

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on: 04.02.2016

%

Judgement delivered on: 29.03.2016

+ **CO.PET. 746/2015**

IN THE MATTER OF

YAKULT DANONE INDIA PRIVATE LIMITED

..... Petitioner

Through : Mr. Peeush Sharma, Mr. Shaurya M. Tomar
and Mr. Aseem Sahni, Advocates
Mr. Aparna Mudiam, Asstt. ROC for the RD

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a petition filed under Section 78 read with Section 100 to 104 of the Companies Act, 1956 (in short the 1956 Act), to seek approval of this court for reduction of share capital. The petitioner company seeks to wipe off accumulated losses amounting to Rs. 110,00,00,000 against the total accumulated loss of Rs, 110,79,46,224/- by setting of the same against share capital account and securities premium account.

2. This petition has, thus, been filed in the background of the following facts:

2.1 The petitioner company was incorporated on 26.10.2005. It appears that in the financial year ending on 31.03.2011, the petitioner company had undertaken a similar exercise on account of having incurred losses to the tune of Rs. 101,10,52,216/-. On account of these losses the petitioner company approached this court for a similar relief. At that point in time, the petitioner company had sought approval of this court to wipe out (the aforementioned) accumulated losses by reducing its share capital by Rs. 10

crores and bringing about reduction in its securities premium account to the extent of Rs. 90 crores.

2.2 By an order dated 20.03.2012, passed in CP No. 480/2011, this court permitted reduction in the paid-up share capital by Rs. 10 crores. Resultantly, the paid up share capital stood reduced from Rs. 20.40 crores to Rs. 10.40 crores. The court further approved the reduction in the securities premium account by Rs. 90,00,00,000/-. Consequently, the securities premium account was reduced from Rs. 183.60 crores to Rs. 93.60 crores.

2.3 Evidently, the petitioner company thereafter increased its authorized share capital on 15.11.2013 by Rs. 6 crores. Consequent thereto, the authorized share capital stood enhanced from Rs. 20.40 crores to Rs. 26.40 crores.

2.4 It is averred that the petitioner company, on 28.03.2014, increased the paid-up share capital by Rs. 16 crores. As a result of this enhancement in the paid-up share capital, it stood increased from Rs. 10.40 crores to Rs. 26.40 crores. This increase in the paid-up share capital was brought about by the petitioner company by issuing and allotting 1600 shares to its promoters (i.e. the existing members). As a result thereof, as on 31.03.2015, the position with regard to authorized, issued, subscribed and paid-up capital of the petitioner company was as follows:

<u>Authorized Share Capital</u> 2640 Equity Shares of Rs. 1,00,000/- each	Rs. 26,40,00,000/-
<u>Issued, Subscribed and paid-up share Capital</u> 2640 Equity Shares of Rs. 1,00,000/- each	Rs. 26,40,00,000/-

2.5 The petitioner company avers that in addition to the aforesaid, it has a balance sum equivalent to Rs. 2,37,60,00,000/- in its securities premium account, as on 31.03.2015.

3. It is because the petitioner company has accumulated losses to the extent of Rs. 110,79,46,224/-, as on 31.03.2015, (which, it has shown as 'net deficit' in its profit and loss account, for the financial year 2014-2015) that, it seeks to move this petition for cancellation of its share capital and securities premium account.

3.1 The decision with regard to a reduction in the share capital account and the securities premium account was taken at the Board of Directors (BOD) meeting held on 12.06.2015. A resolution to the same effect was passed on the said date.

3.2 As a result of the aforesaid decision taken by the BOD, on 15.06.2015, notices were sent, along with explanatory statements, to the shareholders informing them about the decision to convene an Annual General Meeting (AGM) on 17.07.2015, inter alia, for the said purpose.

3.3 The matter pertaining to reduction in share capital and securities premium account was thus, put to the shareholders at the said AGM, which was convened on 17.07.2015. At the said meeting, the shareholders gave their approval and passed the following resolution:

“..... RESOLVED THAT pursuant to Section 78, Section 100 to Section 104 and other applicable provisions of the Companies Act, 1956, if any, (*including any statutory modification or re-enactment thereof for the time being in force*) read with relevant clauses of the Articles of Association of the Company, and subject to the confirmation of the Hon'ble High Court of Delhi and further subject to such other regulatory approvals, permissions and sanctions of any other Government Department, Body or Institution, as may be

required, the approval of the shareholders of the Company be and is hereby accorded and given to the reduction of the Issued, Subscribed and Paid-up Share Capital AND Securities Premium Account of the Company collectively by Rs. 110,00,00,000/- (Rupees One Hundred and Ten Crore Only) and that such reduction be effected by cancelling the equity Share Capital of Rs. 11,00,00,000/- (Rupees Eleven Crore Only) divided into 1,100 shares of Rs. 1,00,000/- (Rupees One Lac only) each thereby Reducing the Paid-up Share Capital from Rs. 26,40,00,000/- to Rs. 15,40,00,000/- and Reduction in the Securities Premium by Rs. 99,00,00,000/- (Rupees Ninety Nine Crore Only) thereby reducing the Securities Premium from Rs. 2,37,60,00,000/- to Rs. 1,38,60,00,000/- for writing off debit balance in the Profit and Loss Account of the Company amounting to Rs. 1,10,79,46,224/-, representing "Accumulated Losses" , as appearing in the books of accounts of the Company as on 31 st March 2015, thereby reducing the debit balance to Rs. 79,46,224/-.....”

3.4 Pursuant thereto, the petitioner company filed MGT-14 with the Registrar of Companies, NCT of Delhi (in short the ROC), qua the said resolution passed at the AGM of the shareholders.

4. It is the petitioner company's case that its prayer for being permitted to set off debit balance in the profit and loss account i.e. accumulated losses, as on 31.03.2015, against paid-up share capital and securities premium account, is a mere book entry and does not involve any financial outflow. It is thus, averred by the petitioner company, that reduction in paid-up share capital will not cause any prejudice to its creditors.

4.1 It is averred that reduction in capital does not involve either diminishing in respect of unpaid capital or, payment to any shareholder of any paid-up capital.

4.2 It is further averred that the reduction would not adversely affect either its operation or its ability to pay debts in the usual and ordinary course of business.

4.3 The petitioner company has emphasized on the fact, based on its audited accounts for the financial year 2014-2015, that as on 31.03.2015, it has total assets amounting to Rs. 164,56,15,511/- as against total liabilities of Rs. 11,35,61,735/-. In other words, it has net assets worth Rs. 153,20,53,776/-.

4.4 The petitioner company has enclosed a certificate of the Chartered Accountant (CA), namely, M J R A & Associates, dated 21.09.2015 to demonstrate that it has no secured creditors in its books, as on 20.08.2015, and that, in so far as unsecured creditors are concerned, the petitioner company owes to them a sum equivalent to Rs. 2,87,26,037/-, as on 20.08.2015. The list of unsecured creditors appears to have been scrutinized by the CA, who has issued the certificate dated 21.09.2015. The certificate issued by the said CA shows that the aforementioned figure pertaining to unsecured creditors includes, unsecured loans, trade creditors, sundry creditors and other current liabilities owed by the petitioner company.

4.5 The petitioner company appears to have obtained consents of two unsecured creditors which represent 80% (in value) of the total number of unsecured creditors. These being: GroupM Media India Private Ltd. and Frigoglass (India) Pvt. Ltd. The consent letter issued by the GroupM Media India Private Ltd. is dated 07.09.2015, while the one issued by Frigoglass (India) Pvt. Ltd. is dated 10.09.2015.

4.6 It is averred by the petitioner company that the provisions of Section 101(2) of the 1956 Act will not be triggered as there is no payment to

shareholders of any paid-up capital or diminution in respect of un-paid share capital. The proposed minutes, of which approval is sought, and whereupon registration by the ROC is sought, is set out in paragraph 25 of the petition. For the sake of convenience, the said minutes are extracted hereafter:

“..... Securities Premium Account of the Petitioner Company be reduced by Rs. 99,00,00,000/- (Rupees Ninety Nine Crores Only) i.e. from Rs. 2,37,60,00,000/- (Rupees Two Hundred Thirty Seven Crore Sixty Lacs Only) to Rs. 1,38,60,00,000/- (Rupees One Hundred Thirty Eight Crore Sixty Lacs Only)

Share Capital Account be reduced by Rs. 11,00,00,000/- (Rupees Eleven Crores Only) i.e. from Rs. 26,40,00,000/- (Rupees Twenty Six Crore Forty Lacs Only) to Rs. 15,40,00,000/- (Rupees Fifteen Lacs Forty Lacs Only)- by writing off/cancelling 1,100 shares of Rs. 1,00,000/- (Rupees One Lakh Only) each....”

5. Notice in this petition was issued on 18.11.2015. Directions were also issued to the petitioner company to carry out publication in the Statesman (English) and Veer Arjun (Hindi). Since then, the petitioner company has filed an affidavit dated 07.01.2016 demonstrating publication in the two newspapers referred to above.

5.1 To be noted, prior to the date when notice was issued in the petition, vide order dated 12.10.2015, this court had directed the petitioner company to file an affidavit stating therein the relevant particulars with regard to its unsecured debts and the consents received in that behalf. The petitioner company has filed an affidavit in that behalf.

6. Upon notice, the Regional Director (RD) has filed his reply, which is based on the report of the ROC dated 27.01.2016. The RD in its reply has largely touched upon the aspects which are already contained in the petition, including the fact that the petitioner company, in paragraph 8 of its reply

dated 14.01.2016, which was sent in response to RD's notice dated 13.01.2016, has indicated that 100% of its equity is by way of foreign investment; the details of which are as follows:

SI. No	Name & Address of the Shareholder	Country	Percentage (%) of Shareholding	No. of Equity Shares
1.	YAKULT HONSHA CO. LTD. Address: 1-19, Higashi- Shinbashi, 1-Chome, Minato-Ku, Tokyo-1 05-8660	JAPAN	50%	1,320
2.	DANONE PROBIOTICS PTE. LTD. Address: #50, Raffles Place, #32-01, Singapore Land Tower, Singapore- 048623	SINGAPORE	50%	1,320
	Total Shareholding		100%	2,640

6.1 That apart, the RD has not raised any objection qua the core issue, which is, the reduction in capital. Pertinently, there is no dispute about the fact that the petitioner company is conferred with the necessary power to seek reduction of its share capital and share premium account under Article 43 of its Articles of Association.

7. Having regard to what has been stated in the pleadings filed before me, and the submissions advanced on behalf of the petitioner company and the RD, which are, broadly, in line with the pleadings, I am inclined to grant the prayers made in the petition.

7.1 The procedure under Section 101(2) of the 1956 Act is dispensed with as the petitioner company, as indicated above, has no secured creditors. In so far as the unsecured creditors are concerned, 80% (in value) have given their consents. The same have been examined and found in order. The list of unsecured creditors is certified by the CA. Furthermore, the procedure prescribed in Section 101(2) of the 1956 Act is unnecessary in this case as reduction in share capital does not involve diminution of unpaid share capital or, payment to any shareholder of any paid-up capital.

7.2 This apart, the reduction in capital is not likely to affect interests of any creditor as it is a mere book entry whereby accumulated losses, to the extent of Rs. 110,00,00,000/- (against a total amount of Rs. 110,79,46,224/-), are to be set off against reduction in paid-up share capital equivalent to Rs. 11 crores by cancelling equity share capital equivalent to the said amount (which is, divided into 1100 shares of a face value of Rs. 1 lac each), thereby, reducing the paid-up capital from its present figure of Rs. 26.40 crores to Rs. 15.40 crores and, by bringing about reduction in securities premium account by Rs. 99 crores, which would result in, scaling down securities premium account from Rs. 237.60 crores to Rs. 138.60 crores. The net effect would be that the accumulated losses, which as on 31.03.2015, stood at Rs. 110,79,46,224/-, will stand reduced to Rs. 79,46,224/-.

8. In view of the above, I confirm the reduction in the paid-up share capital and securities premium account, as indicated above, which is reflected in the special resolution passed at the AGM of the shareholders of the petitioner company dated 17.07.2015.

8.1 Consequently, I also approve the format of minutes drawn up under Section 103(1) of the 1956 Act as setout in paragraph 25 of the petition, the extract of which is set forth in paragraph 4.6 above.

8.2 Having regard to the overall circumstances, the petitioner company's prayer for dispensing with the requirement of adding words "AND REDUCED", while describing its capital structure, is also allowed.

9. The petition is, accordingly, disposed of in the aforesaid terms.

MARCH 29, 2016

kk

RAJIV SHAKDHER, J

