

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH – II, CHENNAI**

IA(CA)/39(CHE)2023

in

CP/88(CHE)/2022

(filed under Rule 11 of NCLT Rules 2016)

In the matter of TENNECO CLEAN AIR INDIA PRIVATE LIMITED

TENNECO CLEAN AIR INDIA PRIVATE LIMITED,

Registered Office:

RNS2, Nissan Supplier Park,
SIPCOT Industrial Park Oragadam Industrial Corridor,
Sriperumbudur Taluk, Kancheepuram,
Tamil Nadu-602 105.

... Applicant Company

Order Pronounced on 23rd November, 2023

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

*For Applicant : Mr.Arvinth Pandia, Sr. Advocate
Mr.Pawan Jhabakh, Advocate*

For RoC : Mr.Avinash Krishnan Ravi, Advocate

ORDER

(Hearing conducted through VC)

This Application has been filed under Rule 11 of NCLT Rules, 2016 by **TENNECO CLEAN AIR INDIA PRIVATE LIMITED** ('The Company') seeking following reliefs,

"Permit the Applicant Company to utilize the Reduced Amounts of INR 1,19,18,07,492, in the following manner:

- a. INR 34,21,68,743 to be adjusted against the Negative Capital Reserves of the Applicant Company;
and*

b. INR 84,96,38,749 to be returned to the Shareholders of the Applicant Company."


2. It is stated that the Application bearing No.CP/88(CHE)/2022 filed under Section 66 of the Companies Act, 2013 for reduction of share capital of the Company viz., **TENNECO CLEAN AIR INDIA PRIVATE LIMITED** was approved by this Tribunal vide order dated 01.02.2023.

3. It is stated that the Issued, Subscribed and Paid-up Equity Share Capital of the Company shall be reduced from INR 3,13,40,61,200/- being 31,34,06,120 equity shares of INR 10/- each fully paid up to INR 2,14,08,88,290/- being 21,40,88,829 equity shares of INR 10/- each fully paid up.

4. It is stated that 9,93,17,291 shares of INR 10/- each have been reduced at a premium of INR 2/- per share (i.e.) INR 12/- per share would have a total outlay of INR 1,19,18,07,492/- which will be the "**Total Returnable Amount**" or "**Reduced Amount**".

5. It is stated that an amount of INR 70,43,07,492/- out of the Total Returnable Amount would be adjusted against the negative capital reserves of the Company which stands at an amount of INR 70,43,07,492 in the books of the Company as on 31 March 2022.

The balance amount of INR 48,75,00,000/- out of the Total Returnable Amount would be returned to the shareholders of the Company by way of cash.



6. It is stated that the Board of Directors and the Shareholders of the company have approved the proposed reduction on 07.06.2022 and 08.06.2022 respectively.

7. It is stated that negative capital reserves of the Company as per provisional financial statements of the Company as on 31.03.2022 is INR 70,43,07,492/- whereas in the audited books of the Company as on 31.03.2022 the negative capital reserves of the Company stands at 34,21,68,743/-. Therefore, the reduced amount which was proposed to be adjusted against the Negative Capital Reserves has been changed from the amounts mentioned in the resolutions passed by the Directors and Shareholders and in order 01.02.2023 passed by this Tribunal in CP/88(CHE)/2022. The utilization of the Reduced Amount as mentioned in CP/88(CHE)/2022 and as proposed in the present Petition is tabulated as under:

Reduced Amount	Utilization in CP/88(CHE)/2022	Utilization Proposed
INR 1,19,18,07,492	INR 70,43,07,492 towards Negative Capital Reserves	INR 34,21,68,743 towards Negative Capital Reserves
	INR 48,75,00,000 returned to the Shareholders	INR 84,96,38,749 returned to the Shareholders

8. It is stated that the Board of Directors and the Shareholders of the Company have unanimously approved the above change in the proposal. It is stated that the proposed utilization is the true reflection of the financial position of the Company. Further, the

Applicant confirms that the Shares reduced by the Applicant Company are not in any manner altered or changed in the present Petition.

9. Heard the submissions and perused documents on record. In the order dated 01.02.2023 in CP/88(CHE)/2022, this Tribunal recorded the submissions of the Petitioner therein as under,

"7. It was further submitted that the reduced 9,93,17,291 shares of Rs.10/- each shall be reduced at a premium of Rs.2/- per share (i.e) Rs.12/- per share having a total returnable amount of Rs.1,19,18,07,492/-, wherein, an amount of Rs.70,43,07,492/- out of the total returnable amount would be adjusted against the negative capital reserves of the company which stands at Rs.70,43,07,492/-in the books of the Company as on 31.03.2022. The balance amount of Rs.48,75,00,000/- out of the Total Returnable Amount would be returned to the shareholders of the Company by way of cash. Further, the premium amounting to Rs. 19,86,34,582/- shall be adjusted with the capital reserves of the company and the premium amounting to INR 19,86,34,582 (being 9,93,17,291 shares @ INR 2 each) shall be with the capital reserves account of the Company."

10. In the Provisional Financial Statement as on 31.03.2022, the capital reserves are recorded as under,

B) Other equity

Particulars	Reserves and Surplus			Total Equity
	Capital Reserve	Retained Earnings	Stock Compensation	
Balance as at 1st April 2020	-	(1)	-	(1)
Profit for the year	-	743	-	743
Reserve on demerger (refer note 3B)	(49,852)	-	-	(49,852)
Other comprehensive income	-	(24)	-	(24)
Total comprehensive income for the period	(49,852)	718	-	(49,134)
Employee stock option expenses	-	-	149	149
Balance as at 31 March 2021	(49,852)	718	149	(48,984)
Balance as at 1st April 2021	(49,852)	718	149	(48,984)
Profit for the year	-	10,171	-	10,171
Other comprehensive income (net of taxes)	-	-	-	-
Total comprehensive income for the year	(7,043)	10,889	149	3,996
Employee stock option expenses	-	-	-	-
Balance as at 31 March 2022	(7,043)	10,889	149	3,996

This is the Statement of changes in equity referred to in our report of even date.





11. In the Audited Financial Statement as on 31.03.2022 the capital reserves are recorded as under,


Particulars	Reserves and Surplus			Total Equity
	Capital Reserve	Retained Earnings	Stock Compensation	
Balance as at 1st April 2020	(49,852)	1,971	78	(47,802)
Profit for the year	-	743	-	743
Other comprehensive income	-	(24)	-	(24)
Total comprehensive income for the period	(49,852)	2,689	78	(47,084)
Employee stock option expenses	-	-	71	71
Balance as at 31 March 2021	(49,852)	2,689	149	(47,013)
Balance as at 1st April 2021	(49,852)	2,689	149	(47,013)
Adjustment related to capital reduction (refer note 49)	46,430	-	-	46,430
Profit for the year	-	9,627	-	9,627
Other comprehensive income (net of taxes)	-	23	-	23
Total comprehensive income for the year	(3,422)	12,340	149	9,067
Employee stock option expenses	-	-	69	69
Balance as at 31 March 2022	(3,422)	12,340	218	9,136

This is the Statement of changes in equity referred to in our report of even date.

For Walker Chandok & Co LLP
Chartered Accountants
Firm Registration No. 001076N/N500013
Ankit Mahra
Partner
Membership No.: 507429



For and on behalf of the Board of Directors
Tenneco Clean Air India Private Limited


Digambar Jagannath Parkhi
Director
DIN: 038858988


Rishi Verma
Managing Director
DIN: 08943606


Nadella Phani Kishor Rao
Finance Director
DIN: 08971799



Comparing the above, it is noticed that in the Audited Financial Statement as on 31.03.2022, the negative capital reserves revised to Rs.3,422 lakh from Rs.7,043 lakh as recorded in Provisional Financial Statement as on 31.03.2022.

12. The Board Resolution dated 08.03.2023 passed by the Applicant Company has resolved to approve the above revision in the reserves. Extract of the same is reproduced below,

RESOLVED THAT in view of the aforesaid facts, the consent of the Board is hereby accorded to file an Application before the NCLT explaining the above facts to utilize the Reduced Amounts in the following manner:

Particulars	Amount
No. of Equity Shares proposed to be reduced i.e., the same as have been duly approved by the NCLT vide order dated 1 February 2023 [A]	9,93,17,291
Amount per share to be paid (i.e., INR 10 each share proposed to be reduced with premium of INR 2 each share) [B]	12
Total Returnable Amount [A x B]	119,18,07,492
Amount to be set off against negative Capital Reserve (i.e., the amount available in the negative Capital Reserve in the books of accounts of the Company)	34,21,68,743
Amount to be paid in Cash	84,96,38,749

13. Further, in the Special Resolution passed in the EGM held on 09.03.2023, the members of the Applicant Company also accorded their consent regarding the proposed change in the negative capital reserves. The extract of the same is as under,

RESOLVED THAT in view of the aforesaid facts, the consent of the members is hereby accorded to file an Application before the NCLT explaining the above facts and to utilize the Reduced Amounts in the following manner:

Particulars	Amount
No. of Equity Shares proposed to be reduced i.e., the same as have been duly approved by the NCLT vide order dated 1 February 2023 [A]	9,93,17,291
Amount per share to be paid (i.e., INR 10 each share proposed to be reduced with premium of INR 2 each share) [B]	12
Total Returnable Amount [A x B]	119,18,07,492
Amount to be set off against negative Capital Reserve (i.e., the amount available in the negative Capital Reserve in the books of accounts of the Company)	34,21,68,743
Amount to be paid in Cash	84,96,38,749

14. It is seen that in the affidavit filed by Mr.Nadella Phani Kishor, Authorized Signatory of the Applicant Company, reconciliation of the negative capital reserves of the Applicant Company as per unaudited and audited financial statement as on 31.03.2022 have been submitted and the same is extracted hereunder,

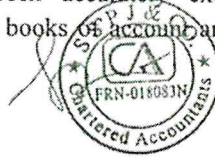
Particulars	Amount (INR)	Remarks
Capital Reserve as per unaudited financials as 31 March 2022	(704,307,492)	<i>The Applicant Company was demerged from Tenneco Automotive India Private Limited ('TAIPL') by approval dated April 28, 2019, on the Demerger Scheme obtained from Hon'ble Tribunal. Pursuant to the Demerger Scheme, any deficit in the asset and liabilities transferred to the Applicant Company vs the shared issued to the shareholders shall form a Capital Reserve for the Applicant Company.</i>
Add/Less		
Local Adjustment - Other reserves	23,111,771	<i>These entries were passed on the suggestion of the statutory auditors on account of reconciliation of assets and liabilities acquired during the course of demerger.</i>
Local Adjustment - Other reserves	276,426,589	
Local Adjustment - Other reserves (Leave Encashment)	(30,913,848)	<i>Reversal of Leave Encashment entry inadvertently routed through the Capital Reserve account.</i>

Particulars		Amount (INR)	Remarks
	Local Adjustment - Other reserves (Provision for Gratuity)	(26,307,660)	In the draft financial statements, entries for gratuity and deferred tax were grouped in Capital Reserve Account instead of provision and deferred tax account. Accordingly, during the course of audit, the amount of INR 26,307,660 and INR 4,985,134 were regrouped in provision for gratuity and deferred tax account respectively.
	Local Adjustment - Other reserves/ (Deferred Tax)	(4,985,134)	
	Local Adjustment - Other reserves	469,588	Amount written-off on account of difference in capital reserve movement.
	Local Adjustment - Other reserves (Gratuity Reserves)	45,360,456	As per the draft financial statements, certain entries pertaining to Gratuity Reserves were inadvertently recorded as part of Capital Reserves following principles laid down under US GAAP instead of ICAAP. During the course of the audit, such entries were identified and reclassified appropriately as per Indian accounting standards/ principles.
	Local Adjustment Retained earnings during affil. current year	33,154,888	This entry was passed on the suggestion of the statutory auditors to correctly reflect the adjustment to be made to capital reserve on account acquisition of certain assets in the earlier years and other entries which were inadvertently passed in the books for earlier years.
	Def. Reserve Pensions FASB#87	45,862,098	The said amount was grouped under long term provisions at the time of preparation of the draft financial statements. However, during the course of audit, the same was reclassified to capital reserve account.
Capital Reserve as per audited financials as 31 March 2022		(342,128,743)	

15. In the course of hearing on 26.07.2023, this Tribunal had directed the Applicant Company to file an affidavit along with Net Worth Certificate issued by the Chartered Accountants on the basis of unaudited financial statement as on 31.03.2023 and to file the list of secured and unsecured creditors. Complying the same, Chartered Accountant Certificate as on 31.03.2023 was filed vide Memo bearing SR.No.3245 dated 01.08.2023 wherein annexing the list of creditors the Chartered Accountant observing as follows,

Conclusion

9. Based on our examination, as above, evidences obtained, and the information and explanations along with the representations provided by the Management, nothing has come to our attention that cause us to believe that the details that from part of the Statement have not been accurately extracted from the unaudited financial information, underlying books of account and other relevant records maintained by



3

the company under the Act for the period from 01st April 2022 to 31st March 2023, prepared and certified by the management, which have not been subjected to review.

16. Moreover, this tribunal vide order dated 02.08.2023 appointed Shri.N.K.Bansali, Practising Company Secretary as a scrutinizer to report the objections, if any, received from any creditors of the Applicant Company. In turn, the Scrutinizer filed his report vide SR.No.3792 dated 05.09.2023. In para 5 of the report, reported that out of 626 creditors the company has received communications from 13 creditors providing their confirmation / no objection to the capital reduction by the Company. A communication was received from one of the unsecured creditor who had been paid by the company on 31/08/2023. Other than this the company has not received any objection / communication from any other creditor/s as of 01/09/2023.

17. Analysing all the above, this Tribunal finds that the Board of Directors though board resolution and the members of the Company in their special resolution accorded their consent on the changes in the reserves. The changes proposed are as per the Audited Financial Statement as on 31.03.2022. There is no significant objection from either the secured or unsecured creditors of the Applicant Company. The

numbers of shares reduced are not altered in the present petition. The RoC has no significant objection in this Application.

18. In view of the above, this Tribunal finds it just and necessary to allow this application. Accordingly, the Applicant Company is permitted to utilize the reduced amount of INR 1,19,18,07,492/- in the following manner,

- a. INR 34,21,68,743/- to be adjusted against the Negative Capital Reserves of the Applicant Company; and
- b. INR 84,96,38,749/- to be returned to the Shareholders of the Applicant Company.

19. In aforesaid terms, this Application IA(CA)/39(CHE)/2023 is **allowed** and **disposed of**.

- sd -

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

- sd -

SANJIV JAIN
MEMBER (JUDICIAL)

Gopishankar. D

*Order pronounced under Rule 151 of NCLT Rules 2016, by **Hon'ble Technical Member Ravichandran Ramasamy** on behalf of the Bench Comprising of **Sanjiv Jain, Member (Judicial)** and **Ravichandran Ramasamy, Member (Technical)**.*

Biswanup Acharya
Court Officer

ra