

**(2021) 12 NCLT CK 0011**

**National Company Law Tribunal, Division Bench I Chennai**

**Case No:** CA/818/2020

Tenneco Automotive India  
Private Limited

APPELLANT

Vs

Registrar of Companies

RESPONDENT

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**Date of Decision:** Dec. 1, 2021

**Acts Referred:**

- Company Act, 2013 - Section 66, 66(5), 133

**Hon'ble Judges:** R. Sucharitha, Member (J); Sameer Kakar, Member (T)

**Bench:** Division Bench

**Advocate:** P.H. Arvinth Pandian, Pawan Jhabakh

**Final Decision:** Allowed

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### **Judgement**

R. Sucharitha, Member (Judicial)

1. The instant Application has been filed by the Applicant Company under Section 66 of the Companies Act, 2013 for confirming the reduction of

share capital of Tenneco Automotive India Private Limited, a company incorporated on 12.01.1998 under the provisions of Companies Act, 1956 and

having its registered office at 122, SIPCOT Industrial Complex Hosur, Tamil Nadu - 635 126. At,

2. The main objects of the Company as set out in the Clause of the Memorandum of Association of the Company, are briefly reproduced as under;

i. Â To act as holding company for the proposed Indian businesses and invest in and develop other downstream joint venture, companies and / or wholly - owned

subsidiaries in India to manufacture, distribute and / or otherwise deal in automobile parts and components and other related activities including establishment of a

comprehensive research and development centre, all types of back office and IT enabled services.

ii. Â To engage in the business of planning, engineering, developing, licensing, manufacturing, producing, fabricating, remodelling, acquiring, purchasing, importing,

exporting, leasing, hiring, letting on hire, exchanging, altering, repairing, maintaining, servicing, distributing, selling, assembling, trading, agency, patenting, dealing

and providing technical, advisory, management, supervisory, engineering and support services in connection with any or all types of automobile parts including but

not limited to ride control products and exhaust pumps as well as any and all other components, parts, sub - assemblies, associated functions, services, products,

systems and related accessories, equipments, materials, tools, machines, machinery, appliances, apparatus, devices and substances necessary or useful for or in

connection with the same.

3. The Authorized Share Capital of the Applicant Company as on 31.12.2019 is Rs.254,27,50,000/- divided into 25,42,75,000 Equity Shares of Rs.10/-

each and the Issue, subscribed and Paid up Capital of the Company as on 31.12.2019 is Rs.237,82,35,840/- divided into 23,78,23,584 Equity Shares of

Rs.10/- each.

4. The Learned Senior Counsel for the Applicant Company submitted that Clause 65 of the Articles of Association of the empowers the Applicant

Company for Capital Reduction, which is as follows;

The Company may, from time to time, by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as may be specified in

the resolution and by a special resolution reduce the capital and accept a surrender of shares from its members.

5. Â It was submitted by the Learned Senior Counsel for the Applicant Company that the Company was engaged in the business of (i) Clean Air

Business and (ii) Ride Performance Business and with an intent to realign the existing businesses and in order to achieve synergies of business

operations, achieve cost reduction, economies of scale and focused management control, the Applicant Company had demerged the Clean Air

Undertaking to the Tenneco Clean Air India Private Limited, (TCAIPL) a group Company through a Scheme of Arrangement, which was duly sanctioned by this Tribunal.

6. It was submitted that the accounting treatment in the Scheme of Arrangement for the Demerger shall give effect to the Demerger of the Clean

Air Undertaking in its books of accounts in accordance with the Indian Accounting Standards prescribed under the Companies (Indian Accounting

Standard) Rules, 2015 as notified under Section 133 of the Companies Act, 2013. The Applicant Company shall reduce the book value of the assets

and liability pertaining to the Clean Air Undertaking, transferred to and vested in TCAIPL, from the book value of the assets and liabilities as

appearing in its books. The difference, if any, between the value of the assets over the aggregate of liabilities being transferred to TCAIPL pursuant

to relevant clauses of the Scheme shall be recorded as Capital Reserve. Following the same, it was submitted that an amount of Rs.313,37,62,949, i.e.

the difference between the value of assets over the aggregate of liabilities and stock compensation reserve being transferred pursuant to demerger,

was transferred to the Demerger Adjust Reserve. Hence a negative Demerger Adjustment Reserve is appearing in the financials of Applicant

Company pursuant to demerger.

7. It was submitted that the negative Demerger Adjustment Reserve is unrepresented by the available assets of the Company and the Company

wishes to present a true and a better view of the financial position, the Company by virtue of the provisions of Section 66 of the Companies Act, 2013

intends to cancel, reduce and restructure the issued, subscribed and paid up equity share capital of the Company by adjusting part debit balance of the

Demerger Adjustment Reserve with its Share Capital. It was submitted that post this adjustment, the remaining negative balance of the Demerger

Adjustment Reserve will be adjusted with the balance appearing in the profit and loss account / retained earnings account of the Company. Thus, it

was submitted that the reduced capital will correctly disclose the Net Worth of the Company and the post reduction book value will be backed by Net

Assets of the Applicant Company i.e. capital structure post reduction would be commensurate with its remaining business and assets.

8. Based on the above facts and circumstances, the Learned Senior Counsel for the Applicant submitted that the Board of Directors of the Applicant

Company thought it fit to cancel, reduce and restructure its Share Capital in the following manner;

i. To cancel and extinguish 23,77,23,584 equity shares of face value INR 10 each fully paid up held by the existing shareholders of the Company on proportionate

basis, thereby reducing the issued, subscribed and paid up equity share capital of the Company from INR 237,82,35,840 divided into 23,78,23,584 equity shares of INR 10 each to INR 10,00,000 divided into 1,00,000 equity shares of INR 10 each.

ii. To adjust the total surplus of INR 23,72,35,840 arising on the above reduction against the Demerger Adjustment Reserve Account.

iii. To adjust the balance amount outstanding in the Demerger Adjustment Reserve account post the above adjustment with the balance appearing in the profit and

loss account / retained earnings account of the Company.

iv. The reduction of the issued, subscribed and paid up equity share capital of the Company shall take effect from the date such reduction is approved by the

shareholders in the EGM i.e. the date of EGM, as is required as per the provisions of Section 66 of the Companies Act, 2013 post confirmation by the NCLT.

9. The Learned Senior Counsel for the Applicant Company submitted that the Applicant Company has 1 (one) secured creditor, at an outstanding

value of INR 6,65,44,772 as on 24th February 2020 and 783 Unsecured Creditors at an outstanding value of INR 207,23,04,595 as on 24th February

2020 and the certificate of the Chartered Accountant to this effect is attached as Annexure A5 at page 153 to 165 77 of the Application.

10. Further, the Certificate issued by the Chartered Accountant with regard to the Confirmation of Accounting Treatment as per Section 133 of the

Companies Act, 2013 is also annexed as Annexure - All.

11. It is seen from the Application and the annexures filed therewith, that the shareholders of the Applicant Company have approved the scheme of

Reduction of Capital in the Extra ordinary General Meeting held on 27.01.2020 by way of Special Resolution, passed at this meeting.

12. Â This Tribunal vide its order dated 29.03.2021, inter alia directed the Applicant Company to give notice of the instant application to the Ministry of Corporate Affairs through the office of the Regional Director, Registrar of Companies, Reserve Bank of India and to the Creditors of the Company and also directed to cause the publication of notice in the prescribed form. In pursuance of the same, the Applicant Company has filed the Affidavit of Service before this Tribunal on 19.04.2021 in relation to the directions contained in the aforesaid order.

13. Â Consequent thereto, upon receipt of the notice, the Regional Director has submitted its observation dated 29.04.2021, wherein it has been observed that the Directors as well as the Auditors of the Company have furnished the certificate to the effect that the Company has no arrears in repayment of deposits or interest thereon. Further, it is stated in the report that the Company is regular in filing the statutory returns and that there is no complaint / prosecution / investigation / inspection is pending against the Company. Thus, it is seen that the RD has stated in its report that after going through the Scheme of Reduction of Capital, the Regional Director has decided not to make any objection to the Scheme.

14. In view of the same, this Tribunal is of the view that it is just and proper to confirm the Reduction of Share capital of the Applicant Company as resolved by the members of the Company by passing a special resolution and by way of the consent in the form of affidavit. This Tribunal also approves the proposed form of Minutes to be registered under section 66 (5) of the Companies Act, 2013 and as given in the application is as follows:

The issued, subscribed and paid up equity share capital of Tenneco Automotive India Private Limited ('the Company') is henceforth INR 10,00,000/- (Rupees ten lakhs only) divided into 100,000 (One Lakh) equity shares of INR 10/- (Rupees Ten only) each, reduced from INR 237,82,35,840 (Rupees two hundred thirty seven crores eighty two lakhs thirty five thousand and eight hundred forty only) divided into 23,78,23,584 (Twenty three crores seventy eight lakhs twenty three thousand and five hundred eighty four) equity shares of INR 10/- (Rupees ten only) each.

15. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule or regulation, the sanction

granted by this Tribunal will not come in way of action being taken, albeit, in accordance with law, against the persons concerned, directors and officials of the applicant.

16. While approving the Reduction of share capital as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment is due or required in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law. Further all compliances as are required to be done by the Applicant Company upon this order confirming reduction of share capital and security premium reserve shall be duly complied with in relation SEBI, FEMA and Income Tax laws as may be applicable.

17. This Application stands allowed accordingly.