA, J.
Date: 28th April, 2015.

P.C.:

1. The Petitioner has filed the above Petition seeking sanction of the Scheme of Arrangement (hereinafter referred to as "the Scheme") with its Equity Shareholders (hereinafter referred to as "the Shareholders"), in accordance with the provisions of Section 391 read with Sections 100 to 103 of the Companies Act, 1956 (hereinafter referred to as "the Act"), from this Court. As per the Scheme, the Petitioner Company is proposing to purchase not more than 221,231 Equity Shares of the Company either in physical form or dematerialized form of Rs. 100/- each fully paid up, representing 30% of the issued, subscribed and paid up share capital. There is no compulsory purchase. An option, is given to the equity shareholders under the Scheme. The manner and procedure of purchasing the equity shares as provided in Clause 4.2 of the Scheme is reproduced below:

> *"The Company shall send an option form to the Shareholders within 5 (five) days from the Effective Date. To exercise the option, a per clause 4.1, the Shareholders will have to return the duly filled-in option forms to the Company within 10 (ten) days from the date of dispatch of such option forms to the Shareholders by the Company. The Company shall within 15*

(fifteen) days of the receipt of the option forms and documents mentioned therein complete the verification of the option forms along with the relevant supporting documents received from the Shareholders. The Company shall purchase Equity Shares only from Shareholders whose option forms and supporting documents are verified by the Company and considered to be valid. The consideration payable for the purchase of Equity Shares shall be discharged by the Company within 30 (thirty) days of the receipt of the valid option forms from the Shareholders".

2. The Petition has been admitted vide order dated July 25, 2014 passed by this Court. Pursuant thereto, the Petitioner Company served notices of final hearing upon (I) the Regional Director, Western Region, Ministry of Corporate Affairs (hereinafter referred to as "the Regional Director"), (ii) Registrar of Companies, Mumbai, Maharashtra, (iii) concerned Income Tax Authority within whose jurisdiction the Petitioner Company's assessment are made (hereinafter referred to as "the IT Authority"),(iv) all the unsecured creditors and has also issued a public notice in two local newspapers viz. "Free Press Journal" in English language and translation thereof in "Navashakti" in Marathi language. No objection has been raised by the IT Authority.

3. In response to the notice of final hearing, the Regional Director has filed an affidavit on 1st October, 2014 (hereinafter referred to as "the said Affidavit") raising various objections and opposing sanction of the Scheme. The Petitioner Company has filed an Affidavit dated 8th October, 2014, in reply to the said Affidavit.

4. The entire case of the Regional Director revolves around his contention that the buyback of shares must be effected only under Section 77A of the Companies Act, 1956/Section 68 of the Companies Act, 2013. According to the Regional Director if a buyback of shares is effected under Section 77A/Section 68, then the distributed income of the company as defined in

Section 115QA of the Income Tax Act would be charged to tax, and it is for this reason that the company is not following the procedure prescribed under Section 77A/Section 68 and has opted for the procedure under Section 391 which would not attract such a tax under Section 115QA of the Income Tax Act. According to the Regional Director by this colourable device the company is evading its liability to pay tax.

5. One of the contentions raised by the Petitioner is that in view of the circular dated 15th January 2014, the Regional Director has no locus in respect of tax matters, particularly when the Income Tax Authorities have not raised any objection. This aspect has been considered in detail by this Court in the case of *Casby CFS Pvt. Ltd.*[1] and it has been held that the Regional Director has the requisite locus standi to raise all objections in respect of a scheme including objections pertaining to taxation laws. He can do so even if the Income Tax Authorities do not raise any objection. It has been held that this is the duty and obligation of the Regional Director. In view of the aforesaid decision of this Court the objection of the Petitioner with regard to the locus of the Regional Director is untenable and deserves to be rejected.

6. The Petitioner has submitted that it is open to the Petitioner to follow either the procedure under Section 77A/Section 68 or the procedure under Section 391 read with Sections 100 to 104 to effectuate the buyback of shares and there is no compulsion for the Petitioner to follow only the procedure prescribed by Section 77A/Section 68. In any event, under Section 77A/Section 68 a company can buyback only 25% of the total paid up capital and free reserves of the company whereas under the Scheme the company proposes buyback of 30% of its paid up capital and free reserves, which is not possible under Section 77A/Section 68. Consequently the only manner in

1 Decided on 19th March, 2015 in CSP Nos. 137 and 138 of 2014.

which the company can buyback the said shares is by following the procedure under Section 391 read with Sections 100 - 104 of the 1956 Act. In support of its contentions the Petitioner has relied upon the decision of the Division Bench of this Court in the case of *SEBI V/s. Sterilite Industries (India) Limited*[2].

7. The Division Bench of this Court in the case of *Sterilite Industries (supra)* has held that a Company may either follow the procedure under Section 391 read with Sections 100 to 104 of the 1956 Act or the procedure under Section 77A (now Section 68). It is not mandatory for a company to buy back its shares only by following the procedure prescribed by Section 77A. In this regard paragraphs 22 and 23 of the Sterilite decision are relevant and the same are reproduced below for convenience :

> *"22. The opening words of section 77A, viz. "notwithstanding anything contained in this Act, but subject to the provisions of sub-section(2) of this section and section 77B, a company may purchase its own shares or other specified securities ..." shows that section 77A is a facilitating provision which enables companies to buy-back their shares without having to approach the court under section 391 and sections 100 to 104 subject to compliance with the provisions of sub-sections(2), (3) and (4). Prior to the introduction of section 77A, the only manner in which a company could buy-back its shares was by following the procedure set out under sections 100 to 104 and section 391 which required the calling of separate meetings of each class of shareholders and creditors as well as (if required by the court) the drawing up of a list of creditors of the company and obtaining of their consent to the scheme for reduction. The legislative intention behind the introduction of section 77A is to provide an alternative method by which a company may buy-back upto 25 per cent of its total paid-up equity capital in any financial year subject to compliance with sub-sections (2), (3) and (4). It does not supplant or take away*

2 (2003) 45 SCL 475

any part of the pre-existing jurisdiction of the company court to sanction a scheme for such reduction under sections 100 to 104 and section 391.

23. The submission of the appellants that the non obstante clause in section 77A gives precedence to that section over the provisions of sections 100 to 104, section 391 is misconceived. The non obstante clause in section 77A namely "notwithstanding anything contained in this Act...." Only means that notwithstanding the provisions of section 77 and sections with the conditions mentioned in that section without approaching the court under sections 100 to 104 or section 391. There is nothing in the provision of section 77A to indicate that the jurisdiction of the court under section 391 or 394 has been taken away or substituted. It is well settled that the exclusion of the jurisdiction of the court should not readily be inferred, such exclusion should be explicitly or clearly implied. There is nothing in the language of section 77 that gives rise to such an inference. We are, therefore, inclined to hold that section 77A is merely an enabling provision and the court's powers under sections 100 to 104 and section 391 are not in any way affected. The conditions provided in section 77A are applicable only to buy-back of shares under section 77A. The conditions applicable to sections 100 to 104 and section 391 cannot be imported into or made applicable to a buy-back under section 77A. Similarly the conditions for a buy-back under section 77A cannot be applied to a scheme under sections 100 to 104 and section 391. The two operate in independent fields".

4. However it is necessary to note that the above was the position in law under the1956 Act in view of the language of the provisions of Section 391 and Section 77A of that Act. In the 2013 Act Sub-section 10 of Section 230 provides as follows :-

"10. No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal

unless such buy-back is in accordance with the provisions of section 68."

This provision may have an impact on the law as laid down by this Court in the Sterilite case. However, at present Section 230 has not come into force and hence this question does not arise for consideration in this case and hence the same need not to be considered. At present the law as laid down in Sterilite Industries prevails and will be applicable to the present case.

5. In the circumstances it is open to a company to buy back its own shares by following the procedure prescribed under Section 77A/Section 68 or by following the procedure prescribed under Section 391 read with Sections 100 to 104 of the 1956 Act. The contentions of the Regional Director are therefore clearly contrary to the prevailing legal position.

6. According to the Regional Director if the Scheme is sanctioned it will amount to evasion of income tax and outflow of foreign exchange to the tune of Rs.248 crores and therefore on this ground the Scheme should be rejected. The Regional Director has not furnished any particulars in support of the aforesaid contention. Be that as it may, if the law permits a company to buy back its shares in more than one way, the company cannot be compelled to follow only the method that results in payment of income tax. It is well settled that an assessee can always manage his affairs in a manner so as to avoid payment of tax. In the present case since it is legally permissible for the company to buy back its shares by following the procedure under Section 391 read with Sections 100 to 104 of the 1956 Act, the fact that the same may not attract income tax will not amount to it being a device to evade tax.

7. Even the argument of the Regional Director that foreign exchange amounting to Rs.248 crores will be drained away if the Scheme is sanctioned, is of no avail once it is held that the procedure adopted by the company is

permissible in law. Moreover, the Regional Director has not shown that the law prohibits the transfer of shares by a non-resident to resident. In fact, he does not dispute that the same is permissible. The Petitioner has placed on record RBI's Circular No.49 dated 4th May 2010 which provides that shares of an unlisted Indian company can be transferred by a non-resident to a resident under the general permission of the RBI if the transfer price does not exceed the fair market value as determined by a Chartered Accountant or a SEBI registered Merchant Banker as per the DCF method. In the present case the transfer price has been arrived at in accordance with the aforesaid circular of the RBI. The Regional Director has not disputed the fair market value of the shares so determined. In these circumstances it is clear that the buyback of shares under the Scheme is in accordance with the RBI Guidelines and that being so, there is no question of there being any draining away of foreign exchange.

8. In view of the above and particularly the fact that in law the Petitioner is entitled to buy back its own shares by means of a scheme under Section 391 read with Sections 100 – 104 of the 1956 Act, the scheme cannot be said to be a colourable device to evade income tax. It is a legally permissible procedure which the Petitioner is entitled to follow to buy back its shares.

9. In support of his contention that the Scheme is a device to evade tax, the Regional Director relies heavily upon the decision of the Hon'ble Gujarat High Court in the case of *Wood Polymer Limited v/s. Bengal Hotels Pvt. Ltd.*[3] This decision has been considered by this Court along with the later decision of the Hon'ble Supreme Court, in the case of *AVM Capital Services Pvt. Ltd. and*

3 (1977) 47 CC 597

others[4] where it has been held that the said decision is no longer good law. As such the decision in the case of Wood Polymer can be of no assistance to the Regional Director.

10. In any event the Petitioner has stated that the issues relating to income tax that may arise out of the Scheme may be left open to be dealt with and decided by the Income Tax Authorities in accordance with the law. The statement is accepted. Consequently nothing survives in the objections of the Regional Director.

11. As already held hereinabove, there is nothing illegal in the Scheme and the same is legitimate and permissible in law.

12. In the circumstances I pass the following order:

(a) The Scheme of Arrangement as proposed is sanctioned with a clarification that the issues relating to Income-tax that may arise out of the Scheme are left open to be dealt with and decided by the Income-tax Authorities in accordance with law.

(b) The Petitioner to pay costs of Rs. 10,000/- to the Regional Director within a period of four weeks from the date of this order.

(c) Filing and issuance of the drawn up order is dispensed with.

(d) All authorities concerned to act on a copy of this order along with Scheme attached thereto, duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(S.J. KATHAWALLA, J.)

4 (2012) 173 CC 355

BSE Limited Registered Office: Floor 25, P J Towers, Dalal Street, Mumbai – 400 001, India
T : +91 22 2272 8045 / 8055 F : +91 22 2272 3457 www.bseindia.com
Corporate Identity Number: L67120MH2005PLC155188

BSE
EXPERIENCE THE NEW

DCS/AMAL/SV/R37/1981/2021-22 **"E-Letter"** **June 18, 2021**

Annexure - 6

The Company Secretary,
Supreme Petrochem Ltd.
11, Solitaire Corporate Park, 5th Floor,
167, Guru Hargovindji Mar, Chakala
Andheri (East), Mumbai, Maharashtra, 400093

Sir,

Sub: Observation letter regarding Draft Scheme of Reduction of Share Capital of Supreme Petrochem Ltd.

We are in receipt of the Draft Scheme of Reduction of Share Capital of Supreme Petrochem Limited as required under SEBI Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017; SEBI vide its letter dated June 18, 2021 has inter alia given the following comment(s) on the draft scheme of Reduction:

- **"Company shall duly comply with various provisions of the Circular."**
- **"Company shall ensure to disclose all details of ongoing adjudication & recovery proceedings, prosecution initiated and all other enforcement action taken, if any, against the Company, its promoters and directors, before Hon'ble NCLT and shareholders, while seeking approval of the scheme.**
- **"Company shall ensure that additional information and undertakings, if any, submitted by the Company, after filing the Scheme with the Stock Exchanges, and from the date of receipt of this letter is displayed on the websites of the listed company and the stock exchanges."**
- **"Company is advised that the observations of SEBI/Stock Exchanges shall be incorporated in the petition to be filed before National Company Law Tribunal (NCLT) and the company is obliged to bring the observations to the notice of NCLT."**
- **"It is to be noted that the petitions are filed by the company before NCLT after processing and communication of comments/observations on draft scheme by SEBI/stock exchange. Hence, the company is not required to send notice for representation as mandated under section 230(5) of Companies Act, 2013 to SEBI again for its comments / observations / representations."**

Accordingly, based on aforesaid comment offered by SEBI, the company is hereby advised:

- To provide additional information, if any, (as stated above) along with various documents to the Exchange for further dissemination on Exchange website.
- To ensure that additional information, if any, (as stated aforesaid) along with various documents are disseminated on their (company) website.
- To duly comply with various provisions of the circulars.

In light of the above, we hereby advise that we have no adverse observations with limited reference to those matters having a bearing on listing/de-listing/continuous listing requirements within the provisions of Listing Agreement, so as to enable the company to file the scheme with Hon'ble NCLT.

Further, where applicable in the explanatory statement of the notice to be sent by the company to the shareholders, while seeking approval of the scheme, it shall disclose information about unlisted company involved in the format prescribed for abridged prospectus as specified in the circular dated March 10, 2017.

BSE - INTERNAL

NOTARY GOVT. OF INDIA

BSE Limited Registered Office: Floor 25, P J Towers, Dalal Street, Mumbai – 400 001, India
T : +91 22 2272 8045 / 8055 F : +91 22 2272 3457 www.bseindia.com
Corporate Identity Number: L67120MH2005PLC155188

Kindly note that as required under Regulation 37(3) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the validity of this Observation Letter shall be six months from the date of this Letter, within which the scheme shall be submitted to the NCLT.

The Exchange reserves its right to withdraw its 'No adverse observation' at any stage if the information submitted to the Exchange is found to be incomplete / incorrect / misleading / false or for any contravention of Rules, Bye-laws and Regulations of the Exchange, Listing Agreement, Guidelines/Regulations issued by statutory authorities.

Please note that the aforesaid observations does not preclude the Company from complying with any other requirements.

Further, it may be noted that with reference to Section 230 (5) of the Companies Act, 2013 (Act), read with Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules 2016 (Company Rules) and Section 66 of the Act read with Rule 3 of the Company Rules wherein pursuant to an Order passed by the Hon'ble National Company Law Tribunal, a Notice of the proposed scheme of compromise or arrangement filed under sections 230-232 or Section 66 of the Companies Act 2013 as the case may be **is required to be served upon the Exchange seeking representations or objections if any.**

In this regard, with a view to have a better transparency in processing the aforesaid notices served upon the Exchange, the Exchange has **already introduced an online system of serving such Notice along with the relevant documents of the proposed schemes through the BSE Listing Centre.**

Any service of notice under Section 230 (5) or Section 66 of the Companies Act 2013 seeking Exchange's representations or objections if any, **would be accepted and processed through the Listing Centre only and no physical filings would be accepted.** You may please refer to circular dated February 26, 2019 issued to the company.

Yours faithfully,

Sd/-

Nitinkumar Pujari
Senior Manager

BSE - INTERNAL

Annexure-7

NSE

25

National Stock Exchange Of India Limited

Ref: NSE/LIST/26691 _I

June 18, 2021

The Company Secretary
Supreme Petrochem Limited
Solitaire Corporate Park,
Building No.11, 5th Floor,
167, Guru Hargovindji Marg,
Chakala, Andheri (East),
Mumbai - 400093

Kind Attn.: Mr. D. N. Mishra

Dear Sir,

Sub: Observation Letter for draft scheme of reduction of share capital between Supreme Petrochem Limited and its shareholders

We are in receipt of the draft scheme of reduction of share capital between Supreme Petrochem Limited and its shareholders vide application dated April 08, 2021.

Based on our letter reference no Ref: NSE/LIST/26691 submitted to SEBI and pursuant to SEBI Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017 ('Circular'), kindly find following comments on the draft scheme:

a. *The Company shall ensure that it discloses all the details of ongoing adjudication and recovery proceedings, prosecution initiated and all other enforcement actions taken, if any, against the company, its promoters and directors, before Hon'ble NCLT and shareholders, while seeking approval of the scheme.*

b. *The Company shall ensure that additional information, if any submitted by the Company, after filing the scheme with the stock exchange, and from the date of receipt of this letter is displayed on the websites of the listed company.*

c. *The Company shall duly comply with various provisions of the Circular.*

This Document Is Digitally Signed

d. *The Company is advised that the observations of SEBI/Stock Exchanges shall be incorporated in the petition to be filed before National Company La[illegible]l (NCLT) and the company is obliged to bring the observations to the notice of NCLT.*

NSE
Signer: [illegible]
Date: Fri, Jun 18, 2021 15:58:37 IST

e. *It is to be noted that the petitions are filed by the company before NCLT after processing and communication of comments/observations on draft scheme by SEBI/ stock exchange. Hence, the company is not required to send notice for representation as mandated under section 230(5) of Companies Act, 2013 to SEBI again for its comments/observations/ representations.*

NSE

Continuation Sheet

It is to be noted that the petitions are filed by the company before NCLT after processing and communication of comments/observations on draft scheme by SEBI/ stock exchange. Hence, the company is not required to send notice for representation as mandated under section 230(5) of Companies Act, 2013 to National Stock Exchange of India Limited again for its comments/observations/ representations.

Based on the draft scheme and other documents submitted by the Company, including undertaking given in terms of Regulation 11 of SEBI (LODR) Regulations, 2015, we hereby convey our "No-objection" in terms of Regulation 94 of SEBI (LODR) Regulations, 2015, so as to enable the Company to file the draft scheme with NCLT.

However, the Exchange reserves its rights to raise objections at any stage if the information submitted to the Exchange is found to be incomplete/ incorrect/ misleading/ false or for any contravention of Rules, Bye-laws and Regulations of the Exchange, Listing Regulations, Guidelines / Regulations issued by statutory authorities.

The validity of this "Observation Letter" shall be six months from June 18, 2021 within which the scheme shall be submitted to NCLT.

The Company shall ensure filing of compliance status report stating the compliance with each point of Observation Letter on draft scheme of arrangement on the following path: ***NEAPS > Issue > Scheme of arrangement > Reg 37(1) of SEBI LODR, 2015>Seeking Observation letter to Compliance Status***

Yours faithfully,
For National Stock Exchange of India Limited

Jiten Patel
Manager

P.S. Checklist for all the Further Issues is available on website of the exchange at the following URL http://www.nseindia.com/corporates/content/further_issues.htm

This Document is Digitally Signed

NSE

Signer: Jiten Bharat Patel
Date: Fri, Jun 18, 2021 15:58:37 IST
Location: NSE