

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI (SPECIAL BENCH)
BENCH III**

C.P.-11/66/ND/2022

IN THE MATTER OF

The Companies Act, 2013

And

Section 66 r/w Section 55 and Section 52 and other
applicable provisions of the Companies Act, 2013 read with
National Company Law Tribunal (Procedure for reduction
of share capital of Company) Rules, 2016

AND

AHLCON PARENTERALS (INDIA) LIMITED

A Company incorporated under the provisions of
Companies Act, 1956

Through its Authorized Representative: Mr.Ranjan Kumar
Sahu

Registered Office: Plot No.30 & 30/E, 2nd Floor, Shivaji
Marg, Najafgarh Road, Industrial Area, New Delhi-110015

CIN No.: U24239DL1992PTC047245

....Petitioner Company

Order delivered on 30.08.2022

CORAM:

**SHRI.BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)**

**Dr. BINOD KUMAR SINHA
HON'BLE MEMBER (TECHNICAL)**

CP-11/66/ND/2022
DOO: 30.08.2022





For Applicant: Mr. Satwinder Singh (Advocate)

For RD: Ms. Shankari Mishra, RD

ORDER

PER: Dr. BINOD KUMAR SINHA, MEMBER (T)

1. M/s Ahlcon Parenterals (India) Limited, a company incorporated under the provisions of Companies Act, 1956 and having its registered office at Plot No.30 & 30/E, 2nd Floor, Shivaji Marg, Najafgarh Road, Industrial Area, New Delhi-110015 has filed this application under section 66 r/w Section 55 and 52 of the Companies Act, 2013 for confirming its reduction of share capital.
2. The facts in brief that are necessary for the disposal of this application:
 - i. The main objects of the Applicant Company as stated in clause III(A) of the Memorandum of Association ("**MOA**") of the petitioner Company are as follows:

"1. To produce, manufacture, buy, sell, import, export, stock, distribute, supply, alter, improve, process, pack and deal in all kinds of pharmaceutical products including bulk drugs and formulation chemicals medicinal preparation,



intravenous fluids, infusion and transfusion solutions, vitamin and non-vitamin tablets, capsules, liquids and also medical equipment/instruments such as disposable plastic bottles, surgical sets, infusion and transfusion sets, disposable syringes, disposable injectable sets, diagnostic kits, disposable chemical agent, specialties and cosmetics.

2. To carry out, promote, sponsor or assist any type of research and development, analysis, testing and experimentation in the field of pharmaceuticals and drugs.

3. To represent any Indian or Foreign organization in India or abroad in the areas of pharmaceuticals and drugs.

4. To provide consultancy, technical know-how or other related services for the planning and implementation of pharmaceutical projects.”

ii. The capital structure of the Applicant Company as on December 31, 2021 is as follows:

Particulars	Amount (Rs.)
Authorized Share Capital	
1,10,00,000 Equity Shares of Rs.10/- each	11,00,00,000
70,00,000 preference shares of Rs.10/- each	7,00,00,000
Total	18,00,00,000
Issued, Subscribed and Paid-up Share Capital	Amount (Rs.)
72,00,150 Equity shares of Rs.10/- each fully paid up	7,20,01,500



Total	7,20,01,500
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- iii. The post reduction issued, subscribed and paid-up share capital will be Rs. 6,92,04,920/- (Rupees Six crore Ninety-Two Lacs four Thousand Nine hundred Twenty only) divided into 69,20,492/- (sixty-Nine Lacs Twenty Thousand Four Hundreds Ninety-Two Equity Shares of Rs. 10/- (Rupees Two and Forty Paisa) each.
- iv. It is stated that Article 50 of the Article of Association (“AOA”) of the petitioner Company provides the power to reduce its capital in any manner. The relevant extract of Article 50 of AOA is reproduced hereunder:
- “50. Subject to the provisions of Sections 100 to 104 of the Act, the board may accept from any member the surrender of all or any of his share on such terms and conditions as shall be agreed”*
- v. It is further stated that the petitioner Company had no secured creditors and 122 unsecured creditors as on December 31, 2021, and same was audited by the statutory auditor vide certificate dated 14.01.2022. The certificate of the same is annexed as Annexure-O from



page 271 to 275 of the petition. The petitioner Company had also filed a certificate from Price Waterhouse Chartered Accountants LLP, Chartered Accountants, Statutory Auditors of the petitioner Company dated 14.01.2022, to the effect that the accounting treatment proposed by the Applicant Company for the proposed reduction of its share capital, as envisaged in paragraph 9 (o) of the Application, is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. The Certificate is annexed as Annexure-H from page no. 204-205 of the petition.

- vi. The board of directors of the Applicant Company had considered and unanimously approved the proposed reduction of issued, subscribed and paid-up Share capital in their meeting held on 03.12.2021.
- vii. In the general meeting of the petitioner Company held on 12.01.2022, the following resolution was unanimously passed in accordance with section 66(1) of the Companies Act, 2013:

“RESOLVED THAT pursuant to the provisions of section 52, 55, 66 and any other applicable



provisions, if any, of the Companies Act, 2013 ("the Act) read with National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016 ("Reduction Rules") (including any statutory modification(s), amendment(s) or re-enactment(s) thereof for the time being in force). Pursuant to the provisions of the Memorandum and Articles of Association of the Company and further subject to the approval of the Hon 'Me National Company Law Tribunal, Bench at New Delhi ("Tribunal") and subject to such other requisite approvals, consents, permissions and/or sanctions of any appropriate authority, body or institution (hereinafter collectively referred to as the "Concerned Authorities) and subject to such terms, conditions, guidelines or modifications, if any, as may be prescribed, imposed, stipulated in this regard by the Hon'ble Tribunal and/or the Concerned Authorities. from time to time, while granting such approvals, consents, permissions and/or sanctions and which may be agreed by the Board of Directors of the Company (hereinafter referred to as "Board" which expression shall be deemed to include any committee of directors constituted by the Board), consent of the members of the Company be and is hereby accorded to the Board to reduce the issued, subscribed and paid-up share capital of the Company from INR 7,20,01,500/- (Indian Rupees Seven Gore Twenty Laths One Thousand and Five Hundred only) consisting of 72,00,150 (Seventy-Two Lakhs One Hundred and Fifty) equity shares of INR 10/- (Indian Rupees Ten only) each by cancelling and extinguishing, in aggregate, 3.88% (Three point Eight-Eight percent) of the total issued subscribed and paid-up share capital of the Company, comprising of 2,79,658 (Two Lakh Seventy-Nine



Thousand Sir Hundred and Fifty-Eight) equity shares of INR 10/- (Indian Rupees Ten Only) each held by the non-promoter shareholders of the Company including the equity shares transferred in Investor Education and Protection Fund Authority (the "Non-Promoter Shareholders") i.e., cancellation and extinguishing of all equity shares of the Company other than the promoter shareholders (i.e., B. Braun Singapore Pte Ltd) (hereinafter referred to as "Capital Reduction") along with balance of capital redemption reserve account and/or securities premium account, if any.

"RESOLVED FURTHER THAT this Capital Reduction along with reduction in balance of capital redemption reserve account and/or securities premium account, if any, shall be effective on the date when the Registrar of Companies, NCT of Delhi & Haryana registers the Hon'ble Tribunal order approving the Capital Reduction and issues a certificate to that effect."

"RESOLVED FURTHER THAT upon the Capital Reduction becoming effective and without any further act or deed, 2,79,658 (Two Lacs Seventy-Nine Thousand Six Hundred and Fifty-Eight) equity shares of INR 10/- (Indian Rupees Ten only) each of the Company held by the Non-Promoter Shareholders shall stand cancelled and extinguished and rendered invalid."
....."

- viii. In view of the above resolution, the Applicant Company proposed to reduce paid up share capital of the Company from Rs. 7,20,01,500/- (Rupees Seven Crore Twenty Lacs One Thousand Five Hundred only) divided



into 72,00,150 equity shares of Rs. 10 each as at December 31, 2021 to Rs. 6,92,04,920/- (Rupees Six Crore Ninety-Two Lacs Four Thousand Nine Hundred Twenty only) divided into 69,20,492 equity shares of Rs. 10 each, by cancelling and extinguishing of 2,79,658 equity shares of face value Rs.10/- each fully paid-up aggregating to Rs.27,96,580/- subscribed and paid-up equity shares which are held by non-Promoter shareholder as on the date as determined by the board after the proposed reduction is approved by this Hon'ble Tribunal.

- ix. The form of the minute proposed 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 Ahlcon Parenterals (India) Limited ("Company") is henceforth Rupees 6,92,04,920/- (Rupees Six Crore Ninety-Two Lakhs Four Thousand Nine Hundred and Twenty only) divided into 69,20,492 (Sixty-Nine Lakhs Twenty Thousand Four Hundred and Ninety-Two) equity



shares of Rs. 10/- (Rupees Ten only) each reduced from Rs. 7,20,01,500/- (Rupees Seven Crore Twenty Lakhs One Thousand and Five Hundred only) divided into 72,00,150 (Seventy-Two Lakhs One Hundred and Fifty) equity shares of Rs. 10/- (Rupees Ten only) each by reducing an amount of Rs. 27,96,580/- (Rupees Twenty-Seven Lakhs Ninety-Six Thousand Five Hundred and Eighty only) divided into 2,79,658 (Two Lakhs Seventy-Nine Thousand Six Hundred and Fifty-Eight) equity shares of Rs. 10/- (Rupees Ten only) each.”

3. It is submitted that Board of directors of the petitioner company has recommended payment of Rs.525/- per equity share to the Non-Promoter Shareholder, notwithstanding the fact the current valuation is lower than the offered price, for the extinguishment of their subscribed and paid-up equity share capital as a result of such reduction of share capital. Such price, as proposed to be paid, corresponds to the price offered by the Promoter Shareholder in Delisting Offer and therefore, the Petitioner Company is of the view that said value, as



offered, shall satisfy the concerns of the remaining Non-Promoter Shareholders and shall not be prejudicial to their interest. Notwithstanding the aforesaid, it is hereby clarified that any payment to any of the non-resident shareholders shall not be more than the price permitted to be paid under the Foreign Exchange Management Act and Regulations made thereunder. Further, the amount to be paid to Non-Promoter Shareholders pursuant to the said reduction shall be subject to applicable withholding taxes, if any. Furthermore, the aforesaid price is higher than the fair value i.e. INR 362.2/- per equity share and INR 380.5/- per equity share as determined by the independent valuers appointed by the Petitioner Company namely, Ms. Mudra Mehta, A.C.A, IBBI Registration No. IBBI/RV/06/2018/10400, Registered Valuer and M/s Ernst & Young Merchant Banking Services LLP, SEBI registered Merchant Banker, respectively. It is stated that the amount equal to the face value of 2,79,658 equity shares of Rs. 10/- each aggregating to Rs. 27,96,580/- shall be reduced from the issued, subscribed and paid up share capital of the



Company. The premium of INR 515/- per share on 2,79,658 equity shares aggregating to INR 14,40,23,870/- to be paid to the Non-Promoter Shareholders shall be adjusted in seriatim against i) Capital Redemption Reserve; (ii) surplus on re-issue of forfeited shares; (iii) securities premium account, if any, (iv) then General Reserves; and v) balance, if any, shall be appropriated in the Profit & Loss account of the Company.

4. It is averred that the company has not obtained any deposits from public. Therefore, the question of arrears of repayment of deposits thereon does not arise in the present case. A certificate of statutory auditor and declaration of Managing director have also been placed on record along with petition. The same is annexed as Annexure-P (Colly) from page 276 to 278 of the Petition.
5. It is seen from the Application and the annexure filed therewith, that the equity shareholders of the Applicant Company have approved the scheme of Reduction of Capital in the General Meeting held on 12.01.2022 by way of Special Resolution.



6. This Tribunal in its order dated 22.02.2022 inter alia,
directed the Applicant Company

- (i) To give notice of the instant application to the Regional Director, Registrar of companies, Ministry of chemicals and fertilizers and Department for promotion of Industry and Internal Trade.
- (ii) To cause the publication of notice in the prescribed form in the daily newspaper.

7. Mr. Ranjan Kumar Sahu, Authorized Representative of the Applicant has filed a compliance affidavit before this Hon'ble Tribunal on 08.03.2022 in relation to the compliance of the directions contained in the aforesaid orders.

8. RD has filed its report to the present petition after considering the report of RoC and IEPF Department, the relevant observation of the said report is reproduced below:

- i. *As regards the observations given in para 9 (i) of the Affidavit stating about the amount of money due to the IEPF Authorities against the shares held by them (which constitutes 1,13,284 nos. of equity shares of the Petitioner Company are to be part of the Reduction of the Share Capital), the Deponent viewed that the opinion of the IEPF (Investor Education and Protection Fund) Authority may please be called by the Hon'ble Tribunal for the approval of the scheme. In this regard the IEPF Authority has forwarded their comments to the Deponent on dated 15.07.2022 in this matter. The*



IEPF Authority in their reply has stated that if the scheme under section 66 of the Act approved by the Hon'ble Tribunal, the company shall be required to deposit the amount due on behalf of Investors based on valuation approved by the Hon'ble Tribunal in form IEPF-7 before shares are debited from the account of IEPF Authority. Also, the Authority has stated in their reply that "as no notice has been served on Authority, it is requested to kindly bring the comments of the Authority before the Hon'ble Tribunal"

- ii. As regards the observation in para-9(ii) of the affidavit filed by the deponent stating about the pay-back to the shareholder of the company out of the fund deposited in the Bank Account of the Company, the petitioner company vide their reply rejoinder dated 15.07.2022 in pars 4.2 (g) has stated that the company cannot borrow funds to pay-off the liabilities and has undertaken to convert its External Commercial Borrowings (ECB) taken from the promoters into equity shares which would be at least equivalent to the amount to be paid as part of the Reduction of Share Capital, in terms of the extant provisions of the Foreign Exchange Management Act, 1999 pursuant to the sanction of the Reduction of the Share Capital of the Hon'ble Tribunal. In view of the above it is to submit that the above reduction of share capital may be considered on the ground that the pay-off amount shall not be out of the fund raised by the company by issuing ECBs (which is meant for the purpose of working capital of the company), but it should be out of the fund raised by issue of equity share capital. In view of the above, it is prayed before the Hon'ble Tribunal to kindly consider the above submission for approval of the petition."



9. The Petitioner has filed the rejoinder to the report of RD and submitted that the transferring amount of consideration to IEPF Authority for the shares held in IEPF should not be considered as against any authority and power vested with IEPF under CA, 2013 r/w general principles of law as enunciated by the various courts. It is further submitted that the company petition envisages reduction of 2,79,658 issued, subscribed and paid-up equity share capital held by non-promoter shareholders of the Petitioner Company (including capital redemption reserve account and/or securities premium account) for a consideration of Rs. 525/- per share aggregating to Rs. 14,68,20,450/-. The Petitioner Company shall discharge such consideration from the funds lying in its bank account at Deutsche Bank, account no. 0639310-00-2 ("DBS"). It is also averred that Petitioner Company has raised External Commercial Borrowings ("ECB") from its ultimate parent company and other group companies in order to fulfil its working capital requirement. The said ECB was raised by way of passing a resolution in meeting of board of directors of the Petitioner Company. Furthermore, the consideration for the proposed



reduction of capital shall be discharged from the balance lying in DBS account which has been accumulated by realizing the payments from the debtors of the Petitioner Company from April 01, 2021.

10. The notice of this petition was also served to Ministry of chemicals and fertilizers and Department for promotion of Industry and Internal Trade, however, no one appeared on behalf of the said departments despite due service being affected, hence, we consider that these departments have no objection to the present scheme.

11. In view of the above discussions, this Tribunal is of the view that it is just and proper to confirm the reduction of paid-up equity share capital of the Applicant Company as resolved by the members of the Company by passing a special resolution. From the application it is also evident that the proposed reduction of paid-up equity does not impair the liability towards Unsecured Creditors. This Tribunal also approves the proposed Form of Minutes set out in Paragraph 28 of the Application and as extracted in paragraph 2(ix) supra.



12. 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 concerned persons, directors and officials of the applicant.

13. 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 including any withholding taxes arising out of the proposed reduction in capital 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 to SEBI, FEMA and Income Tax laws as may be applicable. Further, the consideration for the proposed reduction of capital shall be discharged from the funds lying in its bank account, as



undertaken. The company shall also ensure that payment to IEPF has been remitted in the prescribed form as indicated by IEPF along with necessary details.

14. Applicant Company shall publish the order of confirmation of reduction of paid-up equity share capital and preference share capital in editions of 'The Business Standard' in English and 'Jansatta' in Hindi and file a certified copy of this order with the RoC within 30 days from the date of this order.

15. This application is disposed of accordingly.



(BINOD KUMAR SINHA)
MEMBER (TECHNICAL)



(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)