IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2015

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THE HON'BLE MR. JUSTICE R.MAHADEVAN

Company Petition No.107 of 2014

Elektro Thermal Kinetics Private Limited
(Formerly known as ETK International Ferrites Private Limited)
A Company registered under the Companies Act, 1956
and having its Registered Office
at Plot No.101, Phase-II
SIPCOT, Ranipet-632 403
Represented by its Whole Time Director
Mr.B.Thamilmani. ... Petitioner

Petition under Sections 100 to 104 of the Companies Act, 1956 read with Rules 11(a)(3) and 46 of the Companies (Court) Rules, 1959, for confirming the reduction of Paid Up Equity Share Capital Account of the petitioner Company duly approved by the equity shareholders of the petitioner at an Extra-ordinary General Meeting thereof held on 30th March, 2012, at Chennai be confirmed by this Court so as to be binding on all shareholders and creditors of the petitioner Company and the petitioner Company; to issue necessary and proper directions; to approve the proposed minute; and not requiring the petitioner to add the words "and reduced" to its name as the last words thereof.

For Petitioner : Mr.Murugesh Kasivel

Mr.M.Gopi Krishnan
Additional Central Government
Standing Counsel
for Regional Director,
Southern Region,
Ministry of Corporate Affairs,
Chennai.

O R D E R

This Company Petition is filed under Sections 100 to 104 of the Companies Act, 1956, read with Rules 11(a)(3) and 46 of the Companies (Court) Rules, 1959, for confirming the reduction of Paid-up Equity Share Capital Account of the petitioner Company duly approved by the equity shareholders of the petitioner at an Extra-ordinary General Meeting thereof held on 30th March, 2012, at Chennai be confirmed by this Court so as to be binding on all shareholders and creditors of the petitioner Company and the petitioner Company; to issue necessary and proper directions; to approve the proposed minute; and not requiring the petitioner to add the words "and reduced" to its name as the last words thereof.

2.Heard Mr.Murugesh Kasivel, learned counsel appearing for the petitioner and Mr.M.Gopi Krishnan, learned Additional Central

Government Standing Counsel appearing for the Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai.

3.The petitioner Company was incorporated on 31.07.1990 as a Private Limited Company with the Registrar of Companies, Chennai. According to the petitioner Company, it is presently engaged in manufacture of plant and machineries like heat treatment furnaces and related business. While so, due to stagnation in the economic situation prevailing in the earlier years, coupled with the fact that there is an unhealthy competition in the industry, the petitioner Company was under intense pressure in fixing the price and sales of its final product, which resulted in the petitioner Company accumulating loss of more than Rs.40,38,70,448/- as on 31.03.2012. The petitioner Company for internal financial restructuring of the Company decided to size the Balance Sheet of the Company rightly, which will result in the enhancement of shareholders value through improvement in certain ratios and return on capital employed, etc. Having regard to the Paid-up Equity Share Capital Account of

Rs.43,68,95,030/- in accordance with the provisions of Sections 100 to 104 of the Companies Act, 1956, the Board of Directors at their meeting held on 01.03.2012 proposed subject to the members approval the Scheme of application/partial utilization of the Paid-up Equity Share Capital Account of the Company for writing off the brought forward accumulated losses represented in the Balance Sheet by the debit balance. Article 15(a) of the Articles of Association of the petitioner Company read with Regulation 46 of Table-A of Schedule-1 to the Companies Act, 1956, enable the petitioner Company, by special Resolution to reduce its capital/share premium account of the Company in any manner permitted by law. Accordingly, the petitioner Company is proposing to reduce its Paid-up Share Capital Account from Rs.43,68,95,030/- to Rs.3,30,67,680/-. If the amount of Rs.40,38,27,350/- lying in the Paid-up Equity Share Capital Account of the Company is utilized for the proposed set off of the accumulated losses of the Company as per the audited Statement of Accounts at 31-03-2011, the balance amount of Rs.3,30,67,680/- will remain in the Paid-up Equity Share

Capital Account of the Company.

4. The nature of business carried on by the petitioner Company is detailed in the Memorandum of Association, which is marked as Annexure-1. The authorized share capital of the petitioner Company as on 31.03.2012 is Rs.45,00,00,000/- divided into 4,50,00,000 equity shares of Rs.10/- each. The Paid-up Capital of the petitioner Company as on 31.03.2013 is Rs.43,68,95,030/- divided into 4,36,89,503/- equity shares of Rs.10/- each. Therefore, the petitioner Company has adequate reserves to meet the proposal for reduction of the Paid-up Equity Share Capital of the Company. Upon the said reduction of Equity Share Capital, the Paid-up Equity Share Capital Account of the Company of Rs.43,68,95,030/- shall stand reduced to Rs.3,30,67,680/-. A copy of the audited Balance Sheet as on 31-03-2012 and the audited Balance Sheet as on 31.03.2013 is enclosed as Annexure-2. A Certificate showing "No Secured Creditors" from a Chartered Accountant is marked as Annexure-3. The Board Resolution, dated 01.03.2012, and the

Notice, dated 01.03.2012, calling upon for the Extra-Ordinary General Meeting of the Shareholders on 30.03.2012 is annexed as Annexure-4. A copy of the Special Resolution passed at the Extra-Oridinary General Meeting of the Shareholders of the petitioner Company held on 30.03.2012 is marked as Annexure-5. A copy of the Form of Minute is marked as Annexure-6. According to the petitioner Company, the reduction of the Paid-up Equity Share Capital Account of the petitioner Company will not in any way compromise the interests of or cause any prejudice to the creditors of the petitioner Company.

5. At this juncture, it is relevant to extract the Special Resolution passed at the Extra-Ordinary General Meeting of the shareholders of the petitioner Company held on 30th day of March, 2012, at 1.00 p.m. at the registered office of the petitioner Company, wherein, it was resolved as follows:-

> "**SPECIAL BUSINESS:**
>
> **1.To amend/alter the main objects (Clause IIIA) of the Memorandum of Association of**

the company.

After discussion, the following resolution was passed as a **SPECIAL RESOLUTION:**

RESOLVED THAT pursuant to Section 16, 17 and other applicable provisions if any, of the Companies Act, 1956 and subject to any other regulatory authority as may be prescribed under the Companies Act, 1956 or under any other statute and other concerned authorities, if any, and such other approvals, permissions and sanctions, as may be necessary and subject to such conditions, modifications, as may be prescribed or imposed by any of the aforementioned authorities while granting such approvals, permissions and sanctions, which may be agreed to by the board of directors of the company, the existing main objects of the company of Clause IIIA be deleted and in that place the following objects be added/ inserted as the main objects of the company:

1. To carry on the business of design, fabrication/manufacture, installation, erection and commissioning of heat

treatment furnaces, controlled atmosphere furnaces, ovens, heat resistant fabrications, corrosion resistant fabrications and super alloy fabrications such as retorts, reactors, metal finishing plants, autoclaves, pressure vessels, fuel oil electric heaters, heating elements and spares for conventional and non-conventional energy sector, oil and gas sector, heavy engineering, defence, aerospace and ferrite industries in India and abroad.

2. To carry on the business of turkey engineering procurement and construction of equipments/plant & machineries for industries in India and abroad.
3. To provide engineering procurement and project management services for industries in India and abroad.
4. To provide consultancy, advisory and other services such as modeling, design & analysis and drafting including cutting edge research and development in the

area of Engineering, Science and interdisciplinary fields for such industries in India and abroad.

RESOLVED FURTHER THAT for the purpose of giving effect to the above resolution and for removal of any difficulties or doubts, the Board of Directors (which term shall include any committee thereof or any person/persons that the Board may have constituted/nominated or hereinafter constitute/nominate to exercise its powers including powers conferred in this Resolution) be and is hereby authorized to perform all acts, deeds, matters and things as it may in its absolute discretion deem necessary, expedient, usual or proper and to settle any question or difficulty that may arise with regard to implement the aforesaid resolution".

The Chairman then put the said resolution to vote by show of hands and declared that the resolution was pass unanimously.

2. Shifting of the Registered office of the company

After discussion, the following resolution was passed as a **SPECIAL RESOLUTION :**

RESOLVED THAT THE CONSENT OF the members of the company be and is hereby accorded pursuant to Section 146 and other applicable provisions if any, of the Companies Act, 1956 and subject to such other approvals/consents if any, required for this purpose, the registered office of the company be shifted from the present place to No.101 Phase II, SIPCOT, Ranipet 632 403 or such other place at Ranipet as may be suitably decided by the board of directors of the company from time to time in this connection.

“**FURTHER RESOLVED** that Mr.B.Thamilani, Director of the Company be and is hereby authorized to furnish necessary forms, papers and documents with the Registrar of Companies of Tamilnadu, Chennai and do all such acts things and deeds as may be considered necessary incidental and ancillary for the above mentioned purpose.”

The Chairman then put the said resolution to vote by show of hands and declared that the resolution was passed unanimously.

3. Amendment to the Articles of Association of the Company

After discussion, the following resolution was passed as a **SPECIAL RESOLUTION :**

RESOLVED THAT pursuant to the provisions of Section 31 and other applicable provisions of the Companies Act, 1956 and enabling provisions in the Memorandum and Articles of Association of the Company, and subject to any other regulatory authority as may be prescribed under the Companies Act, 1956 or under any other statute and other concerned authorities, if any, and such other approvals, permissions and sanctions, as may be necessary and subject to such conditions, modifications, as may be prescribed or imposed by any of the aforementioned authorities while granting such approvals, permissions and sanctions, which may be agreed to by the board of directors of the company, the following Articles No.15(a) be inserted after the existing Articles 15 of the Articles of Association of the company.

15(a) The Company may from time to time by special resolution, subject to confirmation by the Court and subject to the provisions of Sections 78, 80 and 100 to 104 of the Companies Act, 1956 reduce its share capital share premium account, securities premium account and any Capital Redemption Reserve Account or premium account in any manner for the time being authorized by law and in particular without prejudice to the generality of the foregoing power may by:

(a) extinguishing or reducing the liability on any of its shares in respect of Share Capital not paid-up;

(b) either with or without extinguishing or reducing liability on any of its shares, cancel paid-up share capital which is lost or is unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the Company; and may, if and so far as is necessary, alter its Memorandum, by reducing the amount of its share capital and of its shares accordingly.

RESOLVED FURTHER THAT for the purpose of giving effect to the above resolution and for removal of any difficulties or doubts, the Board of Directors (which term shall include any committee thereof or any person/persons that the Board may have constituted/nominated or hereinafter constitute/nominate to exercise its powers including powers conferred in this Resolution) be and is hereby authorized to perform all acts, deeds, matters and things as it may in its absolute discretion deem necessary, expedient, usual or proper and to settle any question or difficulty that may arise with regard to implement the aforesaid resolution".

The Chairman then put the said resolution to vote by show of hands and declared that the resolution was passed unanimously.

4.To write off accumulated losses of the Company against the Paid up Share Capital Account of the Company

After detailed discussion, the following resolution was passed as a **SPECIAL RESOLUTION:**

RESOLVED THAT pursuant to the provisions of

Section 100 to 104 and all other applicable provisions of the Companies Act, 1956 and enabling provisions in the Memorandum and Articles of Association of the Company, and subject to the confirmation of the High Court of Madras or such jurisdictional of High Court/Tribunal and or/any other regulatory authority as may be prescribed under the Companies Act, 1956 or under any other statute and other concerned authorities, if any, and such other approvals, permissions and sanctions, as may be necessary and subject to such conditions, modifications, as may be prescribed or imposed by any of the aforementioned authorities while granting such approvals, permissions and sanctions, which may be agreed to by the Board of Directors of the Company, an amount of Rs.40,38,27,350/- being the amount of paid up capital Account of the Company as per the audited statement of accounts as at 31-03-2011 be utilized to adjust in full the amount of Rs.40,38,27,350/- standing to the debit of “Profit and Loss Account” which is the brought forward losses as it stood in the books of the Company as at 31-03-2011.

RESOLVED FURTHER THAT for the purpose of giving effect to the above resolution and for removal of any difficulties or doubts, the Board of Directors (which term shall include any committee thereof or any person/persons that the Board may have constituted/nominated or hereinafter constitute/nominate to exercise its powers including powers conferred in this Resolution) be and is hereby authorized to perform all acts, deeds, matters and things as it may in its absolute discretion deem necessary, expedient, usual or proper and to settle any question or difficulty that may arise with regard to utilization/adjustment of the Paid Up Share Capital account of the Company, including passing of such accounting entries and/or making such other documents as may be required for the confirmation of the full utilization of the Paid Up Share Capital account of the company by the Hon'ble High Court of Judicature of Madras as considered necessary to give effect to the above Resolution and to carry out such modifications/ directions as may be ordered by the High Court of Judicature of Madras or such other jurisdictional High Court/Tribunal to implement the aforesaid resolution”.

The Chairman then put the said resolution to vote by show of hands and declared that the resolution was passed unanimously.”

6. It is also relevant to refer to the Form of the Minute, which reads as follows:-

“Pursuant to Sections 100 to 104 of the Companies Act, 1956 and Rules 46 and 47 of the Companies (Court) Rules, 1959 the Paid Up Equity Share Capital Share Account of the Company as at 31st March 2012 of Rs.43,68,95,030/- (Rupees Forty Three Crores sixty eight lakhs ninety five thousand and thirty only) be reduced by Rs.40,38,27,350/- (Rupees Forty crores thirty seven lakhs twenty seven thousand and three hundred and fifty only) standing to the debt of “Profit and Loss Account” and the amount in the Paid Up Equity Share Capital be reduced to Rs.3,30,67,680/- (Rupees Three Crores thirty lakhs sixty seven thousand and six hundred and eighty only)."

7.Publication containing the advertisement of the petitioner Company was effected in one issue of English daily "Hindu Business Line", Chennai Edition, on 30.06.2014 and also in another issue of Tamil daily "Malai Murasu", Chennai Edition on 30.06.2014.

8.The Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai, has filed an affidavit, wherein, in paragraph No.5, he has pointed out a contradiction of the statement made by the petitioner Company and sought for clarification of the same. It is relevant to extract paragraph No.5 of the affidavit filed by the Regional Director, which reads as follows:-

> "5. The petitioner Company in para 12 of the petition has stated that it does not have any secured creditors. In para 16 of the petition it has stated that it has more than adequate assets including cash and bank balances to satisfy all its creditors and therefore service of notice of the petition on the creditors of the petitioner be dispensed with. Both aras are contradictory and company to clarify".

9. For the above contradiction pointed out by the Regional Director, the petitioner Company has clarified the position by filing a reply and the same is taken on file and placed on record, wherein, in paragraph No.3, it was averred as follows:-

> "3. It is submitted that in Para 5 it has been stated that there are contradictory in para 12 and 16 of the Company Petition. It is stated to make clear that the company has no secured creditors and the company has adequate cash and bank balances to meet out its creditors in the day to day running of its business.

10. The above clarification offered by the petitioner Company, by way of reply, dated 15.10.2014, is accepted and the same is hereby recorded.

11. In view of the above, this Company Petition is ordered-

(i) confirming the reduction of Paid-up Equity Share Capital Account of the petitioner Company duly approved in terms of the Special Resolution passed by the Equity Shareholders at the Extra-ordinary General Meeting thereof held on 30th March, 2012, at

Chennai;

(ii) approving the proposed Minute as Annexure-6;

(iii) not requiring the petitioner Company to add the words "and reduced" to its name as the last words thereof.

12.A certified copy of the order including the Minutes as approved be delivered to the Registrar of Companies within twenty one days and the notice of the registration order by the Registrar of Companies and of the said Minutes as approved by this Court be published in one issue of English daily "Hindu Business Line" and also in one issue of Tamil Daily "Maalai Murasu" within four weeks from the date of receipt of copy of the order.

13.The petitioner Company is hereby directed to pay a sum of Rs.5,000/- (Rupees Five Thousand only) towards fee to the learned Additional Central Government Standing Counsel.

10.02.2015

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R.MAHADEVAN,J

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