

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****COMPANY PETITION NO. 405 of 2015**

PARTH ALLUMINUM LIMITED....Petitioner(s)

Versus

.....Respondent(s)

Appearance:

MS DHARMISHTA RAVAL, ADVOCATE for the Petitioner(s) No. 1

**CORAM: HONOURABLE SMT. JUSTICE ABHILASHA  
KUMARI****Date : 06/01/2016****ORAL ORDER**

1. The petitioner has filed the present petition seeking the sanction of this Court to the proposed reduction and cancellation of part of the Paid-Up Share Capital of the petitioner-Company under Sections-100 and 102 of the Companies Act, 1956 ("the Act", for short). The petitioner has further sought an order of dispensation of the procedure contemplated under Section 101(2) of the Act, on the ground that there are no Secured Creditors and the proposed reduction would not, in any way, affect the rights and interest of the Unsecured Creditors of the Company.

2. The petitioner, Parth Alluminium Limited, has

authorized share capital of Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The Issued, Subscribed and Paid-up Equity Share Capital of the Company as on 30<sup>th</sup> September, 2014, is Rs.47,50,0000/- divided into 47,50,000 equity shares of Rs. 10/- each.

3. The company proposes to reduce the Paid Up Share Capital from Rs.47,50,0000/- divided into 47,50,000 equity shares of Rs. 10/- each, fully paid up to Rs.1,90,00,000/- divided into 19,000,000 equity shares of Rs.10/- each fully paid up, by cancelling 28,50,000 equity shares of Rs. 10/- each fully paid up by available tangible assets by issuing four new equity shares of Rs.10/- each fully paid up, against the present holding of 10 equity shares of Rs.10/- each fully paid up. It is also proposed to write off the preliminary and pre-operative expense account of Rs.19,22,013/- and part of the debit balance in the Profit and Loss Account to the extent of Rs.2,65,77,987/- to the aggregate of Rs.2,85,00,000/-.

4. Heard Ms.Dharmishta Raval, learned counsel for the petitioner.

5. It was pointed out by Ms.Raval that the petitioner-Company has passed the necessary Resolution in the meeting of the Board of Directors held on 10<sup>th</sup> March 2015, in this regard. It was further pointed out from the record that the petitioner-Company, thereafter, issued notices to its shareholders to convene the Annual General Meeting, which was held on 22<sup>nd</sup> September 2015, together with the Explanatory Statement, as required under Section 102 of the Act. In the said meeting, the shareholders passed a Special Resolution for the reduction and consolidation of the paid-up equity share capital of the Company. A copy of the Resolution passed by the shareholders is annexed at Annexure-E. In the Annual General meeting, the shareholders passed the following resolutions:

*"RESOLVED THAT pursuant to Sections-100 to 104 and other relevant provisions of the Companies Act, 1956, Article-8 of the Articles of Association of the Company and subject to confirmation by the Hon'ble High Court of Judicature at Ahmedabad, in the State of Gujarat, consent of the members of the Company be and is hereby accorded to the reduction in the paid-up share capital of the Company with effect from the Appointed Date i.e. 01/04/2015 of the Scheme of*

Capital Reduction from Rs.4,75,00,000/- divided into 47,50,000 equity shares of Rs.10/- each fully paid-up to Rs.1,90,00,000/- divided into 19,00,000 equity shares of Rs.10/- each fully paid-up and that such reduction of Rs.2,85,00,000/- (Rupees Two Crores and Eighty Five Lacs Only) be effected by cancelling 28,50,000 equity shares of Rs.10/- each fully paid-up, which has lost or is not represented by the available tangible assets, by issuing 4 new equity shares of Rs.10/- each fully paid-up against present holding of 10 equity shares of Rs.10/- each fully paid-up.

RESOLVED FURTHER THAT after reduction of the capital of the Company, the paid up capital of the Company be reorganized subject to such rights, privileges and conditions attaching thereto as are provided by the Memorandum and Articles of Association of the Company and the board be and hereby authorized to implement, modify, amend and alter the REDUCTION OF CAPITAL of the Company in accordance with the order of the Hon'ble High Court judiciary at Ahmedabad in the State of Gujarat and such other authorities, Stock Exchange, Registrar of Companies, Securities and Exchange Board of India.

RESOLVED FURTHER THAT the Board of Directors of the Company be and is hereby authorized to move the petition/application to the Hon'ble High

*Court judicature at Ahmedabad or to any other applicable tribunal/authority, for an order confirming the aforesaid reduction and to submit necessary applications under the Companies Act, 1956 and/or the Companies Act, 2013, Listing Agreement, SEBI Act, 1992 and other Applicable Rules and Regulation for the purpose of giving effect to the above mentioned reduction of capital and to do all such other acts, matters, deeds as may deem fit and proper to carry out the reduction of capital."*

6. Learned counsel for the petitioner submitted that the reduction and consolidation of the part of the Equity Share Capital is intended so as to make it represent the fair and equitable value of shares. It is submitted that the Company has accrued losses as per the balance-sheet, as on 30<sup>th</sup> September, 2015, and in that view, the paid up Equity Share Capital does not represent the available assets of the company. Under the circumstances, the reduction and consolidation of the Paid Up Share Capital is desired and proposed.

7. It is further submitted that the proposed reduction of the Share Capital does not to involve the

diminution of any liability in respect of unpaid share capital. The proposed reduction of capital also does not, in any manner, affect the interests or rights of the Unsecured Creditors of the Company. Reliance has been placed on the certificate issued by the Chartered Accountant and Annexed at "Annexure-G". No sacrifice or waiver is called from the creditors and the company would continue to honour its liabilities as before.

8. The petition came to be admitted by this Court, vide order dated 27<sup>th</sup> November, 2015. The Court ordered the dispensation of the procedure under Section-101(2) of the Act. The notice of the petition was directed to be advertised in the English Daily newspaper 'Business Standard', Ahmedabad Edition and the Gujarati Daily newspaper 'Jantasatta', Ahmedabad Edition. The publication of the notice in the Official Gazette was ordered to be dispensed with.

9. It is submitted by the learned counsel for the petitioner that the notice of the petition was duly advertised in the local daily newspapers, as directed. An affidavit dated 16th December 2015 has been filed by the Authorized Officer of the petitioner-Company,

confirming the publication of the advertisements in the aforementioned newspapers. Learned counsel for the petitioner has stated that pursuant to the publication of the advertisements, no objection has been received from anyone, against the proposed reduction of the Paid-Up Share Capital of the petitioner-Company.

10. In paragraph-15 of the affidavit in support of the Summons for Direction, the petitioner has made the following statements and averments:

*"The proposed reduction in Share Capital does not involve either the diminution of any liability in respect of any unpaid capital or the payment to any shareholder of any paid-up capital nor is any call being waived. The creditors of the Company are in no way affected by the proposed restructuring by way of the reduction of capital as there is no reduction in the amount payable to any of the creditors, no compromise or arrangement is contemplated with the creditors. There is no actual cash out flow. Further, the proposed adjustment would not in any way adversely affect the ordinary operations of the Company or the ability of the Company to honour its commitments or to pay its debts in the ordinary course of business. Petitioner Company most humbly craves dispensation from the detailed procedure as to*

*notice to the creditors prescribed under Section-101(2) and Company (Court) Rules, 1959. It is respectfully submitted that as a result of the reduction of capital, no sacrifice or waiver is called from the creditors and the petitioner-Company would continue to honour its liabilities/obligations as before."*

11. The petitioner has also produced a certificate from the Chartered Accountant M/s.R.K.Mansharamani & Co., stating that the proposed reduction of the paid-up share capital of the petitioner-Company neither involves any payment outgo to any shareholder of the company, nor diminishes any liability in respect of the unpaid share capital. Ms.Raval also relied on the decision of this Court in the case of M/s.Duron Energy Private Limited [Company Petition No.238 of 2014] and Gujarat Road and Infrastructure Company Ltd. [Company Petition No.318 of 2013]. Looking to the material on record and the above decisions, this Court is of the view that the petition deserves favourable consideration.

12. Having considered all the above aspects and the documents produced on record, including the Special Resolution passed by the shareholders of the

petitioner-Company, the proposed action of the petitioner to reduce the Paid-Up Share Capital as per the Special Resolution passed by the shareholders of the petitioner-Company deserves to be approved. The same is hereby approved. The Minutes as mentioned in paragraph-17 of the petition are also approved.

13. The petitioner shall take steps for registration of the order with the Registrar of Companies and to publish the approval of the Minutes in the English Daily newspaper 'Business Standard', Ahmedabad Edition and the Gujarati Daily newspaper 'Jantasatta', Ahmedabad Edition, within 14 days of the registration of the order with the Registrar of Companies. The publication of notice in the Official Gazette is dispensed with.

14. The petition is allowed, in the above terms and stands disposed of.

**(SMT. ABHILASHA KUMARI, J.)**

Gaurav+