

(2024) 03 NCLT CK 0051

National Company Law Tribunal, Chandigarh Bench

Case No: CP No.79/Chd/Chd/2023

CSJ Infrastructure Private Limited
Vs

APPELLANT

Vs

RESPONDENT

Date of Decision: March 22, 2024

Acts Referred:

- Companies Act, 2013 - Section 52, 66, 66(1), 66(5), 73, 102, 133
- National Company Law Tribunal (Procedure for reduction of Share Capital of Company) Rules, 2016 - Rule 2(2)(c)

Hon'ble Judges: Dr. PSN Prasad, Member (J); Umesh Kumar Shukla, Member (T)

Bench: Division Bench

Advocate: Anand Chibbar, Vivek Sethi

Final Decision: Dismissed

Judgement

Dr. PSN Prasad, Member (Judicial)

Umesh Kumar Shukla, Member (Technical)

1. The present petition has been filed by 'CSJ Infrastructure Private Limited' having its registered office at 178-178A, Industrial Area, Phase-I, Chandigarh-160002 (hereinafter referred to as the "Company") under Section 66 read with Section 52 of the Companies Act 2013 (hereinafter referred to as the "Act") for obtaining sanction of this Tribunal for confirming special resolution passed by the equity shareholders of the Company to utilize Rs.41,22,40,000/- (Forty One Crores Twenty Two Lakhs Forty Thousand only) out of balance available in the securities premium account, which shall be utilized to set off the entire accumulated losses i.e. the debit balance in the profit and loss account of Rs.41,22,20,000/- (Forty One Crores Twenty Two Lakhs Forty Thousand only) as on

31.03.2022 as per audited financial statements of the Company appearing in "Reserves and Surplus-Retained Earnings" as part of the "Other Equity" (hereinafter referred to as 'Capital Reduction').

2. The registered office of the Company is currently situated at Plot 178-178A, Industrial Area, Phase-1, Chandigarh-160002 and therefore, it is under the territorial jurisdiction of this Bench.

FACTS OF THE CASE

3. The Facts of the case, as stated by the Company in the petition, are as below:

(i) The Company was incorporated as a private company in the name and style of "CSJ Infrastructure Private Limited" on 24.01.2006 in Chandigarh under the provisions of the Companies Act, 2013 vide Certificate of incorporation issued by the Registrar of Companies, Chandigarh (hereinafter referred to as the "RoC"), the copy of which has been annexed as Annexure A of the petition.

(ii) The main objects of the Company are as follows-

"1. To carry on the business of development of land, premises, building and operation of commercial, retail, hospitality and residential premises, and to carry on the business of colonizers, builders, developers, contractors including commercial/residential-building, sale and purchase of properties."

(iii) In Article 50 of the Articles of Association of the Company, it is provided that the Company may, from time to time, by Special Resolution, reduce its share capital in any manner permitted by law. Article 50 of the Articles of Association is reproduced below:

"8. The Company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by law:

(i) its share capital

(ii) any capital redemption reserve account; or

(iii) any share premium account"

A certified true copy of the Memorandum and Articles of Association of company have been annexed as Annexure B and Annexure C of the petition.

(iv) The authorised share capital of the Company as on 31.03.2023 is Rs.250,10,00,000/- divided into 25,01,00,000 equity shares of Rs.10/-each and issued subscribed and paid-up share capital is Rs.46,66,67,870/- divided into 4,66,66,787 share of Rs.10/- each. There has been no change in the authorised, issued, subscribed and paid-up capital of the company since 31.03.2023. Certified true copies of the unaudited financial

statements of the company for the period ended 31.03.2023 has been annexed at Annexure D of the petition. The certified true copies of the audited financial statements of the company for the year ending on 31.03.2022, 31.03.2021 and 31.03.2020 have been annexed at Annexure E, Annexure F & Annexure G respectively of the petition.

(v) There are no qualifications, reservations or any adverse remarks or disclaimers in the audit report issued by the statutory auditors of the company as on 31.03.2022.

(vi) No investigation or proceedings under the Companies Act, 1956/Act, is pending in relation to the company. Further, there are no winding up or insolvency proceedings pending against the company under the Companies Act, 1956/Act or the Insolvency and Bankruptcy Code, 2016.

(vii) The rationale and purpose of the capital reduction as stated in the application:

(viii) The Board of Directors of the Company (herein after referred to as "Board") in its meeting held on 03.07.2023, inter alia, pursuant to the provisions of section 66 read with rule 52 of the Act, resolved to utilize Rs,41,22,40,000/- (Forty One Crores Twenty Two Lakhs Forty Thousand only) of the securities premium account for setting off the entire accumulated losses as at 31.03.2022 reflected as a debit balance under "Reserves and Surplus-Retained Earnings" as part of the "Other Equity". Certified true copy of the resolution dated 03.07.2023, passed by the Board of the Company has been annexed as Annexure H to the petition.

(ix) The adjustment/set off, of securities premium accounting would not have any impact on shareholding pattern or the capital structure of the Company. The proposed reduction will be for the benefit of the Company and its shareholders and also does not envisage cash pay out to any shareholder or any sacrifice on the part of any creditor, accordingly, the proposed reduction of share capital will not result in any adverse impact on the creditors.

(x) The Board sent notices along with explanatory statement in due compliance with the provisions of the Act for convening the Extraordinary General Meeting of the Equity Shareholders of the Company (hereinafter referred to as the "EGM"), at Embassy 247, Unit No.501, B Wing, LBS Marg, Vikhroli (West) 400083, Mumbai at 9.00 a.m. on 08.07.2023. Certified true copy of the notice along with explanatory statement pursuant to section 102 of the Act dated 08.07.2023 sent to Equity Shareholders of the Company, setting out adequate disclosures and proper justification of the proposed capital reduction has been annexed as Annexure I of the petition.

(xi) At the said EGM was held on 08.07.2023, the equity shareholders of the company, representing 100% of the paid-up capital of the company present through their authorised representatives and voting at the meeting have approved the proposed reduction of share capital by passing a special resolution as required in terms of

section 66(1) of the Act. The special resolution as unanimously approved by the equity shareholders of the company is reproduced below:

"RESOLVED THAT pursuant to the provisions of Section 66 read with Section 52 and other applicable provisions of the Companies Act, 2013 (the 'Companies Act'), the National Company Law Tribunal (Procedure for Reduction of Share Capital) Rules, 2016 and other relevant rules made there under and in terms of Article 50 of the Articles of Association of the Company, and subject to the confirmation by The National Company Law Tribunal, Chandigarh Bench, (NCLT) and/ or any other regulatory authority as may be prescribed under the Companies Act in this regard and such other approvals as may be required, approval of shareholders of the Company be and is hereby accorded to utilize Rs.41,22,40,000/- (Forty One Crore Twenty Two Lakh Forty Thousand only) out of the balance available with securities premium account to set-off the entire accumulated losses i.e., the debit balance in the profit & loss account of Rs.41,22,40,000/- (Forty One Crore Twenty Two Lakh Forty Thousand only) as per the audited financial statements of the company as on 31.03.2022 appearing in "Reserves and Surplus - Retained Earnings" as part of the "Other Equity" (hereinafter referred to as 'Capital Reduction').

RESOLVED FURTHER THAT pursuant to the Capital Reduction all the pre-reduction shareholders will remain as the shareholders of the Company and there will be no change in their shareholdings.

RESOLVED FURTHER THAT the balances in the shareholder's funds post the proposed Capital Reduction shall be as follows:

SI No	Shareholder's funds	Balance as on 31.03.2022 (Amount in Rs)	Proposed Utilization (Amount in Rs)	Balance Post Capital Reduction (Amount in Rs)
1	Paid-up capital	46,66,67,870	-	46,66,67,870
2	Securities premium account	1,44,55,52,130	(41,22,40,000)	1,03,33,12,130
3	Retained Earnings	(41,22,40,000)	41,22,40,000	-

RESOLVED FURTHER THAT any one of the Directors or Mr. Amit Kumar Gupta, Chief Financial Officer or Mr. Sidharth, Company Secretary of the Company (collectively referred to as 'Authorized Signatories) be and are hereby severally authorized to do all such acts, matters, deeds and things as may be necessary or desirable including any directions for settling any question or doubt or difficulty whatsoever that may arise, for the purpose of giving effect to the reduction of the share capital of the Company as placed before the meeting or to any modification thereof.

RESOLVED FURTHER THAT any of the Directors or Mr. Amit Kumar Gupta, Chief Financial Officer or Mr. Sidharth, Company Secretary of the Company be and are hereby severally authorized to issue a certified copy of this resolution to such persons/ NCLT/ departments/ authorities."

Certified true copy of the special resolution passed by the equity shareholders of the company at the EGM held on 08.07.20123 and the list of the equity shareholders of the company has been annexed as Annexure J & Annexure K respectively of the petition.

(xii) The company has filed Form MGT-14 with the RoC, Chandigarh in respect of special resolution passed by the equity shareholders of the company in the said EGM, a copy of the same along with payment challan has been annexed as Annexure L to the petition.

(xiii) The reduction of capital does not either involve the extinction, reduction or diminution of any liability in respect of unpaid share capital or cancellation of any paid-up share capital, which is lost or would in any way affect the ability of the company to honour its commitments or prejudicially affect the rights of the creditors of the company.

(xiv) The company has 2 (Two) Secured creditors and 120 (One hundred and twenty) unsecured creditors as on 26.06.2023 with total outstanding amount of Rs.9,57,28,91,827/- (Rupees Nine Hundred Fifty Seven Crores Twenty Eight lacs Ninety One Thousand Eight Hundred and Twenty Seven only) and Rs.8,97,60,35,780/- (Rupees Eight hundred and Ninety Seven Crores Sixty Lacs Thirty Five Thousand Seven Hundred and Eight only), respectively. The list of creditors duly certified by two directors of the company along with certificate from statutory auditors has been annexed as Annexure M of the petition.

(xv) The net worth of the company as on 31.02.2022 is Rs.9,219.74 million (Rupees Nine thousand two hundred nineteen point seven four million) and it is a solvent company with sound financial position capable of meeting all its outstanding debts. The Net worth certificate issued by the practicing Chartered Accountant has been annexed as Annexure N of the petition, which demonstrates that the company has sufficient liquidity to pay all its outstanding creditors as per commercial terms agreed with them.

(xvi) The scheme envisages no pay-out in the proposed capital reduction of the company, and as such creditors will not be adversely affected by the said scheme. Therefore, the company sought for the order dispensing with the requirement of sending notices to the secured and unsecured creditors of the company and publication of such notice in the newspaper considering the sound financial position of the company and also the fact that there is no cash pay-out in the proposed capital reduction of the company.

(xvii) The company has also sought exemption from sending individual notices to the unsecured creditors of the petitioner company having debt value of less than to Rs.1,00,000/-, which constitutes a mere 0.03% of the total outstanding balance of the unsecured creditors and publication of such notice in Financial Express (English) and Jansatta (Hindi) newspapers.

(xviii) The Form of Minutes to be registered under section 66(5) of the Act, List of Directors and copy of Master Data of the company have been annexed as Annexure O, Annexure P and Annexure S of the petition.

(xix) The company shall account for reduction of capital in accordance with Indian Accounting Standards notified under section 133 of the Act under the Companies (Indian Accounting standards) Rules 2015, as may be amended from time to time (Ind AS) and other accounting principles generally acceptable in India, in its books of accounts such that:

a. The accumulated losses/ negative balance of retained earnings to the extent of Rs.41,22,40,000/- (Forty One Crore Twenty Two Lakh Forty Thousand only) shall be adjusted against credit balances of securities premium account.

b. The company will pass appropriate adjustment entries in prudent and commercially acceptable manner.

c. For accounting purpose, the reduction of capital of the company will be given effect on the date, when all substantial conditions for the reduction of capital are completed.

A certificate issued by the statutory auditor of the company certifying that the accounting treatment given is in the compliance of Standards prescribed under Section 133 of the Companies Act, 2013 has been annexed as Annexure Q of the petition.

(xx) A certificate, issued by the statutory auditor of the Company and declaration by a director of the Company that the company has not obtained any deposits as defined under section 73 of the Act read with the rules thereunder and therefore, the requirement under rule 2(2)(c) of the National Company Law Tribunal (Procedure for reduction of Share Capital of Company) Rules, 2016 is not applicable to the company has annexed as Annexure R of the petition.

COMPLIANCE AFFIDAVITS

4. This Tribunal, vide its order dated 27.07.2023, directed that notice of this petition be issued to (i) Central government through Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi; (ii) The Registrar of Companies, Chandigarh and Punjab in form RSC-2; and (iii) The individual secured creditors and unsecured creditors of the petitioner company in form RSC-3 seeking representations/ objections, if any, to the proposed reduction in the share capital along with direction to publish notice in the newspapers in form RSC-4.

5. In compliance of the above said order of this Tribunal, the company, vide diary no. 02246/3 dated 16.08.2023, has filed an Affidavit on dispatch and publication of notice for reduction of share capital in form RSC-5. The copies of notices to creditors via couriers in form RSC-3; copy of notice in RSC-2 to the Office of RoC served via hand delivery & to the Office of Regional Director, Northern Region, Delhi via speed post; Form RSC-4 published in 'Financial Express' and 'Jansatta' have been attached as Annexure II, III & IV and V & VI respectively of the compliance affidavit.

6. The Regional Director, Northern region, Ministry of Corporate Affairs, New Delhi has, vide diary no. 02246/5 dated 25.10.2023, filed Representation/ Affidavit attaching therewith the representation/ report of RoC dated 22.09.2023, vide which it has been submitted that the company has filed its Balance Sheet and Annual Returns up to 31.03.2022, no prosecution has been filed against the company and no complaints are pending and no inspection or investigation has been conducted in respect of the company.

7. The following observations has been made in the report of RoC dated 22. 09.2023 based on the records maintained and documents filed by the company.

- The shareholders have passed the special resolution in an extraordinary general meeting held on 08.07.2023.

- The company has intangible assets of Rs.225.40 Crores as on 31.03.2023. The company has non-current assets (net) of Rs.27.91 Crores as on 31.03.2023.

- The company has deferred tax liabilities of Rs.241.99 crores as on 31.03.2023.

- As per Master Data, share capital is Rs.46,66,70,000, however, as per Balance Sheet, capital is Rs.46,66,67,870/- showing a difference of Rs.2130 in both the figures.

8. The company filed rejoinder affidavit vide diary no. 02246/6 dated 26.10.2023. It has been submitted that the master data of the company available at the portal of Ministry of Corporate Affairs, reflects the correct paid-up share capital of Rs.46,66,67,870/- as per copy of the master data attached as Annexure S of the Petition and despite that

RoC has observed that there is a difference of Rs. 2,130/- between the paid-up share capital as per the balance sheet of the Company and as per the Master Data. In order to remove any ambiguity, the company have reattached the Master Data downloaded from the portal of Ministry of Corporate Affairs as on date and attached as Annexure A to the affidavit. With regard to other observations of the RoC report, it has been stated that the observations in RoC report are correct and do not have any bearing on the capital reduction and hence are not required to be traversed.

ANALYSIS AND FINDING

9. As per Rule 4 of the National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules 2016 (hereinafter referred to as the "Rules"), the creditors of the company can make representation to the Tribunal within a period of three months from the date of receipt of notice and copy of such representation shall simultaneously be sent to the company. The company shall submit to the Tribunal, within seven days of expiry of period, the representations or objections so received along with the responses of the company thereto. The company has not filed the status of receipt/ non-receipt of representations/ objections from the creditors.

10. As per Rule 2(a) of the Rules, the application to confirm a reduction of share capital of a company shall be accompanied with the list of creditors, which is made as on a date not earlier than fifteen days prior to the date of filing of an application showing the details of the creditors of the company, class-wise, indicating their names, addresses and amounts owned to them. It is noted from the petition that the company has filed the petition vide Diary No.02246 dated 18.07.2023 enclosing therewith the list of creditors of the company as on 26.06.2023.

11. As per Rule 2 (b) of the Rules, the application shall also be accompanied with a certificate from the auditor of the company to the effect that the list of creditors is correct as per the records of the company verified by the auditor. It is noted from the petition that the company has attached the certificate of Statutory Auditors of the company S R B C & Co LLP, Chartered Accountants (which has been signed on 06.07.2023 by Partner of the Firm, Mr. Abhishek Agarwal, Chartered Accountants) certifying the list of creditors both secured and unsecured containing all liabilities excluding share capital, reserves and surplus, deferred tax liabilities, lease liability, deferred lease rental, statutory dues, advances from customers, deposit received from customers and provision for expenses made on estimated basis as at 26.06.2023. Further, in the list of creditors of the company as on 26.06.2023, there appears to be mistakes. For example, Total of Inter Company Deposit is shown Rs.1,25,00,00,000/- in the list of creditors, while the same works out to Rs.25,00,00,000/-

12. The above certificate of statutory auditors is based on the unaudited books of accounts of the company as at 26.06.2023, while the company has not filed the same

along with the petition and filed the Balance Sheet as at 31.03.2023.

13. The reason for the capital reduction, as stated in the petition, is that as part of the "Other Equity", against the accumulated losses of Rs.41,22,40,000/- reflected as

a debit balance under "Reserves and Surplus - Retained Earnings", the balance sheet of the company also reflects an amount of Rs.1,44,55,52,130/- standing to the credit of securities premium account and utilization of the securities premium account to set off the accumulated losses of the Company would result in a fairer reflection of the "Other Equity" in the balance sheet. However, it is noted that as per Balance Sheet of the company as at 31.03.2023, the break-up of the 'Other Equity' as on 31.03.2023 is as below:

Particulars	Rs. Million					
	Capital Reserve	Debenture Redemption Reserve	Securities Premium	Retained Earnings	Compulsory Convertible Non-cumulative Debentures	Total Other Equity
Balance as at 01.04.2022	57.78	19.76	1,445.55	-412.32	7,700.00	8,810.77
Profit for the year	-	-	-	904.19	-	904.19
Transfer of Debenture Redemption Reserve	-	-19.76	-	19.76	-	-
Other Comprehensive Income (net of tax)	-	-	-	-0.10	-	-0.10

Balance**as****57.78****-****1,445.55****511.53****7,700.00****9,714.86****at****31.03.2023**

It is evident from the above Table that in view of the profit of Rs.904.19 million during the year 2022-23, the retained earnings have turned positive to Rs.511.53 million as on 31.03.2023. Thus the petitioner has not established a case for reduction of share capital and hence this section 66 petition is dismissed.