



REGULATORY UPDATES

NCLAT GREENLIGHTS CAPITAL REDUCTION SCHEME INVOLVING REPAYMENT TO SHAREHOLDERS AS UNSECURED LOANS

BACKGROUND

Ulundurpet Expressways Private Limited (“Petitioner Company” or “Appellant Company”) presented a scheme for the reduction of capital to NCLT Mumbai.

In this scheme, the Petitioner Company had approached the NCLT for confirmation on the special resolution passed by the shareholders of the company in its EOGM held on 29.11.2022 regarding the reduction of share capital by cancelling 16,76,96,382 equity shares of INR 10 each i.e. constituting approximately 63.4% of the total equity share capital of the Company.

The proposed reduction involved a payout of INR 11.33/- per equity share to the shareholders, aggregating to INR 190 crores.

Unlike a traditional capital reduction, where the entire consideration of is paid to the shareholders at the time of capital reduction, the Petitioner Company was proposed that the consideration of capital reduction be recognized as unsecured loans in the Company’s books. These loans would bear a coupon rate of 14% and be payable over 5 years.

The Ld. NCLT Mumbai declined to confirm the Special Resolution passed by the Petitioner Company and dismissed the petition for reduction of share capital on the following grounds: -

- **Insufficient Cash Accruals:** The Petitioner Company lacked sufficient cash accruals at the time of passing the special resolution, necessitating a scheme for gradual repayment by converting the reduced share capital into interest-bearing unsecured loans.
- **Section 66(1)(b)(ii) of the Companies Act, 2013:** This section permits a company to pay off any paid-up share capital that is in excess of the wants of the company. However, the proposed scheme relied on future cash flows and projections rather than on existing excess capital.
- **Future Cash Flows:** The proposed buyback was to be financed from future cash flows, based on projections, which cannot be regarded as excess capital.
- **Impact on Financial Ratios:** The conversion of reduced share capital into interest-bearing unsecured loans could impact the operating and financial ratios of the Petitioner Company.
- **Indirect Lending by Overseas Shareholders:** The conversion would result in indirect lending by overseas shareholders, which is subject to External Commercial Borrowings guidelines under the Foreign Exchange Management Act.

APPEAL WITH NCLAT

The Appellant subsequently filed an appeal with the NCLAT, arguing that the NCLT failed to follow its own precedents concerning capital reduction. The appellant cited the previous decisions in which similar schemes were approved under comparable circumstances, asserting that the NCLT's decision lacked consistency with earlier rulings.

Based on the appellant's submissions, the NCLAT issued an order in favor of the appellant, stating that Section 66(1)(b)(ii) of the Companies Act, 2013 grants the appellant company the discretion to reduce its share capital "**in any manner,**" provided a special resolution is passed by the required majority of shareholders.

In support of this decision, the NCLAT referenced the judgements passed in ***Indian National Press (Indore) Ltd (1989)***, ***Reckitt Benckiser (India) Ltd (2005)*** and ***Tamil Nadu Newsprint & Papers Ltd.***

The NCLAT observed that since:

- Neither of the creditors raised objections,
- Nor did the Regional Director (Western Region) and the Registrar of Companies oppose the reduction,
- And the special resolution dated dated 29.11.2022 was unanimously approved by the shareholders

there was no justification for withholding permission for the appellant to reduce its share capital. Consequently, the NCLAT reversed the previous order and granted the appeal.

CONCLUSION

In conclusion, the NCLAT upheld the appellant's right to reduce its share capital, emphasizing that the decision made by the majority of shareholders, when compliant with applicable legal provisions, takes precedence. The absence of objections from creditors and no objection from the Regional Director and Registrar of Companies, coupled with the unanimous approval of the special resolution, provided a robust foundation for granting the appeal. This ruling reinforces the legal framework supporting capital reduction and affirms the authority of shareholders in such decisions, ensuring fairness and statutory compliance.


For more details, refer to the NCLAT Judgement **Ulundurpet Expressways Private Limited Vs Regional Director Western Region (Case No. 53/ND/2024)** dated 6th January, 2025.


DISCLAIMER: - *The summary information herein is based on NCLAT Principal Bench, New Delhi Judgement dated 06.01.2025. While the information is believed to be accurate, we make no representations or warranties, express or implied, as to the accuracy or completeness of it. Readers should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. This note is not an offer, advice or solicitation. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.*

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