

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

*(through web-based video conferencing platform)*

CP No. 136/BB/2020

Under Section 66 of Companies Act, 2013

**In the matter of:**

**M/S OVOBEL FOODS LIMITED**

Having its registered office at  
Ground Floor,  
No.46, Old No.32/1, 3<sup>rd</sup> Cross,  
Aga Abbas Ali Road, Ulsoor,  
Bangalore  
Karnataka - 560 042

---Petitioner Company

And

**The Registrar of Companies, Karnataka**

'E' Wing, 2<sup>nd</sup> Floor,  
KendriyaSadan,  
Koramangala,  
Bengaluru - 560 034.

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Respondent

**Order delivered on: 08.03.2022**

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER(JUDICIAL)  
HON'BLE MR.MANOJ KUMAR DUBEY, MEMBER (TECHNICAL)**

**Present through Video Conferencing:-**

For the Applicant Company : Shri RafeeullaShariff (PCS)  
For RoC& RD :Shri.Hemanth R Rao

**ORDER**

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

- Under consideration is an Application under Section 66 of the Companies Act, 2013 and NCLT (Procedure for Reduction of Share Capital of Company), Rules, 2016, for confirming the reduction of share capital.



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2. The Petitioner Company was incorporated under the provisions of the erstwhile Companies Act, 1956 as a Company Limited by Shares on 11.01.1993. The company Corporate Identity Number (CIN) is CIN: L85110KA1993PLC013875. The registered office of the company is situated at Ground Floor, No.46, Old No.32/1, 3<sup>rd</sup> Cross, Aga Abbas Ali Road, Ulsoor, Bangalore - 560 042 which is in the state of Karnataka. Therefore, the matter lies within the territorial jurisdiction of this Tribunal.
3. The Memorandum and Articles of Association is filed as Annexure-VII & VIII of the petition. The main objects of the Petitioner Company are as under:-

*"i. To manufacture, produce, buy, sell, import, export, prepare for market and trade in, deal in and with all kinds of foods and in particular white egg powder, yolk powder, whole farinaceous foods, breads, fish, fish products and sea-food, all kinds of meat, vegetables, root or fruits and any preparation whatsoever, pasta products, cereal products, texturised snacks.*

*ii. To prepare, manufacture, process, improve, buy, sell, import, export, trade in and deal in and with poultry and stock of any description, milk, cream, butter, cheese, egg bacon, pork pie, sausage, potted and preserved meats, delicatessen, protein and health foods and processed foods of any kinds.*

*iii. To set-up and run mixed farms, dairy farm, poultry farm, sheepfarm, fish farm, prawn farms, young stock farm, piggeries, carcass utilisation plant, seed processors, artificial insemination centers and services.*

*iv. To develop, buy, sell, import, export, prepare design know-how technology, expertise, by whatsoever nomenclature referred to as that area required. To manufacture produce, buy, sell, import, export, prepare for market and Trade in, deal in and with all kinds of foods and in particular white egg powder, yolk powder, whole farinaceous foods, ice creams, cakes, breads, fish, fish products and sea-food, all kinds of meat, vegetables, root or fruits and any preparation whatsoever, pasta products, cereal products, texturised snacks."*

*v. To develop, buy, sell, import, export know-how technology, expertise, for the purpose of building suer systems, electrical layout, ice water, pipe lines, steam distribution, compressed air line for the purpose of manufacture, production or development*



market and Trade in, deal in and with all kinds of foods and in particular white egg powder, yolk powder, whole farinaceous foods, breads, fish, fish products and sea-food, all kinds of meat, vegetables, root or fruits and any preparation whatsoever, pasta products, cereal products, texturised snacks and also to construct, build, equip or maintain cold storage chambers, godowns, warehouses, refrigerators, freezing houses, room coolers for storing all kinds of foods and in particular white egg powder, yolk powder, whole farinaceous foods, breads, fish, fish products and sea-food, all kinds of meat, vegetables, root or fruits and any preparation whatsoever, pasta products, cereal products, texturised snacks and edible seeds of oils”.

4. The authorised capital of the company is Rs.11,00,00,000/- (Rupees Eleven Crores only) divided into 1,10,00,000 equity shares of Rs.10 (Rupees Ten only) each, of which 1,05,08,000 equity shares have been issued and have been fully paid-up.
5. Article 5(e) of the Articles of Association of the Company, it is provided that the company may by special resolution, reduce its Capital in any manner and with, and subject to, any incident authorised and consent required by law.

*“The Company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by law,-*

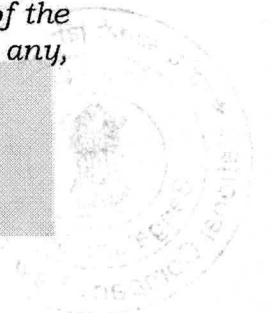
- (a) Its share capital;
- (b) Any capital redemption reserve account ;or
- (c) Any share premium account”

6. The applicant Company has filed the C.P seeking to consider and approve the Scheme of reduction of paid up capital from INR 10,50,08,000/- (Ten Crore Fifty Lakhs Eight Thousand) divided into 1,05,00,800 Equity shares of INR 10/- to INR 9,50,08,000/- (Nine Crore Fifty Lakhs Eight Thousand) divided into 95,00,800 Equity Shares of INR 10/- each.
7. It is averred that the applicant company in accordance with section 66 of the Companies Act, 2013, on the 21<sup>st</sup> day of August 2020 passed a resolution through postal ballot, after due notice as provided in the Act and it was resolved as under:-

**“RESOLVED THAT** pursuant to the provisions of Section 66 of the Companies Act, 2013 and other applicable provisions, if any,



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(including any statutory modification(s) or re-enactment thereof for the time being in force), of the Companies Act, 2013 and the rules made thereunder and the Articles of the Association of the company, subject to the approval of Stock Exchanges where the shares of the company are listed and subject to the confirmation of the Hon'ble National Company Law Tribunal (NCLT) and such other approvals as may be required and subject to the terms and conditions and modifications, if any, as may be prescribed by the NCLT and any other appropriate authority while granting approval or confirmation, and which may be agreed to by the Board of Directors of the Company, the approval of the members be and hereby accorded for the reduction of Equity share capital of company from Rs.10,50,08,000/- divided into 1,05,00,800 Equity Shares of Rs.10/- (Rupees Ten only) each fully paid upto Rs.9,50,08,000/- divided into 95,00,800 Equity Shares of Rs.10/- (Rupees Ten only) each and that such reduction be affected by cancelling of 10,00,000/- Equity Shares of Rs.10/- each amounting to Rs.1,00,00,000/- by adjusting advances paid to KSIIDC and MFPI towards OTS accounts”

**“RESOLVED FURTHER THAT** the reduction of Company's paid-up equity share capital as indicated above is subject to following terms and conditions:

- a) After the Hon'ble National Company Law Tribunal confirms the reduction, the company shall reduce its Equity share capital by adjusting the amount outstanding against the advance paid as part of One Time Settlement (“OTS”) between the company and Karnataka State Industrial and Infrastructure Development Corporation Limited (“KSIIDC”) and Ministry of Food Processing Industry (“MFPI”)
- b) On extinguishments of the paid-up share capital as provided in (a) above, the paid-up equity share capital shall stand reduced to Rs.9,50,08,000/-

**“RESOLVED FURTHER THAT** upon such reduction of Equity Share Capital as confirmed by the Hon'ble NCLT and reduction becoming effective, the Board of Directors of the Company, be and is hereby authorised to reduce the share capital of the company adjusting the amount shown as advance paid OTS in the schedule of Loans & Advances in the Balance Sheet of Ovobel Foods Limited for the year ended 31<sup>st</sup> March, 2018”

**“RESOLVED FURTHER THAT** for the purpose of giving effect to this Resolution, the Board (including any Committee formed by them) be authorised to do all such acts, deeds, matters and things as it may, in its absolute discretion, deem necessary, expedient, usual or proper and to settle any questions or difficulties or doubts that may arise with regard to utilization/adjustment of the Equity



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Share Capital in the books of account as considered necessary to give effect to the above Resolutions or to carry out such modifications/directions as may be ordered by the Hon'ble National Company Law Tribunal and any other appropriate statutory or regulatory authority to implement the aforesaid Resolution."

**"RESOLVED FURTHER THAT** for all the purpose of giving effect to this Resolution, the Board be and is hereby authorised to do all such acts, deeds, matters and things as it may in its absolute discretion deem necessary, expedient, usual or proper or desirable and to settle any question, difficulty or doubt whatsoever may arise in this regard"

**"RESOLVED FURTHER THAT** the Board be and is hereby authorised to delegate all or any of its powers which may be so delegated by law, to any director or committee of directors of the company to give effect to aforesaid Resolutions."

8. The reasons to reduce the paid-up share capital are stated as under:-

"9. As per Section 67 of the Act, no Company Limited by Shares have power to buy its own shares unless the consequent of reduction of capital is effected under the Act and thereof the Company proposes to cancel the said 10,00,000 Equity Shares of the Company by reducing the share capital of the Company by adjusting the amount shown as advance paid against OTS in the schedule of Loans & Advances in the Balance Sheet of OFL for the year ended 31<sup>st</sup> March, 2019, subject to the approval of BSE Ltd, all the statutory authorities and confirmation from Hon'ble National Company Law Tribunal pursuant to section 66 or any other provision of the Companies Act, 2013 and the rules of National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.

10. The reduction of share capital would cause the Balance Sheet to bring in true and fair representation of the Company by the available assets of the Company and reflect the real financial position of the Company.

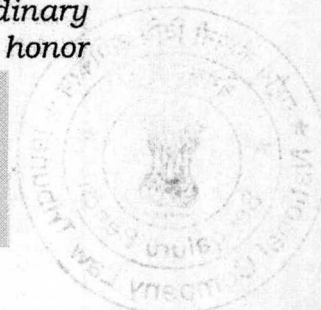
11. The financial restructuring will help the Company to reflect the true Shareholder value which would place the Company in a position to pay dividend or raise capital in future.

12. The restructuring will also not cause any prejudice to the creditors of the Company. For the sake of clarity, it is specified that the reduction in share capital does not involve any further payment to the creditor and only the book entry is required to be passed in the books of accounts of the Company. Further, the proposed adjustment would not in any way adversely affect the ordinary operations of the Company or the ability of the Company to honor

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its commitments or to pay its debts in the ordinary course of business.

13. Accordingly, the Board of Directors of the Company at their meeting held on 14<sup>th</sup> August, 2019 have considered necessary to carry out restructuring of share capital, so as to show a true and fair view of the Balance Sheet by passing the necessary entries in the books of accounts of the Company.”

9. It is also submitted that there is no qualification, reservation or adverse remark or disclaimer made by the auditor report. It is stated that no pending inspection, inquiry or investigation against the Company under the Companies Act, 2013 in relation to the Petitioner company.
10. The applicability of the Scheme of Arrangement of the pre and post reduction of capital structure of the company is as under:-

Particulars	Pre Reduction (Rs.)	Particulars	Post Reduction (Rs.)
Authorised 1,10,00,000 Equity Shares of Rs.10/- each	11,00,00,000	Authorised 1,10,00,000 Equity Shares of Rs.10/- each	11,00,00,000
Issued, subscribed and Paid up Capital 1,05,00,800 Equity Shares of Rs.10/- each	10,50,08,000	Issued, subscribed and Paid up Capital 95,00,800 Equity Shares of Rs.10/- each	9,50,08,000

The pre and post shareholding pattern of the company, upon the approval of Scheme shall be in the following manner:

Category of Equity Shareholders	Pre Reduction as on 14 <sup>th</sup> August, 2019 face value of Rs.10/- each		Post Reduction (Expected) face value of Rs.10/- each	
	No. of Shares	Percentage	No. of Shares	Percentage
Promoter and Promoter Group	54,74,800	52.14	54,74,800	57.63
Public				
Institutions	10,00,600	9.53	600	0.01
Individuals	33,75,000	32.14	33,75,000	35.52
Bodies Corporate	4,18,800	3.99	4,18,800	4.40



Non Resident Indians	2,30,400	2.19	2,30,400	2.43
Clearing Member	1,200	0.01	1,200	0.01
Total	1,05,00,800	100.00	95,00,800	100.00

11. As per the Certificate of Nara Hari & Raghavendra Chartered Accountants, the accounting treatment proposed by the Petitioner Company for the reduction of share capital is in conformity with Accounting Standards specified in Section 133 or any other applicable provisions of the Companies Act, 2013 the same is found at pages 53-55 (Annexure-IV of the petition).
12. As per the Certificate of Nara Hari & Raghavendra Chartered Accountants (Annexure-III, Pages 50-52 of the petition), Chartered Accountant, it is stated that the petitioner company is not in arrears in the repayment of deposits or the interest thereon.
13. When the matter was listed on 09.10.2020, the following order was passed:-

*"Heard Shri Rafeulla Shariff, Learned PCS for the Petitioner through Video Conference.*

*Issue notice. Registry is directed to issue notice to the Regional Director, Hyderabad, the Register of Companies, Karnataka, Creditors as per the list given in CP, Securities Exchange Board of India and Bombay Stock Exchange Limited through email and the petitioner is also permitted to take notice to the aforesaid authorities and creditors, through authorized email along with the Company Petition and material papers as well as by Speed Post and submit proof of service in the Registry well before the next date of hearing. Aforesaid authorities are directed to file the reply within three weeks with a copy endorsing to the petitioner and the Petitioner is directed to file reply affidavit to the observations of said authorities, if any, well before the next date of hearing, with a copy served on the respective authorities. The Petitioner is directed to cause paper publication in 'The Hindu' English daily and 'Udayavani' Kannada daily, and to file proof of service in the Registry well before the next date of hearing."*

14. In compliance to the above order, the petitioner company has filed memo vide Diary No.3658 dated 20.11.2020. Along with the memo, the petitioner has attached the postal receipts of notices sent to all



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the creditors, Registrar of Companies, Bengaluru and the Regional Director, Hyderabad, *Securities Exchange Board of India, Bombay Stock Exchange Limited* and the copies of the paper publications of the advertisement made for the proposed reduction in Form RSC-4. The copies of the tracking reports in respect of all the postal receipts are attached to this petition.

15. The Regional Director has filed its report along with report of Registrar of Companies, Bangalore (ROC) vide Dairy No.1949 dated 28.07.2021 as under:-

1. That the Petitioner has served copy of the Company petition along with annexure to this office 04/09/2020 for reduction of capital under Section 66 and other applicable provisions of the Companies Act,2013.
2. That the company was incorporated on 11.01.1993 and the registered office is presently situated at Ground Floor, No. 46 Old No. 32/1, 3<sup>rd</sup> Cross, Aga Abbas Ali Road Ulsoor, Bangalore-560042. The Petitioner Company has filed statutory returns including financial statement upto 2018-19 and the said forms are taken on record.
3. That the proposed petition is for reduction of paid up capital of the Company from Rs. 10,50,08,000/- comprising of 1,05,08,000/- comprising of 95,00,800/- fully paid up Equity Shares of Rs. 10/- each by reducing 10,00,000 Equity Shares of Rs.10/- each aggregating to Rs. 1,00,00,000/-.
4. That Article No. 5(e) of Articles of Association of the Petitioner Company provides for reduction of share capital of the Company.
5. The Board of Directors at their meeting held on 14.08.2019 considered and approved the reduction of paid up share capital. The Petitioner Company has not filed the Petition for reduction of capital along with e-Form GNL-1.



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6. As per the Petition, the shareholders have approved the proposal of reduction by passing resolution vide extra ordinary general meeting held on 21.08.2020. The resolution for the present capital reduction was filed by the Petitioner Company in Form No. MGT-14 vide SRN R51607430 dated 28.08.2020 and the said form was approved by this office.
7. That the petitioner company has four secured creditors. From the Petition, it is not known whether the approval was obtained from the secured creditors about proposed reduction of paid-up capital.
8. That the Petitioner Company has submitted Certificate from Chartered Accountant M. Raghavendra, partner, Nara Hari & Raghavendra dated 27/08/2020 stating that the Accounting Treatment for the company's proposal of reduction of share capital is in accordance with the standards specified in section 133 of the Companies Act-2013 read with the Rules made thereunder and other generally accepted Accounting principles. The Company being listed, need to comply relevant Ind AS for accounting in case the Petition is allowed.
9. The Company has prepared the list of unsecured creditors as on 18.08.2020. According to the list prepared, there are 59 creditors and the total amount involved is Rs. 1.57 crores. However, no NOCs' or approval has been attached to the Petition.
10. That the Petitioner Company has submitted Certificate from Chartered Accountant M. Raghavendra, Partner, Nara Hari & Raghavendra dated 27.08.2020 stating that the company is not in arrears in the repayment of deposits or the interest thereon and also not accepted deposits.
11. Copy of advertisement for Reduction of Capital as per NCLT Rules has not been attached to the application. It is not known whether Petitioner has advertised as per the requirements.

**In this connection, the following comments are offered:**



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i. In the Petition, it was stated that Petitioner had an agreement dated 31/05/1993 with KSIIDC for subscribing Equity Shares of 5 lakhs. KSIIDC had accordingly invested Rs. 50 lakhs in the Company for 5lakh Equity Shares of Rs. 10/-each. Further MFPI has also invested equivalent amount through KSIIDC as per the Tripartite Agreement dated 15/03/1995. The Company was under BIFR in the year 2001 and in the year 2003, the Company was declared as SICK Company. After repeal of SICA, the Company approached KSIIDC for OTS for the loan extended and for purchase of 10 lakh shares including overdue loan. Thereafter, KSIIDC and MFPI vide letter dated 02/02/2015 and 14/11/2014 respectively agreed for OTS including sale of Equity Shares to the Company.

The company has received back 5 lakh Equity shares on 06.02.2018 and balance 5 lakh Equity shares on 20.02.2019 as final settlement after receiving Rs.1 Crore as compensation towards sale of shares/buy back from the company. In the financial statement Rs.1 Crore has shown as 'loans and advances'. After getting approval from Tribunal, the adjustment will be made by the company against paid-up capital and loans and advances. In this connection, it is to be noted that the company has already bought back the shares and settled the amount of the Investor. This application for reduction of capital is nothing but a regularizing the action already taken. The company should have approached the Hon'ble NCLT before the shares are bought back. Hence, the petitioner company may be advised to clarify for approaching this Hon'ble Court for post-facto approval.

ii. The petitioner company is a Listed Company and has submitted the letter dated 18.03.2020 from the BSE Limited, on the proposed reduction of share capital. The company need to comply with the directions of SEBI/BSE as conveyed to the



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company and also as to whether the validity of the letter is still existing or not which is to be clarified by the petitioner company.

- iii. The special resolution passed on 21.08.2020 through postal ballot and e-voting to make adjustment in the financial statement for the year ending 31.03.2018 and filed MGT-14 on 27.08.2020. However, the proposed adjustment is for the financial year ended 31.03.2019, which needs clarification from the company.
- iv. As per the petition, the company has opted for remote e-voting through CDSL platform for the members appointed by complying with section 110 of the Companies Act, 2013 and rules made thereon and also LODR, 2015. The postal notice dated 14.07.2020 along with postal ballot form was sent to all the shareholders on 21.07.2020 and appointed PCS as scrutinizer. The result of the voting was announced on 21.08.2020. It is noticed that the company has 2067 shareholders, however only 22 members were voted through e-voting and none submitted physical ballot form. Total 21 shareholders voted in favour of the resolution and one voted against the resolution holding meagre share of 100. However, it was noticed that 6 shareholders who voted in favour of resolution are none other than promoters of the company holding around 27% shares. Karnataka state industrial and infrastructure development corporation limited holding 9.52% shares in the company did not participate in the voting process which need to be noted. Further, many of the shareholders who are holding substantial voting rights in the company also did not seen voted for the resolution or participated.
- v. Out of 2067 shareholders, only 22 members voted through e-platform voting and 1 member, having 100 shares voted



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against the Scheme. Since the petitioner company is listed company and obtaining consent of only 21 members in as much as KSIIDC which has 9.52% of shares have also not participated in the voting. Hence, the validity of the voting is questionable.

- vi. As per the latest share-holding pattern and as per listing agreement as on 30.09.2020, 29.91% is held by 6 individual promoters, hold 8.09%, Ovobel SA, Belgium is having 14.14% (total comes 52.14%), public at large is having 38.34% and KSIIDC together with MFPI holds 9.52%. Once the reduction is allowed, the promoter shareholding would be increasing from 52.14% to 57.63% and corresponding increase in shareholding of other investors. When there is no approval from a major portion of the shareholders, the above change needs to be brought to their notice since the petitioner company is a listed company.
- vii. As per Regulations 3 and 4 of SEBI (Substantial Acquisition of Shares and Take Over) Regulations, 2011, the company should have made open offer to the public or to facilitate for offer for sale by complying with section 23 & 24 of the Companies Act, 2013. The company has not opted for the same in violation of the said take over Regulations. The petitioner company may furnish detailed clarification in this regard.
- viii. As per the petition, the company will be amending Note 'Loans and Advances' and paid-up capital' in the duly approved and filed financial statement as at 31.03.2018 and 31.03.2019, the petitioner company needs to approach the Hon'ble NCLT under section 131 of the Companies Act, 2013 if the Scheme is approved.
- ix. The KSIIDC would be getting Rs. 1 Crore for surrendering 10 lakhs shares of Rs. 10 each held in this listed company as

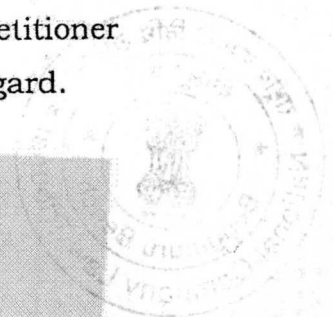


final settlement. It is noticed from the fairness opinion on valuation of equity shares of the company done by M/s Guru and Jana, Chartered Accountants as on 29.11.2019 submitted by Resurgent India dated 07.12.2019, the value arrived by the valuer based on average of 26 weeks high and low was Rs 15.41/-. However, it is noticed that the KSIIDC has agreed for settlement of Rs 10 per share value at face value and it has agreed for settlement of Rs 1 Crore already as compensation after surrendering the 10 lakhs shares to the company. It is not known how and what circumstance the investor company has agreed from Rs 10 per share where the fair value itself was Rs 15.41 as per the valuation arrived in November, 2019. As on date (22.11.2020) the market value share is Rs 46.60 at BSE, EPS is Rs 3.28 and Book value of share would be more. The company is making huge turnover and making good net profit also. Hence, considering all, the payment of Rs 10 per share arrived for buy back of share is far below the present value shares. The Hon'ble NCLT may kindly consider this aspect, being the investor company is owned and controlled by Karnataka Government. Further, the company has written back substantial provision made towards overdue interest payable to KSIIDC and Ministry of Food Processing Industries in the year 2018-19 as part of one time settlement to the tune of Rs 18.26 lakhs.

- x. It is stated in the petition that reduction of share capital of Rs.10.00 lakhs equity share would cause the balance sheet a true and fair representation of the company and reflect real financial position of the company and also reflect true shareholders value. It is not known how the proposed reduction would result into is as claimed. The petitioner company needs to explain the Hon'ble NCLT in this regard.



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- xi. Upon the Scheme is effective, according to the Scheme, the company will cancel 1 crore paid up capital comprising of Rs.10 lakh shares as if it is bought back.
  - xii. As per the Auditor's qualifications during the last 3 years, the company has not made physical verification of fixed assets and furnished reply stating that steps are being taken for rectifying the same, for which, the company needs to file compounding application under section 441 of the Companies Act, 2013.
  - xiii. The petitioner company may be advised to furnish necessary compliance under section 135 of the Companies Act, 2013
  - xiv. The company being a listed company should have gone for buy back of shares by complying with section 68 of the Companies Act,2013 read with SEBI (Buy back of securities) Regulations, 1998 and LODR, 2015 and in as much as KSIIDC is holding 9.52% which is below 10% value of the total shareholding. Instead of buy back of shares under section 68, the present application is filed.
  - xv. The proposed Scheme of arrangement for reduction of capital is an afterthought, as the one time settlement company entered into with KSIIDC and MFPI already been executed which should have been brought in the first place under the Scheme of arrangement proposing for this reduction and not after paying out the consideration to the concerned shareholder and holding physical possession of the share certificates. The petitioner company has only come before this Authority for adjusting the book entries and not for prior approval for reduction of capital. Hence, proposed Scheme does not fit within the provisions of Section 66 of the Act.
- As stated supra, the company should have gone for buy back of shares by complying section 68 of the Companies Act, 2013 and SEBI regulations or at the most the company should have



opted to facilitate the shareholder to offer for sale of shares by complying with section 23, 24 and other provisions of Companies Act, 2013.

xvi. It is apparently clear that the company has approached this Hon'ble Court through the present application without availing the opportunities available to the company like buy back of shares, take over through public announcement. After making the payment and only to make necessary adjustments in the books of accounts, came before this Hon'ble NCLT to make good the action which has already been initiated by it. Further, the petitioner company needs to explain as to how the present Scheme of reduction of capital fits under section 66 of the Companies Act, 2013.

13. No prosecutions, complaints, Technical Scrutiny and Inspection are pending with this office.

16. The Petitioner in response to the Common Report of RD &ROC has filed reply vide Diary No.3132 dated 22.11.2021 as under:-

(i) It is submitted that the Petitioner Company taken note for the observations of Point No.1, 3 and 4 in Common Report of RD & RoC. For the observation No.2 of Common Report of RD & RoC, the Company has also filed the statutory annual returns including financial statement for the financial year 2019-2020 is at Annexure B of the Reply.

(ii) With regard to observation No.5 of Common Report of RD & RoC, the company attached form GNL1 as on 17.11.2020 with vide SRN R71199848 is at Annexure C of the Reply.

(iii) For the observation No.6 of Common Report of RD &RoC, the company enclosed the certified true copy of the resolution dated 21.08.2020 passed through postal ballot is at Annexure D of the Reply,



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- (iv) Regarding observation No. 7 of Common Report of RD &RoC, the company had Bank of Baroda, Vijaya Bank and Andhra Bank as secured creditors at the time of filing the application, since Bank of Baroda and Vijaya Bank are same pursuant to the merger between the banks, the company has sent notice and copy of the petition as instructed under NCLT Order dated 09.10.2020 and pursuant to rule3(1)(iii) of NCLT (Procedure for Reduction of Share Capital of Company) Rules, 2016 to Bank of Baroda, Bangalore, the postal acknowledgement for sending the same is enclosed herewith as Annexure E of the reply. Further the company states that the credit facility obtained from Andhra Bank has already been cleared by the company. Accordingly, the company has sent the notice and copy of the petition to the active creditors who were active at the time of filing the application along with postal acknowledgement
- (v) In compliance to the observation No.8 of Common Report of RD & RoC, the company has filed the Accounting Treatment is at Annexure G of the reply.
- (vi) For observation No.9 of Common Report of RD & RoC, the company has sent notice about the proposed reduction of share capital to all the 59 creditors and the acknowledgement for sending the notice to the creditors is annexed as Annexure F of the reply.
- (vii) For the observation No.10 of Common Report of RD &RoC, the company submitted that the company is not in arrears for the repayment of deposit or the interest thereon and also has not accepted the deposits.
- (viii) For the observation No.11 of Common Report of RD &RoC, the copies of advertisements published in both 'The Hindu' English





daily and 'Udayavani' Kannada daily is annexed as Annexure H of the reply.

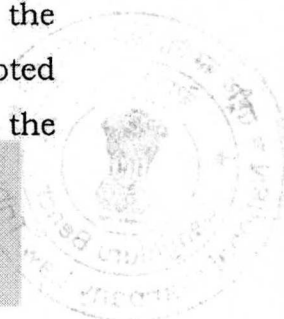
- (ix) For the observation No.12(i), (ii) & (ix) of Common Report of RD & RoC, the company as enclosed the BSE observation letter dated 18.03.2020 regarding the draft scheme of capital reduction of Ovobel Foods Limited and its shareholders and creditors is annexed as Annexure I of the reply.

The petitioner company in reply to the observation No.12(iii) of Common Report of RD & RoC, submits that the company is maintaining the same entries for such share capital and advance paid OTS in schedule of loans and advances for which the adjustments being proposed. Accordingly, the figures shown in the financial statements for both the financial year ended 31<sup>st</sup> March, 2018 and 31<sup>st</sup> March, 2019 are one and the same with respect to the amounts shown for the loan and share capital.

Further submits that the observation No. 12(iv), (v)& (vi) of Common Report of RD & RoC, the company has passed the special resolution through postal ballot dated 14<sup>th</sup> July 2020 which is circulated on 21<sup>st</sup> July 2020. Since the meeting was conducted in the period of Covid-19 the company has sent notice through email to all its members who have registered their email address with company or depository/depositoryparticipants and communication of assent/dissent of the members will be taken place only through the remote e-voting system. Accordingly, e-voting was taken place and out of 2067 shareholders, 22 shareholders voted in favour of the proposed resolution and only 1 shareholder voted against, which forms the 'requisite majority' as per the provisions of the Companies Act, 2013 and it is to be noted that the company has sent proper notice along with the



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relevant supporting documents, and not only the promoters shareholding will get increased due to such reduction, even the holding of all the shareholder will get increased.

For the observations made in No.12(vii) of Common Report of RD & RoC, the company submits that the provisions of SEBI (Substantial Acquisition of Shares and Take Over) Regulations, 2011 would be applicable if any acquirer is acquiring more than 25% or more of voting rights however the company is proposed to reduce the share capital of the company as per section 66 of the Companies Act, 2013.

Based on the above, SEBI (Substantial Acquisition of Shares and Take Over) Regulations, 2011 and section 23 and 24 of Companies Act, 2013 would not be applicable for the proposed Scheme of reduction of share capital.

It is also noted that the company was not required to make open offer as required under SEBI (SAST), Regulations, 2011 or to facilitate for offer for sale by complying with section 23 & 24 of the Companies Act, 2013, since all the transaction made between the company and KSIIDC was as per the directions received from BIFR for one time settlement to clear the dues of KSIIDC and MFPL. The shares transferred by KSIIDC to the company was by virtue of directions of BIFR and this was not the private arrangement and after the approval of NCLT related to the proposed Scheme the company will cancel such shares. With furtherance to above, SEBI (Substantial Acquisition of Shares and Take Over) Regulations, 2011, is effective from 23.10.2011, however the shares are allotted as per the above-mentioned transactions are prior to such effective date.

Further the company have obtained clearance from BSE for the proposed Scheme via observation letter dated 18.03.2020 and



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the same instructed to submit application to NCLT under section 66 of the Companies Act, 2013. The copy of the observation letter is enclosed herewith as Annexure – I of the reply. Accordingly, the company made application to reduce such share capital.

For the observations made in No.12 (viii) of Common Report of RD & RoC, the company submits that it is to be noted, all such adjustments shall be made in the year in which the Scheme is approved itself, so the company is not required to approach for voluntary revision in the financial statements as per section 131 of the Companies Act, 2013 and the transactions were entered and agreed between the parties accordingly the Scheme has been proposed.

For the observation No.12(x) of Common Report of RD & RoC, the company has attached the copy of the Scheme of reduction of share capital in Annexure J of the reply is as under:-

Particulars	Pre Reduction (Rs.)	Particulars	Post Reduction (Rs.)
Authorised 1,10,00,000 Equity Shares of Rs.10/- each	11,00,00,000	Authorised 1,10,00,000 Equity Shares of Rs.10/- each	11,00,00,000
Issued, subscribed and Paid up Capital 1,05,00,800 Equity Shares of Rs.10/- each	10,50,08,000	Issued, subscribed and Paid up Capital 95,00,800 Equity Shares of Rs.10/- each	9,50,08,000

The pre and post shareholding pattern of the company, upon the approval of Scheme shall be in the following manner:

Category of Equity Shareholders	Pre Reduction as on 14 <sup>th</sup> August, 2019 face value of Rs.10/- each		Post Reduction (Expected) face value of Rs.10/- each	
	No. of Shares	Percentage	No. of Shares	Percentage



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Promoter and Promoter Group	54,74,800	52.14	54,74,800	57.63
Public				
Institutions	10,00,600	9.53	600	0.01
Individuals	33,75,000	32.14	33,75,000	35.52
Bodies Corporate	4,18,800	3.99	4,18,800	4.40
Non Resident Indians	2,30,400	2.19	2,30,400	2.43
Clearing Member	1,200	0.01	1,200	0.01
Total	1,05,00,800	100.00	95,00,800	100.00

Upon the coming into effect this Scheme of Arrangement for reduction of Capital of the OFL any increase in percentage of shareholding of the promoters of the company shall be exempted from the obligation to make an open offer pursuant to Regulation 3 & 4 of the SEBI (Substantial Acquisition of Shares and Take Over) Regulations, 2011 ("Takeover Regulations") in terms of the Regulation 10 (1)(d)(ii) of the said Takeover Regulation.

No new shares are being issued under this Scheme of Arrangement for reduction of the capital and therefore no fraction shares will be issued to any of the shareholders of the company.

For the observation made in No.12(xi) of Common Report of RD & RoC, the company proposed to reduce the share capital of the company adjusting the amount shown as advance paid OTS in schedule of loans & advances in the balance sheet via proposed Scheme.

For the observation made in No.12(xii) of Common Report of RD & RoC, as per the auditor's report. The company has a regular program of physical verification of its fixed assets by which fixed assets are verified in a phased manner over a period of three years, this periodicity of physical verification is reasonable having regard to the size of the company and the nature of its assets. However, in the financial year 2019-2020



no physical verification of fixed assets has been conducted on account of the COVID-19 related lock-down restrictions, the management was not able to perform year end physical verification of inventories, subsequent to the year end. Consequently, auditors have performed alternative procedures to audit the existence of inventory as per the guidance provided by in SA 501 "Audit Evidence – Specific Consideration for selected items" and have obtained sufficient audit evidence to issue unmodified opinion. Since the company has verified its fixed assets in proper due course except for the year 2019-2020 application for compounding under section 441 of Act is not reasonable.

For the observation No.12(xiii) of Common Report of RD &RoC, the company has enclosed the copies of the CSR reports for the financial year 2020-2021, 2019-2020 and 2018-2019 which were annexed with the Board's Report of the Company in Annexure K of the reply.

It is to be noted for the observation No. 12(xiv) of Common Report of RD & RoC that as per the provision of section 68 of the Companies Act, 2013, the company may purchase its own shares only out of its free reserves, securities premium account, or the proceeds of the issue of any shares or other specified securities, hence the buy back under such provisions are not applicable to the given scenario.

For the observation made in No.12(xv) of Common Report of RD & RoC, as stated in reply to Observation No.12(i) above, such 10,00,000 equity shares still in the name of KSIIDC in financial statements and in other records of the Company and paid-up share capital of the Company as per MCA records as on date includes such shares as well. Accordingly, the company made application under section 66 of the Companies Act, 2013, to



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reduce such share capital and adjust the amount shown as advance paid OTS in the schedule of loans & advances in the financial statement.

For the observation made in No. 12(xvi) of Common Report of RD & RoC, the company have complied all the necessary provisions of the Companies Act, 2013, SEBI (LODR), 2015 and other applicable rules and regulations as amended time to time and have given proper clarification to all the aforesaid points.

17. The present position of law, while dealing with the provision of Section 66 is that if none of the shareholders are objecting for the proposed reduction, then after considering the merits of the case as also connected facts and circumstances such petition generally deserves to be admitted.

(i) In the case of Elpro International Limited (Company Petition No.288 of 2007) order dated 22.06.2007 reported in [2009]149CompCase 646(Bom), the Hon'ble Bombay High Court has expressed that the question of reduction of share capital is the matter of domestic concern. Further observed that decision for reduction is based on commercial consideration undertaken by the businessmen who are in the best position to know of the necessities and interest of the company concerned, in the absence of serious allegation as regards the bona fides of the proposed Scheme, the Courts are of the view that no interference in such decisions is required. It has also been observed that considering the commercial aspect of the decision it is not permissible for the Court to come to the conclusion that the exit opportunity offered is inequitable and unjust.

(ii) Likewise, in the case of Reckitt Benckiser (India) Ltd. (Company Petition No.206 of 2004) Order dated 31.05.2005 reported in 2005 SCC Online Del 674, after due consideration of the pre



and post reduction, admittedly selective one, it was held that if majority by a special resolution decides to reduce share capital of company, it has also right to decide as to how this reduction should be carried into effect.

(iii) Further, observed that while reducing the share capital, company can decide to extinguish some of its shares without dealing in the same manner as with all other shares of the same class. The company limited by shares is permitted to reduce the share capital in any manner, thereby a selective reduction is permissible within the framework of law. On the question of valuation as well, an observation was that valuation of shares is technical matter, which requires considerable skill and experience. If the stakeholders are satisfied with the value, can approve the transaction of reduction of share capital which should not deemed to be equitable or unfair transaction.

(iv) On the same lines, in one of the decisions of the Bombay High Court in Sandvik Asia Limited v. Bharat Kumar Padamsi&Ors (Company Application No. 290 of 2003), Order dated 04.04.2009 reported in 2009 SCC Online Bom 541, the proposal of capital reduction was upheld. In the said case, the Single Judge Bench of the Court declined to sanction and approve the reduction of the share capital of the Company. Accordingly, the company filed an appeal before the Division Bench. The Hon'ble Bombay High Court relied on the Hon'ble Apex court holding that the judgment of the House of Lords in the case of British and American Trustee and Finance Corporation is a leading authority on the subject of reduction of the share capital by Company.

(v) Subsequently, the High Court has also referred to the judgment of Poole and others v/s National Bank of China Limited in which the same matter was considered by the House



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of Lords relying on the aforesaid judgment in the case of the British and American Trustee and Financial Corporation. In Para 9 of the judgment thereafter, the Hon'ble Bombay High Court held as under:

*"In our opinion, the above quoted observation of the House of Lords from its judgment in the case of Poole, referred to above, squarely apply to the present case. In our opinion once it is established that non-promoter shareholders are being paid fair value of their shares, at no point of time it is even suggested by them that the amount that is being paid is any way less and that even overwhelming majority of the non-promoters shareholders having voted infavour of the resolution shows that the court will not be justified in withholding its sanction to the resolution. As the Supreme Court has recognized that the judgment of the House of Lords in the case of British & American Trustee and Finance Corporate Limited is a leading judgment on the subject, we are justified in considering ourselves bound by the law laid down in that judgment. As we find that there is similarity in the facts in which the observations were made in the judgment in the case of British and American Trustee and Finance Corporation, we will be well advised to follow the law laid down in that case. In our opinion, therefore the learned single judge was in error in declining to grant sanction to the special resolution."*

18. In the circumstances, it is hereby ordered to confirm the reduction of share capital of the petitioner company by approving the special resolution dated 21.08.2020, wherein the members of the Petitioner Company resolved that as under:-

- a) *the company shall reduce its Equity share capital by adjusting the amount outstanding against the advance paid as part of One Time Settlement ("OTS") between the company and Karnataka State Industrial and Infrastructure Development Corporation*



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Limited ("KSHDC") and Ministry of Food Processing Industry ('MFPI')

b) On extinguishments of the paid-up share capital as provided in (a) above, the paid-up equity share capital shall stand reduced to Rs.9,50,08,000/- .

19. In terms of the above, the necessary alteration shall be made in the Memorandum of Association by the Petitioner Company for reduction of the amount of its share capital and of its shares. The copy of the altered Memorandum of Association and the minutes approved along with the order shall be delivered to the ROC by filing the E form INC, within 30 days of the receipt of the copy of the Order. Accordingly, the Registry shall prepare an Order in FORM No.RSC-6 as per the National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016 and issue to the Applicant.

**C.P No. 136/BB/2020** disposed of accordingly. To be consigned to the Records.

Form of Minutes

The capital of Ovobel Foods Limited is henceforth Rs.9,50,08,000/- (Rupees Nine Crores, Fifty Lakhs and Eighty Thousand only) divided into 95,00,800 (Ninety Five Lakhs Eight Hundred Only) Equity shares of Rs.10/- each fully paid up reduced from Rs.10,50,08,000/- (Rupees Ten Crores, Fifty Lakhs, Eight Thousand only) divided into 1, 05,00,800 (One Crore Five Lakhs Eight Hundred) Equity shares of Rs.10/- each effected by cancelling of Rs.10,00,000/- (Ten Lakhs Only) Equity shares of Rs.10/- each amounting to Rs.1,00,00,000/- (Rupees One Crore Only).

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(Manoj Kumar Dubey)  
Member (Technical)

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(Ajay Kumar Vatsavayi)  
Member (Judicial)



CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

for Deputy/Asst. Registrar  
National Company Law Tribunal  
Bengaluru Bench

21/03

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